DESCRIPTION OF THE
"ECONOMIC STIMULUS ACT OF 2008"

Scheduled for Markup
by the
SENATE COMMITTEE ON FINANCE
on January 30, 2008

Prepared by the Staff
of the
JOINT COMMITTEE ON TAXATION

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INTRODUCTION

The Senate Committee on Finance has scheduled a markup on January 30, 2008. This document,[1] prepared by the staff of the Joint Committee on Taxation, provides a description of the Economic Stimulus Act of 2008.

[1] This document may be cited as follows: Joint Committee on Taxation, *Description of the "Economic Stimulus Act of 2008"* (JCX-8-08), January 28, 2008. This document can also be found on the web at www.house.gov/jct.

A. Stimulus Rebate for Individuals

Present Law

In general

Under the Federal individual income tax system, an individual who is a citizen or a resident of the United States generally is subject to tax on worldwide taxable income. Taxable income is total gross income less certain exclusions, exemptions, and deductions. An individual may claim either a standard deduction or itemized deductions.

An individual's income tax liability is determined by computing his or her regular income tax liability and, if applicable, alternative minimum tax liability.

Income tax liability

Regular income tax liability is determined by applying the regular income tax rate schedules (or tax tables) to the individual's taxable income (sec. 1). This tax liability is then reduced by any applicable tax credits. The regular income tax rate schedules are divided into several ranges of income, known as income brackets, and the marginal tax rate increases as the individual's income increases. The income bracket amounts are adjusted annually for inflation. Separate rate schedules apply based on filing status: single individuals (other than heads of households and surviving spouses), heads of households, married individuals filing joint returns (including surviving spouses), married individuals filing separate returns, and estates and trusts. Lower rates may apply to capital gains.

A taxpayer may also be subject to an alternative minimum tax.

Child tax credit

For taxable year 2008, an individual may claim a tax credit of $1,000 for each qualifying child under the age of 17. Generally, a qualifying child must have the same principal place of abode as the taxpayer for more than one-half the taxable year and satisfy a relationship test. To satisfy the relationship test, the child must be the taxpayer's son, daughter, stepson, stepdaughter, brother, sister, stepbrother, stepsister, or descendant of any such individual. A child who is not a citizen, national, or resident of the United States may not be a qualifying child.

Earned income credit

Low and moderate-income workers may be eligible for the refundable earned income credit (EIC). Eligibility for the EIC is based on earned income, adjusted gross income, investment income, filing status, and immigration and work status in the United States. The amount of the EIC is based on the presence and number of qualifying children in the worker's family, as well as on adjusted gross income and earned income. Earned income is defined as (1) wages, salaries, tips, and other employee compensation, but only if such amounts are includible in gross income, plus (2) the amount of the individual's net self-employment earnings.

Description of Proposal

The provision includes a stimulus rebate credit for 2008. The credit mechanism (and the issuance of checks described below) is intended to deliver an expedited fiscal stimulus to the economy.

The credit is computed with two components in the following manner.

Basic credit

All eligible individuals are entitled to the basic credit (for the first taxable year beginning) in 2008 of $500 ($1,000 in the case of a joint return) if they satisfy at least one of the following two criteria:

(1) The sum of an eligible individual's: (1) earned income (as defined for purposes of the earned income credit); and (2) social security benefits must be at least $3,000; or

(2) The eligible individual has a net income tax liability of at least $1.

For these purposes, "net income tax liability" means the excess of the sum of the individual's regular tax liability and alternative minimum tax over the sum of all nonrefundable credits (other than the child credit). Net income tax liability as determined for these purposes is not reduced by the credit added by this provision or any credit which is refundable under present law.

Qualifying child credit

All eligible individuals who are entitled to the basic credit are also entitled to an additional credit amount of $300 multiplied by the number of qualifying children of such individual. For these purposes, the child credit definition of qualifying child will apply (sec. 24).

Eligible individuals

An eligible individual is any individual other than: (1) a nonresident alien; (2) an estate or trust; or (3) a dependents. The determination of this status for the relevant year is made on the basis of the information filed on the tax return.

Refundability

The combined credit is fully refundable.

