Short-Time Compensation: Is Germany’s Success with Kurzarbeit an Answer to U.S. Unemployment?

Megan Felter
SHORT-TIME COMPENSATION: IS GERMANY’S SUCCESS WITH KURZARBEIT AN ANSWER TO U.S. UNEMPLOYMENT?

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Abstract: The recent financial crisis caused a global recession that affected the economies of both the United States and Germany. While the ranks of jobless workers expanded in the U.S. and unemployment remain high, Germany’s labor market was less affected by the recession because of its success with Kurzarbeit, a work sharing program. Germany’s experience with Kurzarbeit can provide the United States with useful insights to improve its own version of work sharing—short-time compensation—to better combat unemployment.

INTRODUCTION

Unemployment rates soared throughout the world during the 2008–2009 economic crisis.¹ The United States and Germany were vulnerable to the recession’s impact; both countries’ economies experienced significant downturns.² Germany contained its unemployment problem more successfully, however, with Kurzarbeit, a work sharing program.³ The program has garnered international attention because it allows the government to supplement workers’ income during temporary periods of decreased demand.⁴ Because the German program al-

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³ See Employment Outlook: Germany, supra note 2, at 1.

⁴ Andreas Crimmann et al., The German Work-Sharing Scheme: An Instrument for the Crisis 13 (ILO Conditions of Work & Emp. Series No. 25, 2010). See generally Nicholas Kulish,
allows individuals to remain employed and receive a sufficient income while working fewer hours, widespread application of a similar framework in the United States could prove useful in managing unemployment rates.\textsuperscript{5}

Part I of this Note describes U.S. and German responses to the recession’s impact on unemployment rates, focusing on Germany’s success with work sharing and noting the existence of similar short-time compensation (STC) programs in the United States. Part II juxtaposes the success of \textit{Kurzarbeit} in Germany against the underutilization of STC programs in the United States, and explores why U.S. work sharing programs have not achieved their full potential. Part III considers strategies, informed by Germany’s experience with work sharing, to increase the United States’ use of STC programs to combat unemployment.

\section*{I. Background}

\subsection*{A. The Recession’s Impact on the United States and Germany}

Many countries’ unemployment rates soared during and after the 2008–09 recession.\textsuperscript{6} In the United States, the unemployment rate doubled, rising from 5\% to 10\% during this two year period.\textsuperscript{7} By mid-2009, U.S. workers filed a record 6.8 million unemployment claims.\textsuperscript{8} Making matters worse, many of those filing claims faced unemployment for extended periods.\textsuperscript{9} There is a growing concern that such long-term unemployment will leave some workers destitute and perpetually excluded from the job market.\textsuperscript{10} In fact, in January 2012, almost 43\% of jobless Americans were considered “long-term unemployed,” having been out of work for at least twenty-seven weeks.\textsuperscript{11} Because the economy’s slow recovery has done little to prompt employers to hire more


\textsuperscript{5} See \textsc{Alison M. Shelton}, Cong. Research Serv., R 40689, \textsc{Compensated Work Sharing Arrangements (Short-Time Compensation) as an Alternative to Layoffs} 6–10, 14–16 (2010).

\textsuperscript{6} See \textit{Crisis to Recovery}, supra note 1, at 15–16.

\textsuperscript{7} \textit{Employment Outlook: U.S.}, supra note 2, at 1.

\textsuperscript{8} \textit{Crisis to Recovery}, supra note 1, at 16.

\textsuperscript{9} \textit{Employment Outlook: U.S.}, supra note 2, at 1.

\textsuperscript{10} \textit{Id.}

workers, the unemployment rate has remained above 8% for three years.

The recession battered Germany’s economy to an even greater extent. Germany’s gross domestic product (GDP) decreased by almost 7%—“a much stronger decline of GDP” than many other advanced and emerging countries experienced. As a major exporting country, Germany was particularly vulnerable to the recession in its service and manufacturing industries. Nonetheless, Germany avoided the significant increase in unemployment rates that the United States and many other countries experienced. While the U.S. unemployment rate jumped from 5.8% in 2008 to 10% in 2009, Germany’s unemployment rate remained relatively stable at approximately 7%, increasing by only .4% during the same period.

B. Kurzarbeit: Germany’s Work Sharing Program

*Kurzarbeit*, meaning “short work,” is a government program that allows workers facing reduced hours due to temporary instances of decreased demand to keep their jobs and receive government funds to partially supplement their diminished income. Kurzarbeit exemplifies

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13 Labor Force Statistics from the Current Population Survey: Unemployment Rate, BUREAU OF LABOR STATISTICS, http://data.bls.gov/timeseries/LNS14000000 (last visited May 18, 2012) (providing monthly unemployment rates from February 2009 to March 2012). Notably, the unemployment rate does not take into account “discouraged workers,” those individuals who have stopped looking for work because they believe no jobs are available for them.” BUREAU OF LABOR STATISTICS, supra note 11, at Frequently Asked Questions (FAQ). Thus, in January 2012, over one million “discouraged workers” were not included in the unemployment rate. Id. at 2 & FAQ.
14 See Crimmann et al., supra note 4, at 5; Employment Outlook: Germany, supra note 2, at 1.
15 Crimmann et al., supra note 4, at 5; Employment Outlook: Germany, supra note 2, at 1; Members and Partners, OECD, http://www.oecd.org (click on “About” tab; then click on “Membership”) (last visited May 18, 2012).
17 Employment Outlook: Germany, supra note 2, at 1.
19 Short-Time Work or “Kurzarbeit”: Frequently Asked Questions, GERMAN MISSIONS IN THE U.S., http://www.germany.info (search “Kurzarbeit”; then follow “Short-Time Work or ‘Kurzarbeit’: Frequently Asked Questions” hyperlink) (last visited May 18, 2012); Crimmann et al., supra note 4, at 13. Although two other types of work sharing are available in
work sharing programs found worldwide, in countries such as France, Italy, Japan, Korea, and the Netherlands. Used in Germany during the Weimar Republic, work sharing spread to many industrial countries following World War II. Work sharing is an expansive term that refers to “any arrangement under which a firm chooses to reduce work hours across the board for many or all workers instead of permanently laying off a smaller number of workers.” Countries differ in their level of work sharing participation; in some places, participation is in the millions, while in others, participation is only in the tens of thousands. During the recession, countries that updated and extended their programs found work sharing valuable in combating unemployment.

Germany’s program has a long and robust history. A work sharing scheme was first used by German miners as early as 1910. It flourished under the Weimar Republic in the 1920s, and by 1969, the program was “reaffirmed in the country’s . . . employment promotion law.” In the 1990s, work sharing was used to temper job loss during reunification and to respond to a struggling auto industry.

To keep workers employed during the recent recession, Germany used its Kurzarbeit program on an unprecedented scale. In mid-2009, over 1.4 million workers and 63,000 employers participated in the program. The “largest work sharing program[] in the world,” Kurzarbeit

Germany to address “seasonal short-time work” and “permanent loss of employment,” this Note focuses solely on the operation of work sharing programs in response to economic downturns causing short-term job loss. See Crimmann et al., supra note 4, at 13.
cost the German government an estimated €5 billion but saved more than 200,000 jobs by the latter half of 2009.\textsuperscript{31}

Under \textit{Kurzarbeit}, employees working reduced hours receive a “short-time allowance” of 60\% of their former full-time wages, or 67\% if they have a child.\textsuperscript{32} Workers receive the short-time allowance from their employers.\textsuperscript{33} In turn, the employers submit monthly accounts to the government and are reimbursed for the funds paid in excess of the workers’ net hourly compensation.\textsuperscript{34} Vacation and holiday pay, however, remain the employers’ responsibility.\textsuperscript{35} Employers must also make social insurance contributions, although provisions limited the contributions for lost hours to 80\% of normal contribution payments.\textsuperscript{36} The government does, however, reimburse the employer for half of these payments during the first six months, and after six months, the government is responsible for the full amount of social insurance contributions.\textsuperscript{37}

Employers of any size and in any industry can participate in \textit{Kurzarbeit}\textsuperscript{38} so long as there has been a reduction in available work “for economic reasons or . . . an unavoidable event” that other labor measures cannot adequately address.\textsuperscript{39} The decrease in work must be temporary, and return to normal working time must be anticipated within a year.

