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Unemployment Insurance: Legislative Issues in the 117th Congress, Second Session

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The Unemployment Insurance (UI) system is a joint federal-state partnership that consists of two types of benefits: (1) permanently authorized programs including 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 U.S. Department of Labor (DOL) provides oversight of state 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 primary 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 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 state economic conditions. The Consolidated Appropriations Act, 2023 (P.L. 117-328), provided \$3.1 billion in federal funds for the administration and activities of the UC program for FY2023.

In response to the recent recession caused by the COVID-19 pandemic, Congress created several temporary, now-expired programs through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136; as amended): Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC). All temporary UI measures enacted in response to the COVID-19 pandemic expired at the beginning of September 2021. For details on these temporary measures, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

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

- provided interest accrual relief to states that had borrowed funds from the federal Unemployment Trust Fund (H.R. 6922);
- provided relief to taxpayers who experienced delayed payment of UI benefits by excluding up to \$10,200 in UI benefit income from federal income taxation in tax year 2021 if the payments were attributable to unemployment in 2021 (H.R. 7350);
- implemented UI program integrity measures (S. 4507, H.R. 8000, H.R. 8661, and H.Res. 1288); and
- restricted eligibility to UI for those with high adjusted gross income levels (S. 5148).

For details on legislation in the first session of the 117th Congress, see CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*.

Contents

Overview of Unemployment Insurance Programs	1
Unemployment Compensation Program	3
UC Financing	4
Extended Benefit Program	4
Extended Benefit Triggers	4
EB Eligibility and Benefit Amount	6
EB Financing	6
Temporary COVID-19 Pandemic UI Programs (Expired)	7
Unemployment Insurance Benefits and the Sequester	7
FY2022 Sequester of Unemployment Insurance Benefits	8
FY2023 Sequester of Unemployment Insurance Benefits	8
State UC Loans and Solvency Concerns	8
Reemployment Services and Eligibility Assessments	9
President’s Budget Proposal for FY2023	10
Laws Enacted in the 117 th Congress, Second Session	11
P.L. 117-328, the FY2023 Consolidated Appropriations Act	11
Legislative Proposals in the 117 th Congress, Second Session	12
Waiver of Interest on UTF Loans	12
H.R. 6922	12
Taxation of UI Benefits	12
H.R. 7350	12
Program Integrity Proposals	13
S. 4507/H.R. 8000	13
H.R. 8661	13
Receipt of UI by Higher-Income Unemployed Workers (“Millionaires”)	14
S. 5148	14

Contacts

Author Information	15
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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 U.S. 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 during those periods increases the federal share of

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 Under Section 4105 of P.L. 116-127, the Families First Coronavirus Response Act (FFCRA), as amended, EB was temporarily 100% federally financed from March 18, 2020, through September 4, 2021.

aggregate UI expenditures. For example, in calendar year 2021, approximately 75% of all UI benefits paid out were 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 jobs lost 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 meet 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.

Federal policymakers often supplement these stabilization efforts by enacting temporary UI benefit expansions. During the 116th Congress, four temporary UI benefit measures passed in response to the COVID-19 pandemic and the resulting economic recession. P.L. 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act (enacted March 27, 2020) established three temporary benefits. The authorization for these benefits was subsequently extended (and, in some cases, the benefits were expanded) and an additional benefit established 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

The authority for these temporary COVID-19 UI benefits expired on September 4, 2021.⁷

This report first provides background on the permanently authorized UI programs—UC and EB—as well as the now-expired COVID-19 UI programs: FPUC, PEUC, PUA, and MEUC. Next, this report presents several UI policy issues that were relevant in the second session of the 117th Congress:

- the sequester order required by the Budget Control Act of 2011 (P.L. 112-25) and implemented on March 1, 2013 (after being delayed by P.L. 112-240), which affects some types of UI expenditures, in FY2022 and FY2023;

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*.

⁵ Division N, Title II, Subtitle A.

⁶ Title IX, Subtitle A.

⁷ The law terminated the programs for weeks of unemployment ending on or before September 6, 2022. This had the effect of ending the programs in all states on September 4, 2021, with the exception of New York's programs, which terminated on September 5, 2021.

