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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 begins with a brief overview of the UI programs that may provide benefits to eligible unemployed workers. It provides information on legislation enacted in the 115th Congress related to UI programs. In addition, this report includes short summaries of legislative proposals introduced in the 115th Congress as a well as UI proposals included in the President's budget for FY2019.

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. Additionally, President Trump signed P.L. 115-123, the Bipartisan Budget Act of 2018, on February 9, 2018. Among other provisions, P.L. 115-123 includes two types of UI provisions: (1) codification of Reemployment Services and Eligibility Assessments (RESEAs) for UI beneficiaries, including funding and other requirements; and (2) a deferral of outstanding interest on federal UI loans for the U.S. Virgin Islands.

President Trump signed P.L. 115-254, the FAA Reauthorization Act of 2018, on October 5, 2018. Among its many provisions, this law temporarily extends the duration of Disaster Unemployment Assistance (DUA) for an additional 26 weeks (up to 52 weeks total) for persons who were unemployed in Puerto Rico or the U.S. Virgin as a direct result of the 2017 Hurricane Irma and Hurricane Maria disasters.

This report also describes UI legislation proposed in the 115th Congress that addresses the following:

- Rehiring UI beneficiaries and exhaustees—H.R. 3702 and H.R. 4470
- Vouchers and demonstration projects—H.R. 1091
- Additional UI benefits for certain energy workers—S. 987 and H.R. 3314
- Drug Testing—H.R. 3330
- Unemployment Compensation for Ex-Servicemembers (UCX)—H.R. 2861

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*.

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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.[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. More information on the TAA and RTAA programs are in CRS Report R42012, *Trade Adjustment Assistance for Workers*. (The report is out of print, but is available to congressional clients from the author upon request.)

[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. As of the date of this publication, EB is not active in any state.[10]

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[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*.

[10] For the current EB trigger notice, select "Extended Benefits Trigger Notice" at https://ows.doleta.gov/unemploy/claims_arch.asp.

Extended Benefit Triggers

The EB program is triggered when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels.[11] 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.[12]

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.[13] States fund the other half (50%) of EB benefit costs through their SUTA.[14]

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[11] 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.

[12] 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.

[13] 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.

[14] 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 it available), and most forms of administrative funding are subject to the sequester reductions.[15] 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.

FY2018 Sequester of Unemployment Insurance Benefits

The FY2018 sequestration order requires a 6.6% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions are applicable to discretionary programs, projects, and activities.[16] As a result, EB expenditures are required to be reduced 6.6% (only on the federal share of EB benefits) for weeks of unemployment during FY2018.[17] In FY2018, EB was activated only in the U.S. Virgin Islands from December 17, 2017, through June 23, 2018.[18]

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.[19] 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.[20] However, EB was not activated in any state during FY2017.[21]

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

[16] Office of Management and Budget (OMB), *OMB Report to the Congress on the Joint Committee Sequestration for Fiscal Year 2018*, May 23, 2017, https://www.whitehouse.gov/sites/whitehouse.gov/files/omb/sequestration_reports/2018_jc_sequestration_report_may2017_potus.pdf.

[17] For details, see Employment and Training Administration, U.S. Department of Labor, *Unemployment Insurance Program Letter*, UIPL 6-18, March 30, 2018, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_6-18_Acc.pdf.

[18] For the current EB trigger notice, select "Extended Benefits Trigger Notice" at https://ows.doleta.gov/unemploy/claims_arch.asp.

[19] 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.

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

[21] For the historical EB trigger notices, select "Extended Benefits Trigger Notice" and the years of interest at https://ows.doleta.gov/unemploy/claims_arch.asp.

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.[22] 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.[23]

As of November 13, 2018, the Virgin Islands owed $68.5 million to the federal accounts within the UTF.[24]

President's Budget Proposal for FY2019

The President's budget for FY2019 proposes changes to several aspects of the UI system.[25] It would create a new required standard for state account balances within the UTF. The President's FY2019 budget also proposes to make funding for Reemployment Services and Eligibility Assessments (RESEA) permanent beginning in 2020, and to make these assessments mandatory for 50% of UC beneficiaries.[26] Additionally, the proposal would create a new benefit entitlement for paid parental leave financed through state unemployment taxes. Finally, the President's budget for FY2019 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 FY2019 would require states to maintain a UTF account balance of at least 50% of the state's Average High Cost Multiple[27] (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

[22] 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).

