The Florida Senate

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Committee on Commerce

EMERGING ISSUES RELATED TO FLORIDA'S UNEMPLOYMENT COMPENSATION PROGRAM

Statement of the Issue

Unemployment compensation is a joint federal and state administered program that provides benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law. Individual states collect unemployment compensation payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act, used to provide grants to the states to fund administration of their unemployment compensation programs. The Agency for Workforce Innovation (AWI) is the agency responsible for administering Florida's unemployment compensation laws.

The American Recovery and Reinvestment Act of 2009 was signed into law in February 2009 as a strategic national effort to stimulate the economy. This act, in part, provides funding for different unemployment compensation program components. Some of the funding required states to change their laws in order to qualify for the funding; other provisions provided additional unemployment compensation benefits to individuals without major state participation. In total, the stimulus funding provided needed support to both unemployment compensation recipients and AWI for administration of the program.

Unfortunately, due to the increasing unemployment rate in Florida, the Unemployment Compensation Trust Fund has recently been paying out more funds than it has been collecting. The trust fund fell into deficit in August 2009, and the state requested a federal advance in order to continue to fund unemployment compensation claims. The Legislature passed legislation during the 2009 regular session to increase employer contribution rates with the goal of easing the strain put upon the trust fund by the current economic climate.

This issue brief will provide an overview of the Florida's Unemployment Compensation program and identify changes made by the federal American Recovery and Reinvestment Act and state legislation enacted in 2009. These changes affect the administration of the program by AWI, program benefits, and employer contributions.

In addition, it will provide an update on the solvency status of the Unemployment Compensation Trust Fund and profile "modernization" options to expand benefits and related federal funding incentives.

This issue brief is intended to be a resource for understanding the Florida's Unemployment Compensation program and related emerging issues.

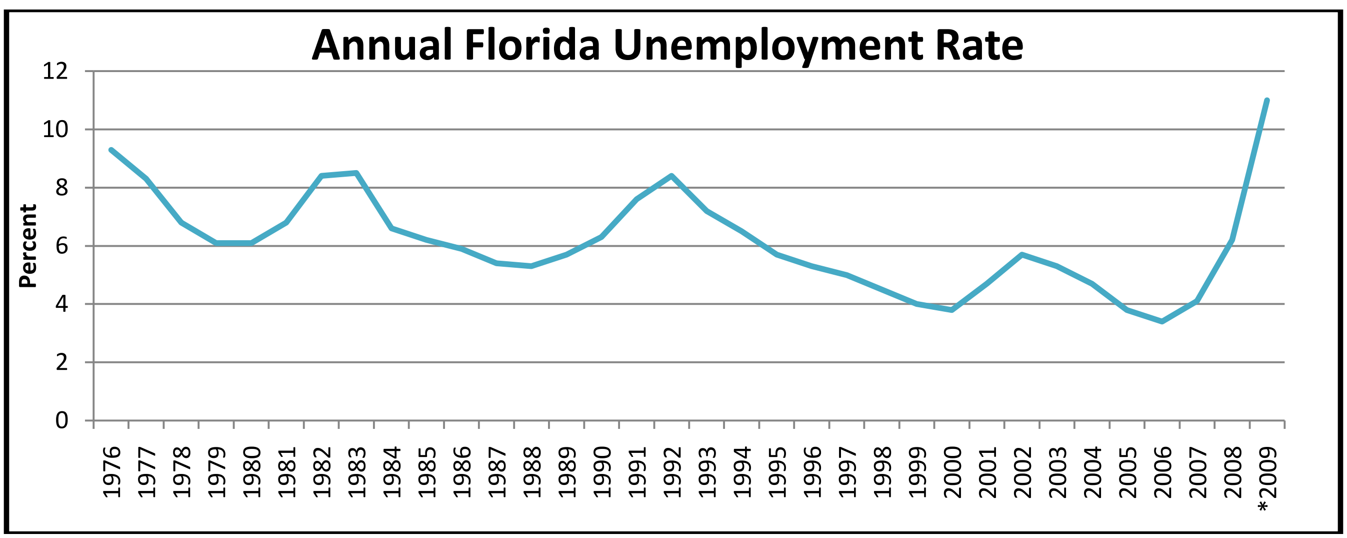
Discussion

Unemployment Compensation Program Overview

According to the United States Department of Labor (USDOL), the Federal-State Unemployment Insurance Program provides unemployment benefits to eligible workers who are unemployed through no-fault of their own (as determined under state law) and who meet the requirements of state law.[1] The program is administered as a partnership of the federal government and the states. There are 53 state programs, including the 50 states, Puerto Rico, the Virgin Islands, and the District of Columbia.

The individual states collect unemployment compensation (UC) payroll taxes on a quarterly basis, which are used to pay benefits, while the Internal Revenue Service collects an annual federal payroll tax under the Federal Unemployment Tax Act (FUTA).[2] FUTA collections go to the states for costs of administering state UC and job service programs. In addition, FUTA pays one-half of the cost of extended unemployment benefits (during periods of high unemployment) and provides for a fund from which states may borrow, if necessary, to pay benefits.[3] States are permitted to set eligibility conditions for UC benefit recipients, the amount and duration of benefits, and the state tax structure so long as the state provisions are not in conflict with FUTA or Social Security Act requirements. Florida's UC program was created by the Legislature in 1937 as part of the national unemployment insurance system.[4] Florida's UC system is funded solely by employers who pay federal and state UC taxes, and is provided at no cost to the workers who receive the benefits.[5]

The national unemployment system was established as a direct result of the high unemployment experienced during the Great Depression of the 1930s. It was authorized by both the Social Security Act of 1935 and the Wagner-Peyser Act, and is currently governed by the FUTA, originally passed in 1939 and later amended. The unemployment insurance system's primary objectives are: (1) to give workers temporary and partial insurance against income loss resulting from unemployment; and (2) to assist the countercyclical stabilization of the economy during recessions by maintaining workers' purchasing power.[6] This supports economic stability for employers who depend on consumer spending to stay in business; it is estimated that every $1 in UC benefits generates $1.63 in economic activity.[7]



Information obtained from the Florida Research and Economic Database, Labor Market Statistics, Local Area Unemployment Statistics Program, at http://fred.labormarketinfo.com/default.asp (last visited 10/16/2009).
*The seasonally adjusted unemployment rate for Florida in September 2009 was 11.0 percent.

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[1] USDOL, State Unemployment Insurance Benefits, at http://workforcesecurity.doleta.gov/unemploy/uifactsheet.asp (last visited 10/20/2009).
[2] FUTA is codified at 26 U.S.C. 3301-3311.
[3] USDOL, Unemployment Insurance Tax Topic, at http://workforcesecurity.doleta.gov/unemploy/uitaxtopic.asp (last visited 10/20/2009).
[4] Chapter 18402, L.O.F.
[5] In addition to employer taxes, some states levy an unemployment tax on employees as a means to finance their UC programs (currently Alaska, New Jersey, and Pennsylvania).
[6] Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001), at http://www.flsenate.gov/data/Publications/2002/Senate/reports/interim_reports/pdf/2002-122cm.pdf (last visited 10/20/2009).
[7] Information from AWI, on file with the Senate Commerce Committee.

Administration of the Unemployment Compensation Program in Florida

The Agency for Workforce Innovation (AWI) is the current agency responsible for administering Florida's UC laws.[8] Prior to October 1, 2000, the state's UC program was administered by the Division of Unemployment Compensation of the former Department of Labor and Employment Security.[9] The Workforce Innovation Act of 2000 transferred the administration of the UC program from the department to AWI. Further, this legislation required AWI to contract with the Department of Revenue to provide unemployment tax collections services.[10]

The USDOL provides AWI with administrative resource grants from the taxes collected from employers pursuant to FUTA. These grants are used to fund the operations of the state's UC program. To determine each state's share of the administrative resource grants, USDOL uses the Resource Justification Model (a budget formulation and allocation system based on state workload and program cost) to annually allocate to each state a base grant for the federal fiscal year, plus a state may earn contingency grants throughout the year. Florida received a base grant of $73.9 million for federal FY 2008 and $77.8 million for federal FY 2009. The USDOL 2010 unemployment insurance state allocations planning budget estimates that Florida's base grant for federal FY 2010 is $81.1 million.[11] These funds finance the processing of claims for benefits by AWI, state unemployment tax collections performed by the Department of Revenue, appeals conducted by AWI and the Unemployment Appeals Commission, and related administrative functions.

AWI administers Florida's UC laws through its Office of Unemployment Compensation Services.[12] The Office of Unemployment Compensation Services consists of the Unemployment Compensation Benefits Section, the Benefits Payment Control Section, and the Office of Appeals. The Unemployment Compensation Benefits Section handles initial claims, questions about unemployment benefits, and other related issues.[13] The Benefits Payment Control Section monitors the payment of unemployment benefits in an effort to detect and deter overpayment and to prevent fraud.[14] The Office of Appeals holds hearings and issues decisions to resolve disputed issues related to eligibility and claims for unemployment compensation and the payment and collection of unemployment compensation taxes. The Office of Unemployment Compensation Services also administers special unemployment compensation programs, such as disaster unemployment assistance, trade adjustment assistance, and UC for ex-service members and federal civilian employees. AWI provides services in English, Spanish, and Haitian Kreyól.[15]

The Unemployment Appeals Commission is administratively housed in the AWI, but is a quasi-judicial administrative appellate body independent of AWI.[16] The commission consists of a three member panel that is

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[8] Sections 20.50 and 443.171, F.S. All Florida statutes cited are 2009, unless otherwise indicated.
[9] Section 11(4)(f), ch. 2000-165, L.O.F. The Department of Labor and Employment Security was abolished by the Legislature in 2002. Ch. 2002-194, L.O.F. Statutory "clean-up" was done by ch. 2003-36, L.O.F., to correct references and clarify duties of both AWI and the Department of Revenue.
[10] The contract requirement and the duties of DOR were clarified by ch. 2003-36, L.O.F.
[11] In addition to the base grant amounts, states earn additional funds each quarter for actual UC claims workload above the base. Information obtained from UDSOL website on the UI Budget at http://www.workforcesecurity.doleta.gov/unemploy/budget.asp#tfloans (last visited 10/20/2009). The base grant amount includes allocation for postage. The federal fiscal year runs from October 1 to September 30 of the next year.
[12] Section 20.50(2)(c)1., F.S.
[13] AWI operates call centers for initial UC claims and questions about continuing claims. These centers are located in Tallahassee, Orlando, and Fort Lauderdale. AWI contracted with a third party to open an additional call center in Orlando to handle overflow calls (approved by the Legislative Budget Commission on February 18, 2009, to handle additional UC workload); this call center began taking calls ahead of schedule in June 2009 in order to take calls related to state extended benefits, and became a fully operational call center in August 2009, taking all types of UC related calls.
[14] Unemployment compensation fraud is a third-degree felony and is subject to prosecution by the State Attorney. Section 443.071, F.S. A third-degree felony is a crime punishable by a maximum penalty of $5,000 and up to five years in prison.
[15] Information found at http://www.floridajobs.org/unemployment/index.html (last visited 10/20/2009).
[16] Section 20.50(2)(d), F.S. "The Unemployment Appeals Commission, authorized by s. 443.012, F.S., is not subject to control, supervision, or direction by the Agency for Workforce Innovation in the performance of its powers and duties but shall receive any and all support and assistance from the agency that is required for the performance of its duties." The Unemployment Appeals Commission is 100 percent federally funded.

appointed by the governor. It is the highest level for administrative review of contested unemployment cases decided by the Office of Appeals referees. The Unemployment Appeals Commission can affirm, reverse, or remand the referee's decision for further proceedings. A party to the appeal who disagrees with the commission's order may seek review of the decision in the Florida district courts of appeal.[17]

Federal Legislation - The American Recovery and Reinvestment Act of 2009

The American Recovery and Reinvestment Act of 2009 (the Recovery Act) was signed into law by President Obama in February 2009.[18] In part, this act allocates funding to UC programs at the state and federal level.

Administrative Funding

The Recovery Act granted the states additional funds for UC and workforce support services administration at the state level.[19] AWI is eligible to receive an estimated $31.7 million for administration from the federal government.[20] AWI was appropriated $15,000 in FY 2008-2009, and $60,000 in FY 2009-2010, but has not yet expended these funds. AWI is estimated to receive $15 million in FY 2010-2011.[21] These funds may be used for improvement of UC benefit and tax operations; staff-assisted reemployment services to unemployed claimants; and the implementation and administration of state law that qualifies the state for incentive payments under the Recovery Act.[22] A portion of Florida's share of the Recovery Act administrative funds could be expended to create and implement the Unemployment Compensation Claims and Benefits Information System, discussed below. The $15,000 was earmarked to be used for legal services; the $60,000 was intended for activities by the Office of the Inspector General.

State Legislation in 2009 Related to UC Administration

AWI received 150 additional full-time employment positions for the Office of Unemployment Compensation Services in the FY 2009-2010 budget.[23] These positions were allocated to areas of the UC program that provide direct service to Floridians. A review process of the program was completed to determine the best use of the positions in light of the increased workload for AWI. The positions were distributed as follows:

- 35 positions to initial claims - these positions process initial UC claims that are received by AWI via the Internet, telephonically through the Interactive Voice Response System (IVR), or by mail and fax;
- 24 positions to continued claim activities – these positions handle calls for general information relating to specific claims, and also assist in resolving claim discrepancies that do not need to be elevated to the adjudication process;
- 17 positions to the adjudication process - these individuals conduct fact-finding interviews with claimants and employers and make initial non-monetary determinations with respect to the eligibility provisions of ss. 443.091, 443.101, and 443.131(3)(a), F.S.;
- 35 positions to appeals activities - this includes 3 positions for translation services primarily provided during hearings, 6 for creating and processing documentation relating to appeals hearings, 2 for intake of initial appeals filings, and 24 positions for new hearing officers;

[17] Section 443.151(4)(c), (d), and (e), F.S.
[18] Public L. No. 111-5.
[19] Section 2003, Public L. No. 111-5.
[20] The funds are held in the administrative account of the UC Trust Fund. The states draw down the funds needed to meet their operational needs in accordance with the Cash Management Improvement Act and the regulations of the Financial Management Service of the U.S. Department of the Treasury.
Benefits are paid from the UC Trust Fund; the program operates with funds in the Employment Security Administration Trust Fund, which is the administrative account of the UC Trust Fund. All money in the administrative account remains part of the UC Trust Fund, pursuant to s. 443.211, F.S. See also, s. 443.191(5)(c), F.S.
[21] Appropriated funds are held by the federal government until AWI draws down the funds to pay for the expenditures. Information from AWI, on file with the Senate Commerce Committee.
[22] USDOL Unemployment Insurance Program Letter (UIPL) 14-09, at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2715 (last visited 10/20/2009).
[23] See s. 6, ln. 2133, ch. 2009-81, L.O.F. (Salaries and Benefits Positions 587.00); and s. 6, ln. 2209, ch. 2008-152, L.O.F. (Salaries and Benefits Positions 437.00). Detail provided by AWI, on file with the Senate Commerce Committee.

- 21 positions to central benefits processing - this includes handling of returned and forged benefit checks; resolution of issues relating to electronic funds transfer between Wachovia and the claimant's bank;[24] reconsideration of monetary determinations, which includes initiating and disposing of blocked claims investigations in conjunction with the Department of Revenue; employer protests to benefit charging; and special UC programs;
- 10 positions to the Benefit Payment Control Section – these positions are primarily for the resolution of issues relating to the reporting of new hires from the State and National Directories of New Hires administered by the Florida Department of Revenue and the U.S. Department of Health and Human Services; and
- 8 positions to the Benefit, Timeliness, and Quality Control (BTQ) and Benefit Accuracy Measurement (BAM) units.

