



# Unemployment Insurance: Legislative Issues in the 112<sup>th</sup> Congress

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## Summary

The 112<sup>th</sup> Congress may consider a number of issues related to currently available unemployment insurance programs: Unemployment Compensation (UC), the temporary Emergency Unemployment Compensation (EUC08), and Extended Benefits (EB). With the national unemployment rate predicted to remain high into next year, the increased demand for regular and extended unemployment benefits will continue. At the same time, the authorization for several key unemployment insurance provisions is temporary and will end in the next year. For instance, the EUC08 program, which currently provides the bulk of extended unemployment benefits, is scheduled to expire the week ending on or before January 3, 2012. The 100% federal financing of the EB program will expire on January 4, 2012. In addition, a temporary 0.2% federal unemployment tax (FUTA) surtax expired at the end of June 2011.

The 112<sup>th</sup> Congress faces these upcoming expirations as well as other likely unemployment insurance policy issues, including unemployment insurance financing. In addition, recent policy discussions have focused on the appropriate length of unemployment benefits. This discussion includes consideration of whether additional weeks of unemployment benefits—the creation of a tier V of the EUC08 program, for instance—is warranted.

This report provides a brief overview of the three unemployment insurance programs—UC, EUC08, and EB—that may currently pay benefits to eligible unemployed workers. It summarizes unemployment insurance legislation in the previous (111<sup>th</sup>) Congress. This report also discusses relevant legislation introduced in the 112<sup>th</sup> Congress; specifically, H.R. 1745, S. 386, H.R. 650, H.R. 589, H.R. 1663, H.R. 235, S. 310, H.R. 569, H.R. 2001, H.R. 2120, H.R. 2137, H.R. 2731, H.R. 2806 as well as a proposal outlined in the President's Budget Proposal FY2012. This report also discusses the implications to the UI programs in H.R. 2693, S.Amdt. 581 to S. 1323, and P.L. 112-25.

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The unemployment insurance (UI) system has two primary objectives: (1) to provide temporary, partial wage replacement for involuntarily unemployed workers; and (2) to stabilize the economy during recessions. In support of these goals, several UI programs may currently provide benefits for unemployed workers.

## Overview of Unemployment Insurance Programs

In general, when eligible workers lose their jobs, the joint federal-state Unemployment Compensation (UC) program may provide up to 26 weeks of income support through the payment of regular UC benefits. UC benefits may be extended in two ways: (1) for up to 53 weeks by the temporarily authorized Emergency Unemployment Compensation (EUC08) program; and (2) for up to 13 or 20 weeks by the Extended Benefit (EB) program if certain economic situations exist within the state.<sup>1</sup>

### Unemployment Compensation Program

The joint federal-state UC program, authorized by the Social Security Act of 1935 (P.L. 74-271), provides unemployment benefits for up to a maximum of 26 weeks.<sup>2</sup> Former U.S. military servicemembers may be eligible for unemployment benefits through the unemployment compensation for ex-servicemembers (UCX) program.<sup>3</sup> The Emergency Unemployment Compensation Act of 1991 (P.L. 102-164) provides that ex-servicemembers be treated the same as other unemployed workers with respect to benefit levels, the waiting period for benefits, and benefit duration.

Although federal laws and regulations provide broad guidelines on UC benefit coverage, eligibility, and benefit determination, the specifics regarding UC benefits are determined by each state. This results in essentially 53 different programs.<sup>4</sup> Generally, UC eligibility is based on attaining qualified wages and employment in covered work over a 12-month period (called a base period) prior to unemployment. All states require a worker to have earned a certain amount of wages or to have worked for a certain period of time (or both) within the base period to be monetarily eligible to receive any UC benefits. The methods states use to determine monetary

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<sup>1</sup> For detailed information on each of these programs, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Katelin P. Isaacs and Julie M. Whittaker. Certain groups of workers may qualify for income support from additional UI programs, including Trade Adjustment Assistance (TAA), Reemployment Trade Adjustment Assistance (RTAA), and Disaster Unemployment Assistance (DUA). Workers who lose their jobs because of international competition may qualify for income support through the TAA program or the RTAA (for certain workers aged 50 or older). Workers may be eligible to receive DUA benefits if they are not eligible for regular UC and their unemployment may be directly attributed to a declared natural disaster. For more information on the TAA, and RTAA programs, see CRS Report RS22718, *Trade Adjustment Assistance for Workers (TAA) and Alternative Trade Adjustment Assistance (ATAA)*, by John J. Topoleski.

<sup>2</sup> Arkansas provides up to 25 weeks, Missouri and South Carolina provide up to 20 weeks, Montana provides up to 28 weeks, and Massachusetts provides up to 30 weeks of regular unemployment benefits. For changes in benefit duration in 2012, see Table 1 in CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*, by Katelin P. Isaacs.

<sup>3</sup> For more information on the UCX program, see CRS Report RS22440, *Unemployment Compensation (Insurance) and Military Service*, by Julie M. Whittaker.

<sup>4</sup> The District of Columbia, Puerto Rico, and the Virgin Islands are considered to be states in UC law.

eligibility vary greatly. Most state benefit formulas replace approximately half of a claimant's average weekly wage up to a weekly maximum.

