Adjustment Assistance for Employees: The Present Status of Federal Legislation

Sidney I. Picker Jr.
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The past two decades have witnessed a proliferation of federal programs designed to promote employment and to assist individuals in attaining employable levels of skill-competence. But these programs, each applicable to specific groups of individuals and each answering an identifiable need, have been enacted in a hodge-podge fashion — resulting in disparate treatment of different persons in strikingly similar economic situations. The author examines the current state of these schemes and compares the purposes, benefits, and beneficiaries under each. In concluding his analysis, he underscores the necessity of repealing most such existing legislation in favor of one comprehensive generic act.

I. Introduction

Dear kindly social worker,

They say go earn some dough.

Like be a soda jerker,

Which means like be a schmo.

It ain't I'm anti-social,

I'm only anti-work.

Glory-oskie, that's why I'm a jerk.¹

Thus was Sergeant Krupke, that fictional symbol of accepted American mores and motivations, informed of a growing American dilemma in the 1957 musical drama, West Side Story. That the American public was already aware of Sergeant Krupke's lesson, and had recognized the bitter irony of work-rejection in one of the world's most work-oriented societies, is evidenced by the nationwide popularity of, and acclaim for the play. But in 1957 this awareness had not been translated into any substantial legislative program designed to moti-

¹ From the song, "Gee, Officer Krupke!", in the musical drama, West Side Story, music by Leonard Bernstein, lyrics by Stephen Sondheim, Produced by Robert E. Griffith and Harold S. Prince (1957) (sheet music available from G. Schirmer, Inc. and Chappell & Co., New York City).
vate and assist the individual in attaining and maintaining employ-
ability. Five years later, however, with the enactment of the Man-
power Development and Training Act of 1962\footnote{2} and the Trade
Expansion Act of 1962,\footnote{3} the United States Government took its first
significant steps into the arena of employment assistance. During
the decade following those first steps, the Federal Government has
become enmeshed in a surfeit of such legislation. President Nixon,
in consequence, has now proposed a unified Manpower Training
Act\footnote{4} to simplify and coordinate the multitude of currently function-
ing federal programs.

Existing legislation provides a broad range of employment ser-
This abundance of available benefits range from job placement\footnote{5} to employ-
ment training\footnote{6} and counseling;\footnote{7} from education\footnote{8} to the payment of
moving expenses;\footnote{9} from the establishment of job preferences\footnote{10} to
the payment of mortgage commitments;\footnote{11} and many more.\footnote{12} The
programs which provide these services, together with other federal
legislation designed either directly or indirectly to promote employ-
ment and the employability of individuals within the United States,
will hereinafter be referred to as “adjustment assistance.”

While federal adjustment assistance to the unemployed and the
underemployed for the purpose of job creation, job maintenance, and

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\begin{itemize}
\item \footnote{2}{42 U.S.C. §§ 2571-2628 (1970).}
\item \footnote{3}{19 U.S.C. §§ 1801-1991 (1970).}
See the modified plan, the comprehensive Manpower Act, H.R. 19519, 91st Cong., 2d
Sess. (1970), discussed in text accompanying notes 367-73, infra. See also H.R. 11688,
92d Cong., 1st Sess. (1971).}
\item \footnote{5}{See, e.g., Job Counseling and Employment Placement Services for Veterans’ Act,
(1970); Manpower Development and Training Act, 42 U.S.C. § 2573(b) (1970) (here-
inafter cited as Manpower Act); Vocational Rehabilitation Act, 38 U.S.C. § 1511(5)
(1970).}
\item \footnote{6}{See, e.g., Railroad Unemployment Insurance Act, 45 U.S.C. § 362(k) (1970);
Manpower Act, 42 U.S.C. § 2582 (1970).}
\item \footnote{7}{See, e.g., Manpower Act, 45 U.S.C. § 2582(a) (1970).}
\item \footnote{8}{See, e.g., War Orphans’ and Widows’ Educational Assistance Act, 38 U.S.C. §
\item \footnote{9}{See, e.g., Social Security Act (Work Incentive Program), 42 U.S.C. § 637 (1970);
§ 1961 (1970).}
\item \footnote{10}{See, e.g., Aviation Facilities Expansion and Improvement Act, 49 U.S.C. § 1722(c)
(1970) (job preference for veterans).}
\item \footnote{11}{Disaster Relief Act of 1970, 42 U.S.C. § 4436(b) (1970).}
\item \footnote{12}{See generally OFFICE OF ECONOMIC OPPORTUNITY, CATALOG OF FEDERAL
DOMESTIC ASSISTANCE PROGRAMS (1970).}
\end{itemize}
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job transferance began in earnest ten years ago, its origins predate that time. Indeed, federal adjustment assistance, in one form or another, has been a feature of the economy since the establishment of the Republic. As early as the 18th century, economically motivated programs have been designed to facilitate, as one benefit, the maintenance of employment. The "tariff," or duty on products imported into the United States from abroad, is a historic form of adjustment assistance benefitting both the producer of like or competing American made products and his employees. If an imported product were to undersell the domestic equivalent, the American producer of that domestic equivalent might be forced out of business, with the consequent elimination of those jobs held by his employees. By forcing the prices of imported products upward, the tariff makes it possible for the American producer to compete with those products while still maintaining a profitable price level: the life of the producer, and consequently the employment of his workers, is thus preserved.

The underlying federal concern for a skilled domestic labor force was demonstrated in a more direct fashion during the 19th century as Congress established the so-called "land grant" colleges. Under that program each state was awarded a specific amount of public land in order to endow, support, and maintain at least one college "where the leading object shall be . . . to teach such branches of learning as are related to agriculture and the mechanic arts . . . in order to promote the liberal and practical education of the industrial classes in the several pursuits and professions in life." Not until the 20th century, however, did the Federal Government seriously concern itself with the nation's needs for an efficiently trained and highly motivated labor force. This concern was prompted in part by the effects of economic fluctuations leading to periodic depressions (with resulting high unemployment), and in part by the new need for mobility and fluidity characteristic of an increasingly industrialized society. Beginning timidly in the 1930's and peaking in the 1960's, the Federal Government enacted adjustment assistance legislation providing, in one form or another, services, benefits, and opportunities for job placement, training, transferance, and advancement. By 1972 more than a dozen separate

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pieces of major legislation existed, each apparently applicable to a particular meritorious situation and answering an identifiable need. Yet, the various pieces of legislation unintentionally overlap in some instances, thus dressing certain beneficiaries in a variety of federal cloaks. Conversely, there are serious gaps in existing legislation which leave other persons, in some respects similarly situated, without the benefits of federal assistance. Without attempting to encompass even a majority of the possibilities available, the following hypothetical situation may illustrate a few of the problems caused by the plethora of current legislation.

Conglomerate Company, located in the City of Zenith, in the southwestern portion of the United States, manufactures various diverse products, including widgets. It is the only widget producer in the country. Recently Conglomerate suffered business reversals due entirely to a decline in the sale of widgets, which are consistently being undersold by cheaper foreign made widgets. Imports of widgets have increased substantially since the United States agreed to eliminate the duty on them at a tariff negotiation some years ago. As a direct result of losses encountered in its widget division, Conglomerate Company retained efficiency experts to evaluate the status of all divisions. As a result of that evaluation the following events occurred.

Conglomerate laid off most of its workers in the widget division, including Adam, a widget machinist. Within the separate gidget division Conglomerate took the following steps. First, it informed Ben, a spray painter, that he would be retained at his present job for six months, after which he would be dismissed. Then it informed Carl, an electrician, that he could retain his job on a part-time basis of 18 hours per week. Finally, it laid off the following persons: Dave, a 20 year old gidget machinist; Ed, Dave's 30 year old brother who was a bolt operator; Frank, a mechanic who began working for Conglomerate in 1969 after his honorable discharge from the army following service in Vietnam; George, an American of Indian ancestry, who resides at a nearby Indian reservation; Heloise, a part-time janitress living in the slum area of Zenith, who is supporting her sick husband and four children and receiving payments under "Aid to Families with Dependent Children"; Ida, a widowed laundress whose husband was killed in Vietnam, and who has been working on her first job for 6 months; Janet, another widowed laundress whose husband was killed in an automobile accident and who has also been working on her first job for 6 months;
Kevin, a security guard who lives in the nearby suburb of Glenwil-
low, a community that has recently suffered severe economic reces-
sion since its largest local employer, Bubbly Brewery, closed six
months ago; and Louise, a cleaning lady who lives in Zenith’s slums
and is the sole support of Mike, her 18 year old son and a high
school dropout.

The economic calamity which has befallen the Zenith area may be
mitigated by beneficent programs of the Federal Government aimed
at providing assistance in just such situations. After examining the
various programs available, an agent of the Government has advised
each of the foregoing individuals that he may be eligible for the fol-
lowing benefits:

1. Adam, the laid-off widget machinist: Training, allowances,
and relocation expense benefits under the Trade Expansion Act of
1962.17

2. Ben, the painter to be discharged in six months: Training,
but no allowance, as an “underemployed” person under the Man-
power Development and Training Act of 196218 (Manpower Act).

3. Carl, the electrician retained on a part-time basis: Training
plus salary under the Economic Opportunity Act of 1964.19

4. Dave, the 20 year old gidget machinist: Residential vocational
education under the Vocational Education Act of 1963.20

5. Ed, the 30 year old bolt operator: Training plus allowance
under the Manpower Act.21

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outlined in id. §§ 1941-44 (allowances), id. §§ 1951-52 (training), and id. §§ 1961-63
(relocation expenses).

18 42 U.S.C. §§ 2571-2628 (1970). Section 2582(a) provides for training of “under-
employed” persons. A person is underemployed if “[h]e has received notice that he
will be unemployed because his skill is becoming obsolete.” 29 C.F.R. § 20.12(g) (3)
(1971). He would receive no “allowances” under the program because, under section
2583(a)(1), such allowances are denied if the trainee is presently employed more than
20 hours per week.

19 42 U.S.C. §§ 2701-2994d (1970). Section 2740 provides for training of “un-
employed” persons. A person is unemployed if he is “not working regularly for re-
numeration in excess of 20 hours a week.” 29 C.F.R. § 51.2(c) (1971).

He could elect assistance under the Manpower Act, in which case he would receive
training and allowances in addition to salary. 42 U.S.C. § 2582(a) provides for training
of “underemployed” persons. A person is underemployed if “[h]e is working less . . .
than full time in his industry or occupation . . . .” 29 C.F.R. § 20.12(g)(2) (1971). In
addition to receiving training while retaining his part-time salary, he is also eligible for
“allowances,” which are not reduced by reason of his receiving salary from part-time

Education” sections, id. §§ 1321-23.

21 42 U.S.C. §§ 2571-2628 (1970). As an unemployed person he would qualify,
under section 2582(a), for training and allowance as provided in section 2583(a)(1).
6. Frank, the Vietnam veteran: Education allowance under the Veterans' Readjustment Benefits Act of 1966\(^\text{22}\) (Veterans Act).

7. George, the American Indian: Training plus subsistence under the Adult Indian Vocational Training Act\(^\text{23}\) (Indians Act).

8. Heloise, the part-time janitress receiving aid to dependent children: Training, allowance and transportation under the Social Security Act Work Incentive Program\(^\text{24}\) (WIN).

9. Ida, the Vietnam widow: Education allowance as a widow of a veteran under the War Orphans' and Widows' Educational Assistance Act.\(^\text{25}\)

10. Janet, the widowed laundress: Nothing. She has not worked the one year necessary to qualify for training and allowances under the Manpower Act.\(^\text{26}\)

11. Kevin, the security guard: Depending upon the economy of the country, a position on the Glenwillow police force under the Emergency Employment Act of 1971.\(^\text{27}\)

12. Louise, the cleaning lady supporting her son: Allowance and training under the Economic Opportunity Act.\(^\text{28}\) Possibly, training, allowance, and transportation under WIN (depending on whether she had been receiving Social Security aid for her son Mike).\(^\text{29}\)

13. Mike, the 18 year old drop-out: Residential training and allowance under Job Corps of the Economic Opportunity Act.\(^\text{30}\)

The foregoing hypothetical situation is intended to dramatize the result of enacting successive acts without regard to programs already implemented under pre-existing legislation. Today Congress provides differential benefits to various special classes of employees and potential employees, with each benefit or group of benefits administered, either directly or indirectly, by a particular branch or department of the Federal Government and often without regard to the administration of similar but not identical benefits to similar but not

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FEDERAL ADJUSTMENT ASSISTANCE

identical beneficiaries under other programs. While each program may be designed to accomplish one or more specific purposes, as often as not, the precise purpose of one may negate the purpose of another.

Writers have commented upon, analyzed, and criticized each separate piece of federal legislation, but few have acknowledged the relationship of one act to another, and none has attempted to compare major pieces of existing legislation. Thus, the purpose of this article is to set forth in a general manner all major federal legislation which is designed, either directly or indirectly, to create or promote employment or employability of individuals by providing adjustment assistance. Comparison will be made from three categorical perspectives: (1) the purpose or intention of each act; (2) the class of recipients or beneficiaries each act is designed to aid; and (3) the benefits offered to each class of beneficiaries under any given act. Except where relevant to the legislative scheme of adjustment assistance this article will not discuss individual state pro-


32 While dealing substantively with adjustment assistance provisions in the Trade Expansion Act of 1962, Professor Stanley Metzger recognizes the difficulties inherent in a proposal releasing or withholding benefits "depending on the line of work." He then points out that selective assistance was not new to the Trade Expansion Act in 1962 but had existed previously for employees in particular fields. Specifically, he refers to the Railroad Unemployment Insurance Law, the Servicemen's Readjustment Act of 1944 and the Veterans' Readjustment Assistance Act of 1952. S. Metzger, Trade Agreements and the Kennedy Round 56-57 (1964).

33 Id. The need for a coordinated adjustment assistance policy in order to end the "continued proliferation of Government-sponsored and Government-support programs" was first recognized by the President's Task Force on Occupational Training in Industry, chaired by Vivian W. Henderson. Task Force on Occupational Training in Industry, A Government Commitment to Occupational Training in Industry 7 (1968) (Report to the Secretaries of Labor and Commerce ordered in the 1967 President's Manpower Report to the Congress). This same Task Force report called for a "thorough and prompt review" of existing legislation dealing with the subject. Id. at 17. The Task Force report, however, confined itself principally to an examination of the various programs under only three pieces of federal legislation; the Manpower Development and Training Act, the Economic Opportunity Act of 1964, and the National Apprenticeship Act of 1937. Id. at 46-55.
visions which may relate to, or otherwise bear on, the employment process. Nor is it the intention of the author to discuss other legislation (federal or state) which is designed to offer, or otherwise provides, assistance to industry, management, employers, or the self-employed. Rather, this article will restrict its consideration to federal adjustment assistance programs benefiting employees and potential employees.

The concluding portion of the article will inquire into certain basic questions concerning adjustment assistance legislation. For example, of what relevance is it that the Federal Government offers such varied benefits to specified groups of employees or potential employees? Is it improper, unwise or unlawful to sprinkle federal largess selectively among the employees in the Conglomerate hypothetical? Certainly Congress may offer benefits to accomplish a legitimate government objective. Thus, to promote trade liberalization Congress rightly may offer benefits to displaced import-affected workers, and not to workers adversely affected by inefficient management. However, with the present superabundance of federal legislation dealing with the same broad subject of employment promotion, it is perhaps appropriate to ask whether Congress, in offering benefits to one group, was fully aware of all benefits offered to that same or other groups under previous acts. If Congress was so aware, then it seems appropriate to question the wisdom of making distinctions in light of the totality of all such acts indicating a general congressional concern with respect to employability.

Existing adjustment assistance legislation may be divided into two broad categories. First, there are those acts — the overwhelming majority — the primary purpose of which is the creation or expansion of employment. Second, there are those acts which have as their objective some primary purpose unrelated to employment creation, but which, in order to promote that primary purpose, have a supportive or secondary purpose involving employment creation or skill acquisition. The single most important example of this latter type of statute is the Trade Expansion Act. The primary purpose of the act is the promotion of international trade, but in support of that primary purpose, adjustment assistance benefits are offered to domestic employees displaced by import competition. Because of the unique nature of this non-generic statute, and in light of its precedential value for future non-generic adjustment assistance legisla-

tion (such as adjustment assistance to workers displaced by more stringent federal pollution controls or safety controls), special consideration is given to its operation.

II. Purposes

Perhaps no statements relating to acts of Congress are fraught with greater risk in interpretation than those attempting to isolate legislative intent. Nevertheless, a full consideration of the numerous statutes dealing with the same broad subject matter of the employment process necessitates some comment upon the intent of each and, more importantly, a synthesis of all the statutes.

A. Generic Adjustment Assistance Legislation

Generic adjustment assistance legislation, that is to say legislation the primary purpose of which is to come to terms with employment problems, has undergone a purposive evolution in the past 10 years. Since the early 1960's, there has been a dualistic shift in congressional thinking; on the one hand, shifting away from the needs of the nation and towards the needs of the individual, and on the other hand, shifting away from the connotation that unemployment is the fault of the individual and toward the implication that it may represent a flaw in the socioeconomic structure itself.