The refundable portion of the credit does not constitute income and is not treated as resources for purposes of determining eligibility or the amount or nature of benefits or assistance under any Federal program or any State or local program financed with Federal funds.

Rebate checks

Most taxpayers will receive this credit in the form of a check issued by the Department of the Treasury.[2] The amount of the payment will be computed in the same manner as the credit, except that it will be done on the basis of tax returns filed for 2007 (instead of 2008). It is anticipated that the Department of the Treasury will make every effort to issue all payments as rapidly as possible to taxpayers who timely filed their 2007 tax returns. (Taxpayers who file late or pursuant to extensions will receive their payments later.)

Taxpayers will reconcile the amount of the credit with the payment they receive in the following manner. They would complete a worksheet calculating the amount of the credit based on their 2008 tax return. They would then subtract from the credit the amount of the payment they received. For many taxpayers, these two amounts would be the same. If, however, the result is a positive number (because, for example, the taxpayer paid no tax in 2007 but is paying tax in 2008), the taxpayer may claim that amount as a credit against 2008 tax liability. If, however, the result is negative (because, for example, the taxpayer paid tax in 2007 but owes no tax for 2008), the taxpayer is not required to repay that amount to the Treasury. Otherwise, the checks have no effect on tax returns filed in 2009; the amount is not includible in gross income and it does not otherwise reduce the amount of withholding.

In no event may the Department of the Treasury issue checks after December 31, 2008. This is designed to prevent errors by taxpayers who might claim the full amount of the credit on their 2008 tax returns and file those returns early in 2009, at the same time the Treasury check might be mailed to them. Payment of the credit (or the check) is treated, for all purposes of the Code, as a payment of tax. Any resulting overpayment under this provision is subject to the refund offset provisions, such as those applicable to past-due child support under section 6402 of the Code. In the event an individual has past-due child support or other outstanding liabilities subject to the refund offset provisions, the rebate amount (to the extent it constitutes an overpayment) will be applied to the outstanding obligation under section 6402 of the Code.

Examples of rebate determination

The following are examples of how the rebate would be determined.

Example 1.–A head of household filer has $4,000 in earned income and one child. Because her earned income exceeds the $3,000 requirement, she receives a rebate check of $800, comprising $500 from the basic credit and $300 per child.

Example 2.–A head of household filer has $2,000 in earned income, $30,000 in interest income, no social security benefits, one child, and a net tax liability of $500. While the taxpayer does not meet the $3,000 earned income plus social security benefit test, her net tax liability is

[2] To the extent practicable, the Department of the Treasury is expected to utilize individuals' current direct deposit information in its possession to expedite delivery of these amounts rather than the mailing of rebate checks.

positive. She receives a rebate check of $800, comprising $500 from the basic credit and $300 per child.

Example 3.–A married couple filing jointly has $2,000 in earned income, $30,000 in interest income, $10,000 in social security benefits, and no children. Because the couple has earned income plus social security benefits that exceed the $3,000 requirement, they receive a rebate check of $1,000, reflecting only the basic credit as there are no qualifying children.

Example 4.–A married couple filing jointly has $75,000 in earned income and three children. Because the couple has earned income plus social security benefits that exceed the $3,000 requirement, they receive a rebate check of $1,900, comprising $1,000 from the basic credit and $300 per child.

Example 5.–A married couple filing jointly has $200,000 in earned income, $30,000 in interest income, and two children. Because the couple has earned income plus social security benefits that exceed the $3,000 requirement, they receive a rebate check of $1,600, comprising $1,000 from the basic credit and $300 per child.

Treatment of the U.S. possessions

Mirror-Code possessions[3]

Each mirror-Code possession will receive an amount equal to the loss to that possession by reason of the recovery rebate credit. This amount will be determined by the Treasury Secretary based on information provided by the government of the respective possession. For these purposes, a possession is a mirror-Code possession if the income tax liability of residents of the possession under that possession's income tax system is determined by reference to the U.S. income tax laws as if the possession were the United States.

