

P.L. 112-96, approved February 22, 2012 (HR 3630)

The Middle Class Tax Relief and Job Creation Act of 2012

Work Search Requirements

Amends section 303(a), Social Security Act (SSA), to add a work search requirement as a condition of eligibility for Unemployment Insurance (UI). This provision applies to weeks of unemployment beginning after the end of the first session of a state's legislature which begins after enactment.

State Reemployment Demonstration Projects

Amends SSA to permit up to 10 states to conduct demonstration projects to expedite reemployment or to improve state effectiveness in carrying out state law on reemployment and provides:

- demonstration projects may be commenced any time after enactment, must last 1-3 years, and end by December 31, 2015;
- permits the Secretary to waive requirements in section 3304(a)(4), Federal Unemployment Tax Act (FUTA) and section 303(a)(5), SSA (withdrawal standard), and 303(a)(1), SSA (methods of administration);
- limits the project scope to subsidies for employer-provided training and disbursement to employers to cover part of the cost of wages (not to exceed the weekly benefit amount); and
- permits Title III (UI administration) grant monies to be used to fund demonstration projects.

Mandatory Recovery of Overpayments

Amends FUTA and the SSA to require states to offset overpayments against benefit payments due an individual. Adds "Federal additional compensation" to the list of benefit payments against which overpayments may be offset.

These provisions apply to weeks beginning after the end of the 1st session of a state's legislature beginning after enactment.

Data Exchange Standardization

Amends SSA to add provisions requiring the Secretary, in conjunction with OMB, to designate a data exchange standard for any category of information required under SSA and provides parameters for the data exchange standards.

Requires the establishment of data exchange standards for required reporting and provides parameters for reporting standards. Requires the Secretary to issue a proposed rule within 12 months of enactment and a final rule within 24 months of enactment.

Effective with respect to reports required in the first reporting period after the effective date of the final rule.

Drug Testing

Amends section 303, SSA, to add a new subsection permitting states to test UI applicants for drugs if:

- the applicant was discharged for unlawful use of drugs, or
- the applicant is only available for suitable work in an occupation that regularly conducts drug testing.

Permits states to deny benefits to an applicant who tests positive for drugs under the circumstances described above.

Emergency Unemployment Compensation (EUC)

Extends the end date for the Emergency Unemployment Compensation (EUC) program from March 6, 2012 to January 2, 2013. Eliminates phase-out for beneficiaries with amounts remaining in their accounts; no EUC is payable after January 2, 2013.

Effective June 1, 2012, modifies the EUC program by changing the Total Unemployment Rate (TUR) required in a state during the most recent 3 months:

- adds a TUR trigger of 6% for Tier 2 (previously no trigger);
- increases the Tier 3 TUR trigger to 7.0% (previously 6.0%); and
- increases the TUR trigger for Tier 4 to at least 9.0% (previously 8.5%).

Effective after September 2, 2012:

- reduces Tier 1 benefits to the lesser of 54% of regular UI or 14 weeks (previously 80% or 20 weeks); and
- reduces Tier 3 benefits to the lesser of 35% of regular UI or 9 weeks (previously 50% or 13 weeks).

For states on Extended Benefits (EB), Tier 4 would remain unchanged. For states not on Extended Benefits (EB), for weeks of benefits:

- from March 1, 2012 to May 31, 2012, increases Tier 4 total benefits to the lesser of 62% of regular UI or 16 weeks (previously 24% and 6 weeks) and:
 - applies only for individuals currently in Tier 4 or new entrants to Tier 4 (there is no “reachback” to prior Tier 4 exhaustees); and
 - the total EUC and Extended Benefits (EB) to an individual may not exceed 282% of regular UI or 73 weeks;
- from June 1, 2012 until August 31, 2012, reduces Tier 4 benefits to the lesser of 24% of regular UI or 6 weeks; and
- from September 1, 2012 until January 2, 2013, increases Tier 4 benefits for all states to the lesser of 39% of regular UI or 10 weeks (previously 24% and 6 weeks).

States are required to defer payment of EB to an individual until all EUC has been paid to that individual. If a state is on EB when this increase in benefits takes effect the state *must* pay the increased EUC amount before paying the balance of EB.

Extended Benefits (EB)

Extends 100% Federal funding of “sharable” EB costs from March 7, 2012 to December 31, 2012.

