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Unemployment Benefits: Legislative Issues in the 108th Congress

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Summary

Changes in the federal-state unemployment compensation (UC) system are likely to be considered during the 108th Congress. Legislation has been introduced to reform and expand the UC system. The 107th Congress enacted the *Temporary Extended Unemployment Compensation* (TEUC) program (P.L. 107-147), which included a 13-week extension of UC benefits, a $8 billion distribution to states, and 13 additional weeks of extended UC benefits in high unemployment states. These temporary benefits have been extended twice during the 108th Congress, (P.L. 108-1 and P.L. 108-36) through the week ending before December 31, 2003. Legislation has been introduced to extend or expand the TEUC program. The Congress also enacted special TEUC benefits for displaced airline related workers, known as TEUC-A (P.L. 108-11). On February 4, 2004, the House passed an amendment to the Community Services Block Grant program reauthorization bill, H.R. 3030 (H.Admt. 462), that would provide a 6-month extension of TEUC benefits. (This report will be updated as legislative activity warrants.)

Background

The UC system, 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 U.S. Department of Labor (DoL). The UC system, established by the Social Security Act of 1935 (P.L. 74-271), operates in each state, the District of Columbia, Puerto Rico, and the Virgin Islands. Federal law sets broad rules that the 53 state programs must follow and levies a payroll tax on employers under the Federal Unemployment Tax Act (FUTA). States set most of the specific rules for eligibility, benefits, and financing. States also process the claims and pay the benefits. The UC system helps counter economic trends. When the economy grows, UC revenue rises and program spending falls, thereby slowing growth. In a recession, revenue falls and program spending rises, stimulating the economy. Benefits totaling $53.2 billion are expected to be paid to 10.5 million UC claimants in all programs during FY2003.

Coverage. Federal law defines the jobs a state UC program must cover to avoid its employers' having to pay the maximum FUTA tax rate (6.2%) on the first $7,000 of each employee's annual pay (**Table 1**). If a state complies with all federal rules, the *net* FUTA tax rate is only 0.8%. A state must cover jobs in firms that pay at least $1,500 in wages during any calendar quarter or employ at least one worker in each of 20 weeks in the current or prior year. The FUTA tax is not paid by governmental or nonprofit employers, but state programs must cover government workers and all workers in nonprofits that employ at least four workers in each of 20 weeks in the current or prior year.

Table 1. FUTA Tax Rates and Taxable Wage Ceilings

Calendar years	Net tax rate (%)	Taxable wage ceiling	Calendar years	Net tax rate (%)	Taxable wage ceiling
1937-1939	0.3	none	1972	0.5	$4,200
1940-1960	0.3	$3,000	1973	0.58	4,200
1961	0.4	3,000	1974-1976	0.5	4,200
1962	0.8	3,000	1977	0.7	4,200
1963	0.65	3,000	1978-1982	0.7	6,000
1964-1969	0.4	3,000	1983-2007	0.8	7,000
1970-1971	0.5	3,000	2008 & later	0.6	7,000

Benefits. To receive unemployment compensation benefits, claimants must have enough recent earnings to meet their state's earnings requirements. States usually disqualify claimants who lost their jobs because of: inability to work or unavailability for work; voluntarily quitting without good cause; discharge for job-related misconduct; refusal of suitable work without good cause; or a labor dispute. Generally, benefits are based on wages in covered work over a 12-month period. Most state benefit formulas replace half of a claimant's average weekly wage up to a weekly maximum. Weekly maximums in 2002 ranged from $133 (Puerto Rico) to $512 (Massachusetts), and, in states that provide dependents' allowances, up to $768 (Massachusetts). The average weekly benefit nationwide is estimated to be $259 for FY2003. Benefits are available for up to 26 weeks (30 weeks in Massachusetts and Washington). The average benefit duration in FY2003 is expected to be 19.6 weeks. A federal-state extended benefits (EB) program offers benefits for an additional 13 to 20 weeks in states with unemployment rates above certain threshold levels.