The UC program is financed by federal taxes under the Federal Unemployment Tax Act (FUTA) and by state payroll taxes under the State Unemployment Tax Acts (SUTA). The 0.6% effective net FUTA tax paid by employers on the first \$7,000 of each employee's earnings (\$42 per worker per year) funds both federal and state administrative costs, loans to insolvent state UC accounts, the federal share (50% permanent law, 100% temporarily under current law) of EB payments, and state employment services.<sup>5</sup>

SUTA taxes on employers are limited by federal law to funding regular UC benefits and the state share (50% under permanent law, 0% under current law) of EB payments. Federal law requires that the state tax be on at least the first \$7,000 of each employee's earnings (it may be more) and requires that the maximum state tax rate be at least 5.4%. Federal law also requires the state tax rate to be based on the amount of UC paid to former employees (known as "experience rating"). Within these broad requirements, states have great flexibility in determining the SUTA structure of their state. Generally, the more UC benefits paid out to its former employees, the higher the tax rate of the employer, up to a maximum established by state law. Funds from FUTA and SUTA are deposited in the appropriate accounts within the Unemployment Trust Fund (UTF).

## **Emergency Unemployment Compensation Program**

On June 30, 2008, the President signed the Supplemental Appropriations Act of 2008 (P.L. 110-252), which created a new temporary unemployment insurance program, the Emergency Unemployment Compensation (EUC08) program. This was the eighth time Congress had created a federal temporary program to extend unemployment compensation during an economic slowdown.<sup>6</sup> State UC agencies administer the EUC08 benefit along with regular UC benefits. The authorization for this program continues until January 3, 2012.

The EUC08 program has been amended eight times.<sup>7</sup> This temporary unemployment insurance program provides up to 20 additional weeks of unemployment benefits to certain workers who have exhausted their rights to regular UC benefits. A second tier of benefits provides up to an additional 14 weeks of benefits (for a total of 34 weeks of EUC08 benefits for all unemployed workers). A third tier is available in states with a total unemployment rate (TUR)<sup>8</sup> of at least 6% and provides up to an additional 13 weeks of EUC08 benefits (for a total of 47 weeks of EUC08 benefits in these states). A fourth tier is available in states with a TUR of at least 8.5% and

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<sup>5</sup> FUTA imposes a 6.2% gross tax rate on the first \$7,000 paid annually by employers to each employee. Employers in states with programs approved by the federal government and with no delinquent federal loans may credit 5.4 percentage points against the 6.2% tax rate, making the minimum net federal unemployment tax rate 0.8%. See CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*, by Julie M. Whittaker, for details on how delinquent loans affect the net FUTA tax.

<sup>6</sup> The other programs became effective in 1958, 1961, 1972, 1975, 1982, 1991, and 2002.

<sup>7</sup> The eight amendments are P.L. 110-449, P.L. 111-5, P.L. 111-92, P.L. 111-118, P.L. 111-144, P.L. 111-157, P.L. 111-205, and P.L. 111-312.

<sup>8</sup> The TUR (the total unemployment rate) is the ratio of unemployed workers to all workers (employed and unemployed) in the labor market.

provides up to an additional six weeks of EUC08 benefits (for a total of 53 weeks of EUC08 benefits in these states).<sup>9</sup>

The EUC08 benefit amount is equal to the eligible individual's weekly regular UC benefits and includes any applicable dependents' allowances. All tiers of EUC08 benefits are temporary and will expire the week ending on or before January 3, 2012. This has the implication that there will be no new entrants into the EUC08 program after December 31, 2011.<sup>10</sup> Those unemployed individuals who had qualified for a tier I, II, III, or IV EUC08 benefit by December 31, 2011, may be "grandfathered" for their remaining weeks of eligibility *for only that specific tier*, and would continue to receive payments for the number of weeks they were deemed eligible within that tier. No EUC08 benefits—regardless of tier—are payable for any week after June 9, 2012.

Until February 16, 2009, the EUC08 program was federally financed by federal unemployment taxes deposited into a federal account within the UTF. With the passage of the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5), however, EUC08 is now financed from general funds of the U.S. Treasury. Neither the federal accounts within the UTF nor the states need to repay these funds.

## **Extended Benefit Program**

The Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), P.L. 91-373, established the Extended Benefit (EB) program. The EB program provides extended unemployment benefits at the state level if certain economic situations exist within the state.<sup>11</sup> In all states, the EB program is available when a state's insured unemployment rate (IUR)<sup>12</sup> or TUR<sup>13</sup> reaches certain levels.<sup>14</sup>

All states must pay up to 13 weeks of EB if the state's IUR for the previous 13 weeks is at least 5% and is 120% of the average of the rates for the same 13-week period in each of the two previous years. Additionally, states may choose two optional thresholds for activating the EB program. (States may choose one, two, or none.) If the state has chosen a given option, they would provide the following:

- Option 1: up to 13 weeks of EB if the state's IUR is at least 6%, regardless of previous years' averages.

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<sup>9</sup> Each week the Department of Labor posts trigger notices for tiers III and IV of the EUC08 program, which are available online, at [http://www.workforcesecurity.doleta.gov/unemploy/claims\\_arch.asp](http://www.workforcesecurity.doleta.gov/unemploy/claims_arch.asp).

<sup>10</sup> January 1, 2012, for New York state.

