



Unemployment Insurance: Legislative Issues in the 112th Congress

Katelin P. Isaacs

Analyst in Income Security

Julie M. Whittaker

Specialist in Income Security

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Summary

The 112th 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 expire. For instance, the EUC08 program, which currently provides the bulk of extended unemployment benefits, is scheduled to expire the week ending on or before March 6, 2012. The 100% federal financing of the EB program will expire on March 7, 2012. The option for states to use three-year EB trigger lookbacks expires the week ending on or before February 29, 2012. In addition, a temporary 0.2% federal unemployment tax (FUTA) surtax expired at the end of June 2011.

The 112th Congress faces these 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 (111th) Congress. This report also discusses relevant legislation introduced in the 112th 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, H.R. 2868, S. 1743, H.R. 3346, S. 1804, S. 1826, H.R. 3427, S. 1885, S. 1931, S. 1944, H.R. 3598, H.R. 3601, H.R. 3630, H.R. 3615, H.R. 3638, P.L. 112-78, a proposal outlined in the President's Budget Proposal FY2012, as well as the President's American Jobs Act of 2011 proposal (introduced in Congress as S. 1549, H.R. 12, and S. 1660). This report also discusses the implications to the UI programs in H.R. 2693, S.Amdt. 581 to S. 1323, P.L. 112-25, and P.L. 112-40.

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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.¹

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.² Former U.S. military servicemembers may be eligible for unemployment benefits through the unemployment compensation for ex-servicemembers (UCX) program.³ 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.⁴ 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 eligibility vary greatly. Most state benefit formulas replace approximately half of a claimant's average weekly wage up to a weekly maximum.

¹ 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 R42012, *Trade Adjustment Assistance (TAA) for Workers*, by Benjamin Collins.

² 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.

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

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

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.⁵

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.⁶ State UC agencies administer the EUC08 benefit along with regular UC benefits. The authorization for this program continues until the week ending on or before March 6, 2012.

The EUC08 program has been amended nine times.⁷ 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)⁸ 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

⁵ FUTA imposes a 6.0% 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 6.0% tax rate, making the minimum net federal unemployment tax rate 0.6%. 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.

⁶ The other programs became effective in 1958, 1961, 1972, 1975, 1982, 1991, and 2002. For more details on these programs, see CRS Report RL34340, *Extending Unemployment Compensation Benefits During Recessions*, by Julie M. Whittaker and Katelin P. Isaacs.

⁷ The nine 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, P.L. 111-312, and P.L. 112-78. Summary details on all of these laws are provided in Table 1 of CRS Report RS22915, *Temporary Extension of Unemployment Benefits: Emergency Unemployment Compensation (EUC08)*, by Katelin P. Isaacs and Julie M. Whittaker.

⁸ 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).⁹

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 March 6, 2012. This has the implication that there will be no new entrants into the EUC08 program after March 3, 2012.¹⁰ Those unemployed individuals who had qualified for a tier I, II, III, or IV EUC08 benefit by March 3, 2012, 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 August 15, 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.¹¹ In all states, the EB program is available when a state's insured unemployment rate (IUR)¹² or TUR¹³ reaches certain levels.¹⁴

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. In addition, 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.

⁹ 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.

¹⁰ March 4, 2012, for New York State.

¹¹ 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. Currently, all states are paying EUC08 benefits before EB.

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

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

¹⁴ 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.

- 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, as amended, 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 ending on or before February 29, 2012.

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 March 7, 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

112th Congress

P.L. 112-78, the Temporary Payroll Tax Cut Continuation Act of 2011

P.L. 112-78, the Temporary Payroll Tax Cut Continuation Act of 2011, was introduced in the House (by Representative Camp), passed by the House and the Senate, and signed into law on December 23, 2011. Among other provisions, P.L. 112-78 extends the expiring UI laws for two months. Under P.L. 112-78, the authorization for the EUC08 program expires the week ending on or before March 6, 2012; the 100% federal financing of the EB program expires on March 7, 2012; and the three-year lookback trigger option for the EB program expires the week ending on or before February 29, 2012.

H.R. 3630 (as passed in the Senate)

On December 17, 2011, the Senate offered an amendment in the nature of a substitute to H.R. 3630. The Senate also passed this version of H.R. 3630—renamed the Temporary Payroll Tax Cut Continuation Act of 2011—on December 17, 2011. Among other provisions, this amended H.R. 3630 would extend for two months (i.e., through February 2012) the three expiring UI laws: (1) the authorization for the EUC08 program; (2) the 100% federal financing of EB; and (3) the three-year lookback option for EB triggers. This amended version of H.R. 3630 does not include any additional UI measures that were proposed in the House-passed version of H.R. 3630. The House-passed version of H.R. 3630 is summarized below.

