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Unemployment Insurance: Legislative Issues in the 116th Congress

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SUMMARY

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Julie M. Whittaker
Specialist in Income Security

Katelin P. Isaacs
Specialist in Income Security

Unemployment Insurance: Legislative Issues in the 116th Congress

The 116th Congress recently enacted benefits related to two unemployment insurance (UI) programs: Unemployment Compensation (UC) and Disaster Unemployment Assistance (DUA). Congress has continued to consider modifications to these two programs within the federal-state UI system to provide weekly income replacement for individuals unavailable to work or unemployed as a result of COVID-19.

On March 18, 2020, President Trump signed P.L. 116-127 (H.R. 6201), the Families First Coronavirus Response Act, into law. The UI provisions in the Families First Coronavirus Response Act provide various types of assistance to states, including up to $1 billion in emergency administrative grant funding in calendar year 2020 for administrative purposes. This law also removes through December 2020 the current incentive in UI law for states to have a waiting week for their regular UC programs.

On March 24, 2020, President Trump signed P.L. 116-136 (H.R. 748), the Coronavirus Aid, Relief, and Economic Security Act (CARES) Act, into law. The UI provisions in the CARES Act include expanded benefit eligibility to the self-employed, independent contractors, gig economy workers, and other workers not covered under state UC programs through a new temporary Pandemic Unemployment Assistance (PUA), which builds on DUA as a model and is authorized through December 2020. Other provisions expanded potential weeks of UI benefits through the Pandemic Emergency Unemployment Compensation (PEUC; authorized through December 2020) and also augment all UI benefits with an additional $600 weekly Federal Pandemic Unemployment Compensation (FPUC) benefit through July 2020.

In the 116th Congress, policymakers have introduced the following additional legislation:

- S. 165, H.R. 720, H.R. 725, H.R. 1117, and H.R. 4072—related to Unemployment Compensation for Federal Employees (UCFE) benefits in response to the partial government shutdown that occurred during FY2019;
- S. 136 and H.R. 556—to provide self-employment and relocation assistance benefits;
- H.R. 1121—to screen individuals for drug use;
- H.R. 1585—to require that states consider an individual who quit employment because of sexual harassment, domestic violence, sexual assault, or stalking to be eligible for UC benefits; and
- H.R. 1759—to amend Title III of the Social Security Act to extend Reemployment Services and Eligibility Assessments (RESEA) to all UC claimants; and
- H.R. 6199, H.R. 6207, H.R. 6271, S. 3476, S. 3482, and S. 3497—to amend federal UI law in various ways in response to the coronavirus outbreak (COVID-19).

For a brief overview of UC, see CRS In Focus IF10336, *The Fundamentals of Unemployment Compensation*. For an overview of DUA, see CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*.

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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] As of the date of this publication, although both the UC and EB programs are authorized, no state is in an active EB period.[2] For an overview of EB, see the **Appendix**.

Unemployment Compensation Program

The Social Security Act of 1935 (P.L. 74-271) authorizes the joint federal-state UC program to provide unemployment benefits. Most states provide up to a maximum of 26 weeks of UC benefits.[3] Former federal workers may be eligible for unemployment benefits through the Unemployment Compensation for Federal Employees (UCFE) program.[4] Former U.S. military servicemembers may be eligible for unemployment benefits through the Unemployment Compensation for Ex-Servicemembers (UCX) program.[5] 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.[6] In general, 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 In Focus IF10570, *Trade Adjustment Assistance for Workers (TAA)*.

[2] 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*.

[3] 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*, Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws. In addition, the maximum UC duration is 28 weeks in Montana and 30 weeks (if local economic conditions are met) in Massachusetts. When EB benefits are available in Montana, the total duration of UC and EB is capped at either 39 weeks (26 + 13) or 46 weeks (26 + 20). When EB benefits are available in Massachusetts, the maximum duration of UC benefits is capped at 26 weeks.

[4] 5 U.S.C. §§8501-8508.

[5] 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*.

[6] 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.[7] In addition, 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.[8] 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.

UC Financing

The UC program is financed by federal taxes under the Federal Unemployment Tax Act (FUTA) and by state payroll taxes under each state's State Unemployment Tax Act (SUTA).[9] The 0.6% effective net FUTA tax employers pay on the first $7,000 of each employee's earnings (equaling 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.[10]

Federal law limits employers' SUTA taxes 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 and 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. In general, the more UC benefits paid out to its former employees, the higher the employer's tax rate, up to a maximum established by state law. FUTA and SUTA funds are deposited in the appropriate accounts within the Unemployment Trust Fund (UTF).

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

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

[8] 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.)

[9] 23 U.S.C. §§3301-11.

[10] 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*, The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States.

types of UI expenditures.[11] Regular UC, UCX, and UCFE payments are not subject to the sequester reductions. EB and most forms of administrative funding are subject to the sequester reductions.[12]

FY2019 Sequester of Unemployment Insurance Benefits

The FY2019 sequestration order requires a 6.2% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions are applicable to discretionary programs, projects, and activities.[13] As a result, EB expenditures are required to be reduced 6.2% (only on the federal share of EB benefits) for weeks of unemployment during FY2019.[14] EB was not activated in any state during FY2019.[15]

FY2020 Sequester of Unemployment Insurance Benefits

The FY2020 sequestration order requires a 5.9% 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 5.9% (only on the federal share of EB benefits) for weeks of unemployment during FY2020.[17] In addition, the temporary UI benefits created under the CARES Act (see below in the section titled "P.L. 116-136, the CARES Act") are not specifically excluded from sequestration. As of this report date, however, DOL has not released any guidance on the applicability of the FY2020 sequester to these temporary UI benefits.

Unemployment Insurance During a Government Shutdown

The lapse in federal appropriations that occurred from December 22, 2018, until January 25, 2019, caused a partial government shutdown. As a result, during this lapse in appropriations,

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

[12] EUC08, when it was available (including any benefit payments delayed from prior fiscal years) is also subject to the sequester reductions. 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, generally, and specifically for sequestration in 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. Please see CRS Report R44836, *Unemployment Insurance: Legislative Issues in the 115th Congress* for additional information on the implications of the sequester order for FY2017 and FY2018.

[13] Office of Management and Budget (OMB), *OMB Sequestration Preview Report to the President and Congress for Fiscal Year 2019*, February 12, 2018, at https://www.whitehouse.gov/wp-content/uploads/2018/02/Sequestration_Report_February_2018.pdf.