- the authority for, structure of, and status of federal loans to states to pay UC benefits if state unemployment tax revenue is insufficient;
- the Reemployment Services and Eligibility Assessment (RESEA) program, which provides federal funding to states to provide in-person reemployment services and also addresses UI overpayments; and
- UI reform policies in the President’s budget proposal for FY2023, including high-level reform priorities as well as proposals related to UI funding, including for program integrity.

This report also summarizes one piece of UI legislation enacted in the second session of the 117th Congress: P.L. 117-328. Finally, this report synthesizes legislation introduced in the second session of the 117th Congress related to the waiver of interest of federal UC loans to states (H.R. 6922); the taxation of UI benefits (H.R. 7350); program integrity proposals (S. 4507, H.R. 8000, H.R. 8661, and H.Res. 1288); and limitations on the receipt of UI benefits by high-income beneficiaries (S. 5148).

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.⁸ Although there are broad requirements under federal law regarding UC benefits and financing, the specifics are set out under each state’s laws. 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.

In general, UC eligibility is based on attaining qualified wages and employment in UC-covered work⁹ over a 12-month period, called a base period,¹⁰ 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

⁸ For details on how the UTF operates, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

⁹ *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.

¹⁰ 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. However, federal law allows states to develop expanded definitions of the base period. For a summary of these expanded definitions, see Table 3-1, *States with Extended or Alternative Base Periods*, in <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/monetary.pdf>.

up to a weekly maximum. There is considerable variation by state in the weekly UC benefit amount. As of July 2022, the maximum weekly benefit amounts ranged from \$235 (Mississippi) to \$974 (Massachusetts).¹¹ The 12-month average, national weekly benefit amount, as of September 2022, was \$387.52.

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).¹² The 0.6% effective net FUTA tax that employers pay on the first \$7,000 of each covered 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.¹³

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 covered employee's earnings and that each state's maximum 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 maximum established by state law. FUTA and SUTA funds are deposited in the appropriate accounts within the UTF.¹⁴

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 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.¹⁵ All states must pay up to 13 weeks of EB if

¹¹ In states that provide dependents' allowances, the maximum benefit was \$1,461 (Massachusetts, requiring 20 dependents for the maximum payment). See DOL, *Significant Provisions of State Unemployment Insurance Laws, Effective July 2022*, <https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/July2022.pdf>. Dependents' allowances are amounts paid on top of the weekly benefit amount in some states, using each state's definition of *dependent*.

¹² 23 U.S.C. §§3301-11.

¹³ 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 In Focus IF12144, *The U.S. Employment Service: Service Delivery and Merit Staffing*.

¹⁴ For details on the UTF, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

¹⁵ 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

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 IUR¹⁶
 - 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 TUR¹⁷
 - 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 payments in the state cease immediately, regardless of individual entitlement.¹⁸ That is, EB benefits are not phased out (grandfathered) when a state triggers off the program.¹⁹

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.

¹⁶ 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.

¹⁷ 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.

¹⁸ 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*.

For remaining entitlement to EB, if a state’s HUP is deactivated but the state TUR remains at or above 6.5%, see page 5, “CH 1-17. Question,” at https://oui.doleta.gov/dmstree/uipl/uipl2k9/uipl_1209c1.pdf.

¹⁹ The Continued Assistance Act (P.L. 116-260) provided a temporary option for states that had triggered off an EB period to disregard the mandatory 13-week off period (discussed in the previous footnote) for weeks between November 1, 2020, and December 31, 2021, if state law permitted such an action.

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.”²⁰ In addition, claimants must have worked at least 20 weeks of full-time covered employment (or the equivalent as defined by the state) 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 through their SUTA revenue.

Temporary EB Financing Change (Expired)

Section 4105 of P.L. 116-127, the Families First Coronavirus Response Act (FFCRA), as amended, temporarily provided 100% federally financed EB (with the exception of state and local government employees) for states that received both halves of the emergency administrative grants authorized under FFCRA, beginning with enactment on March 18, 2020.²¹ The Continued Assistance Act (P.L. 116-260) extended the authority for this 100% federal financing of EB through March 13, 2021 (March 14, 2021, in New York).²² ARPA (P.L. 117-2) subsequently extended this authority through September 6, 2021, when it expired.

