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SENATE REPUBLICAN POLICY COMMITTEE

Legislative Notice

No. 78

S. 3688 – Unemployment Compensation Extension Act of 2008

Calendar No. 1121

On November 18, 2008, S. 3688 was read for a second time and placed on the Senate Calendar.

Noteworthy

- On November 18, the Majority Leader placed the following four bills on the Senate Calendar via Rule 14: S. 3688 (unemployment insurance/auto bailout); S. 3689 (unemployment insurance/stimulus/auto bailout); H.R. 6867 (House-passed unemployment insurance); and H.R. 7110 (House-passed unemployment insurance/stimulus spending).

- It is unclear at this time if the Senate will vote on S. 3688. However, expanding the length of unemployment benefits and providing federal assistance to U.S. automakers–the two pieces of S. 3688–continue to be discussed.

- S. 3688 would lengthen the duration of unemployment benefits by up to seven weeks for all states, plus an additional up to 13 weeks for individuals in states with unemployment at or above 6.0 percent. Combined with the extension passed in June, this would expand the duration of unemployment benefits for all states by up to 20 weeks on top of the regular program's up to 26 weeks, and up to 33 weeks for workers in states with unemployment at and above 6.0 percent, on top of the regular program's up to 26 weeks. This provision is estimated to cost $5.7 billion.

- The U.S. auto industry is the latest in the line of companies that wish to be included in the Department of the Treasury's Troubled Asset Relief Program (TARP). S. 3688 provides $25 billion of the $700 billion in TARP funds for the U.S. auto makers. Proponents suggest that if assistance is not given to the Big Three, then there will be systemic adverse effects on the economy. Opponents of opening up TARP funds for non-financial institutions suggest that Congress look into lifting some of the restrictions placed on the $25 billion loan for autos contained in the continuing resolution enacted in September or that the Big Three consider bankruptcy or reorganization options.

Background

Unemployment Insurance

The Federal-State Unemployment Compensation program provides up to 26 weeks of state benefits to eligible workers who lose their jobs through no fault of their own. In addition, the regular Extended Unemployment Benefit program is triggered when a state's unemployment rate reaches a specific level. It allows for up to an additional 13 weeks of unemployment benefits for individuals in states during a period of high unemployment, paid for by state and federal funds.

National unemployment was reported at 6.5 percent in October. In 2008, the U.S. has lost 1,179,000 jobs, cutting into the 7,895,000 jobs created since January 2003.

In addition to the federal-state program, Congress can enact legislation that further extends unemployment compensation. Congress last did this when it passed the Supplemental Appropriations Act (P.L. 110-252) in June. A provision in that bill created the Emergency Unemployment Compensation (EUC08) program. This program provides for the payment of up to 13 weeks of federal extended unemployment benefits to long-term unemployed workers in all states, with payments beginning July 6, 2008, and allowing for new recipients of these extended benefits through March 28, 2009. A "phaseout" period allows those who start collecting these extended benefits by that date to receive their full promised benefits, payable through the end of June 2009. EUC08 benefits are fully federally funded.

SPECIAL EXTENDED BENEFIT PROGRAMS								
PROGRAM	**Outside Factors**	**START TUR**		**PEAK TUR**		**END TUR**	
1950s – TUC		7.3%	06/58	7.5%	07/58	5.0%	06/59
1960s – TEUC		7.0%	04/61	7.1%	05/61	5.5%	06/62
1970s – TC	Vietnam war era ends	5.8%	01/72	5.8%	03/72	4.9%	03/73
1970s – FSB	Oil Embargo	8.1%	01/75	9.0%	05/75	6.4%	01/78
1980s – FSC		10.1%	09/82	10.8%	12/82	7.2%	03/85*
1990s – EUC		7.0%	11/91	7.8%	06/92	6.6%	02/94*
2000s – TEUC	9/11 attacks	5.7%	03/02	6.4%	06/03	5.7%	12/03*
2000s – EUC		5.5%	06/08				

TUC = Temporary Unemployment Compensation
TEUC = Temporary Extended Unemployment Compensation
TC = Temporary Compensation
FSB = Federal Supplemental Benefits
FSC = Federal Supplemental Compensation
EUC = Emergency Unemployment Compensation
TUR = Total Unemployment Rate
* Phaseout extended beyond this date.

