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# Unemployment Insurance: Legislative Issues in the 114<sup>th</sup> Congress

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## Summary

The 114<sup>th</sup> Congress considered many issues related to unemployment insurance (UI) programs: Unemployment Compensation (UC), the temporary, now-expired Emergency Unemployment Compensation (EUC08), and Extended Benefits (EB). This report gives a brief overview of the UI programs that may provide benefits to eligible unemployed workers. In addition, it briefly summarizes the President's budget proposal for FY2017.

The National Defense Authorization Act for Fiscal Year 2016, P.L. 114-92, altered certain conditions for individuals to receive Unemployment Compensation for Former Servicemembers (UCX).

This report also describes UI legislation proposed in the 114<sup>th</sup> Congress that addressed:

- Concurrent receipt of Social Security Disability Insurance (SSDI) and UI benefits—S. 343, S. 499, H.R. 5919, H.R. 918, and S. 2005
- UI program integrity—H.R. 2503 and H.R. 2512
- Unemployment Compensation for Former Servicemembers (UCX)—P.L. 114-92, S. 1376, and H.R. 1735
- Drug testing—H.R. 1136, H.R. 2148, and H.R. 5945
- Rehiring UI beneficiaries and exhaustees—H.R. 481, H.R. 2265, H.R. 2721, H.R. 3555, H.R. 3622, H.R. 4593, H.R. 4973 and S. 1517
- Reauthorization of EUC08—H.R. 2721 and H.R. 3555
- Vouchers and demonstration projects—H.R. 2509, H.R. 2721, and H.R. 3555
- Job training and education—H.R. 2219
- Relocation Subsidies—H.R. 2755
- Short-time Compensation (STC)—H.R. 2721, H.R. 3555, H.R. 5408, and S. 1902
- New benefits for certain energy workers—H.R. 5669 and S. 2398
- Domestic violence—H.R. 3841 and S. 2208

For information on the expired EUC08 program, which provided additional unemployment benefits depending on state economic conditions during the period of July 2008 to December 2013, see CRS Report R42444, *Emergency Unemployment Compensation (EUC08): Status of Benefits Prior to Expiration*.

For a brief overview of UC, see CRS In Focus IF10336, *The Fundamentals of Unemployment Compensation*.

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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 provide benefits for eligible 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 regular UC benefit payments. UC benefits may be extended for up to 13 weeks or 20 weeks by the Extended Benefit (EB) program if certain economic situations exist within the state.<sup>1</sup> During previous Congresses, the temporarily authorized Emergency Unemployment Compensation (EUC08) program provided additional weeks of benefits (depending on the date, from 13 weeks to 53 weeks). EUC08 benefits expired on December 28, 2013, and are no longer authorized. Currently, although the UC and EB programs are authorized, no state is in an active EB period.

For information on the expired EUC08 program, which provided additional unemployment benefits depending on state economic conditions during the period of July 2008 to December 2013, see CRS Report R42444, *Emergency Unemployment Compensation (EUC08): Status of Benefits Prior to Expiration*.

### Unemployment Compensation Program

The Social Security Act of 1935 (P.L. 74-271) authorizes the joint federal-state UC program to provide unemployment benefits under which most states provide up to a maximum of 26 weeks of UC benefits.<sup>2</sup> Former federal workers may be eligible for unemployment benefits through the Unemployment Compensation for Federal Employees (UCFE) program.<sup>3</sup> Former U.S. military servicemembers may be eligible for unemployment benefits through the Unemployment Compensation for Ex-servicemembers (UCX) program.<sup>4</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 determination, the specifics regarding UC benefits are determined by each state.

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<sup>1</sup> For detailed information on each of these programs, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*. Certain groups of workers may qualify for income support from additional unemployment insurance (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 Unemployment Compensation (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 for Workers*.

<sup>2</sup> For more details on these states with less than 26 weeks of UC available, see CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*. In addition, the maximum UC duration is 28 weeks in Montana and 30 weeks in Massachusetts. When EB benefits are available, any available UC benefits above 26 weeks are treated effectively as if they were EB payments.

<sup>3</sup> 5 U.S.C. §8501-8508.

<sup>4</sup> 5 U.S.C. §8521-8525. For more information on the Unemployment Compensation for Ex-servicemembers (UCX) program, see CRS Report RS22440, *Unemployment Compensation (Insurance) and Military Service*.

This results in essentially 53 different programs.<sup>5</sup> UC eligibility is generally 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 in order to be eligible to receive any UC benefits. The methods states use to determine eligibility vary greatly. Most state benefit formulas replace approximately half of a claimant's average weekly wage up to a weekly maximum.<sup>6</sup> In addition, each state's UC law requires individuals to have lost their jobs through no fault of their own and must be able to work, available for work, and actively seeking work. These eligibility requirements help ensure that UC benefits are directed toward workers with significant labor market experience who are unemployed because of economic conditions.