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

Some states reacted to this temporary 100% federal financing by enacting temporary EB trigger options that remained in place for the duration of the increased federal cost share. According to DOL, 13 states 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.²³

²⁰ State UC programs have their own definitions related to work search and refusal of suitable work. See Tables 5.14 and 5.16 in DOL, Employment and Training Administration (ETA), *2021 Comparison of State Unemployment Insurance Laws*, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/nonmonetary.pdf>.

²¹ 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 of the emergency administrative grant 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 the committees of jurisdiction within one year for states that received 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 both halves of these FFCRA grants (see <https://oui.doleta.gov/unemploy/pdf/IC3MOMarch.pdf>).

²² For subsequent UI benefit expiration dates provided below, the benefit expiration date in New York was one calendar day later, which is due to different state definitions of *week*.

²³ According to DOL, these states were California, Colorado, Delaware, the District of Columbia, Georgia, Illinois, Kentucky, Massachusetts, Michigan, Nevada, New York, Ohio, and Texas. Some states cited the specific federal law in their sunset dates, while other states used specific dates that aligned with an upcoming expiration of the 100% federal

Temporary COVID-19 Pandemic UI Programs (Expired)

The 116th Congress created several new temporary UI benefits through the CARES Act (March 27, 2020) in response to the COVID-19 pandemic and the resulting economic recession. These benefits were extended through the Continued Assistance for Unemployed Workers Act of 2020 (Division N, Title II, Subtitle A, of P.L. 116-260) and Title IX, Subtitle A, of ARPA (P.L. 117-2):

- *Federal Pandemic Unemployment Compensation (FPUC)*, which supplemented weekly UI benefits (by \$600 from March 29, 2020, through July 25, 2020; and \$300 from December 27, 2020, through September 4, 2021). FPUC payments totaled \$448.6 billion.²⁴
- *Pandemic Emergency Unemployment Compensation (PEUC)*, which provided additional weeks of UI benefits for individuals who exhausted other UI benefits and were able to work, available for work, and actively seeking work, subject to COVID-19-related flexibilities. PEUC payments totaled \$85.1 billion.
- *Pandemic Unemployment Assistance (PUA)*, which provided UI benefits to individuals who were not otherwise eligible for UI benefits (e.g., self-employed, independent contractors, gig economy workers); unemployed, partially unemployed, or unable to work due to a specific COVID-19-related reason; and not able to telework and not receiving any paid leave. PUA payments totaled \$131.2 billion.

P.L. 116-260 also authorized a smaller COVID-19 UI benefit: *Mixed Earner Unemployment Compensation (MEUC)*, which provided a \$100 per week benefit augmentation for unemployed workers with income from both wage-and-salary jobs and self-employment who were not currently receiving PUA. MEUC totaled \$62.9 million.

Under ARPA, all of the COVID-19 UI programs—PUA, PEUC, FPUC, and MEUC—expired September 4, 2021.²⁵ For details on these programs, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

Unemployment Insurance Benefits and the Sequester

The sequester order required by the Budget Control Act of 2011 (P.L. 112-25) and implemented on March 1, 2013 (after being delayed by P.L. 112-240), affects some types of UI expenditures.²⁶ UC payments are not subject to the sequester reductions. EB and most forms of administrative funding are subject to the sequester reductions.²⁷

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).

²⁴ For a summary of research on the potential impact of the temporary programs on employment and consumer spending during this period, see CRS In Focus IF12143, *How Did COVID-19 Unemployment Insurance Benefits Impact Consumer Spending and Employment?*

²⁵ The law terminated the programs for weeks of unemployment ending on or before September 6, 2022. This had the effect of ending the programs in all states on September 4, 2021, with the exception of New York's programs, which terminated on September 5, 2021.

²⁶ See CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*.