Unemployment Compensation Claims and Benefits Information System

The 2007 Florida Legislature directed AWI to evaluate the replacement of the 30-year old mainframe system used to process UC benefit claims and appeals.[25] A feasibility study was conducted by a third-party vendor, which recommended that AWI implement a new system.[26] The study also concluded that a cost savings of up to $43.1 million annually could be expected due to enhanced efficiencies in program operations. Benefits of a new UC information system include:

- Enhanced call center operations resulting in decreased caller wait times, reduced call duration, and increased customer satisfaction;
- Improved efficiency of adjudication and appeals activities;
- Reduced errors, fraud and overpayments; and
- Implementation of a simplified, robust technical infrastructure.

The Unemployment Compensation Claims and Benefits Information System is a replacement project for the existing UC Claims and Benefits technology system and supporting systems. The implementation time frame is over a 4-year period at a total project implementation cost of $68.25 million.[27] The agency anticipates that the project costs for the entire system will be funded from federal funds.

The current technology system has been strained under the current economic climate, due in part to increased customer demand and an aging and inflexible technology system. AWI's UC services rely heavily on paper-based processes and legacy technology centered on its current mainframe application. Because of this, it is difficult for AWI to effectively adapt its existing system to changes in program law, such as federal extensions of benefits. The system struggled to accommodate the recent surge in unemployment claims, which resulted in poor system response times and the online systems becoming inaccessible during peak transaction loads. Many short-term fixes have been implemented, including fine-tuning the mainframe application system, creating separate applications to meet short falls of that system, and increasing call-center staff. However, these reactive solutions have not addressed the underlying need for a more efficient information system that can help to automate and streamline programmatic workload. Plans for the new system indicate that AWI intends to eliminate paper-based processes where feasible and provide the public with automated, self-service access to UC program services.

In Phase 2 (Requirements Definition and Procurement Support) of AWI's plan to replace its current automated support systems, AWI will develop detailed requirements specifications and analyze and develop detailed business process requirements which would subsequently be included in a competitive procurement process that evaluates both commercial-off-the-shelf applications and systems implemented in other states.

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[24] Electronic funds transfer of benefits payments through Wachovia is discussed in *Benefit Payments* infra.
[25] Adapted from Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1782 (April 6, 2009).
[26] The feasibility stude was Phase 1 of the project.
[27] AWI's Legislative Budget Request for Fiscal Year 2009-2010, issue #36315C0, as revised (after February 25, 2009).

For FY 2009-2010, AWI requested, and the legislature funded, $2 million from nonrecurring federal UC administrative funds for Phase 2 of the project.[28] Further ch. 2009-73, L.O.F., creates s. 443.1113, F.S., to authorize the Unemployment Compensation Claims and Benefits Information System. In compliance with s. 216.023, F.S., s. 443.1113, F.S., also defines the plan scope, provides time frames for implementation and a governance structure for the project, and outlines and defines the main business objectives that must be achieved.

Specific phases for the project are outlined in s. 443.1113(4), F.S. The business re-engineering analysis and documentation of both the detailed system requirements and overall system architecture are to be completed by the end of FY 2009-2010. The Unemployment Claims and Benefits Internet portal is required to be deployed to full operational status no later than the end of FY 2010-2011.[29] By the end of FY 2011-2012, the new Call Center Interactive Voice Response System and the Benefit Overpayment Screening System are to be fully operational. Lastly, the project should be completed by the end of FY 2012-2013 with the full deployment of the Internet and Intranet Appeals System and the Claims and Benefits Mainframe System.

The project’s governance structure is composed of an executive steering committee with voting powers; the executive director of AWI is designated as the project sponsor. The membership and responsibilities of the executive steering committee are specified within the statute, and include providing direction and support to the project management team; reviewing and approving or denying any changes to the project’s scope, schedule, and costs; and reviewing and approving or denying major project deliverables. The project management team is responsible for the day-to-day oversight and management of the project, and must submit certain information to the executive steering committee as specified within the statute.

Unemployment Compensation Program Benefits

Qualified claimants may receive UC benefits equal to 25 percent of their wages, not to exceed $7,150 in a benefit year.[30] Benefits range from a minimum of $32 to a maximum weekly benefit amount of $275 for up to 26 weeks, depending on the claimant’s length of prior employment and wages earned.[31]

To receive UC benefits, claimants must meet certain monetary and non-monetary eligibility requirements.[32] Key eligibility requirements involve a claimant’s earnings during a certain period of time, the manner in which the claimant became unemployed, and the claimant’s efforts to find new employment.

<u>*Monetary Eligibility*</u>

Pursuant to s. 443.111(2), F.S., in order to establish a benefit year from which UC benefits can be paid, an individual must:[33]

- Have been paid wages in two or more calendar quarters in the base period; *and*
- Have minimum total base period wages equal to the high quarter wages multiplied by 1.5, but at least $3,400 in the base period.

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[28] See s. 6, ln. 2139B, ch. 2009-81, L.O.F.
[29] Replaces the Florida Unemployment Internet Direct and the Florida Continued Claims Internet Directory systems.
[30] Section 443.111(5), F.S.
[31] Section 443.111(3), F.S. A claim week begins on Sunday and ends on Saturday.
[32] Section 443.091(1), F.S., provides an unemployed individual is eligible to receive benefits for a week of unemployment when AWI finds that the individual:

- Has filed a claim for benefits;
- Is registered to work with and report to AWI;
- Is able to and available for work;
- Participates in reemployment services;
- Has been unemployed for a waiting period of 1 week;
- Has been paid total base period wages equal to the high quarter wages multiplied by 1.5, but at least $3,400 in the base period; and
- Has submitted a valid social security number to AWI.

[33] This is the monetary determination.

The base period is the first four of the last five completed calendar quarters immediately before the individual filed a valid claim for benefits.[34] The following chart provided by AWI, illustrates the relationship between the filing date of an initial claim and the corresponding base period:[35]

<table>
<tr><th colspan="10">Base Period Chart</th></tr>
<tr><td colspan="2">Year Preceding Prior year</td><td colspan="4">Prior Year</td><td colspan="4">Current Year</td></tr>
<tr><td>July
Aug.
Sept.</td><td>Oct.
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Dec.</td></tr>
<tr><td rowspan="4"></td><td colspan="4">Base Period (Oct. 1 – Sept. 30)</td><td>Lag quarter</td><td>Claim Filed</td><td></td><td rowspan="2"></td><td rowspan="3"></td></tr>
<tr><td rowspan="3"></td><td colspan="4">Base Period (Jan. 1 – Dec. 31)</td><td>Lag quarter</td><td>Claim Filed</td></tr>
<tr><td rowspan="2"></td><td colspan="4">Base Period (Apr. 1 – Mar. 31)</td><td>Lag quarter</td><td>Claim Filed</td></tr>
<tr><td></td><td colspan="4">Base Period (July 1 – June 30)</td><td>Lag quarter</td><td>Claim Filed</td></tr>
</table>

The most recent quarter of work (the "lag quarter" or fifth completed calendar quarter) is not used to determine monetary eligibility and cannot be credited toward the two-quarter requirement or the $3,400 requirement. For example, an employee who has only worked during the two quarters immediately before filing a claim would not qualify for benefits even if he or she earned more than $3,400. Consequently, some seasonal workers and short-term members of the labor market may not be able to establish monetary eligibility for benefits calculated using the base period in current law.

Wage records used in determining the amount of benefits that may be paid to an unemployed worker are provided through reports furnished by employers on a quarterly basis to the Department of Revenue. Employers have until the last day of the month following the end of a calendar quarter to submit their quarterly wage and tax reports.[36] The reports provide the wage data for each employee's base period, which is used to determine the amount of benefits that are paid to an individual worker. According to AWI, the Department of Revenue generally requires 2 months to process approximately 500,000 employer reports and enter the wage information into its database in preparation for claims that will be filed during the next quarter. Thus, under current law, the lag quarter is not used to determine monetary eligibility for unemployment compensation because the agency lacks the necessary wage data at the time a claim is filed. The data is not available to the agency under the normal employer wage reporting requirements.

Determinations of Eligibility

AWI makes statements called determinations and redeterminations regarding the application of law to an individual's eligibility for benefits or the effect of the benefits on an employer's tax account.[37] Determinations are made on the monetary eligibility requirements, as discussed above, and on the non-monetary eligibility requirements, as discussed below, to receive UC benefits. Based upon information provided with filed claims for benefits, AWI makes an initial determination on entitlement to benefits. If AWI finds an error or new evidence or information pertinent to the determination, the agency may issue a redetermination. A determination becomes final after 20 days have expired. A party who believes a determination is inaccurate may request reconsideration

[34] Section 443.036(7), F.S.
[35] See AWI's Bill Analysis of SB 516 (2009), on file with the Senate Commerce Committee.
[36] Rules 60BB-2.025 and 2.027, F.A.C.
[37] Section 443.151(3), F.S., outlines the process used by AWI to make UC benefit determinations and redeterminations.

within 20 days from the mailing of the determination or notice thereof. The applicant or employer may request an administrative hearing before an appeals referee in the Office of Appeals.[38]

The process for determining eligibility for UC benefits can be very complex; determinations on the monetary eligibility requirements and on the non-monetary eligibility requirements are made separately and can end up being reconsidered and appealed separately. However, before a non-monetary determination can be issued there must be some monetary eligibility for benefits established.

Following the submission of an initial application for benefits, AWI determines the monetary award of the claim, and sends the applicant a Wage Transcript and Determination for review.[39] The claimant can request reconsideration for staff to review the determination and locate additional wages that may not have been included in the initial determination or investigate errors. In the event that AWI cannot confirm the additional employment, the claimant may request an appeals hearing.[40] Further, during this process, if AWI cannot identify the employer or there is an allegation that the claimant was an independent contractor, an investigation is made of the employer's liability. This may result in the employer filing a liability appeal which is heard by an agency special deputy.

While agency staff reviews the monetary eligibility of a claimant, review for the non-monetary determination may begin for a claimant who has sufficient wage credits to establish monetary eligibility. The adjudication process is undertaken when the claimant indicates the most recent job separation occurred for reasons other than lack of work. After an initial non-monetary determination is mailed to the parties, the party adversely affected by the determination can request a hearing.

Disqualification from Benefits (non-monetary determinations)

The state's UC laws contemplate that a claimant was employed in the capacity of an employee, and not an independent contractor.[41] A claimant must be unemployed due to layoffs or otherwise through no fault of their own to be eligible for benefit payments.

An individual may be disqualified from receiving UC benefits for voluntarily leaving work without good cause, or being discharged by his or her employing unit for misconduct connected with the work. The term "good cause" includes only that cause attributable to the employer or which consists of illness or disability of the individual requiring separation from work. An individual is not disqualified for voluntarily leaving temporary work to return immediately when called to work by his or her former permanent employer that temporarily terminated his or her work within the previous 6-calendar months. Additionally, an individual is not disqualified for voluntarily leaving work to relocate as a result of his or her military-connected spouse's permanent change of station orders, activation orders, or unit deployment orders. An individual who voluntarily quits work for a good cause not related to any of the conditions specified in statute will be disqualified from receiving benefits.[42]

[38] Appeals are governed by s. 443.151(4), F.S., and the Administrative Procedures Act, ch. 120, F.S. Appeals of appeals referee decisions are reviewed by the Unemployment Appeals Commission; appeals of commission decisions may only be reviewed by appeal to a Florida district court of appeal.

[39] Typically the Wage Transcript and Determination is received by the claimant 7 to 10 working days after filing a claim. The Wage Transcript and Determination provides information to the claimant on how the individual's benefit amount was determined, the weekly benefit amount, available credits (the maximum amount of UC benefits available to a claimant per benefit year), and the individual's benefit year end date.

[40] Throughout the reconsideration and appeals processes, the claimant must continue to report to AWI every two weeks to claim unemployment benefits (unless the claimant decides not to continue the process to obtain UC benefits).

[41] See General Tax Administration of the Department of Revenue, Florida Unemployment Compensation Employer Handbook, pp. 5 - 8, last revised April 2008. When a claimant's classification is at issue, the Department of Revenue investigates and makes a determination on the claimant's employment.

[42] Section 443.101, F.S. Quitting work for a cause which is personally good, but not identified in the statute as a "good cause," may result in an individual's disqualification.

Other circumstances under which an individual would be disqualified from receiving unemployment compensation benefits include:[43]

- Failing to apply for available suitable work when directed by AWI or the one-stop career center, to accept suitable work when offered, or to return to suitable self-employment when directed to do so;
- Receiving remuneration in the form of wages, or compensation for temporary total disability or permanent total disability under the workers' compensation law of any state with a limited exception;
- Involvement in an active labor dispute which is responsible for the individual's unemployment;
- Receiving unemployment compensation from another state;
- Making false or fraudulent representations in filing for benefits;
- Illegal immigration status;
- Receiving benefits from a retirement, pension, or annuity program with certain exceptions;
- Termination from employment for a crime punishable by imprisonment, or any dishonest act in connection with his or her work;
- Loss of employment as a leased employee for an employee leasing company or as a temporary employee for a temporary help firm if the individual fails to contact the temporary help or employee-leasing firm for reassignment; and
- Discharge from employment due to drug use.

Individuals who attend training approved by AWI, or approved under s. 236(a)(1) of the Trade Act of 1974, may not be denied benefits for any week in which he or she was in training, provided that the claimant satisfies eligibility conditions set in rule.[44]

Further, Florida's UC law provides no definition of part-time and full-time work and makes no distinction between the two with respect to monetary eligibility or disqualification for benefits. With respect to the requirements of being able to work and available for work, Rule 60BB-3.021(2), F.A.C., provides that, in order to be eligible for benefits, an individual must be able to work and available for work during the major portion of the individual's customary work week. Consequently, individuals whose benefits are not based on full-time work are not required to seek or be available to accept full-time work.

Reemployment

To maintain eligibility for benefits, an individual must also be ready, willing, and able to work and actively seeking work.[45] An individual must make a thorough and continued effort to obtain work and take positive actions to become reemployed. To aid unemployed individuals, free reemployment services and assistance are available. AWI defines reemployment services as:

> job search assistance, job and vocational training referrals, employment counseling and testing, labor market information, employability skills enhancement, needs assessment, orientation, and other related services provided by One-Stop Career Centers operated by local regional workforce boards.[46]

AWI's website provides links to local, state, and national employment databases.[47] Claimants are automatically registered with their local One-Stop Career Center when their claims are filed.[48] The One-Stops provide job

[43] Section 443.101, F.S. The statute specifies the duration of the disqualification depending on the reason for the disqualification.
[44] Rule 60BB-3.022, F.A.C.
[45] Section 443.036(1) and (6), F.S., provide the meaning of the phrases "able to work" and "available for work" as:

- "Able to work" means physically and mentally capable of performing the duties of the occupation in which work is being sought.
- "Available for work" means actively seeking and being ready and willing to accept suitable employment.