Financing. The 0.8% FUTA tax funds federal and state administration, the federal share of EB, loans to insolvent state UC accounts, and state employment services. States levy their own payroll taxes to fund UC benefits. State ceilings on taxable wages range from the $7,000 FUTA federal taxable wage ceiling (11 states) up to $30,200 (Hawaii). State UC tax rates are experience-rated. (Employers generating the fewest claimants have the lowest rates.) State tax rates averaged 1.8% of taxable wages and 0.6% of total wages in FY2003. State UC revenue is deposited in U.S. Treasury accounts as federal revenue in the budget. State Unemployment Trust Fund accounts are credited for this revenue. These credits allow Treasury to reimburse states for their benefit payments without annual appropriations, but these reimbursements do count as federal budget outlays. If a state trust fund account becomes insolvent, a state may borrow federal funds. Unemployment Trust Fund revenue exceeded outlays from FY1995- FY 2001, but outlays significantly exceeded trust fund revenue in FY2002 and FY2003 (**Table 2**).

Table 2. Revenue and Spending Associated With Unemployment Compensation, FY1995-FY2003
(in billions of dollars)

	1995	1996	1997	1998	1999	2000	2001	2002	2003
UC revenue, total	**28.9**	**28.6**	**28.2**	**27.5**	**26.4**	**27.1**	**28.7**	**28.9**	**34.1**
FUTA tax	5.7	5.9	6.1	6.4	6.5	6.7	7.1	6.9	6.8
State UC taxes	23.2	22.7	22.1	21.1	19.9	20.4	21.6	22.0	27.3
UC outlays, total	**24.6**	**25.6**	**23.8**	**22.9**	**24.4**	**25.1**	**27.7**	**48.8**	**53.2**
Regular benefits	20.9	22.0	20.3	19.4	20.7	21.6	26.8	41.5	42.6
EB	*	*	*	*	*	*	*	0.1	0.54
Emergency UC	*	*	*	—	—	—	—	6.3	8.9
Administration	3.6	3.6	3.5	3.5	3.7	3.5	3.6	4.1	4.1

Source: U.S. Dept. of Labor. *UI Outlook,* January 2003.
* Less than $50 million.

Legislative Issues in the 108th Congress

Proposal to Extend Unemployment Compensation Benefits

The EB program provides for additional weeks of benefits up to a maximum of 13 weeks during periods of high unemployment, and up to a maximum of 20 weeks in certain states with extremely high unemployment. EB benefits are 50% federally funded, with states funding 50% from their trust funds. The benefits are triggered when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels. However, the EB program has been viewed by some as not being sufficiently sensitive to changes in the economy. The Congress has acted 4 times — in 1971, 1974, 1982, and 1991 — to establish temporary programs of extended UC benefits.[1]

The Temporary Extended Unemployment Compensation (TEUC) program was enacted on March 9, 2002, as part of the *Job Creation and Worker Assistance Act of 2002* (P.L. 107-147). The TEUC program provides up to 13 weeks of federally funded benefits for unemployed workers in all states who have exhausted their regular UC benefits. In addition, up to an additional 13 weeks are provided in certain *high unemployment* states

[1] For more information on extended UC benefits, see CRS Report RL31277, *Temporary Programs to Extend Unemployment Compensation*, by Jennifer E. Lake.

that have an IUR[2] of 4% or higher and meet certain other criteria (TEUC-X). P.L. 107-147 also provided for a one-time distribution of $8 billion to states in surplus federal unemployment funds, known as *Reed Act* funds.

TEUC benefits are payable, to individuals who, in addition to meeting other applicable state UC law provisions, (1) file an initial claim that was in effect during or after the week of March 15, 2001; (2) exhaust regular benefits or have no benefit rights due to the expiration of a benefit year ending during or after the week of March 15, 2001; (3) have no rights to regular or extended benefits under any state or federal law; and (4) are not receiving benefits under Canadian law.[3] In addition, individuals must also have had 20 weeks of full-time work, or the equivalent in wages, in their base periods.[4]

These temporary benefits ended on December 28, 2002, however in the first law passed by the 108th Congress, these benefits were extended through the end of May 2003 (P.L. 108-1).[5] Most recently, the TEUC program was extended by P.L. 108-26 through the week ending before December 31, 2003, with a phaseout extending through the week of April 3, 2004.