<sup>11</sup> The EB program imposes additional federal restrictions on individual eligibility for benefits beyond the state requirements for regular UC. In addition to all state requirements for regular UC eligibility, the EB program requires claimants to have at least 20 weeks of full-time insured employment or the equivalent in their base period, and to conduct a systematic and sustained work search. P.L. 110-252 allows states to determine which extended unemployment benefit—EUC08 or EB—is paid first. States balance the decision of which benefit to pay first by weighing the potential cost savings to the state against the potential loss of unemployment benefits for unemployed individuals in the state. All states except Alaska pay EUC08 benefits before EB.

<sup>12</sup> The IUR (the insured unemployment rate) is the ratio of UC claimants divided by individuals in UC-covered jobs.

<sup>13</sup> The TUR (the total unemployment rate) is the ratio of unemployed workers to all workers (employed and unemployed) in the labor market.

<sup>14</sup> The Department of Labor's weekly trigger notices for the EB program are available online at [http://www.workforcesecurity.doleta.gov/unemploy/claims\\_arch.asp](http://www.workforcesecurity.doleta.gov/unemploy/claims_arch.asp).

- Option 2: up to 13 weeks of EB if the state’s TUR is at least 6.5% and is at least 110% of the state’s average TUR for the same 13 weeks in either of the previous two years; or up to 20 weeks of benefits if the TUR is at least 8% and is at least 110% of the state’s average TUR for the same 13 weeks in either of the previous two years.

P.L. 111-312 made some temporary technical changes to certain triggers in the EB program, which allow states to temporarily use lookback calculations based on three years of unemployment rate data (rather than the current lookback of two years of data) as part of their mandatory IUR and optional TUR triggers if states would otherwise trigger off or not be on a period of EB benefits. Using a two-year versus a three-year EB trigger lookback is an important adjustment because some states are likely to trigger off of their EB periods in the near future despite high, sustained—but not increasing—unemployment rates.

States may opt to implement the lookback changes; to do so, the states must individually amend their state UC laws. These state law changes must be written in such a way that if the two-year lookback is working and the state would have an active EB program, no action would be taken. But if a two-year lookback is not working as part of an EB trigger and the state is not triggered on to an EB period, then the state would be able to use a three-year lookback. This temporary option to use three-year EB trigger lookbacks expires the week on or before December 31, 2011.

The EB benefit amount is equal to the eligible individual’s weekly regular UC benefits.

Under permanent law, FUTA finances half (50%) of the EB payments and 100% of EB administrative costs. States fund the other half (50%) of EB benefit costs through their SUTA. ARRA (P.L. 111-5) temporarily changed the federal-state funding arrangement for the EB program. Currently, the FUTA finances 100% of EB benefits through January 4, 2012. The one exception to the 100% federal financing is for those EB benefits based on work in state and local government employment; those “non-sharable” benefits continue to be 100% financed by the former employers.

## **Legislative Proposals**

### **112<sup>th</sup> Congress**

#### **Budget Control Act of 2011 ( P.L. 112-25)**

On August 2, 2011, President Obama signed into law the most recent measure adjusting the public debt limit, as part of the Budget Control Act of 2011 (P.L. 112-25). The Budget Control Act of 2011 establishes special procedures for congressional increases to the debt limit authorized by the act.<sup>15</sup> In certain situations these procedures may have an impact on unemployment insurance benefits.

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<sup>15</sup> For details on how the public debt limit is increased see CRS Report RS21519, *Legislative Procedures for Adjusting the Public Debt Limit: A Brief Overview*, by Bill Heniff Jr.

The law authorizes increases to the debt limit by at least \$2.1 trillion (and up to \$2.4 trillion), in three installments: (1) an initial increase of \$400 billion; (2) an additional increase of \$500 billion; and (3) an additional increase of an amount between \$1.2 trillion and \$1.5 trillion, depending on certain subsequent actions.

First, upon the certification by the President that the debt subject to limit is within \$100 billion of the debt limit, the debt limit is increased by \$400 billion immediately. This occurred on August 2, 2011.<sup>16</sup> Second, if Congress does not enact into law a joint resolution of disapproval within 50 calendar days of receipt of the certification, the debt limit would be increased by an additional \$500 billion. If Congress passes a joint resolution of disapproval (presumably over a presidential veto), the debt limit will not be increased and the Office of Management and Budget is required to sequester budgetary resources on a “pro rata” basis, subject to sequestration procedures and exemptions provided in Sections 253, 255, and 256 of the Balanced Budget and Emergency Deficit Control Act (BBEDCA) of 1985, as amended.

Third, after the debt limit has been increased by the first \$900 billion and upon another certification that the debt subject to limit is within \$100 billion of the debt limit, Congress will have 15 calendar days of receipt of the certification to pass into law a joint resolution of disapproval to prevent another increase in the debt limit (again over a presumed presidential veto). If Congress does not enact such resolution, the debt limit would be increased by one of three amounts: (1) \$1.2 trillion; (2) an amount between \$1.2 trillion and \$1.5 trillion, if Congress passes and the President signs into law legislation introduced by the Joint Select Committee on Deficit Reduction; or (3) \$1.5 trillion, if a constitutional amendment requiring a balanced budget is submitted to the states for ratification. If the bill by the Joint Select Committee on Deficit Reduction is not enacted (by January 15, 2012) or if it contains less than \$1.2 trillion in deficit reduction, then the remaining amount would be sequestered based upon the procedures in BBEDCA.