Additionally, AWI has adopted criteria, as directed in the statute, to determine an individual's ability to work and availability for work in Rule 60BB-3.021, F.A.C.
[46] Rule 60BB-3.011(12), F.A.C.
[47] For example, on www.fluidnow.com, where individuals can claim their weeks online.

search counseling and workshops, occupational and labor market information, referral to potential employers, and job training assistance. Claimants may also receive an e-mail from Employ Florida Marketplace with information about employment services or available jobs.[49] Additionally, a claimant may be selected to participate in reemployment assistance services, such as Reemployment and Eligibility Assessments (REAs).[50]

State Extended Benefits

State extended benefits are extra benefits that can be paid to unemployed individuals after an individual's regular benefits have run out.[51] These benefits are only available under certain conditions; the extended benefit period is not always available. Typically, under Florida law a state extended benefits period is only triggered "on" when the rate of insured unemployment (individual unemployment rate, or IUR), not seasonally adjusted, over the preceding 13 week period equals or exceeds 5 percent and 120 percent of the average for the period.[52] When a state extended benefit period triggers "on," eligible individuals may receive another 13 weeks of unemployment benefits.

Individuals currently claiming benefits when the extended benefits period begins automatically receive extended benefits when they exhaust all available regular benefits. Individuals who are not in continuous reporting status or who have had intervening employment since last receiving benefits, have to apply for extended benefits so that their eligibility can be determined based on the requirements of ss. 443.091 and 443.101, F.S. Generally, eligible individuals are those persons who still meet criteria to receive regular benefits. However, different from the eligibility for regular benefits, individuals may be disqualified from receiving extended benefits if:

- The individual failed to apply for or accept suitable work; or
- The individual failed to furnish evidence that he or she is actively engaged in a systematic and sustained effort to find work.

Individuals receive weekly benefit amounts equal to the average benefit amounts the individual was receiving in the regular benefit period. An individual may receive a total amount of extended benefits equal to the lesser of:

- 50 percent of the total regular benefits payable in his or her benefit year; or
- 13 times the individual's benefit amount for one week in his or her benefit year.

Federal law provides that when state extended benefits trigger "on" the federal government will share 50 percent of the benefit cost for all insured employers; essentially the federal government will pay 50 percent of extended benefit costs to private employers. The state and local governments in Florida are self-insured and are not eligible for federal sharing.[53] This state extended benefits program is not currently available; AWI does not anticipate that the state extended benefits program will trigger "on" in the near future.[54]

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[48] AWI's Office of Workforce Services is responsible for providing One-Stop Program Support services to the Regional Workforce Boards.

[49] Employ Florida Marketplace is a partnership of Workforce Florida, Inc., and AWI. It provides job-matching and workforce resources. https://www.employflorida.com

[50] REAs are in-person interviews with selected UC claimants to review the claimants' adherence to state UC eligibility criteria, determine if reemployment services are needed for the claimant to secure future employment, refer individuals to reemployment services, as appropriate, and provide labor market information which addresses the claimant's specific needs. Research has shown that interviewing claimants for the above purposes reduces UC duration and saves UC trust fund resources by helping claimants find jobs faster and eliminating payments to ineligible individuals. Florida administers the REA Initiative through local One-Stop Career Centers. Rule 60BB-3.028, F.A.C., further sets forth information on reemployment services and requirements for participation.

[51] Section 443.1115, F.S.

[52] But see State Legislation in 2009 Related to UC Benefits infra. In this document the Recovery Act and 2009 legislative changes associated with state extended benefits are referred to as "temporary state extended benefits," which are discussed in detail below.

[53] Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970; 20 C.F.R. s. 615.14 (2006).

[54] See State Legislation in 2009 Related to UC Benefits infra.

Special UC Benefits Programs

AWI also administers several special programs that involve unemployment compensation.[55] The programs encompass disaster unemployment assistance, short-time compensation, trade readjustment allowance, and UC for ex-servicemembers and federal civilian employees.

Disaster unemployment assistance is available to individuals working or residing in an officially declared disaster area who become unemployed as a direct result of the disaster. It is a federally funded program. The assistance must be requested by the Governor and approved by the President. Individuals have 30 days from the date of the announcement of availability of the funds to apply. Such individuals must have exhausted all regular state benefits and emergency unemployment compensation claims to receive the funds; additionally, some individuals who are disqualified from receiving regular unemployment may be entitled to disaster unemployment assistance. Benefits are available for 26 weeks from the date of the disaster.[56] During FY 2008-2009, AWI processed 1,380 claims for disaster unemployment assistance and paid benefits totaling $132,101.[57]

Short-time compensation is a special claims program that pays partial benefits to groups of employees working reduced hours.[58] Employers may voluntarily participate in this program to retain employees by reducing hours for an entire group of employees instead of resorting to temporary layoffs. At least 10 percent (not less than 2 employees), but no more than 40 percent, of the employees in the total staff or in a particular department must work reduced hours. Employees who are named by the employer as an employee participating in the program will receive a partial unemployment check to supplement their reduced paycheck. Employees participating must have been full-time employees, must work or receive paid leave for all hours scheduled by the employer, and must report the reduced hours, through their employers, to AWI every 2 weeks. The situation must be a temporary situation, which replaces a temporary layoff. Currently, there are 335 approved short-time compensation plans, which cover a total of 13,710 employees. During FY 2008-2009, out of the total number of employees covered, 7,426 participants were paid a total of $3,375,738 in benefits.[59]

The Trade Adjustment Assistance program provides assistance to workers who have been totally or partially separated from their jobs because of increased foreign imports. The USDOL certifies groups of workers as eligible for assistance as of a certain "impact date." The Trade Adjustment Assistance program can provide benefits associated with training, job search, relocation allowances, and other reemployment services. Trade Readjustment Allowances can provide weekly cash benefits (income support) to affected individuals who have exhausted the UC benefits. The weekly amount of an individual's Trade Readjustment Allowances will generally be the same as the amount of the state UC benefits that the individual was receiving, and is reduced by any additional income received, such as earnings, federal training allowances, and extended unemployment received.[60] During FY 2008-2009 there were 258 recipients of basic Trade Readjustment Allowances receiving $199,241 in benefits, and 124 recipients of additional Trade Readjustment Allowances that received benefits totaling $135,872.[61]

Federal law provides for the payment of UC for former members of the Armed Forces (ex-service members), referred to as UCX claims.[62] It also provides for the payment of unemployment compensation to federal civilian

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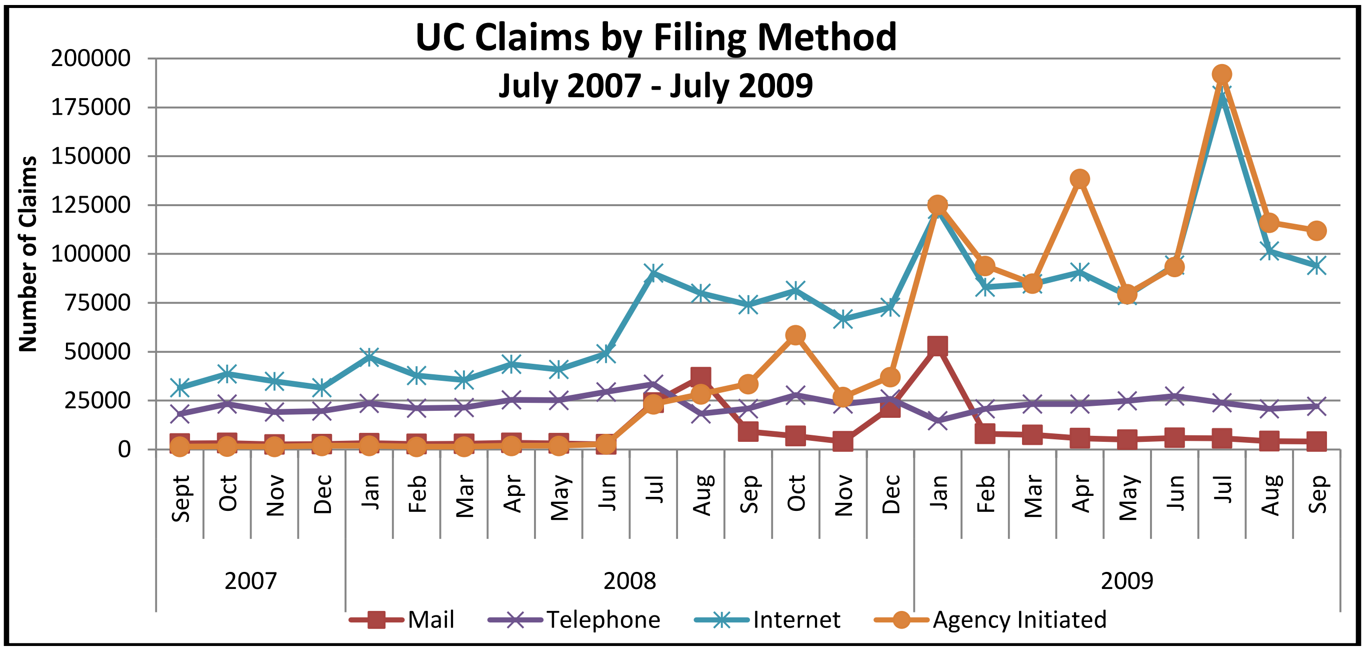
[55] Information from AWI's website at http://www.floridajobs.org/unemployment/uc_spec_prog.html (last visited 10/20/2009).
[56] See also USDOL, Disaster Unemployment Insurance, at http://www.workforcesecurity.doleta.gov/unemploy/disaster.asp (last visited 10/20/2009).
[57] Information from AWI, on file with the Senate Commerce Committee.
[58] Section 443.1116, F.S.
[59] Information from AWI, on file with the Senate Commerce Committee.
[60] Information also from USDOL, Trade Act Program: TAA for Workers, at http://www.doleta.gov/tradeact/ (last visited 10/20/2009); and USDOL, Trade Readjustment Allowances, at http://www.workforcesecurity.doleta.gov/unemploy/tra.asp (last visited 10/20/2009).
[61] Information from AWI, on file with the Senate Commerce Committee.
[62] 5 U.S.C. 8521, et seq. 20 C.F.R. 614.1, et seq. See also USDOL, Unemployment Compensation for Ex-servicemembers, at http://www.workforcesecurity.doleta.gov/unemploy/ucx.asp (last visited 10/20/2009).

employees who are unemployed, referred to as UCFE claims.[63] The law covers all civilian employees of the United States or instrumentalities wholly or partially owned by the United States, with certain specified exceptions. Both UC programs are maintained by the state UC agency in accordance with agreements with the USDOL. Claims are processed under the state's UC laws, and ex-service members and federal civilian service and wages are treated as though they were included under that state's unemployment compensation law. Benefits paid are financed through Federal Employees Compensation Account of the federal Unemployment Trust Fund. Funds needed to pay benefits on UCX and UCFE claims are transferred daily to Florida's account. During FY 2008-2009 the agency processed 7,030 UCX claims and paid benefits totaling $16,119,049. During the same period, AWI processed 3,791 UCFE claims and paid a total of $5,042,791 in benefits.[64]

Claiming Benefits[65]

An unemployed individual may file a claim for UC benefits by telephone, paper application, or over the internet.[66] A claim is effective the Sunday prior to the date that it is filed or postmarked. Credit cannot be given for any weeks of unemployment prior to the effective date of the claim.



Information obtained from AWI.

The date that an individual completes the application for UC benefits determines the date that benefits begin. An individual must wait for one week before receiving UC benefits.[67] This waiting period allows AWI, in beginning the determination process as to the validity of the claim, to give employers time to respond to a claim prior to the payment of benefits. Individuals determined to be eligible for UC benefits should receive their first benefit payment 3 to 4 weeks after a valid claim has been filed.

[63] 5 U.S.C. 8501, et. seq. 20 C.F.R. 609.1, et. seq. See also USDOL, Unemployment Compensation for Federal Employees, at http://www.workforcesecurity.doleta.gov/unemploy/unemcomp.asp (last visited 10/20/2009).

[64] Information from AWI, on file with the Senate Commerce Committee. UCX and UCFE claims are paid with federal funds.

[65] Information obtained from AWI, Benefits Rights Information, at http://www.floridajobs.org/unemployment/uc_bri.html (last visited 10/20/2009); and AWI, UC Claims Services Claim Book, at http://www.floridajobs.org/unemployment/uc_claimbooklet.html (last visited 10/20/2009).

[66] The paper application may be mailed or faxed to AWI.

[67] Section 443.091(1)(e), F.S. Typically the waiting week is the first week that an individual claims. Individuals are not paid benefits for the required 1 week waiting period.

Valid claims for benefits last for 1 year; no additional entitlement may be established until that first claim expires if all benefits are used prior to the expiration of the year.[68] An individual may establish another benefit year only after the termination of the preceding year. If an individual is in continuous reporting, in other words currently receiving UC benefits, when his or her benefit year ends, then AWI's computer system automatically calculates the individual's monetary eligibility for a new benefit year for the week that crosses the benefit year end date.[69] If the individual is not eligible for a new benefit year, benefit payments continue on the individual's extended claim applicable to the prior benefit year.

For an individual who is monetary eligible, a new claim can be established if the individual also meets a requalifying requirement.[70] Also referred to as the double dip, the state UC law provides that, to receive benefits during a new benefit year, an individual must have worked and earned at least 3 times the weekly benefit amount of his or her new claim during the preceding benefit year. If the requalifying requirement has not been met, the claimant is issued a determination holding her or him ineligible on the new claim and payment resumes on the extended program available on the prior claim.[71] As soon as the individual earns enough to satisfy the requalifying requirement, the ineligibility can be removed and benefits paid on the new claim.

<table>
<tr><th colspan="13">Requalifying Chart</th></tr>
<tr><td colspan="4">Prior Year</td><td colspan="4">Current Year</td><td colspan="5">Next Year</td></tr>
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<tr><td colspan="4">Base Period (Jan. 1 – Dec. 31)</td><td>Lag Quarter</td><td>Claim Filed</td><td colspan="7"></td></tr>
<tr><td colspan="5"></td><td colspan="4">Benefit Year (Apr. 1 – Mar. 31)</td><td colspan="4"></td></tr>
<tr><td colspan="5"></td><td colspan="6">Eligible for regular state benefits, EUC, and temporary state extended benefits (2008 – 2010)</td><td colspan="2"></td></tr>
<tr><td colspan="4"></td><td colspan="4">Base Period (Jan. 1 – Dec. 31)</td><td>Lag Quarter</td><td>New Claim Filed</td><td colspan="3"></td></tr>
<tr><td colspan="9"></td><td colspan="4">Benefit Year (Apr. 1 – Mar. 31) (if qualify)</td></tr>
</table>

Information compiled by the Senate Commerce Committee.

Individuals must report to AWI every two weeks to claim benefits. Claimants receive an "information notice" within 18 days of filing their claims, which advises them of the date when they are required to claim weeks.[72] Benefits can only be paid for weeks that were properly claimed; otherwise benefits will be delayed and possibly denied. Benefits are paid every two weeks.

In addition to reporting to AWI to claim weeks and certifying reemployment efforts, claimants must also report any income earned during each week. This is required for any compensated work, including paid attendance at training or job orientation.

[68] Section 443.036(9), F.S.

[69] This is known as an agency initiated claim.

[70] Section 443.091(2), F.S. This new claim could result in benefits received beyond the currently expected 79 weeks for some individuals.

[71] This same process is replayed when the calendar quarters change because a new base period would be applicable to a claim established during any subsequent quarter.

[72] Claimants are also given certain days of the week to claim benefits. For social security numbers ending with an even number, these individuals are scheduled to claim on Mondays. For social security numbers ending with an odd number, claims are made on Tuesdays.

Benefit Payments

Individuals eligible for UC benefits may choose to receive their benefit payments by a check, delivered by mail, or by an electronic funds transfer to a bank account. The method of payment is not a permanent election and may be changed by the individual by contacting AWI.[73]

Checks are mailed the day after they are issued, and the claimant's place of residence dictates the length of time it takes to receive the payment. The costs associated with issuing checks are low; mainly the costs are the postage and the administrative activities associated with returned and forged checks.