Numerous bills have been introduced in the 108th Congress to further extend and expand the TEUC program. A number of bills were introduced during the first week of the session which, although they contained differing dates through which they would have extended the TEUC program, were superceded by P.L. 108-1. These include, H.R. 17, H.R. 19, H.R. 162, H.R. 209, and H.R. 228. Subsequently, other bills have also been introduced to extend and expand the TEUC program. Some would have extended the program beyond the end of May 2003; some would have provided for additional weeks of benefits for unemployed who have exhausted their benefits; some would have temporarily established alternative triggers for qualifying states as high-unemployment for the TEUC-X program. Bills with some combination or all of these provisions include H.R. 682, H.R. 1239, H.R. 1652, S. 35, S. 225, S. 270, and S. 923. In addition, H.R. 1652, H.R. 2046, H.R. 2111, H.R. 2185, H.R. 2188, S. 270, S. 923, and S. 1079 would have also temporarily expanded regular UC eligibility in all states to include part-time and low-wage unemployed workers. S. 270 would have also temporarily increased UC weekly benefit amounts by the greater of 15% or $25. H.R. 2188 and H.R. 3295 would have also provided 8 additional weeks of TEUC benefits for individuals who had exhausted their TEUC benefits. H.R. 3295 would have extended the program through March 31, 2004, with a phase out through June 30, 2004, in high unemployment states.

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[2] The IUR is computed by dividing the number of UC claimants by the number of individuals in jobs covered by UC.

[3] DoL, Unemployment Insurance Program Letter No. 17-02.

[4] A worker's benefit rights are determined on the basis of his/her employment in covered work over a prior period, called the base period. In most states, an individual's base period is a four quarter, 52-week period that depends on when the worker first applies for benefits or first begins drawing benefits. However, several states lengthen the base period under specified conditions.

[5] See CRS Report RS21397, *Unemployment Benefits: Temporary Extended Unemployment Compensation (TEUC) Program*, for additional details.

Since the enactment of P.L. 108-26, several bills have been introduced to further extend and expand TEUC. H.R. 3156 would have provided additional weeks of TEUC benefits equal to the individual's original TEUC entitlement for individuals who had exhausted their TEUC benefits and remained unemployed. H.R. 3244 would have extended the TEUC program through July 1, 2004, with a phase-out period through December 31, 2004, along with a temporary alternative TEUC trigger and expansions of regular UC benefit eligibility for part-time and low-wage workers. S. 1943, H.R. 3499, H.R. 3568, and H.R. 3639 included TEUC extension provisions similar to those in H.R. 3244, as well as provisions for expand TEUC to 26 weeks, reduce TEUC-X to 7 weeks of benefits, and provide for alternative TEUC-X triggers. S. 1708 and S. 1943 also would have extended benefits for railroad workers with 10 or more years of service. H.R. 3270 and S. 1839 would have extended TEUC through June 30, 2004, with a phaseout through September 30, 2004. S. 1853 would have extended TEUC through July 1, 2004, provided extra weeks of TEUC and TEUC-X (up to 26 and 7 weeks, respectively) for weeks of unemployment after enactment, provided for a 4% IUR trigger and eliminate the use of the 120% or 110% threshold tests used to trigger TEUC-X in high-unemployment states, and would have temporarily extended benefits for certain railroad workers. S. 1870, H.R. 3487, and H.R. 3554 would have provided for alternative TEUC-X triggers.

At the beginning of the second session of the 108th Congress, S. 2006 was introduced to extend TEUC through the week ending before June 30, 2004, with a phase out period through the week ending before September 30, 2004. The bill also would provide a 4% TEUC-X trigger and provide states with the authority to temporarily waive the look-back threshold requirements for the permanent EB program.

On February 4, 2004, the House passed an amendment to the Community Services Block Grant program reauthorization bill, H.R. 3030 (H.Admt. 462), administered by the Department of Health and Human Services, that would provide a 6-month extension of TEUC benefits.

