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Unemployment Insurance: Legislative Issues in the 115th Congress

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Summary

The 115th Congress continues to consider many issues related to the two major components of the unemployment insurance (UI) system: Unemployment Compensation (UC) and Extended Benefits (EB). This report provides short summaries of legislative proposals with respect to UI programs. It also gives a brief overview of the UI programs that may provide benefits to eligible unemployed workers. In addition, it briefly summarizes UI proposals included in the President's budget for FY2018.

President Trump signed H.J.Res. 42 on March 30, 2017 (P.L. 115-17). This Congressional Review Act (CRA) resolution negated 20 C.F.R. Part 620. This now-negated rule had set out the circumstances under which states were allowed to prospectively drug test UC claimants based upon the prevalence of drug testing in the occupations in which they were seeking employment.

For information on the expired Emergency Unemployment Compensation 2008 (EUC08) program, which provided additional unemployment benefits from 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*.

Contents

Contacts

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.[1] Currently, although the UC and EB programs are both authorized, no state is in an active EB period.

For information on the expired Emergency Unemployment Compensation 2008 (EUC08) program, which provided additional unemployment benefits depending on state economic conditions from 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.[2] Former federal workers may be eligible for unemployment benefits through the Unemployment Compensation for Federal Employees (UCFE) program.[3] Former U.S. military servicemembers may be eligible for unemployment benefits through the Unemployment Compensation for Ex-servicemembers (UCX) program.[4] 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. This results in essentially 53 different programs.[5] Generally, UC eligibility is based on attaining qualified wages and employment in covered work over a 12-month period (called a base period)

[1] 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*.

[2] 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.

[3] 5 U.S.C. §§8501-8508.

[4] 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*.

[5] The District of Columbia, Puerto Rico, and the Virgin Islands are considered to be states under UC law.

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 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.[6] Additionally, each state's UC law requires individuals to have lost their jobs through no fault of their own, and recipients must be able to work, available for work, and actively seeking work.[7] These eligibility requirements help ensure that UC benefits are directed toward workers with significant labor market experience and who are unemployed because of economic conditions.

The UC program is financed by federal taxes under the Federal Unemployment Tax Act[8] (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.[9]

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 conditions exist within the state.

[6] For details on UC eligibility and benefits, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*.

[7] In some cases a worker may be eligible for benefit based upon quitting a job for a "good cause" reason. In all states, individuals who leave their work voluntarily must meet the state's good cause requirements if they are not to be disqualified from receiving UC. In many states, good cause is explicitly restricted to reasons connected with the work, attributable to the employer, or involving fault on the part of the employer. (For those states, see Table 5.5 in U.S. Department of Labor (DOL), *2017 Comparison of State Unemployment Insurance Laws*, available at https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2017/nonmonetary.pdf.)

[8] 23 U.S.C. §§3301-11.

[9] 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*.

Extended Benefit Triggers

The EB program is triggered when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels.[10] All states must pay up to 13 weeks of EB if the 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—up to an additional 13 weeks of benefits if the state's IUR is at least 6%, regardless of previous years' averages.
- Option 2—up to 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; up to 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.[11]

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.[12] States fund the other half (50%) of EB benefit costs through their SUTA.[13]

[10] The total unemployment rate (TUR) is the three-month average of the ratio of unemployed workers to all workers (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 category, 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.

[11] 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.

[12] 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.

[13] 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.

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.[14] 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. Please see CRS Report R43993, *Unemployment Insurance: Legislative Issues in the 114th Congress* for additional information on the implications of the sequester order for FY2015 and FY2016.

FY2017 Sequester of Unemployment Insurance Benefits

The FY2017 sequestration order required a 6.9% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions are applicable to discretionary programs, projects, and activities.[15] 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 has not been activated in any state from the beginning of FY2017 through the time of this report's publication.[16]

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.[17] 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 states' employers may face increased net FUTA rates until the loans are repaid.[18]

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[14] See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*.

[15] Office of Management and Budget (OMB), *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2017*, Washington, DC, February 9, 2016, https://www.irs.gov/pub/whistleblower/2017_jc_sequestration_report_house.pdf.

[16] For details, see Employment and Training Administration, U.S. Department of Labor, *Unemployment Insurance Program Letter*, UIPL 9-17, Washington, DC, January 19, 2017, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_09-17_Acc.pdf.

[17] 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).

[18] 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*.

As of May 24, 2017, only the Virgin Islands had outstanding loans. The Virgin Islands owed a cumulative $65 million to the federal accounts within the UTF.[19]

President's Budget Proposal for FY2018

The President's budget for FY2018 proposes changes to several aspects of the UI system.[20] It would create a new required standard for state account balances within the UTF. The President's FY2018 budget also proposes to make funding for Reemployment Services and Eligibility Assessments (RESEA) permanent beginning in 2019, and to make these assessments mandatory for 50% of UC beneficiaries. Additionally, the proposal creates a new benefit entitlement for paid parental leave financed through state unemployment taxes. Finally, the President's budget for FY2018 proposes a set of additional integrity measures, including offsetting Social Security Disability Insurance (SSDI) benefits for concurrent receipt of UI benefits.

New Minimum Account Balance for State UTF Accounts

The President's budget proposal for FY2018 would require states to maintain a UTF account balance of at least 50% of the state's Average High Cost Multiple[21] (AHCM). The proposal would alter the rules for calculating the net FUTA rate, requiring a higher net FUTA rate on a state's employers if that state maintained an AHCM of less than 0.5 on January 1 of two or more consecutive years. The additional FUTA revenue would be deposited into the state UTF account and would be terminated once the state met the 0.5 AHCM criteria.[22]

Mandatory RESEA Services

The President's budget proposal for FY2018 would create permanent and mandatory RESEA program funding, beginning in 2019. States would be required to provide reemployment services and eligibility assessments to 50% of UC claimants as well as to 100% of Unemployment Compensation for Ex-Servicemembers (UCX) claimants.[23]

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[19] U.S. Department of the Treasury, Bureau of Public Debt, *Title XII Advance Activities Schedule*, April 18, 2017, at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm.