Few economic studies support the idea that extending unemployment benefits significantly stimulates the economy. Peter Orszag, director of the Congressional Budget Office, stated in testimony to the Senate Finance Committee in January that the "availability and size of UI benefits may…somewhat discourage recipients from searching for work. Extending the duration of benefits or increasing their size means that at least some recipients may remain unemployed longer than they would have without that aid."[1] On this point, one study found that 28 percent of workers who had not yet found jobs found one as soon as their unemployment benefits expired.[2] In fact, most research has found that unemployment insurance benefits play a relatively small role in stabilizing the economy, and provide "virtually no economic stimulus."

A recent *Investor's Business Daily* article looked at unemployment prior to and after enactment of the June extension. The article notes that "Since July 6 [after the President signed the extension into law], there has only been one week when initial jobless claims were as low as they were before Bush signed the extension. Indeed, dozens of economic research papers predicted this outcome. When you extend or increase jobless benefits, you extend unemployment. If you set a date certain for getting rid of benefits, people find jobs."[3]

Auto Industry

Due to the economic turmoil and high fuel costs, the U.S. auto industry is the latest in the line of companies that would like to be included in Treasury's $700 billion Troubled Asset Relief Program (TARP). Please refer to RPC legislative notice on the original TARP program.[4] The "Big Three" U.S. auto makers, Ford, Chrysler, and General Motors have seen plummeting sales and market share, high labor costs, and aging fleets.

Proponents of the auto bailout suggest that if assistance is not given to the Big Three, then there will be systemic adverse effects on the economy. However, there have been suggestions by those opposed to opening up TARP funds for non-financial institutions that the Senate and/or House look into lifting some of the restrictions placed on the $25 billion loan for autos that was contained in the continuing resolution (CR), H.R. 2638, which was signed into law on September 30, 2008 or that the Big Three consider bankruptcy or reorganization options. Opponents of a bailout assert that the Big Three is so hindered by legacy costs and obsolete and expensive business structures that Chapter 11 bankruptcy reorganization is the best option and possibly only option for an economically viable future for the Big Three. The Administration has noted that they are opposed to opening up TARP funds to non-financial institutions.

Background on the Direct Loan program contained in the CR: As part of the FY 2009 CR, Section 129 provided appropriations to fund a direct loan program to auto manufacturers, the Advanced Technology Vehicles Manufacturing Incentive Program. The direct loan program was authorized in Section 136 of the Energy Independence and Security Act

[1] Peter Orszag, Director, Congressional Budget Office, in testimony before the Senate Finance Committee, January 22, 2008.
[2] James Sherk and Patrick Tyrrell, "Unemployment Insurance Does Not Stimulate the Economy," The Heritage Foundation, January 18, 2008.
[3] *Investor's Business Daily*, "Subsidize Unemployment, Get More of It," October 14, 2008.
[4] Senate Republican Policy Committee, "H.R. 1424-Shell for the Text of the Emergency Economic Stabilization Act and Other Matters," October 1, 2008, http://rpc.senate.gov/public/_files/L77EmergEconStabilizationActCJSN1.pdf.

of 2007 (H.R. 6; P.L. 110-140), but funding for the program was not appropriated until Congress passed the CR in September. The loan program is designed to accelerate retooling of U.S. manufacturing plants to produce the next generation of fuel efficient cars and to meet new fuel efficiency standards enacted under H.R. 6.

The loan program is meant to assist in providing low-cost capital to meet the high cost of adapting to the new fuel economy requirements over the next decade, an effect exacerbated by dramatically lower auto sales in the current economy. As described, the loans would be available to all foreign and domestic manufacturers, but the loans would only be available for retooling of domestic plants. Plants that are older than 20 years would be given priority in the competitive application process. Several requirements must be met in order to receive the loans, and the funds can only be used for specific retooling purposes. Although the direct loan program is authorized to loan $25 billion, the cost to the federal government is estimated to be $7.5 billion, or the amount appropriated for the subsidy cost of the program.

