95-742 EPW
Updated June 8, 1998

CRS Report for Congress

Received through the CRS Web

Unemployment Benefits: Legislative Issues in the 105th Congress

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Summary

The authorization for Trade Adjustment Assistance (TAA) expires at the end of FY1998. President Clinton will propose a 5-year extension of TAA that incorporates several major program changes. Changes in the federal-state unemployment compensation (UC) system may also be considered. One major issue, addressed by H.R. 3684 introduced by House Ways and Means Subcommittee Chairman Shaw, is whether to shift some federal UC responsibilities and related funding to the states. The Clinton Administration backs a proposal (H.R. 3697) to increase the availability of extended benefits during recessions and expand coverage of workers with limited job tenure.

Background

The UC system, funded by both federal and state payroll taxes, pays benefits to covered workers who become involuntarily unemployed for economic reasons and meet state eligibility rules. Federally funded TAA extends UC benefits for workers displaced by import competition and provides them with job training. Federal administration of UC and TAA is under the U.S. Department of Labor (DoL). The UC system, established by the Social Security Act of 1935 (P.L. 74-271), operates in each state, the District of Columbia, Puerto Rico, and the Virgin Islands. Federal law sets rules that the 53 state programs must follow and levies a payroll tax on employers under the Federal Unemployment Tax Act (FUTA), but states set most of the rules for eligibility, benefits, and financing, process the claims, and pay the benefits. The UC system helps counter economic trends. When the economy grows, UC revenue rises and spending falls, thereby slowing growth. In a recession, revenue falls and spending rises, stimulating the economy. Benefits totaling $20.3 billion were paid to 7.5 million UC claimants in FY1997.

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

Benefits. To receive UC, claimants must have enough recent earnings to meet their state's requirements. States usually disqualify claimants who lost their jobs because of: inability to work or unavailability for work; voluntarily quitting without good cause; discharge for job-related misconduct; refusal of suitable work without good cause; or a labor dispute. Generally, benefits are based on wages in covered work over a 12-month period. Most state benefit formulas replace half of a claimant's average weekly wage up to a weekly maximum. Maximums range from $133 (Puerto Rico) to $573 (Massachusetts, including dependents' allowances). The average weekly benefit nationwide was $185 in FY1997. Benefits are available for up to 26 weeks (30 weeks in Massachusetts and Washington). The average benefit duration in FY1997 was 14.6 weeks. A federal-state extended benefits (EB) program offers benefits for an additional 13 to 20 weeks in states with unemployment rates above certain threshold levels.

The TAA program can extend UC benefits for up to 26 weeks, or for up to 52 weeks for claimants who are in approved job training. TAA claimants eligible for the North American Free Trade Agreement Transitional Adjustment Assistance Program (NAFTA-TAAP) cannot receive benefits unless enrolled in training. Other TAA claimants are required to enroll in training unless the requirement is waived by the Secretary of Labor.

Financing. The 0.8% FUTA tax funds federal and state administration, the federal share of EB, loans to insolvent state UC accounts, and state employment services. States levy their own payroll taxes to fund UC benefits. State ceilings on taxable wages range from the $7,000 FUTA ceiling (12 states) up to $26,400 (Hawaii). State UC tax rates are experience-rated. (Employers generating the fewest claimants have the lowest rates.) State tax rates averaged 2.3% of taxable wages and 0.8% of total wages in FY1997.

State UC revenue is deposited with the U.S. Treasury and counts as federal revenue in the budget. State Unemployment Trust Fund accounts are credited for this revenue. These credits allow Treasury to reimburse states for their benefit payments without annual appropriations. These reimbursements count as federal budget outlays. If a state trust fund account becomes insolvent, the state may borrow federal funds. Unemployment Trust Fund revenue has exceeded outlays each year since FY1995 (**Table 1**).

Although considered an entitlement, TAA is funded through annual appropriations. Funding levels for FY1998 are: TAA cash benefits, $208 million; TAA training, $97 million; NAFTA-TAAP cash benefits, $22 million; NAFTA-TAAP training, $22 million.

Legislative Issues in the 105th Congress

Reauthorization of Trade Adjustment Assistance

The authorization for TAA expires after FY1998. *A bill (H.R. 2621) reported by the House Ways and Means Committee to restore "fast-track" authority for congressional approval of trade agreements would extend TAA unchanged through FY2000.*

Table 1. Revenue and Spending Associated With Unemployment Compensation, FY1992-FY1998 (in billions of dollars)

	1992	1993	1994	1995	1996	1997	1998
UC revenue, total	23.0	25.2	28.0	28.9	28.5	28.2	27.8
FUTA tax	5.4	4.2	5.5	5.7	5.8	6.1	6.2
State UC taxes	17.6	21.0	22.5	23.2	22.7	22.1	21.6
UC outlays, total	40.4	38.9	29.7	24.6	25.6	23.8	23.2
Regular benefits	25.6	21.9	21.7	20.9	22.0	20.3	19.6
EB	*	0	0.3	0.1	*	*	*
Emergency UC	11.1	13.2	4.2	*	(*)	(*)	—
Administration	3.7	3.8	3.5	3.6	3.6	3.5	3.6

Source: U.S. Dept. of Labor. *UI Outlook: Midsession Review of the 1999 Budget,* May 1998.
*Less than $50 million.