\textsuperscript{31} Crimmann et al., \textit{supra} note 4, at iii, 1; \textit{Employment Outlook: Germany, supra} note 2, at 1. Other sources suggest that up to 432,000 jobs were saved. \textit{See Crisis to Recovery, supra} note 1, at 36; \textit{see also Short-Time Work or "Kurzarbeit," supra} note 19 (estimating that “400,000 jobs have been saved”). Although this Note focuses solely on the significant role \textit{Kurzarbeit} played in controlling Germany’s unemployment rate, Germany’s use of working-time accounts, its lack of a real estate and credit bubble burst, and its role as an exporter, particularly to China, may also have affected the country’s job market. \textit{See Crimmann et al., supra} note 4, at 1, 5–6; \textit{Angela in Wonderland, Economist}, Feb. 5–11, 2011, at 17.

\textsuperscript{32} Fed. Ministry of Labour & Soc. Affairs, \textit{Working Short-Time to Overcome the Crisis} 4 (Mar. 2010) (Ger.); Crimmann et al., \textit{supra} note 4, at 14. If a participating employee’s hours drop to zero, the employee receives a short-time allowance equal to unemployment benefits. Crimmann et al., \textit{supra} note 4, at 13.

\textsuperscript{33} Id. at 4, 9.

\textsuperscript{34} Id. at 7.

\textsuperscript{35} Id. at 5, 7.

\textsuperscript{36} Id.

\textsuperscript{37} \textit{Short-Time Work or "Kurzarbeit," supra} note 19. Germany promotes the program as useful to a wide variety of employers, “a graphic arts agency employing five persons, the automotive supplier encompassing 500 employees, or the construction conglomerate with 50,000 workers on its payroll.” Id.

\textsuperscript{38} Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 8; \textit{see Crimmann et al., supra} note 4, at 1, 6 (describing additional labor strategies, such as “working-time accounts,” which may have also bolstered German employment).
and a half.\footnote{Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 8. The eligibility period originally lasted only six months. \textit{Global Wage Report}, \textit{supra} note 16, at 56.} Due to the recession’s persistence, however, Germany increased the entitlement period to two years.\footnote{\textit{Short-Time Work} or “\textit{Kurzarbeit},” \textit{supra} note 19.} Temporary or contract workers also gained program eligibility because of the recession.\footnote{Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 6; see Crimmann et al., \textit{supra} note 4, at 15 (outlining additional \textit{Kurzarbeit} requirements).}

To enroll, the employer or works council must notify the local employment agency that the wages of a minimum of one-third of workers would be reduced by more than ten percent for an estimated time period.\footnote{Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 8; Crimmann et al., \textit{supra} note 4, at 13, 15. After February 2009, employers had only to prove that the wages of at least one worker would be reduced by more than ten percent. Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 5.} The local employment agency, and the employer’s own workers, must approve the program.\footnote{Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 8; Crimmann et al., \textit{supra} note 4, at 13.} If the business has a works council—a non-union body that employees may establish at companies that satisfy certain criteria—that council can provide employee consent.\footnote{Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 8; Manfred Weiss & Marlene Schmidt, \textit{Labour Law and Industrial Relations in Germany} 223–24 (4th ed. 2008).} If there are no works councils and no union agreements applicable to short-time work, the employer must obtain approval from all employees falling under the program.\footnote{Fed. Ministry of Labour & Soc. Affairs, \textit{supra} note 32, at 8.}

\section*{C. Work Sharing and Unemployment Benefits in the United States}

Because U.S. employers laid off workers during the 2008–2009 economic crisis, the government response was largely focused on providing and expanding unemployment benefits.\footnote{See Katelin P. Isaacs et al., Cong. Research Serv., RL 34251, \textit{Federal Programs Available to Unemployed Workers} 2 (2010); \textit{Crisis to Recovery}, \textit{supra} note 1, at 20–22; Stephen Walsh et al., Berkeley Planning Assocs., \textit{Evaluation of Short-Time Compensation Programs: Final Report} at 3-5 (1997) [hereinafter \textit{Final Report}], available at http://www.berkeleypolicyassociates.com/index.php/work_project555 (click on “PDF”) (submitted to DOL).} State and federal governments spent more than $115 billion on unemployment compensation in 2009.\footnote{See \textit{Isaacs et al.}, \textit{supra} note 47, at 2.} Under the Emergency Unemployment Compensation and Extended Benefit programs, the U.S. government increased the benefits collection period from twenty-six weeks to as much as ninety-
nine weeks. Unfortunately, millions of jobless Americans depleted their ninety-nine weeks of benefits in 2011, leaving them without any working income or further unemployment compensation.

Work sharing is a concept that already exists in the United States, and has been recognized as a means “of spreading employment” and avoiding job losses during difficult economic times, including during the Great Depression. Twenty-three states currently offer work sharing programs, known as STC programs. Five of those states authorized STC use within the past three years. Nonetheless, STC plans totaled only 2% of unemployment benefits paid out across the United States in 2009 and saved less than 300,000 jobs in 2009 and 2010 combined.

U.S. employers, employees, and states began calling for STC programs after a recession in the early 1970s. California instituted the first U.S. STC program in 1978, followed soon after by Arizona and Oregon. Although at the time states did not have federal authorization to draw upon their unemployment trust funds for STC benefits, the Department of Labor (DOL) did not object to such funding.

In 1982, the federal government enacted the Tax Equity and Fiscal Responsibility Act (TEFRA), which authorized a three-year federal STC

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49 Isaacs et al., supra note 47, at 1; Crisis to Recovery, supra note 1, at 20–22.
51 Shelton, supra note 5, at 2 (internal quotation marks omitted) (quoting William J. Barrett, The President’s Org. on Unemp. Relief, Spreading Work: Methods and Plans in Use (1932)).
54 Shelton, supra note 5, summary.
55 Ridley, supra note 53.
56 Shelton, supra note 5, at 11.
57 Final Report, supra note 47, at 3–2. The New York state legislature was actually the first to consider STC in 1975; however, no legislation was passed. Shelton, supra note 5, at 11.
58 Shelton, supra note 5, at 11; see infra text accompanying note 73 (describing the structure and funding of the U.S. unemployment insurance scheme).
program allowing state governments to use their unemployment trust fund accounts to supply STC benefits. TEFRA also instructed DOL to issue model legislation, which was distributed in 1983 and became the framework for most states’ STC programs. Once TEFRA’s temporary authorization terminated, however, DOL curtailed its STC endorsement efforts.

After a recession in the early 1990s, Congress permanently approved STC programs in the Unemployment Compensation Amendments of 1992 (UCA). UCA, among other provisions, defined STC programs and required DOL to support the establishment of state programs, to create model legislation, and to issue a review of state programs. Although DOL collected information on STC programs, it did not fully satisfy UCA’s mandate. Efforts to amend the federal law to give explicit approval of current state programs have been unsuccessful, including legislation that was introduced in 2009.

STC programs all share a similar basic framework. State governments can authorize employer-specific proposals so long as hours are reduced by at least 10% and employers obtain union approval. Consistent with the 50% of original earnings that unemployment compensation offers, STC also provides half of an employee’s lost wages.

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60 Shelton, supra note 5, at 11; David E. Balducchi & Stephen A. Wandner, Work Sharing Policy: Power Sharing and Stalemate in American Federalism, 38 Publius: J. Federalism 111, 121 (2008). The DOL’s STC Handbook, distributed in 1987, was particularly helpful to states implementing STC programs during this time, as it included “model language for state STC statutes, the text of legislation passed by states with existing STC programs, and summaries of STC research results.” Final Report, supra note 47, at 8-10.

61 Shelton, supra note 5, at 12.


63 Shelton, supra note 5, at 12.

64 Id.

65 Id. at 13, 15–16.

66 Id. at 2.


68 Shelton, supra note 5, at 2.
STC programs are funded in the same way as unemployment benefits, taxing employers based upon an “experience rating.” As more benefits are collected by laid-off employees, the employer’s experience rating increases, requiring the employer to pay more unemployment insurance taxes. STC can be funded by the Unemployment Trust Fund because it is considered an unemployment compensation program under the Social Security Act.