[14] For details, see U.S. Department of Labor (DOL), Employment and Training Administration (ETA), *Unemployment Insurance Program Letter*, UIPL 1-19, December 12, 2018, at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4536.

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

[16] OMB, *OMB Sequestration Preview Report to the President and Congress for Fiscal Year 2020*, March 18, 2019, at https://www.whitehouse.gov/wp-content/uploads/2019/03/sequestration_preview_March_18_2019.pdf.

[17] For details, see DOL, ETA, Unemployment Insurance Program Letter (UIPL) No. 18-19, September 16, 2019, at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5955.

agencies without funding furloughed federal employees, and many federal employees excepted from furlough worked without pay.[18]

Furloughed federal employees may be eligible for UCFE benefits.[19] States are required to operate the UCFE program under the same terms and conditions that apply to regular state UC.[20] Therefore, UCFE eligibility is determined under the laws of the state in which an individual's official duty station in federal civilian service is located. Federal employees who are in furlough status because of a government shutdown are generally treated by state law as laid off with an expectation of recall. Depending on state laws and regulations, the state may have an option to not require federal employees to search for work given an expected recall.[21]

However, according to guidance from DOL, excepted federal employees who are performing services (but working without pay) would generally be ineligible for UCFE benefits based on states' definitions of "unemployment."[22]

Private-sector workers who are furloughed or laid off due to the partial government shutdown because they were employed by government contractors or other businesses may be eligible for regular UC benefits. UC eligibility for these workers would be based on the requirements set out under the state laws in the state where they had worked.

In this climate, there has been congressional interest in assisting furloughed and excepted federal employees through the UI system. For example, as described below in the section on "Unemployment Compensation for Excepted Federal Employees During a Government Shutdown," there are proposals to provide new authority to pay UCFE benefits to excepted federal employees who work without pay.

The most recent lapse in federal appropriations began December 22, 2018, and ended on January 25, 2019, with the enactment of H.J.Res. 28.[23] Because retroactive pay for furloughed and excepted federal employees was authorized under S. 24, the Government Employee Fair Treatment Act of 2019 (enacted January 16, 2019), UCFE payments made to federal employee claimants during this lapse in appropriations may be deemed an overpayment, subject to state UC

[18] See OMB guidance on the recent lapse in appropriations, available at https://www.whitehouse.gov/omb/information-for-agencies/agency-contingency-plans/. Also see the Office of Personnel Management guidance on "Pay and Benefits for Employees Affected by the Lapse in Appropriations" (CPM 2019-06), January 27, 2019, available at https://www.chcoc.gov/content/pay-and-benefits-employees-affected-lapse-appropriations-1.

[19] Unemployment Compensation for Federal Employees (UCFE) is authorized under 5 U.S.C. §§8501-8508. For a short discussion of this issue, see CRS Insight IN11169, *Availability of Unemployment Benefits for Affected Federal Employees During a Government Shutdown*.

[20] See 5 U.S.C. §8502(b).

[21] See OPM, "Unemployment Insurance Questions and Answers for Federal Workers," December 2018, available at https://www.opm.gov/policy-data-oversight/pay-leave/furlough-guidance/unemployment-compensation-for-federal-employees-fact-sheet-december-2018.pdf.

[22] See DOL, ETA, UIPL 31-13, "Impacts of the Federal Government Shutdown and Unemployment Compensation for Federal Employees and State Administrative Funding for State UI Programs," Section A(3) of the Attachment ("Questions and Answers: Unemployment Insurance and the Federal Government Shutdown"), October 11, 2013, available at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7589; and also DOL, ETA, "E-Blast to State Unemployment Insurance Agencies," January 16, 2019, available at https://oui.doleta.gov/unemploy/2019_shutdown/docs/E-Blast_to_State_Unemployment_Insurance_Agencies_v3.pdf.

[23] H.J.Res. 28 (enacted January 25, 2019) is a continuing resolution (CR) that provided continuing FY2019 appropriations to several federal agencies through February 15, 2019.

laws regarding overpayment recovery. According to the Office of Personnel Management's guidance on this issue,[24]

> The state UI agency will determine whether or not an overpayment exists and, generally, the recovery of the UCFE overpayment is a matter for state action under its law; however, some state UI laws require the employer to recover such overpayment by collecting the overpayment amount from the employee. The Federal and state agencies will need to coordinate to determine the required action in accordance with the individual state UI law. Federal agencies are encouraged to develop lists or spreadsheets that can be provided to the state(s) containing the employees' names, social security numbers, and the amounts and periods of time covered by the retroactive payment.

State UC Loans and Solvency Concerns

If a recession is deep enough and if 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 use to meet its UC benefit payment obligations.[25] 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.[26]

The U.S. Virgin Islands is the only jurisdiction with an outstanding loan. As of March 13, 2020, it had an outstanding loan of $63.2 million from the federal accounts within the UTF.[27] At the end of 2019, 31 states had accrued enough funds in their accounts to meet or exceed the minimally solvent standard of an average high cost multiple (AHCM) of 1.0 in order to be prepared for a recession.[28]

Reemployment Services and Eligibility Assessments

Beginning in FY2015, DOL funded state efforts "addressing individual reemployment needs of UI claimants, and working to prevent and detect UI overpayments" through the voluntary Reemployment Services and Eligibility Assessment (RESEA) program.[29] RESEA provides

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[24] OPM, "Pay and Benefits for Employees Affected by the Lapse in Appropriations" (CPM 2019-06), January 27, 2019, available at https://www.chcoc.gov/content/pay-and-benefits-employees-affected-lapse-appropriations-1.

[25] 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).

[26] 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*.

[27] U.S. Department of the Treasury, Bureau of Public Debt, *Title XII Advance Activities Schedule*, January 18, 2019, at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm.

[28] The average high-cost multiple (AHCM) is the ratio of actual state Unemployment Trust Fund account balances (divided by covered wages in that year) to the average of the 3 highest years of benefit payments (each divided by that year's covered wages) experienced by the state over the past 20 years. Presumably, the average of the 3 highest years' outlays would be a good indicator of potential expected UC payments if another recession were to occur. Under these assumptions, if a state had saved enough funds to pay for an average high year of UC benefit activity, its AHCM would be at least 1.0. See DOL, Office of Unemployment Insurance, Division of Fiscal and Actuarial Services, *State Unemployment Insurance Trust Fund Solvency Report 2020*, February 2020, at https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf.