President Clinton has proposed a 5-year TAA extension with certain changes in the program. He would extend TAA eligibility to workers left jobless because of plant relocation to any other country. Currently, plant relocation triggers eligibility only under NAFTA-TAAP when a plant is moved to Canada or Mexico. He also would raise the cap on funds for TAA training and make the TAA training requirement the same as for NAFTA-TAAP. (For further discussion, see CRS Issue Brief 98023, *Trade Adjustment Assistance: Proposals for Renewal and Reform*, by James R. Storey.)

Administration Proposals to Reform Unemployment Compensation

The Clinton Administration has submitted legislation, introduced by Representatives Levin, English, and Rangel (H.R. 3697), that would: offer states financial aid to implement use of a more current wage base for benefit determination; require that the EB eligibility trigger be based on a state's total unemployment rate instead of the insured unemployment rate most states now use; set a target for states to meet in funding benefit costs; and increase federal funding for state UC administration.

A budget proposal would speed up collection of UC taxes. Employers generally pay federal and state UC taxes quarterly. The President proposes that these taxes be paid monthly by firms with more than 20 employees, effective in 2003, arguing that faster collection would reduce tax delinquency. Opponents claim that added administrative costs would be imposed on employers solely to realize a one-time gain in federal revenue.

Proposals to Reduce the Federal Role in the Unemployment Compensation System

Some states urge a "devolution" (turning over) of FUTA revenue to them. They argue that the redistribution of FUTA revenue by DoL away from states where FUTA revenue is high relative to UC administrative costs is unfair. They also argue that Congress holds back FUTA funds to reduce budget outlays, that states could collect FUTA revenue at less cost, and that state control of administrative funding would provide more flexibility to meet local needs. Opponents fear that devolution might weaken state administration and threaten EB funding. The impact on the federal budget is also an issue. (For further discussion, see CRS Report 97-369, *Unemployment Compensation: Proposals to Reduce the Federal Role*, by James R. Storey.)

Representative Shaw, Chairman of the House Ways and Means Subcommittee on Human Resources, has introduced H.R. 3684 to address these issues. His bill calls for state collection of the FUTA tax and would give states control over setting spending levels for UC administration. Funding would come from their own tax revenue, supplemented by federal grants in the smallest states. States would be required to continue offering the EB program during economic downturns. This bill has broad support from state organizations. A hearing on the bill is expected.

Other Pending Unemployment Compensation Issues

Offsetting Benefits from Multiemployer Pension Plans. Since 1980, federal law has forced states to offset certain pension income against a claimant's UC benefits. This law results in a disparate treatment of pensioners whose benefits come from multiemployer pension plans versus single employer plans. If a retiree under a multiemployer plan returns to work for a different employer under the same plan, then loses that job and applies for UC, the state must offset the entire pension against any UC benefit claimed, even though only a small part of it resulted from the last job. However, a pensioner who returns to work for a new employer under a single-employer plan has only the pension from the most recent job offset against any claimed UC benefit. *Bills introduced by Representative English (H.R. 841) and Senator Hatch (S. 1123) would alter this law for claimants in the entertainment industry, a group that is often affected by this pension offset.*

Status of Indian Tribal Governments Under UC. There is confusion in the UC system over the status of Indian tribal governments. Some have been treated like private firms and made subject to the FUTA tax, while others have been treated as state governments or nonprofit agencies and exempted from FUTA. *H.R. 294, offered by Representative Shadegg, would treat tribal governments like other governments.*

Extension of UC Self-employment Program. *Senator Wyden (S. 897) and Representative English (H.R. 3773) propose that authority granted states in 1993 to pay UC benefits to claimants while they start new businesses be made permanent.* Without this authority, which expires in November 1998, states will have to require that such claimants seek new jobs and accept job offers.

Exclusion of Trust Funds from the Federal Budget. *Senator Hollings has proposed (in S. 1588) to exclude trust funds from the budget figures Congress uses to determine if spending and revenue legislation comply with limits imposed by the congressional budget process.* Although the Unemployment Trust Fund is intended to accumulate spending authority for drawdown during recessions, legislated increases in

UC benefits count under the budget rules as new spending that must be offset by spending cuts or tax increases unless Congress waives the budget limits. If trust funds were removed from budget accounting, the financing of UC legislation would be judged by the status of the Unemployment Trust Fund, not by other spending and tax priorities. However, its removal would have increased federal budget deficits in recent years.

