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Unemployment Insurance: Legislative Issues in the 117th Congress

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SUMMARY

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Unemployment Insurance: Legislative Issues in the 117th Congress

The Unemployment Insurance (UI) system is a joint federal-state partnership. The U.S. Department of Labor (DOL) provides oversight of state Unemployment Compensation (UC) programs and the state administration of federal UI benefits. Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each state's laws, resulting in 53 different UC programs operated in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. States operate their own UC programs and administer any temporary, federal UI benefits. State UC programs determine the weekly benefit amount and the number of weeks of UC available to unemployed workers. Most states provide up to 26 weeks of UC to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules.

The UI system's two main objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions (i.e., by providing income support to unemployed workers, who spend this income, maintaining a certain level of economic activity). The UC program, created under the Social Security Act of 1935, provides unemployment benefits to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. Augmenting the regular UC program, federal law includes an automatic expansion of the regular UC benefit with the Extended Benefit (EB) program established by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA; P.L. 91-373). EB may provide up to an additional 13 or 20 weeks of benefits once regular UC benefits are exhausted, depending on worker eligibility, state law, additional federal eligibility requirements, and economic conditions in the state.

In response to the recent recession caused by the COVID-19 pandemic, Congress created several temporary programs through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136; enacted March 27, 2020):

- Pandemic Unemployment Assistance (PUA),
- Pandemic Emergency Unemployment Compensation (PEUC), and
- Federal Pandemic Unemployment Compensation (FPUC).

The Consolidated Appropriations Act, 2021 (also known as the Continued Assistance for Unemployed Workers Act of 2020, or the Continued Assistance Act; P.L. 116-260; enacted December 27, 2020), extended the authorization of these programs and created Mixed Earner Unemployment Compensation (MEUC). Congress also provided states with more flexibility to address COVID-19-related unemployment through expanded benefit eligibility, additional administrative funding, and other temporary UI measures enacted under the Families First Coronavirus Response Act (FFCRA; P.L. 116-127, enacted March 18, 2020).

In the 117th Congress, the UI provisions in Title IX, Subtitle A, of the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2; enacted March 11, 2021) make four significant changes to UI programs and benefits:

1. They reauthorize and expand the enhanced UI benefits created under the CARES Act and the Continued Assistance Act;
2. They extend the authorization for additional, temporary UI provisions first authorized under the CARES Act and FFCRA and subsequently extended under the Continued Assistance Act;
3. They authorize a federal income tax exclusion of up to $10,200 in UI benefits in 2020 for taxpayers with modified adjusted gross income (AGI) of less than $150,000; and
4. They provide two sources of additional UI administrative funding: (1) $2 billion to DOL for federal and state administration of UI benefits, including for fraud prevention and benefit processing purposes; and (2) $8 million to DOL for federal activities related to UI programs.

With continued unemployment due to the COVID-19 recession, the 117th Congress may continue to consider additional UI measures. For example, Congress may further extend or expand the enhanced UI measures enacted under FFCRA and the CARES Act.

In the 117th Congress, policymakers have introduced legislation that would:

- exempt certain types of UI benefits from sequestration (S. 545);
- exclude up to $10,200 in UI benefit income from federal income taxation in tax year 2020 (S. 175 and H.R. 685; proposal in these two bills was enacted under Section 9042 of ARPA [P.L. 117-2]);
- amend Title III of the Social Security Act to extend Reemployment Services and Eligibility Assessments (RESEA) to all UC claimants (S. 1389, H.R. 1868, and H.R. 2188);
- modernize state UI systems and implement additional program integrity measures (S. 490, H.R. 723, and H.R. 1458);
- amend federal UI law in various ways in response to COVID-19, including by amending, contracting, or expanding UI provisions in FFCRA or the CARES Act (S. 1389, H.R. 435, H.R. 934, H.R. 1868, and H.R. 2188).

For additional details on the temporary UI benefits created in response to the COVID-19 recession, see CRS Report R46687, *Current Status of Unemployment Insurance (UI) Benefits: Permanent-Law Programs and COVID-19 Pandemic Response*.

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Overview of Unemployment Insurance Programs

The Unemployment Insurance (UI) system is a joint federal-state partnership that provides income support through weekly benefit payments. The UI system's two main objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions (i.e., by providing income support to unemployed workers, who spend this income, maintaining a certain level of economic activity).[1] The UI system consists of two types of benefits: (1) permanently authorized programs such as the Unemployment Compensation (UC) and the Extended Benefit (EB) programs and (2) temporary federal UI benefits created by congressional action to supplement the UC and EB programs during recessions.

The UC program and the UC benefit provide the foundation of the UI system. The UC program, created under the Social Security Act of 1935, provides unemployment benefits to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each state's laws, resulting in 53 different UC programs operated in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. The U.S. Department of Labor (DOL) provides oversight of state UC programs and state administration of all UI benefits. States operate their own UC programs and typically administer any temporary federal UI benefits. Most states provide up to 26 weeks of UC benefits.

Augmenting the regular UC program's economic stabilization efforts, federal law includes an automatic expansion of the regular UC benefit with the EB program established by the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373). EB may provide up to an additional 13 or 20 weeks of benefits once regular UC benefits are exhausted, depending on worker eligibility, state law, additional federal eligibility requirements, and economic conditions in the state.