STC programs are distinguished from partial unemployment benefits, which are paid “to an unemployed worker who has accepted a part-time job while searching for a permanent, full-time job . . . . [and who is] earning less than their weekly benefit amount.” Whereas an unemployed U.S. worker can usually receive unemployment benefits (including partial unemployment benefits) only up to half of his or her normal wages, an employee working half of his or her normal hours can still receive supplemental benefits under an STC program.

II. Discussion

A. Legal Authorization for Work Sharing Programs

Germany’s work sharing program has enjoyed longstanding legal authorization, clear from its decades-old history and more particularly its use during German reunification. Kurzarbeit maintains a unified legal framework because Germany’s federal government is the sole entity responsible for labor and social security policy decisions. German states merely follow federal laws in these areas.

69 Id. at 3.
70 Vroman & Brusentsev, supra note 295, at 17 n.22.
71 Wandner, supra note 21, at 21–22. The unemployment insurance program, which now encompasses traditional unemployment benefits as well as STC benefits, was established in 1935 to provide financial support for the unemployed. Id. at 17. Federal law dictates the program’s structure, in which “[e]ach state has an account within the Fund from which it pays [unemployment] benefits.” Id. at 17, 21. Though states are responsible for administering the unemployment insurance program, federal taxes finance the cost of program administration in the states. Unemployment Insurance Tax Topic, Dep’t of Labor, http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited May 18, 2012). Federal taxes also fund half of extended unemployment benefits and offer “a fund from which states may borrow, if necessary, to pay benefits.” Id. State taxes are used purely to pay unemployment benefits. Id.
72 Shelton, supra note 5, at 3.
73 Id.
74 Crimmann et al., supra note 4, at 17; Germany’s Response, supra note 295, at 2; Wandner, supra note 21, at 20; Vroman & Brusentsev, supra note 25, at 11.
75 See Weiss & Schmidt, supra note 45, at 19.
76 See id.
In the United States, however, unemployment is addressed through a “federal-state partnership” that gives states the freedom to establish their own unemployment compensation programs so long as they meet initial federal requirements.\(^{77}\) Although U.S. STC programs have existed for a number of years, the federal government has not established a consistent legal framework to bolster program use by the states.\(^{78}\)

The first instance of federal inconsistency regarding STC program authorization occurred after TEFRA’s three-year mandate expired and DOL stopped endorsing STC programs.\(^{79}\) Not only did established state programs still exist, but seven additional state programs were implemented using the expired law’s model legislation.\(^{80}\) With the enactment of UCA in 1992, the federal government again authorized STC programs following a recession.\(^{81}\) The statutory definition of STC programs under UCA renders them applicable when “individuals’ work-weeks have been reduced by at least 10%.\(^{82}\) During such periods, UCA provides that

\[ \text{STC is paid as a pro rata portion of the full unemployment benefit that an individual would have received if totally unemployed;} \]
\[ \ldots \text{STC beneficiaries are not required to meet availability for work and work search requirements, unlike beneficiaries of regular unemployment compensation, but they are required to be available for their normal work week;} \]
\[ \ldots \text{STC beneficiaries may participate in employer-sponsored training programs; and \ldots the reduction in work hours is in lieu of layoffs.} \]

UCA’s permanent authorization of STC is problematic, however, because it omits provisions contained in TEFRA—provisions that states

\(^{78}\) \text{See Shelton, supra note 5, at 12.}\n
\(^{79}\) \text{Id.}\n
\(^{80}\) \text{Id.}\n
\(^{81}\) \text{Id. at 3–4, 12.}\n
\(^{83}\) \text{Shelton, supra note 5, at 12 (restating UCA’s provisions). For the actual statutory provisions, see Unemployment Compensation Amendments § 401(d) (1)(B)–(E).}\n
relied upon when they initially crafted their still-existing STC programs. Unlike TEFRA, UCA does not require employers to . . . submit work sharing plans to the state for approval; certify to the relevant state agency that the reduction in work hours is in lieu of temporary layoffs; win consent from the relevant union(s); or contribute to health insurance or pension plans as if the employee continued to be fully employed.

Because UCA’s provisions are inconsistent with TEFRA, a number of existing TEFRA-based state STC programs technically violate the more restrictive law currently in effect. If DOL enforced the federal law in its present form, it “would risk confrontations with work sharing states and likely bring the Congress back into a policy debate.” Consequently, DOL has “sidestepped implementation of STC” by failing to provide states with support and updated model legislation and refusing to contest state programs created in accordance with TEFRA.

Congressional efforts to bolster UCA’s definition of STC with some of TEFRA’s original provisions have been unsuccessful. For example, on multiple occasions, Congress has failed to pass legislation giving states the ability to hold employers responsible for submitting STC plans to state agencies and providing full health and retirement benefits to employees. Nonetheless, the recent recession has renewed federal interest in STC, as evidenced by the introduction of a number of different STC bills in 2009.

The Keep Americans Working Act (KAWA) would have required employers to submit written STC plans to state agencies and to continue to provide employees with health and retirement benefits. It

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84 Shelt on, supra note 5, at 12.
85 See id.
86 See id. at 12–13 (“Clinton Administration and DOL officials were concerned that existing state provisions requiring employers to continue to provide health and pension benefits were out of compliance with UCA’s definitions of STC, and DOL would need to require states to roll back these provisions.”); Balducchi & Wandner, supra note 60, at 129.
87 Balducchi & Wandner, supra note 60, at 129.
88 Shelt on, supra note 5, at 12–13.
89 See id. at 13.
91 See id. at 15; infra text accompanying notes 101–103
also called upon DOL to support state STC programs and offer model legislation.\textsuperscript{93} Finally, KAWA would have authorized DOL to provide start-up grants to states with STC programs and declared that states would receive full reimbursement of STC benefit payments until September 30, 2011.\textsuperscript{94}

The Helping Unemployed Workers Act (HUWA) included similar provisions, although it would have extended the reimbursement period through the end of 2011.\textsuperscript{95} Both acts died, however, after languishing in the Senate Finance Committee and the House Committee on Ways and Means during the 111th Congressional session.\textsuperscript{96}

Despite these failures, politicians have continued to propose STC legislation because they recognize that “the deep recession . . . will not be solved overnight.”\textsuperscript{97} In July 2011, members of Congress introduced the Layoff Prevention Act (LPA).\textsuperscript{98} LPA mirrors provisions contained in 2009’s KAWA and HUWA, as well as President Obama’s recently introduced 2011 American Jobs Act, by proposing requirements consistent with TEFRA.\textsuperscript{99} For example, LPA would mandate that employers submit their STC plans to the state and continue to provide health and retirement benefits.\textsuperscript{100} It would also require employers to obtain union approval of their STC plans.\textsuperscript{101}

In addition to refining the contours of STC programs, LPA offers funding and support to enhance program implementation and use.\textsuperscript{102}

\textsuperscript{93}S. 1646; H.R. 4135.
\textsuperscript{94}S. 1646; H.R. 4135.
\textsuperscript{95}Helping Unemployed Workers Act, S. 2831, 111th Cong. (2009); Helping Unemployed Workers Act, H.R. 4183, 111th Cong. (2009); see Shelton, supra note 5, at 15.
\textsuperscript{99}See S. 1333; H.R. 2421; S. 2831; H.R. 4183; S. 1646; H.R. 4135; The American Jobs Act, supra note 97, §§ 341–346.
\textsuperscript{100}See S. 1333 § 2(a) (1); H.R. 2421 § 2(a) (1).
\textsuperscript{101}S. 1333 § 2(a) (1); H.R. 2421 § 2(a) (1).
\textsuperscript{102}S. 1333 §§ 3–5; H.R. 2421 §§ 3–5.
It provides DOL and states with funding to promote STC programs and requires DOL to offer model legislation and technical assistance. It provides DOL and states with funding to promote STC programs and requires DOL to offer model legislation and technical assistance.\textsuperscript{103} States would receive reimbursement of STC payments from the federal government for up to three years under the LPA’s provisions.\textsuperscript{104} In addition, seasonal or temporary workers would not be eligible for program participation.\textsuperscript{105} Finally, existing state plans would be given two and a half years to comply with program requirements.\textsuperscript{106}