Section 256 of the BBEDCA specifically exempts regular UC benefits (including UC for former federal workers and UC for former servicemembers) and federal loans to the states for payment of unemployment benefits from sequestration. However, BBEDCA requires that administrative grants to the states and the federal share of EB be subject to sequestration. States would be required to continue to pay their share of EB unless state law allows a reduced payment. A state may reduce the EB weekly benefit amount by a percentage that does not exceed the percentage by which the federal share of EB has been reduced.

Senator Reid introduced S.Amdt. 581 to S. 1323 on July 24, 2011. Among many items, this amendment would allow appropriations above the proposed discretionary caps in administrative grants to the states for each year from 2012 through 2021 (totaling \$245 million over that period). These appropriations would be for the purpose of identifying improper payments of unemployment compensation. H.R. 2693, introduced by Representative Drier on July 28, 2011, has similar language. On July 29, 2011, the Congressional Budget Office (CBO) estimated that the net effect of the benefit savings and the revenue reductions stemming from the program integrity activities related to unemployment insurance would be a reduction in deficits of \$256 million over a 10-year period.<sup>17</sup>

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<sup>16</sup> President Obama submitted such certification on August 2, 2011. It is available at <http://www.whitehouse.gov/the-press-office/2011/08/02/message-president-us-congress>.

<sup>17</sup> See <http://www.cbo.gov/ftpdocs/123xx/doc12354/SenateBudgetControlActJuly29.pdf>.



## **H.R. 1745, the JOBS Act of 2011**

Representative Camp introduced H.R. 1745, the Jobs, Opportunity, Benefits, and Services Act of 2011 (the JOBS Act of 2011), on May 5, 2011. The JOBS Act of 2011 proposes a number of changes to (1) state UC eligibility requirements and (2) the funding of federal unemployment benefits (i.e., EUC08 and EB). For instance, it would create new federal requirements related to work availability and work search activities that would require changes in state UC laws. For instance, in order to satisfy the new “actively seeking work” federal requirement, H.R. 1745 would require individuals receiving regular state UC benefits to (1) register for employment services within 14 days of initial UC claim; (2) post a resume, record, or other employment application on a database as required by each state; and (3) apply for work that is similar to an individual’s previous job and that pays comparable wages for similar work in the local labor market where an individual resides or is actively seeking work. H.R. 1745 would also impose new federal educational requirements (i.e., high school degree, GED or equivalent, or progress toward GED) for UC claimants in state programs. This bill would allow states to create and conduct demonstration projects to improve and accelerate the reemployment of UC claimants, although these projects would not be able to increase the net costs to a state’s account in the Unemployment Trust Fund (UTF).

The JOBS Act of 2011 would also transform the financing of federal unemployment benefits (including EUC08 benefits) from a mandatory, individual entitlement to a block grant to states for FY2011 and FY2012 (\$31 billion over both years) in an amount proportional to federal benefit payments in each state during the previous 12 months. H.R. 1745 would allow states to use block grant funds to pay federal unemployment benefits (i.e., EUC08 and EB benefits) or, if states pass their own legislation to do so, to use the funds to pay any type of unemployment benefit (including regular UC), to repay outstanding federal loans (including interest payments on federal loans), or to provide additional reemployment services. This legislation would end the 100% federal financing of the EUC08 and EB programs, effective July 6, 2011. States would continue to pay EUC08 benefits with block grant funds. Under current law, a state has the option to terminate the federal-state EUC08 agreement with 30 days notice to the U.S. Department of Labor, and this termination would not impact the state’s share of the block grant. States would continue to pay EB if the program were still active (i.e., triggered “on”).

## **Alleviating State Unemployment Compensation Stresses**

The broader state financial crisis facing the states is mirrored in the states’ accounts within the UTF. On December 30, 2010, 31 states owed a cumulative \$40.8 billion to the federal accounts within UTF. ARRA temporarily stopped the accrual of interest charges on loans through December 31, 2010, but those charges are once again accruing. States currently are prohibited from actively legislating a decrease in regular benefits (restricted for the duration of the EUC08 program); as a result, state unemployment taxes on employers are likely to increase. At the same time, employers in up to 24 states are likely to face an increased net federal unemployment tax (FUTA) because they have borrowed funds from the federal UTF loan account for two consecutive years.<sup>18</sup>

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<sup>18</sup> See CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*, by Julie M. Whittaker for more information on the interest calculation and the potential net FUTA increase.

### ***President's Budget Proposal FY2012***

The President's Budget Proposal for FY2012 attempts to address some of these concerns. The proposal includes extending the suspension of interest accrual through 2012 and temporarily suspending net FUTA tax increases through 2012. Currently, the U.S. Department of Labor (DOL) projects that states will accrue \$1.22 billion in interest charges in FY2011 and \$1.79 billion in FY2012 without these suspensions.

The proposal would increase the FUTA taxable wage base from \$7,000 to \$15,000 in 2014 while decreasing the FUTA tax rate from 0.6% to 0.38%. Beginning in 2015, the FUTA tax base would be indexed to wage growth. Under federal law, the taxable wage base for SUTA taxes in states must be at least the taxable wage base for FUTA. Therefore, the proposed increase in the FUTA taxable wage base in the President's Budget Proposal would have the effect of requiring states to have a SUTA taxable wage base of at least \$15,000 beginning in 2014 and indexed to wage growth beginning in 2015.