The two permanently authorized UI programs—UC and EB—provide weekly, countercyclical payments that increase automatically during a recession. The intent to provide economic stability is reflected in the UI system's funding and benefit structure. During economic expansions, states fund approximately 85%-90% of all UC expenditures, as almost all UC benefits are financed by state unemployment taxes. In comparison, federal UC expenditures are relatively small during these expansions (approximately 10%-15%) and are primarily made to the states via administrative grants financed by federal unemployment tax revenue. The federal share of EB expenditures is 50% under permanent law. Thus, the federal share of UI expenditures (UC+EB) increases during recessions.[2] Additionally, temporary UI programs created during all recessions have been 100% federally financed, which again increases the federal expenditure share in UI expenditures. For example, in calendar year 2021, approximately 75% of all UI benefits paid out were federally financed.

[1] See, for example, President Franklin Roosevelt's remarks at the signing of the Social Security Act on August 14, 1935: "This law, too, represents a cornerstone in a structure which is being built but is by no means complete. It is a structure intended to lessen the force of possible future depressions. It will act as a protection to future Administrations against the necessity of going deeply into debt to furnish relief to the needy. The law will flatten out the peaks and valleys of deflation and of inflation. It is, in short, a law that will take care of human needs and at the same time provide the United States an economic structure of vastly greater soundness" (available at http://www.ssa.gov/history/fdrstmts.html#signing).

[2] EB is temporarily 100% federally financed.

When employment grows, state and federal UC tax revenues rise and spending on UC benefits falls because fewer workers are unemployed.[3] In a recession, UC tax revenue decreases and UC program spending increases as more workers lose their jobs and receive UC benefits. The increased amount of UC payments to unemployed workers mitigates the economic impact of a job loss by supplementing lost earnings and thus injecting additional funds into the economy.

Additionally, to support the UC program's economic stabilization efforts during higher unemployment periods, federal law includes an automatic extension of the regular UC benefit through the EB program. Triggering "on" to EB requires that a state meets certain unemployment thresholds. (The state also has options to adopt certain additional unemployment triggers.) In practice, the required EB trigger is set to such a high level of unemployment that the majority of states do not trigger onto EB in most recessions.[4] The weekly EB payment to beneficiaries is the same as the underlying UC benefit amount and, thus, also varies by state.

Congress often supplements these stabilization efforts by enacting temporary UI benefit expansions. The 116th Congress created four new temporary UI benefits in response the COVID-19 pandemic and the resulting economic recession in P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (enacted March 27, 2020). The authorization for these benefits was subsequently extended (and in some cases the benefits were expanded) by the following:

- the Consolidated Appropriations Act, 2021 (P.L. 116-260, also known as the Continued Assistance for Unemployed Workers Act of 2020, or the Continued Assistance Act; enacted December 27, 2020)[5] and
- the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2, enacted March 11, 2021).[6]

Unemployment Compensation Program

Federal law sets broad rules that state UC programs must follow. These include the broad categories of jobs and workers that must be covered by the program, the method for triggering the EB program, the floor on the highest state unemployment tax rate to be imposed on employers (5.4%), and how the states will repay Unemployment Trust Fund (UTF) loans.[7] Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each state's laws, resulting in 53 different UC programs operated in the 50 states, the District of Columbia, Puerto Rico, and the Virgin Islands. DOL provides oversight of state UC programs and state administration of all UI benefits. States operate their own UC programs and also administer any temporary, federal UI benefits.

[3] For a description of federal and state unemployment taxes, see CRS Report R44527, *Unemployment Compensation: The Fundamentals of the Federal Unemployment Tax (FUTA)*.

[4] Janet L. Norwood et al., *Collected Findings and Recommendations: 1994-1996*, Advisory Council on Unemployment Compensation, 1996, pp. 2-4. For additional information on EB law changes over time, see Table A-1 in CRS Report RL34340, *Extending Unemployment Compensation Benefits During Recessions*. As of this writing (i.e., the week beginning May 2, 2021), there are 14 jurisdictions triggered on to an EB period; see https://oui.doleta.gov/unemploy/trigger/2021/trig_050221.html.

[5] Division N, Title II, Subtitle A.

[6] Title IX, Subtitle A.

[7] For details on how the UTF operates, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

In general, UC eligibility is based on attaining qualified wages and employment in UC-covered work[8] over a 12-month period called a base period[9] 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 UC benefits. The methods states use to determine eligibility vary greatly. 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. These eligibility requirements help ensure that UC benefits are directed toward workers with labor market experience who are unemployed because of economic conditions. Self-employed workers—potentially including independent contractors and gig economy workers—are the largest group of workers generally excluded from eligibility for UC benefits.

UC benefit calculations are generally based on wages for covered work over the base period, as described above. Most state benefit formulas replace half of a claimant's average weekly wages up to a weekly maximum. There is considerable variation by state in the weekly UC benefit amount. As of July 2020, the maximum weekly benefit amounts ranged from $235 (Mississippi) to $823 (Massachusetts). The 12-month average, national weekly benefit amount, as of December 2020, was $319.

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).[10] The 0.6% effective net FUTA tax that employers pay on the first $7,000 of each employee's annual 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.[11]

Federal law limits employers' SUTA taxes to funding regular UC benefits and the state share (50%) of EB payments. Additionally, federal law requires that all states tax at least the first $7,000 of each employee's earnings and that the maximum state unemployment tax rate be at least 5.4%. Federal law also requires each employer's state unemployment 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

[8] Covered work refers to any job that is subject to unemployment payroll taxes (i.e., Federal Unemployment Tax Act or state unemployment taxes) as well as most state and local governmental employment.

[9] The base period is the time period during which wages earned or hours/weeks worked are examined to determine a worker's monetary entitlement to UC. Almost all states use the first four of the last five completed calendar quarters preceding the filing of the claim as their base period. This may result in a lag of up to five months between the end of the base period and the date a worker becomes unemployed. As a result there are some instances when workers with substantial labor market attachment are ineligible for UC benefits. In particular, recent entrants to the workforce or re-entrants may be ineligible under this definition. Federal law allows states to develop expanded definitions of the base period.