[29] Since FY2005, DOL has provided some type of reemployment services through discretionary appropriations. For

funding to states to conduct in-person interviews with selected UI claimants to (1) assure that claimants are complying with the eligibility rules, (2) determine if reemployment services are needed for the claimant to secure future employment, (3) refer the individual to reemployment services as necessary, and (4) provide labor market information that addresses the claimant's specific needs. Section 30206 of P.L. 115-123 codified the authority for DOL to administer a RESEA program.[30] It also set out various requirements for states to use certain types of evidence-based interventions for UI claimants under RESEA and allocated discretionary funding for RESEA across three categories (base funding, outcome payments, and research and technical assistance). State RESEA programs must include reasonable notice and accommodations to participating UI beneficiaries.

On April 4, 2019, DOL published a proposed methodology to allocate base RESEA funds and outcome payments. DOL requested state and public comments on this proposal by May 6, 2019.[31] On August 8, 2019, DOL published a notice that summarizes and responds to the public comments as well as sets out the RESEA allocation formula that will be effective beginning in FY2021.[32]

President's Budget Proposal for FY2021

The President's budget for FY2021 proposes changes to several aspects of the UI system.[33] It would create a new required standard for state account balances within the UTF and a new benefit entitlement for paid parental leave financed through state unemployment taxes. The President's FY2021 budget also proposes a set of additional integrity measures, including the required use of certain databases to confirm UC eligibility and requiring Social Security Disability Insurance (SSDI) benefits offset UI benefits.

New Minimum Account Balance for State UTF Accounts

The President's budget proposal for FY2021 would require states to maintain a minimum level of solvency in their UTF account balances to be at least half (0.5) of the state's AHCM. (Under current law, states have incentives to maintain an AHCM of at least 1.0 but are not required to do

additional background, see CRS Report R43044, *Expediting the Return to Work: Approaches in the Unemployment Compensation Program*; and DOL, ETA, Unemployment Insurance Program Letter, UIPL 3-17, December 8, 2016, p. 2, available at https://wdr.doleta.gov/directives/attach/UIPL/UIPL_03-17.pdf.

[30] 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 from the UTF $2.6 billion in state grants for administering state UI 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).

[31] DOL, ETA, "Allocating Grants to States for Reemployment Services and Eligibility Assessments (RESEA) and Determining Outcome Payments in Accordance With Title III, Section 306 of the Social Security Act," 84 *Federal Register* 13319-21, April 4, 2019, accessible at https://www.govinfo.gov/content/pkg/FR-2019-04-04/pdf/2019-06558.pdf.

[32] DOL, ETA, "Allocating Grants to States for Reemployment Services and Eligibility Assessments (RESEA) in Accordance With Title III, Section 306 of the Social Security Act (SSA)," 84 *Federal Register* 139018-20, August 8, 2019, accessible at https://www.govinfo.gov/content/pkg/FR-2019-08-08/pdf/2019-16988.pdf.

[33] The President's detailed budget proposal for UC in FY2021 is accessible at https://www.dol.gov/general/budget. The President's budgets for FY2019 and FY2020 included substantively similar UC proposals and are accessible at https://www.dol.gov/general/budget/index-2019 and https://www.dol.gov/general/budget/index-2020.

so.) 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.[34]

Paid Family Leave Benefit

The President's budget proposal for FY2021 would require states to establish a paid parental leave benefit, using the UC program as its base for an administrative framework.[35] 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.[36] States would have discretion to determine the parameters of eligibility and financing for this new paid parental leave benefit.

UI Program Integrity

Requirements to Use Particular Data Sources for Program Integrity

The President's 2021 budget would require states to use three specific data sources to confirm an individual's eligibility for UC benefits: the State Information Data Exchange System (SIDES, administered by Information Technology Support Center [ITSC] and DOL); the National Directory for New Hires (NDNH, administered by the Department of Health and Human Services); and the Prisoner Update Processing System (PUPS, administered by the Social Security Administration).[37]

Additional Integrity Proposals

The proposal would create several additional integrity measures, including

- giving the Secretary of Labor the authority to implement new corrective action measures in response to poor state administrative performance within the program;
- allowing states to retain a percentage 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

[34] Seven states did not meet this solvency measure at the end of 2019: California, New York, Texas, Illinois, Massachusetts, Ohio, and the U.S. Virgin Islands. A total of 22 states did not qualify for interest-free short-term loans for FY2020. See DOL, Office of Unemployment Insurance, Division of Fiscal and Actuarial Services, *State Unemployment Insurance Trust Fund Solvency Report 2020*, Chart 1 and Table 1, pp. 59-60, February 2020, at https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf.

[35] 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*.

[36] 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, New Jersey, and New York as well as states that have enacted paid family leave insurance programs, but which are not yet fully implemented and not paying benefits (e.g., the District of Columbia, Massachusetts, and Washington State), see CRS Report R44835, *Paid Family and Medical Leave in the United States*.

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

administration as well as providing reemployment services for UI claimants;[38] and

- offsetting SSDI benefits to account for concurrent receipt of UI benefits.[39]

New Final Rule on UC Drug Testing

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 allow states to conduct two types of drug testing. First, it expanded the long-standing state option to disqualify UC applicants who were discharged from employment with their most recent employer (as defined under state law) for unlawful drug use by allowing states to drug test these applicants to determine UC benefit eligibility or disqualification. Second, it allowed states to drug test UC applicants for whom suitable work (as defined under state law) is available only in an occupation that regularly conducts drug testing, to be determined under new regulations issued by the Secretary of Labor.

As required by P.L. 112-96, on August 1, 2016, DOL promulgated 20 C.F.R. Part 620,[40] a new rule to implement the law's provisions relating to the 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.

Amid stakeholders' concerns about the 2016 DOL rule, Congress repealed this UC drug testing rule using the Congressional Review Act (CRA) via H.J.Res. 42/P.L. 115-17.[41] On November 5, 2018, DOL published a Notice of Proposed Rulemaking (NPRM) to reissue the rule identifying occupations that regularly conduct drug testing for purposes of Section 2105 of P.L. 112-96.[42] The CRA prohibits an agency from reissuing the rule in "substantially the same form" or issuing a "new rule that is substantially the same" as the disapproved rule, "unless the reissued or new rule is specifically authorized by a law enacted after the date of the joint resolution disapproving the original rule." Notably, this is the first time an agency has proposed to reissue a rule after the original version was disapproved under the CRA.[43]

According to the 2018 NPRM, DOL has addressed the reissue requirements of the CRA by proposing a substantially different and more flexible approach to the statutory requirements than

[38] 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.