The UC program is financed by federal taxes under the Federal Unemployment Tax Act<sup>7</sup> (FUTA) and by state payroll taxes under the State Unemployment Tax Act (SUTA). The 0.6% effective net FUTA tax paid by employers on the first \$7,000 of each employee's earnings (no more than \$42 per worker per year) funds federal and state administrative costs, loans to insolvent state UC accounts, the federal share (50%) of EB payments, and state employment services.<sup>8</sup>

SUTA taxes on employers are limited by federal law to funding regular UC benefits and the state share (50%) 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 each employer's state tax rate to be based on the amount of UC paid to former employees (known as "experience rating"). Within these broad requirements, each state has great flexibility in determining its SUTA structure. 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).

## **Extended Benefit Program**

The EB program was established by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA; P.L. 91-373) (26 U.S.C. §3304, note). EUCA may extend receipt of unemployment benefits (extended benefits) at the state level if certain economic situations exist within the state. The President's FY2017 Budget Proposal contained several possible alternations to the EB program. See the "President's Budget Proposal for FY2017" section of this report for details on the proposals.

### **EB Triggers**

The EB program is triggered when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels.<sup>9</sup> All states must pay up to 13 weeks of EB if the

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<sup>5</sup> The District of Columbia, Puerto Rico, and the Virgin Islands are considered to be states under UC law.

<sup>6</sup> For details on UC eligibility and benefits, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*.

<sup>7</sup> 23 U.S.C. §§3301-11.

<sup>8</sup> The Federal Unemployment Tax Act (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%. Details on how delinquent loans affect the net FUTA tax are in CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

<sup>9</sup> The total unemployment rate (TUR) is the three-month average of the ratio of unemployed workers to all workers (continued...)

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. States may choose to enact two other optional thresholds. (States may choose one, two, or none.) If the state has chosen one or more of the EB trigger options, it would provide the following:

- Option 1—an additional 13 weeks of benefits if the state’s IUR is at least 6%, regardless of previous years’ averages.
- Option 2—an additional 13 weeks of benefits 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; an additional 20 weeks of benefits if the state’s 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.

EB benefits are not “grandfathered” (phased out) when a state triggers “off” the program. When a state triggers “off” of an EB period, all EB benefit payments in the state cease immediately regardless of individual entitlement.<sup>10</sup>

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.<sup>11</sup> States fund the other half (50%) of EB benefit costs through their SUTA.<sup>12</sup>

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(employed and unemployed) in the labor market. The TUR is essentially a three-month average version of the unemployment rate published by the Bureau of Labor Statistics (BLS) and based on data from the BLS’s monthly Current Population Survey (CPS). The insured unemployment rate (IUR) is the ratio of UC claimants divided by individuals in UC-covered jobs. In addition, the IUR uses a different base of workers in its calculations as compared with the TUR. The IUR excludes several groups used in TUR calculations: self-employed workers, unpaid family workers, workers in certain not-for-profit organizations, and several other, primarily seasonal, categories of workers. In addition to those unemployed workers whose last jobs were in the excluded employment, the IUR excludes the following: those who have exhausted their UC benefits (even if they are receiving EB benefits); new entrants or reentrants to the labor force; disqualified workers whose unemployment is considered to have resulted from their own actions rather than from economic conditions; and eligible unemployed persons who do not file for benefits.

<sup>10</sup> EB benefits on interstate claims are limited to two extra weeks unless *both* the worker’s state of residence (e.g., Texas) and the worker’s state of previous employment (e.g., Louisiana) are in an EB period.

<sup>11</sup> The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, as amended (the final time by P.L. 112-240), made technical changes to certain triggers in the EB program. These changes allowed states to temporarily use lookback calculations based on three years of unemployment rate data (rather than the permanent-law 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 was an important adjustment at the time of the signing of P.L. 111-312 (December 17, 2010) because many states were likely to trigger off of their EB periods despite high, sustained—but not increasing—unemployment rates. For more information on these state law changes, see CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*. The authorization for the temporary EB trigger modifications expired the week ending on or before December 31, 2013.

<sup>12</sup> P.L. 111-5, the American Recovery and Reinvestment Act of 2009 (most recently amended by P.L. 112-240, the American Taxpayer Relief Act of 2012), temporarily changed the federal-state funding arrangement for the EB program. The FUTA financed 100% of EB benefits from February 17, 2009, through December 31, 2013. The one exception to the 100% federal financing was for those “non-sharable” EB benefits (work not subject to FUTA taxes such as state and local government employment). Those non-sharable benefits continued to be 100% financed by the former employers.