[10] 23 U.S.C. §§3301-11.

[11] 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*. For information on the Employment Service, see CRS Report R43301, *Programs Available to Unemployed Workers Through the American Job Center Network*.

maximum established by state law. FUTA and SUTA funds are deposited in the appropriate accounts within the UTF.[12]

Extended Benefit Program

The EB program was established by the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373). The EB program may provide up to an additional 13 or 20 weeks of benefits for individuals who were previously eligible for UC benefits once regular UC benefits are exhausted, depending on a number of factors: worker eligibility, state law, additional federal eligibility requirements, and economic conditions in the state.

Extended Benefit Triggers

The EB program is triggered "on" when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels.[13] 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—based upon the IUR[14]
  - up to an additional 13 weeks of benefits if the state's IUR is at least 6%, regardless of previous years' averages.
- Option 2—based upon TUR[15]
  - 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 or;
  - 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. (This is designated as a High Unemployment Period [HUP] for EB.)

No more than 13 weeks are available in total (or 20 weeks if the HUP conditions have been met) as the triggers are not additive. When a state triggers "off" of an EB period, all EB benefit

[12] For details on the UTF, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

[13] The 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. The 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 nonprofit organizations, and several other (primarily seasonal) categories of workers. The IUR also excludes those who have exhausted their UC benefits (even if they are receiving EB benefits), new entrants or re-entrants 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.

[14] If EB is activated based upon the IUR (triggers "on"), the EB period is immediately in effect. See Section 203(a)(1) of P.L. 91-373, as amended.

[15] By law, a state triggering on to an EB period based upon a TUR-based trigger will begin to offer those benefits on the third week after the first week for which there is a state "on" indicator. See Section 203(a)(1) of P.L. 91-373.

payments in the state cease immediately, regardless of individual entitlement.[16] That is, EB benefits are not phased out (grandfathered) when a state triggers off the program.[17]

EB Eligibility and Benefit Amount

The EB benefit amount is equal to the eligible individual's weekly regular UC benefit. The EB program imposes federal restrictions on individual eligibility for EB beyond the state requirements for regular UC. The EB program requires that a worker make a "systematic and sustained" work search (as defined by state law). Furthermore, the worker may not receive benefits if he or she refused an offer of *suitable* work, which is defined as "any work within such individual's capabilities."[18] In addition, claimants must have worked at least 20 weeks of full-time insured employment (or the equivalent as defined by the state) in insured wages during their base periods.

EB Financing

Under permanent law, FUTA revenue finances 50% of the EB payments and 100% of EB administrative costs. States fund the other 50% of EB benefit costs, under permanent law, through their SUTA revenue.

Temporary EB Financing Change

Section 4105 of P.L. 116-127, the Families First Coronavirus Response Act (FFCRA), as amended, temporarily provides 100% federally financed EB (with the exception of state and local employees) for states that receive both halves of the emergency administrative grants authorized under FFCRA.[19] The Continued Assistance Act (P.L. 116-260) extended the authority for this

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[16] If an EB period is deactivated based upon the state failing to meet IUR based trigger requirements (i.e., it triggers "off"), the EB period is immediately ended. If an EB period triggers off based upon a state failing to meet TUR-based trigger requirements, the EB period will end on the third week after the first week for which there is a state "off" indicator. See Section 203(a)(2) of P.L. 91-373, as amended.

By federal law, no EB period shall last for a period of less than 13 consecutive weeks, and no EB period may begin before the 14th week after the close of a prior EB period with respect to such state. See Section 203(b) of P.L. 91-373, as amended.

EB benefits on interstate claims are limited to two extra weeks unless both the worker's state of residence and the worker's state of previous employment are in an EB period. The rules for triggering on and off EB based upon multiple triggers are provided in Title 20, Section 615.11, of the *Code of Federal Regulations*.

[17] The Continued Assistance Act (P.L. 116-260) provided a temporary option for states that have triggered off an EB period to disregard the mandatory 13-week off period for weeks between November 1, 2020, and December 31, 2021, if state law allows.

[18] State UC programs have their own definitions related to work search and refusal of suitable work. See Tables 5.16 and 5.18 in DOL, Employment and Training Administration (ETA), *2020 Comparison of State Unemployment Insurance Laws*, https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/nonmonetary.pdf.

[19] Section 4102(a) of FFCRA provided up to a total of $1 billion in "emergency administrative grants" to states in calendar year 2020. Half of each state's share was available if the state met certain requirements related to UC eligibility notifications and claims access. The second half of each state's share was available if a state qualified for the first half and experienced at least a 10% increase in UC claims over the previous calendar year and met certain other requirements related to easing UC eligibility requirements for individuals affected by COVID-19. Additionally, there were reporting requirements to DOL and committees of jurisdiction within one year for states that receive these grants. DOL published the state shares of these emergency administrative grants in Unemployment Insurance Program Letter (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. As of June 11, 2020, according to DOL, all states met the statistical criteria for receiving these FFCRA grants (see

100% federal financing of EB through March 13, 2021 (March 14, 2021, in New York).[20] ARPA (P.L. 117-2) subsequently extended this authority through September 4, 2021.