²⁷ The Emergency Unemployment Compensation program, when it was available (including any benefit payments

FY2022 Sequester of Unemployment Insurance Benefits

The FY2022 sequestration order required a 5.7% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions were applicable to discretionary programs, projects, and activities.²⁸ Thus, the federal share of EB expenditures in FY2022 was required to be reduced by 5.7% for the weeks of unemployment during FY2022.²⁹

In program guidance, DOL announced that 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 subject to FY2022 sequestration:

The PPAs [programs, projects, and activities] established through enactment of the CARES Act, as amended, expired September 6, 2021. Although residual benefit payments will continue to be issued to claimants beyond the expiration of these programs, the Department, in consultation with OMB, has determined these residual benefit payments to be obligations incurred when the week of unemployment was experienced. Therefore, residual benefit payments will continue to be charged to the FY 2021 budget authority and will not be subject to the 5.7 percent sequestration reduction.³⁰

FY2023 Sequester of Unemployment Insurance Benefits

The FY2023 sequestration order also requires a 5.7% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions are applicable to discretionary programs, projects, and activities.³¹ Thus, the federal share of any EB expenditures payable in FY2023 are required to be reduced by 5.7% for the weeks of unemployment during FY2023. At the time of this report, no state has been in an EB payable period in FY2023. DOL has not yet released guidance to states on the FY2023 sequestration of UI benefits.

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

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 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; 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; and CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*, for additional information on the implications of the sequester order for FY2021.

²⁸ Office of Management and Budget, *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2022*, May 28, 2021, https://www.whitehouse.gov/wp-content/uploads/2021/05/BBEDCA_251A_Sequestration_Report_FY2022.pdf.

²⁹ For details, see ETA, UIPL No. 5-22, December 20, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9859.

³⁰ ETA, UIPL No. 5-22, p. 2.

³¹ Office of Management and Budget, *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2023*, March 28, 2022, https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA_251A_Sequestration_Report_FY2023.pdf.

these benefits, provides a loan mechanism within the UTF framework that an insolvent state may use to meet its UC benefit payment obligations.³² States must pay back these loans and are charged interest on loans that are not repaid by the end of the fiscal year in which they were obtained.³³ If the loans are not paid back within a certain period (approximately two years, depending on the timing of the beginning of the loan period), states' employers may face increased net FUTA rates until the loans are repaid.³⁴

Immediately before the COVID-19-related recession began, 31 states were determined to have accrued enough funds in their UTF accounts to meet or exceed the minimally solvent standard as defined by DOL in order to be prepared for a recession.³⁵ However, the rapid increase in the number of individuals receiving regular UC benefits during the COVID-19-related recession strained many states' trust fund balances.

At the end of FY2019, one jurisdiction had a federal UTF loan totaling \$64 million (the U.S. Virgin Islands). In comparison, by the end of FY2020, 19 jurisdictions had federal UTF loans totaling \$34.1 billion (California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Texas, the U.S. Virgin Islands, and West Virginia). By the end of FY2021, the number of jurisdictions with outstanding federal loans had decreased to 12 jurisdictions (California, Colorado, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Texas, and the U.S. Virgin Islands), but the loans had increased to \$45.6 billion. By November 10, 2022, the number of jurisdictions with outstanding federal loans had decreased to five (California, Connecticut, Illinois, New York, and the U.S. Virgin Islands), and the outstanding loan amount had decreased to \$27.3 billion.³⁶

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.³⁷ 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

³² 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).

³³ If the state's UTF accounts have met certain financial conditions. For a full explanation of these conditions, see the section “Interest Charges on Loans” in CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*. Section 4103 of FFCRA (P.L. 116-127, as amended) temporarily waived interest payments and the accrual of interest on federal advances (loans) to states to pay UC benefits through September 6, 2021. The temporary measure did not reduce any underlying loan principal.

³⁴ For details on how states may borrow federal funds to pay for UC benefits, see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

³⁵ See DOL, Office of Unemployment Insurance, *State Unemployment Insurance Trust Fund Solvency Report 2020*, February 2020, <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf>.

³⁶ Data on jurisdictions and loan amounts for each quarter are available by selecting the data category “loan” at https://oui.doleta.gov/unemploy/data_summary/DataSum.asp.

³⁷ 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.