Extends Federal funding of the first week of EB if the state does not have a non-compensable waiting week from August 15, 2012 to June 30, 2013.

Extends the authority for states to use a 3-year “Lookback” from February 29, 2012 to December 31, 2012.

EUC Work Search

Requires that the agreement between the Secretary and states include a provision that individuals receiving EUC be able to work, available to work, and actively seeking work.

Defines “actively seeking work” to include Employment Services (ES) registration, appropriate search for work, maintenance of a work search record, and providing such record to the state upon request.

Requires the Secretary to establish a minimum number of claims for each state to randomly audit for compliance.

EUC Reemployment Services and Reemployment and Eligibility Assessment Activities (REAs)

Changes the agreement between the Secretary and the states to require that:

- states provide reemployment services and REA activities to individuals who start receiving EUC “on or after the 30th day” following enactment of this Act;
- EUC claimants referred to reemployment services and REA activities participate in those services and actively seek work (permits the state to waive participation under certain circumstances); and
- states provide EUC claimants: labor market and career information, assessment of the individual’s skills, orientation to one-stop center services, review of the individuals’ eligibility based on work search activities, and defines additional services that may be provided.

Requires the Secretary issue guidance on implementation of reemployment services and REA activities not later than 30 days after enactment.

Provides funding for reemployment services and REA activities from general revenues at \$85 per person served through FY 2013.

Provides for distribution of funds among states, and for the transfer of funds to the Employment Security Administration account as the Secretary determines necessary to carry out reemployment services and REA activities.

EUC Recovery of Overpayments

Requires states to offset EUC overpayments against benefits payable to individuals using the same procedures as are used to recover overpayments of regular compensation.

EUC Nonreduction Rule

Provides that the EUC nonreduction rule (prohibiting states from reducing the average weekly benefit amount) does not apply to states that enacted a law before March 1, 2012 that, upon taking effect, would violate the nonreduction rule.

Short-time Compensation (STC) Program

Repeals the previous definition of STC and amends section 3306, FUTA, to add a new subsection defining “short-time compensation program” (STC) as a program under which:

- employer participation is voluntary;
- employer reduces employee hours in lieu of layoffs;
- the reduction is at least 10 percent and not more than 60 percent, and employees are not disqualified from unemployment compensation;
- employees receive a pro rata share of benefits they would have received if totally unemployed;
- employees meet work availability and work search requirement if they are available for their workweek as required;
- eligible employees may participate in appropriate training, either employer-sponsored or funded under the Workforce Investment Act of 1998;
- employers are required to certify that, if health and retirement benefits are provided, those benefits will not be reduced due to participation in the short-time compensation program; and
- the state agency requires the employer to submit a written plan describing how the requirements of this subsection will be implemented, with an estimate of the number of layoffs that would have occurred but for the short-time compensation program; the plan must be consistent with employer obligations under Federal law.

Amends Federal law to allow payment of STC from the state account in the Unemployment Trust Fund and provides that a state currently operating an STC program has until 2 years and 6 months after enactment to meet the new requirements.

Temporary Financing for States with STC Program in Law

Provides 100 percent funding for STC paid to an individual under state law. Provisions for full funding include:

- that the maximum amount payable to an individual is 26 times the amount of regular compensation payable, including dependents’ allowances;
- that no payments be made to an individual who is employed on a seasonal, temporary, or intermittent basis;

- funding applies to weeks of unemployment beginning on or after the date of enactment and ending on or before the date that is 3 years and 6 months after the date of enactment;
- that states operating an STC program under the old definition will be eligible for 2 years of reimbursement until they amend their laws to conform to the new definition; and
- that a state that operated a Federal program may receive payments upon enactment of STC law for a combined total of 156 weeks.

Appropriates funds from general revenues and requires the Secretary to certify to Treasury the sums payable to each state under this section.