[23] 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*.

[24] U.S. Department of the Treasury, Bureau of Public Debt, *Title XII Advance Activities Schedule*, November 13, 2018, at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm.

[25] The President's detailed budget proposal for UC in FY2019 is accessible at https://www.dol.gov/sites/default/files/budget/2019/CBJ-2019-V1-07.pdf. The President's budget for FY2018 included substantively similar UC proposals and is accessible at https://www.dol.gov/sites/default/files/CBJ-2018-V1-07.pdf.

[26] See the section in this report on "RSEA Provisions in Section 30206 of P.L. 115-123" for a description of RESEA changes subsequently enacted under P.L. 115-123, the Bipartisan Budget Act of 2018.

[27] 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.

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.[28]

Mandatory RESEA Services

The President's budget proposal for FY2019 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.[29] (Just prior to the February 12, 2018, release of the President's budget proposal for 2019, Section 30206 of P.L. 115-123, the Bipartisan Budget Act of 2018 (enacted February 9, 2018) codified RESEA. See the section in this report on "**The Bipartisan Budget Act of 2018 (P.L. 115-123)**" for a summary of the enacted RESEA provisions.)

Paid Family Leave Benefit

The President's budget proposal for FY2019 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.[30] 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 2019 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.[31]

[28] 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.

[29] 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*.

[30] 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 (1) states that currently operate state paid family leave insurance programs, including California, Rhode Island, and New Jersey, as well as (2) states that have enacted paid family leave insurance programs, but which are not yet fully implemented and paying benefits (e.g., New York, District of Columbia, and Washington State), see CRS Report R44835, *Paid Family Leave in the United States*.

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

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;[32] and
- offsetting SSDI benefits to account for concurrent receipt of UI benefits.[33]

Proposed Rescission of Expired Temporary Extended Railroad Unemployment Benefits

On May 8, 2018, the Trump Administration submitted to Congress a proposal for 38 rescissions of budget authority. In their transmission, the Office of Management and Budget stated that these rescissions were transmitted pursuant to Section 1012 of the Congressional Budget and Impoundment Control Act of 1974 (2 U.S.C. 683).[34] Included in this proposal was a rescission of $132,612,397 from the unexpended remainder of a $175 million appropriation contained in P.L. 111-92 for a temporary program of extended Railroad unemployment benefits.[35] These temporary mandatory benefits were originally created in 2008 (P.L. 111-5, Title II, Section 2003) and the authority for the benefits expired on December 31, 2013 (P.L. 112-240, Title V, Section 504). The Government Accountability Office issued a letter stating that each proposed rescission was properly classified as a rescission proposal and not as a deferral. Additionally, the letter stated that if the amounts proposed for rescission are not rescinded, the President or the head of the Railroad Retirement Board may use the authority provided in 31 U.S.C. § 1555 to cancel the amounts without any further Congressional action.[36]

[32] 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.

[33] 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*.

[34] The rescission transmittal (rescission proposal no. R18-1) is available on the White House website at https://www.whitehouse.gov/wp-content/uploads/2018/05/POTUS-Rescission-Transmittal-Package-5.8.2018.pdf.

[35] For summary information on the separate unemployment benefits available under the Railroad Unemployment Insurance Act (RUIA), see CRS In Focus IF10481, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*.

[36] U.S. Government Accountability Office, *Impoundment Control Act of 1974: Review of the President's Special Message of May 8, 2018*, B-330045, May 22, 2018, https://www.gao.gov/products/B-330045.