### ***Other Proposals to Alleviate State Unemployment Compensation Stress***

Senator Durbin introduced S. 386, the Unemployment Insurance Solvency Act of 2011, on February 17, 2011. Similar to the President's proposal, S. 386 would extend the suspension of interest accrual on federal loans to states through 2012; temporarily suspend net FUTA tax increases through 2012; increase the FUTA taxable wage base from \$7,000 to \$15,000 in 2014 while lowering the net FUTA tax to 0.38%; and index the FUTA taxable wage base to wage growth after 2014. Unlike the President's proposal, S. 386 would forgive a certain percentage (20%, 40%, or 60%) of the outstanding federal loan to the state based upon a state-level need-based measure as of December 31, 2010. (This measure was originally constructed for temporarily increasing the Medicaid Federal Medical Assistance Percentages (FMAP) in P.L. 111-5.) States without an outstanding federal loan would receive an additional 0.5% in interest compared with what they would otherwise receive on their state UTF account balances. Employers in states that maintain a programmatic measure of sufficient reserves would face a net FUTA tax that was 0.1% less than it would otherwise have been. In addition, S. 386 would require that any state taking advantage of the provisions in S. 386 submit a "reasonable" plan to the DOL explaining how the state would repay any outstanding federal loans and how the state would attain a programmatic measure of sufficient reserves within a "reasonable" time.

Representative Peter Welch introduced H.R. 650 on February 10, 2011. The bill would extend the interest accrual on federal loans to states through 2012.

### **Additional Benefits for UI Exhaustees**

Recent congressional hearings have raised the issue of how to aid long-term unemployed workers, especially those individuals who have exhausted all available unemployment benefits.<sup>19</sup>

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<sup>19</sup> House Subcommittee on Human Resources Hearing on "Improving Efforts to Help Unemployed Americans Find Jobs," held on February 10, 2011 (Hearing advisory and witness testimony available at <http://waysandmeans.house.gov/Calendar/EventSingle.aspx?EventID=223512>); Senate Committee on Finance Hearing on "Using Unemployment Insurance to Help Americans Get Back to Work: Creating Opportunities and Overcoming Challenges," held on April 14, 2010 (Member statements and witness testimony available at <http://finance.senate.gov/hearings/hearing/?id=868a8e37-5056-a032-5297-a991437cea80>); House Subcommittee on Income Security and Family (continued...)

As of January 2011, about 44% of unemployed individuals had been without a job for more than 26 weeks.<sup>20</sup> These long-term unemployed workers are at risk of exhausting current benefits while remaining unemployed.<sup>21</sup>

One policy strategy to address the needs of unemployment insurance benefit exhaustees is to create additional federal benefits. For instance, on February 9, 2011, Representative Barbara Lee introduced H.R. 589, the Emergency Unemployment Compensation Expansion Act. This bill is similar to H.R. 6556 of the 111<sup>th</sup> Congress in that it would add up to 14 additional weeks of unemployment benefits to the existing tier I of the EUC08 program, amending tier I of EUC08 to provide up to 34 weeks of unemployment benefits to eligible individuals. These new benefits would not be retroactive (i.e., no lump sum payments) but, if this bill were passed, an individual could begin to receive the additional benefits up to 14 weeks if he or she continued to meet the eligibility criteria for EUC08. In addition, H.R. 589 would extend the date of the last payable benefit for grandfathered individuals receiving EUC08 benefits from June 9, 2012, to September 22, 2012.<sup>22</sup>

### **Other Legislation**

On August 5, 2011, Representative Michaud introduced the Workforce Fairness and Tax Relief Act of 2011 (H.R. 2806). The proposal would repeal the taxation of unemployment benefits and any trade adjustment assistance payments. It would also eliminate the penalty for distributions from a qualified retirement plan to an individual after separation from employment if the individual had received at least 24 weeks of UC. The bill would apply to benefits received after December 31, 2010.

On August 1, 2011, Representative Berg introduced H.R. 2731, the Helping Innovation of Re-Employment Services in States (HIRES) Act. H.R. 2731 would allow states to enter into agreement with the U.S. Department of Labor to set up reemployment demonstration projects. Reemployment demonstration projects in states would approved for no more than three years and could be conducted no later than five years after enactment of the legislation. H.R. 2731 would prohibit these state reemployment demonstration projects from using any funds from the state's account in the federal UTF. If enacted, this legislation would be effective for weeks beginning after September 30, 2011.

H.R. 2137, the Empowering More Productive and Lasting Opportunity Act of 2011 (introduced on June 3, 2011, by Representative Renacci), would provide the authority over the five years following enactment for states to set up a particular type of demonstration project within their UC programs, an Employment Assistance Voucher Program. This Employment Assistance Voucher Program would allow states to use their state UC funds to provide subsidies to employers who hire individuals eligible for state UC benefits and likely to exhaust those unemployment benefits

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(...continued)

Support Hearing on "Responding to Long-Term Unemployment," held June 10, 2010 (Member statements and witness testimony available at <http://democrats.waysandmeans.house.gov/Hearings/hearingDetails.aspx?NewsID=11201>).

