

Editorial Notes

REFERENCES IN TEXT

Section 905(g) and section 904(a), referred to in subsec. (d)(1)(A), probably mean sections 905(g) and 904(a) of the Social Security Act. However, section 905(g) probably should be a reference to section 904(g) as there is no subsec. (g) in section 905 of the Act, and section 904(g) establishes the Federal unemployment account. Section 904(a) and (g) is classified to section 1104(a) and (g), respectively, of Title 42, The Public Health and Welfare.

Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsec. (g), is section 205 of Pub. L. 91-373, which is set out in a note under section 3304 of Title 26, Internal Revenue Code.

AMENDMENTS

2021—Subsec. (c)(3). Pub. L. 117-2, §9014(b), struck out par. (3). Text read as follows: “With respect to compensation paid to individuals for weeks of unemployment ending after December 31, 2020, paragraph (1) shall be applied by substituting ‘50 percent’ for ‘100 percent.’”

Subsec. (e)(2). Pub. L. 117-2, §9014(a), substituted “September 6, 2021” for “March 14, 2021”.

2020—Subsec. (c)(1). Pub. L. 116-260, §204(1)(A), substituted “Except as provided in paragraph (3), there shall be paid” for “There shall be paid” in introductory provisions.

Subsec. (c)(3). Pub. L. 116-260, §204(1)(B), added par. (3).

Subsec. (e)(2). Pub. L. 116-260, §204(2), substituted “March 14, 2021” for “December 31, 2020”.

Statutory Notes and Related Subsidiaries

FULL REIMBURSEMENT

Pub. L. 117-2, title IX, §9014(b), Mar. 11, 2021, 135 Stat. 119, provided that: “Paragraph (3) of section 2105(c) of such Act (15 U.S.C. 9024(c)) is repealed and such section shall be applied to weeks of unemployment to which an agreement under section 2105 of such Act applies as if such paragraph had not been enacted. In implementing the preceding sentence, a State may, if necessary, reenter the agreement with the Secretary under section 2105 of such Act, and retroactively pay for the first week of regular compensation without a waiting week consistent with State law (including a waiver of State law) and receive full reimbursement for weeks of unemployment that ended after December 31, 2020.”

§ 9025. Pandemic emergency unemployment compensation**(a) Federal-State agreements****(1) In general**

Any State which desires to do so may enter into and participate in an agreement under this section with the Secretary of Labor (in this section referred to as the “Secretary”). Any State which is a party to an agreement under this section may, upon providing 30 days’ written notice to the Secretary, terminate such agreement.

(2) Provisions of agreement

Any agreement under paragraph (1) shall provide that the State agency of the State will make payments of pandemic emergency unemployment compensation to individuals who—

(A) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before July 1, 2019);

(B) have no rights to regular compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(C) are not receiving compensation with respect to such week under the unemployment compensation law of Canada; and

(D) are able to work, available to work, and actively seeking work.

(3) Exhaustion of benefits

For purposes of paragraph (2)(A), an individual shall be deemed to have exhausted such individual’s rights to regular compensation under a State law when—

(A) no payments of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual’s base period; or

(B) such individual’s rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(4) Weekly benefit amount, etc.

For purposes of any agreement under this section—

(A) the amount of pandemic emergency unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to—

(i) the amount of the regular compensation (including dependents’ allowances) payable to such individual during such individual’s benefit year under the State law for a week of total unemployment;

(ii) the amount of Federal Pandemic Unemployment Compensation under section 9023(b)(1)(B) of this title; and

(iii) the amount (if any) of Mixed Earner Unemployment Compensation under section 9023(b)(1)(C) of this title;

(B) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof (including terms and conditions relating to availability for work, active search for work, and refusal to accept work) shall apply to claims for pandemic emergency unemployment compensation and the payment thereof, except where otherwise inconsistent with the provisions of this section or with the regulations or operating instructions of the Secretary promulgated to carry out this section;

(C) the maximum amount of pandemic emergency unemployment compensation payable to any individual for whom an¹ pandemic emergency unemployment compensation account is established under subsection (b) shall not exceed the amount established in such account for such individual; and

(D) the allowable methods of payment under section 9023(b)(2) of this title shall apply to payments of amounts described in subparagraph (A)(ii).

¹ So in original. Probably should be “a”.

(5) Coordination rules**(A) In general**

Subject to subparagraph (B), an agreement under this section shall apply with respect to a State only upon a determination by the Secretary that, under the State law or other applicable rules of such State, the payment of extended compensation for which an individual is otherwise eligible must be deferred until after the payment of any pandemic emergency unemployment compensation under subsection (b) for which the individual is concurrently eligible.

(B) Special rule

In the case of an individual who is receiving extended compensation under the State law for the week that includes December 27, 2020 (without regard to the amendments made by subsections (a) and (b) of section 206 of the Continued Assistance for Unemployed Workers Act of 2020) or for the week that includes March 11, 2021 (without regard to the amendments made by subsections (a) and (b) of section 9016 of the American Rescue Plan Act of 2021), such individual shall not be eligible to receive pandemic emergency unemployment compensation by reason of such amendments until such individual has exhausted all rights to such extended benefits.