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 Donald Trump signed H.J.Res. 42/P.L. 115-17. This Congressional Review Act (CRA) resolution negated 20 C.F.R. Part 620.[37] 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.[38] 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.[39] On November 5, 2018, DOL published a Notice of Proposed Rulemaking (NPRM) to reissue a rule that identifies occupations that regularly conduct drug testing for purposes of Section 2105 of P.L. 112-96.[40] Because the 2016 regulation was repealed using the Congressional Review Act, this new rule is subject to the reissue requirements of the CRA.[41]

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

The Bipartisan Budget Act of 2018 (P.L. 115-123)

On February 9, 2018, President Donald Trump signed the Bipartisan Budget Act of 2018 (P.L. 115-123). Among other provisions, P.L. 115-123 includes two UI-related changes. First, Section 20801 of P.L. 115-123 authorizes a deferral of interest payments on an outstanding federal UI loan for the U.S. Virgin Islands (USVI). Second, Section 30206 of P.L. 115-123 codifies

[37] For details, see CRS Insight IN10909, *Recent Legislative and Regulatory Developments in States' Ability to Drug Test Unemployment Compensation Applicants and Beneficiaries*.

[38] 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.)

[39] 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.

[40] Employment and Training Administration, "Federal-State Unemployment Compensation Program; Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants Under the Middle Class Tax Relief and Job Creation Act of 2012," 83 *Federal Register* 55311-55318, November 5, 2018, https://www.federalregister.gov/documents/2018/11/05/2018-23952/federal-state-unemployment-compensation-program-establishing-appropriate-occupations-for-drug.

[41] For additional information on the reissue requirements, see CRS Insight IN10996, *Reissued Labor Department Rule Tests Congressional Review Act Ban on Promulgating "Substantially the Same" Rules*.

Reemployment Services and Eligibility Assessments (RESEAs) for UI beneficiaries into Title III of the Social Security Act (SSA) and provides an allocation formula for the funds and other requirements.

Deferral of Interest Payments for USVI in Section 20801 of P.L. 115-123

Two major disaster declarations were announced by the Federal Emergency Management Agency (FEMA) for the U.S. Virgin Islands in September 2017.[42] This provision responds to the resulting economic conditions, including increased unemployment, in the USVI in the aftermath of Hurricanes Irma and Maria. Under this provision, the deadline for USVI's payment of interest on a federal UI loan that was due on September 29, 2017, was extended and not due until September 28, 2018. Additionally, no interest accrued on this outstanding interest payment during the deferral period.[43]

RESEA Provisions in Section 30206 of P.L. 115-123

RESEA grants have been directed to states by U.S. Department of Labor (DOL) since 2005 through discretionary appropriations.[44] Section 30206 of P.L. 115-123 codifies the authority for DOL to administer a RESEA program.[45] It also sets out various requirements for states to use certain types of evidence-based interventions for UI claimants under RESEA as well as allocates discretionary funding for RESEA across three categories (base funding, outcome payments, and research and technical assistance). Under this law, state RESEA programs must include reasonable notice and accommodations to participating UI beneficiaries.

The FAA Reauthorization Act of 2018 (P.L. 115-254)

P.L. 115-254, the FAA Reauthorization Act of 2018, was signed into law on October 5, 2018. Among its many provisions, it retroactively extended Disaster Unemployment Assistance (DUA) for an additional 26 weeks for persons who were unemployed in Puerto Rico and the U.S. Virgin Islands as a direct result of the 2017 Hurricane Irma or Hurricane Maria disasters.[46] (This created a total potential entitlement to DUA of up to 52 weeks for some individuals.) Because the disasters had both been declared more than 52 weeks before the passage of P.L. 115-254, the remaining DUA weeks will be paid retroactively.[47] Individuals who worked in these areas and

[42] See https://www.fema.gov/disaster/4335 and https://www.fema.gov/disaster/4340.

[43] For background on federal UI loans, see the section in this report on "State Fiscal Concerns Alleviating State Unemployment Compensation Stress."

[44] For additional background, see CRS Report R43044, *Expediting the Return to Work: Approaches in the Unemployment Compensation Program*.

[45] The law created a new Section 306 of the Social Security Act. Just over a month later, on March 23, 2018, the Consolidated Appropriations Act, FY2018 (P.L. 115-141), provided $2.6 billion from the UTF for grants to states for the administration of state unemployment insurance laws as authorized under title III of the Social Security Act (including not less than $120 million for RESEA and UC improper payment reviews, and to provide reemployment services and referrals to training, as appropriate) and provided that such activities would not be subject to the newly-created section 306 of the Social Security Act for that fiscal year (FY2018).

[46] For details on DUA, see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*.