Non mirror-Code possessions[4]

To each possession that does not have a mirror code tax system, the Treasury Secretary will make a payment in an amount estimated by the Secretary as being equal to the aggregate benefits that would have been provided to residents of that possession if a mirror code tax system had been in effect in that possession. This payment will not be made to any U.S. possession unless that possession has a plan that has been approved by the Secretary under which the possession will promptly distribute the payment to its residents.

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[3] Possessions with mirror code tax systems are the United States Virgin Islands, Guam, and the Commonwealth of the Northern Mariana Islands.

[4] Possessions that do not have mirror code tax systems are Puerto Rico and American Samoa.

General rules

For purposes of the rebate credit payment, the Commonwealth of Puerto Rico and the Commonwealth of the Northern Mariana Islands are considered possessions of the United States.

It is intended that the Secretary will undertake appropriate measures to ensure that the amount of any payment to a possession does not include any amounts of refund credits claimed from the United States under the provision by residents of that possession.

For purposes of the rule permitting the Treasury Secretary to disburse appropriated amounts for refunds due from certain credit provisions of the Internal Revenue Code of 1986, the payments required to be made to possessions under the provision are treated in the same manner as a refund due from the recovery rebate credit.

Effective Date

The provision applies to taxable years beginning after December 31, 2007.

B. Election Among Business Stimulus Incentives

Present Law

Expensing of certain depreciable business assets

A taxpayer that satisfies limitations on annual investment may elect under section 179 to deduct (or "expense") the cost of qualifying property, rather than to recover such costs through depreciation deductions.[5] For 2008, the maximum amount that a taxpayer may expense is $128,000 of the cost of qualifying property placed in service for the taxable year. The $128,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $510,000.[6] In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2010 is treated as qualifying property.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.[7] For taxable years beginning in 2011 and thereafter, other rules apply.[8]

[5] Additional section 179 incentives are provided with respect to qualified property meeting applicable requirements that is used by a business in an empowerment zone (sec. 1397A), a renewal community (sec. 1400J), or the Gulf Opportunity Zone (sec. 1400N(e)).

[6] Amounts applicable for 2008 are set forth in Rev. Proc. 2007-66, 2007-45 I.R.B. 970. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2007 through 2010, is $125,000 of the cost of qualifying property placed in service for the taxable year. The $125,000 and $500,000 amounts are indexed for inflation in taxable years beginning after 2007 and before 2011.

[7] Sec. 179(c)(1).

[8] Under the rules in effect for taxable years beginning in 2011 and thereafter, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner (sec. 179(c)(2)).

Allowance for depreciation

A taxpayer is allowed to recover through annual depreciation deductions the cost of certain property used in a trade or business or for the production of income. The amount of the depreciation deduction allowed with respect to tangible property for a taxable year is determined under the modified accelerated cost recovery system ("MACRS"). Under MACRS, different types of property generally are assigned applicable recovery periods and depreciation methods. The recovery periods applicable to most tangible personal property range from three to 25 years. The depreciation methods generally applicable to tangible personal property are the 200-percent and 150-percent declining balance methods, switching to the straight-line method for the taxable year in which the taxpayer's depreciation deduction would be maximized.

Section 280F limits the annual depreciation deductions with respect to passenger automobiles to specified dollar amounts, indexed for inflation.

Section 167(f)(1) provides that capitalized computer software costs, other than computer software to which section 197 applies, are recovered ratably over 36 months.

Net operating loss carryback rules

Under present law, a net operating loss ("NOL") generally means the amount by which a taxpayer's business deductions exceed its gross income. In general, an NOL may be carried back two years and carried over 20 years to offset taxable income in such years.[9] NOLs offset taxable income in the order of the taxable years to which the NOL may be carried.[10]

The alternative minimum tax rules provide that a taxpayer's NOL deduction cannot reduce the taxpayer's alternative minimum taxable income ("AMTI") by more than 90 percent of the AMTI.