The option of electronic funds transfers became available in 2003. The funds are transferred by the Department of Financial Services to Wachovia, who then disperses the payments to the individuals' financial institutions, who in turn transfer the funds to the individual accounts. From the date the warrant is issued, the individual receives the payment by the third day.

An innovation that AWI is implementing in this area is benefit payments to debit cards.[74] Chapter 2008-167, L.O.F., authorized AWI to develop a system for the payment of UC benefits by electronic payment cards or debit cards. AWI recently selected a vendor, through a competitive solicitation process, to assist with implementation of this endeavor. It is expected that the program will be implemented in early 2010.

The program will provide an electronic card to the claimant which will operate similarly to a debit card one might have with a bank or credit union. The card will be branded so that it can be used at virtually any outlet that accepts electronic payments. When funds are approved on a claim, the Department of Financial Services will transfer the funds to the vendor who will transfer the funds to the account assigned to the card. The claimant will be able to contact the vendor to determine available balances on the card and make purchases. Claimants will likely receive their funds in the same time frame as an electronic funds transfer, which is also an Automated Clearing House (ACH) Network transaction. There would be no cost to recipients for debit card usage within the vendor network or at any retail location, but it is not known at this time what costs might be incurred outside the network.

AWI anticipates that the cost for this innovation in payments will be minimal. The largest cost will be for computer programming, similar to what AWI incurred with implementing the electronic funds transfers in 2003.[75] AWI estimates it could save $317,000 annually using an electronic card for benefit payments versus mailing checks.[76] This program will be funded though federal UC administrative funds.

UC Benefit Figures

About $647 million in UC benefit payments were paid in September 2009. This is a 147% increase from September 2008, due in part to the additional UC benefits provided by the state and federal government. Of the total September 2009 payments, about $285 million was paid for regular state UC claims.[77]

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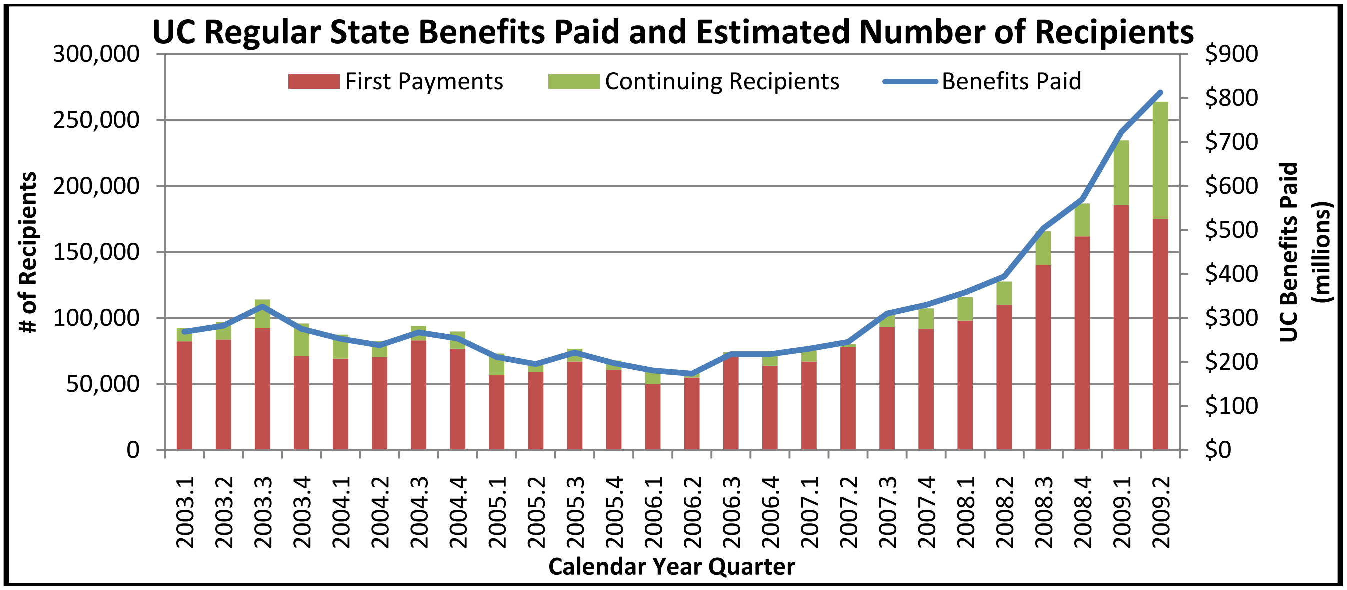
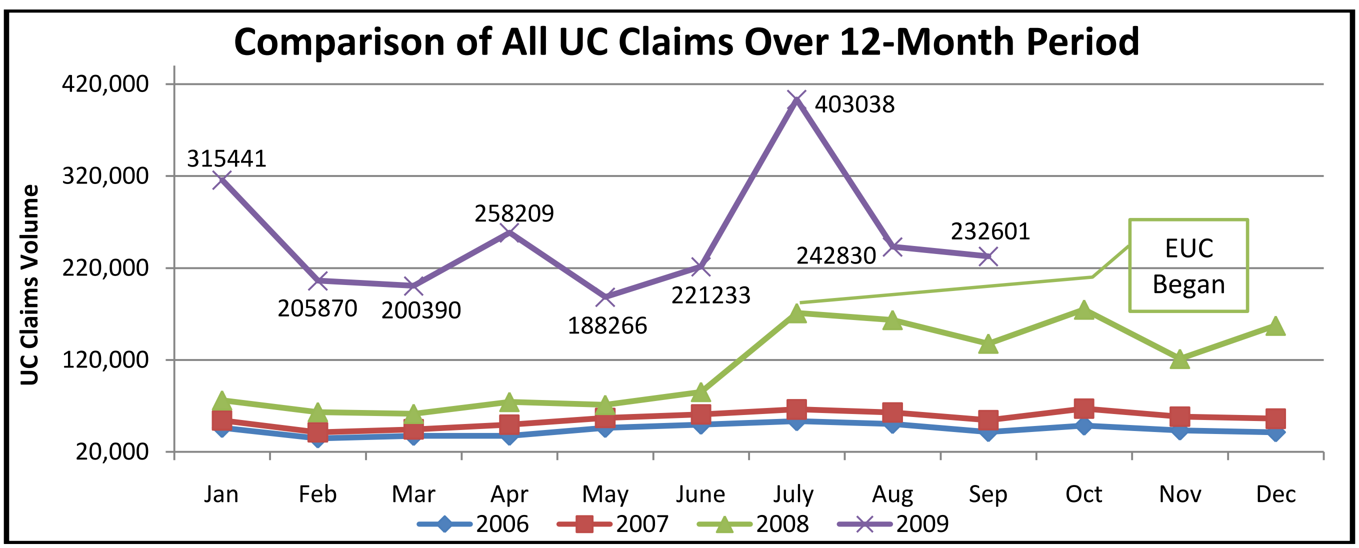
[73] See AWI, Unemployment Compensation Frequently Asked Questions, p. 9, available at http://www.floridajobs.org/unemployment/Frequently%20Asked%20Questions.doc (last visited 10/20/2009).
[74] Currently, about 31 states offer the use of debit cards. USDOL Unemployment Insurance Program Letter (UIPL) No. 34-09, at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2795 (last visited 10/20/2009).
[75] The cost to implement the electronic funds transfer was $200,000. The estimated cost to implement the debit card program was $300,000. See Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1026 (March 16, 2008).
[76] See Senate Bill Analysis and Fiscal Impact Statement for CS/SB 1026 (March 16, 2008). The analysis states that AWI calculated the cost of postage for checks as $370,000 per year (1 million checks at $.37 for postage). Because a claimant would maintain one debit card, the cost for postage was estimated to be $52,910 annually (143,000 cards at $.37 for postage). Currently the postage rate is $.44 per letter.
[77] Information from AWI, on file with the Senate Commerce Committee.



Information compiled from the USDOL Unemployment Insurance Data Summary website available at http://www.workforcesecurity.doleta.gov/unemploy/content/data.asp (last visited 10/16/2009).

AWI paid beneficiaries about $4.2 billion in benefits in FY 2008-2009; this includes $2.6 billion in regular state benefits, $1.4 billion in federal emergency UC, $177.8 million in federal additional UC, and $131,690 in disaster unemployment assistance. A total of $72.1 million, or 1.7 percent, was determined overpaid. Determinations for fraud accounted for $6.2 million.[78] The remainder of the overpayments was principally the result of the non-monetary process – either from lack of timely information from employers or reversals from the appeals process.[79]

For October 2009, AWI predicts a 23 percent increase in daily UC claims compared to September 2008. For the second quarter of 2009, about 33% of unemployed were receiving regular UC benefits; about 46 percent of unemployed were receiving some form of UC benefits.[80] It is estimated that between 20,000 - 25,000 individuals per month will exhaust their regular (state) and federal emergency unemployment compensation benefits.[81]



Information obtained from AWI. Includes claims for regular state benefits, emergency unemployment compensation (EUC), temporary state extended benefits, and disaster unemployment assistance.

[78] Determinations for fraud are made based upon the findings of investigations and audits. See s. 443.071, F.S.
[79] Information from AWI, on file with the Senate Commerce Committee.
[80] USDOL Unemployment Insurance Data Summary website available at http://www.workforcesecurity.doleta.gov/unemploy/content/data.asp (last visited 10/19/2009).
[81] Information from AWI, on file with the Senate Commerce Committee.

Federal Legislation - The American Recovery and Reinvestment Act of 2009

The Recovery Act contains provisions for funding of additional UC benefits, increased time for eligibility for emergency unemployment compensation, and temporary state extended benefits.

Federal Additional UC Benefits Payments

The Recovery Act provides an additional $25 per week in benefits to UC recipients for unemployment compensation claims established between February 22, 2009, and December 26, 2009.[82] Eligible UC benefit claimants are those individuals making regular state claims, federal civilian employee claims, ex-servicemembers claims, emergency unemployment compensation claims, state extended benefit claims, or seeking trade readjustment allowances, disaster unemployment assistance, and short-time compensation.

UC claimants began receiving the federally funded $25 increase per week claimed in mid-March and will be available for weeks claimed until July 3, 2010.[83] Payments are issued bi-weekly in a payment separate from the regular UC benefits, as these payments are made from a federal account rather than Florida's trust fund. Through October 10, 2009, Floridian UC claimants had received a total of $388.4 in extra payments (for 912,375 claims).[84]

Eligibility for Emergency Unemployment Compensation (Federal)

Emergency unemployment compensation (EUC) is specially extended benefits available to individuals who have exhausted all rights to regular state benefits. Signed into law on June 30, 2008, EUC became payable for the week ending July 12, 2008, pursuant to Public L. No. 110-252. First-tier EUC benefits are automatically established when individuals exhaust their regular state benefits.

The Unemployment Compensation Extension Act of 2008, Public L. No. 110-449, extended the eligibility period (to the week ending March 28, 2009; payable until August 29, 2009) and expanded the amount of benefits that could be paid under the EUC program from up to 13 weeks to 20 weeks of benefits.[85] In addition, the law created a second tier of benefit eligibility for up to an additional 13 weeks of benefits in states with a total unemployment rate of 6 percent or higher. At the time of passage, Florida had a 7.4 percent unemployment rate.[86]

The Recovery Act extended the ability for individuals to apply to receive EUC benefits to December 26, 2009.[87] Individuals who exhaust their first-tier EUC benefits prior to December 26, 2009, will automatically have their second-tier EUC benefits established. Any EUC benefits may be claimed up to June 5, 2010.[88] Extension of these benefits is entirely federally funded. Florida's estimated share for the continuance of the EUC is $1.04 billion.[89] In FY 2008-2009, $212.4 million in EUC payments were made to Florida recipients as a result of the Recovery Act.

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[82] Section 2002, Public L. No. 111-5. Governor Crist signed a letter of agreement with the U.S. Department of Labor to allow payment of these funds on February 20, 2009.

[83] A bill was filed in the United States House of Representatives on July 30, 2009, which would extend the extra $25 payment for weeks claimed until June 30, 2011 (eligibility established by January 1, 2011). See H.R. 3404, S. 1647 (111th Congress, 2009).

[84] Information from AWI, on file with the Senate Commerce Committee.

[85] Signed into law November 21, 2008.

[86] November 2008 unemployment rate, from Florida Research and Economic Database, Labor Market Statistics, Local Area Unemployment Statistics Program.

[87] Section 2001, Public L. No. 111-5. The state of Florida entered into an agreement with the U.S. Department of Labor to allow payment of EUC in June 2008. Governor Crist signed a letter of agreement with the U.S. Department of Labor to allow payment of these funds pursuant to the Recovery Act on March 18, 2009.

[88] A bill was filed in the United States House of Representatives on September 10, 2009, which would create a third tier of EUC benefits for 13 weeks. This bill was approved by the House on September 22, 2009, and sent to United States Senate for consideration. See H.R. 3548 (111th Congress, 2009). Another bill was filed in July 2009 that would extend eligibility for both EUC tiers until December 31, 2010 (payable until May 31, 2011), and also included the same creation of a third tier of EUC benefits. See H.R. 3404, S. 1647 (111th Congress, 2009).

[89] The total amount of EUC paid in Florida for FY 2008-2009 was a little over $1.415 billion. This number includes EUC paid prior to the extensions in November 2008 and February 2009.

It is estimated that Floridians will receive about $814.38 million in FY 2009-2010 before the program terminates.[90] Recipients of EUC benefits will receive up to $275 per week claimed. As of October 10, 2009, Floridian UC claimants had received a total of $843.5 million in EUC benefits as a result of the Recovery Act (for 773,439 claims).[91]

Suspension of Federal Income Tax

The Recovery Act also suspended federal income tax assessed against the first $2,400 of UC benefits an individual receives in the 2009 tax year.[92]

Trade Adjustment Expanded Income Support

The Recovery Act extends the federal Trade Adjustment Assistance program in several ways. Relevant to UC benefits, under the expanded program, workers may receive up to 130 weeks of income support if enrolled in full-time training, and up to 156 weeks of income support if enrolled in remedial training. Income support includes both UC benefits and trade readjustment allowances (payable when UC benefits are exhausted). Workers eligible for the program who filed petitions after May 18, 2009, became eligible for the expanded program income support provisions under the Recovery Act.[93]

Alternative Trigger for Regular State Extended Benefits

When a state enters an extended benefits period, the Recovery Act provides that the federal government will pay 100 percent of payments to former private sector employees through May 29, 2010 (for claimants that qualify by December 26, 2009).[94] States may elect to participate in an alternate extended benefits trigger rate; such action will increase the likelihood that a state's extended benefits period would trigger "on." After December 26, 2009, any extended benefits paid are only reimbursed by the federal government at a rate of 50 percent for former private sector employees making new claims. A participating state may set a sunset date in enacting the alternate trigger. Florida has elected to participate in the alternative state extended benefits trigger, discussed below as temporary state extended benefits.

State Legislation in 2009 Related to UC Benefits

Temporary State Extended UC Benefits

Chapter 2009-99, F.S., in part, authorizes and creates a temporary state extended benefits program for unemployed individuals in order to qualify for federal funds under the Recovery Act.[95] Florida's temporary state extended benefits program is effective between February 1, 2009, and January 2, 2010.[96] Temporary state extended benefits triggered "on" on February 1, 2009, and will trigger "off" on December 12, 2009.