Temporary Adoption of Optional EB Triggers Based on 100% Federal Financing for EB

Some states have reacted to this temporary 100% federal financing by enacting temporary EB trigger options that remain in place for the duration of the increased federal cost share. According to DOL, 13 states have adopted a more responsive TUR trigger but authorized a sunset for these TUR triggers tied to the availability of the 100% federal financing for EB.[21]

Temporary COVID-19 Pandemic UI Programs

The 116th Congress created several new temporary UI benefits through the CARES Act (March 27, 2020) in response the COVID-19 pandemic and the resulting economic recession. The Continued Assistance Act (December 27, 2020) and ARPA (March 11, 2021) subsequently extended the authorization for these COVID-19 UI benefits and, in some cases, expanded their duration. Below is summary information on these temporary UI benefits. **Figure 1** also provides the flow of all available UI benefits, including these temporary COVID-19 UI benefits, from March 13, 2021, through September 4, 2021.

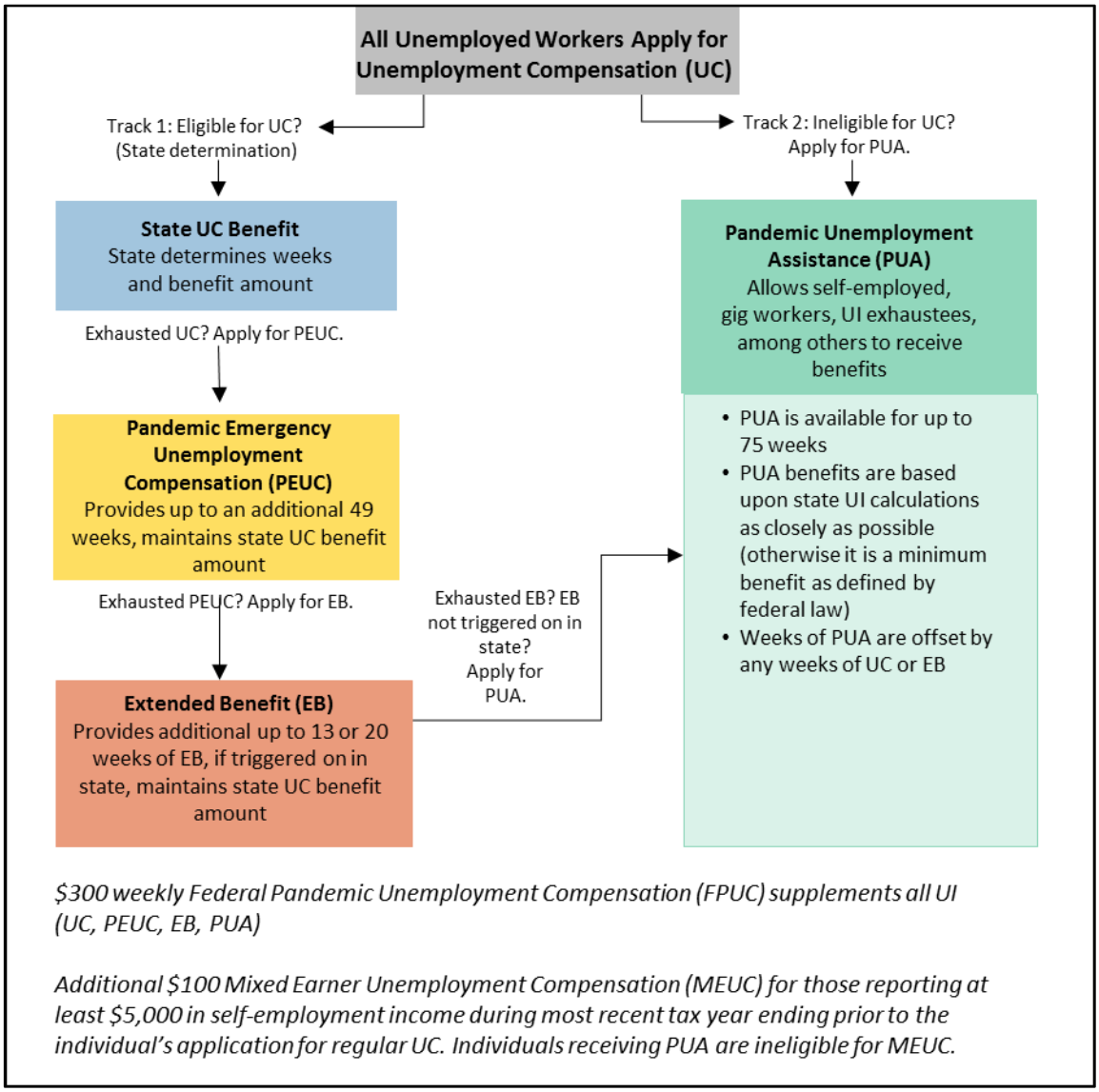
https://oui.doleta.gov/unemploy/pdf/IC3MOmarch.pdf). All states requested their full allotment of these FFCRA grants by September 30, 2020.

[20] For subsequent UI benefit expiration dates provided below, the benefit expiration date in New York falls one calendar day later, which is due to state definitions of *week*.

[21] According to DOL, these states are California, Colorado, Delaware, the District of Columbia, Georgia, Illinois, Kentucky, Massachusetts, Michigan, Nevada, New York, Ohio, and Texas. Some states have cited the specific federal law in their sunset dates, while other states have used specific dates that align with an upcoming expiration of the 100% federal financing of EB. Texas's EB TUR trigger statute requires that if 100% federal financing of EB is available, then Texas must promulgate a regulation to use it (based on DOL/ETA email communication with authors, January 16, 2021).

Figure 1. Current Coordination of the Flow of UI Benefits Under the American Rescue Plan Act of 2021

(March 13, 2021, through September 4, 2021)



Source: CRS analysis based on the UI provisions in Title IX, Subtitle A, of the American Rescue Plan Act of 2021 (P.L. 117-2) and DOL guidance.