Arguments have been raised to use this loan funding for the current operating shortfalls rather than provide the new money that's being currently requested. However, Section 136 is structured for traditional project financing, and allows access to capital only as expenses are incurred, providing a loan drawdown that typically spans several years. Any legislative changes to the parameters of Section 136 would require the Department of Energy (DOE) to rescind existing regulations and go through the lengthy rules process again, delaying the disbursement of any loans well into next year. As a result, it would not be able to address the short-term operating expense shortfall. Additionally, Section 136 was negotiated as a part of H.R. 6 to provide auto manufacturers with the ability to retool to meet changing fuel efficiency standards and expand green technologies. Such a need will continue to exist beyond the short-term, as will the need for the direct loan program.

Currently, the DOE is accepting applications for the program; however, no funds have been released.

The change underway in the U.S. auto industry should also be considered. One such change is in the geography of automobile and automobile-related manufacturing. Between 2000 and 2005, the U.S. share of light-vehicle sales by the Big Three automakers fell from 67.9 percent to 57.8 percent. Researchers note that while some of the market loss is attributable to a rise in imports, most of it is explained by the increased U.S. production of foreign-headquartered assembly companies. This change has impacted the geography of the U.S. auto industry. Many of these "new domestic" assembly plants tend to be located farther south than the assembly plants of the Big Three producers.

The core of the auto region no longer reaches from Detroit to Pennsylvania and New York. Instead, the new core reaches from Michigan, west to Chicago and south to northern Alabama and into the Carolinas. The northern half of the region is more densely populated by domestic producers which tend to be more unionized. U.S. plants of foreign-based companies are more concentrated in the southern half of the region. Larger plants tend to be located farther away from Detroit and tend to have larger employment.

Bill Provisions

Title I – Unemployment Compensation

Section 101. Short Title.

Section 102. Additional First-Tier Benefits. Section 102 would provide up to seven additional weeks of federal extended unemployment benefits to workers in all states (for a total of up to 20 weeks of such benefits under the program, in all states, when combined with EUC08 benefits).

Section 103. Second-Tier Benefits. Section 103 would provide up to an additional thirteen weeks of federal extended benefits (for a total of up to 33 weeks in such states, under the program, when combined with EUC08 benefits) for workers in states with three-month average total unemployment rates of six percent or higher, among other conditions.

Section 104. Phaseout Provisions. The bill would maintain the current eligibility window of March 31, 2009 during which individuals may first qualify for these extended benefits. However, it extends through August 27, 2009 (from the current end of June 2009) the phaseout period during which these benefits may be collected, allowing those who become eligible for the additional weeks of benefits offered under this legislation to receive their full course of promised extended benefits.

Section 105. Temporary Federal Matching for the First Week of Extended Benefits for States with no Waiting Period. Section 105 would eliminate the requirement that states without a waiting week pay 100 percent of the first week of extended benefits (EB). Currently, states that do not require a one-week unemployment compensation (UC) waiting period, or have an exception for any reason to the waiting period, pay 100 percent of the first week of EB. Twenty-five states do not require a one-week UC waiting period in all cases.[5]

Section 106. Effective Date. The amendments made by sections 102, 103, and 104 shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008.

Title II – Automobile Industry Emergency Assistance

Section 201. The Emergency Economic Stabilization Act of 2008 (division A of Public Law 110-343) is amended by adding at the end TITLE IV – DIRECT BRIDGE LOAN PROVISIONS.

Section 401. Findings. Congress finds that extraordinary and exigent circumstances have prevented the automobile industry from securing essential credit and liquidity from other sources. Congress finds that failure of the automobile industry to obtain credit and liquidity will have a systemic adverse effect on the economy.

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[5] Congressional Research Service, “Emergency Unemployment Compensation (EOC08),” CRS Report to Congress RS22915, November 14, 2008.

Section 402. Purposes.

- To clarify that authority and facilities are available to be used immediately by the Secretary to restore liquidity and stability to the automobile industry in the United States;
- To ensure that such authority and such facilities are used in a manner that –
  - Stimulates manufacturing and sales of automobiles produced by automobile manufacturers in the United States;
  - Enhances the ability and capacity of the domestic automobile industry to pursue the timely and aggressive production of energy efficient advanced technology vehicles;
  - Preserves and promotes the jobs of 355,000 workers in the United States directly employed by the automobile industry and an additional 4,500,000 workers in the United States employed in related industries; and
  - Safeguards the ability of the domestic automobile industry to provide retirement and health care benefits for 1,000,000 retirees and their spouses and dependents; and
- Reaffirm the purposes of Section 2, which include providing the Secretary with broad authority to restore liquidity and stability to financial institutions, including automobile finance companies.