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[90] Information from the Florida Office of Economic Recovery at http://flarecovery.com/about/state-and-local-projects/safety-net/unemployment-compensation-emergency-extended-benefits (last visited 10/20/2009). AWI stated that this estimate had not been adjusted as of August 10, 2009.

[91] Information from AWI, on file with the Senate Commerce Committee.

[92] Section 1007, Public L. No. 111-5. UC benefits are subject to the federal income tax (since 1878). Claimants may voluntarily elect for AWI to deduct and withhold federal income tax due (s. 443.151(1)(b), F.S.; Public L. No. 103-465). A Form 1099-G is furnished to claimants at the end of January each year, which reports benefits paid and taxes withheld during the prior year. The same information is sent to the Internal Revenue Service.

[93] AWI Press Release, AWI Announces Recovery Act-Expanded Worker Retraining Program, May 18, 2009. For claims filed before May 18, 2009, benefits last up to 104 weeks for workers enrolled in full-time training and up to 130 weeks of payments if the worker was also enrolled in remedial training. See s. 1828, Public L. No. 111-5.

[94] Section 2005, Public L. No. 111-5. A bill was filed in the United States House of Representatives on July 30, 2009, which would extend full federal funding for state extended benefits established by January 1, 2011 (payable until the end of May 2011). See H.R. 3404, S. 1647 (111th Congress, 2009). Florida law would need to be amended in order to take advantage of the extension. See State Legislation in 2009 Related to UC Benefits, below.

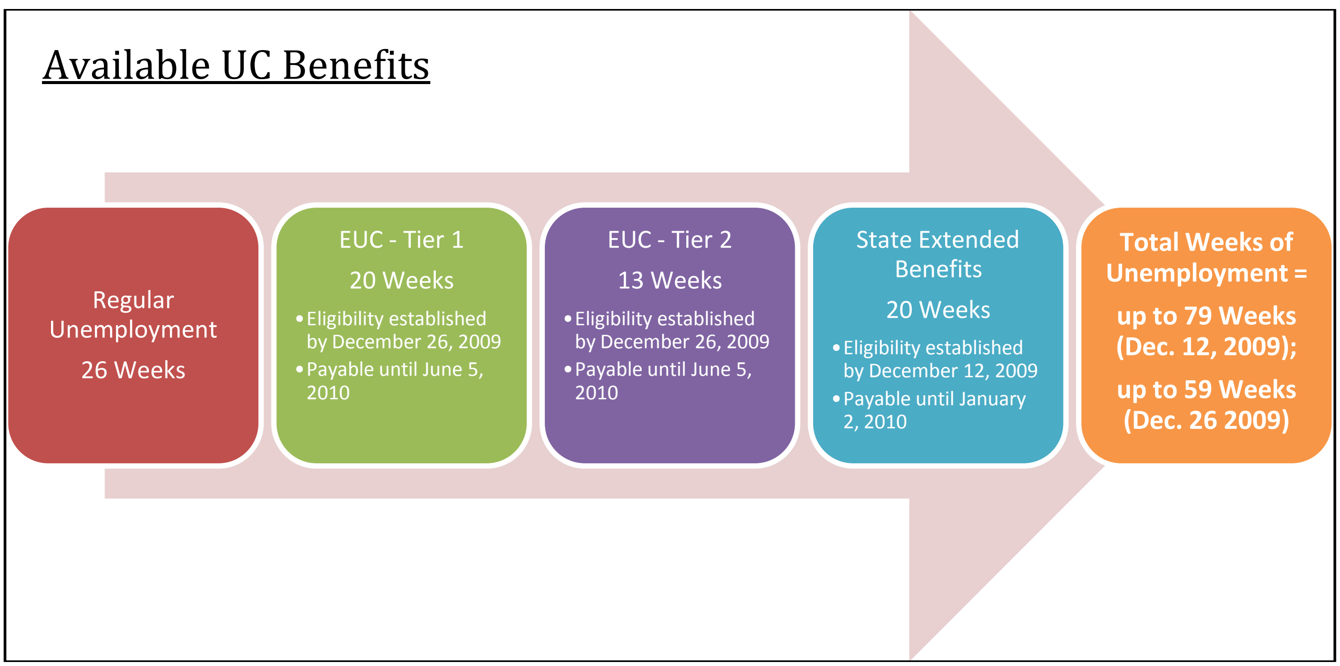
[95] Section 443.1117, F.S. See ss. 4, 5, and 7, ch. 2009-99, L.O.F.

[96] The temporary state extended benefits were to be available for 13 to 20 weeks, depending on the average total rate of unemployment. Because of Florida's high unemployment rate, temporary state extended benefits were available for the 20

Individuals who have exhausted regular benefits and emergency federal extended benefits between February 22, 2009, and December 12, 2009, will be eligible for temporary state extended benefits to be paid for up to 20 weeks until January 2, 2010.[97] By implementing a temporary state extended benefits period based upon the average total unemployment rate (TUR), Florida will qualify for 100 percent funding, also known as federal sharing, for the state extended benefits for private employers (approximately $418 million in stimulus funds). The related Recovery Act funds are paid from a separate federal general revenue account and do not affect the balance of Florida's UC Trust Fund.

Extended benefits for former state and local employees do not qualify for federal funding, due to the fact that these entities are self-insured and the federal law does not allow for their participation in federal sharing. The temporary extended benefits for these former employees must be paid by the governmental entity. The cost is estimated to total $24.4 million, approximately $2.4 million from state funds and $22 million from local government funds. In order to participate in federal sharing, the temporary state extended benefits program had to encompass unemployed individuals of both the private and public sectors.

Applicants can apply for temporary state extended benefits online or by mailing in an application. As with the state extended benefits program under s. 443.1115, F.S., applicants must meet the heightened requirements for searching for work. AWI began payments for extended benefits on July 2, 2009. It is estimated that about 250,000 Floridians will be eligible for funds over the temporary time period. By October 10, 2009, a total of $384.5 million had been paid in state extended benefits (for 114,554 claims).[98] Additionally, individuals receiving temporary state extended benefits are still eligible to receive the separate $25 additional benefits payment for the duration of their extended benefits period.



The availability of UC benefits is particular to each individual; for individual claims, consult AWI for specific information.

AWI estimates that the Recovery Act has resulted in a positive impact of $1.5 billion to Florida's economy. The Recovery Act funding for the additional UC benefits totaled approximately $944.5 million through August 21, 2009, paid to 753,377 Floridians.[99]

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week time period. AWI does not anticipate that the regular state extended benefits program will trigger "on" during this period.

[97] Benefits were made available retroactive to the date SB 810 was signed into law.

[98] This total does not include any payments made for the $25 additional benefit payments. Information from AWI, on file with the Senate Commerce Committee.

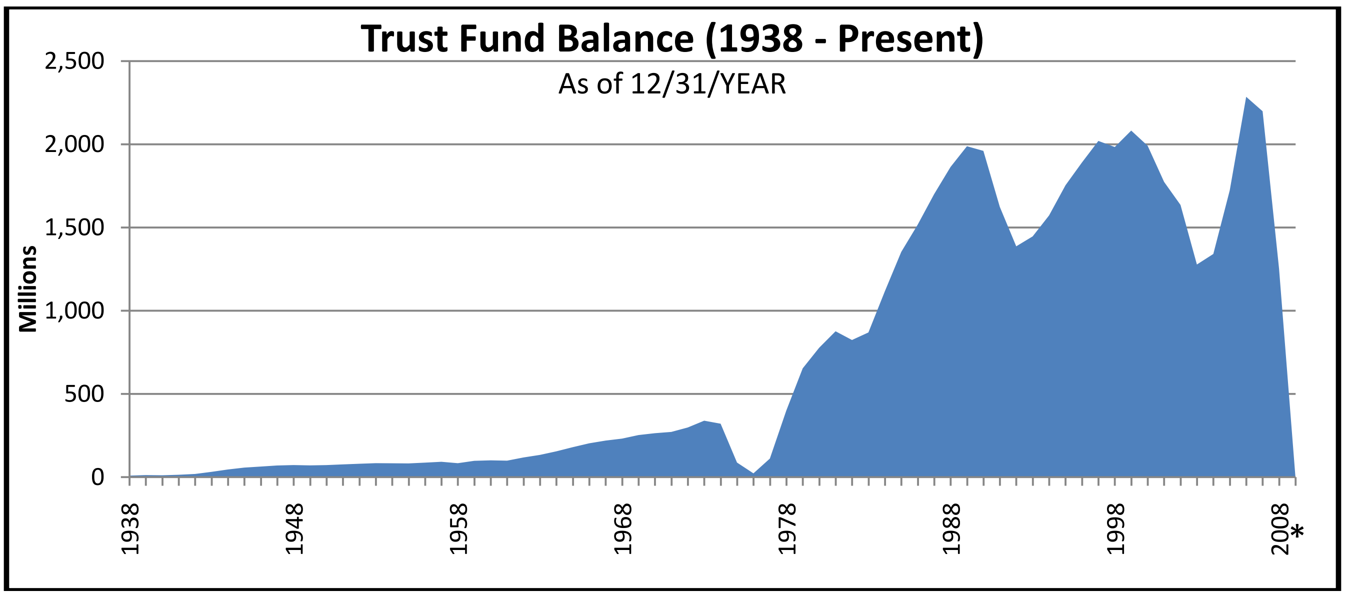
[99] AWI Press Release, Florida's July Employment Figures Released, (August 21, 2009).

Clarification of Disqualification for Benefits

Provisions were added to s. 443.101, F.S., related to disqualification for benefits for two situations when an employee separates from employment.[100] One provision ensures that if an individual gives notice that he or she is going to quit, and the employer fires that individual, without misconduct, before his or her end date, then the individual will be eligible for unemployment benefits until the effective date of his or her notice. Conversely, the second provision states that when an employer gives an individual notice that he or she will be discharged and that individual quits work before that date without good cause, then the individual is not available for work and not eligible for unemployment benefits until the effective date of the employer's discharge.

Unemployment Compensation Trust Fund

Florida sets the state tax structure for the taxable wage base and rate, and funds collected are paid into the UC Trust Fund, which is maintained at the U.S. Treasury.[101] At the end of the 4th quarter of 2008, Florida had a UC Trust Fund balance of over $1.3 billion.[102] As of June 30, 2009, the balance was just under $450 million.[103] The trust fund is primarily financed through the contributory method—by employers who pay taxes on employee wages.[104]



Information obtained from the Florida Department of Revenue.
*As of August 24, 2009, the UC Trust Fund balance fell to $0 and federal advance monies were drawn down.

Pursuant to s. 443.1316, F.S., unemployment taxes are collected by the Department of Revenue (DOR) under contract with AWI.[105] UC tax collection services have been integrated into the administrative structure of the General Tax Administration program at DOR. DOR registers all liable employers for payment of state

[100] Section 6, ch. 2009-99, L.O.F.
[101] Section 443.191, F.S.
[102] Based on information from the Bureau of the Public Debt and U.S. Department of Labor, compiled by the National Conference of State Legislatures as of January 27, 2009, at http://www.ncsl.org/standcomm/sclaborecon/UIDec2008.htm#StateUnempRatesandBalances (last visited 10/20/2009).
[103] Based on information from the Bureau of the Public Debt, compiled monthly by the National Conference of State Legislatures, at http://www.ncsl.org/default.aspx?tabid=17835 (last visited 10/20/2009).
[104] Nonprofit employers may choose to finance compensation through either the contributory method or the reimbursement method. A reimbursing employer is one who must pay the Unemployment Compensation Trust Fund on a dollar-for-dollar basis for the benefits paid to its former employees. The employer is otherwise not required to make payments to the trust fund. See s. 443.1312, F.S. The state and local governments are reimbursing employers. Most employers are contributory employers; DOR advised in August 2009 that based on the most recent data available there were 473,213 contributing employers and 3,253 reimbursing employers in Florida.
[105] DOR receives a monthly reimbursement for its costs incurred under the contract.

unemployment compensation taxes and conducts audits to ensure that employers are properly reporting wages for all employees. Unemployment compensation tax is based upon federal and Florida law that defines employers to be taxed and the amount to be collected from each employer. Twenty five field tax offices throughout the state are available to assist employers with filing unemployment compensation taxes.

The Internal Revenue Service charges each liable employer a federal unemployment tax of 6.2 percent on employees' annual wages.[106] If, however, a state program meets the federal requirements and has no delinquent federal loans, employers are eligible for up to a 5.4 percent tax credit, making the net federal tax rate 0.8 percent.[107] To receive the maximum federal tax credit, Florida has established a taxable wage base for state UC taxes at least equal to the federal taxable wage base – currently $7,000.[108] Employers pay quarterly taxes on the first $7,000 of each employee's annual wages for both the Federal and Florida UC taxes.[109]

An employer's initial state tax rate is 2.7 percent.[110] After an employer is subject to benefit charges for 8-calendar quarters, the standard tax rate is 5.4 percent, but may be adjusted down to a low of 0.1 percent.[111] The adjustment in the tax rate is determined by calculating several factors.

The "benefit ratio" is the most significant factor in determining the tax rate, and it is the factor over which the employer has control. The benefit ratio is the cost of benefit charges as a percentage of the employer's taxable wages and is calculated by dividing the total compensation charged to the employer's record over the preceding 3 years by the amount of the employer's payroll during the same 3-year period.[112] This is often referred to as "experience rating"; in other words, an employer's tax rate is based on its experience in laying off workers. Employers who lay off the most workers are charged the highest tax rates. The purpose of experience rating under Florida's UC law is to ensure that employers with higher unemployment compensation costs pay a higher tax rate.

When an individual receives unemployment compensation based on the wages an employer paid the worker, benefit charges are assigned to that employer's account. The account of each employer who paid an individual $100 or more during the period of a claim is subject to being charged a proportionate share of the compensation paid to the individual. However, an employer can obtain relief from benefit charges by responding to notification of a claim with information concerning the reason for the individual's separation from work or refusal to work.[113] In general, an employer can earn a lower tax rate by limiting the amount of benefit charges to the employer's account.

Compensation that cannot be charged against any employer's account is recovered through "variable adjustment factors" that socialize the cost of this compensation among all contributory employers who, during the previous 3 years, had benefit experience. These variable adjustment factors include the noncharge factor (benefits not

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[106] The Federal Unemployment Tax Act (FUTA) is set to be reduced by 0.2 percent for 2010. A bill in Congress which creates a third tier of federal EUC benefits also delays the scheduled reduction in the surtax to 6.0 percent until 2011. See H.R. 3548 (111th Congress, 2009).

[107] At this rate, the cost is $56 per employee on the first $7,000 of taxable wages.

[108] Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).
This discussion of Florida UC taxes focuses on taxes for the current year, 2009, which is based upon the law prior to the 2009 legislative changes. The 2009 legislative changes affected the taxable wage base and the fund size factor (tax triggers).

[109] Section 443.1217(2)(a), F.S. (2008).

[110] Section 443.131(2)(a), F.S. At this rate, the cost is $189 per employee on the first $7,000 of taxable wages.

[111] Section 443.131(2)(b), F.S. Because of the definition of base period, at least 10 quarters must have elapsed before a new employer can be considered chargeable for 8 quarters of benefits. See also, s. 443.131(3)(d), F.S. An employer is only eligible for variation of the standard rate if its employment record was chargeable for benefits for 12 consecutive quarters ending on June 30 of the preceding calendar year. These employers are referred to as "rated employers."
At the rate of 5.4 percent, the cost is $378 per employee on the first $7,000 of taxable wages; and at a tax rate of 0.1 percent, the cost is $7 per employee. About 74 percent of Florida employers were taxed at the lowest experience factor (average tax rate 0.12 percent) in 2009; at this rate, the cost is $8.40 per employee on the first $7,000 of taxable wages.