Different rules apply with respect to NOLs arising in certain circumstances. A three-year carryback applies with respect to NOLs (1) arising from casualty or theft losses of individuals, or (2) attributable to Presidentially declared disasters for taxpayers engaged in a farming business or a small business. A five-year carryback applies to NOLs (1) arising from a farming loss (regardless of whether the loss was incurred in a Presidentially declared disaster area), or (2) certain amounts related to Hurricane Katrina and the Gulf Opportunity Zone. Special rules also apply to real estate investment trusts (no carryback), specified liability losses (10-year carryback), and excess interest losses (no carryback to any year preceding a corporate equity reduction transaction). Additionally, a special rule applies to certain electric utility companies.

[9] Sec. 172(b)(1)(A).

[10] Sec. 172(b)(2).

Description of Proposal

The proposal allows taxpayers to elect one of the three allowable business stimulus incentives: (1) temporary increase in limitations on expensing of certain depreciable business assets, (2) special depreciation allowance for certain property, or (3) modification of net operating loss carryback rules.

1. Temporary increase in limitations on expensing

This provision increases the $128,000 and $510,000 amounts under section 179 for 2008 to $250,000 and $800,000, respectively. The $250,000 and $800,000 amounts are not indexed for inflation.

2. Special depreciation allowance

This provision allows an additional depreciation deduction equal to 25 percent of the adjusted basis of qualified property for the first and second taxable years.[11] The additional first- and second-year depreciation deductions are allowed for both regular tax and alternative minimum tax purposes.[12]

The basis of the property and the depreciation allowances in the year of purchase and later years are appropriately adjusted to reflect the additional first- and second-year depreciation deductions. In addition, there are no adjustments to the allowable amount of depreciation for purposes of computing a taxpayer's alternative minimum taxable income with respect to property to which the proposal applies. The amount of the additional first- and second-year depreciation deductions are not affected by a short taxable year. The taxpayer may elect out of additional depreciation for any class of property for any taxable year.

The interaction of the additional depreciation allowance with the otherwise applicable depreciation allowance may be illustrated as follows. Assume that in 2008, a taxpayer purchases new depreciable property and places it in service.[13] The property's cost is $1,000, and it is five-year property subject to the half-year convention. The amount of additional first-year depreciation allowed under the proposal is $250. The amount of additional second-year depreciation allowed under the proposal is $250. The remaining $500 of the cost of the property is deductible under the rules applicable to five-year property. Thus, 20 percent, or $100, is also allowed as a depreciation deduction in 2008 and 32 percent, or $160, in 2009. The total depreciation deductions with respect to the property for 2008 and 2009 are $350 (i.e., $250 plus

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[11] The additional first-year depreciation deduction is subject to the general rules regarding whether an item is deductible under section 162 or instead is subject to capitalization under section 263 or section 263A.

[12] However, the additional depreciation deductions are not allowed for purposes of computing earnings and profits.

[13] Assume that the cost of the property is not eligible for expensing under section 179.

$100), and $410 (i.e., $250 plus $160), respectively. The remaining $240 cost of the property is recovered under otherwise applicable rules for computing depreciation.

In order for property to qualify for the additional depreciation deduction it must meet all of the following requirements. First, the property must be (1) property to which MACRS applies with an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) computer software other than computer software covered by section 197, or (4) qualified leasehold improvement property (as defined in section 168(k)(3)).[14] Second, the original use[15] of the property must commence with the taxpayer after December 31, 2007.[16] Third, the taxpayer must purchase the property within the applicable time period. Finally, the property must be placed in service after January 29, 2008, and before January 1, 2009. An extension of the placed in service date of one year (i.e., to January 1, 2010) is provided for certain property with a recovery period of ten years or longer and certain transportation property.[17] Transportation property is defined as tangible personal property used in the trade or business of transporting persons or property.

The applicable time period for acquired property is (1) after January 29, 2008, and before January 1, 2009, but only if no binding written contract for the acquisition is in effect before January 1, 2008, or (2) pursuant to a binding written contract which was entered into after January 29, 2008, and before January 1, 2009.[18] With respect to property that is manufactured,

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[14] A special rule precludes the additional first-year depreciation deduction for any property that is required to be depreciated under the alternative depreciation system of MACRS.

[15] The term "original use" means the first use to which the property is put, whether or not such use corresponds to the use of such property by the taxpayer.