Notes: This coordination flow is contingent on an individual meeting all eligibility criteria for the respective programs. It is also contingent on a state having an agreement with DOL to administer each benefit.

Transition rules: (1) Individuals who were receiving EB for the week ending December 26, 2020, were required to remain on EB until those benefits were exhausted. After that point, they may have been eligible for additional PEUC if available. (2) Individuals who were receiving EB for the week ending March 13, 2021, must remain on EB until those benefits are exhausted. After that point, they may be eligible for additional PEUC if available.

PUA is the last payer. All other UI benefits must be exhausted or unavailable. States have a temporary, six-week authorization to continue to pay PUA rather than PEUC if an individual was receiving PUA for the week ending March 13, 2021.

FPUC, MEUC, PUA, and PEUC are authorized through September 4, 2021 (September 5, 2021, for New York).

As of March 5, 2021, South Dakota and Idaho did not sign agreements to offer MEUC, according to DOL.

Pandemic Unemployment Assistance (PUA)

PUA is a temporary, federal UI program for individuals who are (1) not otherwise eligible for UI benefits (e.g., self-employed, independent contractors, gig economy workers, or those who have exhausted all entitlement to other UI benefits); (2) unemployed, partially unemployed, or unable to work due to a specific COVID-19-related reason; and (3) not able to telework and not receiving any paid leave. As originally constructed under the CARES Act, PUA provided up to 39 weeks of benefits for weeks of unemployment ending December 26, 2020. The Continued Assistance Act authorized 11 additional weeks of PUA benefits (not retroactive; only payable with respect to weeks of unemployment beginning December 26, 2020) for a total of 50 weeks of PUA.[22]

In the 117th Congress, ARPA authorizes 29 additional weeks of PUA benefits (not retroactive; only payable with respect to weeks of unemployment beginning March 14, 2021). ARPA also extends the authorization for PUA through weeks of unemployment ending on or before September 6, 2021. No PUA benefits are payable after September 4, 2021.[23] The current PUA expiration date effectively limits PUA benefits to an additional 25 weeks and a cumulative total of 75 weeks.

UC Exhaustion and PUA

During a period of unemployment, individuals may have been eligible for benefits under multiple UI programs, including programs authorized in the CARES Act, as amended. Once an individual has exhausted entitlement to UC, Pandemic Emergency Unemployment Compensation (PEUC), and EB benefits, the individual may be eligible to collect PUA if the cause of unemployment is attributable to a specific COVID-19-related reason. The 50-week entitlement to PUA would be reduced by the number of UC and EB weeks received by the individual.

The PUA benefit amount is the weekly benefit amount as calculated under state law based on recent earnings, subject to the minimum benefit under Disaster Unemployment Assistance (DUA),[24] which is half of the state's average weekly UC benefit amount. In territories without UC programs, the PUA benefit is determined by DUA regulations.

Pandemic Emergency Unemployment Compensation (PEUC)

PEUC provides additional weeks of federally financed UI benefits for individuals who were previously eligible for UC benefits but exhausted all UC entitlement and are able, available, and actively seeking work, subject to COVID-19-related flexibilities. It was originally created as a 13-week UI extension under the CARES Act and payable through weeks of unemployment ending December 26, 2020, but the Continued Assistance Act authorized 11 additional weeks of PEUC benefits (not retroactive; only payable with respect to weeks of unemployment beginning December 26, 2020)—for a total of 24 weeks of PEUC.[25]

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[22] The Continued Assistance Act extended the authorization for PUA through weeks of unemployment ending on or before March 14, 2021. It also created a phaseout period for PUA so that, for individuals receiving PUA at the end of the program who had not exhausted available weeks of PUA and remained otherwise eligible, PUA benefits were payable until April 10, 2021.

[23] ARPA did not provide authority for a phaseout period under PUA after program expiration.

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

[25] The Continued Assistance Act also extended the authorization for PEUC through weeks of unemployment ending on or before March 14, 2021. In addition, it created a phaseout period for PEUC so that, for those individuals who were

In the 117th Congress, ARPA authorizes 29 additional weeks of PEUC benefits (not retroactive; only payable with respect to weeks of unemployment beginning March 14, 2021). ARPA also extends the authorization for PEUC through weeks of unemployment ending on or before September 6, 2021. No PEUC benefits are payable after September 4, 2021.[26] The current PEUC expiration date effectively limits PEUC benefits to an additional 25 weeks and a cumulative total of 49 weeks.

The PEUC benefit amount is equal to the eligible individual's weekly regular UC benefits.

Federal Pandemic Unemployment Compensation (FPUC)

Originally authorized under the CARES Act at $600 per week, FPUC was a benefit augmentation for all individuals receiving any weekly UI benefit. The $600 FPUC benefit initially expired on July 25, 2020. The Continued Assistance Act reestablished FPUC by reauthorizing the FPUC amount at a lower $300 per week for weeks of unemployment beginning after December 26, 2020, and ending on or before March 14, 2021.

In the 117th Congress, ARPA extends the Continued Assistance Act's reauthorization of FPUC at $300 per week through weeks of unemployment ending on or before September 6, 2021. After September 4, 2021, no FPUC benefits are payable.

Mixed Earner Unemployment Compensation (MEUC)

The Continued Assistance Act created a $100-a-week MEUC payment in addition to the $300-a-week FPUC benefit in states that elect to participate. MEUC provides a $100 weekly benefit for individuals who received at least $5,000 in self-employment income in the most recent tax year (i.e., the tax year ending prior to the individual's application for state UI benefits) and who receive almost any UI benefit (including UC, EB, and PEUC but excluding PUA). MEUC was originally authorized for weeks of unemployment beginning on or after December 27, 2020, and ending on or before March 14, 2021.