H.R. 3630 (as passed in the House), Title II, Subtitle B of the Middle Class Tax Relief and Job Creation Act of 2011

On December 9, 2011, Representative Camp introduced H.R. 3630, the Middle Class Tax Relief and Job Creation Act of 2011. The unemployment insurance provisions contained within H.R. 3630 have four major sections: regular unemployment compensation benefit reforms; the extension of some but not all temporary unemployment insurance provisions, including the continued authorization of tiers I and II of the EUC08 program; alterations to the underlying EUC08 provisions; and an additional tax on millionaires to recover unemployment benefits paid to such individuals.

Unemployment Compensation Reforms in H.R. 3630 (as passed in the House): “Nonreduction Rule” Repealed, Work Search Requirements, Educational Requirements, Demonstration Projects, Overpayment Offsets, and Drug Testing

H.R. 3630 repeals the “nonreduction rule” for the calculation of the regular UC benefit amount. This allows states the option to decrease average weekly benefit amounts without invalidating their EUC08 federal-state agreements. States would then be able to reduce the weekly benefit amount available to beneficiaries.

The regular UC reforms are similar to provisions found in H.R. 1745. H.R. 3630 proposes a number of changes to state UC eligibility requirements. To satisfy the new “actively seeking work” federal requirement, the proposal would require individuals receiving regular state UC benefits to (1) register for employment services within 10 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 under state requirements. No new funds would be provided for such activities. There would be no exceptions for those on temporary lay-off with expectation of recall, union members, or for those who are striking. The bill 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. In addition, any UC claimant referred to reemployment services would be required to participate. H.R. 3630 also would add new stipulations that UC may not be denied to an individual enrolled/making satisfactory progress in education or state-approved job training.

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 UTF. The proposal would allow the U.S. Labor

Secretary to waive the withdrawal standard if requested by the state (State UTFs would be allowed to be used for purposes other than paying unemployment benefits). This proposal would also allow the Labor Secretary to waive the merit employee requirement if requested by the state. The proposal also requires U.S. DOL to develop and maintain model language for states to use in enacting Self-Employment Assistance (SEA) programs for regular UC claimants (as authorized under current federal law).

H.R. 3630 requires that states recover 100% of any erroneous overpayment by reducing up to 100% of the UC benefit in each week until the overpayment is fully recovered. The proposal would not allow states to waive such deduction if it would be contrary to equity and good conscience. It creates the authority for states to recover Federal Additional Compensation (FAC) overpayments through deductions to regular unemployment compensation. The proposal would require the Labor Secretary to designate standard data elements for any information required under title III or title IX of the SSA. Finally, the bill would clarify federal law to allow (but does not require) drug testing of UC applicants.

***Unemployment Insurance Extensions in H.R. 3630 (as passed in the House):
Decreases in EUC08 and Maintenance of EB Provisions***

H.R. 3630 would extend the authorization of tiers I and II of EUC08 until the week ending on or before January 31, 2013. There would be no grandfathering of benefits after that date. Tier I would continue to offer up to 20 weeks in all states.¹⁵ However, Tier II would now offer up to 13 weeks (rather than 14) and would be available in states with at least 6.0% TUR (rather than in all states). Tiers III and IV would not be reauthorized.

Under H.R. 3630, individuals who were receiving EUC08 benefits during the week ending on or before January 3, 2012, would be able to finish out that particular tier only; however, certain individuals receiving Tier I benefits the week ending on or before January 3, 2012, may be able to receive benefits from the new Tier II (i.e., up to 13 additional weeks) if available in the state under the new rules regarding Tier II. Individuals receiving EUC08 benefits from tiers II, III, or IV would continue to be entitled to the amounts provided in that tier under current law; however, no additional tiers of EUC08 would be available to them. H.R. 3630 would require states to pay individuals any entitlement to EUC08 benefits before any entitlements to EB benefits.

H.R. 3630 would extend the 100% federal financing of EB through January 31, 2013, as well as the option for states to use three-year lookbacks in their EB triggers until the week ending on or before January 31, 2013.

H.R. 3630 would extend the temporary extended railroad unemployment benefits—authorized under the American Recovery and Reinvestment Act (ARRA; P.L. 111-5), as amended—for one month through January 31, 2012, to be financed with funds still available under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312).