Proposals to Reform Unemployment Compensation

In recent years, calls for reforming the UC program have emerged from various interest groups, including labor, employers, and state employment agencies. These groups argue that changes in the economy and the workforce since the program was enacted in the 1930s have led to inefficiencies and inequities in the UC program that need to be reformed. Today more women are in the workforce. They, and many new entrants into the labor force are often employed in part-time, temporary or short-term jobs that can leave them ineligible for UC during periods of unemployment. Many see the declines in UC recipiency as due, in part, to stricter state eligibility requirements related to earnings minimums and reduced growth in manufacturing. Employers see inefficiencies in the administration of the program, including complex tax forms, multiple tax filing requirements, and complex record keeping requirements.

In the 108th Congress, H.R. 1802, introduced on April 11, 2003, would require states to expand eligibility for UC benefits to workers seeking part-time work and use an individual's most recent earnings in determining UC eligibility (often referred to as the *alternate base period*), which could make it easier for certain new or low-wage workers to qualify for UC benefits. States would be prohibited from denying UC benefits to individuals solely because they were seasonal workers, because they left employment because of sexual harassment, because of loss of adequate child are for children under age 13, or because the individual is a victim of domestic violence. The bill would expand the UC tax wage base from the first $7,000 of employee wages to the taxable wage base used for Social Security taxes ($87,000 in 2003), and lower the gross FUTA tax from 6.2% to 5.59%.

H.R. 2188, in addition to extending and expanding TEUC (described briefly above), provides several reforms to the UC system. The bill would lower the permanent EB program's insured unemployment rate (IUR) triggers from 5% to 4%, would provide for variable earnings to be credited to state UC trust fund accounts depending on the state's ability to meet certain funding goals, and would provide interest-free advances to state UC accounts only to states who met certain funding goals. The bill would provide a two-year suspension of federal income tax on UC benefits for taxable years beginning after December 31, 2002, and permit states to collect FUTA taxes from employers in the state instead of FUTA taxes being sent to the Secretary of DoL for taxable years beginning after December 31, 2003.

As part of the FY2005 budget request, the Administration proposes to: (1) require states to amend their UI tax laws to deter schemes to avoid paying UC taxes through such means as transfers from businesses to shell companies; (2) reduce UC benefit overpayments and fraud and abuse; and (3) improve the collection of past overpayments through offsets of individuals' federal income tax refunds.

Other Unemployment Compensation Issues

Benefits for Certain Workers Unemployed by Terrorist Attack and The War on Iraq. In response to the unemployment of airline and airline related workers caused by the September 11, 2001 terrorist attacks, subsequent security measures that have been taken, and the war with Iraq, P.L. 108-11, was signed into law on April 16, 2003. This temporary program provides up to 39 weeks of extended benefits to qualified individuals whose regular UC claim is based in whole, or in part, on qualifying employment with a certified air carrier, at a facility at an airport, or with a producer or supplier of products or services for an air carrier.[6] The program has two tiers of benefits, known as TEUC-A and TEUC-AX. These programs are authorized through the week ending before December 29, 2003, and there is a phaseout period for individuals with an existing claim that will run through the week ending before December 26, 2004. H.R. 3405 would make employees of foreign air carriers eligible for TEUC-A and TEUC-AX.

Excluding UC Benefits from Gross Income. Under current law, UC benefits are required to be included in gross income for tax purposes. H.R. 798, introduced on February 13, 2003, would repeal the inclusion in gross income of unemployment compensation. H.R. 1187, introduced on March 11, 2003, would impose a retroactive, 2-year moratorium on the inclusion of UC benefits from gross income for taxable years 2002 and 2003. H.R. 3295 includes a provision to suspend the taxation of UC benefits for taxable years 2004 and 2005.

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[6] For more detailed information, see U.S. Department of Labor, *Special Temporary Extended Unemployment Compensation for Displaced Airline Related Workers*. [http://www.workforcesecurity.doleta.gov/unemploy/factsheetteuc_a.asp]