<sup>20</sup> U.S. Department of Labor, "Employment Situation Summary," Table A-12, February 4, 2011.

<sup>21</sup> For more information on long-term unemployment, see CRS Report R41179, *Long-Term Unemployment and Recessions*, by Gerald Mayer and Linda Levine.

<sup>22</sup> This legislative proposal was also offered by Rep. Barbara Lee as H.Amdt. 67 to H.R. 1, the Full-Year Continuing Appropriations Act of 2011, on February 17, 2011; however, a point of order was sustained against it.

in lieu of paying unemployment benefits to such individuals. H.R. 2137 would provide no additional federal funding to states that participate in this UC demonstration project.

On June 3, 2011, Representative Shelia Jackson Lee introduced H.R. 2120, which proposes to expand the definition of a targeted group for purposes of the Work Opportunity Tax Credit to include individuals who have exhausted entitlement to EUC08. For those EUC08 exhaustees who are hired and remain on a firm's payroll at least 400 hours, an employer would be able to claim an income tax credit of 40% of the first \$10,000 in wages paid during the worker's first year of employment. For eligible hires who remain employed from 120 hours to 399 hours, the subsidy rate would be 25%. In the second year of employment, an additional tax credit of up to 25% on the first \$10,000 of that second year may be paid to employers. The tax credit would be refundable.

Representative Bilirakis introduced H.R. 2001 on May 26, 2011. H.R. 2001 would create a new federal requirement that individuals be deemed ineligible for UC benefits based on previous employment from which they were separated due to an employment-related drug or alcohol offense. This proposal would require states to amend their state UC laws.

On April 15, 2011, Representative Allen West introduced H.R. 1663, which proposes a temporary tax credit for certain small businesses that hire eligible, unemployed workers. This hiring credit would be calculated following Section 51 of the Internal Revenue Code of 1986. It would be available to businesses with gross receipts in the previous taxable year of no more than \$20 million (among other requirements) that hire unemployed individuals who (1) have received unemployment benefits—either regular UC or other federal benefits, including EUC08 and EB—for at least four weeks during the year prior to the hiring date and (2) reside in a “high unemployment zone” (defined as any county with an unemployment rate that exceeds both the national unemployment rate and 4%). The hiring credit proposed in H.R. 1663 would be temporarily authorized for individuals starting work for an employer after December 31, 2011, and until December 31, 2013.

Representative Kevin Brady introduced H.R. 235, the Cut Unsustainable and Top-Heavy Spending Act of 2011 (or CUTS Act) on February 7, 2011. Among other provisions, this bill would prohibit the use of federal funds—from the EB and EUC08 programs—to pay unemployment benefits to anyone with resources of at least \$1 million in the preceding year. An individual's resources would be determined in the same way as the resource test for the Medicare Part D drug benefit subsidy. This provision would be effective for any weeks of unemployment beginning on or after January 1, 2011.

On February 8, 2011, Senator Coburn introduced S. 310, the Ending Unemployment Payments to Jobless Millionaires Act of 2011. Like H.R. 235, S. 310 would prohibit any EUC08 or EB benefit payments to individuals with resources in the preceding year of at least \$1 million, as determined through the resource test for the Medicare Part D drug benefit subsidy. Resources under the drug benefit subsidy are defined by the individual states and include savings and investments but do not include the value of a primary residence or the value of a car. Unlike H.R. 235, the prohibition provision in S. 310 would be effective on or after enactment of this legislation. Representative Lankford introduced H.R. 569 on February 9, 2011. H.R. 569 is a House companion bill to S. 310 and contains the same legislative language.

## **Upcoming Expirations and Other Issues for the 112<sup>th</sup> Congress**

### **Expiration of the Temporary FUTA Surtax**

Congress first passed a temporary FUTA surtax in 1976, and since 1983 the surtax has been applied in its current form (0.2% on the first \$7,000 of employee wages). P.L. 111-92 extended the authorization of the FUTA surtax through June 2011. As of July 1, 2011, the authorization of the surtax has lapsed. Thus, from July 1, 2011, the net FUTA tax is 0.6%, down from 0.8%.

### **Expiration of the Emergency Unemployment Compensation Program**

P.L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, extends the authorization of the EUC08 program until the week ending on or before January 3, 2012. Thus, on December 31, 2011 (January 1, 2012, for New York), the EUC08 program will cease to enroll new beneficiaries and current beneficiaries will complete their current tier of benefits but not advance to the next tier.

### **Expiration of the 100% Federal Financing of Extended Benefit Program**

Under permanent law, EB benefits are funded half (50%) by the federal government through its account for that purpose in the UTF. States fund the other half (50%) through their state accounts in the UTF. The federal government pays 100% of EB administrative costs. The 2009 stimulus package, as amended, temporarily changes the federal-state funding arrangement. The federal government finances 100% of EB benefits until January 4, 2012, with the exception of “non-sharable” benefits (generally, these are former state and local employees’ EB benefits). The EB program’s 100% federal financing has prompted 27 states to adopt the optional triggers to provide 20 weeks of extended benefits.

For individuals who were receiving EB payments on January 4, 2012, the federal government will continue to pay 100% of EB benefits for the duration of these individuals’ benefits (but not for new entrants to the EB program starting after that date).