[20] The President's detailed budget proposal for UC in FY2018 is accessible at https://www.dol.gov/sites/default/files/CBJ-2018-V1-07.pdf.

[21] The average high-cost multiple (AHCM) is the ratio of actual UTF account balances to the average of the three highest years of benefit payments experienced by the state over the past 20 years. Presumably, the average of the three 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.

[22] For the current AHCM in each state, see the last column of Table 1 in U.S. Department of Labor, Office of Unemployment Insurance, *State Unemployment Insurance Trust Fund Solvency Report*, Washington, DC, March 2017, https://ows.doleta.gov/unemploy/docs/trustFundSolvReport2017.pdf.

[23] Under current law, due to changes made by the Emergency Unemployment Compensation Act of 1991 (P.L. 102-164), states are required to treat former military servicemembers the same as other unemployed workers with respect to UC benefit levels, the waiting period for benefits, and benefit duration. For details on UCX, see CRS Report RS22440, *Unemployment Compensation (Insurance) and Military Service*.

Paid Family Leave Benefit

The President's budget proposal for FY2018 would require states to establish a paid parental leave benefit by 2020 using the UC program as its administrative framework. States would be required to provide six weeks of benefits to a worker on leave or otherwise absent from work for the birth or adoption of the worker's child.[24] States would have discretion to determine the parameters of eligibility and financing for this new paid parental leave benefit. For information on a previous attempt to create a paid benefit for the birth or adoption of a child through the UC program, see CRS In Focus IF10643, *Unemployment Compensation (UC) and Family Leave*.

UI Program Integrity

Requirements to Use Particular Data Sources for Program Integrity

The President's 2018 budget includes additional integrity measures that would require states to use three specific data sources to confirm an individual's eligibility for UC benefits: State Information Data Exchange System (SIDES), the National Directory for New Hires (NDNH), and the Prisoner Update Processing System.[25]

Additional Integrity Proposals

The proposal would create several additional integrity measures. These include

- giving the Labor Secretary authority to implement new corrective action measures in response to poor state administrative performance within the program;
- allowing states to retain up to 5% of UC overpayments for program integrity use;
- requiring states to deposit all UC penalty and interest payments into a special state fund, with these funds required to be used for improving state UI administration as well as providing reemployment services for UI claimants;[26] and
- offsetting SSDI benefits to account for concurrent receipt of UI benefits.[27]

[24] It is not clear if this proposal creates any new entitlement to job-protected leave itself; rather, it appears to create a new entitlement to income replacement while an individual is taking parental leave. For information on states that currently operate state paid family leave insurance programs, including California, Rhode Island, and New Jersey, see CRS Report R44835, *Paid Family Leave in the United States*.

[25] States currently have the federal authority to use these data sources, but their use is not mandatory.

[26] In addition, under this proposal, states with high improper payment rates would be required to spend a portion of the UC penalty and interest payments funds on program integrity activities.

[27] For a discussion of legislative proposals on this issue introduced in the 114th Congress, see the section on "Concurrent Receipt of SSDI and UI Benefits" in CRS Report R43993, *Unemployment Insurance: Legislative Issues in the 114th Congress*. For general background on the issue of concurrent receipt of SSDI and UI, see CRS Report R43471, *Concurrent Receipt of Social Security Disability Insurance (SSDI) and Unemployment Insurance (UI): Background and Legislative Proposals*.

Enacted Laws in the 115th Congress

Congressional Review Act: Disapproval of Unemployment Compensation Drug Testing Regulations (H.J.Res. 42/P.L. 115-17)

On March 31, 2017, President Trump signed H.J.Res. 42/P.L. 115-17. This Congressional Review Act (CRA) resolution negated 20 C.F.R. Part 620.[28] This rule had set out the circumstances under which states were allowed to prospectively drug test UC claimants based upon the prevalence of drug testing in the occupations in which they were seeking employment.[29] Since there are no longer any lists of occupations that require drug testing within the UC sections of the *Code of Federal Regulations* (on account of P.L. 115-17), this ability to prospectively test UC claimants based upon occupation is no longer available to states. Without this rule, states may drug test UC claimants only if they were discharged from employment because of either unlawful drug use or for refusing a drug test.[30]

S.J.Res. 23, introduced by Senator Ted Cruz on February 16, 2017, proposed measures identical to H.J.Res. 42.

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[28] See CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*.

[29] Section 2105 of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96; February 22, 2012) amended federal law to permit states to conduct two types of drug testing: (1) drug testing of UC applicants who were discharged from employment with their most recent employer (as defined under state law) for unlawful drug use (this remains available to states); and (2) drug testing of UC applicants for whom suitable work (as defined under state law) is available only in an occupation that regularly conducts drug testing, as determined under regulations issued by the Secretary of Labor. (Because there are no regulations in effect with the passage of P.L. 115-17, this option is not currently available to states.)

[30] Prior to issuing the final rule on this issue, DOL released guidance to states on drug testing of UC applicants who were discharged from employment with their most recent employer because of unlawful drug use or for refusing drug testing; this guidance remains in effect. U.S. DOL, Unemployment Insurance Program Letter (UIPL), No. 1-15, "Permissible Drug Testing of Certain Unemployment Compensation Applicants Provided for in Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012," October 4, 2014, available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL-1-15_Acc.pdf.