\textbf{B. National Understanding of Work Sharing’s Proper Role and Benefits}

Perhaps as a consequence of Germany’s clear legal mandate for \textit{Kurzarbeit}, the program’s utility does not appear to be hampered by the widespread misunderstandings that afflict STC in the United States.\textsuperscript{107} Germans understand that work sharing’s limitations are a function of the program’s purpose: to avoid layoffs by spreading the burden of temporary economic decline among more employees through decreased work hours.\textsuperscript{108} STC is an appropriate response only during an economic crisis of limited duration;\textsuperscript{109} it is generally not suitable for an exceedingly lengthy period of economic decline.\textsuperscript{110} It should not be used to avoid necessary structural adjustments, as efforts to save employees facing imminent layoffs would prove futile.\textsuperscript{111} Such was the case with the eventual loss of jobs following the use of work sharing during German reunification.\textsuperscript{112}

The United States, with disjointed STC program authorization and enforcement, lacks a clear, widespread understanding of the benefits of STC programs and their potential role in easing unemployment during a recession.\textsuperscript{113} As an alternative to employee layoffs, STC can create a “win-win-win” situation for all parties.\textsuperscript{114} Employees directly benefit

\textsuperscript{103} S. 1333 §§ 5–6; H.R. 2421 §§ 5–6.
\textsuperscript{104} S. 1333 § 3(b) (2); H.R. 2421 § 3(b) (2).
\textsuperscript{105} S. 1333 § 3(a) (3) (B); H.R. 2421 § 3(a) (3) (B).
\textsuperscript{106} S. 1333 § 2(a) (3); H.R. 2421 § 2(a) (3).
\textsuperscript{107} See Crimmann et al., \textit{supra} note 4, at 1.
\textsuperscript{108} See Jon C. Messenger, Work Sharing: A Strategy to Preserve Jobs During the Global Crisis, at 1 (ILO TRAVAIL Policy Brief No. 1, 2009).
\textsuperscript{109} See id. at 2.
\textsuperscript{110} See Crimmann et al., \textit{supra} note 4, at 3.
\textsuperscript{111} See id. Germany has made clear that “no help will be available for products or services that are no longer in demand or that have become obsolete.” \textit{Short-Time Work or “Kurzarbeit,” supra} note 19.
\textsuperscript{112} See Crimmann et al., \textit{supra} note 4, at 17.
\textsuperscript{113} See \textit{Final Report, supra} note 47, at ii–iii.
\textsuperscript{114} \textit{Crisis to Recovery, supra} note 1, at 34.
from STC by avoiding job loss and receiving supplemental income.\textsuperscript{115} This allows employers to operate during the downturn and retain workers who will be needed once the economy recovers.\textsuperscript{116} Employers also benefit from lower costs because “the preservation of human capital”\textsuperscript{117} allows them to spend less on termination, hiring, and training.\textsuperscript{118} Furthermore, because work sharing avoids laying off those with the least seniority by making cuts across the seniority spectrum, some have argued that “the average hourly wage rate would probably be lower.”\textsuperscript{119} The government also benefits, as STC payments to a particular worker would be smaller than traditional unemployment compensation payments.\textsuperscript{120} Finally, society as a whole benefits from the higher spirits of workers who have kept their jobs after facing the possibility of layoffs.\textsuperscript{121}

Despite these benefits, some states and employers misunderstand STC’s unique advantages.\textsuperscript{122} For example, partial benefits under the traditional unemployment compensation scheme may seem to provide STC-like support; however, these funds are only available when workers collecting unemployment benefits make less in wages than their weekly unemployment allowance.\textsuperscript{123} States have also failed to implement STC programs because they do not perceive any advantage to employers.\textsuperscript{124} A lack of manufacturing employers, consistent seasonal layoffs, and the prevalence of small businesses are reasons states have offered to explain STC’s perceived unsuitability.\textsuperscript{125}

Four distinct apprehensions about STC plan costs may also affect program implementation in the United States.\textsuperscript{126} First, employers may worry about the increased costs associated with paying full retirement and health benefits.\textsuperscript{127} Although UCA does not compel employers to

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\textsuperscript{115} Id. \\
\textsuperscript{116} Id. \\
\textsuperscript{118} See \textit{Crisis to Recovery}, supra note 1, at 34; Vroman & Brusentsev, \textit{supra} note 25, at 4. \\
\textsuperscript{119} See, e.g., Vroman & Brusentsev, \textit{supra} note 25, at 3–4. Some argue that work sharing will maintain workplace diversity, assuming layoffs are determined by least seniority, and women, young adults, and minorities are those with the least seniority. See \textit{id.} at 3. Contra Final Report, \textit{supra} note 47, at iii (“We found no evidence that STC disproportionately protected the jobs of minorities, women, and young adults.”). \\
\textsuperscript{120} See \textit{Crisis to Recovery}, \textit{supra} note 1, at 34. \\
\textsuperscript{121} See \textit{id.} \\
\textsuperscript{122} See Final Report, \textit{supra} note 47, at 4-8. \\
\textsuperscript{123} SHELTON, \textit{supra} note 5, at 3; Final Report, \textit{supra} note 47, at 4-8. \\
\textsuperscript{124} Final Report, \textit{supra} note 47, at 4-15. \\
\textsuperscript{125} \textit{Id.} at 4-15 to -16. \\
\textsuperscript{126} See \textit{id.} at 3-3 to -4. \\
\textsuperscript{127} SHELTON, \textit{supra} note 5, at 9.
\end{flushleft}
provide STC-participating employees with full retirement and health benefits, many state programs based on TEFRA’s earlier legislation require the continuation of such employer support.\textsuperscript{128}

Second, employers may be worried about increased costs in the form of larger unemployment insurance contributions.\textsuperscript{129} When STC programs were first established, states often required STC-participating employers to pay extra charges that increased their unemployment insurance tax rate.\textsuperscript{130} Apart from extra charges, employers might also face higher average unemployment insurance payments because, in addition to newer workers, longstanding employees with higher wage rates would participate in STC programs.\textsuperscript{131} Because STC involves cutting the hours of employees across the board in lieu of layoffs, benefits payments would be made to higher-wage workers with seniority.\textsuperscript{132}

A third concern involves the duration of STC payments and their source of funding.\textsuperscript{133} If taxpayers believe the overall eligibility period for traditional unemployment benefits is unaffected by STC program participation, some might worry that workers will exploit both programs and thus unduly burden state unemployment trust funds.\textsuperscript{134} This concern amplifies the more fundamental worry that, regardless of program duration, state unemployment trust funds will be unable to handle the sheer number of STC claims filed.\textsuperscript{135}

Finally, states have raised serious questions regarding the costs of STC administration.\textsuperscript{136} STC claims processing may cost more than traditional unemployment claims administration, because approval of STC plans is non-automated and granted on an individual basis.\textsuperscript{137} Because STC is a way to spread the burden of less work among more people, it may also increase the administrative burden on states.\textsuperscript{138} Presumably more workers would participate in STC than would apply for unemployment benefits after being laid off; thus, there would be more claims under STC than there would be for traditional unemployment

\textsuperscript{128} \textit{Id.} at 11–13.
\textsuperscript{129} \textit{See} Final Report, \textit{supra} note 47, at 3-5.
\textsuperscript{130} \textit{Id.}
\textsuperscript{131} \textit{See} Final Report, \textit{supra} note 47, at 5-11; Vroman & Brusentsev, \textit{supra} note 25, at 4.
\textsuperscript{132} \textit{See} Final Report, \textit{supra} note 47, at 5-11; Vroman & Brusentsev, \textit{supra} note 25, at 4.
\textsuperscript{133} \textit{See} Vroman & Brusentsev, \textit{supra} note 25, at 4, 18; Ridley, \textit{supra} note 67, at 3–4.
\textsuperscript{134} Vroman & Brusentsev, \textit{supra} note 25, at 4, 10.
\textsuperscript{135} Ridley, \textit{supra} note 67, at 3–4.
\textsuperscript{136} Final Report, \textit{supra} note 47, at 4-40. Although some employers believe STC program administration requires considerable effort, one source failed to find a strong correlation between program administration and employer involvement. \textit{Id.} at 4-39.
\textsuperscript{137} \textit{See} Shelton, \textit{supra} note 5, at 7; Final Report, \textit{supra} note 47, at 4-40.
\textsuperscript{138} \textit{See} Shelton, \textit{supra} note 5, at 7.
compensation. Additionally, more employees would be eligible for STC benefits than traditional unemployment benefits because “newer workers, who are more vulnerable in layoffs, are more likely to fail requirements for regular unemployment benefits.”