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.³⁸ 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 for UI beneficiaries selected for participation.³⁹

RESEA is a permanently authorized program with funding scheduled to increase over future fiscal years. Yet circumstances related to the COVID-19 pandemic 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.⁴⁰

President's Budget Proposal for FY2023

The President's budget proposal for FY2023 included changes to several aspects of the UI system. First, the proposal outlined "a set of high-level principles to guide future efforts to reform the UI system,"⁴¹ which included addressing:

- benefit access for eligible workers,
- inadequate benefit levels,

³⁸ 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).

³⁹ 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>).

⁴⁰ DOL, "Operational Flexibilities Update—E-Blast to State Unemployment Insurance Agencies on June 12, 2020," https://oui.doleta.gov/unemploy/pdf/pandemicflexibilities_06122020.pdf.

⁴¹ DOL, "FY2023 Congressional Budget Justification, Employment and Training Administration, State Unemployment Insurance and Employment Service Operations," p. 16, <https://www.dol.gov/sites/dolgov/files/general/budget/2023/CBJ-2023-V1-07.pdf>.

- limited eligibility, and
- racial disparities.

The President’s budget proposal for FY2023 also proposed an alteration to the formula that determines the federal appropriation for state UI administration, which would be the first substantive update in decades.⁴² Specifically, this proposal would update assumptions related to UI claims processing and state UI workforce salary rates, as prior assumptions for these factors were not capturing current administrative costs in states.

Additionally, the President’s budget proposal for FY2023 requested \$150 million to promote integrity in the UI system by investing in identity verification services for states as well as funding information technology infrastructure to prevent fraud and improve benefit delivery for claimants.⁴³ Finally, the President’s budget proposal for FY2023 included \$375 million in funding for RESEA, which combines reemployment services with an assessment of claimants’ continuing eligibility for UI benefits.

Laws Enacted in the 117th Congress, Second Session

This section provides summary information on the one piece of legislation with UI provisions enacted in the second session of the 117th Congress. For laws with UI provisions enacted in the first session of the 117th Congress see CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*.

P.L. 117-328, the FY2023 Consolidated Appropriations Act

On December 29, 2022, President Biden signed the FY2023 Consolidated Appropriations Act (P.L. 117-328). Each fiscal year, funds are made available through the appropriations process to make distributions of FUTA revenue for state UC administration and for the federal costs of administration. These appropriations customarily include a base level of funding as well as an additional contingent appropriation. The appropriations language customarily provides a baseline estimate of national unemployment as measured by the volume of unemployment compensation claims expected to be filed per week—the average weekly insured unemployment (AWIU). Additionally, the contingent funding includes a trigger based upon the average volume of weekly UC claims exceeding the AWIU baseline.

P.L. 117-328 provided \$3,134,635,000 for UC administration and activities, an increase of \$283,819,000 from its FY2022 appropriation.⁴⁴ Additionally, for every 100,000 increase in the total AWIU above 1,778,000, an additional \$28,600,000 is to be available to states for administration from the UTF.

Within the appropriation for UC administration and activities, P.L. 117-328 provided \$258 million for RESEA (an increase of \$117 million from FY2022).

⁴² For an overview of current funding for UI administration, see CRS In Focus IF10838, *Funding the State Administration of Unemployment Compensation (UC) Benefits*.

⁴³ DOL, “FY2023 Congressional Budget Justification, Employment and Training Administration, State Unemployment Insurance and Employment Service Operations,” p. 28, <https://www.dol.gov/sites/dolgov/files/general/budget/2023/CBJ-2023-V1-07.pdf>.

⁴⁴ The additional funds were “for additional resources for States to increase staffing capacity and to accommodate sustained increases in workload.” Sen. Patrick Leahy, Explanatory Statement Regarding H.R. 2617, *Congressional Record*, vol. 168, part 198 Book II (December 22, 2022), p. S8874, <https://www.congress.gov/117/crec/2022/12/20/168/198/CREC-2022-12-20-bk2.pdf#page=322>.

Legislative Proposals in the 117th Congress, Second Session

This section provides summary information on all legislation that was introduced in the second session of the 117th Congress that would have amended UI programs and benefits. For UI legislation introduced in the first session of the 117th Congress see CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*.