Section 403. Emergency Direct Loan Program. The Secretary shall make loans in the amount equal to $25 billion to automobile manufacturers and component suppliers that:

1) Have submitted an application for a loan that includes a statement of need;
2) Have operated a manufacturing facility for the purposes of producing automobiles throughout the twenty year period ending on the date of enactment of this title; and
3) The Secretary determines would have a systemic adverse effect on the overall United States economy if operations in the United States ceased.

Long-Term Financial Viability Requirement: In addition, during the time of application, the automobile manufacturer must submit to the Secretary a detailed plan on how the requested loan amounts will be used to ensure the long-term financial posture of the company.

Section 404. Funding From Third Tranche; Treatment of Loan Amounts. The same funding stipulations as contained in the original Emergency Economic Stabilization Act of 2008 (Section 118) apply to loans made under Title IV except that all of the funding for the auto loan program, credit subsidy costs, and administrative expenses must come out of the third tranche of funding and are exempted from the procedural and reporting requirements that require the White House to specifically request the additional funds.

Section 405. Timing of Disbursements. Three days after the enactment of this title, the Secretary shall receive applications for loans. No later than 15 days after the Secretary receives the application shall he determine the applicant's eligibility. The Secretary then has seven days to disburse the funds once he receives a disbursal request from the eligible applicant.

Section 406. Terms and Conditions. The term to maturity of any loan made under Title IV shall be 10 years. The term could be longer if the Secretary so determines. The annual rate of interest shall be five percent during the five-year period beginning on the date on which the Secretary disburses the loan and nine percent thereafter.

Warrants: The Secretary may not make a loan under this title unless the automobile manufacturer provides a warrant or senior debt instrument.

Executive Compensation Standards:

- There must be limits on compensation that exclude incentives for senior executive officers to take unnecessary and excessive risks.
- The bill contains a provision for the recovery of bonuses or incentive compensation paid to a senior executive officer based on statements of earnings, gains, or other criteria that later are discovered materially inaccurate.
- No golden parachute payments will be allowed to senior executive officers during the period that the loan is outstanding.
- No bonuses or incentive compensation will be paid or accrued to any executive whose annual base compensation exceeds $250,000, adjusted for inflation.
- No compensation plan will be allowed that could encourage manipulation of the reported earnings.

Definitions: The executive compensation section defines ‘senior executive officer’ as an individual who is one of the top five most highly-paid executives and whose compensation is required to be disclosed pursuant to the Securities and Exchange Act of 1934, and a ‘golden parachute’ as any payment to a senior executive officer for departure from a company for any reason.

Prohibition on Payment of Dividends: No common stock dividends may be paid by any recipient of a loan for the duration of the loan.

The section also contains a provision stating that there is no prepayment penalty.

Section 407. Oversight. The same oversight stipulations as contained in the original Emergency Economic Stabilization Act of 2008 (Sections 105, 116, 121, and 125) apply to loans made under Title IV.

Title III – Emergency Treatment

Section 301. Emergency Treatment. All provisions in the Act are designated as an emergency for purposes of S. Con. Res. 21, the concurrent resolution on the budget for FY 2008. The same emergency stipulations are contained in the original Emergency Economic Stabilization Act of 2008 (Section 204). This means pay-as-you-go (Paygo) rules do not apply.

Cost

According to an updated estimate from the Congressional Budget Office (CBO) on H.R. 6867, the unemployment compensation extension would increase direct spending by $5.7 billion in FY 2009, assuming enactment December 1, 2008.

Because of remaining market uncertainty, CBO is unable to estimate the ultimate cost of this $25 billion loan. CBO expects that the "net budget cost of loans to auto manufacturers and suppliers would probably be higher than the cost of alternative uses of TARP funds, which would likely involve firms whose credit risks are lower than those of the automobile industry. As a result, CBO anticipates that requiring the Secretary to devote $25 billion of TARP authority to the proposed loans for the automobile industry would likely result in a net increase in the federal deficit compared to current law. Because of continuing uncertainty surrounding the implementation of the TARP under current law, however, CBO cannot provide a specific estimate at this time of this legislation's incremental impact on the federal budget."

Administration Position

A Statement of Administration Policy (SAP) was not available at press time.