[39] 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*.

[40] See "Federal-State Unemployment Compensation Program; Middle Class Tax Relief and Job Creation Act of 2012 Provision on Establishing Appropriate Occupations for Drug Testing of Unemployment Compensation Applicants," 81 *Federal Register* 50298-50302, August 1, 2016, at https://www.govinfo.gov/content/pkg/FR-2016-08-01/pdf/2016-17738.pdf.

[41] For examples of these stakeholder concerns, see CRS Report R45889, *Unemployment Compensation (UC): Issues Related to Drug Testing*. For information on the Congressional Review Act, see CRS Report R43992, *The Congressional Review Act (CRA): Frequently Asked Questions*.

[42] DOL, ETA, "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, at https://www.federalregister.gov/documents/2018/11/05/2018-23952/federal-state-unemployment-compensation-program-establishing-appropriate-occupations-for-drug.

[43] For more information on potential implications for this reissued rule stemming from the disapproval of the 2016 rule under the CRA, see CRS Insight IN10996, *Reissued Labor Department Rule Tests Congressional Review Act Ban on Promulgating "Substantially the Same" Rules*.

the 2016 Rule, enabling states to enact legislation to require drug testing for a far larger group of UC applicants than the previous rule permitted. This flexibility is intended to respect the diversity of states' economies and the different roles played by employment drug testing in those economies. [44]

Comments on the proposed 2018 rule were required to be submitted by January 4, 2019.[45] As of September 25, 2019, the Office of Management and Budget's Office of Information and Regulatory Affairs completed its final review of this rule.[46] The final rule was issued on October 4, 2019.[47]

For an analysis of selected policy considerations relevant to UC drug testing, including arguments for and against expanded drug testing, potential legal concerns, and administrative considerations, see CRS Report R45889, *Unemployment Compensation (UC): Issues Related to Drug Testing*.

Enacted Laws in the 116th Congress

P.L. 116-127, the Families First Coronavirus Response Act

On March 18, 2020, President Trump signed P.L. 116-127 (H.R. 6201), the Families First Coronavirus Response Act. The UI provisions are found in Division D of P.L. 116-127. Division D generally gives states more flexibility to address COVID-19 through expanded benefit eligibility as well as additional administrative funding. DOL has published guidance for states on how to implement the Families First Coronavirus Response act in its Unemployment Insurance Program Letter No. 13-20, March 22, 2020, available at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634.

Administrative Grants to States

Division D provides up to a total of $1 billion in "emergency administrative grants" to states in calendar year 2020.[48] Half of each state's share is available if the state meets certain requirements related to UC eligibility notifications and claims access. The second half of each state's share is available if it qualified for the first half and if the state experiences at least a 10% increase in UC claims over the previous calendar year and meets certain other requirements related to easing UC eligibility requirements for individuals affected by COVID-19. Additionally, there are reporting

[44] See DOL, "Federal-State Unemployment Compensation Program," pp. 55312-55313.

[45] The 211 comments received on this rule are available at https://www.regulations.gov/docket?D=ETA-2018-0004.

[46] OMB, Office of Information and Regulatory Affairs, Reginfo.gov, "OIRA Conclusion of EO 12866 Regulatory Review," at https://www.reginfo.gov/public/do/eoDetails?rrid=129401.

[47] Employment and Training Administration, Department of Labor, "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 ," 84 *Federal Register* 53037-52, October 4, 2019, https://www.govinfo.gov/content/pkg/FR-2019-10-04/pdf/2019-21227.pdf.

[48] DOL has published the state shares of these emergency administrative grants in UIPL No. 13-20, "Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020," March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634.The maximum payment allowable for a state is calculated using the methods also used in Reed Act distributions. That is, funds would be distributed to the state Unemployment Trust Fund (UTF) accounts based on the state's share of estimated federal unemployment taxes (excluding reduced credit payments) made by the state's employers. For background on Reed Act distributions, see CRS Report RS22006, *The Unemployment Trust Fund and Reed Act Distributions*.

requirements to DOL and committees of jurisdiction within one year for states that receive these grants.

Waives Certain UI Requirements for Benefits

Division D waives any federal UI requirements (i.e., under Section 303 of the Social Security Act and Federal Unemployment Tax Act [FUTA] Section 3304) related to work search, one-week waiting periods,[49] quits for good cause,[50] and employer tax assessments for state programs if a state modifies its UC laws "on an emergency temporary basis as needed to respond to the spread of COVID-19.[51]"

Waives Interest Payments Due and Accrual of Interest on UTF Loans

Division D temporarily waives interest payments and the accrual of interest on federal advances (loans) to states to pay UC benefits through December 2020.[52] But it would not reduce any underlying loan principal.[53]

Short-Time Compensation Assistance

Division D requires DOL to provide assistance to states in establishing, implementing, and improving Short-Time Compensation (work sharing) programs.[54]

Temporary 100% Federal Financing of EB for States Qualify for Full Division D Administrative Grants

Finally, if triggered (see **Appendix**), Division D temporarily makes Extended Benefits (EB) 100% federally financed (with the exception of "non-sharable" compensation—e.g., state and local workers) from enactment until the end of December 2020, but only for states that receive both halves of the emergency administrative grants. Because P.L. 116-127 also temporarily

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[49] Many states require that an individual, who is otherwise eligible for UI benefits, serve a waiting period (one week) before benefits are payable. Some states currently also waive this waiting week requirement under certain situations, such as a disaster or emergency declaration. For additional details, see Table 3-7 ("State Initial Waiting Periods") in "Chapter 3: Monetary Eligibility," of DOL's *2019 Comparison of State Unemployment Insurance Laws*, available at https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2019/monetary.pdf.

[50] Individuals generally are required to have lost a job through no fault of their own in order to be eligible for UC benefits, but states also define "good cause" voluntary quits that do not make UC claimants ineligible for benefits. For additional details, see beginning on page 2 of "Chapter 5: Nonmonetary Eligibility," of DOL's *2019 Comparison of State Unemployment Insurance Laws*, available at https://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2019/nonmonetary.pdf.

[51] One of the more restrictive federal UI requirements in the context of this COVID-19 outbreak is the requirement under Section 303(a) of the Social Security Act that the unemployed must be "able to work, available to work, and actively seeking work" in order to be eligible for regular UC benefits (see 42 U.S.C. Section 503(a)(12)). While Division D waives the work search aspect of this requirement, it does *not* waive the "able and available" aspect of this requirement.

