Section 1. Short Title; Table of Contents

Current Law.

Not applicable

Explanation of Provision

The Act may be cited as the "Emergency Extended Unemployment Compensation Act of 2008." Provides table of contents.

Section 2. Federal-State Agreements.

Current Law.

The Unemployment Compensation (UC) program, funded by both federal and state payroll taxes, pays benefits to covered workers who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. Federal administration of UC is under the purview of the U.S. Department of Labor (DOL). Federal law sets broad rules that the 53 state programs must follow. The federal tax pays for both federal and state administrative costs, the federal share of the extended benefit (EB) program (50%), loans to insolvent state UC accounts, and state employment services. The state tax pays for the regular UC benefit and the state share of the EB program (50%). If the state "triggers on" to the EB program based on a definition of "high unemployment," the federal share is 80%.

Explanation of Provision.

The bill would create a new temporary extension of unemployment compensation that would entitle certain unemployed individuals to unemployment benefits (emergency unemployment compensation) that are not available under current law. Individuals who had exhausted their benefits with respect to a benefit year (excluding any benefit year that ended before May 1, 2007) may be eligible for these additional benefits. The amount of the benefit would be the equivalent of the individual's weekly regular UC benefit (including dependents' allowances).

The terms and conditions of the state law for receipt of regular UC benefits would also apply to these benefits.

Governors of the states (if state law permits) would be able to provide for the payment of the emergency UC benefit before the EB benefit. Such an election would not require a state to "trigger off" an EB period. Thus, once the regular UC benefit was exhausted a state could opt for the individual to receive the emergency UC benefit (100% federal funding) before receiving the EB benefit (50% federal funding and 50% state funding; or, in the EB "high unemployment period" case, 80% federal funding and 20% state funding).

Effective Date.

The proposal is effective on the date of enactment.

Section 3. Emergency Unemployment Compensation Account.

Current Law.

The EB program, established by P.L. 91-373 (26 U.S.C. 3304, note), may extend UC benefits at the state level if certain economic situations exist within the state. Although the EB program is not currently active in any state, it — like the UC program — is permanently authorized. The EB program is triggered when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels. [1] 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 2 previous years. There are two other optional thresholds that states may choose. (They may choose one, both, or none.) Under these options, the state 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; or, in a "high unemployment period," an additional 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

Beyond the regular UC benefit eligibility requirements, eligibility for EB benefits requires that individuals must have 20 weeks of full-time insured employment or its equivalent.

Explanation of Provision.

The provision would establish an account for individuals who were eligible for this emergency extended UC benefit. The number of weeks an individual would be eligible for these emergency extended UC benefits would be the lesser of 50% of the total regular UC eligibility or 13 weeks.

Under a special rule, if the state is in an EB period (which has a special definition for purposes of this temporary extension, see next paragraph) at the time the UC benefits exhausted, then the amount of emergency UC benefits is augmented by an additional amount that is equivalent to an additional 13 weeks (or 50% of the total regular UC eligibility, if less). Thus, in those "high-unemployment" states where the EB program was triggered, temporary benefits of

[1] The TUR is essentially a weekly version of the seasonally-adjusted unemployment rate published by the Bureau of Labor Statistics. That is, the ratio of the total number of unemployed persons divided by the total number of employed and unemployed persons. The IUR is substantially different from the TUR because it excludes several important groups: self-employed workers, unpaid family workers, workers in certain not-for-profit organizations, and several categories of workers. In addition to those unemployed workers whose last jobs were in excluded employment, the insured unemployed rate excludes the following: those who have exhausted their UC 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.

up to 26 weeks would be possible (13 additional weeks plus another 13 extra weeks for the special EB period).

The bill would temporarily change the definition of an EB period for the purposes of this provision by expanding the definition of an EB period to include states with a TUR that was at least 6.0% and states with an IUR that was at least 4.0% (regardless of the IUR and TUR in the same 13-week period in the previous two years).

Effective Date.

The proposal is effective on the date of enactment.

Section 4. Payments to States Having Agreements for the Payment of Emergency Unemployment Compensation.

Current Law.

The federal unemployment tax on employers, among other uses, pays the federal share (50%) of the extended benefit (EB) program and 100% of federal and state administrative costs. State unemployment taxes on employers pay for 100% of the regular UC benefit and 50% of the EB benefit. If the state "triggers on" to the EB program based on a definition of "high unemployment," the federal share is increased to 80% and the state share is decreased to 20%.

Explanation of Provision.

100% of the temporary extended UC benefit would be federally funded.

Effective Date.

The proposal is effective on the date of enactment.

Section 5. Financing Provisions.

Current Law.

UC benefits are financed through employer taxes. The federal taxes on employers are under the authority of the Federal Unemployment Tax Act (FUTA), and the state taxes are under the authority given by the State Unemployment Tax Acts (SUTA). These taxes are deposited in the appropriate accounts within the U.S. Treasury's Unemployment Trust Fund (UTF).