## Expired Emergency Unemployment Compensation Program

On June 30, 2008, President George W. Bush signed the Supplemental Appropriations Act of 2008 (P.L. 110-252), which created a new temporary unemployment insurance program, the EUC08 program. This was the eighth time Congress had created a federal temporary program to extend unemployment compensation during an economic slowdown.<sup>13</sup> State UC agencies administered the EUC08 benefit along with regular UC benefits.

The authorization for this program was extended multiple times since its enactment, but it was terminated on December 28, 2013, for all states except New York (December 29, 2013) and North Carolina (June 29, 2013).<sup>14</sup>

## Unemployment Insurance Benefits and the Sequester

The sequester order required by the Budget Control Act of 2011 (BCA; P.L. 112-25) and implemented on March 1, 2013 (after being delayed by P.L. 112-240), affected some but not all types of unemployment insurance expenditures. Regular UC, UCX, and UCFE payments are not subject to the sequester reductions. EB, EUC08 (when available), and most forms of administrative funding are subject to the sequester reductions.<sup>15</sup> Please see CRS Report R43133, *The Impact of Sequestration on Unemployment Insurance Benefits: Frequently Asked Questions*, for additional information on the impact of sequestration on UI benefits and sequestration for FY2013 and FY2014.

### FY2017 Sequester of UI Benefits

The FY2017 sequestration order required a 6.9% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions applicable to discretionary programs, projects, and activities.<sup>16</sup> Therefore, the sequestration order required that EB expenditures be reduced by 6.9% (only on the federal share of EB benefits) for weeks of unemployment beginning on October 8, 2016, through September 30, 2017. However, EB was not available in any state from the beginning of FY2017 through the time of this report date (April 2017).<sup>17</sup>

### FY2016 Sequester of UI Benefits

Among many actions, the Bipartisan Budget Act of 2015, P.L. 114-74, increased discretionary spending limits for FY2016. As a result, although a 6.8% sequester reduction in non-exempt mandatory programs went into effect on October 1, 2015, for FY2016, there were no

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<sup>13</sup> 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*.

<sup>14</sup> For more details on the early termination of EUC08 benefits in North Carolina, see CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*.

<sup>15</sup> See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*, for a discussion of the sequester order.

<sup>16</sup> Office of Management and Budget (OMB), *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2017*, February 9, 2016, [https://www.irs.gov/pub/whistleblower/2017\\_jc\\_sequestration\\_report\\_house.pdf](https://www.irs.gov/pub/whistleblower/2017_jc_sequestration_report_house.pdf).

<sup>17</sup> For details, see U.S. Department of Labor, Employment and Training Administration, *Unemployment Insurance Program Letter*, UIPL 9-17, January 19, 2017, [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_09-17\\_Acc.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_09-17_Acc.pdf).

sequestration reductions applicable to discretionary programs, projects, and activities.<sup>18</sup> However, if any EB benefits had become available, they would have been subject to the FY2016 6.8% sequestration reduction. Additionally, there may have been certain delayed EB or EUC08 benefit payments and related administrative costs made in FY2016 from prior fiscal years (for example, because of appeals). Those payments would have been subject to the FY2016 6.8% sequestration reduction because FY2016 funds would have been apportioned for these purposes.

## **FY2015 Sequester of UI Benefits**

In FY2015, the sequestration order required a 7.3% reduction in all nonexempt nondefense mandatory expenditures. Therefore, the sequestration order required that EB expenditures be reduced by 7.3% (only on the federal share of EB benefits) for weeks of unemployment beginning on October 4, 2014, through September 26, 2015. EB was not available in any state during FY2015.

## **State Fiscal Concerns Alleviating State Unemployment Compensation Stress**

If a recession is deep enough and if state unemployment tax (SUTA) revenue is inadequate for long periods of time, states may have insufficient funds to pay for UC benefits. Federal law, which requires states to pay these benefits, provides a loan mechanism within the UTF framework that an insolvent state may opt to use to meet its UC benefit payment obligations.<sup>19</sup> States must pay back these loans. If the loans are not paid back quickly (depending on the timing of the beginning of the loan period), states may face interest charges and the states' employers may face increased net FUTA rates until the loans are repaid.<sup>20</sup>

Near the end of the 114<sup>th</sup> Congress on October 18, 2016, only California and the Virgin Islands had outstanding loans. Together they owed a cumulative \$3.6 billion to the federal accounts within the UTF.<sup>21</sup> In general, the increased state borrowing to fund UC benefits reflects the magnitude of the recession and the slow employment recovery afterward.<sup>22</sup>

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<sup>18</sup> For details, see DOL, Employment and Training Administration, *Unemployment Insurance Program Letter*, UIPL 12-16, March 29, 2016, [http://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_12-16\\_Acc.pdf](http://wdr.doleta.gov/directives/attach/UIPL/UIPL_12-16_Acc.pdf). For more information on the sequester order, see CRS Insight IN10389, *Bipartisan Budget Act of 2015: Adjustments to the Budget Control Act of 2011*.