[52] For background on these federal loans to states, see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

[53] This provision is similar to what was enacted for 2009 and 2010 under Section 2004 of the American Recovery and Reinvestment Act (ARRA; P.L. 111-5). See CRS Report R40368, *Unemployment Insurance Provisions in the American Recovery and Reinvestment Act of 2009*.

[54] For background on STC programs, see CRS Report R40689, *Compensated Work Sharing Arrangements (Short-Time Compensation) as an Alternative to Layoffs*.

removes the current incentive in EB law for states to have a one-week waiting period, or "waiting week," for their regular UC programs through December 2020, the first week of EB is "sharable" (50% federal/50% state under permanent law; or 100% under the conditions of this provision).

P.L. 116-136, the CARES Act

On March 27, 2020, President Trump signed P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act. Title II, Subtitle A of the CARES Act provides several temporary UI measures to address recent increases in unemployment including augmented benefit amounts, expanded benefit eligibility, additional weeks of benefits, and several other UI provisions.

As of this report date, DOL has released three Unemployment Insurance Program Letters (UIPLs) that provide guidance to states regarding the administration of the UI provisions in the CARES Act:

- On April 2, 2020, DOL released UIPL No. 14-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility."[55] This guidance provides states with a summary of the UI provisions in CARES Act of 2020. It also provides guidance to states regarding authority for emergency state staffing flexibility. This DOL CARES Act guidance is available at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390.
- On April 5, 2020, DOL released UIPL No. 15-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions," available at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297. This guidance provides instructions to states on the temporary, additional, federally financed $600 benefit that augments all weekly UI benefits (Section 2104 of the CARES Act).
- On April 6, 2020, DOL released UIPL No. 16-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions," available at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628. This guidance provides instructions to states on the temporary, expanded UI benefit eligibility (Pandemic Unemployment Assistance) created under Section 2102 of the CARES Act.

Below are summary details of Sections 2102 through 2115 of the CARES Act (i.e., the UI provisions).

Temporary, Additional $600 Weekly Federal Compensation (FPUC)[56]

Section 2104 of the CARES Act creates a temporary, additional, federally financed $600 benefit that augments weekly UI benefits, including UC, Pandemic Unemployment Assistance (PUA, see

[55] DOL, ETA, UIPL, No. 14-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility," April 2, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390 (hereinafter, "DOL 2020 Summary CARES Act UIPL").

[56] For relevant DOL guidance, see DOL, ETA, UIPL No. 15-20, "Coronavirus Aid, Relief, and Economic Security

description below), Pandemic Emergency Unemployment Compensation (PEUC, see description below), EB, DUA, STC, Trade Readjustment Allowance (TRA), and Self Employment Assistance (SEA).[57]This FPUC is payable for weeks of unemployment beginning after a state signs an agreement through weeks ending on or before July 31, 2020.[58]

FPUC income is disregarded for the purposes of Medicaid and the Children's Health Insurance Program (CHIP). (During the period that this payment is authorized, states would be prohibited from reducing UC benefit amount or duration.)

Temporary, Pandemic Unemployment Assistance (PUA) for Unemployed Persons Not Covered by Regular UC Program[59]

Section 2102 of the CARES Act creates a temporary, federal UI program for individuals not otherwise eligible for UI benefits (e.g., self-employed, independent contractors, gig economy workers, and other workers not covered under state UC programs): Pandemic Unemployment Assistance (PUA). PUA benefits are to be administered by states, like all other UI benefits.

PUA provides up to 39 weeks of federally financed UI benefits to unemployed workers who (1) are ineligible for any other state or federal UI benefit; (2) meet conditions related to being unemployed, partially unemployed, or unable to work due to COVID-19; and (3) are not able to telework and are not receiving any paid leave. According to the DOL 2020 Summary CARES Act UIPL, the total weekly entitlement PUA is generally limited to 39 weeks, offset by any weeks that the individual received benefits from regular UC and EB. Under this guidance, the weeks for which an individual collected PEUC would not be deducted from the individual's PUA entitlement.[60]

PUA is available in all states and U.S. territories, subject to agreements with DOL. PUA pays benefits, including retroactively, for weeks of unemployment, partial unemployment, or inability to work beginning on or after January 27, 2020, and ending on or before December 31, 2020 (hereinafter, through December 2020).

The PUA benefit amount is identical to the weekly benefit amount (WBA) as calculated under state law based on recent earnings (subject to the minimum benefit under DUA, which is half of

(CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions," April 5, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297.

[57] For information on TRA, see CRS Report R44153, *Trade Adjustment Assistance for Workers and the TAA Reauthorization Act of 2015*. For information on SEA, see CRS Report R41253, *The Self-Employment Assistance (SEA) Program*.

[58] A number of state laws have provisions for extending the potential duration of benefits during periods of high unemployment for individuals in approved training who exhaust benefits, or for a variety of other reasons. Although some state laws call these programs "extended benefits," DOL uses the term "additional benefits" (AB) to avoid confusion with the federal-state EB program. DOL has stated that FPUC is not payable to individuals receiving AB payments. The order of payment for AB within the context of the multiple programs described above is dependent on state law.

[59] For relevant DOL guidance, see DOL, ETA, UIPL No. 16-20, "Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions," April 6, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628.

[60] See Section 4(b)(i)(d) of DOL 2020 Summary CARES Act UIPL, page 7.

the state's average weekly UC benefit amount).[61] In territories without UC programs, the PUA benefit would be determined by DUA regulations.[62]

All PUA benefits, like other UI benefits, are temporarily augmented by an additional, federal payment of $600 beginning after the date on which the state enters into an agreement with DOL to pay FPUC through July 2020.

Temporary, 13-Week Extended Pandemic Emergency Unemployment Compensation (PEUC)

Section 2107 of the law creates PEUC, which authorizes up to 13 additional weeks of federally financed UI benefits for individuals who exhaust state and federal UI benefits and are able, available, and actively seeking work, subject to COVID-19-related flexibilities.

PEUC is authorized through the end of December 2020. The PEUC benefit amount is required to be the WBA as calculated under state law. All PEUC benefits are temporarily increased by $600 a week by FPUC through July 31, 2020. (During the period that PEUC is authorized, states would be prohibited from reducing UC benefit amount or duration.)