The first significant step toward effective adjustment assistance came in 1962 with the enactment of the Manpower Act. This act was intended to instill skills or abilities in those who were unemployed or underemployed in order to increase employment, and to provide an able labor force to meet the demands of the nation's economy. In large measure the Manpower Act was the product of earlier vocational education acts. Under former legislation, federal funds could be expended by states in order to train and retrain the unemployed worker unable to meet the demands of a changing economy with its new skill requirements. But most of those funds were in fact expended on the establishment of vocational education schools for young people preparing to enter the job market. There

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85 The act offers first priority, however, to the unemployed "[b]ecause of the difficulty of distinguishing among the various levels and causes of underemployment and the difficulty of defining unemployment [sic] . . . ." S. REP. NO. 651, 87th Cong., 1st Sess. 15 (1961).

was need for a new program which could operate independently of existing legislation, and which would emphasize the training or retraining of the unemployed person whose previous job was forfeited for lack of skill flexibility.\footnote{37 S. REP. NO. 651, 87th Cong., 1st Sess. 2 (1961).}

While the Manpower Act is primarily designed to provide occupational training to unemployed workers,\footnote{38 Patrick, supra note 36, at 21.} a reading of the act discloses an emphasis on the nation's needs as opposed to the individual employee's needs. That emphasis was clearly indicated as Congress referred to the "critical need for more and better trained personnel in many vital occupational categories" which must be filled in order to "meet the staffing requirements of the struggle for freedom."\footnote{39 42 U.S.C. § 2571 (1970).} This emphasis on the needs of the national economy is also found in congressional instructions to the Secretary of Labor who, in carrying out the purposes of the act, is required to "determine the skill requirements of the economy" so that the most important material necessary for that economy to prosper — trained personnel — is readily available.\footnote{40 42 U.S.C. § 2581 (1970).} Furthermore, although the provisions of the act are not confined to any occupational category, Congress, in the purposes section of the statute, specifically identified occupational categories which it considered "vital" to the national welfare, "including professional, scientific, technical and apprenticeable categories."\footnote{41 42 U.S.C. § 2571 (1970).}

One year later Congress adopted the Vocational Education Act, which was designed to complement the Manpower Act. The object of the Vocational Education Act was to "create a bridge between school and earning a living for young people."\footnote{42 42 U.S.C. § 2571 (1970).} To accomplish that goal it emphasized the expansion, improvement, and development of programs of vocational education for youths and others preparing to enter the labor market rather than the training of those displaced by a changing labor market.\footnote{43 42 U.S.C. § 1241 (1970).} The Vocational Education Act remains in the tradition of the Manpower Act by placing subtle emphasis on the needs of the nation rather than on those of the individ-

\footnote{37 S. REP. NO. 651, 87th Cong., 1st Sess. 2 (1961).}
\footnote{38 Patrick, supra note 36, at 21.}
\footnote{40 42 U.S.C. § 2581 (1970). "The primary areas of concern were to solve the shortage of skilled labor and secondly, to retrain workers temporarily displaced by automation." Patrick, supra note 36, at 20.}
\footnote{42 42 U.S.C. § 2571 (1970).}
\footnote{43 20 U.S.C. § 1241 (1970). This intention is further underlined in the definition Congress assigned to "vocational education" which refers to training "given in schools or classes . . . as part of a program designed to prepare individuals for gainful employment as semiskilled or skilled workers or technicians or subprofessionals . . . ." 20 U.S.C. § 1248(l) (1970).}
ual employee. Thus, it provides for the establishment of vocational education programs to prepare individuals "for gainful employment . . . in recognized occupations and in new and emerging occupations or to prepare individuals for enrollment in advanced technical education programs . . . ."44

The Economic Opportunity Act, also designed to benefit the generic category of unemployed persons, first displayed the subtle change in emphasis away from a narrow concern with unemployment as it related to the needs of the economy, and toward the particular problems of the unemployed person. Thus, the act declared:

It is . . . the policy of the United States to eliminate the paradox of poverty in the midst of plenty in this Nation by opening to everyone the opportunity for education and training, the opportunity to work, and the opportunity to live in decency and dignity.45

This change in emphasis continued through the 1960's under President Johnson's program for a "Great Society," which reflected a growing awareness of the social problems of the population as opposed to the purely economic demands of the nation. Coupled with heightened interest in the relationship between the individual and society was a growing sense that the country was not adequately imparting a sense of work-worthiness to large segments of its population, particularly the poor who had come to rely on expanding welfare legislation. Within this context one can understand the adoption in 1967 of the Work Incentive Program (WIN) as an amendment to the Social Security Act.46 That program was designed to provide training, as an effective incentive to seeking gainful employment, for persons receiving benefits under the Aid to Families with Dependent Children (AFDC) program.47

Implicit in the WIN amendment is the congressional notion that a work ethic — the motivation of the individual to be employed and thereby assume primary responsibility for his or her own welfare — is an ideal to be promoted. In line with that notion, one of the expressed purposes of the amendment was to instill this ideal in

46 42 U.S.C. §§ 620-44 (1970). While it is not strictly correct to include the Social Security Act under a category of generic legislation promoting employment, the WIN amendment seems most appropriately relevant for a discussion at this point even though the employment features of the amendment are, perhaps, subsidiary to a primary intent of Congress to alleviate welfare.
47 The program has been criticized, however, as requiring recipients to train for work rather than to find an incentive to work. See Comment, Public Welfare "WIN" Program: Arm-Twisting Incentives, 117 U. PA. L. REV. 1062 (1969).
AFDC recipients and their children who had failed to assimilate it. Thus, it is apparent that the amendment was based on certain fundamental assumptions. The importance of the working parent as a role model for the child, the effectiveness of WIN-authorized training programs in raising skills of recipients to "employable levels," the belief that WIN recipients would find immediate work, and the expectation that the work they obtained would remove them from the welfare rolls were all premises upon which the program was anchored. These assumptions have been challenged, however, upon grounds that in making them, both Congress and the public believed poverty to be a result of personal failure rather than an indication of a "societal malfunction." It would follow from that contention that any failure of the WIN program must rest, in part at least, on the basic purpose of the program to deal with persons who have failed rather than to deal with an economic system which has failed.

Perhaps without intending to come to grips with the special sociological problems relating to poverty, Congress nevertheless now seems to have adopted the position of the WIN critics that unemployment is attributable to events not within the control of particular unemployed individuals. For example, the statement of findings and purposes in the Emergency Employment Act notes that "expanded work opportunities fail, in times of high unemployment, to keep pace with the increased number of persons in the labor force," and that many unemployed or underemployed persons are in such a position because of "technological changes or as a result of shifts in the pattern of Federal expenditures, as in the defense, aerospace, and construction industries . . . ." A similar recognition of the deeper problems of unemployment is evident in the proposed amendments to the Disaster Area Relief Act. There, Congress cited the existence of severe unemployment as a matter of "critical national concern" in view of "the human suffering, loss of personal income, dislocation of families, and national economic loss." Thus, the net result of


Id. at 489.

See notes 52, 53 infra & accompanying text.


Id., § 4871(4). The relief offered under the act is not geared to the needs of the individual so much as the nation; if national unemployment reaches a certain trigger point, and if thereafter a given region within the country qualifies as an "area of substantial unemployment," then federal funds are distributed to state and local governments who in turn may use such funds to hire individuals in public service. Id., §§ 4872-73.

Proposed Economic Disaster Area Relief Act of 1971, S. 2393, 92d Cong., 1st
the philosophical change in Congress is that unemployment is now looked upon less as a failure of the individual and more as a scourge of God ranking with hurricanes, earthquakes, fires, and other disasters over which the victim has relatively little control. In the evolution of congressional attitude to the position that the unemployed is the victim of an imperfect economic system, new legislation such as this has been proposed without thorough examination of legislation adopted earlier in the evolutionary scale, and therefore without due appreciation of the effect of earlier acts on later programs.

B. Nongeneric Legislation — The Trade Acts

Turning from the "generic" adjustment assistance acts, there is another category of legislation, in which adjustment assistance provisions serve a secondary purpose closely related to a primary goal not aimed at the employment process. The best example of such legislation is the Trade Expansion Act, which was the first to offer a comprehensive integrated program of adjustment assistance to a limited class of beneficiaries in order to achieve a purpose unrelated to the employment process. The Trade Expansion Act is a model for future limited class beneficiary provisions such as the recently proposed adjustment assistance program for employees displaced by industries unable to meet stringent pollution control standards. For this reason the act deserves special consideration.

In order to understand the reasons for the inclusion of adjustment assistance provisions in the Trade Expansion Act it is necessary to examine more fully the nature of the tariff itself. As mentioned earlier, the tariff is actually an unrefined form of adjustment assistance. Although it does not result in the direct payment of benefits to employees, it does tend to maintain their status as employees since it preserves the business of their employers. Thus, tariff reductions, while bringing economic benefits of free trade, also tend to eliminate some jobs theretofore held by domestic employees. As the United States sought to obtain the benefits of liberalized inter-

Sess. § 2 (1971). Like the Emergency Employment Act of 1971 the proposed Disaster Relief Act would operate on certain trigger points requiring a certain level of unemployment nationwide and within any particular "area, community, or neighborhood" so that unemployment may be classified a "major disaster" entitling those adversely affected to the same federal assistance as persons affected by "any hurricane, tornado, storm, flood, high water, wind driven water, tidal wave, earthquake, drought, fire, insect infestation, or other catastrophe." Id. § 3.

54 See notes 361, 362 infra & accompanying text.
55 See notes 13, 14 supra & accompanying text.
56 J. PEN, A PRIMER ON INTERNATIONAL TRADE, 107 (1967).
national trade, a conflict with the "employment maintenance" feature of existing tariffs seemed inevitable. For a time it was thought the country could have its trade and beat it too, by preserving the protectionist features of the tariff through an "escape clause" in international trade liberalization agreements. For example, the United States might agree to reduce the tariff on widgets as a concession in exchange for equivalent foreign tariff reductions on a particular exportable American product. However, if the import of widgets increased by reason of the tariff reduction, and if the increased imports injured domestic widget producers, then the United States might escape its international obligation to maintain its "concession" tariff on widgets if it reserved, in the agreement, the right to eliminate the concession if such injury occurred. This "right to escape" was first established in 1942 as a part of a bilateral trade agreement with Mexico, and soon thereafter became a firm fixture of American as well as international trade policy. But the right to escape was reciprocal in nature, and thus invocation of the escape clause gave to certain foreign countries the corresponding right to suspend their tariff concessions previously granted to the United States. The result was that the goal of trade liberalization was effectively frustrated. Furthermore, the escape clause worked to the distinct disadvantage

59 Inclusion of the escape clause represented a political compromise. In order to save the pre-trade agreements program from attack by representatives of domestic producers it became necessary to accept "some restriction on executive power to reduce tariffs." D. ACHESON, PRESENT AT THE CREATION 200-01 (1969). Accordingly President Truman in 1947 issued Executive Order 9832 requiring that all future trade agreements include the escape clause. This was later codified in the Trade Agreements Extension Act of 1951, ch. 14, §§ 6-8, 65 Stat. 73, as amended, 69 Stat. 166 (1955), 19 U.S.C. §§ 1363-65 (1958), repealed by Trade Expansion Act of 1962, § 257(e)(1). A refinement of the escape clause, the so-called "peril point" was also established. See the Trade Agreements Extension Act of 1951, §§ 3-4, 65 Stat. 72-73 (1951), as amended, 72 Stat. 675 (1958), 19 U.S.C. §§ 1360-61 (1958). Prior to tariff negotiations conducted by the President, a list of articles for possible inclusion in a trade agreement was submitted to the Tariff Commission which identified the "peril points" (peril points are the maximum tariff cut below which a given product would be injured). The President might nevertheless negotiate a tariff reduction on such product below this point, but often at his own political peril. See S. METZGER, supra note 32, at 39-43.
60 General Agreement on Tariffs and Trade, Oct. 30, 1947, art. 19, 61 Stat. pt. 5 at A3, T.I.A.S. No. 1700, 55 U.N.T.S. 188 [hereinafter cited as GATT]. The multilateral agreement assures to each signatory the right to unilaterally suspend tariff concessions previously made, upon stated circumstances and conditions.
61 GATT, art. 19, para. 3(a).
of the American consumer "who was forced to pay higher prices because less expensive foreign goods were kept out."\(^6\)

It was in response to this dilemma, that Congress first undertook consideration of adjustment assistance to industries and workers adversely affected by increased imports. Congress recognized that negotiation of tariff concessions might in the long run be in the best interest of the country, even though concessions might be injurious to domestic producers and their employees.\(^6\) At the same time it was recognized that "[t]he government, if it reduces or removes existing tariff protection, is responsible for such injury and should bear at least a part of the cost of adjusting to new patterns of trade."\(^6\)

The notion of long-run advantage seemed eminently sensible. Rather than resort to protection solely for the purpose of maintaining an inefficient domestic producer, thereby inhibiting exports by more efficient industries, the government might now allow this "sick production" to pass away quietly and meanwhile ease the pain for temporarily unemployed workers by preparing them for new jobs. Moreover, the American consumer could obtain the advantages of trade liberalization without fear of price increases resulting from application of the escape clause.\(^6\)

Adjustment assistance benefits for import-affected employees were first proposed by David J. McDonald, President of the United Steelworkers of America and a member of the President's Commission on Foreign Economic Policy (the so-called "Randall Commission") in his dissent to that Commission's report in 1954.\(^6\) A number of bills encompassing such adjustment assistance were introduced in Congress in the years following that report, including one put forward by then Senator John F. Kennedy.\(^6\) None of these proposals bore fruit, however, until Kennedy became President and introduced what was to become the Trade Expansion Act of 1962.\(^6\)

That act, which authorized the President to negotiate substantial tariff reductions (and in some cases tariff elimination), included in


\(^{63}\) Cf. J. PEN, supra note 56.

\(^{64}\) The President's Message Transmitting the Administration's Trade Bill, H.R. DOC. No. 314, 87th Cong., 2d Sess. 11 (1962).

\(^{65}\) Comment, supra note 62, at 1050.


\(^{67}\) S. 3650, 83d Cong., 2d Sess. (1954). See also S. METZGER, supra note 32, at 57.

its provisions the power to provide, under certain conditions and circumstances, adjustment assistance to both industries and their employees displaced by increased imports.

In political terms the adjustment assistance provisions of the Trade Expansion Act, "by first admitting the possibility of injury to domestic interests, and then proposing a system for obtaining relief from such injury . . . robbed the protectionist interests in Congress of their traditionally strong arguments against tariff reduction." Internationally, by offering a viable alternative to the escape clause, adjustment assistance gave the United States an opportunity to present a heightened "image of American leadership and dependability in world trade and foreign affairs."

Adjustment assistance provisions similar to those in the Trade Expansion Act are found in another more specialized international trade act, the Automotive Products Trade Act of 1965. It is impossible to appreciate that act, however, without some understanding of the underlying international agreement to which it refers, the United States-Canada Automotive Products Agreement of 1965. In its broadest terms the agreement provides for a limited form of tariff-free trade in automotive products between the United States and Canada. This agreement was a result of Canadian determination to "Canadianize" certain aspects of its economy. Prior to 1965 over 90 percent of all motor vehicles manufactured in Canada were produced by United States subsidiaries. Moreover, Canada had imported

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73 Id. at 1090. The United States was the first country to offer adjustment assistance as an alternative to the protective effects of the escape clause. J. JACKSON, WORLD TRADE AND THE LAW OF GATT 567 (1969).
75 Agreement Concerning Automotive Products with Canada, Jan. 16, 1965 [1966] 1 U.S.T. 1372, T.I.A.S. No. 6093. The Agreement provides that the United States can accord such duty-free treatment only to Canadian automotive products and not to such products imported from any other country. Id., art. 2. The United States has thus accorded a tariff "preference" to Canada in violation of the "most-favored nation" provisions of GATT art. 1. Pursuant to GATT, art. 25, para. 5, however, the Contracting Parties "waived" application of the most-favored nation clause in order to give effect to the United States-Canada arrangement. GATT, BASIC INSTRUMENTS AND SELECTED DOCUMENTS, 14th Supp. 37 (1966).
automotive products from the United States valued at $635 million while it had exported to the United States automotive products valued at only $89 million.\textsuperscript{77} The terms of the 1965 agreement were aimed at correcting this trade imbalance. It was accepted by the United States for two reasons: (1) elimination of duties on automotive products would "rationalize" the North American automobile industry thus causing increased efficiency in production and distribution;\textsuperscript{78} and (2) the economic and political consequences of unilateral Canadian action to accomplish some form of "Canadianization" would be considerably more adverse to American interests than were the provisions of the agreement.\textsuperscript{79}

The Automotive Products Trade Act of 1965 was the mechanism to implement the substance of the agreement.\textsuperscript{80} Thus, the act was primarily designed to resolve imminent and serious trade conflict between the United States and Canada, and secondarily designed to create a limited free trade area between the United States and Canada in order to integrate the automotive products industries of the two countries along more rational economic lines.

As with the Trade Expansion Act of 1962, Congress recognized that effectuation of the principal purposes of the Automotive Products Trade Act would result in large-scale economic dislocation, which would be necessary in order to bring about the desired industry integration. Such dislocation would in turn cause unemployment among selective groups of employees.\textsuperscript{81} Here too Congress recognized that, having negotiated the agreement and having enacted the requisite legislation, the government was obliged to provide adjustment assistance to displaced employees.\textsuperscript{82} The assistance to be provided, however, was limited to a three year period ending July 1, 1968 — just long enough to minimize the transitional difficulties encountered while adjusting to the effects of the trade agreement.\textsuperscript{83} In addition to this reason for providing adjustment assistance, Congress found it politically necessary to include such benefits in order to obtain the de facto support of American labor for the underlying trade


\textsuperscript{78} Manley, \textit{supra} note 77, at 296.

\textsuperscript{79} Metzger, \textit{supra} note 77, at 103.


\textsuperscript{81} Manley, \textit{supra} note 77, at 297.

\textsuperscript{82} Id. at 297.

agreement. Without such support neither the agreement nor the act would have been feasible.