Waiver of Interest on UTF Loans

Generally, states have been charged interest on federal UTF loans (borrowed to pay for state UC benefits) if they are not repaid by the end of the fiscal year in which they were obtained. Section 4103 of FFCRA (P.L. 116-127, as amended) temporarily waived interest payments and the accrual of interest on federal advances (loans) to states to pay UC benefits through September 6, 2021. The temporary measure did not reduce any underlying loan principal.

H.R. 6922

On March 3, 2022, Representative Danny Davis introduced H.R. 6922, the Continued Waiver of Interest on State Unemployment Loans during the Pandemic Act. The bill would have retroactively reauthorized the waiver on interest on state loans (that had expired on September 6, 2021) and would have extended the waiver through September 30, 2022.

Taxation of UI Benefits

ARPA allowed taxpayers with modified adjusted gross incomes (AGIs) of less than \$150,000 to exclude up to \$10,200 in UI benefits from 2020 taxable income. This exclusion applied to all UI benefits, including the temporary COVID-19 UI benefits. UI benefit payments might be delayed for a variety of reasons, such as state administrative delays and claimant appeals. If the 2020-based UI benefit was paid to the individual after 2020, the payment could not be excluded from income tax for 2020 even if the underlying (delayed) benefit was based on a period of unemployment in 2020.⁴⁵ For more background on this issue, see CRS Report R47105, *Taxing Unemployment Insurance (UI) Benefits: Federal- and State-Level Tax Treatment During the COVID-19 Pandemic*.

H.R. 7350

On March 31, 2022, Representative Mike Thompson introduced H.R. 7350. The bill would have amended the Internal Revenue Code of 1986 to exempt from taxation up to \$10,200 in late UI payments that were based upon a period of unemployment in 2020 but were not paid until 2021.

⁴⁵ See A6 of IRS, “IRS Updates 2020 Unemployment Compensation Exclusion FAQs,” Fact Sheet FS-2022-21, March 2022, <https://www.irs.gov/pub/taxpros/fs-2022-21.pdf#page=3>, which states: “Q6. I was unemployed in 2020, but payment of my unemployment compensation was delayed until 2021. Do I qualify for the unemployment compensation exclusion? A6. *No, the American Rescue Plan provides unemployment compensation exclusion relief only for unemployment compensation received in 2020. The exclusion does not apply to unemployment compensation that was received in 2021*” (italics added).

Program Integrity Proposals

Program integrity issues, such as improper benefit payments, have long been of concern for the permanent-law UI programs. The improper payment estimate for the UI system has been above 10% for 14 of the past 18 years.⁴⁶ The Office of Management and Budget continues to designate UI as a “high-priority” program (i.e., a program with estimated improper payments of more than \$100 million a year). The enhanced UI benefits created in response to the COVID-19 pandemic exacerbated program integrity concerns related to improper payments and fraud. For more background on this issue, see CRS In Focus IF12243, *Unemployment Insurance Program Integrity: Recent Developments*.

S. 4507/H.R. 8000

On June 9, 2022, Representative Kevin Brady introduced H.R. 8000, the Chase COVID Unemployment Fraud Act of 2022. Senator Mike Crapo introduced S. 4507, the Senate companion bill of the same name, on July 12, 2022. S. 4507/H.R. 8000 would have amended both the CARES Act as well as permanent-law UI programs to make program-integrity-related changes. These bills would have allowed states to retain 25% of any recovered COVID-19 UI benefits that were fraudulent and use the retained amounts for certain program administration purposes related to program integrity. S. 4507/H.R. 8000 would also have extended the authority for COVID-19 UI benefit overpayment recovery via benefit offset from the current three years to five years. Under this proposal, states would also have been authorized to retain up to 5% of recovered overpayments of permanent-law UI benefits and use those retained amounts for certain program integrity purposes. Under current law, states are not permitted to retain recovered overpayments. S. 4507/H.R. 8000 would also have required states to use certain data matching procedures for the purposes of fraud prevention and investigation, including matching via the National Directory of New Hires, prisoner data, and the State Information Data Exchange System (SIDES, administered by Information Technology Support Center [ITSC] and DOL).⁴⁷ These bills would also have prohibited DOL from issuing guidance to permit states to issue waivers of COVID-19 UI benefit overpayment recovery based on categories of eligibility (i.e., “blanket” waivers), rather than using determinations based on evaluations of each individual’s circumstances, and would have required additional reporting by DOL on COVID-19 UI overpayments waived by states. Finally, S. 4507/H.R. 8000 would have extended the waiver of federal requirements regarding merit staffing for state UI programs through December 2023.⁴⁸