¹⁵ These EUC08 tier durations reflect durations in states with at least up to 26 weeks of UC benefits available. States that have enacted reductions in UC maximum durations would have EUC08 tiers (as well as EB periods) with lesser durations available. For more details on this issue, see CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*, by Katelin P. Isaacs.

***Other Alterations to the EUC08 Program in H.R. 3630 (as passed in the House):
Work Search Rules, Educational Requirements, Demonstration Projects, and
Overpayment Offsets***

Similar to the proposed changes to the regular state UC benefit, H.R. 3630 would require active work search for EUC08 entitlement in which active work search must include at least the following: (1) individuals would register with ES within 30 days; (2) individuals would post a resume, record, or other application for employment on a database required by the state; and (3) individuals would apply for work as required by the state. In addition, the bill would require that individuals meet the minimum education requirements (high school degree, GED, or enrolled in program) effective on or after 30 days of enactment for those individuals who enter a tier of EUC08. Likewise, individuals must participate in reemployment services if referred. Up to \$5 of EUC08 benefits each week for each individual may be diverted (at state option) to fund these reemployment services and activities.

H.R. 3630 would allow up to 20% of all EUC08 recipients to be diverted into demonstration projects that are designed to expedite the reemployment of individuals “who establish an initial eligibility for UC under the state law or to improve the effectiveness of a state in carrying out its state law (presumably state UI law) with respect to reemployment.” Activities may include subsidies for employer-provided training, such as wage subsidies; work sharing or short-time compensation; enhanced employment strategies and services; Self-Employment Assistance programs; direct reimbursements to employers who hire individuals that were receiving EUC08 in order “to cover part of the cost of wages that exceed the unemployed individual’s prior benefit level”; or other innovative activities not otherwise described that are designed to facilitate the reemployment of individuals receiving EUC08.

H.R. 3630 would require states to offset the EUC08 benefit if an individual received an unemployment benefit overpayment. States would not be required to offset more than 50% of the benefit in any week. (Current law allows states to offset EUC08 payment but does not require that states do so for non-fraud overpayments. Any offset under current law may not be more than 50% of total EUC08 benefit.)

***Additional Unemployment Insurance Tax on Millionaires and Other High-
Income Taxpayers in H.R. 3630 (as passed in the House)***

H.R. 3630 would create a new tax on unemployment benefit income for certain high-income taxpayers. For individual taxpayers with more than \$1 million in adjusted gross income (AGI) (\$2 million for joint filers), any income from unemployment benefits would be taxed at an additional 100% rate. (The unemployment income would continue to be used in the calculation of AGI and thus subject to “regular” federal income tax.) Under this proposal, individual filers with an AGI of at least \$750,000 (and \$1.5 million for joint filers) would also face the new tax on unemployment benefit income with the rate proportional to AGI over these limits and the maximum rate set at 100%. Any tax receipts collected from this new federal income tax on unemployment benefits from a particular state would be transferred into that state’s account in the federal UTF. This proposal would be effective for all tax years beginning after December 31, 2011.

Unemployment Insurance Provisions in the President's American Jobs Act of 2011 Proposal (Title III, Subtitle A: Supporting Unemployed Workers Act of 2011)¹⁶/S. 1549/H.R. 12/S. 1660

On September 13, 2011, Senator Reid introduced S. 1549, the American Jobs Act of 2011, by request, which contains the legislative language of the President's American Jobs Act of 2011 proposal. Also by request, Representative Larson introduced H.R. 12, the House companion version of the American Jobs Act of 2011, on September 21, 2011.

Senator Reid introduced S. 1660 on October 5, 2011. S. 1660 contains the same UI provisions found in the President's American Jobs Act of 2011, S. 1549, and H.R. 12. S. 1660 differs from the President's American Jobs Act of 2011, S. 1549, and H.R. 12, however, in some non-UI provisions proposed to offset the legislation.¹⁷

Extension of Federal UI Provisions: EUC08, 100% EB Federal Financing, and EB Three-Year Lookback Trigger Option

The President's American Jobs Act of 2011 proposal would provide a year-long extension of the EUC08 authorization and the 100% federal financing of EB through calendar year 2012. In addition, it would extend authorization for states to use three-year lookbacks for state EB triggers during this period. It would not expand the number of weeks of unemployment benefits available to the unemployed beyond what is currently available. (The proposal does not include a "tier V" of EUC08 benefits.)