<sup>19</sup> Federal UC law does not restrict the states from using loan resources outside of the UTF. Depending on state law, states may have other funding measures available and may be able to use funds from outside of the UTF to pay the benefits (such as issuing bonds).

<sup>20</sup> Details on how states may borrow federal funds to pay for UC benefits are in CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

<sup>21</sup> For the most recent information on outstanding loans, see U.S. Department of the Treasury, Bureau of Public Debt, *Title XII Advance Activities Schedule* October 20, 2016, at [http://www.treasurydirect.gov/govt/reports/tfmp/tfmp\\_advactivitiesched.htm](http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiesched.htm).

<sup>22</sup> For the current solvency of each state's financing system, see DOL, Division of Fiscal and Actuarial Services, Office of Unemployment Insurance, *State Unemployment Insurance Trust Fund Solvency Report 2017*, March 2017, <http://ows.doleta.gov/unemploy/docs/trustFundSolvReport.pdf>.



## President's Budget Proposal for FY2017

President Obama's budget proposal for FY2017 attempted to address some of the state and federal financing concerns.<sup>23</sup> In addition, the proposal would have expanded and reformed UI benefits and benefit availability.

### Federal Unemployment Tax Changes

The President's budget proposal for FY2017 would have (1) reauthorized the lapsed 0.2% Federal Unemployment Tax (FUTA) surtax,<sup>24</sup> and (2) increased the taxable wage base to \$40,000 while decreasing the effective FUTA tax rate to 0.165% (making it approximately actuarially equivalent to 0.8% on \$7,000). After 2018, the taxable wage base would have been indexed to inflation. Beginning in 2018, the proposal would have required states to impose a minimum tax per employee that equates to 0.175% of the FUTA wage base (\$70 per employee in 2018).

### Requiring States to Maintain Increased UTF Balances

In addition, the President's budget proposal for FY2017 would have required states to maintain a UTF account balance of at least 50% of the state's Average High Cost Multiple (AHCM).<sup>25</sup> The proposal would have altered the rules for calculating the net FUTA rate, requiring a net FUTA rate on a state's employer if that state maintained an AHCM of less than 50% on two or more consecutive January firsts. The additional FUTA revenue would have been deposited into the state UTF account and would have been terminated once the AHCM met the 50% criteria.

### State Requirement to Provide 26 Weeks of UC

The President's budget proposal for FY2017 would have required all states to have a maximum duration of at least 26 weeks for the regular UC program and adopt three policies that expand access to UC benefits. The states would have had to (1) enact an alternative base period option for determining UC eligibility; (2) not deny benefits for claimants who seek part-time employment; and (3) allow unemployed workers to be eligible for UI benefits if they leave their jobs for family reasons.<sup>26</sup>

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<sup>23</sup> The President's detailed budget proposal for UC in FY2017 is accessible at <http://www.dol.gov/sites/default/files/documents/general/budget/CBJ-2017-V1-08.pdf>. For examples on previous proposals on changing the underlying tax structure, see reports released by the Advisory Council on Unemployment Compensation (ACUC), *Collected Findings and Recommendations: 1994-1996*, AUCU, Washington, DC, 1996. Additionally, the report proposed changes to the underlying loan requirements, some of which were incorporated into 20 C.F.R. §606.32 in 2010.

<sup>24</sup> Congress first passed a temporary FUTA surtax in 1976, and since 1983 the surtax had been applied as 0.2% on the first \$7,000 of employee wages until it lapsed on July 1, 2011. Thus, since then, the effective FUTA tax on employers for each employee is 0.6% (a decrease from 0.8%) on the first \$7,000 of wages.

<sup>25</sup> The average high-cost multiple (AHCM) is the ratio of actual UTF account balances to the average of the 3 highest years of benefit payments experienced by the state over the past 20 years. Presumably, the average of the 3 highest years' outlays would be a good indicator of potential expected UC payments if another recession were to occur. Under these assumptions, if a state had saved enough funds to pay for an average high year of UC benefit activity, its AHCM would be at least 1.0.