C. Nongeneric Legislation — Miscellaneous

There remain in the category of nongeneric legislation certain programs aimed at benefitting traditional special groups. Because this focus on special groups is antithetical to the trend toward more generic legislation, these acts are considerably less significant than the trade acts in providing precedent for future legislation. For example, adjustment assistance provisions which operate exclusively for the benefit of Indians reflects a 20th century congressional concern compounded by a 19th century indifference toward that group. It also indicates congressional recognition of the special ethic and skill acquisition problems of a culturally different and economically retarded people. While the employment problems encountered by Indians are significant, the current trend indicates that future benefits will flow in accordance with generic adjustment assistance legislation on behalf of all culturally deprived or economically depressed people.

Perhaps the best example of legislation relating to a traditional group is that conferring benefits upon armed service veterans. Special beneficial legislation in favor of veterans is, in some measure, a communication of gratitude as well as an acknowledgement that some special reward or compensation is appropriate for what were special services rendered. Thus, veterans' benefits legislation finds its basic purpose not in the promotion of employment but rather in the appreciation of a nation. Prior to the 20th century, veterans' benefits were usually provided by state legislatures rather than the Federal Government. Most bore little relationship to the employment function. While various state benefits remain, principal benefits for veterans today are found in federal legislation. Federal


85 That is not to say Congress denies that Indians have problems requiring some form of assistance of which they would be exclusive beneficiaries. Rather, it is likely that any such assistance will be subsumed within generic legislation authorizing programs for the unemployed, underemployed and otherwise economically deprived, rather than separate legislation for racial, religious, ethnic or sexual groups which may be subject to constitutional attack.

86 Examples of such benefits are cash bonuses, homestead exemption laws, and tax exemption legislation. See generally CAL. MIL. & VET. CODE §§ 1-2000 (West 1955).

87 E.g., CAL. MIL. & VET. CODE §§ 1-2000 (West 1955), especially id. §§ 870-99 (education assistance for veterans and their dependents); OHIO REV. CODE §§ 5901.01-.99 (Page Supp. 1970) ("Veterans' Relief").
assistance for the education and training of veterans first developed on a substantial scale when President Roosevelt was confronted with the necessity of drafting 18 year-olds for service in World War II. Consequently, assistance legislation devoted prime attention to on-the-job training. In 1952 Congress approved legislation extending the World War II benefits to veterans of the Korean conflict. However, due to the more orderly return of Korean veterans into civilian life, their higher level of pre-service schooling, and the greater technical demands of post-Korea society, the legislative history of the Veterans Act discloses a shift in emphasis to formal education rather than on-the-job training.

This shift in emphasis was maintained in the Veterans' Readjustment Benefits Act of 1966. In the 1966 act Congress stressed that it sought to aid returning veterans "in attaining the vocational and educational status which they might normally have aspired to and obtained had they not served their country." The purpose was not to equalize educational opportunities for all veterans, but rather to provide assistance in helping the veteran follow an educational plan that he might have adopted had he never entered the armed forces. Similarly, those provisions in favor of widows and wives of disabled veterans were designed to assist "them in preparing to support themselves and their families at a standard of living level which the veteran, but for his death or service disability, could have expected to provide for his family." Thus, the purpose of veteran benefit legislation has evolved from one of "reward" to one of obligation-recognition whereby Congress adopted the view that the veteran should be placed in the same position he would have been able to achieve had he never served in the armed forces.

III. BENEFICIARIES

The actual beneficiaries of adjustment assistance programs are those individuals for whom benefits are either directly or indirectly

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90 H.R. REP. NO. 1258, supra note 88, at 3-5.
94 H.R. REP. NO. 1258, supra note 88, at 3-5.
provided by reason of their qualification under the acts. In some instances the statutes authorize payments to governmental entities, employers, or others for the purpose of encouraging them to promote, directly or indirectly, the employment of persons whom they would not otherwise help. Reference to such programs will not be made in this analysis except where they are so intimately related to purely individual adjustment assistance that an omission would distort the principal subject matter.

The beneficiaries of adjustment assistance programs are defined by the acts in various ways, often with little consistency. It is the purpose of this section to isolate and identify the various criteria for qualification as a beneficiary under any given act. To alleviate somewhat the burden of relating the many statutes to each other, the discussion to follow will utilize the following definitional categories in referring to beneficiaries: (a) The Unemployed and Those in Need; (b) Those Affected by Import Competition; (c) Veterans; (d) Youth; (e) Women; and (f) Indians.

A. The Unemployed and Those in Need

While all adjustment assistance programs operate on the assumption that some person or group of persons is in need — either monetarily or otherwise without sufficient ability to care for himself — some of the acts under investigation are designed to benefit all persons who fall into the deceptively broad category of "needy" rather than into specific categories of persons requiring assistance (such as veterans, youth, females, and the like). The acts which specifically cut across sub-class lines and appear to benefit anyone in need of such assistance include the Manpower Act, the Economic Opportunity Act, the Vocational Education Act, the Social Security Act (WIN provisions), the Emergency Employment Act and the proposed amendments to the Disaster Area Relief Act of 1970.

Two of these provisions, the Manpower Act and the Economic Opportunity Act (Training for Adults Program), are concerned specifically with such categories as the "unemployed,"


Thus, in order to fully analyze the benefits available under these two provisions, it is necessary to isolate the meaning of such terms so as to ascertain just who Congress sought to benefit. While neither of the two acts defines the term "unemployed," the regulations issued in connection with these acts provide as follows. Under the Manpower Act a person is "unemployed" if: (1) he is able to work; (2) is available for full-time employment; and (3) has no job. On the other hand, under the Economic Opportunity Act, unemployment is defined in terms of "not working regularly for remuneration in excess of twenty hours a week."

It is clear that the Economic Opportunity Act permits qualifying for benefits as an "unemployed" person in spite of some part-time work, whereas such part-time work would exclude an individual from the definition of "unemployed" found in the Manpower Act. This act would, instead, categorize the person engaged in such work as "underemployed." This category includes a person who is either: (1) "working below his skill capacity"; (2) working less, or has notice that he will work less, than full-time in his occupation; or (3) "has received notice that he will become unemployed because his skills are obsolete."

Thus, although an individual with a full-time job who is given notice that his skills are no longer in demand, or an individual who has a part-time job which is in excess of twenty hours a week, may not qualify for benefits under the Economic Opportunity Act, he is still eligible for the admittedly more limited benefits for underemployed individuals provided in the Manpower Act.

The word "needy" is used twice in the Economic Opportunity Act of 1971, 42 U.S.C.A. §§ 4871-73 (Supp. 1972), also uses the terms "unemployed" and "underemployed" but because of the paramount importance of national "trigger points" (see discussion in text accompanying notes 131, 132 infra) before that act comes into operation, inclusion above would obfuscate the text. The WIN program under the Social Security Act also comes to terms with the definition of "unemployed" in connection with its Aid to Families with Dependent Children program. See text accompanying notes 123-28 infra.

The latter act an individual may hold a part-time job provided his income does not exceed 75 percent of his previous average full-time wage, and still be considered unemployed. Although the difference may be explained on the ground the Manpower Act also makes provision for the "underemployed" while the Trade Expansion Act does not, certain benefits, such as a training allowance, are made available only to the unemployed. Allowances under the Trade Expansion Act may also be paid to a beneficiary for a "week of unemployment" even though he may have a part-time job. See note 281 infra & accompanying text.

102 29 C.F.R. § 51.2(c) (1971).
103 29 C.F.R. § 20.12(g) (1971).
Act\(^{104}\) (and in one section of the Manpower Act)\(^{105}\) but in neither case is it used with respect to any substantive provision relating to a beneficiary. Rather, within the substantive benefit-conferring provisions of the act Congress adopted the phrase "low income."\(^{106}\) Within this context the description applies to "any family whose income is insufficient to provide it with basic needs. It shall be conclusive evidence that a person is from a low income family if his family receives or is eligible to receive cash welfare benefits on a needs basis under any public welfare program."\(^{107}\) It seems clear, therefore, that the Work and Training for Adults Program of the Economic Opportunity Act was intended to benefit not only the "unemployed" (as that act defines the term) but a broader classification encompassing the poor — primarily those receiving public assistance.\(^{108}\)

The remaining qualifications under the Manpower Act are that: (1) the person cannot reasonably be expected to secure appropriate full-time employment without training;\(^{109}\) and (2) in the view of the Secretary of Labor there must "be a reasonable expectation of employment in the occupation for which the person is to be trained," and if such employment is not available within the area in which the applicant resides, the Secretary must have "reasonable assurance" of the applicant's willingness to accept employment in a different location.\(^{110}\) No similar requirements are found in the Work and Training for Adults Program of the Economic Opportunity Act. The only related criteria under that act are found in those provisions under which the Director of the Office of Economic Opportunity contracts with a public or private nonprofit agency to serve as "prime sponsor" of a training program\(^{111}\) subsequent to the Director's designation of an area as a "community program area."\(^{112}\) Participation in such a

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\(^{107}\) 29 C.F.R. § 50.1(d) (1971).


program is limited to persons 16 years old and over who have the potential for attaining "regular competitive employment."

Less encompassing in nature than any of the foregoing acts is the WIN program of the Social Security Act. The program's stated purpose is to provide assistance to individuals in those families receiving AFDC benefits. WIN programs provide work training for such persons in order to assist them in becoming wage-earning members of society, thereby restoring their families to economic independence. As a result of 1967 amendments to the Social Security Act, state plans for aid to families with dependent children must provide for the prompt referral of "appropriate" individuals, age 16 or over, for participation in a work incentive program. Children, relatives, and "essential persons" living in a household receiving AFDC benefits are considered appropriate for referral. Persons deemed inappropriate for referral include: the ill, incapacitated, or old; persons so remote from a work project that they cannot effectively participate; a child attending school full-time; and a person whose presence in the home on a substantially continuous basis is required because of the illness or incapacity of another member of the household. The statute also makes provision for the referral of "any other person claiming Aid to Families with Dependent Children" who requests such referral to the program (unless the welfare agency determines that his participation would be inimical to his or his family's welfare).

Local sponsors of the program are expected to enroll, counsel, train, and place every eligible welfare recipient referred to them. Prior to November, 1971, a priority of referral was set forth in the administrative regulations. Those regulations provided a first priority for the referral of unemployed fathers. The second priority group included "mothers and other caretaker relatives and essential persons who volunteer" for referral. The third priority for referral included dependent children and essential persons age 16 or over who are not in school, at work, or in training. Volunteer mothers not currently involved in a work and training program and having no preschool age children were in the fourth priority. A fifth pri-

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114 See notes 46-48 supra & accompanying text.
ority was assigned to mothers and others who have preschool age children. The final priority was assigned to any others determined by the state to be appropriate for referral. Although the regulation establishing these priorities was rescinded after being attacked in the case of Thorn v. Richardson, recently proposed amendments to the WIN provisions would again establish a similar priority scheme — and in effect elevate them from the regulatory status into the statutory scheme.

Notwithstanding the present state of limbo regarding prescribed priorities for referral, it still remains that the administrators of the state programs must refer those persons who qualify for benefits. Thus the adjustment assistance provisions of the WIN program are unique in one important respect: in accordance with past or future priorities, enrollment in the program is largely involuntary. As such, it is the only adjustment assistance provision under which the receipt of benefits may not be dependent on the initiative of the beneficiary: such benefits may be thrust on the potential beneficiary regardless of his views toward the program. Indeed, any failure on the part of at least one group of people, unemployed fathers, to participate in a WIN program will preclude such person from receiving further assistance under the AFDC program.

119 4 FEP Cases 299, (W.D. Wash. 1971). The plaintiffs challenged the priorities for referral to the WIN program both under regulations of the Department of Health, Education and Welfare, and under regulations of the State Employment Service of the State of Washington. These priorities were challenged as discriminatory on the basis of sex. The order of the Court in this case held both that the classifications of the priorities were not rational and also that sex was a suspect classification under the Equal Protection clause.
120 H.R. 10604, 92 Cong., 1st Sess. (1971). Under the proposed amendments, section 433(a) of Title V of the Social Security Act (42 U.S.C. § 633(a) (1970) ) would require the state administrators to refer:
[F]irst, unemployed fathers; second, mothers, whether or not required to register pursuant to § 402(a)(19)(A), who volunteer for participation under a work incentive program; third, other mothers, and pregnant women, registered pursuant to section 402(c)(19)(A), who are under 19 years of age; fourth, dependent children and relatives who have attained age 16 and who are not in school or engaged in work or manpower training; and fifth, all other individuals so certified to [the Secretary of Labor]. Title V of the Social Security Act § 433(a), as modified by Conference Agreement on H.R. 10604, reprinted at 117 CONG. REC. S. 21644 (daily ed. Dec. 14, 1971).
In addition to the foregoing considerations, the WIN program introduces a third encounter with the troublesome term "unemployed," but in a context somewhat different from the use of that word in the Manpower and Economic Opportunity Acts. Until 1961 the category of "dependent children" for whom aid could be given under the AFDC program was limited by statute to those deprived of parental support by causes such as death, absence, or incapacity. Unemployment was not one of the enumerated conditions creating eligibility. In 1961, however, Congress added section 607 to the Social Security Act, which section permitted states to broaden their definitions of "dependent child" to include those deprived of parental care or support by reason of the unemployment of a parent. \(^{123}\) "Unemployment" was never defined either in the amendments or regulations, and thus states were free to adopt their own interpretations. By 1967, 22 states had amended their AFDC plans to include dependent children of unemployed parents, and had established a variety of tests of "unemployment," \(^{124}\) generally, but not consistently, based on number of hours worked per week. As a result of the lack of a uniform standard among the states, Congress, in 1968, amended section 607 by eliminating state authority to define "unemployment," and instead authorized the Secretary of Health, Education, and Welfare to prescribe definitional standards. \(^{125}\) Congress also limited application of section 607 to unemployed fathers rather than to unemployed parents, apparently because some states had permitted both parents to qualify as unemployed. The HEW regulation adopted pursuant to the 1968 amendments provides that state plans must include a definition of an "unemployed father" for purposes of AFDC qualification, "[w]hich shall include any father who is employed less than 30 hours a week . . . and . . . [w]hich may include any father who is employed less than 35 hours a week . . . ." \(^{126}\) This regulation, based upon the statutory purpose of the AFDC program which stressed the concept of aiding "the needy," led to litigation over the discrepancy between the statutory purpose language with its attendant definitions, and the regulatory language establishing a definitional criterion of need which was not suggested by the statute procedures required when other individuals refuse to participate in a project without good cause.


\(^{124}\) S. REP. NO. 744, 90th Cong., 1st Sess. 159-60 (1967).


\(^{126}\) 45 C.F.R. § 233.100(a)(1)(i), (ii) (1971).
itself. Plaintiffs unsuccessfully argued that, although they worked more than the minimum number of hours, they should not be penalized for such work because their wages were, in fact, so low as to qualify them as needy persons. Despite this apparently sound attack, the regulation remains as drafted.

General in their application to beneficiaries but specific in their operation are two forms of adjustment assistance, both proposed in 1971, which were designed to offer benefits only on the happening of specified national events. These are the Emergency Employment Act of 1971 and the proposed 1971 amendments to the Disaster Relief Act of 1970. In each case the benefits are not available until some specified national or regional level of unemployment is reached. Under the Emergency Employment Act the rate of seasonally adjusted national unemployment must reach 4.5 percent or higher and the area for which the emergency employment assistance is sought must be experiencing a rate of seasonally adjusted unemployment in excess of 6 percent. Under the proposed amendments to the Disaster Relief Act, the operational trigger point would be reached when area unemployment amounts to a "major disaster" — unemployment in a given area which is 50 percent above the national average for 6 of the preceding 12 months, or a 100 percent increase in unemployment culminating in an unemployment rate of at least 6 percent for the past 12 months and which, in the President's discretion, is of such magnitude as to warrant federal assistance.

Under the Emergency Employment Act, once the trigger point is reached, the Secretary of Labor is authorized to formulate agreements with all appropriate federal, state, or local governmental units, or other public agencies and institutions, for the purpose of providing employment, primarily in public service jobs, for the un-

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128 The district court upheld the classification as "rational." 324 F. Supp. at 1260.
131 42 U.S.C.A. §§ 4874(b), 4875(c)(1) (Supp. 1972). However, "areas of substantial unemployment" need not be political areas, but they can be areas of "sufficient size and scope to sustain a public service employment program ... ." Id. § 4875(c)(1).
132 S. 2393, 92d Cong., 1st Sess. § 3(1) (1971). The area in question may be any "area, community, or neighborhood (without regard to political boundaries), in any part of the United States ...." Id. But the governor of the state in question must certify the need for federal assistance. Id.
employed and the underemployed.\textsuperscript{134} Unlike previous legislation, the Emergency Act defines the terms “unemployed” and “underemployed.” An “unemployed” person is anyone who is either: (1) without a job and who wants and is available for work; or (2) an adult who (or whose family) is receiving money payments pursuant to the Social Security Act and who is, in the opinion of the Secretary of Labor, available for work but without a job or with a job which provides insufficient income to enable the person or his family to be self-supporting without public assistance.\textsuperscript{135} An “underemployed person” is one who is: (1) working part-time but seeking full-time work; or (2) working full-time for wages below the poverty level.\textsuperscript{136} Although these definitions apply only to the Emergency Act, they are, nevertheless, the first statutory criteria available and as such should be compared with the regulatory definitions of the same terms discussed earlier.