H.R. 8661

On August 5, 2022, Representative Steven Horsford introduced H.R. 8661, the Guaranteeing Unemployment Assistance and Reducing Deception (GUARD) Act. H.R. 8661 would have amended both the CARES Act as well as permanent-law UI programs to make program-integrity-related changes. This bill would have provided \$5 million in FY2023 and FY2024 to DOL for coordination purposes among federal agencies (e.g., DOL, the inspector general of DOL, the Attorney General, and the Secretary of Homeland Security) in support of recovering COVID-19 UI overpayments. H.R. 8661 would also have clarified the availability of state administrative funding for recovery of fraudulent COVID-19 UI benefits and required states to provide a point

⁴⁶ See <https://www.paymentaccuracy.gov/payment-accuracy-high-priority-programs/>.

⁴⁷ States currently have the federal authority to use these data sources, but their use is not mandatory under federal law.

⁴⁸ Under ARPA, this flexibility expired after September 4, 2021.

of contact for identity theft victims whose information was, or is, being used to fraudulently claim unemployment benefits. This bill would have required states to use certain data matching and information sharing systems for the purposes of fraud prevention and investigation, including the National Directory of New Hires, prisoner data, and interstate benefit data.⁴⁹ H.R. 8661 would also have prohibited states from issuing more than one warning to UI claimants who are not actively seeking work before taking other action with regard to claimant eligibility. Under this proposal, states would have been authorized to retain up to 5% of overpayment of permanent-law UI benefits and use those retained amounts for program integrity purposes or equitable access to benefits.

H.R. 8661 would also have created new penalties for states out of compliance with federal UI requirements, including withholding up to 15% of administrative funding. This bill would also have created new UI program standards for administration and performance, including technology standards, with performance bonuses available for DOL to award states (up to \$280 million annually beginning in FY2024). DOL would have been required to report biannually on the ability of the unemployed to access and receive UC benefits and provide this information disaggregated by racial and ethnic groups for each state. DOL would have been required to provide analysis of state policies that may be causal factors for differences in access and receipt across racial and ethnic groups. DOL would have been able to require corrective action or impose financial penalties on states that did not meet the new DOL standards. DOL would also have been required to provide centralized support and technical assistance to states using the \$2 billion funding authorized under ARPA and additional sums as necessary.

H.Res. 1288

On July 26, 2022, Representative Jackie Walorski introduced H.Res. 1288, which would have required the DOL Secretary to transmit any documents and communication between DOL officials beginning March 1, 2020, related to COVID-19 UI fraudulent payments that went to criminal organizations in foreign countries, including China and Russia. The House Committee on Ways and Means considered H.Res. 1288 and recommended that the resolution not be agreed to on September 28, 2022.⁵⁰

Receipt of UI by Higher-Income Unemployed Workers ("Millionaires")

There is no general income test that restricts UI benefit receipt. States, which determine many of the eligibility requirements for UI benefits, may not restrict UI eligibility based on individual or household income. States may restrict benefits if the source of income is deemed related to the beneficiary's unemployment (for example, receipt of a pension from the former employer). See CRS In Focus IF12289, *Unemployment Insurance and "Millionaires": Recent Data and Policy Considerations*, for additional information.

S. 5148

On November 30, 2022, Senator Joni Ernst introduced S. 5148, the Ending Unemployment Payments to Jobless Millionaires Act of 2022. The bill would have prohibited the use of federal funds for paying UC benefits to an individual whose AGI is at least \$1 million.

⁴⁹ States currently have the federal authority to use these data sources, but their use is not mandatory under federal law.

⁵⁰ See H.Rept. 117-521.

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