## **UI Laws Passed in the 111<sup>th</sup> Congress**

### **P.L. 111-5, The American Recovery and Reinvestment Act of 2009**

ARRA (P.L. 111-5, the 2009 stimulus package) contained a number of important provisions that affect unemployment benefits. These provisions included extension of the EUC08 program through December 2009; temporary 100% federal financing of the EB program; up to \$7 billion for modernization of state unemployment programs; a temporary \$25 per week supplemental benefit for regular UC, EB, EUC08, TAA, and DUA benefits; temporary tax relief for unemployment benefits; and a temporary suspension of interest accrual on loans to insolvent state UTF funds.<sup>23</sup>

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<sup>23</sup> For additional information on unemployment provisions in the 2009 stimulus package, please see CRS Report R40368, *Unemployment Insurance Provisions in the American Recovery and Reinvestment Act of 2009*, by Alison M. (continued...)

### ***Unemployment Compensation Modernization***

The 2009 stimulus package provided for a special transfer of up to \$7 billion in federal monies to state unemployment programs as “incentive payments” for changing certain state UC laws. The funds are transferred from the federal unemployment account (FUA) in the UTF to qualifying states’ UTF accounts. The maximum incentive payment allowable for a state is calculated using the methods used in Reed Act distributions.

For a state to receive one-third of its potential distribution, it must enact an alternative base period, which ensures the last completed quarter of a worker’s employment is counted when determining eligibility for unemployment benefits. The remaining two-thirds of the \$7 billion are distributed to states contingent on their qualifying for the first one-third, plus state law containing at least two of the following four provisions: (1) permit former part-time workers to seek part-time work; (2) permit voluntary separations from employment for compelling family reasons; (3) provide extended compensation to UC recipients in training programs for high-demand occupations; or (4) provide dependents allowances to UC recipients with dependents.

In addition to the \$7 billion in conditional transfers, the package immediately transferred a total of \$500 million to the states for the administration of UC programs, without conditions. These funds could be used to pay for (1) administration of the new provisions, if any, enacted in order to receive shares of the \$7 billion in special incentive payments; (2) improvement of outreach to individuals who might be eligible for regular unemployment compensation by virtue of the expansion provisions; (3) improvement of unemployment benefit and tax operations, including responding to increased demand for unemployment compensation; and (4) staff-assisted reemployment services for unemployment compensation claimants.

### ***Federal Additional Compensation***

The 2009 stimulus package, as amended, temporarily increased benefits by \$25 per week. The authorization for Federal Additional Compensation (FAC) was extended by P.L. 111-118, P.L. 111-144, and P.L. 111-157. This supplemental FAC benefit expired on May 29, 2010, as it was not included in P.L. 111-205 or P.L. 111-312. Prior to May 29, 2010, it was available to all individuals receiving regular UC, EB, EUC08, DUA, and TAA benefits. This supplemental benefit was grandfathered for individuals who had been receiving the FAC and had not exhausted the right to all unemployment benefits as of May 29, 2010. However, this grandfathering terminated on December 11, 2010 (December 12, 2010, for New York). The supplemental benefit was financed by the federal government from general revenues and did not need to be repaid. All FAC payments ceased December 11, 2010 (December 12, 2010, for New York).

### ***ARRA Provisions Affecting the EUC08 Program***

The 2009 stimulus package, as amended, also extends the temporary EUC08 program through December 31, 2011 (January 1, 2012, for New York State). Following enactment of the stimulus package, the extension of EUC08 benefits began to be paid from the general funds of the U.S. Treasury and does not need to be repaid.

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### ***Temporary Waiver of Interest Payments and the Accrual of Interest on Advances to State Unemployment Funds***

The stimulus package provides temporary relief to states that borrow from the Federal Unemployment Account of the Unemployment Trust Fund. The interest payments due between enactment of the stimulus package (February 17, 2009) through December 31, 2010, would be deemed to have been made by the state. In addition, no interest on advances accrue during the period.

### ***Temporary 100% EB Financing and Changes to EB Eligibility***

The 2009 stimulus package (as amended) temporarily changes the federal-state funding arrangement for the EB program. The federal government finances 100% of EB benefits through January 4, 2012, with the exception of “non-sharable” (state and local government employees’) EB benefits, as those benefits are also not subject to the permanent law 50% federal financing provisions. The 100% federal financing of EB benefits took place through the Extended Unemployment Compensation Account (EUCA) in the UTF. After the 100% federal financing authorization ends, EB financing reverts to 50% state financing and 50% federal financing, although 100% financing is grandfathered for individuals who were receiving EB during the week that the authorization of 100% federal financing is terminated. The stimulus package also continues the temporary suspension of the waiting week requirement for federal funding until the week ending before May 30, 2011. Under the waiting week requirement, now temporarily suspended, states that do not require a one-week UC waiting period, or have an exception for any reason to the waiting period, paid 100% of the first week of EB.

The 2009 stimulus package also temporarily allows states the option of expanding EB eligibility, by ignoring the benefit year requirement and instead using EUC08 exhaustion as an eligibility requirement for EB (as long as the state is triggered “on” for EB) until the expiration of the EUC08 program. As the EB program has operated in the past, a beneficiary had to be within his or her original “benefit year” when the EB program triggered “on” in the state to receive EB benefits.<sup>24</sup> Even though a number of states triggered “on” for EB in the second half of 2008, the benefit year requirement cause numerous individuals to be ineligible for EB because their benefit years had expired before the state triggered “on.” Allowing states to use EUC08 exhaustion as an eligibility requirement instead will cause more individuals to be eligible for the EB program.