Tobacco Worker Transition Assistance. *A Senate-passed bill (S. 1415) to regulate the production and marketing of tobacco products includes a provision to aid tobacco industry workers made jobless because of these regulations.* Cash benefits and job retraining would be offered on the same basis as under the TAA program, with annual dollar ceilings on spending of $25 million on cash benefits and $12.5 million on training.

Unemployment Compensation Changes in P.L. 105-33 and P.L. 105-34

Legislation enacted in 1997 to implement a bipartisan balanced budget agreement (P.L. 105-33, P.L. 105-34) included the UC provisions described below.

The *Pennington* Decision. A federal court in *Pennington v. Doherty*[1] overturned an Illinois UC eligibility rule that, if applied nationally, would add to the cost of most state UC programs. The case concerns how states determine claimants' wage histories. Illinois and most states count covered wages in the first 4 of the last 5 completed calendar quarters to determine if a claimant meets the state's wage threshold for eligibility. The plaintiff argued that an alternative base period (the last 4 completed quarters) used by several states could be used by Illinois and would help many claimants. The court agreed that use of the last 4 quarters was feasible and would better execute federal law, which requires states to employ methods to ensure full payment of UC "when due." Illinois argues that the court has broadened the scope of the "when due" clause beyond congressional intent. An Urban Institute analysis by Wayne Vroman of six states that now use alternative base periods found that use of the 4 most recently completed quarters increased eligibility by 6% to 8% and benefit costs by 4% to 6%. The newly eligible claimants were mainly low-wage, part-time, and intermittent workers. *The balanced budget bill revised federal law so that state base period procedures need not be changed.* This provision will reduce the federal budget deficit by $37 million over FY1998-FY2002. *S. 1126 introduced by Senator Boxer proposes repeal of this enacted provision.*

FUTA Surtax Extension. Though the net FUTA tax rate is 0.8%, the permanent rate is only 0.6% (**Table 2**). The 0.2% "surtax" was adopted in 1976 to repay loans made to the Unemployment Trust Fund during the 1974 recession. That debt was paid off in 1987, but Congress extended the surtax in 1987, 1990, 1991, and 1993. While the added revenue raised trust fund balances, the main reason for the extensions was to offset costs of new spending for unrelated programs. Budget rules force pay-as-you-go funding of legislated hikes in entitlement spending and tax cuts.

Employers argue that the need for this surtax, which had been set to expire in January 1999, has vanished. President Clinton, on the other hand, proposed its extension through 2007 to anticipate the demands of the next recession. Extension, coupled with

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[1] U.S. District Court for the Northern District of Illinois, No. 85 C 6327, February 1, 1996.

changes in certain account ceilings, will increase federal revenue by $6.4 billion for FY1998-FY2002. *The bipartisan budget agreement included the FUTA surtax extension.*

State Funding. The balance in the trust fund account for UC administration at the end of a fiscal year is transferred to other accounts to the extent that it exceeds 40% of the prior year's appropriation for administration. Because states have complained that they need these "excess" funds to operate their programs effectively, *the budget bill earmarked $100 million of funds that otherwise would be transferred and required that it be distributed to the states in the same proportion as each state's share of the appropriation for administration. The budget bill also authorized appropriations over 5 years ($89 million in FY1998) for "program integrity activities" such as claims review and employer tax audits to assist state efforts to reduce administrative error and fraud.*

Table 2. FUTA Tax Rates and Taxable Wage Ceilings

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

The Federal Unemployment Account, a trust fund account that finances federal loans to insolvent state UC benefit accounts, had a ceiling equal to 0.25% of annual wages in covered employment. *The budget bill raised that ceiling to 0.5% starting in FY2002.* Without this change, excess funds would have "spilled over" into state benefit accounts, thereby increasing net federal spending in FY2003 and thereafter.

The new law encourages higher state trust fund account balances. States can receive interest-bearing loans from federal funds if their account reserves are depleted. They will now be eligible for interest-free federal advances if they meet a funding goal set by DoL.

Coverage. States must cover their government employees under UC, with certain exceptions. The 1997 budget law allows states a new exception for election workers. States already could exclude from UC coverage wages earned by inmates in penal institutions. The new law requires exclusion as well of outside earnings by inmates in work-release programs, to avoid creating UC entitlements for inmates upon discharge from prison. The FUTA exemption for organizations controlled by religious groups was extended to schools that are religious in nature but under lay control.