Reemployment Services

The President's proposal would also impose new federal requirements and appropriate new federal funds for states to provide reemployment and eligibility assessments to certain EUC08 claimants. The proposal would require states to enter into agreements with the U.S. DOL and require new EUC08 claimants to report to or check in with their local One-Stop Career Centers. The President's plan would provide \$200 per unemployed worker in federal funding for states to conduct Reemployment and Eligibility Assessments in order to review new EUC08 claimants' eligibility for benefits and provide an assessment of their work search efforts.

Self-Employment Assistance

The President's plan would authorize states to enter into agreements with the U.S. DOL to pay Self-Employment Assistance (SEA) benefits for up to 26 weeks to eligible individuals who (1) have at least 26 weeks of remaining benefit entitlement through the EUC08 program and (2) are participating in entrepreneurial training activities. SEA benefits would be paid in the same amount as EUC08 benefits and participants would be exempt from the work availability and work

¹⁶ Based on legislative language released on September 12, 2011 (available online at http://www.whitehouse.gov/sites/default/files/American_Jobs_Act.pdf).

¹⁷ For a more complete analysis of the American Jobs Act, including non-UI provisions, see CRS Report R42033, *American Jobs Act: Provisions for Hiring Targeted Groups, Preventing Layoffs, and for Unemployed and Low-Income Workers*, coordinated by Karen Spar.

search requirements under EUC08. SEA benefits would be available to up to 1% of all EUC08 recipients in each participating state. An individual receiving SEA benefits would be able to stop participation and receive any remaining EUC08 benefits. States with agreements to pay SEA benefits would be able to use Reemployment NOW funds (see description below) to finance SEA administrative, start-up costs, if specified in an approved state Reemployment NOW plan.¹⁸

Railroad Retirement Benefits

The President's American Jobs Act proposal would extend the temporary extended railroad unemployment benefits—authorized under the American Recovery and Reinvestment Act (ARRA; P.L. 111-5), as amended—for an additional year through June 30, 2012, to be financed with funds still available under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312).¹⁹

Reemployment NOW Program and Funding Opportunities

The President's plan would establish a "Reemployment NOW" program with \$4 billion in appropriations from the general fund of the Treasury. These federal funds would be allotted to the states based on a two-part formula: (1) two-thirds would be distributed to the states based upon the state share of the U.S. total number unemployed persons and (2) one-third would be distributed to the states based on the state share of the long-term unemployed (measured as unemployment spells of at least 27 weeks). Up to 1% of the funds would be available for program administration and evaluation.

To receive a Reemployment NOW allotment, a state would have to submit a plan describing (1) activities to assist the reemployment of eligible individuals; (2) performance measures; (3) coordination of efforts with Title I of the Workforce Investment Act of 1998, the Wagner-Peyser Act, and other appropriate federal programs; (4) timelines for implementation; (5) estimates of quarterly enrollments; (6) assurances that the state will provide appropriate reemployment services to any participating EUC08 claimants; and (7) assurances that the state will provide information to the U.S. DOL relating to the fiscal, performance, and other matters, including employment outcomes and program impacts that the U.S. DOL determines is necessary to effectively monitor the activities. The U.S. DOL would be required to provide Congress and the public with both guidance as well as program evaluation for activities conducted with Reemployment NOW funds.

Allowable program uses of Reemployment NOW funds would include the following:

- The "*Bridge to Work*" program would allow individuals to continue to receive EUC08 benefits as wages for work performed in a short-term work experience placement. The Bridge to Work placement would last up to eight weeks and would be required to compensate claimants at a rate equivalent to the minimum wage. The state would be permitted to augment the EUC08 benefit with

¹⁸ See CRS Report R41253, *The Self-Employment Assistance (SEA) Program*, by Katelin P. Isaacs, for additional information on the permanent-law state option to provide SEA benefits to individuals eligible for regular, state-financed UC.

¹⁹ For more details on unemployment benefits for railroad workers, see CRS Report RS22350, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*, by Alison M. Shelton.

Reemployment NOW funds to meet this criteria (the EUC08 benefit would count as wages for that calculation). For individuals participating at least 25 hours per week in a Bridge to Work program, work search requirements would be suspended during the participation and wages paid would not offset EUC08 benefit amounts. Any earnings acquired during program participation would not be considered earnings for the purposes of employment taxes, but would be treated as unemployment benefits for tax purposes.