### ***Temporary Suspension of Federal Income Tax on Unemployment Benefits***

ARRA (P.L. 111-5) provided tax relief to the unemployed through the exemption of the first \$2,400 of benefits from income taxation in tax year 2009.

### ***P.L. 111-92, The Worker, Homeownership and Business Assistance Act of 2009***

The President signed P.L. 111-92, the Worker, Homeownership and Business Assistance Act of 2009, into law on November 6, 2009. The law created an additional (new second) tier of up to 14

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<sup>24</sup> A “benefit year” is the 52-week period during which an individual may receive unemployment benefits based on a period of prior, qualifying employment. The benefit year starts after an unemployed worker files a “valid claim” (i.e., a claim that meets minimal wage and employment requirements).

weeks of benefits, without regard to state unemployment rates. The law also created a fourth tier of up to an additional six weeks of EUC08 benefits in states with unemployment rates of at least 8.5%. Other measures included in the proposal concerned eligibility for food stamp payments (benefit eligibility and determination would not consider the \$25 additional federal unemployment benefit established in ARRA legislation); railroad workers (who have their own unemployment insurance system) would receive approximately the same increase in potential benefits; and the authorization of the 0.2% FUTA surtax is extended through 2010 and the first six months of calendar year 2011.

### **P.L. 111-118, The Department of Defense Appropriations Act**

On December 19, 2009, the President signed P.L. 111-118, the Department of Defense Appropriations Act of 2010, into law. P.L. 111-118 extended the EUC08 program through the end of February 2010. The law also extended the 100% federal financing of the EB program and the \$25 supplemental weekly benefit through the end of February 2010.

### **P.L. 111-144, The Temporary Extension Act of 2010**

On March 2, 2010, the President signed P.L. 111-144, the Temporary Extension Act of 2010. P.L. 111-144 extended three temporary provisions through the week ending on or before April 5, 2010: EUC08, the \$25 supplemental weekly benefit, and 100% federal EB financing. The Senate passed H.R. 4691 without amendment on March 2, 2010, and the President signed the bill that day.

### **P.L. 111-157, The Continuing Extension Act of 2010**

On April 15, 2010, the President signed P.L. 111-157, the Continuing Extension Act of 2010 into law. P.L. 111-157 retroactively extended the availability of EUC08, 100% federal financing of EB, and the \$25 FAC benefit, until the week ending on or before June 2, 2010.<sup>25</sup>

### **P.L. 111-205, The Unemployment Compensation Extension Act of 2010**

On July 22, 2010, the President signed P.L. 111-205, the Unemployment Compensation Extension Act of 2010, into law. P.L. 111-205 retroactively extended the availability of EUC08 and 100% federal financing of EB until the week ending on or before November 30, 2010. It did not extend the \$25 FAC benefit, which expired May 29, 2010. In addition, P.L. 111-205 addressed the “second year benefit” issue for the EUC08 program.<sup>26</sup>

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<sup>25</sup> Over the history of the temporary EUC08 program, there have been four lapses in program authorization: February 27, 2010, to March 2, 2010; April 3, 2010, to April 15, 2010; June 2, 2010, to July 22, 2010; and November 30, 2010, to December 17, 2010. Each of these lapses was addressed either in law, via retroactive effective dates of program extension legislation for longer lapses, or through the administration of the program, in the case of the shortest lapse (February 27, 2010-March 2, 2010). The longest of these authorization lapses was 49 days (or 7 weeks), occurring between June 2, 2010, and July 22, 2010, and ending when P.L. 111-205 was signed. The passage of P.L. 111-312 addresses the most recent lapse (November 30, 2010-December 17, 2010) and retroactively restores EUC08 program authorization. For more information on these lapses and the EUC08 program, see CRS Report RS22915, *Temporary Extension of Unemployment Benefits: Emergency Unemployment Compensation (EUC08)*, by Katelin P. Isaacs and Julie M. Whittaker.

<sup>26</sup> For full details on the “second benefit year” issue, see CRS Report RL33362, *Unemployment Insurance: Programs* (continued...)



### **P.L. 111-291, The Claims Resolution Act of 2010**

On December 8, 2010, the President signed into law P.L. 111-291, which contains provisions related to unemployment insurance overpayment reform. P.L. 111-291 expands penalties related to UI fraud to those who had failed to report earnings and improves UI data collection efforts.

### **P.L. 111-312, The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010**

On December, 17, 2010, the President signed P.L. 111-312, the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010. P.L. 111-312 retroactively extends the authorization of the EUC08 program until January 3, 2012, and the 100% federal financing of the EB program until the week ending on or before January 4, 2012. In addition, P.L. 111-312 allows states to use three-year lookback calculations in their mandatory IUR and optional TUR triggers (rather than the two-year lookback calculations under current law) to trigger on or keep on a period of EB benefits if they would otherwise trigger off or not be on a period of EB benefits (see “Extended Benefit Program” section above for more details).

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*and Benefits*, by Katelin P. Isaacs and Julie M. Whittaker.