<sup>26</sup> The base period is the time period during which wages earned or hours/weeks worked are examined to determine a worker's monetary entitlement to UC. Almost all states use the first four of the last five completed calendar quarters preceding the filing of the claim as their base period. This may result in a lag of up to five months between the end of the base period and the date a worker becomes unemployed. As a result there are some instances when workers with substantial labor market attachment are ineligible for UC benefits. In particular, recent entrants to the workforce, or re- (continued...)

## **Modernization Incentives**

Finally, the President's budget proposal for FY2017 would have provided up to a total of \$5 billion in lump sum payments to states for opting for changes that "modernize" state UC laws. To become eligible for the payments, states would have had to (1) provide for broader federal access to UI wage records; (2) adopt e-filing and/or increased penalties for employer non-reporting; (3) provide for at least 26 weeks of benefits in the regular UC program; and (4) define "misconduct" that conforms to the U.S. DOL model definition. States also would have had to commit to not make qualifying requirements more stringent or reduce benefit levels. Additionally, to receive the incentive payment, a state would have had to adopt two work incentive reforms and one benefit expansion reform.

The work incentive options would have included (1) progressively more intense reemployment service delivery as duration of benefit receipt lengthens; (2) improved reemployment services for UI claimants; (3) voluntary work-based programs for UI claimants, such as on-the-job training or apprenticeship programs or subsidized temporary work programs; (4) relocation assistance programs coupled with individual case management, in-person career counseling, provision of customized information on availability of job opportunities in other locations, and referrals to suitable jobs in other locations; and (5) improvement of data systems to enable and provide access to workforce and educational entities for performance, research, and evaluation.

The benefit expansion options would have included (1) allowing UC benefits to be paid to claimants in approved training; (2) establishing a maximum weekly benefit amount that is at least two-thirds of the state's average weekly wage in covered employment in the most recent 12-month period for which data are available; and (3) improving eligibility provisions related to temporary workers.

## **EB Reform**

The President's budget proposal for FY2017 also would have altered and replaced most of the EB program. The mandatory IUR trigger would have been replaced by a modification of the current optional TUR trigger.<sup>27</sup> Funding for EB would have continued to be shared (50% state, 50% federal) if the maximum number of weeks of UC benefits available in the state was fewer than 26 weeks. Funding for EB would have been 100% reimbursed with federal funds if the state offered at least 26 weeks of UC. In addition, all EB claimants would have been required to receive Reemployment Services and Eligibility Assessments (RES/REAs) as a condition of eligibility.<sup>28</sup> If

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(...continued)

entrants, may be ineligible under this definition. Federal law allows states to develop expanded definitions of the base period. More than two-thirds of states allow the use of an alternative base period (ABP) for workers failing to qualify under the regular base period. For example, if the worker fails to qualify using wages and employment in the first four of the last five completed calendar quarters, then the state might use wages and employment in the last four completed calendar quarters.

<sup>27</sup> The program would have had four tiers of 13 weeks each, using trigger thresholds of 6.5%, 7.5%, 8.5%, and 9.5%. This would have created up to 52 weeks of EB if a state met the economic conditions. A state could trigger onto a tier either by three-month average TUR at or above the percentage or by having an unemployment rate plus the change in rates from a comparable period in one of the previous two years at or above the trigger value.

<sup>28</sup> Reemployment and Eligibility Assessments (REAs) provide a means of enforcing job search requirements and delivering employment-related assistance to recipients. Since 2005, the federal government has provided grants to state workforce agencies to fund REAs. These are in-person interviews with selected UC claimants to assure that they are complying with the eligibility rules, determine if reemployment services are needed for the claimant to secure future employment, refer the individual to reemployment services (RES) as necessary, and provide labor market information (continued...)

federal funds in the UTF were insufficient to pay EB, funds would have been provided from the Treasury's General Fund through non-repayable advances.

## **Wage Insurance**

The President's budget proposal for FY2017 would have created a new wage insurance<sup>29</sup> program that would have replaced half of lost wages, up to \$10,000 over two years for certain formerly unemployed workers who find employment at lower salaries. The reemployed worker's new position would have had to pay less than \$50,000/year and workers must have worked for their prior employer for at least three years to be eligible for this program.

## **Enacted Laws in the 114<sup>th</sup> Congress**

### **The National Defense Authorization Act for Fiscal Year 2016 (P.L. 114-92)**

Senator Ron Johnson sponsored S. 1356, which was enacted as the National Defense Authorization Act for Fiscal Year 2016, P.L. 114-92. In addition to many other actions, the law altered certain conditions for individuals to receive Unemployment Compensation for Former Servicemembers (UCX).<sup>30</sup> The law generally prohibits the concurrent receipt of UCX and Post-9/11 Veterans Educational Assistance but does provide exceptions.<sup>31</sup> In addition, the law doubled the number of days (from 90 to 180 continuous days) a reserve member of the Armed Forces would have to be on active duty to qualify for UCX.