C. Government Promotion and Public Awareness of Work Sharing

The fact that Kurzarbeit was used by more than 1.4 million workers and 63,000 employers during the recession is evidence of the German federal government’s successful efforts to promote the program to state governments and the general public. Although program use reached unprecedented levels during the 2008–2009 recession, “the extensive use of work sharing [was] not new for Germany.” Work sharing was used in the 1990s to temper job loss during reunification and to aid the struggling auto industry. Furthermore, in the pre-recession months of early 2007, thousands of workers participated in Kurzarbeit.

In contrast, the inconsistent and uncertain relationship between federal law and state STC programs has left U.S. employers and workers generally unaware—or worse, skeptical—of these schemes. DOL has been reticent in promoting STC programs and providing guidance to states seeking to establish or expand programs. Before the 2008 recession, STC benefits rarely exceeded 1% of all unemployment benefits. In fact, most of the states that currently offer STC programs “do not actively promote STC.” State officials may not be knowledgeable about the programs; indeed, a survey conducted in the mid-1990s found that three states’ unemployment insurance officials “had not heard of STC.”

139 See id. at 7 n.14.
140 Id. This is because traditional unemployment compensation is determined by “the time period over which [a worker’s] wages [are] earned and hours/weeks [are] worked.” Id.
141 See Messenger, supra note 108, at 3; Crisis to Recovery, supra note 1, at 32, 36.
142 See Crimmann et al., supra note 4, at 17.
143 See id. at 15, 17.
144 See id. at 17.
145 See Shelton, supra note 5, at 1; Vroman & Brusentsev, supra note 295, at 18.
146 Id., supra note 5, at 16.
147 Id. at 3–4.
148 Id. at 16. Rhode Island is a notable exception—in 2009 it reached an STC-to-unemployment-benefits ratio of 15.9% due to its efforts to increase program awareness. Id. at 5–6.
149 Final Report, supra note 47, at 4-2, 4-8.
Limited funding can also hinder adequate STC program promotion.\textsuperscript{150} In the past, STC marketing has been as minimal as summarizing the program in regular employer-targeted unemployment materials or engaging in limited leaflet distribution.\textsuperscript{151} Because STC use is so limited, it has failed to garner significant national attention as a feasible solution to temporary unemployment.\textsuperscript{152}

III. Analysis

A. Enact Federal Legislation Consistent with Existing State Programs

To make better use of STC programs, the United States should follow Germany’s lead and provide a clear and consistent authorization for these schemes.\textsuperscript{153} Although UCA provides a permanent federal STC policy that allows all states to implement STC programs, the relationship between existing state plans and federal legislation is disjointed.\textsuperscript{154} New legislation like LPA is thus needed to amend or repeal UCA in favor of provisions that do not conflict with current STC programs.\textsuperscript{155}

Congress should reconcile federal law and existing state programs by reinstating some of TEFRA’s original provisions.\textsuperscript{156} Because many state programs were created under TEFRA, legislators should abandon UCA’s definition of STC programs in favor of LPA’s more TEFRA-based provisions.\textsuperscript{157} This would avoid the significant modifications that would have to be made to states’ current STC programs to bring them into compliance with UCA.

New legislation should require that employers continue to contribute to the health insurance and pension plans of STC-participating workers.\textsuperscript{158} Although this proposal may seem controversial, employers in states with TEFRA-based programs are already familiar with such a

\textsuperscript{150} See id. at 4-27.

\textsuperscript{151} Id. Most, if not all, states with established STC programs include information on their respective labor agency’s website. See, e.g., \textit{Shared Work—The Layoff Alternative}, N.Y. St. Dep’t of Labor, http://www.labor.state.ny.us/ui/dande/sharedwork1.shtm (last visited May 18, 2012); \textit{Work Sharing}, Emp. Dev. Dep’t, St. of Cal., http://www.edd.ca.gov/unemployment/work_sharing_claims.htm (last visited May 18, 2012); \textit{Work Sharing}, Mass. Dep’t of Workforce Dev., https://ipasssecurity.detma.org/ipass/login_workshare.asp (last visited May 18, 2012).

\textsuperscript{152} See Balducchi & Wandner, \textit{supra} note 60, at 128.

\textsuperscript{153} See \textit{Shelton}, \textit{supra} note 5, at 16.

\textsuperscript{154} See Balducchi & Wandner, \textit{supra} note 60, at 129.

\textsuperscript{155} See \textit{Shelton}, \textit{supra} note 5, at 16.

\textsuperscript{156} See \textit{Ridley}, \textit{supra} note 67, at 3.

\textsuperscript{157} See \textit{Shelton}, \textit{supra} note 5, at 12–13.

\textsuperscript{158} See id. at 11–12.
In fact, many employers have chosen to provide STC-participating workers with full benefits even though it is not required by law.\textsuperscript{159} Surveys reveal that few employers considered these continued benefit contributions to be a significant drawback of STC.\textsuperscript{160}

STC legislation should also incorporate TEFRA’s requirements that employers submit written STC plans to state agencies and obtain union consent when appropriate.\textsuperscript{161} These conditions not only secure government and employee approval, but increase transparency by making information about STC more available.\textsuperscript{162} Because many states created STC programs under TEFRA’s mandate, these provisions would be relatively uncontroversial in states already familiar with them.\textsuperscript{163} If implemented, these requirements would mirror Kurzarbeit’s notification and approval provisions.\textsuperscript{164}

Reconciliation of TEFRA and UCA should be achieved through legislation because the problem cannot be solved by DOL action alone.\textsuperscript{165} If the ultimate goal is to conform federal law to fit existing TEFRA-based programs, DOL can do little more than broaden its interpretation of UCA to permit existing programs.\textsuperscript{166} Although such action might draw STC into public discourse as a matter of “political urgency,” the fact remains that only Congress can make the necessary legal changes to solve the problem once and for all.\textsuperscript{167}

The need for a legislative response is evident from past Congressional attempts to incorporate TEFRA provisions into UCA’s current framework.\textsuperscript{168} During recessionary periods since the 1990s, members of Congress have repeatedly introduced bills to reconcile state programs with federal law by mandating that STC-participating employers submit plans to state agencies, obtain union consent, and continue contribut-

\begin{footnotesize}
\begin{enumerate}
\item\textsuperscript{159} See id.
\item\textsuperscript{160} See Final Report, supra note 47, at 3-15.
\item\textsuperscript{161} See id.
\item\textsuperscript{162} See Layoff Prevention Act, S. 1333 § 2(a)(1), 112th Cong. (2011); Layoff Prevention Act, H.R. 2421 § 2(a)(1), 112th Cong. (2011); Shelton, supra note 5, at 11–12.
\item\textsuperscript{163} See S. 1333 § 2(a)(1); H.R. 2421 § 2(a)(1).
\item\textsuperscript{164} See Shelton, supra note 5, at 11–12.
\item\textsuperscript{165} See Fed. Ministry of Labour & Soc. Affairs, supra note 32, at 8; Crimmann et al., supra note 4, at 13.
\item\textsuperscript{166} See Balducchi & Wandner, supra note 60, at 129.
\item\textsuperscript{167} See id. Congress could give the DOL the power “to determine what provisions are appropriate for the work sharing program beyond the five that are now in permanent federal law.” Id.; see Ridley, supra note 67, at 3. The legal controversy, however, would likely still remain. See Shelton, supra note 5, at 13.
\item\textsuperscript{168} See Messenger, supra note 108, at 6; Balducchi & Wandner, supra note 60, at 129–30.
\end{enumerate}
\end{footnotesize}
ing to retirement and health plans.\textsuperscript{170} Although bills introduced in 2009 died in committee,\textsuperscript{171} Congress has another chance to realign federal STC legislation with the introduction of LPA in 2011.\textsuperscript{172} LPA proposes not only to incorporate TEFRA’s requirements, but also to further refine STC’s scope and provide the funding and support needed to properly promote and implement STC.\textsuperscript{173}