In the 117th Congress, ARPA extends the authorization of the $100-a-week MEUC payment in participating states for weeks of unemployment ending on or before September 6, 2021. After September 4, 2021, no MEUC benefits are payable.

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 types of UI expenditures.[27] UC payments are not subject to the sequester reductions. EB and most forms of administrative funding are subject to the sequester reductions.[28]

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receiving PEUC at the end of the program, had not exhausted available weeks of PEUC, and remained otherwise eligible, PEUC benefits were payable until April 10, 2021.

[26] ARPA did not provide authority for a phaseout period under PEUC after program expiration.

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

[28] The Emergency Unemployment Compensation program, when it was available (including any benefit payments delayed from prior fiscal years), was 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

FY2021 Sequester of Unemployment Insurance Benefits

The FY2021 sequestration order requires a 5.7% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions are applicable to discretionary programs, projects, and activities.[29] As a result, the federal share of EB expenditures is required to be reduced by 5.7% for weeks of unemployment during FY2021.[30] When EB is payable in FY2021 and there is authority for the 100% federal financing of EB (with the exception of non-sharable compensation—e.g., state and local workers),[31] the net sequester reduction to EB benefit payments for FY2021 is 2.85%. (The reduction to non-sharable EB benefits would remain at 5.7%.[32])

The temporary, COVID-19 UI benefits created under the CARES Act and subsequently extended under the Continued Assistance Act and ARPA (as well as MEUC, which was created under the Continued Assistance Act) were not specifically excluded from sequestration. However, the Office of Management and Budget released the FY2021 order prior to the enactment of the CARES Act.[33] Thus, the temporary UI benefits created under the CARES Act and extended under the Continued Assistance Act and ARPA are not subject to the FY2021 mandatory sequester order.

State UC Loans and Solvency Concerns

If a recession is deep enough and if SUTA revenue is inadequate for a sustained duration, 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.[34] 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

impact of sequestration on UI benefits generally and specifically, for sequestration in FY2013 and FY2014. 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; 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; and CRS Report R45478, *Unemployment Insurance: Legislative Issues in the 116th Congress* for additional information on the implications of the sequester order for FY2019 and FY2020.

[29] Office of Management and Budget, *OMB Report to the Congress on the Joint Committee Reductions for Fiscal Year 2021*, February 10, 2020, https://www.whitehouse.gov/wp-content/uploads/2020/02/JC-sequestration_report_FY21_2-10-20.pdf.

[30] For details, see ETA, UIPL No. 18-19, September 16, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5955.

[31] The temporary federal financing of EB, as authorized under FFCRA (P.L. 116-127), was extended by the Continued Assistance Act through weeks of unemployment ending on or before March 14, 2021, which included the first two quarters of FY2021. This provision was further extended under ARPA through September 4, 2021, which includes the remaining quarters of FY2021.

[32] For details, see ETA, UIPL No. 12-21, January 19, 2021, at https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9913.

[33] The FY2021 sequestration order was issued by the President on February 10, 2020, available at https://www.federalregister.gov/documents/2020/02/13/2020-03044/sequestration-order-for-fiscal-year-2021-pursuant-to-section-251a-of-the-balanced-budget-and.

[34] Federal UC law does not restrict 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).

may face interest charges, and states' employers may face increased net FUTA rates until the loans are repaid.[35]

As of May 4, 2021, 20 jurisdictions had outstanding federal loans totaling $52.1 billion from the federal accounts within the UTF: California ($20.9 billion), Colorado ($1.0 billion), Connecticut ($725.1 million), Hawaii ($710.2 million), Illinois ($4.2 billion), Kentucky ($505.7 million), Louisiana ($184.1 million), Maryland ($68.5 million), Massachusetts ($2.3 billion), Minnesota ($1.1 billion), Nevada ($332.4 million), New Jersey ($247.6 million), New Mexico ($278.2 million), New York ($9.3 billion), Ohio ($1.5 billion), Pennsylvania ($1.6 billion), Texas ($6.9 billion), the U.S. Virgin Islands ($94.8 million), Virginia ($42.6 million), and West Virginia ($184.9 million).[36] 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.[37] By the end of 2020, the impact of the recessionary demands on the state UC programs brought about by the COVID-19 pandemic had lowered this number to 13 states.[38]

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.[39] RESEA provides 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.

In 2017, Section 30206 of P.L. 115-123 codified the authority for DOL under permanent law to administer a RESEA program.[40] It also set out various requirements for states to use certain types

[35] 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*.

[36] U.S. Department of the Treasury, Bureau of Public Debt, *Title XII Advance Activities Schedule*, May 4, 2021, http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm.

[37] The AHCM is the ratio of actual state UTF account balances (divided by covered wages in that year) to the average of the three 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 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. See DOL, Office of Unemployment Insurance, *State Unemployment Insurance Trust Fund Solvency Report 2020*, February 2020, https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf.

[38] See DOL, Office of Unemployment Insurance, *State Unemployment Insurance Trust Fund Solvency Report 2021*, March 2021, https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2021.pdf.

[39] Since FY2005, DOL has provided some type of reemployment services through discretionary appropriations. For additional background, see CRS Report R43044, *Expediting the Return to Work: Approaches in the Unemployment Compensation Program*; and ETA, Unemployment Insurance Program Letter, UIPL 3-17, December 8, 2016, p. 2, https://wdr.doleta.gov/directives/attach/UIPL/UIPL_03-17.pdf.