Two earlier proposals had similar provisions, but did not include exceptions to the prohibition of concurrent receipt. Representative Mac Thornberry sponsored H.R. 1735, the National Defense Authorization Act for Fiscal Year 2016,<sup>32</sup> which was vetoed by President Obama on October 22, 2015. Senator John McCain sponsored an identically named bill (S. 1376) that contained similar provisions.

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that addresses the claimant's specific needs. REAs replaced a previous Eligibility Review Program that had been funded by DOL in which UC claimants were interviewed to confirm their eligibility for benefits. For more information, see the "Reemployment and Eligibility Assessments" section of CRS Report R43044, *Expediting the Return to Work: Approaches in the Unemployment Compensation Program*.

<sup>29</sup> For information on Wage Insurance and UC, see CRS Report R43044, *Expediting the Return to Work: Approaches in the Unemployment Compensation Program*.

<sup>30</sup> For information on UCX, see CRS Report RS22440, *Unemployment Compensation (Insurance) and Military Service*. For information on Post-9/11 Veterans Educational Assistance see CRS Report R42755, *The Post-9/11 Veterans' Educational Assistance Act of 2008 (Post-9/11 GI Bill): A Primer*.

<sup>31</sup> 5 U.S.C. §8525(a) provides exceptions to the prohibition on concurrent receipt of UCX and educational assistance.

<sup>32</sup> The bill contained two provisions regarding unemployment insurance for former servicemembers. Section 535 of S. 1376 included a provision that would have prohibited the concurrent receipt of unemployment benefits for former military servicemembers (UCX) and Post-9/11 Veterans Educational Assistance. Section 592 of the bill would have doubled the number of days a reserve member of the armed forces would have to be on active duty to qualify for UCX (from 90 to 180).

## Legislative Proposals in the 114<sup>th</sup> Congress

### Concurrent Receipt of SSDI and UI Benefits<sup>33</sup>

S. 499 (Senator Orin Hatch), S. 2005 (Senator David Vitter), and H.R. 918 (Representative Sam Johnson), all titled the Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act, would have required for any month that an individual is entitled to UC, EB, or Trade Adjustment Assistance (TAA) for at least one week, he or she would have been deemed to have engaged in substantial gainful activity (SGA) and be disqualified from receiving SSDI benefits. If an SSDI beneficiary had been participating in a period of trial work, the individual would have been deemed to have rendered services in a month if he or she had been entitled to UC, EB, or TAA for any week that month (and, therefore, that month would count toward the 60-month rolling period in the trial work period without having the benefits reduced or terminated).

H.R. 5919, the Preserving and Reforming SSDI (PAR-SSDI) Act of 2016, was introduced by Representative David Schweikert. H.R. 5919 would have required (among other provisions) that for any week in whole or in part within a month that an individual was paid or determined to be eligible for UC, he or she would have been deemed to have engaged in substantial gainful activity and so be disqualified from receiving Social Security disability benefits after a certain period has elapsed.

S. 343, the Reducing Overlapping Payments Act, was introduced by Senator Jeff Flake. S. 343 would have required for any month that an individual was entitled to UC, no SSDI benefits would be paid.

### UI Program Integrity

Representative David Reichert sponsored H.R. 2503, the Permanently Ending Receipt by Prisoners Act. H.R. 2503 would have required states to use the Prisoner Update Processing System (PUPS) data compiled by the Social Security Administration.<sup>34</sup> States would use PUPS data to confirm that an individual was not confined in a jail, prison, or other penal institution or correctional facility. Any individual who was incarcerated would not be eligible for regular UC benefits because the individual would not have been available for work.

Representative Kevin Brady sponsored H.R. 2512, the Furloughed Federal Employee Double Dip Elimination Act. The bill would have clarified that if a federal employee were to receive back pay for a period during which he or she had been furloughed due to a lapse in federal appropriations, the federal employee would have to repay any unemployment compensation for that period.

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<sup>33</sup> For an overview of concurrent receipt of SSDI and UI benefits in the 114<sup>th</sup> Congress, see CRS Report R43471, *Concurrent Receipt of Social Security Disability Insurance (SSDI) and Unemployment Insurance (UI): Background and Legislative Proposals*.

<sup>34</sup> The Prisoner Update Processing System (PUPS) data contain the individual's name, Social Security number, date of birth, sex, date of conviction, date of confinement, release date, inmate status code, and such other information as may be supplied or acquired during the benefit suspension or reinstatement process.