B. \textit{Improve National Understanding of Work Sharing’s Potential Role in Combating Unemployment}

To optimize STC use, Congress should enact legislation that evinces an understanding of STC’s proper role and addresses concerns about its potential costs.\textsuperscript{174} Federal authorization must make clear that STC is a program complementary to traditional unemployment benefits and useful to all types of employers facing temporary layoffs.\textsuperscript{175} If properly structured and implemented, the program would ease fears about costs associated with continued retirement and health benefits, unemployment insurance contributions, and the duration of STC benefits.\textsuperscript{176} In fact, employers could experience a decrease in some costs.\textsuperscript{177} Finally, Congressional authorization of temporary federal funding could lessen the financial burden on states paying STC benefits and improving their programs’ administration.\textsuperscript{178}

1. Ensure Understanding of STC’s Appropriate Scope

A clear understanding of the appropriateness of STC programs is as essential to program success as a consistent legal framework.\textsuperscript{179} To ensure that state governments and individuals appreciate the role STC can play in combating unemployment, it must be widely known that as

\begin{itemize}
\item \textsuperscript{170} See id. at 13, 15.
\item \textsuperscript{171} See id. at 13, 15–16; H.R. 4135: \textit{Keep Americans Working Act}, supra note 96; S. 2831: \textit{Helping Unemployed Workers Act}, supra note 96.
\item \textsuperscript{172} See S. 1333; H.R. 2421.
\item \textsuperscript{173} See S. 1333; H.R. 2421.
\item \textsuperscript{174} See \textit{Final Report}, supra note 47, at 8-2, 8-7 to -11; Balducchi & Wandner, supra note 60, at 130.
\item \textsuperscript{175} See \textit{Shelton}, supra note 5, at 3; \textit{Fed. Ministry of Labour & Soc. Affairs}, supra note 32, at 7; Grimm\textit{mann et al., supra} note 4, at 13.
\item \textsuperscript{176} See \textit{Shelton}, supra note 5, at 3; \textit{Final Report}, supra note 47, at 3-5; Vroman \& Brusentsev, supra note 25, at 4.
\item \textsuperscript{177} See \textit{Crisis to Recovery}, supra note 1, at 34; \textit{Final Report}, supra note 47, at 3-5; Vroman \& Brusentsev, supra note 25, at 4.
\item \textsuperscript{178} See \textit{Ridley}, supra note 67, at 3–4, 5 n.5.
\item \textsuperscript{179} See \textit{Shelton}, supra note 5, at 16; \textit{Final Report}, supra note 47, at 8-2.
\end{itemize}
a work sharing program, STC has a limited purpose: to avoid layoffs during temporary periods of economic decline.\footnote{See Crimmann et al., supra note 4, at 13.} It should not be used to avoid layoffs during more permanent periods of decline or to avoid necessary structural changes.\footnote{See id. at 3.}

A strong legislative framework can make STC’s scope clear.\footnote{See S. 1333; H.R. 2421; Balducchi & Wandner, supra note 60, at 128.} For example, STC’s appropriateness as a response to temporary periods of economic decline can be supported by legislative provisions that provide benefits for a discrete period of time.\footnote{See S. 1333 § 3(b)(2); H.R. 2421 § 3(b)(2).} Recognizing states’ needs for funding in the current economic climate, LPA offers STC benefit reimbursement to states, but only within the three-and-a-half years following enactment.\footnote{See S. 1333 § 3(b)(2); H.R. 2421 § 3(b)(2).} LPA also defines the proper scope of STC programs by prohibiting the participation of workers who might attempt to use the program on a more permanent basis.\footnote{See S. 1333 § 3(a)(3)(B); H.R. 2421 § 3(a)(3)(B).} “[S]easonal, temporary, or intermittent” workers are not eligible for STC programs that receive federal funding.\footnote{See Crimmann et al., supra note 4, at 1, 15, 17; Final Report, supra note 47, at 8-12.}

Crafting a federal law that clearly establishes STC’s limited role in the United States is important because STC must distinguish itself from Kurzarbeit in at least one regard. In some circumstances, Kurzarbeit has been used to respond to permanent structural changes or as a transitional program with a worker training component.\footnote{See Shelton, supra note 5, at 1; Final Report, supra note 47, at 8-12.} In the United States, however, where STC is underutilized and relatively unknown, these uses not only distort STC’s primary purpose in avoiding layoffs during temporary periods of decline, but they would cause needless confusion to those unfamiliar with STC.\footnote{See Final Report, supra note 47, at 4-8, 8-12 (noting, but not exploring, STC’s possible use in “employment transition”).} Furthermore, STC skeptics concerned about the program’s impact on state unemployment trust funds may fear that, if the program is used to address more permanent redundancies, it might require extension of the eligibility period for unemployment benefits.\footnote{See id. at 8-12 to -14. In practice, some U.S. employers used STC programs for years; however, states responded to this by limiting repeated program usage. Id. at 8-13 to -14. Thus, although it is possible that employees could “work part-time while simultaneously
Although STC’s limited application makes it “unlikely to ever play a great role in the unemployment compensation system,” the program must nonetheless be promoted to all types of employers. The United States should follow Germany’s lead in endorsing STC’s usefulness to employers in all industries and of all sizes—not just those in manufacturing.

Congress, DOL, and state governments must also make clear to employers and employees that STC will supplement, not supplant, more traditional unemployment benefits schemes. Just as Germany maintains its own separate support program for unemployed workers while successfully utilizing Kurzarbeit, so too can the United States maintain traditional unemployment benefits while making better use of STC. Instead of providing laid-off employees with only 50% of their working wages, the United States can ensure that STC-participating employees facing significant working hour cutbacks can remain employed and continue to receive the majority of their normal working wages.

For example, a worker facing a 50% cut in hours could expect to receive only a 25% decrease in income under the program, because the employer would provide 50% of normal compensation due to hours worked and the government would provide an additional 25% of income in STC benefits. If an STC scheme were not implemented, the worker would not receive an additional 25% supplemental income benefit under the traditional unemployment insurance program. Furthermore, unemployment insurance’s partial benefits would not apply because they are only available when workers collecting unemployment participating in training or conducting job searches,” id. at 8-12, this change in “STC’s purpose . . . from layoff prevention to employment transition,” id., is by no means clearly warranted or broadly desired. See id. at 8-13 to -14.

See Shelton, supra note 5, at 16.
192 See Fed. Ministry of Labour & Soc. Affairs, supra note 32, at 7; Crimmann et al., supra note 4, at 10.
193 See Shelton, supra note 5, at 3; Final Report, supra note 47, at 4-8.
194 See Shelton, supra note 5, at 3; Crisis to Recovery, supra note 1, at 17 (describing Germany’s spending on unemployment claims during the recession). Germany’s labor market schemes do not render the role of STC and traditional unemployment benefits mutually exclusive; Kurzarbeit allows for payment of benefits not only while an employee is working reduced hours, but also when that employee’s hours have been totally cut to zero. See Crimmann et al., supra note 4, at 13 (noting that workers using Kurzarbeit can receive benefits comparable to traditional unemployment benefits, although the workers are considered legally “employed”).
195 See Shelton, supra note 5, at 2–3 (describing how STC functions).
196 See id.
197 See id. at 3 (explaining the role of partial benefits).
benefits earn less than their weekly unemployment compensation allowance.\textsuperscript{199} Thus, in a period of temporary decline, workers facing a decrease in income would receive greater financial benefit from participating in STC than being laid off and collecting traditional unemployment benefits.\textsuperscript{200}

2. Address Concerns About Program Costs

In addition to explaining STC’s proper role, Congress, DOL, and state governments must address concerns about STC costs.\textsuperscript{201} The government should emphasize that STC can actually lower some costs for employers, including termination, rehiring, and training expenses.\textsuperscript{202} Further, to allay concerns about continued retirement and health benefit contributions, the government should note that such payments are already required by TEFRA-based state programs, and have not been considered significant drawbacks of program use.\textsuperscript{203}