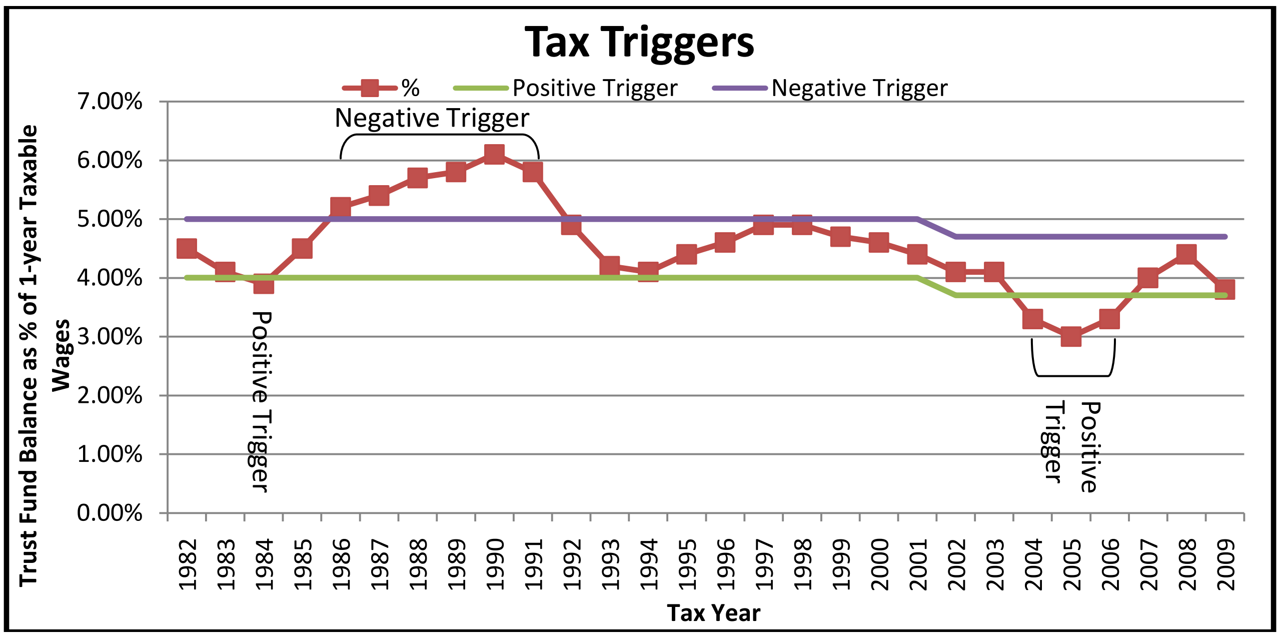
[112] Section 443.131(3)(b), F.S.

[113] Section 443.131(3)(a), F.S.

attributable to any employer over the last 3 years), the excess payments factor (that portion of benefit charges which exceed the maximum rate of 5.4 percent), and the fund size factor (requires the trust fund maintain a certain balance, discussed below as "triggers"; currently, if the trust fund size is between 3.7 percent and 4.7 percent of one year's taxable payroll, the factor will be zero).[114]

The "final adjustment ratio" is another factor in determining an employer's tax rate. It spreads costs not obtained by the other factors to all employers who are not at initial or maximum rates. This factor is also applied to employers who have no benefit charges in the preceding 3 years. As a result, this factor determines what the minimum rate for the tax year will be.[115]

Florida's tax calculation method, especially due to the benefit ratio, is closer to a "pay as you go" approach, in which taxes increase rapidly after a surge in benefit costs. Economic conditions resulting in abnormally high unemployment accompanied by high benefit charges can cause a severe drain on the UC Trust Fund. The effect triggers the positive fund balance adjustment factor, which consequently increases tax rates for all employers. Conversely, when unemployment is low, the negative fund balance adjustment factor triggers, and tax rates for employers are reduced accordingly.[116]



Information obtained from the Florida Department of Revenue.

The Legislature established the tax triggers in 1957.[117] The 1957 law imposed an automatic tax increase on all employers if the trust fund's balance fell below 4 percent of taxable payrolls on December 31 of each year (also known as the positive fund balance adjustment factor). Conversely, if the trust fund's balance grew beyond 5 percent of taxable payrolls, the law granted an automatic tax reduction for all employers (also known as the negative fund balance adjustment factor).[118] In 1994, the Legislature amended the tax trigger to be calculated using the trust fund's balance on June 30 of each year.[119] From 2003 through the 2009 tax year, the positive fund

114 Section 443.131(3)(e), F.S. (2008). See also DOR, Tax Rate Methodology, at http://dor.myflorida.com/dor/uc/taxratemeth.html (last visited 10/20/2009).
115 DOR, Tax Rate Methodology, at http://dor.myflorida.com/dor/uc/taxratemeth.html (last visited 10/20/2009).
116 Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).
117 Chapter 57-247, L.O.F.
118 Because legislative records from this period are limited, there is no definitive record of the Legislature's reasoning behind establishing the tax trigger as a range between 4 and 5 percent of taxable payrolls.
119 The data for the 1-year taxable payrolls for the year ending June 30 is required to be reported to DOR by September 30. Whether or not an adjustment will trigger "on" is not known until all information is collected. Section 443.131(3)(e)1., F.S.

balance adjustment factor was 3.7 percent, and the negative fund balance adjustment factor was 4.7 percent.[120] Each adjustment factor remains in effect until the balance of the trust fund rises above or falls below the respective trigger percentage.

The federal UC system originally operated on the basis that benefits would be forward funded.[121] That is, tax rates and benefit levels were established with the intention that the system would accumulate reserves during economic expansions and, thereby, have sufficient reserves to pay benefits during economic recessions. According to the U.S. General Accounting Office (GAO), this approach was used during the first 30 years of the unemployment insurance system. However, GAO observed that, throughout the most recent three decades, many states have gradually eroded the forward-funding principle by relying on federal loans to pay benefits during recessions due to inadequate trust fund reserves.

In contrast to forward funding, states may borrow money from the federal government through the USDOL to pay benefit claims whenever the state lacks funds to pay claims due in any month. Such loans are referred to as "advances." The state's trust fund balance must be zero in order to receive an advance. The federal law requires a state's governor to request the loan from the U.S. Secretary of Labor.[122]

Many states have experienced chronic problems with UC trust fund insolvency, causing them to borrow from the federal government to pay benefits and resulting in increased federal taxes to repay the loans. In response, these states have restricted eligibility to UC benefits to reduce benefit costs, thereby reducing the number of workers who are eligible to receive benefits and, consequently, jeopardizing the value of their UC programs as economic stabilizers. In the current economic climate, states are increasingly requesting federal advances. Twenty-three states currently have requested federal advances.[123] In the first quarter of 2009, 14 states had outstanding loans from the Federal Unemployment Account.

Trust Fund Loans[124]	
Outstanding Loans from the Federal Unemployment Account. Balances as of October 16, 2009 are:	
Alabama	$46,966,608
Arkansas	$128,287,891
California	$4,465,070,083
Connecticut	$28,089,827
Florida	$464,900,000
Idaho	$73,249,625
Illinois	$589,391,835
Indiana	$1,273,612,909
Kentucky	$467,500,000
Michigan	$2,766,860,000
Minnesota	$141,664,220
Missouri	$325,906,100
New Jersey	$687,821,333
New York	$1,582,444,530
North Carolina	$1,277,171,727
Ohio	$1,425,237,799

[120] Section 443.131(3)(e), F.S. (2008). The low and high triggers were adjusted to their current amounts in 2002 by ch. 2002-218, L.O.F., from the amounts they had been since 1957. See State Legislation in 2009 Related to the UC Trust Fund infra.
[121] Information adapted from Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).
[122] 42 U.S.C. s. 1321 (2009).
[123] Virginia and Nevada made advance requests to USDOL, but as of October 16, 2009, had not yet drawn down any funds.
[124] Information obtained from UDSOL website on the UI Budget at http://www.workforcesecurity.doleta.gov/unemploy/budget.asp#tfloans (last visited 10/20/2009).

Pennsylvania	$1,302,862,397
Rhode Island	$100,773,429
South Carolina	$564,138,430
South Dakota	$307,762
Texas	$694,587,660
Virgin Islands	$4,130,904
Wisconsin	$675,535,736
Total	$19,086,510,806

Before 1982, the USDOL provided interest-free loans to pay UC benefits in states with insolvent trust funds. However, under the Omnibus Budget Reconciliation Act of 1981, the U.S. Congress mandated that loans to state UC trust funds after March 1982 carried interest charges with an annual interest rate of up to 10 percent. Interest is due on the last day of the federal fiscal year in which the loans were made (September 30). After a state UC trust fund borrows from the USDOL, if the loan becomes delinquent, the federal tax credit for the state's employers is reduced until the loan is repaid (reduced by 0.3 percent for each year).[125] Thus, employers in states with insolvent trust funds are faced with multiple tax increases: increased state UC taxes to restore solvency of the state UC trust fund, and increased federal taxes to repay federal loans. In addition, any grants related to the costs of administration held in the UC trust fund do not earn interest.

Federal Legislation - The American Recovery and Reinvestment Act of 2009

The Recovery Act essentially provides for a waiver period for interest charges to any advances made to a state.[126] Any interest due between February 17, 2009, and December 31, 2010, on advances to a state is "deemed to have been paid by the state." Further, the Recovery Act provides that no interest will accrue on any advances made during this period. Thus, on any advance from the USDOL to Florida to pay UC benefits, interest would not accrue on the loan through December 31, 2010; after that date interest would accrue on the outstanding amount of the loan.[127]

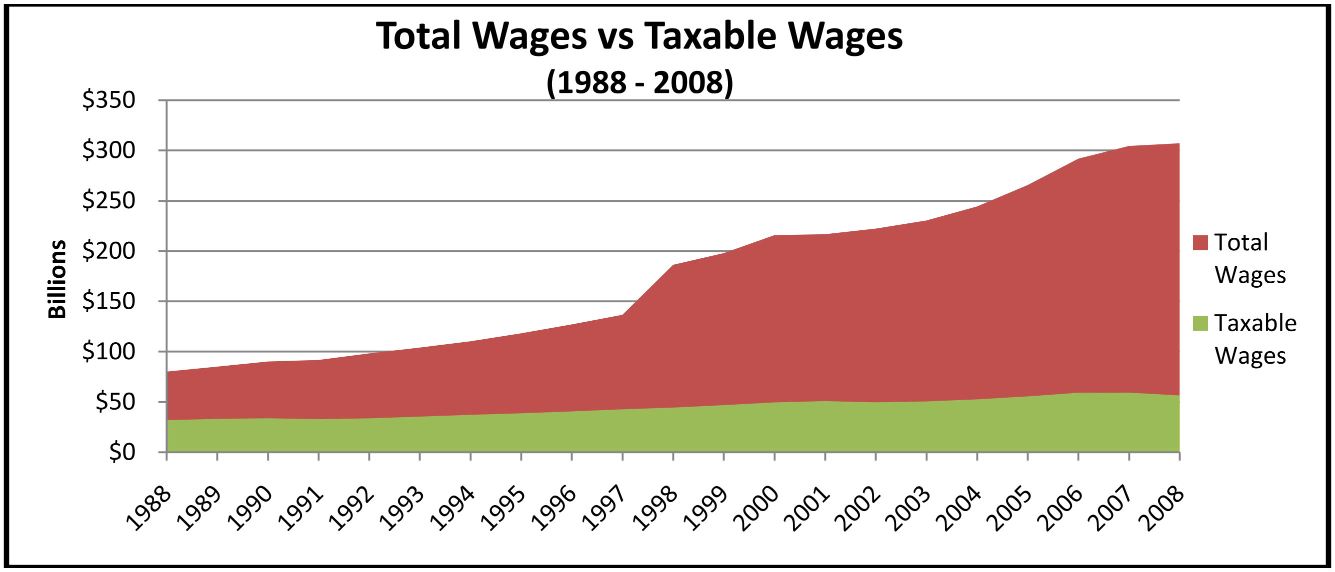
State Legislation in 2009 Related to the UC Trust Fund

Chapter 2009-99, L.O.F., amended portions of the unemployment compensation statutes in ch. 443, F.S., related to calculation of employers' tax rates and Unemployment Compensation (UC) Trust Fund solvency. The effect is to replenish the UC Trust Fund sooner than under the parameters in current law for recoupment.

Employer Contributions Based on Wages Increased[128]

Effective January 1, 2010, the portion of an individual's wages exempt from determining an employer's contributions is decreased from the excess of $7,000 to the excess of $8,500. After January 1, 2015, the portion is increased back to wages in excess of $7,000. In other words, employers will be taxed on an additional $1,500 per employee for the next 5 years.

[125] If a state has an outstanding loan balance on January 1 for 2 consecutive years, then the entire loan must be repaid before November 10 of the second year or the credit reduction will begin.
[126] Section 2004, Public L. No. 111-5.
[127] However there is debate on whether or not the federal government will decide to extend the interest waiver beyond 2010.
[128] Section 1, ch. 2009-99, L.O.F. See s. 443.1217(2)(a), F.S.



Information obtained from the Florida Department of Revenue.

Fund Balance Triggers Adjusted to Recoup More Funds[129]

For the calculation of employers' contributions rates effective January 1, 2010, the positive fund balance adjustment factor (low trigger) is increased from 3.7 percent of taxable payrolls to 4 percent, imposing the automatic tax increase earlier due to current economic conditions. The positive adjustment factor remains in effect until the balance of the UC Trust Fund equals or exceeds 5 percent of the taxable payrolls for the year; this will effectively leave the tax rate at a higher level for longer, resulting in the recoupment of more funds. This will revert to 4 percent on January 1, 2015. Additionally, the time to recapture the funds is shortened from 4 years to 3 years. This will artificially increase the tax rate by shortening the time to reach a higher trust fund balance used in calculating the higher tax rates. The recapture time period is restored to 4 years on January 1, 2015.

The law increased the negative fund balance adjustment factor (high trigger) from 4.7 percent of taxable payrolls to 5 percent. It delays the annual computation of the negative adjustment factor until January 1, 2015; in essence the employer contribution tax rates will not be lowered for 5 years. Thereafter, the negative adjustment factor will remain in effect until the balance of the UC Trust Fund is between 4 and 5 percent of taxable payrolls for the year. However, the negative adjustment factor is suspended in any calendar year in which an advance, or loan, from the federal government is still in repayment for the principal amount of the loan.