[47] In personal communication with CRS on September 26, 2018, and October 15, 2018, the U.S. DOL Employment and Training Administration (ETA) stated that it plans to issue guidance letters to the Puerto Rico Department of Labor and U.S. Virgin Islands Department of Labor advising on the implementation of DUA extension provisions in P.L. 115-254, including how to accept and adjudicate new DUA claims. After this guidance is issued, Puerto Rico and the U.S. Virgin Islands should notify potentially eligible individuals (including DUA and UC exhaustees) and issue public announcements coordinated with FEMA. Additionally, ETA guidance for accepting and adjudicating new DUA claims

who have exhausted entitlement to UC or EB also may be eligible for DUA benefits for the remaining otherwise uncompensated weeks in the disaster assistance period that were not covered by UC and EB.[48]

Legislative Proposals in the 115th Congress

Rehiring UI Beneficiaries and Exhaustees

Representative David McKinley introduced the Manufacturing Economic Recovery Act of 2017, H.R. 3702. The bill, among other items, would create a permanent work opportunity tax credit for hiring a full-time employee in a manufacturing facility located in the United States and include an increased credit for hiring individuals receiving unemployment compensation.

Delegate Eleanor Holmes Norton introduced the Reducing Long-Term Unemployment Act, H.R. 4470. The bill would suspend employment and railroad retirement taxes for employers who hired unemployed individuals through 2018. The aggregate reduction in taxes from such suspension would be limited to $5,000 per employee.

Vouchers and Demonstration Projects

Representative James Renacci sponsored H.R. 1091, the Flexibility to Promote Reemployment Act. The bill would make 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).[49] The bill would extend the time period that the (now-expired) state demonstration projects could be approved by DOL through December 31, 2021 (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. 1091 would also revise 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 transfer the responsibility for the state UC demonstration project impact evaluation from the states, as under the now-expired demonstration authority, to DOL and would require a specific procedure for termination of the state UC demonstration project by DOL.

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and weekly certifications will be provided to Puerto Rico and the U.S. Virgin Islands. Because individuals were not notified in advance of the authorization of the retroactive extension of the DUA period and compliance with work search requirements is not feasible, claimants may not be held to the work search requirement. Individuals will still need to certify for each week of DUA benefits being claimed and respond to the remaining questions on the certification, such as whether the individual performed work or had earnings during the week claimed and whether the individual was able and available for work.

[48] In Puerto Rico and the U.S. Virgin Islands, up to an additional 26 weeks of DUA would be available for DUA and UC exhaustees. Because EB was available in the U.S. Virgin Islands from December 17, 2017, through June 23, 2018, some individuals in the U.S. Virgin Islands may have had up to 26 weeks of UC and an additional 13 weeks of EB. In this case, P.L. 115-254 would provide up to an additional 13 weeks of DUA benefits. (EB has not been available in Puerto Rico since 2010.)

[49] 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*.

Unemployment Benefits for Energy Workers

Senator Jeff Merkley and Representative Jared Polis introduced S. 987 and H.R. 3314, the 100 by '50 Act, respectively. Among other provisions, these bills would allow states to provide additional, temporary, federally funded UI benefits to individuals who have exhausted all UI benefits (regular UC benefits and any other UI benefit available—e.g., EB benefits); who are certified as workers adversely affected by a transition away from fossil fuels and into clean and renewable energy by the year 2050; and who are receiving certain adjustment assistance provided through this proposal.

Drug Testing[50]

Representative Earl Carter sponsored H.R. 3330, the Ensuring Quality in the Unemployment Insurance Program (EQUIP) Act. The bill would allow states to require 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.

Unemployment Compensation for Ex-Servicemembers (UCX)[51]

Representative Steve Russell sponsored H.R. 2861, the Hire Military Service Members Act. The bill would require the Department of Defense to withhold payments to the states for UCX benefits if the state imposes professional licensing requirements that do not accept certain professional credentials related to military training and skills (i.e., credentials obtained under a program specified by 10 U.S.C. §2015 or in a similar program).

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[50] For a legal analysis of required drug testing, see CRS Report R42326, *Constitutional Analysis of Suspicionless Drug Testing Requirements for the Receipt of Governmental Benefits*.

[51] For a summary of the UCX benefit see CRS Report RS22440, *Unemployment Compensation (Insurance) and Military Service*.

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