STC-participating employers must understand that they will not be overburdened by significantly greater unemployment insurance contributions.\textsuperscript{204} Regardless of whether Germany’s Kurzarbeit framework treats STC and traditional unemployment benefits the same for purposes of social insurance contributions, past U.S. experience with STC should ease employer concerns.\textsuperscript{205} Many states with STC programs no longer distinguish between STC and traditional unemployment benefits when setting employer contribution levels.\textsuperscript{206} Unless Congress amends federal law to determine contributions for both programs under different rubrics, states enacting STC programs can treat employer

\textsuperscript{199} See id.
\textsuperscript{200} See id.
\textsuperscript{201} See Final Report, supra note 47, at 3-3 to -4, 8-2.
\textsuperscript{202} See Crisis to Recovery, supra note 1, at 34; Vroman & Brusentsev, supra note 25, at 4.
\textsuperscript{203} See Final Report, supra note 47, at 3-3 to -4, 8-2.
\textsuperscript{204} See id., at 3-5, 4-24.
\textsuperscript{205} See id. Because Germany’s social insurance framework is more extensive than U.S. social insurance schemes, likely reflecting broader ideological differences between the two countries, a sufficient comparison of social insurance systems would require exploration beyond this Note’s scope. See Final Report, supra note 47, at 3-5 to -7 (contrasting U.S. reliance on layoffs with more robust responses in Germany and other European countries); Weiss & Schmidt, supra note 45, at 19 (“[Germany’s federal republic] is based on . . . the principle of welfare improvement . . . which plays a significant role in the discussion of labour law and of social security law.”).
\textsuperscript{206} Final Report, supra note 47, at 3-5, 4-24; Vroman & Brusentsev, supra note 25, at 17. Seven states do, however, impose additional taxes on employers participating in STC. Shelton, supra note 5, at 3.
use of STC and traditional unemployment benefits the same.\textsuperscript{207} In fact, LPA would not use employer-paid portions of STC benefits under a federal-state STC agreement “for purposes of calculating an employer’s contribution rate.”\textsuperscript{208}

Such treatment of STC and traditional unemployment benefit contributions could even lessen the burden on STC-participating employers.\textsuperscript{209} Because STC payments to a particular worker would likely be less than traditional unemployment benefits,\textsuperscript{210} employers’ resulting contributions to the state’s unemployment trust fund would not increase with the implementation of STC.\textsuperscript{211} Although one commentator speculates that significantly increased STC use could strain the unemployment trust fund, STC’s limited utility in saving only the jobs needed once the economy improves could offset this fear.\textsuperscript{212}

To strengthen an understanding of STC in the United States, Congress, DOL, and state governments must also explain that STC does not increase costs by extending the overall unemployment benefit eligibility period.\textsuperscript{213} Because STC program participation counts against the traditional unemployment benefits period, it does not provide additional weeks of compensation that could drain state unemployment trust funds.\textsuperscript{214} LPA confirms this in its proposal to limit explicitly program funding to the twenty-six week period normally allowed for unemployment benefits.\textsuperscript{215} Although U.S. STC programs differ from \textit{Kurzarbeit} in

\textsuperscript{207} See \textit{Final Report}, supra note 47, at 3-5, 4-24; \textit{Shelton}, supra note 5, at 3.

\textsuperscript{208} S. 1333 § 4(b)(3); H.R. 2421 § 4(b)(3). STC agreements, as distinguished from STC programs, may be entered into by states without laws “provid[ing] for the payment of short-time compensation under a short-time compensation program.” S. 1333 § 4(a)(1); H.R. 2421 § 4(a)(1).

\textsuperscript{209} See \textit{Shelton}, supra note 5, at 3.

\textsuperscript{210} See id. (explaining that workers with working hour reductions as low as 10% can participate in STC, whereas unemployment benefits supplement up to 50% of wages).

\textsuperscript{211} See id.; \textit{Federal-State Partnership}, supra note 77, at 10 (“[Experience rating] formulas are devised to establish the relative experience of individual employers with unemployment or with benefit costs.”).

\textsuperscript{212} See Crimmann et al., supra note 4, at 13; \textit{Final Report}, supra note 47, at 8-7.

\textsuperscript{213} Vroman & Brusentsev, supra note 25, at 4.

\textsuperscript{214} See id. at 4. This argument does not address whether STC could be an extra burden on the Unemployment Trust Fund due to STC use by workers who would not otherwise collect traditional unemployment benefits. Because STC is only intended to be used to avoid layoffs during temporary periods of economic decline, in theory the only workers who would participate in the program would be those otherwise needing full unemployment benefits. \textit{But cf. Employment Outlook: Germany}, supra note 2, at 1 (“[E]stimates . . . suggest[] that \textit{Kurzarbeit} ends up supporting some jobs that would have been maintained even in the absence of the subsidy.”).

\textsuperscript{215} See S. 1333 § 3(a)(3)(A); H.R. 2421 § 3(a)(3)(A).
In this respect, counting STC participation against the unemployment benefits period is likely better suited to the current condition of the U.S. economy.

In light of the fact that many states “ha[d] trusts funds that [were] barely solvent” during the recession, Congress should authorize federal funding to help states pay STC benefits. If Congress were to pass LPA, it would repay states with legally authorized STC programs 100% of STC benefit payments made for up to three years. Such temporary federal funding could alleviate concerns about STC’s potential burden on states and thus make Americans and states more amenable to STC program expansion. Because STC is not yet a topic of national discourse, however, authorization of federal funding to expand STC would likely face significant opposition. With a number of states and individuals unsure of STC’s appropriateness and concerned about the program’s costs, it is reasonable to assume that many taxpayers would disapprove or be skeptical of a federally funded STC initiative.

Nonetheless, even if there is not adequate support for a temporary, comprehensive, federally funded STC program, more modest goals could be achieved with federal support. Federal funding could drive DOL’s efforts to provide states with better technical assistance, marketing strategies, and administrative procedures. For example, LPA would allow DOL a portion of available funds “to provide for outreach and to share best practices.” If these efforts were properly funded, they could play a significant role in encouraging the appropriate use of STC.

Comprehensive efforts to encourage STC use in the United States would also require states to make improvements to existing STC frameworks. Program administration is one area in which both Germany

216. Vroman & Brusentsev, supra note 25, at 13. STC use in Germany does not impact the eligibility period for full unemployment benefits. Id.

217. See Ridley, supra note 67, at 3–4, 5 n.5 (noting the serious impact the recession had on state unemployment trust funds); Vroman & Brusentsev, supra note 25, at 18.

218. See Ridley, supra note 67, at 3–4, 5 n.5.

219. See S. 1333 § 5(a)(1), (b)(2); H.R. 2421 § 3(a)(1), (b)(2).


221. See Balducchi & Wandner, supra note 60, at 128.

222. See Final Report, supra note 47, at 3-3 to -4.

223. See id. at 4-45.

224. See S. 1333 § 5(e); H.R. 2421 § 5(e).

225. See Final Report, supra note 47, at 4-45.

226. See id. at 8-8.
and the United States have shown a need for improvement.\textsuperscript{227} Just as Germany streamlined its application process to facilitate approval of \textit{Kurzarbeit} participation, so too must the United States consider ways to ease the administrative burden of STC program implementation and operation.\textsuperscript{228} One measure that could ease significant concerns about STC administration costs is to permit employers to file STC claims.\textsuperscript{229} Because STC increases the number of employees filing for unemployment compensation, requiring employers, instead of employees, to file workers’ claims would ease the burden on state employment agencies.\textsuperscript{230} With employer-filed claims, states could avoid an onslaught of workers individually approaching the agency for approval.\textsuperscript{231}

Germany’s administrative improvements should also encourage the United States to mechanize claims processing and streamline program approval.\textsuperscript{232} Automating the claims filing system would allow states to handle better the increased claims that accompany STC participation.\textsuperscript{233} Streamlining the authorization process would allow states to avoid “the layers of approval” that hinder plan submissions and program implementation.\textsuperscript{234} States seeking enhanced program administration systems could expect STC administrative costs no greater than those of traditional unemployment programs.\textsuperscript{235} Recognizing the need for updated STC administration, LPA would provide states with grants to improve processes for filing STC plans and claims.\textsuperscript{236}