Requests and Repayment of Federal Advances[130]

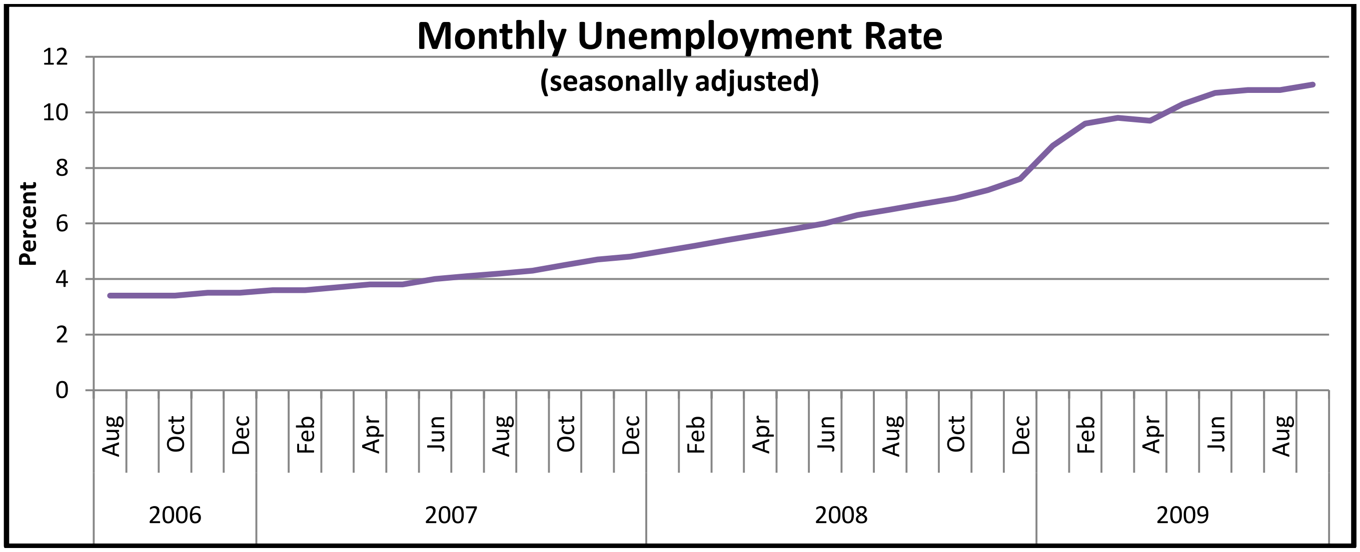
Chapter 2009-99, L.O.F, clarified that the Governor, or his designee, is specifically authorized to request advances from the federal government to finance the UC Trust Fund.[131] Further, the use of moneys in the trust fund to repay advances is specifically authorized.

Governor Crist officially notified USDOL by letter that effective in June 2009, Cynthia R. Lorenzo, Director of AWI, was his designee authorized to act on his behalf in all matters related to advances from the federal unemployment account.

[129] Section 2, ch. 2009-99, L.O.F. See s. 443.131(3)(e), F.S.
[130] Section 3, ch. 2009-99, L.O.F. See s. 443.191(1) and (3), F.S.
[131] USDOL Unemployment Insurance Program Letter (UIPL) 22-02, states that "the Governor may delegate the authority to request [advances] and make voluntary repayments to another state official, if permitted by state law." Available at http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=1382 (last visited 10/20/2009).

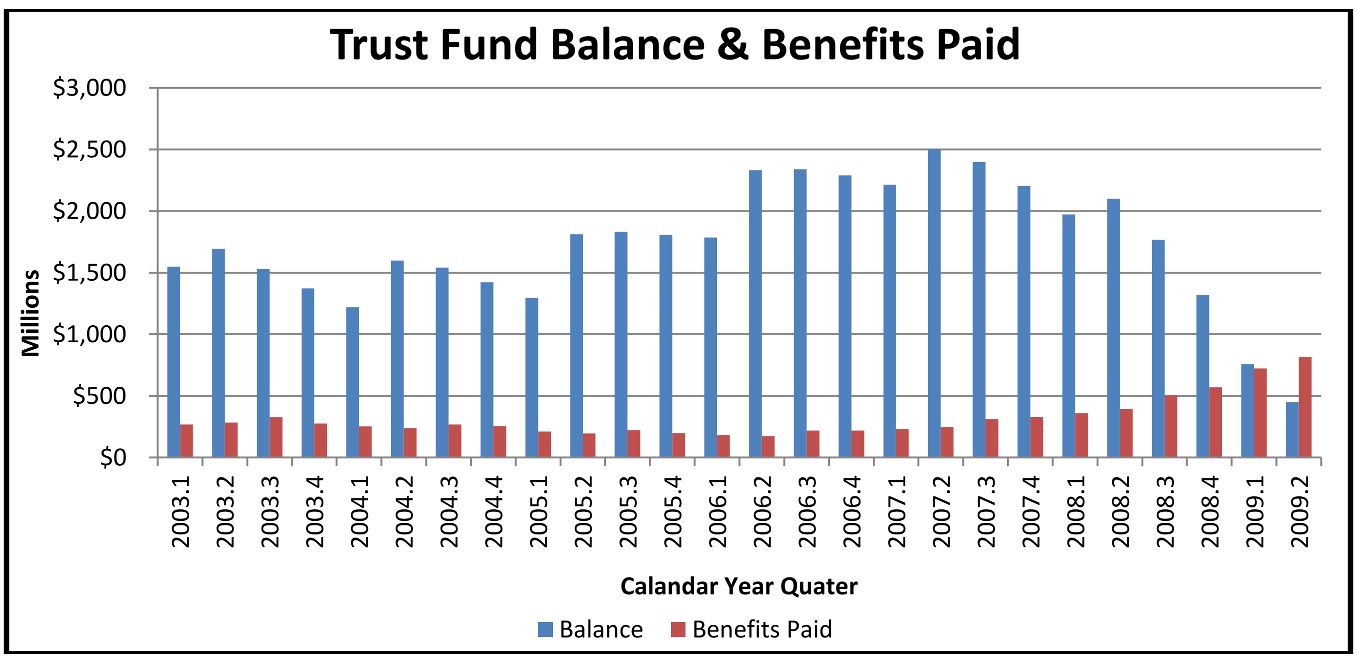
UC Trust Fund Solvency

Florida's seasonally adjusted unemployment rate for September 2009 was 11 percent. This represents about 1 million jobless out of a labor force of 9,193,000. The unemployment rate is up 0.2 percent from the revised August rate of 10.8 percent and is up 4.3 percentage points from the September 2008 rate. The state's September unemployment rate is 1.2 percentage points higher than the national unemployment rate of 9.8 percent. The last time the unemployment rate was as high as the September rate was October 1975 when it was also 11.0 percent.[132]



Information obtained from the Florida Research and Economic Database, Labor Market Statistics, Local Area Unemployment Statistics Program, at http://fred.labormarketinfo.com/default.asp (last visited 10/19/2009).

The unemployment payments have greatly increased as tax collections decreased. This has resulted in a significant cash decline, and under the state's current tax structure the balance in the trust fund fell to a hard deficit in August. On August 24, 2009, the balance of the trust fund fell to zero and federal advance monies began to be drawn down to pay UC benefits.



Information obtained from the USDOL Unemployment Insurance Data Summary website available at http://www.workforcesecurity.doleta.gov/unemploy/content/data.asp (last visited 10/19/2009).

132 AWI Press Release, Florida's September Employment Figures Released, (October 16, 2009).

During the history of Florida's tax trigger, the UC Trust Fund has never become insolvent. In the aftermath of the 1973-1975 recession, the state anticipated the UC Trust Fund's reserves were insufficient to pay benefits. Consequently, the state twice borrowed funds from the federal government – $10 million in 1976 and $32 million in 1977. However, Florida's trust fund remained solvent and the loans were never drawn down. With the exceptions of 1976 and 1977, Florida had never sought a federal loan, making this state one of only a few to avoid serious and chronic problems with trust fund insolvency.[133]

However, due to the current economic climate and increased demand on the UC Trust Fund, AWI predicted that the UC Trust Fund would fall into deficit in August 2009. AWI began the request process in July for an advance from the federal government in order to maintain the solvency of the trust fund. The state made a formal request for an advance from the Federal government in order to make benefit payments in August 2009. Advances are requested prior to the quarter in which they are needed and for 3-month periods at a time. Florida's July 2009 advance request, estimated to USDOL that in order to pay UC compensation under Florida law, the state would need:

Amount Not to Exceed	Month of Transfer
$ 0	July 2009
$ 300 million	August 2009
$ 310 million	September 2009

The USDOL evaluates the state's request and sends a confirmation letter that provides the authorized amount that Florida may borrow and the authorization period. The state may not borrow more funds than the authorized amount. The state will only draw down, or borrow, funds as needed to pay UC benefits. Advance monies may only be used to pay UC benefits. For example, if an employer is due a credit for overpayment of UC taxes, the employer cannot be repaid until the trust fund is replenished with funds other than advance monies. Florida sent another advance request in September 2009 for the fourth quarter of 2009 that requested $300 million for October, November, and December each. The state drew down $464.9 million through October 16, 2009.[134]

The state may make repayments voluntarily by notifying USDOL by letter of the amount and effective repayment date. Repayments are made on a last made, first repaid basis. The Recovery Act effectively waives interest accrued on advances until December 31, 2010. Beginning January 1, 2011, interest will begin to accrue on any loans that Florida has not yet repaid. Interest accrues on a federal fiscal year basis (October to September), and is due no later than September 30 each year. States may apply to USDOL for deferrals of interest for loans in certain situations; these include the delay of interest payments for interest accrued from May to September, and the deferral of interest payments if the individual unemployment rate (IUR) equals or exceeds 7.5 percent for the first 6 months of the last calendar year or if the total unemployment rate (TUR) equals or exceeds 13.5 percent or higher for the most recent 12 months. Interest continues to accrue even if a state receives a deferral to pay it.

The interest rate charged is equal to the fourth calendar quarter yield on the Unemployment Trust Fund for the previous year, capped at 10 percent. Interest rates for past years have been:

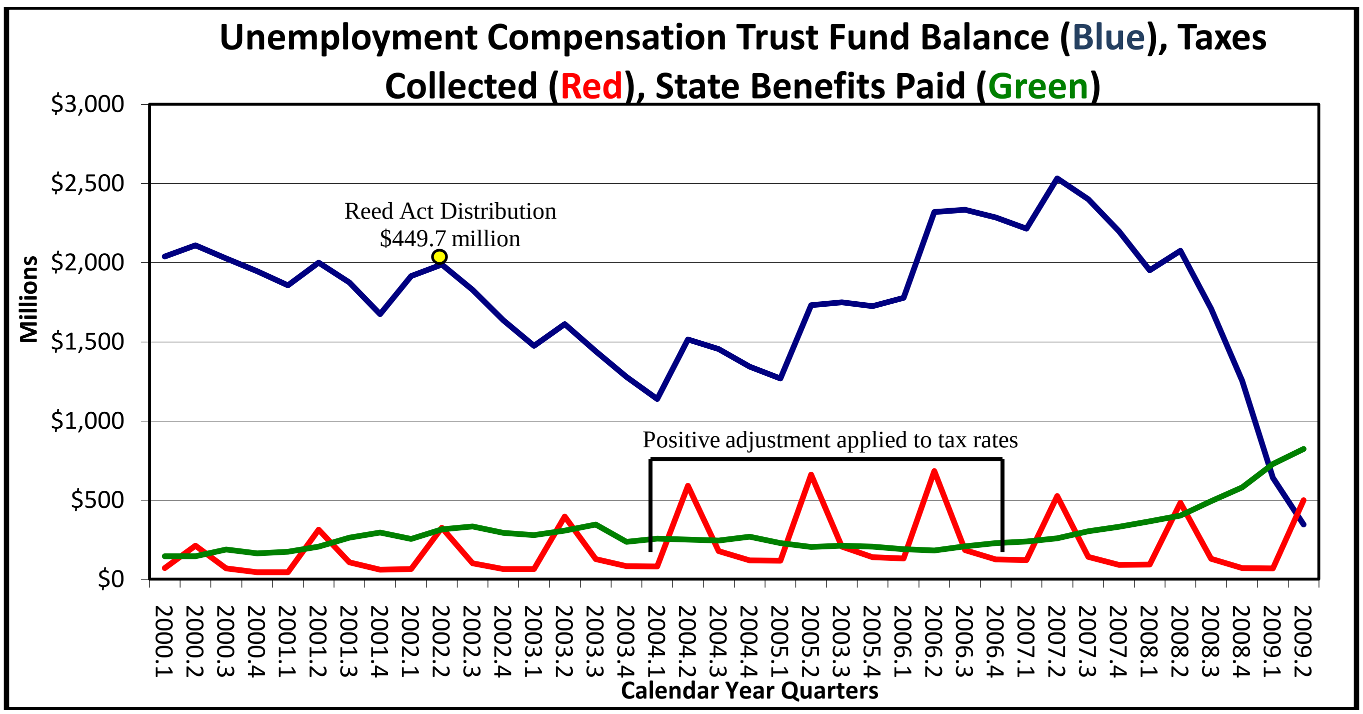
4th Quarter Year	Year Applied	Rate
2008	(2009)	4.64%
2007	2008	4.81%
2006	2007	4.66%
2005	2006	4.63%

[133] Solvency of the Unemployment Compensation Trust Fund and the Tax "Trigger", The Florida Senate Committee on Commerce and Economic Opportunities, Interim Project Report 2002-122 (October 2001).
[134] Information from AWI, on file with the Senate Commerce Committee. See also U.S. Department of Treasury, Bureau of Public Debt, Treasury Direct's Title XII Advance Activities Schedule at http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_advactivitiessched.htm (last visited 10/20/2009).

Repayment of the principal amount of the advance will be made from a portion of state UC taxes collected from employers. However, the interest due on advances cannot be paid from funds from the UC Trust Fund. In order to repay the interest, a state may make an appropriation from general revenue, issue bonds, or impose a surcharge on employers.[135] The State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, includes payments from the General Revenue Fund of $126.9 million in FY 2011-2012 and $199.4 million in FY 2012-2013 to cover the interest costs as a "Critical Need."[136]

Florida employers will most likely experience a partial loss of the federal UC tax credit beginning on January 1, 2012, due to the existence of an outstanding federal advance; however, the value of the lost credit (essentially, of the increased federal taxes by 0.3 percent per year) offsets the outstanding loan balance. The credit reduction continues and escalates until such time as the loan is fully repaid.[137] The Office of Economic and Demographic Research (EDR) estimated that the first repayment to the federal government through the loss of the federal credit would be $168 million in January 2012 and $346 million in January 2013.[138]

Since the tax trigger was established in 1957, a negative fund balance adjustment factor has been applied during 15-tax years, automatically reducing employer taxes in each of those years. During this same period, a positive fund balance adjustment factor has automatically increased UC taxes 12 times. The tax trigger cut taxes each year from 1986 to 1991. The most recent instance the tax trigger raised taxes was each year from 2004 to 2006. Since 2006, tax rates have not been adjusted because the UC Trust Fund balance has not triggered a rate change.[139]



Information obtained from AWI. The second quarter spikes in revenue result because taxes collected on first quarter wages generally reach the limit of the taxable age base of $7,000 and are paid in the second quarter.

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[135] It does not appear that the option of issuing bonds to repay the interest is available to Florida. See Art. VII, s. 11, Fla. Const.

[136] State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, adopted 9/15/2009 by the Legislative Budget Commission, pp. 10, 62, 108, available at http://www.flsenate.gov/data/publications/2009/Senate/reports/Long-RangeFinancialOutlook2010-2013.pdf (last visited 10/20/2009).

[137] USDOL Webinar on Title XII Advances, August 10, 2009 (slides on file with the Senate Commerce Committee). See also State of Florida Long-Range Financial Outlook Fiscal Year 2010-11 through 2012-13, p 108.

[138] Unemployment Compensation Trust Fund (monthly 2009 – 2013), Office of Economic and Demographic Research, July 2009, on file with the Senate Commerce Committee.

[139] Information from DOR, on file with the Senate Commerce Committee.