[40] 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

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 for UI beneficiaries selected for participation.[41]

RESEA is a permanently authorized program with funding scheduled to increase over future fiscal years. Yet circumstances related to the COVID-19 pandemic have presented challenges to the in-person nature of RESEA service delivery. On June 12, 2020, DOL provided the following guidance to states on the issue of RESEA during the COVID-19 pandemic:

> During the temporary circumstances related to COVID-19, states have flexibility to conduct RESEA service delivery by telephone if other person-to-person virtual means are not practical.
>
> In recognition that traditional work search may not be feasible, states are encouraged to focus on helping claimants frame effective reemployment and work search plans to be implemented when there is no longer a COVID-19 threat.[42]

Laws Enacted in the 117th Congress

P.L. 117-2, the American Rescue Plan Act of 2021

The UI provisions in Title IX, Subtitle A, of ARPA make four significant changes to UI programs and benefits.

Reauthorization and Extension of CARES Act UI Benefits

As described in more detail above, APRA extends the authority for PUA, PEUC, FPUC, and MEUC through September 3, 2021. Additionally, ARPA authorized 29 additional weeks each of PUA and PEUC benefits payable with respect to weeks of unemployment beginning March 14, 2021 (not retroactive).

The PUA expiration date under ARPA effectively limits PUA benefits to no more than an additional 25 weeks and a cumulative total of 75 weeks. The PEUC expiration date under ARPA effectively limits PEUC benefits to no more than an additional 25 weeks and a cumulative total of 49 weeks.

Figure 1, shown earlier, provides the flow of all currently available UI benefits—including PUA, PEUC, FPUC, and MEUC—from March 13, 2021, through September 4, 2021.

Security Act for that fiscal year (FY2018).

[41] 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 (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, https://www.govinfo.gov/content/pkg/FR-2019-04-04/pdf/2019-06558.pdf). On August 8, 2019, DOL published a notice that summarizes and responds to the public comments and sets out the RESEA allocation formula that will be effective beginning in FY2021. (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, https://www.govinfo.gov/content/pkg/FR-2019-08-08/pdf/2019-16988.pdf.)

[42] DOL, "Operational Flexibilities Update—E-Blast to State Unemployment Insurance Agencies on June 12, 2020," https://oui.doleta.gov/unemploy/pdf/pandemicflexibilities_06122020.pdf.

Extensions of Additional UI Provisions

ARPA extends the temporary authority for additional UI provisions first authorized under FFCRA and the CARES Act and subsequently reauthorized under the Continued Assistance Act. The authorities for the following UI provisions are generally extended through September 6, 2021 (or for weeks of unemployment ending on or before September 6, 2021 [i.e., through September 4, 2021]):

- Waiver of interest payments and the accrual of interest on federal advances (loans) to states to pay regular UI benefits through temporary assistance for states with advances;
- 100% federal funding of EB;
- 100% federal funding for the first week of UC benefits in states with no waiting week (originally 100% federal funding under CARES Act, then 50% funding under the Continued Assistance Act, then restored to 100% federal funding under ARPA that is retroactive and applies as if the reduction to 50% funding had not occurred);
- 75% federal funding of state UC benefits based on service with certain employers;[43]
- 100% federal financing of Short-Time Compensation[44] (STC; work sharing) in states with existing programs and 50% federal financing for states that set up STC programs (up to the equivalent of 26 weeks of benefits for individuals); and
- Waiver of federal requirements regarding merit staffing for state UI programs on an emergency, temporary basis in response to COVID-19 (limited to certain temporary actions taken by states to quickly process UI claims, including rehiring former employees and temporary hiring).

UI Tax Exclusion for 2020

ARPA allows taxpayers to exclude up to $10,200 in UI benefits from income in 2020 for the purposes of federal income for taxpayers with a modified AGI of less than $150,000. The $150,000 AGI threshold applies regardless of the taxpayer's filing status (i.e., married filing jointly, single, or head of household).[45]

Additional UI Administrative Funding

ARPA provides $2 billion in additional UI administrative funding to DOL in FY2021 to "detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits." This funding is available until expended and may be used for (1) federal administrative costs, (2) system-wide infrastructure, and (3) grants to states and territories for program integrity and fraud

[43] This funding is for UC benefits paid to former employees of reimbursing employers. Reimbursing employers are state and local governments, Indian tribes, and nonprofit organizations (including the Kennedy Center) that have opted not to pay UI taxes but instead reimburse states for regular UI benefits paid to their former employees. Under both the CARES Act and the Continued Assistance Act, the federal funding for these UC benefits was previously 50%. The 75% federal funding authorized for these UC benefits under ARPA begins for weeks of unemployment after March 31, 2021.

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

[45] For more background on this temporary tax exclusion on UI benefits, see CRS In Focus IF11782, *Federal Taxation of Unemployment Insurance Benefits*.

prevention purposes, including for identity verification and faster claims processing for all UI benefits.

ARPA also provides an additional $8 million to DOL in FY2021, available until expended, for necessary expenses to carry out federal activities related to the administration of UI programs.

Legislative Proposals in the 117th Congress

This section provides summary information on all legislation introduced in the 117th Congress that would amend UI programs and benefits. These bills have not yet gained passage. (Enacted legislation is described in an earlier section on "Laws Enacted in the 117th Congress.")

Taxation of UI Benefits

H.R. 435

On January 21, 2021, Representative Nydia Velázquez introduced H.R. 435, the Excluding Pandemic Unemployment Compensation from Income Act. H.R. 435 would exclude all FPUC payments from gross income calculations for federal income tax purposes (as well as for purposes of all federal and federally assisted programs).