Among its 59 accounts, the federal UTF in the U.S. Treasury includes: the Employment Security Administration Account (ESAA), the Extended Unemployment Compensation Account (EUCA), the Federal Unemployment Account (FUA), 53 state accounts, the Federal Employees Compensation Account, and two accounts related to the Railroad Retirement Board. Federal unemployment taxes are placed in the ESAA, the EUCA, and the FUA. Each state's unemployment taxes are placed in the appropriate state's account.

Explanation of Provision.

The provision would allow funds in the federal EUCA within the UTF to be used for the payment of emergency UC benefits. In addition, it would appropriate such sums as necessary for administrative costs (i.e., without fiscal year limitation) from the federal ESAA.

The provision would appropriate funds for the emergency UC benefits paid to employees of non-profits and governmental entities from the general fund of the Treasury payable into the federal EUCA. Those amounts would not be required to be repaid.

Effective Date.

The proposal is effective on the date of enactment.

Section 6. Fraud and Overpayments.

Current Law

All state laws provide for recovering UC benefits paid to workers who later are found not to be entitled to them. In addition to direct repayment, states use several tools to recoup these funds. States may, at the discretion of the agency, recover overpayments by deducting from future benefits payable (benefit offset). They also may offset overpayments with state tax refunds due to the worker. They also can compel repayment by pursuing civil action in state court. Finally, some states may assess interest on outstanding overpayment balances. Some states provide that if the overpayment is not the fault of the individual, the individual is not liable to repay the amount overpaid.

Explanation of Provision.

If an individual lies or cooperates in a lie in order to receive an emergency UC benefit to which he or she was not entitled, the individual would be ineligible for further emergency UC benefits and would be subject to prosecution under section 1001 of title 18 of the United States Code (Chapter 47 --- Fraud and False Statements).

The provision would mandate states to require individuals who have received emergency UC benefits to which they were not entitled to repay the benefits. The state would be able to waive the repayment if it determines the payment was made without fault on the part of the individual and such repayment would be contrary to equity and good conscience.

The provision would allow states to recover erroneous payments through deductions from any emergency UC benefits payable to such individual or from any state or federal unemployment benefit with respect to any week of unemployment, during the 3-year period after the date such individual received the erroneous emergency UC benefit payment. No single deduction would be allowed to exceed 50% of the weekly benefit amount from which such deduction is made. In addition to regular UC and EB benefits, the Trade Readjustment Allowance and the federal Disaster Unemployment Assistance benefit (among other similar benefits) also would qualify to have such a deduction.

No repayment shall be required until a determination has been made and an opportunity for a fair hearing has been given to the individual and the determination has become final.

Effective Date.

The proposal is effective on the date of enactment.

Section 7. Definitions.

Current Law.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) provides definitions for the EB program. Included among the definitions are the following:

- The term "compensation" means cash benefits payable to individuals with respect to their unemployment.
- The term "regular compensation" means compensation payable to an individual under any state unemployment compensation law (including compensation payable pursuant to 5 U.S.C. chapter 85—that is, federal employee and ex-servicemember unemployment benefits), other than extended compensation and additional compensation.
- The term "extended compensation" means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the state law which satisfy the requirements of this title with respect to the payment of extended compensation.
- The term "additional compensation" means compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors.
- The term "benefit year" means the benefit year as defined in the applicable state law.
- The term "base period" means the base period as determined under applicable state law for the benefit year.
- The term "Secretary" means the Secretary of Labor of the United States.
- The term "state" includes the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
- The term "state agency" means the agency of the State which administers its state law.
- The term "state law" means the UC law of the state, approved by the Secretary of Labor under section 3304 of the Internal Revenue Code of 1986.
- The term "week" means a week as defined in the applicable state law.

Explanation of provision.

The proposal would keep all but one of these definitions. The proposal does not include the definition of the term "Secretary."

Effective Date.

The proposal is effective on the date of enactment.

Section 8. Applicability.

Current Law.

Not applicable.

Explanation of Provision.

The program would terminate in the week ending on or before February 1, 2009. Those unemployed individuals who had qualified for the emergency UC benefit or had qualified for the additional "EB" (high unemployment) provision would continue to receive payments for the number of weeks they were deemed eligible. However, if the unemployed individual has not exhausted the first emergency extension of UC benefits by December 31, 2008, regardless of state economic conditions, the individual would not be eligible for an additional "EB" (high unemployment) extension of the emergency UC benefit. If an individual exhausts his or her regular UC benefits after December 31, 2008, the individual would not be eligible for any emergency UC benefit. No such benefits shall be payable for any week beginning after April 30, 2009.

Effective Date.

The proposal is effective on the date of enactment.