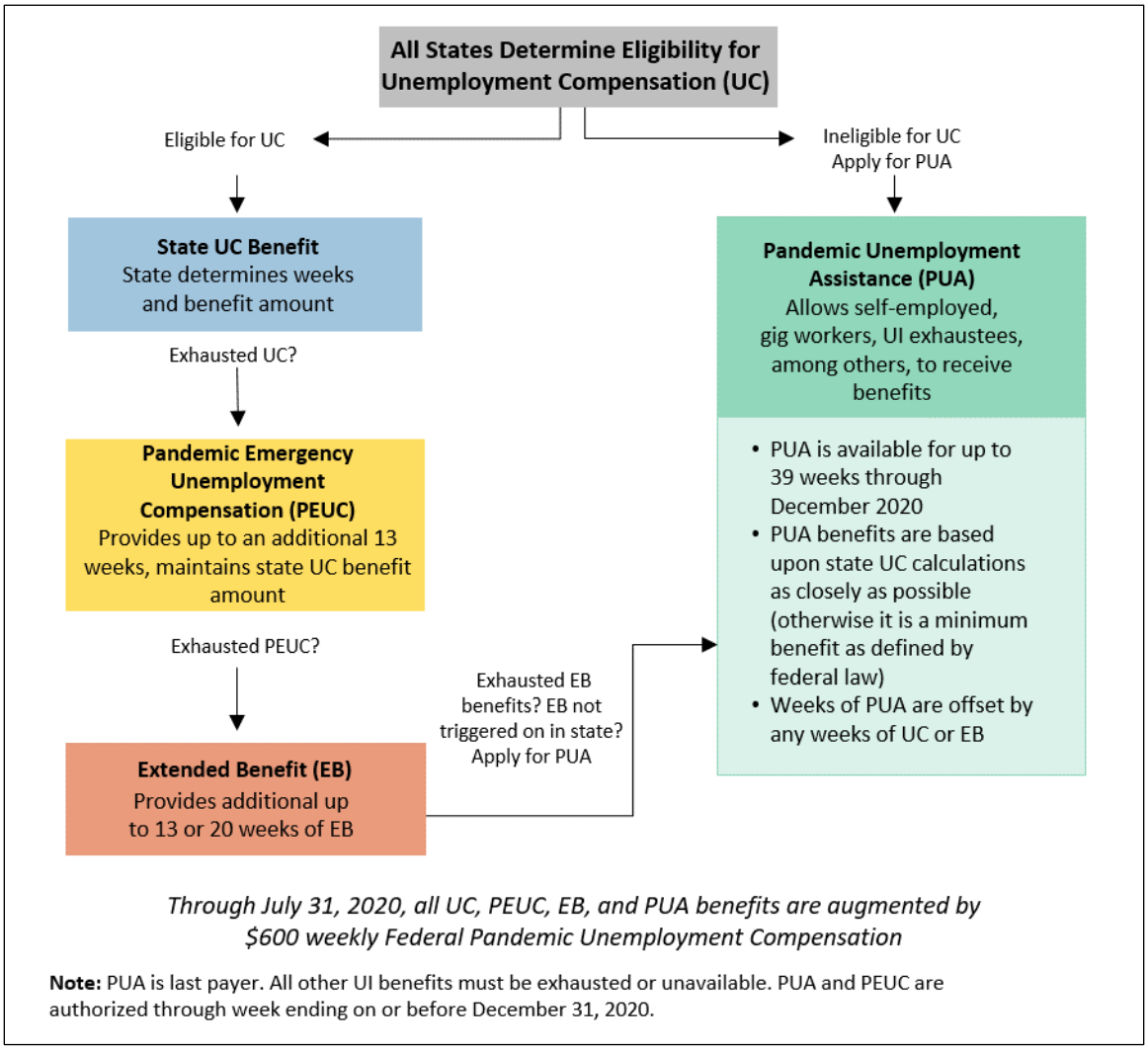
Coordination of UI Benefits

Individuals may be eligible for benefits under multiple UI programs, including programs authorized in the CARES Act. Below, **Figure 1** provides the statutory order of the flow of UI benefits. This flow is contingent on the individual meeting all eligibility criteria for the respective programs. It is also contingent on the state having an agreement with DOL to administer the programs authorized under the CARES Act.

[61] For minimum DUA benefits, see DOL, ETA, UIPL, No. 11-20, "Minimum Disaster Unemployment Assistance (DUA) Weekly Benefit Amount: April 1 - June 30, 2020," March 19, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8052.

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

Figure 1. Coordination of the Flow of UI Benefits Under the CARES Act



Source: CRS analysis based on P.L. 116-136, the CARES Act and DOL guidance.

Notes: This flow is contingent on the individual meeting all eligibility criteria for the respective programs. It is also contingent on the state having an agreement with DOL to administer the programs authorized under the CARES Act.

Other UI Provisions

- Section 2103 provides, through December 2020, 50% federal funding of regular UC benefits based on service with reimbursing employers, which are state and local governments, federally recognized Indian tribes, and nonprofit organizations that have opted not to pay UI taxes, but instead reimburse states for UC benefits paid to their former employees. This provision provides financial relief to these reimbursing employers. It also allows for state flexibility in the timing of required reimbursement payments for these employers.
- Section 2105 provides 100% federal financing through the end of December 2020 for UC benefits provided during the first week of unemployment in state UC programs with no

one-week waiting period (thus, incentivizing states that require one-week waiting periods before receiving UC under state law to remove them).

- Section 2106 temporarily waives federal requirements regarding merit staffing for state UC programs on an emergency basis in response to COVID-19 until December 31, 2020. This waiver is limited to certain temporary actions taken by states to quickly process UI claims, including rehiring former employees and temporary hiring.
- Sections 2108-2111 authorizes 100% federal financing of Short-Time Compensation (STC; work sharing) in states with existing programs and 50% federal financing for states that set up STC. It also authorizes $100 million in federal grants to support STC. DOL would be required to provide STC technical assistance.
- Sections 2112-2114 provide $50 million to waive the seven-day waiting period for Railroad Unemployment Insurance (RRUI) benefits. They also authorize a comparable FPUC ($1,200 for RRUI biweekly benefits; so $600 per week) for RRUI through July 2020. Finally, they provide an additional 13 weeks of federally financed RRUI benefits through the end of December 2020, comparable to PEUC.[63]
- Section 2115 provides $25 million in funding for the DOL Office of Inspector General for audits, investigations, and oversight related to the UI provisions in the CARES Act.

Section 2116 authorizes DOL to issue operating instructions and other guidance needed to implement the UI provisions in the CARES Act.