The proposed amendments to the Disaster Relief Act, on the other hand, do not define such words as “unemployed,” although the benefits would be confined to that category of persons.\textsuperscript{137} Inasmuch as the proposals would authorize the President to provide “re-employment assistance services under other laws,” it is arguable that whatever regulatory definition of the term exists in other legislation would be applicable under this program. But if that were the case, the definition would depend entirely upon the federal statute to which the President chose to make reference. In any event, the eligible beneficiaries would be substantially limited by the provision that assistance would be offered only to “unemployed” persons “who are unable to find reemployment in a comparable position within a reasonable distance from home.”\textsuperscript{138}

B. \textit{Those Affected by Import Competition}

Under the Trade Expansion Act a “group of workers,” their union, or any other authorized representative\textsuperscript{139} may apply for assistance benefits if the following circumstances are proved: (1) an increase in imports of a product like or competitive with those manu-

\begin{itemize}
\item \textsuperscript{134} Id. § 4872(a).
\item \textsuperscript{135} Id. § 4883(a)(5).
\item \textsuperscript{136} Id. § 4883(a)(6). The Director of the Office of Management and Budget determines the criteria necessary for “poverty level.” \textit{Id.}
\item \textsuperscript{137} S. 2393, 92d Cong., 1st Sess. § 256 (1971).
\item \textsuperscript{138} \textit{Id.}
\item \textsuperscript{139} 19 U.S.C. § 1901(a)(2) (1970).
\end{itemize}
factured by the workers' employer has occurred;\textsuperscript{140} (2) the increase results "in major part" from tariff concessions granted under international trade agreements;\textsuperscript{141} (3) the competing domestic employer or subdivision thereof is seriously injured or is threatened with unemployment or underemployment of a significant number of workers;\textsuperscript{142} and (4) the import increase has been "the major factor" in causing or threatening to cause such unemployment or underemployment.\textsuperscript{143}

The principal question encountered by those seeking to qualify as beneficiaries under the act has turned on the phrases "in major part" and "the major factor" in criteria (2) and (4) above. The Tariff Commission (that agency designated by the Trade Expansion Act to determine eligibility)\textsuperscript{144} initially interpreted the word "major" in both criteria as an over 50 percent test. That is to say, before it would agree that imports increased "in major part" from tariff concessions, the Commission required that all other causes for increased imports (e.g., higher quality, better design, superior distribution system of the imported product) considered together were less significant than the granting of the tariff concession.\textsuperscript{145} Similarly, in determining whether increased imports were "the major factor" in causing or threatening to cause injury, workers were required to demonstrate that the totality of all other causes was less significant than increased imports alone.\textsuperscript{146} Thus, it was not sufficient to demonstrate that increased imports was the most important of many factors if all other factors taken together amounted to more than 50 percent of the cause of increases.\textsuperscript{147} In 1969, the Commission rejected the mechanical "over 50 percent" and "largest single cause" tests in favor of a more flexible "but for" test. The new test embraced an earlier view expressed by Commissioner Clubb in the \textit{Barbers' Chairs} case\textsuperscript{148} in which he interpreted "major" to mean "substantial," without regard to any specified percentages. Under the new test, if, but for the tariff concessions, imports would be below the current level, then

\textsuperscript{140} Id. § 1901(c)(2).
\textsuperscript{141} Id.
\textsuperscript{142} Id.
\textsuperscript{143} Id. § 1901(c)(3).
\textsuperscript{144} Id. § 1901(c)(2), (3) (1970).
\textsuperscript{146} Id. at 7.
\textsuperscript{147} Id.
the increase resulted "in major part" from those concessions.\textsuperscript{140} The new test has been criticized on grounds that the dominant cause of increased imports might have nothing to do with imports (e.g., poor quality or design of the domestic product), but if tariff concessions had contributed in some small degree to the increase, the but for test could be met, thus turning tariff concessions into a major cause.\textsuperscript{150} Consequently, adjustment assistance is apparently being offered not only to promote a liberal trade policy but to aid any group able to show some import connection. This, in effect, discriminates against those who cannot demonstrate any import connection.\textsuperscript{151} To remedy this apparent inequity, William Roth, the President's Special Representative for Trade Negotiations, has proposed a "substantial cause" test to be used in determining whether increased imports caused or threatened unemployment or underemployment, and has further suggested eliminating altogether the requirement of proving a causal relationship between a tariff concession and increased imports.\textsuperscript{152} His view has been criticized on the grounds that, under such an approach, adjustment assistance based merely on increased imports would bear no relationship to trade liberalization policies manifested in governmental negotiation and concession — supposedly the principal reason for adopting adjustment assistance provisions in trade legislation.\textsuperscript{153} As a compromise solution, it has been suggested that a "substantial" cause test (i.e., less stringent than the "over 50 percent" test) be applied if it is shown


\textsuperscript{150} Comment, Adjustment Assistance: A New Proposal for Eligibility, 55 CORNELL L. REV. 1049, 1053 n.34 (1970). It is interesting to note that the "but for" test has not been applied by a majority of the Tariff Commissioners when an applicant sought escape clause relief under the Trade Expansion Act even though the criteria for escape clause relief and adjustment assistance are identical. 19 U.S.C. § 1901(b)(1), (3) (1970), See Pianos and Parts Thereof, TEA-I-14, Tariff Comm'n Pub. No. 309 (1969), decided after the Buttweld Pipe and Transmission Towers and Parts cases, where only two Commissioners felt it appropriate to apply the "but for" test when escape clause relief was sought. It is difficult to justify the use of two different tests when the statutory language in both sections is the same. President Nixon's proposed Trade Act of 1971 eliminates the identical causal language by imposing a "substantial cause" test for adjustment assistance and a more stringent "primary cause" test for the escape clause. In addition, the proposed act would eliminate altogether any causal connection between a prior tariff concession and increased imports. H.R. 20, 92d Cong., 1st Sess. (1971); S. 4, 92d Cong., 1st Sess. (1971).

\textsuperscript{151} Comment, supra note 150, at 1056.

\textsuperscript{152} SPECIAL REPRESENTATIVE FOR TRADE NEGOTIATIONS, FUTURE UNITED STATES FOREIGN TRADE POLICY 47 (1969). This report was the basis for President Nixon's proposed statutory changes in 1969. See note 150 supra.

\textsuperscript{153} See note 64 supra & accompanying text.
that the workers' firm "does not have the potential to effectively compete with such imports."\(^{154}\)

One group of potential beneficiaries under the Trade Expansion Act was, for a time, singled out for special treatment under the Automative Products Trade Act.\(^{155}\) For a period of 30 months following the effective date of that act in 1965, automotive workers, affected by trade agreements made pursuant to the act, were afforded liberalized access to federal adjustment assistance benefits.\(^{156}\) During that time, application for assistance could be made by a "group of workers" employed by a firm which produced an automative product.\(^{157}\) In order to qualify for benefits, those workers would have to demonstrate: (1) that "dislocation"\(^{158}\) had occurred or was threatening to occur; (2) that American production of the automative product in question (or its directly competitive equivalent) had decreased "appreciably"; (3) and either that importation of the like or directly competitive product from Canada had increased "appreciably," or that American exports of the like or competitive automative product to Canada had decreased "appreciably."\(^{159}\)

While the "causation" requirement, so troublesome in the Trade Expansion Act, was present in the Automative Products Trade Act, the standard had been altered and the burden of proof effectively shifted to the government. A showing by workers of the three criteria mentioned above required the President to certify the workers as eligible unless he determined "that the operation of the Agreement has not been the primary factor in causing or threatening to cause dislocation of the . . . group of workers."\(^{160}\) Furthermore, it was possible for workers to qualify for adjustment assistance under the act even though they might not be able to meet the second or third requirement mentioned above, if the President nevertheless determined that the "operation of the Agreement" was the primary

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\(^{154}\) Comment, supra note 150, at 1058.


\(^{158}\) "Dislocation" is defined as unemployment or underemployment of a significant number or proportion of a firm or appropriate subdivision thereof. 19 U.S.C. § 2022(j)(2)(B) (1970).


factor in causing or threatening dislocation to workers. In addition to the foregoing, the Automotive Products Trade Act avoids the phrase "major factor" and includes in lieu thereof, "primary factor." Whatever the vagaries of the latter phrase, even the Tariff Commission agreed that it must be a less strict causation test than its Trade Expansion Act equivalent. Consequently, the act provides greater flexibility in the determination of beneficiaries than is found in the earlier trade act. More workers obtained relief under the Automotive Products Trade Act than under its 1962 trade cousin, although with an unusual variation. In some cases it was held that a certain percentage of workers were laid off due to dislocation caused by the act and, therefore, only a certain percentage of workers should receive benefits. Neither the statute nor regulations authorizes apportionment of causation or a consequent arbitrary apportionment of workers who will receive benefits under the act. It has been observed that "[t]he problem was... how to select those


162 Hearings on H.R. 9042 Before the Senate Comm. on Finance, 89th Cong., 1st Sess., at 440 (1965). It should be remembered, however, that at the time the Tariff Commission offered its views it was applying the "over 50 percent" test for causation under the Trade Expansion Act. The more liberal "but for" test was not adopted until 1969. See text accompanying notes 148, 149 supra.

The Automotive Agreement Adjustment Assistance Board, designed to act for the President under Exec. Order No. 11,254, 3 C.F.R. 354 (1965), 19 U.S.C.A. § 2022 (Supp. 1972), adopted the "single most important" test to determine "primary factor." 48 C.F.R. § 501.2(i) (1968). The "single most important" test was indeed more liberal than the Tariff Commission's "over 50 percent" test, but perhaps less so than the Commission's later "but for" test adopted in 1969. See note 149 supra & accompanying text.

The more flexible standards than those found in the Trade Expansion Act were justified on the grounds that the Automotive Products Trade Act calls for an immediate duty elimination while the Trade Expansion Act looked primarily to no more than a 50 percent tariff cut staged over five years, that the Automotive Products Trade Act would create greater injury since it contemplated both decreased United States exports and increased United States imports from Canada, and that the purpose of the act was to promote dislocation in order to rationalize production. H.R. REP. No. 537, 89th Cong., 1st Sess. 11 (1965). In fact, the newer and more liberal standards stem in large measure from a fear of labor opposition to the agreement after unhappy experiences with the restrictive interpretation given adjustment assistance under the Trade Expansion Act. See, e.g., Hearings on H.R. 9042 Before the Senate Comm. on Finance, 89th Cong., 1st Sess., at 246-48 (1965).


165 See Manley, supra note 163, at 308.
workers unemployed by the [act] from among the larger group of petitions. The board seems to have simply selected an arbitrary number."\textsuperscript{166} As between any two workers it would seem extremely difficult to justify to one worker why he does not qualify as a beneficiary while a co-worker does qualify for no reason other than the arbitrary application of percentages. While the benefits of the Automotive Products Trade Act were continued for only a 30 month period ending July 1, 1968\textsuperscript{167} there appears to be no reason why workers could not now obtain similar adjustment assistance provided they meet the more stringent standards specified in the Trade Expansion Act.

C. Veterans

For a veteran to be eligible for vocational rehabilitation he must: (1) have a service-connected disability arising out of service during World War II or the Korean conflict; or (2) have a 30 percent or more disability arising from service after World War II but before the Korean conflict or after the Korean conflict, or a lesser disability which clearly causes "a pronounced employment handicap."\textsuperscript{168} Eligibility for Veterans' Educational Assistance, on the other hand, only requires that a veteran: (1) have received a discharge other than dishonorable after having served on active duty for a period of more than 180 days; or (2) have been discharged or released for a service-connected disability.\textsuperscript{169}

Other eligibility rules apply to veterans interested in receiving "special assistance for the educationally disadvantaged." A veteran is educationally disadvantaged if he is not on active duty and has not received a secondary school diploma (or an equivalency certificate) at the time of his discharge or release from active duty, or if he needs refresher or special courses in order to pursue a program of education for which he would otherwise be eligible. Such a veteran is eligible to be enrolled in a program of education for which he would otherwise be considered to be ineligible as "already qualified."\textsuperscript{170} Veterans pursuing secondary education are eligible for individualized tutorial assistance if they are enrolled at an educational institution on a half-time basis or more and have "a marked deficiency in

\textsuperscript{166} Id.
a subject required as a part of, or which is prerequisite to, or which is indispensable to the satisfactory pursuit of, an approved program of education . . . ."171

D. Youths

Much of the adjustment assistance legislation is generic in nature, applying to youths and older workers without regard to the age of the potential beneficiary. Even within this body of generic acts, however, Congress clearly intended in at least one act172 that young people would in fact be the principal beneficiaries. And in addition to these programs of general applicability certain adjustment assistance provisions have been adopted which apply exclusively to youths. Perhaps the most significant legislation in this regard is the Economic Opportunity Act, which established such programs as the Job Corps Work Training for Youths, and Work-Study programs.

Criteria for admission to the Job Corps program reflect the same mixture of objective and discretionary criteria found in earlier legislation. To be admitted into the program a candidate must: (1) be at least 14 but less than 22 years old;173 (2) be a permanent resident of the United States;174 (3) either have a "low income" or be a member of a "low income family";175 (4) require additional training, counseling or related assistance in order to "secure and hold meaningful employment," qualify for some other training program, participate in regular school work, or satisfy armed forces requirements;176 (5) live in an environment which deprives him of the opportunity to take part in any other training program provided by the Federal Government but which does not provide residential services;177 and (6) demonstrate some reasonable likelihood that participation in the Job Corps will be successful.178

172 See note 42 supra & accompanying text.
174 Id.
175 42 U.S.C. § 2713(5) (1970). The statute provides no definition of "low income" under the Job Corps section. Under the "Work Training Program" portion of the statute where "low income" is also an eligibility criterion, the statute, without defining the term, states that one is deemed to be from a low income family if the "family receives cash welfare payments." 42 U.S.C. § 2742(a) (1970).
177 The Job Corps was designed for those who live in an environment unconducive to the purposes of adjustment assistance programs; therefore, the program established resident centers in order to provide a more controlled setting.
Unlike the Job Corps, which was designed to provide a new atmosphere more conducive to training receptivity, the Work and Training Program under the Economic Opportunity Act was intended to offer work experience, to both those in and out of school, through a training experience not otherwise available in private employment or under existing federal programs.\textsuperscript{170} Candidates for the Work and Training Program need only be "unemployed or low-income persons" and residents of the United States.\textsuperscript{180} But the criteria for eligibility and limitation to youth are found in those provisions empowering the Director of the Office of Economic Opportunity to contract with a public or private non-profit agency to serve as "prime sponsor" of the Work Training Program\textsuperscript{181} subsequent to the Director's designation of an area as a "community program area."\textsuperscript{182} Under those provisions the program has been confined to persons in grades 9 through 12, or persons in that age group, who need additional funds either to stay in school or to go back to school.\textsuperscript{183}

The Work and Training Program indicates congressional sensitivity to the inadequacies of earlier programs implemented under the Manpower Act. That act had authorized the establishment of "special programs" for testing, counseling, selection and referral of youths 16 and over for "occupational training and further schooling."\textsuperscript{184} To demonstrate eligibility for such programs candidates had to show that they were either unqualified for or unable to obtain employment without further training and schooling, and that the reason for such disqualification could be traced to an "inadequate educational background and work preparation."\textsuperscript{185} The youth provisions of the Manpower Act were never implemented on a scale sufficient to prove their effectiveness since, for the most part, funds available under it were applied primarily in the training of unemployed adults.\textsuperscript{186}

\textsuperscript{170} H.R. REP. NO. 1458, 88th Cong., 2d Sess. 3 (1964).
\textsuperscript{180} 42 U.S.C. § 2742(a) & (b) (1970). "Unemployed" is defined as "not working regularly for remuneration in excess of twenty hours per week." 29 C.F.R. § 51.2(c) (1971). For further discussion on the meaning of "low-income" see text accompanying notes 106, 107 supra.
\textsuperscript{182} 42 U.S.C. § 2738(a) (1970).
\textsuperscript{185} 42 U.S.C. § 2582(b) (1970).
\textsuperscript{186} For example, the Secretary of Labor had an upper limit on the number of youths
One final provision under which benefits are available to the needy young is the Vocational Education Act. The substantive portions of that act which are specifically directed toward youth are those relating to "Residential Vocational Demonstration Schools" under which the Federal Government may provide grants for the purpose of promoting vocational education of youths aged 15 to 21.\textsuperscript{187} Like the Job Corps, the program involves full-time residential training, but unlike the Job Corps, emphasis is on schooling. While the criteria for eligibility under this program are broad enough to include much of the population,\textsuperscript{188} effective restrictions have been created by contractual arrangements between the Federal Government and schools participating in the program. Those limit the schools functions to benefitting youths within the age limits previously stated who need full-time study on a residential basis and can profit from such an experience.\textsuperscript{189} While schools established under a Vocational Education Act grant are theoretically open to anyone regardless of economic status, special consideration is given to the needs of large urban areas having substantial numbers of young people who have dropped out of school or are unemployed.\textsuperscript{190} Of special interest is the act's method of avoiding duplication of benefits by providing that, as an additional criterion for eligibility, a prospective beneficiary must demonstrate that he is not receiving benefits under either the Manpower Act or the Trade Expansion Act.\textsuperscript{191}

E. Women

Although there appears today no real need for adjustment assistance legislation to include express invitations to women (or any minority group)\textsuperscript{192} to participate in the programs offered, some of the current statutes do take special notice of the needs of women. In fact, one statute, the Economic Opportunity Act, goes so far as to

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\textsuperscript{188} For example, this includes anyone in high school, anyone who has completed high school or had discontinued his education and is preparing to enter the labor market, anyone already in the labor market but in need of upgrading his skills or acquiring new ones, and those with special "educational handicaps." 20 U.S.C. § 1262(a)(3) (1970).
\textsuperscript{190} Id.
\textsuperscript{192} Various regulations under adjustment assistance acts prohibit discrimination against minority groups with respect to eligibility for benefits under such programs.
mandate the encouragement of female participation in the Job Corps. Other statutes provide benefits exclusively to the female spouse of the person through whom initial eligibility is established, or provide differential eligibility priorities for beneficiaries based on sex and marital status.