If in the normal course of its business a taxpayer sells fractional interests in property to unrelated third parties, then the original use of such property begins with the first user of each fractional interest (i.e., each fractional owner is considered the original user of its proportionate share of the property).

[16] A special rule applies in the case of certain leased property. In the case of any property that is originally placed in service by a person and that is sold to the taxpayer and leased back to such person by the taxpayer within three months after the date that the property was placed in service, the property would be treated as originally placed in service by the taxpayer not earlier than the date that the property is used under the leaseback.

If property is originally placed in service by a lessor (including by operation of section 168(k)(2)(D)(i)), such property is sold within three months after the date that the property was placed in service, and the user of such property does not change, then the property is treated as originally placed in service by the taxpayer not earlier than the date of such sale.

[17] In order for property to qualify for the extended placed in service date, the property is required to have an estimated production period exceeding one year and a cost exceeding $1 million.

[18] Property does not fail to qualify for the additional first-year depreciation merely because a binding written contract to acquire a component of the property is in effect prior to January 1, 2008.

constructed, or produced by the taxpayer for use by the taxpayer, the taxpayer must begin the manufacture, construction, or production of the property after January 29, 2008, and before January 1, 2009. Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract that is entered into prior to the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer. For property eligible for the extended placed in service date, a special rule limits the amount of costs eligible for the additional depreciation. With respect to such property, only the portion of the basis that is properly attributable to the costs incurred before January 1, 2009 ("progress expenditures") is eligible for the additional depreciation.[19]

Property does not qualify for the additional depreciation deduction when the user of such property (or a related party) would not have been eligible for the additional depreciation deductions if the user (or a related party) were treated as the owner. For example, if a taxpayer sells to a related party property that was under construction prior to January 30, 2008, the property does not qualify for the additional depreciation deductions. Similarly, if a taxpayer sells to a related party property that was subject to a binding written contract prior to January 30, 2008, the property does not qualify for the additional depreciation deductions. As a further example, if a taxpayer (the lessee) sells property in a sale-leaseback arrangement, and the property otherwise would not have qualified for the additional depreciation deductions if it were owned by the taxpayer-lessee, then the lessor is not entitled to the additional depreciation deductions.

The limitation on the amount of depreciation deductions allowed with respect to certain passenger automobiles (sec. 280F) is increased by $7,650 ($3,825 for the first and second taxable years) for automobiles that qualify (and do not elect out of the increased deduction). The $7,650 increase is not indexed for inflation.

3. Modification of net operating loss carryback rules

This provision increases the general NOL carryback period from two years to five years in the case of an NOL for any taxable year ending during 2006 or 2007. The provision also suspends the 90 percent limitation on the use of any alternative tax NOL deduction attributable to carrybacks from taxable years ending during 2006 or 2007, and carryovers to taxable years ending during 2006 and 2007.

A taxpayer may waive the benefit of the provision by electing, prior to November 1, 2008, to determine the carryback period with respect to NOLs arising in a taxable year ending during 2006 or 2007 without regard to the rule under the provision (i.e., two year carryback).[20] Additionally, a taxpayer may revoke a waiver of the carryback period under section 172(b)(3) for NOLs for taxable year ending during 2006 or 2007 before November 1, 2008.

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[19] For purposes of determining the amount of eligible progress expenditures, it is intended that rules similar to sec. 46(d)(3) as in effect prior to the Tax Reform Act of 1986 shall apply.

[20] Sec. 172(j).

Effective Date

The provision relating to depreciation is effective for property placed in service after December 31, 2007.

The provision relating to expensing is effective for taxable years beginning after December 31, 2007.

The provision relating to NOLs is effective generally for NOLs for taxable years ending after December 31, 1995, except if the taxpayer, before November 1, 2008, revokes its election under the provision with respect to an NOL for a taxable year ending during 2006 or 2007.[21]

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[21] A specified liability loss under section 172(c) is allowed a 10-year carryback period. Because the proposal allows 100 percent of AMTI to be offset, taxpayers that have incurred a specified liability loss may carryback AMT NOLs from taxable years beginning in 2006 to taxable years beginning in 1996.