\section*{C. Increase Awareness of STC Programs}

Federal legislation, in addition to authorizing clearly STC and its appropriate use, should support efforts to increase STC awareness.\textsuperscript{237}

\begin{itemize}
\item \textsuperscript{227} See Fed. Ministry of Labour & Soc. Affairs, supra note 32, at 8; Final Report, supra note 47, at 8-8.
\item \textsuperscript{228} See Fed. Ministry of Labour & Soc. Affairs, supra note 32, at 8; Final Report, supra note 47, at 8-8.
\item \textsuperscript{229} Shelton, supra note 5, at 7.
\item \textsuperscript{230} See id.
\item \textsuperscript{231} See id. Some states also eased the burden associated with filing claims, usually filed every week or two weeks, by requiring only employers, instead of individual employees, to verify claims with a signature. See Final Report, supra note 47, at 8-4.
\item \textsuperscript{232} See Shelton, supra note 5, at 7.
\item \textsuperscript{233} See id.
\item \textsuperscript{234} See id.
\item \textsuperscript{235} See Final Report, supra note 47, at 8-3 to -4.
\item \textsuperscript{236} See S. 1333 § 5(a), (d)(3); H.R. 2421 § 5(a), (d)(3).
\item \textsuperscript{237} See Final Report, supra note 47, at 4-8; Balducchi & Wandner, supra note 60, at 128.
\end{itemize}
Lacking Germany’s more robust history of work sharing, the United States must actively promote the benefits of STC to its states and citizens. Underutilization of work sharing can be tackled only if a national discourse on STC programs is established.

Most fundamentally, DOL should actively endorse STC. Although Congressional action is more desirable than DOL’s action alone, DOL’s promotion of STC programs could provide the spark that makes STC an issue of pressing national concern. DOL is already legally authorized to endorse STC in states without programs and support states’ efforts to publicize established programs. If such DOL action eventually prompts Congress to reconcile STC policy at the state and federal levels, DOL could promote STC without fearing any conflict, and could singularly focus on reaching a level of program awareness similar to that found in Germany.

To promote STC, DOL should create model legislation for states to follow in crafting their own STC programs. Although Germany’s governmental structure merely requires states to implement federal law, the United States must provide legislative guidance to address adequately the freedom its own system gives to states constructing unemployment compensation programs. If enacted, LPA would require the Secretary of Labor to create model legislation that “allow[s] sufficient flexibility by States and participating employers while ensuring accountability and program integrity.”

UCA required DOL to produce model legislation in early 1993, but DOL has not yet done so. DOL’s unwillingness to provide model legislation until federal and state policy are reconciled is understandable, because promoting STC could put existing TEFRA-based state

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238 See Shelton, supra note 5, at 1–2; Crimmann et al., supra note 4, at 17.

239 See Ridley, supra note 67, at 3.

240 See Balducchi & Wandner, supra note 60, at 128.

241 See id. at 128–30.

242 See id.

243 See id. at 130.

244 See id. at 128–29.

245 See id. at 128.

246 See Weiss & Schmidt, supra note 45, at 19.

247 See Federal-State Partnership, supra note 77, at 1; Balducchi & Wandner, supra note 60, at 128.

248 S. 1333 § 6(b); H.R. 2421 § 6(b). The Act would also require the Secretary of Labor to “consult with employers, labor organizations, State workforce agencies, and other program experts” in creating such guidance. S. 1333 § 6(c); H.R. 2421 § 6(a).

249 Balducchi & Wandner, supra note 60, at 128.
programs at risk. Nonetheless, DOL should be concerned about the lack of legal guidance for states and be prepared to issue model legislation once a consistent federal and state framework is established. If states do not have clear guidance from DOL, it is unlikely that work sharing implementation in the United States would reach even a fraction of that found in Germany.

DOL must also promote STC by providing technical assistance for STC program implementation. Like the unreleased model legislation, DOL did not make technical assistance and support available after UCA was enacted. While states with established STC initiatives may not need further technical assistance to construct their programs, they could still benefit from DOL’s more updated guidance. States implementing programs for the first time could also benefit. LPA recognizes this need by requiring DOL to “provide technical assistance and guidance in developing, enacting, and implementing such programs.” Specifically, DOL could assist states by organizing educational conferences, compiling a best practices manual, or creating an online forum with STC-related information. These types of renewed DOL efforts could address the stagnation of STC program establishment that occurred after UCA’s enactment.

DOL should also support the efforts of state governments in promoting STC to the labor community. Efforts to encourage employer and worker awareness would be especially effective if DOL and state governments connected with unions and business associations. For instance, DOL could engage in various marketing and outreach efforts to target the labor community in a particular area and report its efforts back to the states. Contact with unions and business associations

250 See Shelton, supra note 5, at 12.
251 See id. at 16.
252 See Shelton, supra note 5, at 16; Crimmann et al., supra note 4, at 11 (showing the number of employers using Kurzarbeit in each geographical region).
253 See Balducchi & Wandner, supra note 60, at 128.
254 See id.
255 Id. at 129.
256 See Final Report, supra note 47, at 4-45 (explaining that states sought further technical assistance from DOL).
257 See Balducchi & Wandner, supra note 60, at 129.
258 S. 1333 § 6(a) (2); H.R. 2421 § 6(a) (2).
259 See Final Report, supra note 47, at 8-10 to -11; Ridley, supra note 67, at 3.
260 See Ridley, supra note 67, at 3.
261 See id.
262 Id.
263 See Final Report, supra note 47, at 8-10.
would ensure that these crucial players are aware of STC programs, and make it more likely that individual workers and employers are similarly informed. Because the United States has not enjoyed an STC history as extensive and robust as Germany’s history with Kurzarbeit, the United States must undertake these additional efforts to inform the labor community of STC opportunities.

Finally, DOL could support states’ promotion efforts by endorsing innovative or effective state practices. It could recommend Rhode Island’s operation of “rapid response team[s]” to explain the benefits of STC in the face of significant layoffs, or it could recommend New York’s use of press conferences to promote STC. Some legislators found such tactics so useful that, if enacted, LPA would authorize grant disbursement to states that use “rapid response teams . . . [and] provi[de] education or assistance to employers to enable them to assess the feasibility of participating in [STC].” By promoting STC to the states in these ways, DOL could remedy the unfortunate situation in which “[m]ost states do not actively promote STC.” More robust marketing efforts at the state level would increase program awareness and lead to ultimately greater STC use.

Conclusion

Germany’s success with Kurzarbeit during the recent recession has directed needed attention to work sharing programs and their potential role in combating unemployment. In the United States, STC could be an appropriate and effective response to the layoffs that accompany a recession. Although the United States has its own history of STC use, a host of issues prevent STC from being properly utilized by states. Thus, the United States should contemplate Germany’s success with Kurzarbeit and discern areas for improvement in its own STC policy and legislation.

264 See id. at 4-43. Through the various measures described above, the DOL could reach “key stakeholders” that also include “representatives from the state’s employment security agency, legislators, . . . labor groups, or the governor.” See id.

265 See Shelton, supra note 5, at 11–13; Crimmann et al., supra note 4, at 17; Wandner, supra note 21, at 20.

266 See Ridley, supra note 67, at 3.

267 See Final Report, supra note 47, at 8-10; Ridley, supra note 67, at 3.

268 See Ridley, supra note 67, at 3.

269 S. 1333 § 5(d)(1)–(2); H.R. 2421 § 5(d)(1)–(2).

270 Shelton, supra note 5, at 16; see Ridley, supra note 67, at 3.

271 See Final Report, supra note 47, at 4-44.
Most fundamentally, the United States needs a consistent legal framework upon which DOL and states can act regarding STC. Congress needs to reconcile established state STC programs and federal law by changing UCA to incorporate TEFRA provisions. If Congress were to enact a framework like LPA, it could initiate a more thoughtful dialogue to address widespread misunderstandings of STC. With a clear vision of STC’s proper role, the government could offer comprehensive guidance, funding, and support for STC programs.

Although Germany’s success with Kurzarbeit can inform a reassessment of U.S. STC policy, STC will be useful in combating U.S. unemployment only when appropriate Congressional action converges with public awareness.