## Drug Testing<sup>35</sup>

Representative Steve Pearce sponsored H.R. 1136, the Accountability in Unemployment Act of 2015. The bill would have required individuals to undergo drug testing and test negative to be eligible for UC benefits. H.R. 1136 would also have required a 30-day waiting period for applicants who test positive for any one of several specified drugs and would have required individuals to be ineligible for UC benefits for five years after the third positive drug test.

Representative Earl Carter sponsored H.R. 2148, the Ensuring Quality in the Unemployment Insurance Program (EQUIP) Act. The bill would have required any UC applicant to complete a substance abuse risk assessment. If the applicant had been deemed high-risk, the applicant would have to pass a controlled substances test to receive UC benefits. Those who did not pass the test would be ineligible for benefits for 30 days and then would have to be retested to determine eligibility.

Representative Kevin Brady introduced H.R. 5945, the Ready to Work Act of 2016. The proposal would have terminated the final rule issued by the U.S. DOL on August 1, 2016, the “Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants” (81 Fed. Reg. 50298). This DOL rule established occupations that regularly conduct drug testing. As such, the rule implemented a change made under the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96; February 22, 2012) that allowed states to drug test UC applicants for whom suitable work is available only in an occupation that regularly conducts drug testing.

## Rehiring UI Beneficiaries and Exhaustees

Representative Bill Pascrell introduced H.R. 481, the Long-Term Unemployed Hiring Incentive Act. The bill would have extended the work opportunity tax credit (WOTC) for companies that hire any UC exhaustees through December 31, 2017.<sup>36</sup>

Representative Julia Brownley introduced H.R. 2265, the VOW to Hire Heroes Extension Act of 2015, and Senator Richard Blumenthal introduced an identically named bill, S. 1517. This legislation would have expanded and extended WOTC for companies that hire veterans through December 31, 2018. In addition, the bill would have expanded the program by allowing tax-exempt organizations to apply a credit against payroll taxes for hiring a veteran.

Representative Barbara Lee introduced H.R. 2721, the Pathways Out of Poverty Act of 2015, and Representative Frederica Wilson introduced H.R. 3555. Both proposals would have amended the work opportunity tax credit to allow an increased work opportunity tax credit for long-term unemployed individuals (individuals who are unemployed and receiving unemployment compensation for six months or more).

Representative David McKinley introduced the Manufacturing Economic Recovery Act of 2015, H.R. 3622. The bill, among other items, would have created a permanent work opportunity tax

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<sup>35</sup> For implications of required drug testing, see CRS Report R42326, *Constitutional Analysis of Suspicionless Drug Testing Requirements for the Receipt of Governmental Benefits*.

<sup>36</sup> The authorization of the WOTC was extended after the introduction of this proposal by P.L. 114-113. Under current law, wages earned by eligible workers who begin work before December 31, 2019, are eligible for the WOTC. For additional information on WOTC, see CRS Report R43729, *The Work Opportunity Tax Credit*.

credit for hiring a full-time employee in a manufacturing facility located in the United States and included an increased credit for hiring individuals receiving unemployment compensation.

Delegate Eleanor Holmes Norton introduced the Reducing Long-Term Unemployment Act, H.R. 4593. The bill would have suspended employment and railroad retirement taxes for employers who hired unemployed individuals through 2017. The aggregate reduction in taxes from such suspension would have been limited to \$5,000 per employee.

Representative Bonnie Watson Coleman introduced the Investing in Older Americans Act of 2016, H.R. 4973. The bill would have made the WOTC permanent and expanded it to include the hiring of older long-term unemployment recipients who are at least 55 years old at the time of hiring. The bill would have limited the amount of the qualified first-year wages that may be taken into account under the WOTC to \$14,000 for a qualified older long-term unemployment recipient.

## **Reauthorize Emergency Unemployment Compensation**

Two bills would have reauthorized the lapsed temporary Emergency Unemployment Compensation (EUC08) benefits until the end of 2015: H.R. 2721, the Pathways Out of Poverty Act of 2015 and H.R. 3555, the Jobs! Jobs! Jobs! Act of 2015 (Representative Frederica Wilson).