C. Extension of Unemployment Insurance Benefits[22]

1. Federal-State agreements

Present Law

The Unemployment Compensation (UC) program, funded by both Federal and State payroll taxes, pays benefits to covered workers who become involuntarily unemployed for economic reasons and meet State-established eligibility rules. Federal administration of UC is under the purview of the U.S. Department of Labor (DOL). Federal law sets broad rules that the 53 State programs must follow. The Federal tax pays for both Federal and State administrative costs, the Federal share of the extended benefit (EB) program (50 percent), loans to insolvent State UC accounts, and State employment services. The State tax pays for the regular UC benefit and the State share of the EB program (50 percent).

Description of Proposal

The proposal would create a new temporary extension of unemployment compensation that would entitle certain unemployed individuals to unemployment benefits that are not available under current law. Individuals who had exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before February 1, 2007) would be eligible for these additional benefits. The amount of the benefit would be the equivalent of the individual's weekly regular UC benefit (including dependents' allowances).

The terms and conditions of the State law for receipt of regular UC benefits would also apply to these benefits; except that the individual must have had 20 weeks of full-time insured employment or the equivalent in insured wages. The equivalent in insured wages would be earnings covered by the State law for compensation purposes which either (1) exceed 40 times the individual's most recent weekly benefit amount (WBA) or (2) exceed 1.5 times the individual's insured wages in that calendar quarter of the base period in which the individual's insured wages were the highest.

Governors of the States (if State law permits) would be able to provide for the payment of the temporary extended UC benefit in lieu of the EB benefit. Such an election would not require a State to "trigger off" an EB period. Thus, once the regular UC benefit was exhausted a State could opt for the individual to receive the temporary extended UC benefit (100 percent Federal funding) rather than receiving the EB benefit (50 percent Federal funding and 50 percent State funding).

Effective Date

The proposal is effective on the date of enactment.

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[22] This description of present law and the description of the proposals affecting unemployement insurance benefits was prepared by the Congressional Research Service.

2. Temporary unemployment compensation account

Present Law

The EB program, established by P.L. 91-373 (26 U.S.C. 3304), may extend UC benefits at the State level if certain economic situations exist within the State. Although the EB program is not currently active in any State, it — like the UC program — is permanently authorized. The EB program is triggered when a State's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels. All States must pay up to 13 weeks of EB if the IUR for the previous 13 weeks is at least five percent and is 120 percent of the average of the rates for the same 13-week period in each of the two previous years. There are two other optional thresholds that States may choose. (They may choose one, both, or none.) Under these options, the State would provide the following:

Option 1: an additional 13 weeks of benefits if the State's IUR is at least six percent, regardless of previous years' averages.

Option 2: an additional 13 weeks of benefits if the State's TUR is at least 6.5 percent and is at least 110 percent of the State's average TUR for the same 13-weeks in either of the previous two years; or an additional 20 weeks of benefits if the TUR is at least eight percent.

Beyond the regular UC benefit eligibility requirements, eligibility for EB benefits requires that individuals must have 20 weeks of full-time insured employment or its equivalent.

Description of Proposal

The proposal would establish an account for individuals who were eligible for this temporary extended UC benefit. The number of weeks an individual would be eligible for these temporary extended UC benefits would be the lesser of 50 percent of the total regular UC eligibility or 13 weeks.

Under a special rule, if the State is in an EB period (which has a special definition for purposes of this temporary extension) at the time the UC benefits exhausted then the amount of temporary extended UC benefits is augmented by an additional amount that is equivalent to the temporary UC benefit established in subsection (b)(1). Thus, in those "high-unemployment" States where the EB program was triggered, temporary benefits of up to 26 weeks would be possible (13 additional weeks plus another 13 extra weeks).

The bill would temporarily change the definition of an EB period for the purposes of this provision by reducing the trigger from an IUR of five percent to an IUR of four percent.

Effective Date

The proposal is effective on the date of enactment.

3. Payments to States having agreements for the payment of temporary extended unemployment compensation

Present Law

The Federal unemployment tax on employers, among other uses, pays the Federal share (50 percent) of the extended benefit (EB) program and 100 percent of Federal and State administrative costs. State unemployment taxes on employers pay for 100 percent of the regular UC benefit and 50 percent of the EB benefit.