- *Wage insurance* would authorize states to provide an income supplement to EUC08 claimants who secure reemployment at a lower wage than their separated employment. The benefit level would be determined by the states; although it would not be able to more than 50% of the difference between the worker's wage at the time of separation and the worker's reemployment wage. States would also establish a maximum benefit amount that an individual can collect. The duration of wage insurance payments would be limited to two years. Wage insurance under this proposal would also be limited to individuals who (1) are at least 50 years of age; (2) earn not more than \$50,000 per year from reemployment; (3) are employed on a full-time basis as defined by the state; and (4) are not employed by the employer from which the individual was separated.
- *Enhanced reemployment services* would allow states to use funds to provide EUC08 claimants and individuals who have exhausted all entitlements to EUC08 benefits with reemployment services that are more intensive than any reemployment services provided by the states previously (for instance, one-on-one assessments, counseling, or case management).
- *Start-up of SEA state programs* would authorize states to use funds for any administrative costs associated with the start-up of SEA agreements (as described above).
- *Additional innovative programs* would allow states to use funds for programs other than the programs described above. These programs would be required to facilitate the reemployment of EUC08 claimants, among other requirements.

Short-time Compensation Programs ("Worksharing")

The President's proposal would clarify requirements related to short-time compensation (STC or "worksharing") programs and provide temporary federal financing to support state worksharing programs.²⁰ This proposal would temporarily federally finance 100% of STC benefits for up to three years in states that meet the new definition of an STC program, with a transition period for states with existing STC programs that do not meet the new definition (currently 22 states have STC programs). States without existing STC programs would be allowed to enter into an agreement with the U.S. DOL for up to two years in order to receive federal reimbursement for administrative expenses, as well as temporary federal financing of 50% of STC payments to individuals, with employers paying the other 50% of STC costs. Under this proposal, if a state

²⁰ Work sharing is a program within the federal-state UC system that provides pro-rated unemployment benefits to workers whose hours have been reduced in lieu of a layoff. In a typical example of work sharing, a firm that needs to reduce its 100-person workforce by 20% would, in lieu of laying off 20 workers, instead reduce the work hours of the entire workforce by 20%, on a temporary basis. For additional details, see CRS Report R40689, *Compensated Work Sharing Arrangements (Short-Time Compensation) as an Alternative to Layoffs*, by Alison M. Shelton.

enters into an agreement with the U.S. Secretary of Labor subsequently enacts a law providing for STC, that state would be eligible to receive 100% of federal financing. The President's proposal would award U.S. DOL grants to eligible states, with one-third of each state's grant available for implementation and improved administration purposes and two-thirds of each state's grant available for program promotion and enrollment of employers. The maximum amount of all grants to states would be \$700 million. Finally, this proposal would provide \$1.5 million for the U.S. DOL to submit a report to Congress and the President, within four years of enactment, on the implementation of this provision, including a description of states' best practices, analysis of significant challenges, and a survey of employers in states without STC programs.

Long-Term Unemployed Work Opportunity Credits

The President's proposal would add a targeted group for purposes of the Work Opportunity Tax Credit (WOTC) for individuals who have been unemployed for six months or more during the one-year period prior to being hired. For those long-term unemployed who are hired and remain on a firm's payroll at least 400 hours, an employer would be able to claim a non-refundable 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 for 120 hours to 399 hours, the credit rate would be 25%. Under certain circumstances, tax-exempt employers may take the credit for hiring long-term unemployed individuals. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312) extended the authorization of WOTC through December 31, 2011.²¹

The Emergency Unemployment Compensation Extension Act of 2011 (H.R. 3346/S. 1804)

On November 3, 2011, Representative Doggett introduced H.R. 3346 and Senator Reed introduced S. 1804. These companion bills—both named the Emergency Unemployment Compensation Extension Act of 2011—propose to extend expiring UI provisions and make various changes, including to the financing of UI benefits. H.R. 3346 and S. 1804 would provide a year-long extension of the EUC08 program, the 100% federal financing of the EB program, and the authorization for states to use three-year lookbacks for state EB triggers through calendar year 2012. These bills also propose to allow states to temporarily suspend the lookback for the EB triggers, "by statute, regulation, or other issuance having the force and effect of law," through the end of calendar year 2012. H.R. 3346 and S. 1804 would also extend the temporary extended railroad unemployment benefits (authorized under P.L. 111-5, as amended) for an additional year (i.e., through June 30, 2012) using existing funds from P.L. 111-312.

H.R. 3346 and S. 1804 would also allow states to enter into an agreement with the U.S. DOL to temporarily suspend the accrual of interest for FY2012. In addition, states that otherwise have employers facing a decreased state tax credit on federal unemployment taxes would be able to opt to suspend the reduction in credit for tax year 2012. To have these options available to the state, the state would be required to continue to calculate regular unemployment benefit entitlements (both in weekly amount and total weeks available) as required by state law on the date of enactment of this proposal. States with no outstanding unemployment loans within the

²¹ For more information on the Work Opportunity Tax Credit see CRS Report RL30089, *The Work Opportunity Tax Credit (WOTC)*, by Christine Scott.

unemployment trust fund would earn an additional two percentage points in interest on the (positive) average daily balance in the state's unemployment trust fund account.