Table 1 provides a summary of the Sections 2102 through 2111 of the CARES Act.

Table 1. DOL-Related Summary Information on Unemployment Insurance Provisions in the CARES Act

(P.L. 116-136, Sections 2102-2111)

Benefit/Program	Availability	Description
Section 2102 Pandemic Unemployment Assistance (PUA)	Provides up to 39 weeks of unemployment. Covers weeks of unemployment beginning on or after January 27, 2020 through the week ending on or before December 31, 2020 (payable on a retroactive basis).	Applies to individuals who are self-employed, those who would not qualify for regular Unemployment Compensation (UC) or Extended Benefits (EB) under state or federal law or Pandemic Unemployment Compensation (PEUC) under Section 2107. Includes individuals who have exhausted all rights to UC, PEUC, and EB. Operationally, this program will be administered by the states similarly to the Disaster Unemployment Assistance (DUA) program. Includes eligible, unemployed workers in the states, American Samoa, Commonwealth of the Northern Mariana Islands, the District of Columbia, Federated States of Micronesia, Guam, Marshall Islands, Puerto Rico, the Republic of Palau, and the U.S. Virgin Islands, provided the state/territory signs an agreement with U.S. Department of Labor (DOL).

[63] For background on RRUI, see CRS Report RS22350, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*.

Benefit/Program	Availability	Description
Section 2103 Emergency Unemployment Relief of Governmental Entities and Non-Profit Organizations	Covers weeks of unemployment beginning on or after March 13, 2020 through December 31, 2020.	Authorizes DOL to issue guidance to allow states to interpret their state UC laws to provide maximum flexibility to reimbursing employers (which are state and local governments, federally recognized Indian tribes, and nonprofit organizations that have opted not to pay UI taxes, but instead reimburse states for UC benefits paid to their former employees) as it relates to timely payment and assessment of penalties and interest. Provides for transfers to a state's account in the Unemployment Trust Fund (UTF) from the Federal Unemployment Account (FUA) to allow partial reimbursements (generally 50 percent of the amount of payments in lieu of contributions) to reimbursing employers.
Section 2104 Federal Pandemic Unemployment Compensation (FPUC)	Covers weeks of unemployment beginning after the date of signed agreement (between state and DOL) through July 31, 2020.	Provides individuals who are collecting regular UC, PEUC, PUA, EB, Short-Time Compensation (STC), Trade Reemployment Allowances (TRA), Disaster Unemployment Assistance (DUA), or Self-Employment Assistance (SEA) with an additional, federally-financed $600 per week. Among the requirements of this program is a non-reduction rule, which prohibits states from changing the computation method governing regular UC law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).
Section 2105 Temporary Full Federal Funding of the First Week of Compensable Regular Compensation	Covers weeks of unemployment beginning after the date of signed agreement, through December 31, 2020.	For states that provide compensation to individuals for their first week of unemployment (i.e., states which do not require a waiting week), this Section provides 100% federal funding for the total amount of UC paid to individuals for their first week of regular UC.
Section 2106 Emergency State Staffing Flexibility	March 27, 2020 through December 31, 2020.	Provides state agencies with emergency flexibility for personnel standards on a merit basis limited to engaging of temporary staff, rehiring of retirees or former employees on a non-competitive basis, and other temporary actions to quickly process applications and claims.

Benefit/Program	Availability	Description
Section 2107 Pandemic Emergency Unemployment Compensation (PEUC)	Covers weeks of unemployment beginning after state signs agreement through December 31, 2020.	Provides for up to 13 weeks of benefits to individuals who have exhausted regular UC under state or federal law, have no rights to regular UC under any other state or federal law, are not receiving compensation under the UC laws of Canada, and are able to work, available for work, and actively seeking work. States must offer flexibility in meeting the "actively seeking work" requirement if individuals are unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction. Among the requirements of this program is a non-reduction rule, which prohibits states from changing the computation method governing regular UC law in a way that results in the reduction of average weekly benefit amounts or the number of weeks of benefits payable (i.e., maximum benefit entitlement).
Section 2108 Temporary Financing for Existing Short-Time Compensation (STC) Programs	Covers weeks of unemployment beginning on or after March 27, 2020 through weeks of unemployment ending on or before December 31, 2020. (If a state enacts a new STC law, reimbursements are available starting with the effective date of the state law.)	Provides that states with an existing STC program may be reimbursed with federal funds for 100% of STC benefit costs, up to a maximum of 26 weeks of STC per individual.
Section 2109 Temporary Financing of STC agreements	Covers weeks of unemployment beginning after the date of signed agreement ending on or before December 31, 2020.	Provides that states without an existing STC program may provide STC benefits under an agreement with the Secretary of Labor and be reimbursed with federal funds for 50% of STC benefit costs, up to a maximum of 26 weeks of STC per individual.
Section 2110 Grants for STC Programs	Grant applications must be submitted by December 31, 2023.	Provides for a $100 million grant to be shared across states for implementation or improved administration, and promotion and enrollment of the state's STC program.
Section 2111 Assistance and Guidance in Implementing Programs	Effective March 27, 2020.	Provides that DOL shall develop model legislative language, or disseminate existing model language, which may be used by states in developing and enacting STC programs. The Department will also develop reporting requirements for states and provide technical assistance.

Source: CRS analysis based on P.L. 116-136, the CARES Act, and Attachment 1 in DOL 2020 Summary CARES Act UIPL, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390.

Legislative Proposals in the 116th Congress

Unemployment Compensation for Excepted Federal Employees During a Government Shutdown

On January 16, 2019, Senator Richard Blumenthal introduced S. 165, the Federal Unemployment Compensation Equity Act of 2019. This proposal would amend UCFE law and create a new permanent UCFE eligibility category for excepted federal employees who are unpaid but required to work during a government shutdown due to a lapse in appropriations. During any shutdown beginning on or after December 22, 2018, all excepted federal workers would be deemed eligible for UCFE benefits. In addition, these employees would not be subject to a one-week waiting period (otherwise often required under state laws) before UCFE benefits were to be paid.

On January 23, 2019, Representative Debbie Dingell introduced H.R. 725, the Pay Federal Workers Act. This proposal would also provide UCFE benefits in a similar manner to S. 165, including permanently amending 5 U.S.C. Chapter 85 to provide federal authority for these benefits.

On January 23, 2019, Representative Anthony Brown introduced H.R. 720. This proposal would deem excepted federal employees during a government shutdown to be eligible for UCFE during FY2019. The authority to provide UCFE to these excepted workers would expire at the end of FY2019.