Description of Proposal

100 percent of the temporary extended UC benefit would be Federally funded.

Effective Date

The proposal is effective on the date of enactment.

4. Financing provisions

Present Law

UC benefits are financed through employer taxes. The Federal taxes on employers are under the authority of the Federal Unemployment Tax Act (FUTA), and the State taxes are under the authority given by the State Unemployment Tax Acts (SUTA). These taxes are deposited in the appropriate accounts within the U.S. Treasury's Unemployment Trust Fund (UTF).

Among its 59 accounts, the Federal UTF in the U.S. Treasury includes: the Employment Security Administration Account (ESAA), the Extended Unemployment Compensation Account (EUCA), the Federal Unemployment Account (FUA), 53 State accounts, the Federal Employees Compensation Account, and two accounts related to the Railroad Retirement Board. Federal unemployment taxes are placed in the ESAA, the EUCA, and the FUA. Each State's unemployment taxes are placed in the appropriate State's account.

Description of Proposal

The provision would allow funds in the Federal EUCA within the UTF to be used for the payment of temporary extended UC benefits. In addition, it would appropriate for administrative funds, such sums as necessary (i.e., without fiscal year limitation) from the Federal ESAA.

The provision would appropriate funds for the temporary extended UC benefits paid to employees of non-profits and governmental entities from the general fund of the Treasury payable into the Federal EUCA. Those amounts would not be required to be repaid.

Effective Date

The proposal is effective on the date of enactment.

5. Fraud and overpayments

Present Law

All State laws provide for recovering benefits paid to workers who later are found not to be entitled to them. In addition to direct repayment, States utilize several tools to recoup these funds. States may, at the discretion of the agency, recover overpayments by deducting from future benefits payable (benefit offset). They also may offset overpayments with state tax refunds due to the worker. They also can compel repayment by pursuing civil action in State court. Finally, some States may assess interest on outstanding overpayment balances. Some States provide that if the overpayment is not the fault of the individual, the individual is not liable to repay the amount overpaid.

Description of Proposal

If an individual lies or cooperates in a lie in order to receive a temporary extended UC benefit to which he or she was not entitled, the individual would be ineligible for further temporary extended UC benefits and would be subject to prosecution under section 1001 of title 18 of the United States Code (Chapter 47 --- Fraud and False Statements).

The provision would mandate States to require individuals who have received temporary extended UC benefits to which they were not entitled to repay the benefits. The State would be able to waive the repayment if it determines the payment was made without fault on the part of the individual and such repayment would be contrary to equity and good conscience.

The provision would allow States to recover erroneous payments through deductions from any temporary extended UC benefits payable to such individual or from any State or Federal unemployment benefit with respect to any week of unemployment, during the three-year period after the date such individual received the erroneous temporary extended UC benefit payment. No single deduction would be allowed to exceed 50 percent of the weekly benefit amount from which such deduction is made. (In addition to regular UC and EB benefits, the Trade Readjustment Allowance and the Federal Disaster Unemployment Assistance benefit also would qualify for such a deduction.)

No repayment shall be required until a determination has been made and an opportunity for a fair hearing has been given to the individual and the determination has become final.

Effective Date

The proposal is effective on the date of enactment.

6. Applicability

Present Law

Not applicable.

Description of Proposal

The program would terminate on December 31, 2008. Those unemployed individuals who had qualified for the temporary extended UC benefit or had qualified for the additional "EB" (high unemployment) provision would continue to receive payments for the number of weeks they were deemed eligible. However, if the unemployed individual has not exhausted the first temporary extension of UC benefits by December 31, 2008, regardless of State economic conditions, the individual would not be eligible for an additional "EB" (high unemployment) extension of the temporary UC benefit. If an individual exhausts his or her regular UC benefits after December 31, 2008, the individual would not be eligible for any temporary extended UC benefit. No such benefits shall be payable for any week beginning after March 31, 2009.

Effective Date

The proposal is effective on the date of enactment.