The mandate of the Economic Opportunity Act amounts to a clear congressional recognition of the urgent need to decrease the number of unemployed women. The legislative history of the act over a period of several years is replete with discussion of the need to enroll women and the consistent lack of success in fulfilling that goal. In the hope of finally achieving its goal Congress, in 1966, amended the act to expressly require enrollment of a set percentage of women. The act now provides:

193 Legislative history pointed out that 46 percent of all high school dropouts were young women and that about 33 percent of the labor force were women. The report of the Committee on Education and Labor then pointed out that "it is the Committee's desire that at the very minimum the number of young women in the Job Corps should be as nearly as practicable in the same proportion." H.R. REP. No. 1458, 88th Cong., 2d Sess. 4 (1964).

194 Legislative history provides the following stated justification for establishment of a statutory percentage requirement:

Since women form about one-third of our labor force and considerably more of our unemployed, the Job Corps was designed to permit young women as well as young men to participate. The objective of the Congress, as stated in the 1964 Economic Opportunity Act report of this committee, was to guarantee that a minimum of one-third of those benefited would be women.

This objective was reaffirmed last year when it appeared that less than 1 percent of the young people enrolled in the Job Corps in the opening months were women. The committee at that time called attention again to congressional intent and the evident discrepancy between legislative intent and Job Corps performance. Recognizing that the program was innovative and untested and that some administrative problems could be expected in the beginning, the committee did not recommend an amendment to require enrollment of a specific number of young women by the end of the current fiscal year.

The Job Corps, however, has not made satisfactory progress in the enrollment of young women. The committee now believes that such a statutory requirement should be adopted for fiscal year 1967. Data submitted by the Office of Economic Opportunity during hearings on the bill indicated that by the end of June 1967, Job Corps planned a capacity for only 6,000 women against 39,000 men. Even if this goal were achieved, two and a half years after initiation of the program, Job Corps would still be less than halfway to attaining the minimum proportion of young women it has been directed from the start to achieve.

The significance of this gap between the congressional goal and planned program performance is highlighted by the alarmingly high rate of unemployment among young women at a time when unemployment generally is at its lowest point in many years. Last year, unemployment among girls 14 to 19 was 14.3 percent as compared with 13.1 among boys in the same age group. For those 20 to 24, the rate was 7.3, as compared to 6.3 for young men. For nonwhite girls, the rates were the highest of any group — 29.8 for girls 14 to 19 and 13.7 for women 20 to 24, compared to 22.6 and 9.3, respectively, for nonwhite boys and young men in the same age group.
(b) The Director shall take necessary action to assure that on or before June 20, 1968, of the total number of Job Corps enrollees receiving training, at least 25 per centum shall be women. The Director shall immediately take steps to achieve an enrollment ratio of 50 per centum women enrollees in training in the Job Corps consistent with (1) efficiency and economy in the operation of the program, (2) sound administrative practice, and (3) socioeconomic, educational, and training needs of the population to be served.195

Additional benefits for women are available under the veterans benefits programs which include assistance for the wives (but not husbands) of certain veterans. Under these provisions, enrollment in educational assistance programs, specialized vocational training courses, and special restorative training are all available to "the widow of any person who dies of a service-connected disability," or "the wife of any person who has a total disability permanent in nature resulting from a service-connected disability, or the widow of a veteran who died while a disability so evaluated was in existence . . . ."196 Eligibility under these programs may terminate for a woman otherwise eligible, if the spouse from whom her eligibility is derived is found no longer to have a total disability, or if she is divorced from him.197 While special provision is thus made for the education of wives of disabled veterans, no mention is made of any benefits for the husbands of female veterans who are killed or disabled.198 The implication, apparently, is that men are expected to be able to work to support themselves and their children if their wife's earning capacity is destroyed.

This preference for widows and wives of disabled veterans recognizes the need for providing assistance to those individuals in order to ease the readjustment of widows and wives of disabled veterans to their likely new roles as breadwinners. In contrast, job retraining programs conducted under the Work Incentive Program of the Social Security Act have functioned under a referral priority system which gives a preference for retraining to men, in spite of the fact that the majority of families receiving AFDC bene-

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198Proposed legislation would require the same treatment for husbands of female veterans as is now provided for wives of male veterans. H.R. 3965, 92d Cong., 1st Sess. (1971).
fits are headed by women. Although the act itself does not set forth priorities drawn along lines of sex, categories referred to in the act, such as "caretaker relatives," have been interpreted in regulations along sex lines. Regulations adopted by state agencies charged with administration of the WIN program are, of necessity, drawn consistently with the federal regulations, thereby also creating preferences for male trainees.\textsuperscript{199}

While women were accorded equal treatment under the statute, despite the aforementioned inconsistent federal and state regulations, with respect to their right to be referred for training under WIN, the Social Security Act simultaneously does give women a different kind of preference. Provisions of the act require state plans to include provision for the referral of unemployed fathers to a work retraining program within 30 days after the initial receipt of benefits. There is no such requirement, however, for unemployed women, who thus have some choice in the matter of seeking retraining.\textsuperscript{200} Thus, it is perhaps natural that the establishment of priorities in the regulations manifests an apparent belief that Congress would, in fact, prefer to retrain men. The net result, of course, is to keep more people on AFDC, since unemployed fathers can easily lose their eligibility under both AFDC and the WIN programs if they are not referred for training within the required time period. Not surprisingly this situation has recently led to litigation.\textsuperscript{201}

F. Indians

The Adult Indian Vocational Training Act\textsuperscript{202} has provided the benefits of vocational training to certain categories of American Indians. While the statute is designed to help Indians "to obtain reasonable and satisfactory employment,"\textsuperscript{203} it does not require either unemployment or underemployment as a precondition to qualification for the training services provided. The basic qualifications necessary are: (1) that the individual be an Indian,\textsuperscript{204} that is, he must have at least 25 percent "Indian blood;"\textsuperscript{205} (2) that he or she be

\textsuperscript{199} See text accompanying notes 118-20 supra.
\textsuperscript{203} Id.
\textsuperscript{204} Id.
\textsuperscript{205} Inasmuch as the regulation is stated in terms of blood rather than relationship,
not less than 18 nor more than 35 years old\textsuperscript{206} (although exceptions can be made);\textsuperscript{207} and (3) that he or she reside either within the boundaries of an Indian reservation,\textsuperscript{208} or "near" such a reservation\textsuperscript{209} if a failure to provide services to Indians residing near a reservation would have a "direct effect" on Bureau of Indian Affairs programs within the reservation.\textsuperscript{210} The Secretary of the Interior has by regulation added the following requirements:\textsuperscript{211} (1) that the applicant must be "in need" of training "in order to obtain reasonable and satisfactory employment," that is, employment sufficient to generate income capable of maintaining the applicant or his family at a level "adequate in the community;"\textsuperscript{212} and (2) that it must be "feasible" for the applicant to pursue training.\textsuperscript{213} Once qualified, an exclusive program of job training is available to the individual.

Indians, or more correctly Indian tribes, are mentioned in other adjustment assistance legislation although clearly the beneficiaries of such legislation are not intended to be exclusively Indians. Rather the specific mention of Indian tribes in certain provisions is to insure that such tribes will qualify for benefits along with other beneficiaries residing in political or other distinct subdivisions. Thus, under the WIN Program of the Social Security Act, the Secretary of Labor "may make grants to, or enter into agreements with, public or private organizations (including Indian tribes with respect to Indians on a reservation . . . .)."\textsuperscript{214} Grants are also available to "an Indian tribe on a Federal or State reservation, which has within it an area of substantial unemployment," under the Special Employment As-

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\textsuperscript{207} The statute states that training benefits must be available "primarily to Indians" between 18 and 35 years of age. \textit{Id.} (emphasis added). While the act was concerned with the training of adults, apparently Congress assumed that a training program would be of little value to middle-aged Indians who would be less adaptable to change.
\textsuperscript{209} Id.
\textsuperscript{210} The Bureau of Indian Affairs regulations, and not the authorizing legislation, imposes the condition that there must be a "direct effect" on programs within reservations before Indians residing outside reservations may qualify for training. 25 C.F.R. § 34.3 (1972).
\textsuperscript{211} The Secretary of Interior is authorized to promulgate such additional rules and regulations as he deems advisable. 25 U.S.C. § 309 (1970).
\textsuperscript{212} 25 C.F.R. §§ 33.3, 34.3(a), (b) (1972).
\textsuperscript{213} 25 C.F.R. § 34.3 (1972).
sistance Program of the Emergency Employment Act of 1971.215 An Indian reservation may also be considered a "community" in order to qualify for a community program area under the Economic Opportunity Act.216 It is worth noting that while the foregoing provisions relate directly to Indians, any individual Indian who does not meet the qualifications of such programs may nevertheless be eligible for adjustment assistance if he meets the personal qualifications specified in other acts.

IV. Benefits

The various adjustment assistance statutes offer a colorful spectrum of benefits, operationally designed in one form or another to promote the employability of individuals. In some respects these benefits are understandably tailored to the needs of specific groups of individuals, such as health benefits for those in need of medical attention. On the other hand, other benefits are so basic as to be available under most of the statutes involved. Worker training programs and payments of allowances are examples of this latter type of benefit. Yet a third type of benefit includes those inexplicably offered only under a single act despite its apparent relevancy to beneficiaries under all or most other acts. The payment of expenses incurred in seeking a job in a distant city represents an example of this type of benefit.

A. Training

The primary benefit offered under virtually every act providing adjustment assistance is that of job training.217 While training is nowhere defined in the various acts, each includes it as a benefit to be offered or promoted. In some cases it is referred to simply as "training,"218 in others as "vocational training,"219 and in still more

218 While the act itself does not define it, regulations to the Manpower Act provide that training "means a planned and systematic sequence of instruction or other learned experience on an individual or group basis under competent supervision which is designed to impart skills, knowledge, or abilities to prepare individuals for suitable employment." 29 C.F.R. § 20.1(r) (1972).
as "on-the-job training," \(^{220}\) "occupational training," \(^{221}\) "apprenticeship training," \(^{222}\) "vocational education," \(^{223}\) "retraining," \(^{224}\) "restorative training," \(^{225}\) and "vocational rehabilitation." \(^{226}\) In each case the training is offered through an independent entity with the financial support of the Federal Government. The "entity" may be an employer, a union, a nonprofit institution, a school or other educational institution, a state or state agency, or an agency of the Federal Government. The word takes on various nuances depending on the nature of the experience offered as well as upon the limitations with respect to whom the offeree may be. By way of example, "on-the-job" training suggests that training is administered by an employer who may be paying a portion of the trainee's salary and who holds out some possibility of more permanent non-government supported employment at the conclusion of the training period. "Vocational education" suggests training administered by an educational institution in order to prepare a trainee for a "specific type of occupation." "Vocational training" suggests training administered either by a labor union or other labor-controlled institution, or by a state agency charged with preparing a trainee, to fill a specific occupational need. "Training" alone may mean that responsibility for producing desired abilities in a trainee is in the hands of any of the entities previously mentioned for the purpose of preparing the trainee either for a specific occupation or for any of several occupations in which the acquired knowledge or experience may be used. Thus, without further definition, "training" means the teaching of certain skills to a given person after which the skills are readily transferable to useful employment. Training should be distinguished from "education" generally, which is also a form of skill acquisition but is less related to any particular employment possibility.

\(^{220}\) Id.

\(^{221}\) Manpower Act, 42 U.S.C. § 2582(a) (1970). The problems of defining "occupational training" are described in the legislative history of the 1963 amendments to the act. Very rigid and narrow interpretations were applied in many areas during the early stages of the program. The legislative history explains that training programs need not be limited to traditional curriculum developed for a particular occupational training program. Rather "occupational training" is "tailormade training;" if it is "specific training for a particular occupation." The one limitation mentioned is that it does not embrace "professional" or "preprofessional" training. H.R. REP. No. 861, 88th Cong., 1st Sess. 17 (1963).


\(^{224}\) E.g., id.


\(^{226}\) E.g., id. § 1501(2).
The earliest form of job "training" undertaken by the Federal Government is found in the National Apprenticeship Act of 1937.\textsuperscript{227} The intent of that relatively early piece of assistance legislation was to combine a system of education for journeymen in particular crafts with actual on-the-job training. Unlike current programs, the Government did not underwrite the costs of apprenticeship training under this provision. Rather, it acted through the Department of Labor in an advisory and promotional capacity by encouraging the establishment of standards and by offering technical assistance to unions and employers.\textsuperscript{228}

In contrast to the early provision, the Federal Government today offers training programs by underwriting the costs of programs in which supervision and control over the type of training offered is usually exercised by the Secretary of Labor, subject to basic statutory guidelines. Under most statutes providing adjustment assistance, strict limitation is placed only on the scope of the beneficiaries who may be eligible for participation in the program.\textsuperscript{229}

In many respects, the broadest discretion vested in the Secretary of Labor is found in the Manpower Act. While applicants for training must meet general statutory requirements as beneficiaries,\textsuperscript{230} the Secretary is empowered under this act to devise whatever training programs he deems suitable. By way of contrast, one should consider both the Trade Expansion Act\textsuperscript{231} and the Automotive Products Trade Act which appear to confer broad discretion on the Secretary


\textsuperscript{228} TASK FORCE ON OCCUPATIONAL TRAINING IN INDUSTRY, A GOVERNMENT COMMITMENT TO OCCUPATIONAL TRAINING IN INDUSTRY 47 (1968) (Report to the Secretaries of Labor and Commerce).

\textsuperscript{229} This is exemplified by the Manpower Act. The Secretary of Labor must determine whether "there is a reasonable expectation of employment in the occupation for which the person is to be trained." If such employment is not available in the area in which the person resides, the Secretary must "obtain reasonable assurances of such person's willingness to accept employment outside his area of residence." 42 U.S.C. § 2582(f) (1970). Legislative history points out the problems of administration due to use of the word "reasonable" in this statutory provision, which is nowhere defined. Use of the word "reasonable" was intended to promote flexibility and is to be interpreted differently depending on the circumstances. The history makes clear that no employer guarantees are envisaged; surveys may be desirable in some occupations while in others experience will be enough of a guide. H.R. REP. No. 861, 88th Cong., 1st Sess. 16 (1963).

However, if the statute relates less directly to a job, and is more in the nature of an education function then the limitation may be placed not on the job availability, but the Administrator's satisfaction that the individual will profit from the experience. See Economic Opportunity Act, 42 U.S.C. § 2718 (1970); Social Security Act, WIN Program, 42 U.S.C. § 632(b) (1970).

\textsuperscript{230} See notes 101, 103 supra & accompanying text.

of Labor. However, the primary effort is to restore the worker to employment with the import-affected firm from which he was discharged. To this end, consultation must be held with such firm and the relevant unions or other worker representatives in order to develop a "worker retraining plan" devised "to meet the manpower needs of such firm . . . ." The net result is a limitation of the Secretary's discretion with respect to training programs under the two trade acts, so as to ensure that the actual training programs carried out will be tailored to "restore the employment relationship between the workers and the firm."

Like the Manpower Act, the Economic Opportunity Act and the Vocational Education Act are generally broad in their designation of potential beneficiaries. Each contemplates the same basic groups of persons — the poor, the young, the unemployed, or the economically unequipped. There are nonetheless significant differences between the two in regard to the training programs available under each. One major difference is that the vocational education available under the Vocational Education Act is almost exclusively full-time institutional training, much more limited than the various diverse opportunities available under the broader Economic Opportunity

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234 Id. The difference between the Manpower Act and the two trade acts is understandable in that while the latter two deal with unemployment in an industry affected by imports, the former deals with unemployment and underemployment generally without regard to the cause. Compare 42 U.S.C. § 2582(a) (1970) with 19 U.S.C. § 1951 (1970) and 19 U.S.C. § 2021.

While the quoted provision of the Trade Expansion Act may benefit some workers by affording the opportunity to retain their seniority status, in other respects the provision appears to make the needs of the firm paramount. Any given worker may be placed in a precarious position not unlike an indentured servant if the plan in question calls for retraining him to perform a less remunerative function. The worker, while not obliged to accept the plan, is nevertheless penalized for failure to accept inasmuch as refusal to take part in such a training program results in forfeiture of his trade readjustment allowance. The act states that "[a]ny adversely affected worker who, without good cause refuses to accept . . . suitable training to which he has been referred by the Secretary of Labor shall not thereafter be entitled to trade readjustment allowances until he enters . . . training to which he has been so referred." Whether insistence by the worker on an alternative training program which would enable him to obtain the same or better position with some other employer would amount to "good cause" (thus preventing his loss of the trade adjustment allowance) is unresolved.

235 See notes 96-113, 187-91 supra & accompanying text.


237 OEO activities provide part-time employment, on the job training, work experience, and basic education. 42 U.S.C. § 2740(a)(1), (2) (1970).
Act. Under the Vocational Education Act, the Federal Government exercises no direction, supervision or control over the curriculum, administration, or personnel of any educational institution receiving funds pursuant to the act. Furthermore, federal funds are channelled to the states rather than to individual boards of education. Since the allotment to each state is based on a statutory formula, the Federal Government retains only minimal control over even the distribution of funds relating to individual programs. In marked contrast, under the Work and Training for Youths and Adults programs of the Economic Opportunity Act, the Government retains substantial financial control inasmuch as the Director of the office of Economic Opportunity contracts for fund distribution directly with the prime sponsor of each community area program. The statute itself goes so far as to place upon the Government the responsibility for "planning, administering, coordinating and evaluating a comprehensive work and training program." The act also authorizes the Director to create "Job Corps Centers," for those individuals not suited to other types of training. Unlike most other forms of training programs, the Job Corps may be residential in character, thus providing a more controlled experience than can be achieved under other federal legislation.

On its face the Vocational Education Act appears to be closely related in terms of administrative control to the Manpower Act. Under this act, primary responsibility for a vocational education program rests with the Commissioner of Education whose broad discretion in the establishment of training programs is limited only minimally by the Presidential National Advisory Council. There are differences between the two acts, however, which can be explained in terms of use rather than authority. The Vocational Education Act, as its now repealed predecessors indicate, provides broad authority for the training of individuals, but that authority has been used primarily for vocational high school education rather than general training for the unemployed, thus creating a need for legislation.