Temporary Financing for States With No STC Program in Law

Provides that if a state's law does not provide for payment of STC, the state may enter into an agreement with the Secretary to operate a Federal STC program. Provisions for payment include:

- maximum amount payable to an individual is 26 times the amount of regular compensation payable, including dependents' allowances;
- no payments may be made to an individual who is employed on a seasonal, temporary, or intermittent basis;
- state will be paid one-half of the amount of STC paid to individuals and any additional administrative expenses incurred by reason of the agreement;
- participating employers must pay one-half of the amount of short-time compensation paid by the state, money must be deposited into the state's unemployment trust fund, and may not be used to calculate the employer's contribution rate;
- an agreement entered into under this section applies to weeks of unemployment beginning on or after the date on which the agreement is entered into, and ending on or before the date that is 2 years and 13 weeks after the date of enactment;
- state may receive payments for a maximum of 104 weeks under this agreement; and
- if a state enacts STC law, it may receive 100 percent payments for a combined total of 156 weeks (until 3 years and 6 months after enactment).

Appropriates funds from general revenues and requires the Secretary is to certify to Treasury the sums payable to each state under this section.

Grants for STC Programs

Provides grants to states and requires that:

- state law meet the definition of STC program in section 3306(v), FUTA;
- one-third of the maximum incentive payment be used for implementation or improved administration and two-thirds be used for promotion and enrollment of employers;
- state meet the conformity requirements of FUTA and SSA to receive administrative grants;
- STC program not be subject to discontinuation and must be scheduled to take effect within 12 months of certification; and
- grant funds may be recouped if the state terminates the STC program or fails to meet appropriate requirements within a 5-year period of the date the grant is awarded.

Appropriates \$100 million from general revenues to carry out the grant program without fiscal limitation and authorizes the Secretary to use 0.25% of available funds to provide for outreach and to share best practices among the states.

Guidance for STC Implementation

Requires the Secretary to:

- develop, and to periodically review and revise, model legislative language that states may use to develop and enact short-time compensation programs (requires consultation with employers, labor organizations, state workforce agencies, and other program experts);
- provide technical assistance and guidance in developing, enacting, and implementing such programs;
- establish reporting requirements for the number of estimated averted layoffs, number of participating employers, and other items; and
- report to Congress, not later than 4 years after enactment, on the implementation of the STC program.

Appropriates \$150 million from general revenue without fiscal year limitation for required report.

Self-Employment Assistance (SEA) Program

Amends Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) law and the Supplemental Appropriations Act of 2008 to make SEA programs available to individuals who have exhausted benefits if a state chooses to create an SEA program for EB/EUC claimants (previously available only for individuals receiving “regular compensation”). Requires that:

- participants do not have to be identified through profiling as likely to exhaust regular benefits;
- individuals may receive up to 26 weeks of SEA payments based on EUC, EB or combined EUC/EB eligibility (combined eligibility limit);
- an individual who is receiving SEA under an EB program may continue to receive EUC SEA benefits when s/he exhausts EB eligibility, up to the combined eligibility limit (carryover rule);
- the percentage of EUC/EB participants in SEA may not exceed 1 percent of the number of individuals receiving UI;
- the requirement that SEA programs not result in increased costs to the state UI program is inapplicable to SEA programs for EB and EUC recipients;
- no individual may be approved for participation in SEA unless the agency “has a reasonable expectation that the individual will be entitled to at least 13 weeks” of EUC and/or EB benefits; and
- individuals may drop out of SEA at any time and receive the balance of EB or EUC to which the individual was initially determined eligible.

Grants for SEA Programs

Provides grants to states to improve administration of existing SEA programs or to develop, implement, and administer SEA programs and:

- authorizes the Secretary to award grants to states to promote SEA programs and enroll unemployed individuals in those programs;
- requires applications for grants be submitted to the Secretary on or before December 31, 2013; and
- that the amount of a grant shall be determined based on the percentage of unemployed individuals relative to the percentage of unemployed individuals in all states.

Appropriates \$35 million from general revenues for fiscal years 2012 through 2013.

Guidance for SEA Implementation

Requires the Secretary to:

- develop model language, and periodically review and revise the model language;
- provide technical assistance and guidance in establishing, improving, and administering SEA programs;
- establish reporting requirements for state SEA programs utilizing required elements and any additional appropriate information;
- submit a report to Congress, evaluating the effectiveness of the SEA programs (required information defined), no later than 5 years after enactment;
- consult with employers, labor organizations, state agencies, and other relevant program experts in the development of model language and guidance; and
- utilize resources available through DOL and to coordinate with the Administrator of the Small Business Administration to ensure adequate funding is reserved and available for entrepreneurial training for SEA participants.