Other Legislative Proposals to Extend Expiring UI Provisions

In addition to the President's American Jobs Act of 2011 proposal, S. 1549/H.R. 12/S. 1660, H.R. 3346/S. 1804, and H.R. 3630, which contain extensions to expiring UI provisions as well as further changes to UI programs, there have been several other legislative proposals to address UI expirations.

For instance, Subtitle F of H.R. 3638, the Act for the 99% (introduced by Representative Grijvalva on December 13, 2011), proposes a one-year extension of the three expiring UI provisions: the authorization for the EUC08 program, the 100% federal financing of the EB program, as well as the three-year lookback option for EB triggers. Additionally, H.R. 3638 would add 14 weeks to the current duration of Tier I of the EUC08 program, amending Tier I of EUC08 to provide up to 34 weeks of unemployment benefits rather than the current up to 20 weeks of benefits.

In addition, Senator Heller introduced S. 1885, the Responsible Unemployment Extension Act, on November 17, 2011. S. 1885 would extend the EUC08 authorization and the 100% federal financing of the EB program for another year (i.e., through calendar year 2012). S. 1885 would not, however, extend the authorization for states to use three-year lookbacks in their EB triggers. S. 1885 proposes to offset the UI extensions using \$44 billion in unobligated, federal discretionary funds.

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.²² In certain situations these procedures may have an impact on unemployment insurance benefits.

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, 2011.²³ 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

²² 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.

²³ 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>.

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.²⁴

The Trade Adjustment Assistance Extension Act of 2011 (P.L. 112-40)

On September 2, 2011, H.R. 2832, an act to extend the Generalized System of Preferences, and for other purposes, was introduced by Representative Camp. Title II subsection C of the act requires (1) states to charge employers’ account when UC overpayments are the fault (through action or inaction) of the employer, (2) states to assess a minimum 15% penalty on overpayments due to claimant fraud, and (3) employers report any “rehired employee” to the Directory of New Hires. H.R. 2832 was signed into law as P.L. 112-40 on October 21, 2011.

²⁴ 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 21 states are facing an increased net federal unemployment tax (FUTA) in 2011 because they have borrowed funds from the federal UTF loan account for two consecutive years.²⁵

²⁵ 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.²⁶ As of November 2011, about 45% of unemployed individuals had been without a job for more than 26 weeks.²⁷ These long-term unemployed workers are at risk of exhausting current benefits while remaining unemployed.²⁸

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 111th 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, 2012.²⁹

Like H.R. 589, H.R. 3638 (the Act for the 99%, introduced by Representative Grijvalva on December 13, 2011) would also increase the duration of Tier I of EUC08 from the current up to 20 weeks of unemployment benefits to up to 34 weeks of benefits. The additional weeks of EUC08 Tier I benefits would not be retroactive. But individuals would receive the additional up to 14 weeks of benefits if they continued to be eligible for EUC08. H.R. 3638 would also provide a one-year extension of several expiring UI laws (see description in section on “Other Legislative Proposals to Extend Expiring UI Provisions.”)

Other Legislation

Representative Pearce introduced H.R. 3615, the Accountability in Unemployment Act of 2011, on December 8, 2011. H.R. 3615 would create a new federal requirement for states to drug test all UC claimants as a condition of benefit eligibility. If an individual tests positive for certain controlled substances (in the absence of a valid prescription or as otherwise authorized under a state’s laws), he or she would be required to retake a drug test after a 30-day period and test

²⁶ 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 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>).

²⁷ U.S. Department of Labor, “Employment Situation Summary,” Table A-12, December 2, 2011.

²⁸ For more information on long-term unemployment, see CRS Report R41179, *Long-Term Unemployment and Recessions*, by Gerald Mayer and Linda Levine.

²⁹ 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.

negative in order to be eligible for UC benefits. Under this proposal, any individual who tests positive for certain controlled substances three or more times would be ineligible for UC benefits for a five-year period and until he or she has tested negative for controlled substances. H.R. 3615 would require individuals filing for UC benefits to pay for the cost associated with their own drug test—and this amount would be repaid via the first UC benefit provided to individuals ultimately eligible for UC benefits. This proposal would be effective one year after its enactment.