239 Id. § 1243(a)(2). The formula is based on the number of persons in various age groups in the population needing vocational education and the per capita income in the respective states.
241 Id. § 2739(a).
242 Id. § 2716.
aimed directly at the latter group. The Manpower Act focuses on this need.\textsuperscript{244}

In addition to the “generalist” acts which provide training to broad categories of individuals, there exists a series of statutes which provide a similar experience for a more selective group of beneficiaries. These statutes include: (1) the WIN provisions of the Social Security Act, which provide “work incentive programs” for persons in households qualifying for AFDC benefits;\textsuperscript{245} (2) the Adult Indian Vocational Training Act;\textsuperscript{246} (3) the vocational rehabilitation training program for disabled veterans;\textsuperscript{247} (4) the Special Restorative Training program\textsuperscript{248} for the orphans and widows of veterans, and for the wives of disabled veterans, under the veterans benefits acts; and (5) the Trade Expansion Act\textsuperscript{249} as well as the Automotive Products Trade Act,\textsuperscript{250} each confined to certain classes of beneficiaries adversely affected by trade. The statutory variation relating to training among these acts is actually no greater than the variations which exist among the so-called “generalist”\textsuperscript{251} acts.

The length of time in which particular individuals may remain in the various training programs varies in accordance with the provisions of the particular enabling statute. For example, the maximum period of training under the Job Corps is two years. Under the Work Experience and Training Program of the Economic Opportunity Act an individual may participate for three years.\textsuperscript{252} The Manpower Act and the Trade Expansion Act have no durational limitations\textsuperscript{253} although there is considerable pressure to end the training period after two years under the Manpower Act\textsuperscript{254} and one year under the Trade Act\textsuperscript{255} since the related “allowance” on which trainees may support themselves during their period of training.

\textsuperscript{244} See notes 96-100 supra & accompanying text.
\textsuperscript{251} See notes 236-44 supra & accompanying text.
\textsuperscript{253} Id. § 2923(b).
\textsuperscript{254} The period of time as expressed in the Manpower Act is a period of time “reasonable and consistent with the occupation for which the person is being trained.” 42 U.S.C. § 2582 (1970).
\textsuperscript{255} Id. § 2583(a).
ceases thereafter. Under the WIN program\textsuperscript{257} of the Social Security Act the period for any given individual is flexible\textsuperscript{258} but there is a one year restriction on "the average period of enrollment under all projects under [an adopted] program throughout any area [of the country]."\textsuperscript{259} Adult Indians on or near Reservations may receive training for two years unless they are receiving nurses' training, for which they are entitled to a three year program.\textsuperscript{260}

The programs referred to above are largely financed by the Federal Government and the Government must ensure compliance with statutory standards. However, the responsible federal official has considerable latitude in contracting with states, public and private institutions, corporations, employers, schools and other training centers, which in turn will implement the particular training programs.\textsuperscript{261} In this connection it is interesting to note the variety of governmental officials who are ultimately responsible for training programs under the various acts. The Secretary of Labor bears primary responsibility under the following Acts: the Manpower Act;\textsuperscript{262} the Economic Opportunity Act, except for its Job Corps program;\textsuperscript{263} the

\begin{itemize}
\item \textsuperscript{257} 42 U.S.C. §§ 630-44 (1970).
\item \textsuperscript{258} 42 U.S.C. § 636(b) (1970).
\item \textsuperscript{259} Id. § 636(a).
\item \textsuperscript{260} 25 U.S.C. § 309 (1970). The reasoning behind the different periods of time for the training of nurses and the training of others appears to be based on the fact that some schools of nursing offer a three year course of study leading to a diploma in nursing. The extension of time for nurses training was added to the existing legislation in 1963 in response to a need on the part of Indian health officials for additional trained nurses. H.R. REP. NO. 894, 88th Cong., 1st Sess. 2 (1963). Although the legislation is admittedly beneficial, the additional time was added to satisfy not the needs of trainees but the needs of an employer.
\item \textsuperscript{261} "In carrying out the purposes of this part the Secretary may make grants to or enter into agreements with public or private agencies or organizations . . . ." 42 U.S.C. § 632(c) (1970). \textit{See also} 25 U.S.C. § 309 (1970); 42 U.S.C. § 2717(a) (1970); \textit{id.} 2738. Perhaps the most significant exception is the education portion of the veterans' program whereby the Veterans' Administrator gives his approval to a program of education, but payments are made directly to the individual who thereupon pays the institution providing the training. While earlier veterans' acts focused on job training, the more orderly return of veterans to civilian life since the Korean conflict with their higher level of pre-service schooling, and with greater technical demands on our society, shifted the emphasis to formal education. H.R. REP. No. 1258, 89th Cong., 2d Sess. 18 (1965). The Veterans' Readjustment Benefits Act of 1966, providing supportive but not exclusive assistance to veterans, was intended primarily for tertiary education but is also available for vocational education. 38 U.S.C. § 1675 (1970). Yet, a peculiar congressional prejudice emerges by not offering assistance for courses in bartending and personality development (\textit{id.}), nor allowing educational benefits for wives, widows and orphans of veterans who desire to enroll in on-the-job and on-the-farm training courses or correspondence courses. 38 U.S.C. § 1723 (1970).
\item \textsuperscript{262} 42 U.S.C. § 2572(2) (1970).
\item \textsuperscript{263} 42 U.S.C. § 2925 (1970).
\end{itemize}
Automotive Products Trade Act;\textsuperscript{264} the Trade Expansion Act;\textsuperscript{265} and the Social Security Act's WIN provisions.\textsuperscript{266} The Director of the Office of Economic Opportunity is responsible for the Job Corps.\textsuperscript{267} The Commissioner of Education is primarily responsible for programs under the Vocational Education Act.\textsuperscript{268} The Secretary of the Interior is responsible under the Indian Act.\textsuperscript{269} The Director of the Veterans Administration is responsible for the various training programs under the veterans' benefits acts.\textsuperscript{270} While the various acts are in some measure coordinated by giving the Secretary of Labor prime responsibility in a majority of training programs, it is apparent that a number of such programs rest on the doorsteps of other officials. To some extent, the various acts avoid some duplicity of administration by preventing double participation by beneficiaries. For example, participation in any training programs enacted under earlier legislation precludes participation in a program under the Vocational Education Act.\textsuperscript{271} Nevertheless, there remains a multiplicity of programs, parceled out to numerous public and private organizations all too often responsible to several different federal officials.

\textbf{B. Allowances}

In addition to offering programs of training, a number of statutes provide for an "allowance" or periodic cash payment to the trainee. This allowance theoretically provides basic subsistence to the individual who otherwise is unemployed during the training period. Or, if the individual is involved in some form of on-the-job training, the allowance supplements his understandably low wages. The need for the allowance became apparent as Congress discovered that many state unemployment insurance laws contained provisions which terminated benefits when a recipient undertook a training program, thus frustrating the training incentive. The allowances under the federal programs compensate for those lost benefits. Where the state in-

\textsuperscript{266} 42 U.S.C § 630 (1970).
\textsuperscript{267} 42 U.S.C § 2717 (1970).
volved does permit the continuation of unemployment compensation during a training period, federal allowances cease to the extent of such compensation.272 There is an exception, however, in that any person (other than an unemployed father) who qualifies for an allowance under the WIN program may receive both the allowance provided under that act and any available state unemployment compensation.273

Eligibility for the allowance benefit in every case depends on involvement in a training program, although such participation is no guarantee of an allowance, particularly where adequate wages are paid.274 And each statute may impose its own particular eligibility requirements. For example, under the Manpower Act the potential trainee must demonstrate proof that he has been employed in the past for a total of at least one year.275 The Trade Expansion Act imposes more stringent conditions by requiring that the potential beneficiary must have been employed for a total of 18 months within the three years immediately preceding application, and must have been employed for six months of the immediately preceding year by a firm adversely affected by imports.276 On the other hand, previous

272 "No training allowance shall be made to any person otherwise eligible who... has received or is seeking unemployment compensation under [any] state unemployment compensation law..." 42 U.S.C. § 2583(d) (1970). See also 19 U.S.C. § 1942(c) (1970).

273 The Social Security Act specifically denies aid to families with dependent children with respect to any week for which fathers, but impliedly no other relative, of such children receive unemployment compensation under state or federal law. 42 U.S.C. § 607(b) (2) (C) (ii) (1970). This provision has been unsuccessfully challenged by unemployed male parents on the ground the provision constitutes an unreasonable classification (one based on sex) in violation of the 14th amendment. Burr v. Smith, 322 F. Supp. 980 (W.D. Wash. 1971).


275 42 U.S.C. § 2583(c) (1970). Perhaps the "previous employment" requirement of this act can best be understood in light of its purpose to alleviate unemployment among the laid-off wage-earner rather than to prepare young people for future employment.

276 Furthermore, the act requires that in each week of any such former employment a minimum of $15 in wages must have been paid. 19 U.S.C. § 1941(c) (1970). No comparable requirement is found in any other act.

The act also differs from other acts in that the separation from employment with the import affected employer must be involuntary. The act defines "adversely affected worker" to be "an individual who, because of lack of work in adversely affected employment — (A) has been totally or partially separated from such employment, or (B) has been totally separated from employment with the firm in a subdivision of which such adversely affected employment exists." Id. § 1978(2).
work experience is not a qualification for the allowance under WIN or the Job Corps.277

Beneficiaries under the Manpower Act are precluded from obtaining part-time or other temporary jobs. The need for such prohibition stems directly from the express coverage language of the act which declares that it shall apply to the “unemployed and underemployed.”278 Given the difficulty in precisely defining “underemployment,” the statute avoids such definitional problems by precluding allowances for any but the unemployed.279 While the Trade Expansion Act would appear at first reading to likewise confine the allowance benefit to the unemployed,280 a closer reading discloses that the criterion for benefits, a “week of unemployment,” as used in that statute means that a beneficiary may be employed in something less than a “full-time” job, provided the remuneration from the part-time job is less than 75 percent of his prior average weekly wage.281 Thus, by avoiding the all-or-nothing alternatives of the Manpower Act, the trade act encourages the beneficiary to help himself, at least to the extent permitted by the statute.282

The amount of an allowance offered varies from one statute to another. For example, under WIN the allowance (called an “incentive payment”) is available to a maximum of $30 per month.283 Under the Job Corps provisions the allowance maximum is $35 per month for the first six months, and up to $50 per month thereafter.284 The vocational rehabilitation sections of the Veterans Act provide a minimum payment of $135 for a full-time trainee, with additional compensation according to the number of his dependents.285 Under the apprenticeship and on-the-job training programs of the Veterans

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277 Although there is no exact provision stating this, the general provisions of qualification for the programs (WIN, 42 U.S.C. §§ 626, 632-35 (1970) and Job Corps, 42 U.S.C. §§ 2719-24 (1970)), do not disqualify a trainee from receiving an allowance on the basis of prior work experience.


279 Id. § 2583(a).


281 Id. § 1978(14).

282 For the effect of such part-time wages on the amount of the allowance paid, see notes 295-98 infra & accompanying text.

283 42 U.S.C. § 634 (1970). The training incentive payment must be disregarded in determining an individual’s need for purposes of qualifying for provisions of a state plan for aid and services to needy families with children. Id. § 602(a)(8).


285 The Act also provides variations in allowance for “three quarters time” and “half time” trainees. 38 U.S.C. § 1504(b) (1970).
Act, compensation begins at a monthly rate of $108.286. Compensation under the special restorative training program for wives, widows and orphans of veterans under the Veterans Act is limited to $55 per month, with no adjustment for dependents. The Trade Expansion Act provides a maximum allowance of either 65 percent of the worker's average weekly wage or 65 percent of the average weekly manufacturing wage, whichever is less. This amount may be scaled downward by subtracting one-half of any remuneration received in any week of unemployment, assuming of course that the service performed during that week for which remuneration is paid does not amount to "employment." Under the Manpower Act the maximum amount available is $10 above the average weekly gross unemployment compensation payment in the state where the beneficiary is receiving training (thus varying the amount from state to state).

The duration of the allowance payment may also be coordinated with the training program so that the maximum length of the training period is also the maximum length of time the allowance is paid. But this is not true of either the Manpower Act or the Trade Expansion Act where there is no statutory limit to the training period although the duration of the allowance is clearly prescribed. In the case of the former statute the period is two years, and under the latter it is one year.

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286 38 U.S.C. § 1683(b) (1970). Additional compensation is available if the trainee has dependents, but the total compensation available decreases the longer the individual remains in the program. The rationale for this result is that the trainee will find new employment after completing the initial stages of training and will not need as much compensation. *Id.*


288 19 U.S.C. § 1942(a) (1970). The average weekly manufacturing wage is the annual average weekly wage which "is paid to production workers in manufacturing for the latest calendar year for which the figure has been published by the Bureau of Labor Statistics of the Department of Labor." S. Metzger, *Trade Agreement and the Kennedy Round 66* (1964).

289 19 U.S.C. § 1942(a) (1970). By merely subtracting 50 percent of his current earnings from his allowance rather than the full amount of such earnings the worker has an incentive to seek out and obtain part-time work.

289 See note 281 supra & accompanying text.


291 An example of such variance occurs with the Indians Act where the subsistence allowed varies in accordance with the length of the training program, usually two or three years. *See note 260 supra & accompanying text.*


293 19 U.S.C. § 1943(a) (1970). However, an additional 26 weeks is allowed if needed to complete Labor Department approved training. *Id.* § 1943(a)(1). An additional 13 weeks is allowed for any worker who was at least 60 years old when separated from his job. *Id.* § 1943(a)(2).
With respect to allowances a number of the statutes contemplate the possibility of duplicity of benefits. A worker who might qualify for allowances under more than one act might, without coordination among the programs, indulge in "act-shopping" in order to obtain the maximum advantage, or perhaps he would attempt to qualify for benefits under more than one act. To meet this possibility, the Trade Expansion Act, for example, provides that its allowance shall be reduced by the amount of any state or federal unemployment insurance to which the worker is otherwise entitled.\textsuperscript{295} Furthermore, the total number of weeks in which a worker has received unemployment insurance or a training allowance under the Manpower Act is deducted from the number of weeks he is entitled to an allowance under the Trade Expansion Act should he thereafter apply for that allowance.\textsuperscript{296} Thus, while a worker already receiving an allowance benefit under one act is not precluded from later applying for the trade readjustment allowance, he can take advantage of neither double payments nor double maximum time periods. Nevertheless, he is entitled to receive the full amount of the allowance provided under the Trade Expansion Act, and if that amount is higher than benefits elsewhere provided, he is entitled to the difference not only as to future periodic payments but with respect to any past period as well, beginning from the time when he was first eligible to apply for the trade allowance.\textsuperscript{297} Furthermore, if the reverse situation should occur so that the worker already receiving a trade readjustment allowance would otherwise be entitled to a training allowance under any other federal law but has not yet applied, then his trade readjustment allowance may be paid to him in lieu of the allowance he would receive under such other federal statute. In this situation the trade allowance may be increased beyond the maximum previously stated so that it is equal to what the worker would otherwise have received under such other federal law, assuming that amount to be greater.\textsuperscript{298} These factors illustrate that the more specialized Trade Expansion Act was intended to supplement existing state or federal benefits rather than to duplicate them. Whether or not the plan is wholly successful is another matter.

\textsuperscript{295} Id. § 1942(c).
\textsuperscript{296} Id. § 1942(d).
\textsuperscript{297} Id.
\textsuperscript{298} Thus, a worker qualifying for an allowance under the Trade Expansion Act or any other federal act may receive the highest allowance available budgeted from the Trade Expansion Act's "trade readjustment allowance" but the worker may not collect a double allowance, one under each applicable Federal act. Id. § 1942(b).
For example, any worker who is currently receiving an allowance under some other federal act (other than the Manpower Act, which is specifically referred to in the Trade Expansion Act) may also apply for and receive a trade act allowance. Although payments made to him after his date of entitlement may be reduced by the amounts he is also receiving from the other federal act,\textsuperscript{299} it would appear that he may receive the trade allowance for the full 52 weeks without any diminution in duration by reason of payments made to him under such other federal act.\textsuperscript{300}

In addition to periodic cash allowances, in at least one case, the Job Corps, the allowance itself is supplemented by a lump sum payment or "readjustment allowance" upon termination of the training period.\textsuperscript{301} This payment, not to exceed $50 for each month of satisfactory participation in the Corps, is designed to provide the trainee with a cash reserve on which to subsist until he finds employment.\textsuperscript{302} There is no similar provision for a final lump sum payment found in any of the other acts. If the final readjustment allowance serves a needed purpose by affording transition payment until the time employment is found, it would seem that similar payments should be included in other acts.

C. Transportation

In five of the acts under consideration specific provision is made for the payment of transportation expenses necessitated by the particular training program. The statutes are by no means uniform in their intent or specific provisions. Only the Manpower Act clearly contemplates payment of daily commuting expenses.\textsuperscript{303} The Social Security Act, in which the WIN provisions are found, does not

\textsuperscript{299} Id. § 1942(c). Even this may depend on the definition of "unemployment insurance" which includes (but is not necessarily limited to) payments under State law and the following federal laws specifically mentioned in the act: "Title XV of the Social Security Act, the Railroad Unemployment Insurance Act, and the Temporary Extended Unemployment Compensation Act of 1961." Id. § 1978(2).

\textsuperscript{300} Id. § 1942(d). The Trade Expansion Act speaks only of unemployment insurance and training allowances under the Manpower Act and the superceded Area Redevelopment Act, thus inferring that any federal payment which is an allowance and not "unemployment insurance" is not thereby covered. Nor is it clear that non-unemployment insurance payments under such other federal acts would amount to "remuneration" within the meaning of the Trade Expansion Act; "remuneration" is merely defined as "wages and net earnings derived from services performed as a self-employed individual." Id. § 1978(7) (1970).