On February 8, 2019, Representative Katie Hill introduced H.R. 1117, the Shutdown Fairness Act of 2019. This proposal would deem excepted federal employees and unpaid military servicemembers during a government shutdown to be eligible for UCFE or UCX during FY2019. The authority to provide UCFE to these excepted workers would expire at the end of FY2019.

On July 25, 2019, Representative Lori Trahan introduced H.R. 4072. This proposal would deem excepted federal employees and unpaid military servicemembers during a government shutdown to be eligible for UCFE or UCX during FY2020. The authority to provide UCFE to these excepted workers would expire at the end of FY2020. H.R. 4072 would also waive the one-week waiting period before these benefits could be paid.

At the end of the first session of the 116th Congress, none of these bills became law.

Self-Employment and Relocation Assistance Benefits

On January 15, 2019, Senator Ron Wyden and Representative Danny Davis introduced S. 136 and H.R. 556, the Economic Ladders to End Volatility and Advance Training and Employment Act of 2019 (the ELEVATE Act). Among other provisions, this proposal would establish new self-employment and relocation assistance benefits for unemployed workers to be administered by the Social Security Administration, in consultation with DOL. The self-employment assistance benefits would provide weekly income replacement (half of prior earnings up to the maximum weekly benefit amount in the state) for up to of 26 weeks to individuals. They would be available to individuals who are (1) eligible for any type of UI benefit; or ineligible for any type of UI benefit, but became involuntarily unemployed over the previous 12 weeks; or were previously

self-employed, but lost a hiring contract, and (2) have a viable business plan approved by their state department of labor, workforce board, or the Small Business Administration.[64]

In addition, Section 3 of S. 136 and H.R. 556 would provide up to $2,000 (or more, depending on family size) to fund to up to 90% of certain relocation expenses for eligible individuals and their families. To be eligible for this relocation assistance, an individual must be (1) a dislocated worker,[65] (2) a long-term unemployed individual,[66] or (3) an underemployed individual[67] and also have filed a claim for relocation assistance and obtained suitable work with an expectation of obtaining such work in a new geographic region.

Domestic Violence

On March 7, 2019, Representative Karen Bass introduced H.R. 1585, the Violence Against Women Reauthorization Act of 2019. Among many other provisions, Section 703 of H.R. 1585 would require states to consider an individual who quit employment because of sexual harassment, domestic violence, sexual assault, or stalking to be eligible for UC benefits. The House passed H.R. 1585 on April 4, 2019.

Drug Testing[68]

Representative Earl Carter sponsored H.R. 1121, 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 fail the test would be ineligible for benefits for 30 days and would have to be retested to determine eligibility.

Reemployment Services and Eligibility Assessments

On March 14, 2019, Representative Stephanie Murphy introduced H.R. 1759, the Building on Reemployment Improvements to Deliver Good Employment (BRIDGE) for Workers Act. This proposal would extend eligibility to any claimant of unemployment benefits, including those profiled as likely to exhaust benefits (rather than limiting eligibility to those who were profiled as likely to exhaust benefits). The House passed H.R. 1759 on April 9, 2019.

UI Response to Coronavirus (COVID-19)

Both, H.R. 6201, the Families First Coronavirus Response Act, and H.R. 748, the CARES Act have become law and are discussed in the section: “Enacted Laws in the 116th Congress.”

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[64] This proposal would create a new authority to provide self-employment assistance benefits under a new Title XIII Part B of the Social Security Act. This new authority would be distinct from Self-Employment Assistance programs currently authorized under federal law and set up by states. See CRS Report R41253, *The Self-Employment Assistance (SEA) Program*.

[65] As defined in Section 3 of the Workforce Innovation and Opportunity Act (P.L. 113-128).

[66] As defined by the newly-created Director of the Office of Reemployment Assistance, in consultation with the Secretary of Labor and in accordance with criteria set out under the proposed Section 1323 of the Social Security Act.

[67] “As so determined” under the proposed Section 1325(4)(A)(iii) of the Social Security Act.

[68] For additional background on drug testing UC applicants, including selected policy considerations and potential legal concerns, see CRS Report R45889, *Unemployment Compensation (UC): Issues Related to Drug Testing*.

H.R. 6199

On March 11, 2020, Representative Steven Horsford introduced H.R. 6199, which includes the same UI provisions as Division D, the Emergency Unemployment Insurance Stability and Access Act of 2020, of H.R. 6201/P.L. 116-127, the Families First Coronavirus Response Act.

H.R. 6207/S. 3476

On March 11, 2020, Representative Derek Kilmer, introduced H.R. 6207, the Coronavirus Worker Relief Act. This proposal would authorized the availability of DUA benefits under a Stafford Act emergency declaration or disaster declaration for COVID-19. [69] On March 12, Senator Gary Peters introduced S. 3476, the Senate companion bill.

H.R. 6271

Representative Shelia Jackson Lee introduced H.R. 6271, the Unemployment Assistance for Individuals Impacted by Quarantine Order for a National or State Public Health Emergency Act of 2020, on March 16, 2020. The proposal would authorize the availability of DUA benefits under a public health emergency declaration.

S. 3482

On March 12, 2020, Senator Cory Booker introduced S. 3482, the Emergency U.I. Solutions Act of 2020, a bill that would remove and federally finance any waiting week (i.e., unpaid first week of unemployment) under regular UC programs during a Stafford Act emergency declaration. This proposal would also add a new federal requirement for state UC programs to eliminate any waiting week in this circumstance.

S. 3497

On March 12, 2020, Senator Gary Peters introduced S. 3497, the Pandemic Unemployment Assistance Act, a bill which would create a temporary 26-week benefit for unemployed persons whose unemployment is attributable COVID-19 and are ineligible for regular UC.

[69] For background on emergency declarations under the Stafford Act, see CRS Report R43784, *FEMA's Disaster Declaration Process: A Primer*.

Appendix. Extended Benefit Program

The Extended Benefit (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.[70]

Extended Benefit Triggers

The EB program is triggered when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels.[71] 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.[72]

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

[71] 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. As a result, the IUR in a state is often calculated to be much lower than its TUR.

[72] 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.

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.[73] States fund the other half (50%) of EB benefit costs through their SUTA.[74]

Author Information

Julie M. Whittaker
Specialist in Income Security

Katelin P. Isaacs
Specialist in Income Security

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[73] 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. 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.

[74] 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.