On December 7, 2011, Representative Kingston introduced H.R. 3601, the Ensuring Quality in the Unemployment Insurance Program (EQUIP) Act. H.R. 3601 would add a new federal requirement that individuals undergo a substance abuse risk assessment for each benefit year as a condition of eligibility for UC in all states. This new federal requirement would also require individuals deemed to be at high risk for substance abuse—based on the assessment results—to test negatively for controlled substances within one week to qualify for UC benefits. Individuals deemed high-risk who test positively for any controlled substance would be prohibited from receiving UI benefits for a 30-day period following the positive drug test. Such an individual would be prohibited from receiving any UC benefits until he or she tests negatively for any controlled substance in a subsequent period. A second positive drug test would prohibit any individual from receiving UC benefits for the duration of that benefit year. Finally, an individual deemed at high risk for using controlled substances would be subject to further drug testing at any time during the benefit year with limited notice provided. High-risk individuals would be responsible for the costs of any testing for controlled substances. This new federal requirement would be not be subject to any merit staffing requirements. Finally, additional federal funding to implement these new laws and conduct substance abuse testing in each state would come from any remaining funds for the Independent Payment Advisory Board (IPAB).³⁰

Representative Yvette Clarke introduced H.R. 3598 on December 7, 2011. H.R. 3598 would define any fee associated with Electronic Benefit Transfer (EBT) cards used by states to distribute unemployment benefits as administrative expenses under federal law. Such a federal definition would prohibit states from deducting EBT fees from unemployment benefit payments made with state unemployment tax (SUTA) funds. Under this proposal, any EBT fees would need to be financed through state administrative funds rather than an individual's unemployment benefit payment.

On December 4, 2011, Senator Casey introduced S. 1944, the Middle Class Tax Cut Act of 2011. Among other provisions, S. 1944 would create a new income tax on unemployment benefit income for any taxpayer with an adjusted gross income (AGI) of at least \$1 million (and \$500,000 in the case of an individual filing a single tax return). The tax rate for this unemployment benefit income would be 55% in tax years 2011 and 2012 and then 50% for tax years after 2012. (The UI income would continue to be used in the calculation of AGI and thus subject to “regular” federal income tax.)

Among other provisions, S. 1931, the Temporary Tax Holiday and Government Reduction Act (introduced on November 30, 2011, by Senator Heller) would create a new tax on unemployment benefit income for certain high-income taxpayers. For individual taxpayers with more than \$1 million in AGI (\$2 million for joint filers), any income from unemployment benefits would be

³⁰ See CRS Report R41511, *The Independent Payment Advisory Board*, by Christopher M. Davis, for details on the IPAB and the Consumer Operated and Oriented Plan (CO-OP) program. See CRS Report R40942, *Private Health Insurance Provisions in the Patient Protection and Affordable Care Act (PPACA)*, by Hinda Chaikind and Bernadette Fernandez, for more details on the CO-OP program.

taxed at an additional 100% rate. (The UI income would continue to be used in the calculation of AGI and thus subject to “regular” federal income tax.) Under this proposal, individual filers with an AGI of at least \$750,000 (and \$1.5 million for joint filers) would also face the new tax on unemployment benefit income with the rate proportional to AGI over these limits and the maximum rate set at 100%. Any tax receipts collected from this new federal income tax on unemployment benefits from a particular state would be transferred into that state’s account in the federal UTF.

On November 11, 2011, Senator Wyden introduced S. 1826, the STARTUP Act. Representative Doggett introduced H.R. 3427, the companion bill to S. 1826, on November 14, 2011. Among other provisions, the STARTUP Act would authorize states to create Self-Employment Assistance (SEA) programs available to recipients of EUC08 and EB benefits. SEA allowances would be paid in lieu of (and in the same amount as) unemployment benefits under the EUC08 and EB programs for up to 26 total weeks to eligible individuals who (1) have at least 13 weeks of remaining benefit entitlement through the EUC08 and EB programs and (2) are participating in entrepreneurial training activities. SEA participants would be exempt from the work availability and work search requirements under EUC08 and EB. Under the STARTUP Act, SEA benefits would be available to up to 1% of all EUC08 and EB recipients in each participating state. Participants would be able to discontinue SEA participation at any time and receive any remaining entitlement to EUC08 or EB benefits. Under current law, states are authorized to set up SEA programs for recipients of regular UC benefits, but not recipients of EUC08 or EB benefits, as proposed by S. 1826 and H.R. 3427.³¹

The STARTUP Act would also provide federal funds to states that submit approved applications to be used for (1) the creation, development, and administration of the proposed SEA programs as well as (2) the promotion and enrollment of EUC08 and EB recipients in SEA programs. Appropriated funds for these grants to states would total \$35 billion for each FY2012 through 2014.