\textsuperscript{301} 42 U.S.C. § 2719(c) (1970).

\textsuperscript{302} Id.

\textsuperscript{303} 42 U.S.C. § 2583 (b) (1970). Reimbursement for local transportation is based on the cost of the most economic public transportation available. Id.
clearly distinguish between daily and other transportation needs, but the National Institute of Education on Law and Poverty indicates that the providing of daily transportation is in fact contemplated.\textsuperscript{304} The Economic Opportunity Act provides that transportation may be provided to Job Corps enrollees,\textsuperscript{305} while "transportation assistance" may be provided under various other work and training programs. If the particular training program is beyond commuting distance, transportation costs may be paid under the Manpower Development and Training Act,\textsuperscript{306} the Trade Expansion Act,\textsuperscript{307} and the Indians Act.\textsuperscript{308} In the latter act discretion is conferred on the appropriate authority to provide such transportation to the training site.\textsuperscript{309} In the Manpower Act and the Trade Expansion Act, the Secretary of Labor has similar discretion, but by statute is confined to reimbursement of transportation costs at a maximum rate of ten cents per mile.\textsuperscript{310} Under these same two acts the Secretary is also authorized to pay a subsistence payment of up to $5 per day for the trainee who resides beyond commuting distance of the training site.\textsuperscript{311}

D. Relocation Expenses

Relocation expenses are distinguishable from transportation expenses in that the latter contemplates movement in order to take part in a training program, whereas the former contemplates a permanent change of residence in order to obtain employment. Very few of the acts under consideration provide financial assistance for permanent relocation. The first to even consider such a benefit was

\textsuperscript{304} National Institute for Education in Law and Poverty, Handbook on Welfare Law 63 (1968).

The lack of clarity in the statute is demonstrated in 42 U.S.C. § 632 (1970), which refers to transportation only when there is no WIN program established within the "political subdivision" in which a beneficiary resides. However, a city and its adjacent suburbs may be separate "political subdivisions" thus allowing for transportation expenses for daily commuting between such subdivisions.

\textsuperscript{305} 42 U.S.C. § 2719(a) (1970).
\textsuperscript{306} Id. § 2583(b).
\textsuperscript{309} Id.

\textsuperscript{310} 42 U.S.C. § 2583(b) (1970); 19 U.S.C. § 1951(a) (1970) respectively. It is interesting to note that under the Manpower Act the Secretary of Labor may increase these amounts for transportation between non-contiguous states, and for areas outside the continental United States. No such flexibility is found in the Trade Expansion Act although its application might commonly arise in such unique geographic areas as greater New York City where a trainee might reside in suburban Connecticut and find it necessary to take training in nearby New Jersey.

the Manpower Act. While that act did not generally authorize the payment of such expenses to a trainee able to obtain work in another city, it did authorize the establishment of pilot projects "designed to assess or demonstrate the effectiveness in reducing unemployment of programs to increase the mobility of unemployed workers by providing assistance to meet their relocation expenses."312 Under the pilot projects (the authority for which expired on June 30, 1970) the Secretary of Labor could provide grants or loans to those unemployed individuals who could not be expected to obtain a full-time position in the community in which they were residing, had bona fide offers of permanent employment elsewhere, and appeared, in the Secretary's judgment, to be qualified to fill such employment.313

While the Manpower Act included this benefit within the pilot project context, and thus classified it as experimental, the Trade Expansion Act included payment of relocation expenses as a regular benefit to be offered eligible beneficiaries.314 The later Automotive Products Trade Act, which incorporated those features of the Trade Expansion Act relating to adjustment assistance, also provides for the payment of relocation expenses.315 The relocation allowance provided in the two trade acts is to be paid to any eligible beneficiary provided he or she is the "head of a family" and has been "totally separated" from his or her import-affected firm.316 Such assistance is confined to a relocation within the United States,317 and is dependent upon a determination by the Secretary of Labor that the worker cannot reasonably be expected to find suitable employment within commuting distance of his residence.318 Like the pilot project under the Manpower Act, qualification for relocation assistance under the trade acts is contingent upon the worker's demonstration that

313 Id.
316 19 U.S.C. § 1961 (1970). A "family" consists of the worker's spouse, unmarried children (including step or adopted children) who are, unless physically or mentally incapable of taking care of themselves, under 21, and any other person for whom the worker is entitled to take a "deduction" [presumably "exemption"] for income tax purposes, provided the principal residence of each such person is with the worker. 29 C.F.R. § 91.1(a) (1971). Whether or not a mentally retarded child residing in a special facility for such children and thus not residing with the worker would qualify as a family member remains to be seen.

The "head of the family" must maintain a home for the family; he or she is considered as maintaining such a home if over half of the cost of maintenance is furnished by such worker. Id. § 91.1(r).
318 Id.
he has either obtained suitable employment of reasonably long duration, or has a bona fide offer to that effect.\textsuperscript{319} Finally, at the time the worker applies for relocation assistance he must be qualified to receive a trade readjustment allowance.\textsuperscript{320} The amount of the relocation allowance under the trade acts is computed on the basis of two separate items which are additional and not substitutional: (1) the travel and moving expenses of the worker and his family;\textsuperscript{321} and (2) a lump sum amount equal to two and one-half times the average weekly manufacturing wage.\textsuperscript{322}

Relocation benefits also found their way into the WIN program in 1967.\textsuperscript{323} Under the WIN provisions the Secretary of Labor must first determine that relocation is "necessary in order to enable" the beneficiary to become permanently employable and self-supporting.\textsuperscript{324} Like similar requirements under the trade acts, the beneficiary must have a job waiting for him in the new location, but the amount available for relocation is less precisely defined. The actual amount to be paid is left to the discretion of the Secretary of Labor and the factors to be considered are: (1) transportation of the beneficiary and his dependents; (2) movement of household goods; and (3) a settling-in allowance.\textsuperscript{325}

Notwithstanding the inclusion of relocation expenses in the two trade acts and in WIN, the benefit has not been included in other acts. Failure to amend the Manpower Act in this regard is particularly unusual inasmuch as the benefit was offered in experimental form. The most recent congressional attempt at providing relocation assistance is found in the proposed amendments to the Disaster Relief Act of 1970.\textsuperscript{326} The proposed amendments provide for the

\textsuperscript{319} Id.
\textsuperscript{320} Id. \S 1962(b)(1).
\textsuperscript{321} Transportation costs will be reimbursed to the extent of the "most economical public transportation" reasonably available, or, if private transportation is used, ten cents per mile. 29 C.F.R. \S\S 91.22(a), (b) (1971). Actual costs of moving household goods up to 11,000 pounds in weight, will be paid. Id. \S 19.21(a). If the move is by commercial carrier the worker must submit two estimates; thereafter the actual cost of the move (excluding crating but including insurance) will be paid. Id. \S 91.23(a). If the move is by privately owned trailer the worker may receive 12 cents per mile; if the trailer is rented, the actual cost of rental will be paid up to a maximum of 20 cents per mile; and if the trailer and hauling are by commercial carrier, actual costs will be paid up to 20 cents per mile. Id. \S 91.23(b) (1970).
\textsuperscript{322} 19 U.S.C. \S 1963(2) (1970). The lump sum payment serves as a form of "settling in" allowance.
\textsuperscript{323} 42 U.S.C. \S 637 (1970).
\textsuperscript{324} Id.
\textsuperscript{325} Id.
\textsuperscript{326} 42 U.S.C. \S 4401 (1970).
payment of transportation costs to the beneficiary and his family, and for the transfer of their household goods. While the amendments do not provide for a special relocation allowance, as did the two trade acts and WIN, they do include six additional words, with little or no discussion, which might substantially expand the relocation benefit beyond that contemplated in any preceding legislation. The pertinent text reads as follows: "Such assistance may include necessary costs of seeking such employment and the cost of moving his family and household to the location of guaranteed employment." A reasonable interpretation of these words would lead to the conclusion that for the first time the federal government has assumed financial responsibility, under the qualifications of the bill, for expenses incurred by an individual in seeking out and obtaining employment in another location. Presumably if he were to find such employment, the government would also pay relocation expenses.

It is difficult to explain why the payment of relocation expenses should be confined to three acts of Congress, or why the payment of expenses in locating a position in another city should be confined to one bill. The only tenable explanation is that thus far congressional attention has not been sufficiently focused on the issue.

E. Medical Benefits

The first reference to medical care as a benefit under adjustment assistance legislation is found in the Manpower Act. That act provides for payment, up to an aggregate of $100, for "appropriate physical examinations, medical treatment and prostheses [to any person who] cannot reasonably be expected to pay the cost of the services [if] the services are not otherwise available without cost to him from any other resource in the community." If physical impairment precludes an individual from participating in job training programs and thus from obtaining employment, it would seem that the medical benefits offered are quite inadequate. The $100 limit effectively precludes any medical service other than a health checkup and treatment sufficient to enable the recipient to functionally operate in an employment capacity. It cannot, and by the dollar limitation provided does not, offer the significant medical treatment which may be necessary to restore the individual to long-term employability.

328 Id. (emphasis added).
Several other statutes refer to medical benefits, and, while they omit the dollar limitation found in the Manpower Act, it would appear that they too do not contemplate extensive medical treatment. For example, under the Economic Opportunity Act, the Director of the Office of Economic Opportunity is authorized to provide "supportive and follow-up services" including "health services." But no standard is provided by which the Director can evaluate the needed extent of such services. Other statutes are completely silent regarding medical services, though in some cases such services may be inferred. While there does not appear to be any legislative requirement to provide medical services for WIN beneficiaries, a regulation of the Department of Health, Education, and Welfare provides that:

[Service] must be provided to families and children with health needs through identifying needs for preventive and remedial medical services; locating organizations or individuals who are willing to provide quality services on a dignified basis and helping them to solve any problems which may prevent them from obtaining needed medical services and from making optimum use of the services available.

The Indians Act makes no mention of health or medical care. However, in lieu of the more conventional allowance paid under training programs previously discussed, the Secretary of the Interior may offer "subsistence" payments. "Subsistence" has been defined to include "medical examinations" and "health care," among other things.

Where veterans are involved the Veterans Administrator may, under the Veterans Act, provide medical services without dollar limitation when a veteran is accepted for vocational rehabilitation. This statute, in contrast to the provisions of the Manpower Act, clearly contemplates more significant treatment by providing for "such medical care, treatment hospitalization, and prosthesis as may be necessary to accomplish the purposes" of the program. The difference between the Veterans Act and other statutes may be explained on the ground that the vocational rehabilitation program under the Veterans Act is specifically designed for a disabled veteran — someone already incapacitated by reason of health — while the remain-

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330 Id. § 2740(a)(6).
333 25 C.F.R. § 34.8 (1972).
ing acts are primarily concerned with those unable to find employment for reasons other than medical.

The recent congressional proposal for amendments to the Disaster Relief Act of 1970 is in certain aspects a departure from all previous legislation. In the event one qualifies as a beneficiary under the proposed amendments the President will be required to “afford necessary medical treatment” and to provide such person with “full access to medical services without regard to inability to pay.” The proposed legislation clearly contemplates application of the medical provision to a person unable to afford medical treatment because of financial hardship resulting from the “disaster.” If the proposal is enacted it will be the first act since the Veterans Act which appears to contemplate substantial medical treatment whenever necessary. Moreover, it will be the first act which does not require, as a precondition to medical benefits, a showing by the potential beneficiary that such benefits are not otherwise available to him. It should be emphasized that once the President makes a finding that disaster-caused financial hardship of the individual prevents him from providing himself with medical services, the President is required to provide such services. There will be no discretion to refuse.

F. Child Care

The Manpower Act was the first to provide for day care services for needy persons who require work experience, training, or special family and supportive services in order to secure and hold regular employment. This service was to be administered by the Secretary of Labor in cooperation with the Secretary of Health, Education, and Welfare.

The Economic Opportunity Act makes similar provision for daytime care of children. In order to assist families in becoming or remaining self-sufficient, the Director of the Office of Economic Opportunity is empowered by statute to provide financial assistance to appropriate public agencies and private organizations, in amounts up to 90 percent of the cost of providing day care to children from

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336 Id. (Note, that there is no requirement that the need for medical services arise out of the “disaster” itself.
338 Id. § 2610c(a).
339 Id. § 2931.
low-income families or from urban and rural areas with large concentrations or proportions of low-income persons. Should a particular family not be readily classified as low-income, the statute provides that the Director of Economic Opportunity may require such payment "where the family's financial condition is, or becomes through employment or otherwise, such as to make such payment appropriate." The Social Security Act's WIN program is intended to encourage "the care of dependent children in their own homes or in the homes of relatives. . . ." Nonetheless, the statute provides that a state plan for aid and services to needy families, in order to qualify for federal funding, must provide for "the implementation of such programs by assuring that . . . [a person] referred to the Secretary of Labor, pursuant to [a work incentive program] is furnished child-care services and that in all appropriate cases family planning services are offered them. . . ." In the immediately succeeding subsection it is provided that the "acceptance [of such] family planning services . . . shall be voluntary . . . and shall not be a prerequisite to eligibility for or the receipt of any other service or aid under the plan . . . ." In specifically prescribing a voluntariness in regard to family planning, while making no similar pronouncement regarding child-care, the statutory language can be, at least arguably, interpreted as mandating the acceptance of child care services in order to qualify for WIN benefits. The applicable regulations are not particularly helpful in resolving this question. They simply provide that "the parents must be involved and agree to the type of care to be provided . . . ." and allow the parents a choice of in-the-home or out-of-home care. While priorities for referral to WIN programs include, as a last priority, even those mothers with pre-school age children who do not volunteer for WIN, the Department of Health, Education, and Welfare has instructed local welfare agencies not to refer mothers of pre-school age children to work-incentive programs

340 Id. § 2932(a).
341 Id. § 2932(b).
342 42 U.S.C. § 601 (1970) (emphasis added). An additional purpose of providing such aid is "to help maintain and strengthen family life and to help such parents or relatives to attain or retain capability for the maximum self-support and personal independence consistent with the maintenance of continuing parental care and protection . . . ." Id.
343 Id. § 602(a)(15)(B)(i).
344 Id. § 602(a)(15)(C).
345 45 C.F.R. § 220.18 (1971).
unless a suitable child care plan is actually available.\textsuperscript{346} It appears, however, that informal pressures may in fact persuade a mother to volunteer for a work incentive program and leave her children with a day care agency regardless of any right she may have not to avail herself of this service.\textsuperscript{347}

V. Conclusion

From the foregoing discussion it should be apparent that the federal government has enacted a multitude of legislative acts relating to the employment process. Each act differs from the others in its purpose, in the class of beneficiaries it chooses to cover, and in the benefits to be offered to those beneficiaries. In addition to those substantive differences, each act may also differ from any other in its administrative aspects. While it is outside the scope of this article to examine these administrative differences, the reader should nevertheless bear in mind that the decision-making process and the decision-maker involved may vary depending on the statute under which the potential beneficiary pursues his rights.\textsuperscript{348}


\textsuperscript{347} Such a right could be based on an agency determination that participation would be "inimical to the welfare of such person of the family." Id. at 1069, citing 42 U.S.C. § 602(a)(19)(A)(iii) (1970).

\textsuperscript{348} By way of example one need only compare the differences between two statutes which are most closely related to one another and which thus should be most closely coordinated — the Trade Expansion Act and the Automotive Products Trade Act — in order to appreciate the lack of consistency. Under the Trade Expansion Act a petition to determine eligibility for adjustment assistance is filed with the United States Tariff Commission. 19 U.S.C. § 1901(a)(2) (1970). The Commission conducts a factual investigation to determine whether the petitioner meets the four criteria specified in the statute. Id. § 1901(C)(2), (3). See text accompanying notes 140-44, supra. The Commission then reports its results to the President. 19 U.S.C. § 1901(f)(1) (1970). While the President has discretion whether or not to certify a group of workers as eligible to apply for adjustment assistance, this discretion is limited only to those cases in which the Tariff Commission has made an affirmative finding that the four criteria have been met. Id. § 1902(c). In the event of a negative finding by the Commission, the President lacks authority to certify workers and the case is closed. In practical application, therefore, the principal decision maker under the act is the Tariff Commission.

The Automotive Products Trade Act, on the other hand, set up different administrative machinery which, during the three year period of applicability, reduced significantly the role of the Commission. Petitions for eligibility were filed with the President rather than the Commission. 19 U.S.C. § 2022(a) (1970). The President then would request the Commission to conduct a "factual" investigation, the report of which would later be filed with the President. Id. § 2022(e). The Commission's report, however, was confined to the jury-like function of fact finder. Id. § 2022(e)(1). Thereafter, the President and not the Commission, would make the appropriate determination based on the more flexible criteria of this act. Id. § 2022(c), (e)(1) (1970). See text accompanying notes 156-59, supra. If the President were to make an affirmative determination as to all the criteria specified in the statute he would retain limited discretion to
The current multiplicity of federal acts relating to the employment process all but requires a reappraisal of existing legislation in light of the purposes Congress has sought to achieve. It is the purpose of the following recommendations not to suggest any detailed legislative scheme by which Congress can simplify the existing acts, but rather to analyze what Congress should consider before it decides on any further course of legislative action in this area.

What is the purpose Congress seeks to achieve? Inherent in all of the current acts is the notion that employment is desirable, not only to satisfy the individual but to insure that the nation has available to it a highly motivated and thoroughly skilled work force to meet the demands of our technologically advanced, superindustrialized, production-oriented society. In connection therewith, the acts demonstrate that the legislative spotlight has focused on two principal means of effectuating this purpose: (1) instilling a work ethic in those portions of the population who may not be motivated in the direction of employment; and (2) instilling skills currently (and in the future) demanded by the country's economic machinery in those portions of the population who either operate outside the work ethic, or possess the requisite ethic but lack the communication, skill, or ability necessary for them to fill the employment positions which may or will be available.