The tax rates for 2010 will begin to be calculated around mid-October 2009, and released in December 2009. At that time, the balance of the trust fund as of June 30, 2009, will be used to determine if a tax increase will be triggered.[140] The positive adjustment factor will trigger a tax increase for 2010 taxes if the balance of the trust fund is less than 4.0 percent of the 1-year taxable wages as of June 30, 2009. Taxes will continue to be higher until the balance of the trust fund equals or exceeds 5.0 percent of the previous year's taxable wages as of June 30 of that year, or, beginning in 2015, until the trust fund equals or exceeds 4.0 percent of the 1-year taxable wages. Further, in an effort to repay any advances taken, there will be no negative adjustment factor in any calendar year in which an advance from the federal government is still in repayment for the principal amount of the loan.

Additionally, taxes calculated for 2010 will increase because of the 2009 changes to the taxable wages. An additional $1,500 of each employee's wages will be subject to UC taxes.[141]

The 2009 changes to the tax structure are predicted to infuse significant cash into the UC Trust Fund; however, it is estimated that the fund will continue in deficit over the next 5 years, thereby requiring more advances from the federal government to maintain the solvency of the trust fund. In April 2009, the Revenue Estimating Conference projected that the deficit in the second quarter of 2014 would improve from $3.7 billion under the 2008 law to $997.3 million under the 2009 law.[142] However, in July 2009, the Office of Economic and Demographic Research (EDR) forecast for the trust fund shows that even with the 2009 changes to the tax structure, the trust fund will operate with a large deficit.[143] With increasing UC benefits costs, and principal and interest payments due on the advances, the trust fund is predicted to fall into a deficit over $4 billion by the end of 2011. By the EDR forecast, benefits payments are much greater than tax revenues for the next few years. Despite the 2009 changes to the tax structure, the increased cash flow into the trust fund will not be enough to prevent a growing deficit in the UC Trust Fund.

Federal Legislation - The American Recovery and Reinvestment Act of 2009's Modernization Funding

The Recovery Act includes incentive payments to "modernize" state UC systems. If Florida were to implement all the required components of the Unemployment Insurance Modernization Act (UIMA),[144] the state would be entitled to about $444.3 million in total. These incentive funds will be available until September 30, 2011, and states must apply to receive the funds.[145] Depending on the modernization options that a state chooses, the incentive monies are expected to cover the benefit payments for 2 to 6 years.[146]

[140] For calculation of the 2009 tax rates, the trust fund balance was 3.8 percent of the 1-year taxable wages as of June 30, 2008. It was only 0.10 percent above the positive adjustment factor.

[141] For example:

Tax Rate	Wage Base - $7,000	Wage Base - $8,500
0.1 %	$7.00	$8.50
0.12 %	$8.40	$10.20
0.80 %	$56.00	$68.00
2.7 %	$189.00	$229.50
5.4 %	$378.00	$459.00

[142] See Unemployment Compensation Tax, Revenue Estimating Conference, April 16, 2009.

[143] Unemployment Compensation Trust Fund (monthly 2009 – 2013), Office of Economic and Demographic Research, July 2009, on file with the Senate Commerce Committee.

[144] The UIMA was adopted into federal UC law as part of the Recovery Act. Section 2003, Public L. No. 111-5.

[145] USDOL has 30 days to approve the application and direct the U.S. Secretary of the Treasury to distribute funds to the eligible state's unemployment trust fund.

[146] The entire amount of the stimulus money is deposited into the state's UC trust fund, and use of the money is not limited to the specific benefit of persons eligible due to the expansion of the state UC program. The money could be used to pay any current benefit claims.

UIMA Base Period Provision

In order to receive one-third of the modernization money available under the Recovery Act, or associated with UIMA, Florida would have to implement the alternative base period.[147] Under the alternative base period, claimants must meet the same rules as current law base period claimants but they can use a more recent four-quarter period to do so.

<table>
<tr><th colspan="10">Base Period Chart Showing Alternative Base Period</th></tr>
<tr><td colspan="2">Year Preceding Prior year</td><td colspan="4">Prior Year</td><td colspan="4">Current Year</td></tr>
<tr><td>July
Aug.
Sept.</td><td>Oct.
Nov.
Dec.</td><td>Jan.
Feb.
March</td><td>April
May
June</td><td>July
Aug.
Sept.</td><td>Oct.
Nov.
Dec.</td><td>Jan.
Feb.
March</td><td>April
May
June</td><td>July
Aug.
Sept.</td><td>Oct.
Nov.
Dec.</td></tr>
<tr><td></td><td colspan="4">Base Period
(Oct. 1 – Sept. 30)</td><td>Lag quarter</td><td rowspan="2">Claim Filed</td><td colspan="3" rowspan="2"></td></tr>
<tr><td colspan="2" rowspan="7"></td><td colspan="4">Alternative Base Period
(January 1 – December 31)</td></tr>
<tr><td colspan="4">Base Period
(Jan. 1 – Dec. 31)</td><td>Lag quarter</td><td rowspan="2">Claim Filed</td><td colspan="2" rowspan="2"></td></tr>
<tr><td rowspan="5"></td><td colspan="4">Alternative Base Period
(April 1 – March 31)</td></tr>
<tr><td colspan="4">Base Period
(Apr. 1 – Mar. 31)</td><td>Lag quarter</td><td rowspan="2">Claim Filed</td><td rowspan="2"></td></tr>
<tr><td rowspan="3"></td><td colspan="4">Alternative Base Period
(July 1 – June 30)</td></tr>
<tr><td colspan="4">Base Period
(July 1 – June 30)</td><td>Lag quarter</td><td rowspan="2">Claim Filed</td></tr>
<tr><td></td><td colspan="4">Alternative Base Period
October 1 – September 30)</td></tr>
</table>

The alternative base period would eliminate the "lag quarter" and would allow individuals to supply their own wage information, as opposed to the current use of employer wage reports. Information supplied by individuals would be verified for the last quarter when employers issued the wage reports and after benefit payments had begun to be made; any overpayments or inconsistent information would need to be investigated by AWI. Florida's share for implementation of the alternative base period would be $148.1 million.

The National Employment Law Project (NELP) estimates that about 27,229 workers would benefit from this change to Florida's UC laws, resulting in an annual payment of about $45.2 million in benefits.[148] In November 1997, the Florida Department of Labor and Employment Security conducted a study for the USDOL to determine the benefits to claimants and the impact on employers of using an alternative base period to calculate unemployment compensation.[149] The study found that the Florida Department of Labor and Employment Security (now AWI) would have to expend $150,000 for initial programming plus $45,000 per year for an additional staff person in the monetary reconsideration unit. Based upon the number of claims filed in 2008, it is possible that the alternative base period could result in benefit eligibility for 14,030 individuals. The 1997 findings are most likely still generally accurate today.[150]

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[147] In the alternative, Florida could also qualify by implementing a regular base period that includes the most recently completed calendar quarter before the start of the benefit year.

[148] See National Employment Law Project (NELP), Implementing the Model Provisions of the Unemployment Insurance Modernization Act in the States, (February 2009), at http://nelp.3cdn.net/dcc61269e71d7220ef_t8m6bpprp.pdf (last visited 10/20/2009).

[149] Florida Department of Labor and Employment Security, Division of Unemployment Compensation, Monetary Eligibility Study: Variable Base Period, Final Report, (June 1997).

[150] See AWI's Bill Analysis of SB 516 (2009), on file with the Senate Commerce Committee.

Thirty-four other states and the District of Columbia currently have enacted alternative base period legislation. Fifteen of these states changed their state laws in 2009 to adopt the alternative base period to receive Recovery Act funding.[151]

UIMA Incentive Options Provision

If a state qualifies for the one-third Recovery Act funding associated with implementing the alternative base period, it may qualify for the remaining two-thirds by expanding benefits to at least two of four areas.[152] The four areas involve part-time workers; workers with dependents; workers who leave work for compelling family reasons; and permanently laid-off workers who require benefits to participate in training. The claims of individuals who have left employment for reasons not attributable to the employer, for example due to specific compelling family reasons, workers in training, and workers with dependents, are not charged to employer's account. However, because specific employers' accounts would not be charged for such claims, the costs for these non-charged benefits would be shared by all employers. Florida's share of the Recovery Act funds, if it were to implement two of the four areas, would be about $296.2 million.

1. Part-time workers: One in 6 U.S. employees works a part-time schedule.[153] Employers pay UC for part-time workers, and those workers' wages are also taxed for the same purposes. To receive the incentive option, a state must modernize its UC program so that part-time workers who are unemployed may be eligible for UC benefits while they seek other part-time employment.[154]

   Current Florida law does not distinguish between full-time and part-time employment, as discussed above; thus Florida may already be in compliance with this requirement, although not specifically stated in the Florida Statutes. Consequently, there would be an insignificant or no increase in benefit costs to implement this provision.

   NELP predicts that about 6,294 workers would benefit from this change to Florida UC law, resulting in about $8 million in benefits paid out annually.[155]

   Seven states enacted new measures and four altered their state laws in 2009 to qualify for Recovery Act funding under this incentive option. In total, 27 states should qualify for Recovery Act funding.[156]

2. Compelling Family Reasons: Another area that a state can implement to obtain the two-thirds of the Recovery Act funding associated with UIMA deals with individuals who leave work for certain compelling family reasons. Such circumstances must include:[157]
   - Domestic violence – If an individual reasonably believes that, due to the violence, the individual's continued employment would jeopardize the safety of the individual or any member of the individual's immediate family, then this would be a compelling reason to leave work.
   - "Trailing spouse" – UIMA requires that the individual had to accompany his or her spouse to a place where it is impractical for the individual to commute and due to a change in location of the spouse's employment.

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[151] See NELP, Federal Stimulus Funding Produces Unprecedented Wave of State Unemployment Insurance Reforms, (June 16, 2009), at http://www.nelp.org/page/-/UI/UIMA.Roundup.June.09.pdf?nocdn=1 (last visited 10/20/2009). See also USDOL DOL - ETA Information Related to the American Recovery and Reinvestment Act of 2009, for a list of states qualified for Recovery Act funding, available at http://www.doleta.gov/recovery/#PressReleases (last visited 10/20/2009).
[152] A state may elect to just implement alternative base and receive one-third of the incentive payments; or a state may elect to do both parts and receive 100 percent of the available funds.
[153] Andrew Stettner, NELP, What is UI Modernization and Why is it Important?, (May 2008), at http://nelp.3cdn.net/9a398fa5e086804cea_obm6yhsxp.pdf (last visited 10/20/2009).
[154] USDOL Unemployment Insurance Program Letter (UIPL) 14-09.
[155] NELP, Implementing the Model Provisions.
[156] NELP, Federal Stimulus Funding.
[157] USDOL Unemployment Insurance Program Letter (UIPL) 14-09. At a minimum, a state's definition of "immediate family member" must include spouses, parents, and minor children under the age of 18.

- Sick family member – Individuals may leave work due to the illness or disability of a member of the individual's immediate family. "Illness" means a verified illness which necessitates the care of the ill person for a period of time longer than the employer is willing to grant leave (paid or otherwise). Similarly, "disability" means a verified disability which necessitates the care of the disabled person for a period of time longer than the employer is willing to grant leave (paid or otherwise).

Individuals must continue to meet UC requirements, such as for the ability and availability to work. NELP predicts that about 6,393 workers would benefit from this particular change to Florida UC law, resulting in a pay-out of about $18.3 million in benefits annually.[158]

Thirteen states enacted new measures or altered their state laws in 2009 to qualify for Recovery Act funding under this incentive option. In total, 17 states should qualify for Recovery Act funding.[159]

3. Extended Benefits While Training: Unemployed individuals who have exhausted their UC benefits may receive extended UC benefits while enrolled in approved training and making satisfactory progress. Benefits are provided for 26 weeks beyond the normal duration of benefits. Approved training may be limited to programs that prepare an individual for entry into a high-demand occupation if the individual has been separated from a declining occupation or involuntarily and indefinitely separated from employment as a result of a permanent reduction of operations at the place of employment.[160]

   Eight states enacted new measures and three altered their state laws in 2009 to qualify for Recovery Act funding under this incentive option. In total, 12 states should qualify for Recovery Act funding.

4. Weekly Dependent Allowance: States may pay weekly supplemental allowances to unemployed individuals that have dependents in their families. Such unemployed individuals receive a regular weekly dependent or children's allowance as part of a UC check. The Recovery Act and UIMA require a minimum payment of $15 per dependent for stimulus funding.[161]

   Fourteen states, plus the District of Columbia, pay a regular weekly dependent or children's allowance as part of a UC check. Currently, all but six of the states implementing these supplemental allowances provide less than the required $15 per dependent. In total, 6 states should qualify for Recovery Act funding.[162]

Modernization Costs and Benefits

Under a proposed bill in 2009 to modernize Florida's UC system, recurring costs of the annual benefits for the eligibility enhancements was estimated at $73.7 million.[163] The bill proposed to implement the alternative base period and benefits for part-time workers and those with specific compelling family reasons. Alternative base benefit payments were estimated to total $51.3 million annually; incentive options to provide benefits for part-time workers and those who leave work for compelling family reasons were expected to result in $22.4 million in benefits payments annually.

The receipt of the Recovery Act funding of $444.3 million would offset the cost to private employers ($69.3 million annually) for approximately 6 years. However, public employers (state and local governments) are not assessed UC taxes. Federal regulation exempts public employers from the tax and considers them as being "self-

[158] NELP, Implementing the Model Provisions.
[159] NELP, Federal Stimulus Funding.
[160] USDOL Unemployment Insurance Program Letter (UIPL) 14-09.
[161] May be capped at $50 per week or 50 percent of the weekly benefit amount for the benefit year, whichever is less. USDOL Unemployment Insurance Program Letter (UIPL) 14-09.
[162] In 2009, Illinois increased its benefits to comply with the $15 weekly minimum benefit that qualifies for incentive funding. Tennessee was the only state to adopt a new state law to provide a weekly dependent allowance. NELP, Federal Stimulus Funding.
[163] S.B. 516 (2009).

insured" for UC claims. It was estimated that the eligibility enhancements from the modernization would result in an immediate recurring cost of $4.4 million to state and local governments, approximately 90 percent local and 10 percent state. AWI and DOR estimated they would need to expend an additional $2.1 million in recurring federal UC administrative funds to administer modernization.

Also, use of the alternative base period shortens the period required for a new employer to establish chargeability for benefits, possibly resulting in a net reduction in tax receivables from new employers. AWI estimated that this would result in an $8 million revenue reduction to the UC Trust Fund.

The bill died in the Senate Policy & Steering Committee on Ways and Means.

Conclusion

This Issue Brief is intended to be an overview of Florida's Unemployment Compensation program and the changes resulting from the federal and state laws enacted in 2009. This includes:

- The extension of state and federal benefits to the unemployed;
- The requirements of AWI due to the increased workload and new services;
- The development of the new Unemployment Claims and Benefits Information System;
- The clarification of the authority to borrow (and repay) significant funds from the federal government to maintain the solvency of the Unemployment Compensation Trust Fund; and
- The increase in employer contributions to restore the Unemployment Compensation Trust Fund to solvency and repay the loans from the federal government.

Given the projected high level of unemployment for many months to come, the state and federal governments are likely to readdress these issues. To date, legislation has been filed in Congress to extend federal EUC benefits for a third time period, and to extend the eligibility period for the first two tiers of EUC and temporary state extended benefits. Legislative action would be necessary to take advantage of the extension of the temporary state extended benefits funding. Further, the state has the option of drawing down additional federal stimulus funds if Congress expands eligibility for state benefits.

As indicated in this report, the 2009 increase in the employer contribution rate may be inadequate if the goal is to timely repay the federal loans, plus interest, and restore the trust fund to solvency.

Any legislative action will have to take into account the combination of new federal initiatives and the impact on business community.