Senator Scott Brown introduced S. 1743, the Learn to Earn Reemployment Training Improvement Act of 2011, on October 20, 2011. S. 1743 would give states the option to create a “Learn to Earn” program, if approved by the U.S. DOL. All Learn to Earn state programs would be authorized for FY2013 and FY2014 only. A Learn to Earn program (which is similar to the “Bridge to Work” program proposed in the American Jobs Act [S. 1549, S. 1660, H.R. 12]) would allow individuals to continue to receive EUC08 benefits as wages for work performed in a short-term work experience placement of up to 10 weeks for not more than 38 hours per week. Learn to Earn state programs would be required to compensate claimants at a rate equivalent to the minimum wage with the EUC08 benefit payment counted as wages for that calculation. The state would be permitted to augment the EUC08 benefit. For individuals participating in a Learn to Earn program, work search requirements would be suspended during the participation and wages additional earnings paid by program would not offset EUC08 benefit amounts. Any earnings acquired during program participation would not be considered earnings for the purposes of employment taxes, but would be treated as unemployment benefits for tax purposes.

Federal funding for states to establish Learn to Earn programs in S. 1743 would come from savings determined by the Office of Management and Budget (OMB) through the termination and

³¹ For more details on the current-law option for states to set up SEA programs for individuals eligible for state-financed UC benefits, see CRS Report R41253, *The Self-Employment Assistance (SEA) Program*, by Katelin P. Isaacs.

consolidation of existing job training programs deemed by OMB to be “duplicative or ineffective.” These federal funds would be allotted to the states based on a two-part formula: (1) two-thirds would be distributed to the states based upon the state share of the U.S. total number unemployed persons and (2) one-third would be distributed to the states based on the state share of the long-term unemployed (measured as unemployment spells of at least 27 weeks). Up to 1% of the funds would be available for program administration and evaluation.

Representative Dold introduced H.R. 2868, the Unemployed Workers Hiring Act of 2011, on September 8, 2011. H.R. 2868 would eliminate employer Social Security payroll taxes on newly hired individuals employed for at least 30 hours a week who had been receiving any unemployment benefits (e.g., UC, EUC08, EB, UCX, and DUA) or had exhausted any of these unemployment benefits as of the day prior to the new employment start date.

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 be 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 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 112th 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. 112-78, the Temporary Payroll Tax Cut Continuation Act of 2011, extends the authorization of the EUC08 program until the week ending on or before March 6, 2012. Thus, on March 3, 2012 (March 4, 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 March 7, 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 28 states to adopt the optional triggers to provide up to 13 or 20 weeks of extended benefits.

For individuals who were receiving EB payments on March 7, 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).

Expiration of the Three-Year Lookback Option for Extended Benefit Triggers

P.L. 111-312, as amended, allows 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 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 their EB periods in the near future despite high, sustained—but not increasing—unemployment rates.

For states to implement EB trigger lookback changes, each state would need to individually opt to amend its state UC laws. These state law changes must be written in such a way that if the two-year lookback has the effect that the state would have an active EB program, no action would be taken. But if a two-year lookback is not effective 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. There are 34 states that have enacted a three-year EB trigger lookback option, as temporarily authorized.

The option for states to use three-year EB trigger lookbacks expires the week ending on or before February 29, 2012.

UI Laws Passed in the 111th 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.³²

³² For additional information on unemployment provisions in the 2009 stimulus package, please see CRS Report (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 March 3, 2012 (March 4, 2012, for New York State). Following enactment of the stimulus

(...continued)

R40368, *Unemployment Insurance Provisions in the American Recovery and Reinvestment Act of 2009*, by Alison M. Shelton and Julie M. Whittaker.

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.

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 March 7, 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, as amended, also continues the temporary suspension of the waiting week requirement for federal funding until the week ending before August 15, 2012. 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.³³ Even though a number of states triggered “on” for EB in the second half of 2008, the benefit year requirement caused 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.

³³ 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).

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 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; 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, 2010.³⁴

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

³⁴ 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.

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.³⁵

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).

Author Contact Information

Katelin P. Isaacs
Analyst in Income Security
kisaacs@crs.loc.gov, 7-7355

Julie M. Whittaker
Specialist in Income Security
jwhittaker@crs.loc.gov, 7-2587

³⁵ For full details on the “second benefit year” issue, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Katelin P. Isaacs and Julie M. Whittaker.