Congressional focus on the first goal — instilling the work ethic — is perhaps most clearly demonstrated in the title as well as the
provisions of the WIN Program, which is expressly designed to ensure that:

[I]ndividuals . . . will acquire a sense of dignity, self-worth, and confidence which will flow from being recognized as a wage-earning member of society and that the example of a working adult in these families will have beneficial effects on the children in such families.349

This same philosophic goal is implicit in those portions of the Economic Opportunity Act designed to "assist young persons . . . to become more responsible, employable and productive citizens."350 Less clearly stated, perhaps, but no less clear in its goal is the congressional program designed to prepare the widows of veterans for a productive (i.e., employable) life by providing not merely some form of social insurance on which they could exist, but a training and education program which is to prepare them to "support themselves and their families. . . ."351 Most recently, the same goal is found in President Nixon's proposed Family Assistance Plan (FAP) in the proposed 1971 amendments to the Social Security Act, which seeks to restore families "to self-supporting, independent and useful roles in their communities."352

It is not the purpose of this article to question the desirability of instilling a work ethic or motivation in the population generally.353 The ethic, whose origins lie in the development of the na-


351 38 U.S.C. § 1700 (1970). It is clearly arguable that the training and education program for widows is merely a scheme to encourage the widow to support herself and her family, thus relieving the government of the obligation of caring for her. But the government, if it were not concerned with the work ethic and the creating of a role model for the widow's children, could accomplish the same goal through some other means, such as the encouragement of a subsequent marriage (thus foisting support of the widow and minor children on a second husband) by providing a lump sum government donated dowry. Such a course might in fact be less expensive than the costs of operating or financing training and education programs. If this suggestion seems absurd, that perhaps, is because the absurdity arises out of the recognition of, and respect for, the work ethic rather than the comparative economic costs of operating a dowry dispensing system rather than a training and education program.


353 Insofar as the work ethic inspires human beings to produce and thereby to seek
tion-states of Europe and the beginnings of Protestantism some four hundred years ago, is a firm and founding precept of our society. If there has been a failure to pass on this fundamental precept to certain segments of the population, then Congress may legitimately consider that it is duty-bound to enact whatever legislation necessary to restore and preserve the ethic in its paramount position in American life.

However, any legislation proposed to achieve that goal must take cognizance of the factors necessary to promote acceptance of the work ethic. By way of example, the WIN program assumes that a working parent "inevitably provides a good example — that is imparts respect for a work ethic — to the children of the family." This assumption has been criticized as being tenuous. If the work performed by the parent is perceived by the child or parent to be menial or unrewarding materially and psychologically, or if it means that the child must forego parental or other adequate supervision for long hours, the lesson to be learned may well be the obverse of that desired.

Any concerted attempt to come to terms with work ethic acceptance must, therefore, recognize and properly account for all factors which give the ethic its force. Thus, if the government wishes to legislate within this arena, it must, for example, recognize its own responsibility to assure that any effectuating program creates skills and achieve economic growth, it may well acquire a negative value according to a study recently completed by the Massachusetts Institute of Technology. The study concludes that mankind must achieve no-growth "global equilibrium" within 100 years or face virtual collapse of its society. See D. MEADOWS, D. MEADOWS, J. RANDERS & W. BEHERENS, THE LIMITS TO GROWTH (Potomac Associates 1972) (report prepared for the Club of Rome, an informal college of influential citizens concerned with man's future). As a logical consequence of a society as envisioned by the MIT study, a "play-ethic," ennobling slothful nonproduction and minimal consumption will assume the highest morality necessary to assure the continuation of mankind on this planet. Enshrinement of such an ethic would, as a minimum, play unimaginable and unpredictable havoc with all legislation which is the subject matter of this article.


Id.

"Probably much depends upon the nature of the mother's work and the status it confers. Perhaps the example of serious interest in outside work on the mother's part makes both her sons and her daughters value such work more highly." Maccoby, Effects Upon Children of Their Mothers' Outside Employment, in WORK IN THE LIVES OF MARRIED WOMEN 157 (1958) (Nat. Manpower Council Conference Proceedings), quoted in Comment, supra note 354, at 500. See also E. HERZOG, CHILDREN OF WORKING MOTHERS 30 (Children's Bureau, Social Security Admin., U.S. Dept. of Health, Educ. & Welfare Pub. No. 382-1960 (1960). Herzog stated that the fact that the mother works is a "secondary rather than a primary factor" in the development of a child. Id., quoted in Comment, supra note 354, at 500.
which are in fact needed and respected by society.\textsuperscript{357} Further, it must recognize the worker’s sense of responsibilities to his family and others whom he believes are dependent on him,\textsuperscript{358} and the worker’s respect for himself. Finally, although no legislative program can cure all of the nation’s social problems, government must recognize the broader implications instilled in a potential worker who may not comprehend the value of the work ethic when he over-simplifies what may appear to him to be evidence of society’s rewards to the nonworking wily.\textsuperscript{359} In short, there must be some realistic acceptance of the fact that certain elements in our society believe that while the country may espouse the work ethic in principle it denies it in operational practice.

The second primary goal of legislation relating to the employment process — skill acquisition — is inherent in all of the acts considered in this article. An element of that goal is recognition that in a dynamic, rapidly changing social and economic society such as the United States, the skills demanded at any given moment may become obsolete in the next moment, while new and as yet unimagined skills may then be required. Thus, flexible skill adaptation as well as skill acquisition constitute the objective of every training or educational program. Yet, with this goal in mind, one may wonder whether it is appropriate for each act to confine its applicability to selected groups of beneficiaries, or whether differential benefits should be offered under the two or more acts which may be available to a potential beneficiary. From the vantage point of the laid-off worker, does it really make a difference whether his unemployed status is a result of imports or employer-mismanagement? To the financially insecure widow, do employment needs vary with the status of her deceased husband as soldier or civilian? One might think that it should make no difference in either case, but the adjustment assistance acts nevertheless provide disparate benefits.

There is no present likelihood that, without further thought,

\textsuperscript{357} The WIN program has been faulted because it does not necessarily impart new skills, and those skills which it does instill are those least needed. Comment, \textit{supra}, note 354, at 497.

\textsuperscript{358} \textit{Cf.} note 382, \textit{supra}.

\textsuperscript{359} Without making judgmental determinations, in the eyes of the ethic-poor individual he may see his employer and others enjoying the fruits of upper-middle class existence, which may include afternoons at a country club, long business luncheons, and increased prosperity enhanced in large measure by income tax provisions which benefit those who invest properly while not working. Meanwhile he and his fellow employees may be required to perform a repetitive dulling operation for 8 hours each day, the remuneration for which is subject to tax and other deductions seemingly far out of proportion to those of his employer.
such distinctions will diminish. As any given socio-economic issue assumes national importance it tends to attract a laser-like congressional focus which excludes the relationship of the given issue to apparently unrelated existing legislation. By way of example, protection of the environment and pollution control, of little national concern ten years ago, has stepped from the chorus line of national issues to the pinnacle of international stardom, and thus commands prime attention from the stage-door Johnnies of Congress. As a natural consequence of this recognition of the importance of environmental protection, many segments of society have become concerned with the economic consequences of pollution control legislation. Stricter control standards might increase the costs of plant operation beyond economic feasibility. If that is true, then there is a strong possibility that many workers will find themselves unemployed through no fault of their own. What obligation, if any, should the Federal Government assume on behalf of such individuals? With existing models at hand one cannot be surprised by the fact that a “pollution-control adjustment-assistance program” was suggested to the Senate Subcommittee Hearings on Air and Water Pollution in the Spring of 1971. The proponent stated:

An appropriately designed adjustment assistance policy could go far toward ameliorating the adverse effects of the pollution control policy on labor and capital. There is a useful model for this in certain provisions of the Trade Expansion Act of 1962 and the Canadian-American Automotive Trade Agreement. Both of these agreements contain provisions for adjustment assistance to those localities adversely affected by the lowering of tariffs.

See generally Hearings on Economic Dislocation Resulting from Environmental Controls Before the Subcomm. on Air and Water Pollution of the Senate Comm. on Public Works, 92d Cong., 1st Sess. (1971) [hereinafter cited as Hearings on Dislocation].

Statement of A. Myrick Freeman, III, “The Costs of Pollution Control” How Much and Who Pays?”, Hearings on Dislocation at 242 (submitted by letter to Senator Muskie from Professor Freeman, Chairman, Dep’t of Economics, Bowdoin College, Brunswick, Maine, May 14, 1971, reprinted in id. at 239).

See also S. 3223, 92d Cong., 2d Sess. (1972). The bill directs the Atomic Energy Commission to suspend or revoke any license to operate a civilian nuclear power plant on a showing that the facility presents a threat to public health or safety. Id. § 2, amending the Atomic Energy Act of 1964, 42 U.S.C. § 2236 (1970). The bill further provides that all employees of any affected facility, contractor, or agency “be entitled to just and prompt compensation by the Federal Government for financial loss and hardship incurred as a result of such suspension or revocation.” Id. The bill specifically prohibits similar assistance when a license is revoked because of the licensee’s negligence or deception rather than because of a change in public policy. From the viewpoint of an employee is it relevant that his job is lost because of his employer’s misconduct or the government’s change in policy? He is equally, and faultlessly unemployed in both cases, though compensated only in one.

Hearings on Dislocation at 242 (emphasis added). See also the suggestion of
Should the foregoing suggestion be adopted by Congress, one more special group of beneficiaries — pollution-displaced workers — will be added to the list of selected beneficiary-candidates who qualify for some form of assistance under present legislation. Furthermore, the very fact that the two trade acts were cited to the subcommittee as examples of special interest adjustment assistance legislation underscores the necessity for repeal of all such legislation and replacement by comprehensive generic acts. So long as the existing acts remain, they will continue to act as magnets attracting one special interest group after another.

In light of the purpose of any given act discussed in this article, it is not difficult to understand why adjustment assistance has been offered almost exclusively to special interest groups. For example, adjustment assistance is a laudable alternative to increased imports. If federal concern were confined solely to the maintenance of internationally agreed tariff rates, then adjustment assistance under the Trade Act should indeed be confined to import-affected workers. But federal creation of import-affected adjustment assistance, in light of the fact that there also exists such generic legislation as the Manpower Act and the Economic Opportunity Act, clearly indicates a concern for something beyond international tariff agreements. Yet, specialized statutes, such as the Trade Expansion Act, may have served a valuable pioneering purpose even though they favored a special group. This pioneering role has been recognized by Professor Stanley Metzger, former Chairman of the United States Tariff Commission. "Special adjustment assistance, while creating a differential in favor of import-displaced workers, is . . . equitable in itself; moreover, it may serve the purpose in time of raising the levels of adjustment assistance available generally . . . ." Post-Trade Expansion Act legislation has proved Professor Metzger correct. So much so, in fact, that it no longer seems appropriate to offer adjustment assistance for yet another special group such as pollution-affected workers, but rather to consider modification and/or displace-

Ralph Nader that "Congress should require companies which reduce their work forces as a result of environmental cost pressures to continue to pay the wages of those employees who lose their job [sic] for some specified period of time — say, 6 months — after their dismissal." Hearings on Dislocation at 9.

363 S. METZGER, TRADE AGREEMENTS AND THE KENNEDY ROUND 56 (1964) (emphasis added). Professor Metzger admitted that it is logically "difficult to justify differential treatment of adjustment problems on the basis of varying impersonal causes. . . . [W]orkers have no more of a 'right' to the maintenance of a tariff rate than Douglas Aircraft has to the continuation of a particular missile system in the nation's arsenal." Id. at 55-56.
ment of existing acts by a comprehensive adjustment assistance package offering appropriate benefits to any person in need of skill acquisition or skill adaptation without regard to whether that person had previously been employed by a polluter, employed by a trade-affected firm, or not employed at all.

The call for unified legislation is not new. As early as 1968 a special governmental Task Force on Occupational Training in Industry, after analyzing the narrower question regarding "training in industry" programs, called for passage of a National Training Act.\textsuperscript{384} Nine of the 16 Task Force members believed that serious consideration must be given to a "guarantee of minimum levels of training to all Americans."\textsuperscript{385}

Presidential appreciation of the need for a unified adjustment assistance program was demonstrated in the 1970 Manpower Report of the President.\textsuperscript{386} Based on the facts contained in that report, but prior to the transmittal of the report to Congress, President Nixon had proposed enactment of a unified Manpower Training Act.\textsuperscript{387} Although that bill encountered initial opposition in both Houses of Congress,\textsuperscript{388} a modified version of the same plan, known as the Comprehensive Manpower Act,\textsuperscript{389} obtained the full support of the Nixon administration\textsuperscript{370} and was passed by the House on November 17, 1970.\textsuperscript{371}

In large measure the proposed comprehensive legislation was prompted by a desire to simplify and coordinate the administration of existing manpower legislation.\textsuperscript{372} For example, the Manpower

\textsuperscript{384} TASK FORCE ON OCCUPATIONAL TRAINING IN INDUSTRY, A GOVERNMENT COMMITMENT TO OCCUPATIONAL TRAINING IN INDUSTRY 7 (Aug. 1968) (Report to the Secretaries of Labor and Commerce by a Task Force ordered in the 1967 PRESIDENT'S MANPOWER REPORT TO THE CONGRESS).

\textsuperscript{385} Id. at 7 n.3.


\textsuperscript{387} The President's bill was introduced in the House by Representative William Ayres as H.R. 13472, 91st Cong., 1st Sess. (1969), and in the Senate, by Senator Jacob Javits as S. 2838, 91st Cong., 1st Sess. (1969).


\textsuperscript{371} 116 CONG. REC. 37740 (1970).

\textsuperscript{372} One of the supporters of the bill said:

This bill will eliminate red tape, streamline many programs and curtail duplication (of benefits).

Since the enactment of the Manpower Development and Training Act of
Development and Training Act of 1962 and the Economic Opportunity Act of 1964 were to be repealed; and programs previously provided under those acts were to be placed under the exclusive direction of the Secretary of Labor. Although the proposed legislation focuses some attention on problems relating to creating a work ethic, it would seem, from statements of congressmen and the language of the bill itself, that its primary purpose is to impart needed skills to those who already possess the requisite ethic. This is particularly evident in Title II of the bill, which establishes a new program designed to upgrade the skills of workers who are already employed on a full-time basis. The bill would also provide public service employment — job availability in the public sector — for the unemployed. Charges that such provisions were a disguised form of welfare for those unable or unwilling to work were expressly denied by the bill’s co-sponsor, Congressman O’Hara.

While the bill would not have affected all federal adjustment

1962 and the Economic Opportunity Act of 1964, individual programs have lost much of their flexibility. Proliferation of training programs has led to overlapping and uncoordinated services. See also the remarks of Senator Smith to the effect that “the purpose of the bill is to coordinate and unify many separately funded and administered manpower training programs into a single program to insure maximum benefits for those served.” Id at 37660.

373 See H.R. 19519, 91st Cong., 2d Sess. tit. 1, §§ 101-110 (1970). This title contains the now traditional laundry list of programs and benefits as found in earlier acts. Here, however, they are provided on a comprehensive basis, under the responsibility of a single person (the Secretary of Labor) and administered by state and local governments through a system of sponsorship designed to diffuse administrative burdens while utilizing responsibility. Id. § 104.

374 The Secretary of Labor is authorized, among other things, to establish a program called “Outreach” which would be designed “to find the discouraged and undermotivated and encourage and assist them to enter employment or programs designed to improve their employability.” H.R. 19519, § 102(a)(3).

375 See, e.g., the statement of Congressman Broomfield in which he lists the flaws of post-1961 legislation to be corrected in the Comprehensive Act and concludes: [J]ob training assistance has justifiably concentrated on the needs of the hard core unemployed or the poor. It is time now that we offer help to the unemployed former worker as well. This is the man whose original skills qualified him for our labor force, but who has since been laid off by general economic trends or the incredible advances of technology. 116 CONG. REC. 37698 (1970).


assistance legislation (particularly in regard to the most important special interest groups covered by the trade acts) it would have gone a long way toward simplification and coordination of present laws. Nevertheless, it is clear that Congress has not yet seen the advantage of a single generic act applicable to all. Within the context of the bill itself, and over the opposition of its sponsors, Congress passed an amendment to the bill creating preferences for veterans, the perennially acceptable special interest group.\textsuperscript{379} One of the co-sponsors pointed out to his colleagues in vain that: "[O]ne of the objectives of this legislation is to combine separate categorical programs into one flexible program to serve all. I hope that we will not abandon that concept for any particular group, no matter how deserving."\textsuperscript{380}

Even though the Nixon proposal would not repeal such specialized legislation as the Trade Expansion Act, and fails to take full notice of problems related to the work ethic, it does indicate a basic understanding of the direction in which Congress has been heading since 1962 and attempts to construct a more efficient vehicle to continue along that direction.\textsuperscript{381} Congress, on the other hand, appears not to have recognized that it has already involved itself in adjustment assistance to such a substantial degree that a continuation of the existing variegated legislative programs is dysfunctional to the established congressional intent. To continue to categorize beneficiaries, or to fragment the benefits offered, on the basis of special interest groups such as employees in international trade or pollution-affected industries, rather than on the basis of genuine differential needs such as youth or the elderly, represents a failure to appreciate the fundamental commitment Congress has already made to the goals of skill adaptability and work-ethic acquisition.


\textsuperscript{380} 116 CONG. REC. 37728 (1970).

\textsuperscript{381} While the Comprehensive Manpower Act was not passed by the 91st Congress, a basically similar bill was introduced in November of 1971 (but not yet considered) in the 92d Congress. See H.R. 11688, 92d Cong., 1st Sess. (1971).