## **Vouchers and Demonstration Projects**

Representative James Renacci sponsored H.R. 2509, the Flexibility to Promote Reemployment Act. The bill would have made a number of changes to the state UC demonstration projects created by the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96).<sup>37</sup> The bill would have extended the time period that the (now-expired) state demonstration projects could be approved by DOL through December 31, 2019 (P.L. 112-96 authorized these demonstration projects through December 31, 2015), as well as expanded the existing authority for state UC demonstration projects by authorizing 10 states per year to conduct approved demonstration projects (the original, expired authority was only for 10 states total). H.R. 2509 also would have revised state UC demonstration project requirements, including removing a requirement that any direct disbursements paid to employers for hiring UC claimants not exceed an individual's UC weekly benefit amount and requiring that DOL approve state applications for UC demonstration projects based on the order of receipt. Additionally, the bill would have transferred the responsibility for the state UC demonstration project impact evaluation from the states, as under the now-expired demonstration authority, to DOL and would have required a specific procedure for termination of the state UC demonstration project by DOL.

Both H.R. 2721, the Pathways Out of Poverty Act of 2015, and H.R. 3555, the Jobs! Jobs! Jobs! Act of 2015, among many provisions, would have allowed states to (1) establish a Bridge to Work program to provide EUC08 claimants with short-term work experience placements with eligible employers; (2) provide a wage insurance program to pay, for up to two years, an EUC08 claimant who obtains reemployment up to 50% of the difference between the wages received at the time of work separation and the wages received for reemployment; and (3) provide a program of enhanced reemployment services to EUC08 claimants, including unemployed individuals who have exhausted their EUC08 rights.

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<sup>37</sup> For more details on these state UC demonstration projects, as authorized under 42 U.S.C. §505, see CRS Report R41662, *Unemployment Insurance: Legislative Issues in the 112th Congress*.

## **Job Training and Education**

Representative Rodney Davis sponsored H.R. 2219, the Opportunity KNOCKs Act. The bill would have required that states allow UC beneficiaries to participate in a Workforce Investment Act (WIA) authorized job training program and remain eligible for benefits.<sup>38</sup> If the UC beneficiary has been profiled to exhaust regular benefits, the individual would have been allowed to enroll in any coursework necessary to attain a recognized postsecondary credential.

## **Relocation Subsidies**

Representative Tony Cárdenas sponsored H.R. 2755, the American Worker Mobility Act of 2015. The proposal would have authorized the U.S. Department of Labor to grant a relocation subsidy of up to \$10,000 to long-term unemployed workers.

## **Short-Time Compensation<sup>39</sup>**

Both H.R. 2721, the Pathways Out of Poverty Act of 2015, and H.R. 3555, the Jobs! Jobs! Jobs! Act of 2015, would have provided temporary 100% federal financing for up to three years and six months after enactment for short-time compensation (STC) benefits in states with existing STC programs. States without existing STC programs would have been allowed to enter into an agreement with DOL for up to two years and three months after enactment and 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. If a state would have entered into an agreement with the Secretary of Labor and then subsequently enacted a law providing for STC, that state would have been eligible to receive 100% federal financing at that enactment.

The proposals would have awarded grants of up to \$700 million total 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. This proposal would have provided \$1.5 million for DOL to submit a report to Congress and the President, within four years of enactment, on the implementation of this provision.

Representative Rosa DeLauro and Senator Jack Reed introduced the Layoff Prevention Extension Act of 2016, H.R. 5408 and S. 1902, respectively. The proposals would have extended federal financing of the STC programs for an additional two years. Additionally, they would have extended the deadline by two years for a state to submit its application for a STC grant through December 31, 2016.

## **Unemployment Benefits for Energy Workers**

Senator Bernie Sanders introduced S. 2398, the Clean Energy Worker Just Transition Act. Among other provisions, the proposal would have provided additional weeks of unemployment benefits for adversely affected workers in coal-related or coal-dependent or similar energy industries. The

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<sup>38</sup> The Workforce Innovation and Opportunity Act of 2014 (WIOA; P.L. 113-128) amended and reauthorized many Workforce Investment Act (WIA) programs.

<sup>39</sup> See CRS Report R40689, *Compensated Work Sharing Arrangements (Short-Time Compensation) as an Alternative to Layoffs*, for details on STC.

workers' employment status would have had to change for causes attributable to the low cost of competing alternative forms of energy.<sup>40</sup>

Representative Evan Jenkins introduced H.R. 5669, the Creating Opportunities for America's Laid-off (COAL) Miners Act of 2016. The proposal would have added up to 26 weeks of additional unemployment benefits for adversely affected workers in coal-related or coal-dependent or similar energy industries.

## **Domestic Violence**

Representative Lucille Roybal-Allard and Senator Patty Murray introduced the Security and Financial Empowerment Act of 2015, H.R. 3841 and S. 2208, respectively. The bills would have required states to consider an individual who quit a job as a result of domestic or sexual violence to be eligible for UC benefits.

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<sup>40</sup> The assistance would have included temporary additional unemployment compensation, health insurance premium subsidy tax credits, training and support for employment, as well as additional pension benefits.



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