S. 175

On February 2, 2021, Senator Dick Durbin introduced S. 175, the Coronavirus Unemployment Benefits Tax Relief Act, which would exclude up to $10,200 of UI benefits per individual for the purposes of federal income taxation for tax year 2020. Also on February 2, 2021, Representative Cynthia Axne introduced H.R. 685, the House companion bill. The proposal in these two bills was enacted under Section 9042 of ARPA (P.L. 117-2; enacted March 11, 2021).

Railroad UI (RRUI) Sequestration Exemption

S.545

On March 2, 2021, Senator Rob Portman introduced S. 545, the Railroad Employee Equity and Fairness Act. S. 545 would permanently exempt railroad UI benefits from the BCA mandatory sequester.[46]

Reemployment Services and Eligibility Assessments

H.R. 1868

On March 12, 2021, Representative John Yarmuth introduced H.R. 1868. Section 3(c) of this bill, as introduced, would extend RESEA eligibility to any claimant of unemployment benefits rather than limiting eligibility only to those who were profiled as likely to exhaust benefits.[47] On March

[46] For more information on railroad UI benefits, see CRS Report RS22350, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*.

[47] This is the same proposal that was included in the House-passed version of H.R. 1759 in the 116th Congress, the Building on Reemployment Improvements to Deliver Good Employment for Workers Act (also introduced in the Senate as S. 2872). Additionally, Section 3(a) of this bill, as introduced, would disregard MEUC payments from

19, 2021, the House agreed to H.R. 1868, including this language in Section 3(a). On March 25, 2021, the Senate agree to an amended version of H.R. 1868 that does not include the proposal related to RESEA eligibility. (While resolving differences, the RESEA eligibility proposal was dropped. H.R. 1868 was signed into law on April 14, 2021 as P.L. 117-7 and did not include the RESEA eligibility proposal.)

H.R. 2188

On March 26, 2021, Representative Kevin Brady introduced H.R. 2188, the Reopening America by Supporting Workers and Businesses Act of 2021. Among other UI provisions, this bill includes a RESEA proposal, which is the same as the expanded RESEA eligibility proposal under Section 3(c) of H.R. 1868, as introduced and as described above. It would also accelerate a scheduled increase in funding for RESEA across upcoming fiscal years.

UI Modernization and Program Integrity Proposals

S. 723

On February 2, 2021, Representative Bill Posey introduced H.R. 723, the Reducing Fraud in Unemployment Assistance Act. H.R. 723 would require that states compare a list of individuals receiving state UC benefits with a list of incarcerated individuals in federal and state custody for the purposes of investigating and prosecuting fraud, waste, and abuse. H.R. 723 would also provide for the federal recovery of state overpayments of PUA and FPUC.

S. 490/H.R. 1458

On March 1, 2021, Senator Ron Wyden introduced S. 490, the Unemployment Insurance Technology Modernization Act. Also on March 1, 2021, Representative Steven Horsford introduced H.R. 1458, the House companion bill. This proposal would require DOL, in consultation with relevant experts, to develop, operate, and maintain technology capabilities to modernize the federal and state administration of UI benefits. It sets out a number of specifications for these technology capabilities, including accessibility requirements for online UI claim filing and requirements regarding automated decisions (i.e., to prevent biases). States would be able to use only some of the modular components of the technology components, depending on their needs. This proposal also requires a study to evaluate current UI technology needs. It would also require DOL to conduct a pilot program on at least four states prior to deploying the new technology components to all states. Finally, this proposal establishes a Digital Services Team at DOL to assist in the development of these technology capabilities and to oversee their maintenance and improvement by providing assistance to state UI agencies.

income for the purposes of the Medicaid/Children's Health Insurance Program, which would be the same as current treatment of FPUC payments under current law.

Further Amendments, Contractions, or Extensions to the CARES Act and FFCRA

H.R. 934

On February 8, 2021, Representative Steven Horsford introduced H.R. 934, the Unemployed Worker Lifeline Act. H.R. 934 would extend the FPUC authorization from weeks of unemployment ending on or before March 14, 2021, until weeks of unemployment ending on or before October 3, 2021. H.R. 934 would also increase the FPUC amount from $300 per week to $400 per week.

H.R. 1868

On March 12, 2021, Representative John Yarmuth introduced H.R. 1868. Section 3(a) of this bill, as introduced, would disregard MEUC payments from income for the purposes of the Medicaid/Children's Health Insurance Program, which would be the same as current treatment of FPUC payments under current law.[48] On March 19, 2021, the House agreed to H.R. 1868, including this language in Section 3(a). On March 25, 2021, the Senate agreed to an amended version of H.R. 1868 that does not include the proposal related to treatment of MEUC payments. (While resolving differences, the MEUC payments proposal was dropped. H.R. 1868 was signed into law on April 14, 2021, as P.L. 117-7 and did not include the MEUC payments proposal.)

H.R. 2188/S. 1389

On March 26, 2021, Representative Kevin Brady introduced H.R. 2188, the Reopening America by Supporting Workers and Businesses Act of 2021. On April 27, 2021, Senator Mike Crapo introduced the Senate companion bill: S. 1389, the Back to Work Bonus Act. In addition to the two RESEA proposals (described in the section on "Reemployment Services and Eligibility Assessments"), this proposal would authorize one-time, lump-sum FPUC payments, or "back-to-work bonuses" ($1,200 for full-time reemployed workers and $600 for part-time reemployed workers), for individuals reemployed after being previously eligible for FPUC who met certain requirements. H.R. 2188 and S. 1389 would also reinstate the federal work search requirement by removing the authority for COVID-19-related flexibility for states authorized under FFCRA (P.L. 116-127).

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[48] Additionally, Section 3(c) of this bill, as introduced, would have extended RESEA eligibility to any claimant of unemployment benefits rather than limiting eligibility only to those who were profiled as likely to exhaust benefits.

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