(6) Nonreduction rule**(A) In general**

An agreement under this section shall not apply (or shall cease to apply) with respect to a State upon a determination by the Secretary that the method governing the computation of regular compensation under the State law of that State has been modified in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount, of regular compensation which will be payable during the period of the agreement will be less than the number of weeks, or the average weekly benefit amount, of the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the State law, as in effect on January 1, 2020.

(B) Maximum benefit entitlement

In subparagraph (A), the term “maximum benefit entitlement” means the amount of regular unemployment compensation payable to an individual with respect to the individual’s benefit year.

(7) Actively seeking work**(A) In general**

Subject to subparagraph (C),² for purposes of paragraph (2)(D), the term “actively seeking work” means, with respect to any individual, that such individual—

(i) is registered for employment services in such a manner and to such extent as prescribed by the State agency;

(ii) has engaged in an active search for employment that is appropriate in light of

the employment available in the labor market, the individual’s skills and capabilities, and includes a number of employer contacts that is consistent with the standards communicated to the individual by the State;

(iii) has maintained a record of such work search, including employers contacted, method of contact, and date contacted; and

(iv) when requested, has provided such work search record to the State agency.

(B) Flexibility

Notwithstanding the requirements under subparagraph (A) and paragraph (2)(D), a State shall provide flexibility in meeting such requirements in case of individuals unable to search for work because of COVID-19, including because of illness, quarantine, or movement restriction.

(8) Special rule for extended compensation

At the option of a State, for any weeks of unemployment beginning after December 27, 2020, and before September 6, 2021, an individual’s eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

(A) after the date as of which such individual exhausts all rights to pandemic emergency unemployment compensation; and

(B) during an extended benefit period that began on or before the date described in subparagraph (A).

(b) Pandemic emergency unemployment compensation account**(1) In general**

Any agreement under this section shall provide that the State will establish, for each eligible individual who files an application for pandemic emergency unemployment compensation, an¹ pandemic emergency unemployment compensation account with respect to such individual’s benefit year.

(2) Amount in account

The amount established in an account under subsection (a) shall be equal to 53 times the individual’s average weekly benefit amount, which includes the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title, for the benefit year.

(3) Weekly benefit amount

For purposes of this subsection, an individual’s weekly benefit amount for any week is the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for such week for total unemployment plus the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title.

(4) Coordination of pandemic emergency unemployment compensation with regular compensation**(A) In general**

If—

²So in original.

(i) an individual has been determined to be entitled to pandemic emergency unemployment compensation with respect to a benefit year;

(ii) that benefit year has expired;

(iii) that individual has remaining entitlement to pandemic emergency unemployment compensation with respect to that benefit year; and

(iv) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least \$25 less than the individual's weekly benefit amount in the benefit year referred to in clause (i),

then the State shall determine eligibility for compensation as provided in subparagraph (B).

(B) Determination of eligibility

For individuals described in subparagraph (A), the State shall determine whether the individual is to be paid pandemic emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

(i) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all pandemic emergency unemployment compensation payable with respect to the benefit year referred to in subparagraph (A)(i).

(ii) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this subparagraph), until exhaustion of all pandemic emergency unemployment compensation payable with respect to the benefit year referred to in subparagraph (A)(i).

(iii) The State shall pay, if permitted by State law—

(I) regular compensation equal to the weekly benefit amount established under the new benefit year; and

(II) pandemic emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year.

(iv) The State shall determine rights to pandemic emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year.

(c) Payments to States having agreements for the payment of pandemic emergency unemployment compensation

(1) In general

There shall be paid to each State that has entered into an agreement under this section an amount equal to 100 percent of the pandemic emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

(2) Treatment of reimbursable compensation

No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this section or chapter 85 of title 5. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this section in respect of such compensation.

(3) Determination of amount

Sums payable to any State by reason of such State having an agreement under this section shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(d) Financing provisions

(1) Compensation

(A) In general

Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a))) shall be used for the making of payments to States having agreements entered into under this section.

(B) Transfer of funds

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(2) Administration

(A) In general

There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a))³ of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided

³So in original. A third closing parenthesis probably should appear.

in title III of the Social Security Act (42 U.S.C. 501 et seq.) in meeting the costs of administration of agreements under this section.

(B) Transfer of funds

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(3) Certification

The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this subsection. The Secretary of the Treasury, prior to audit or settlement by the Government Accountability Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

(e) Fraud and overpayments

(1) In general

If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of pandemic emergency unemployment compensation under this section to which such individual was not entitled, such individual—

(A) shall be ineligible for further pandemic emergency unemployment compensation under this section in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(B) shall be subject to prosecution under section 1001 of title 18.

(2) Repayment

In the case of individuals who have received amounts of pandemic emergency unemployment compensation under this section to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic emergency unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that—

(A) the payment of such pandemic emergency unemployment compensation was without fault on the part of any such individual; and

(B) such repayment would be contrary to equity and good conscience.

(3) Recovery by State agency

(A) In general

The State agency shall recover the amount to be repaid, or any part thereof, by deductions from any pandemic emergency unemployment compensation payable to such individual under this section or from any unemployment compensation payable to such individual under any State or Federal unemployment compensation law administered by the State agency or under any other State or Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment, during the 3-year period after the date such individuals received the payment of the pandemic emergency unemployment compensation to which they were not entitled, in accordance with the same procedures as apply to the recovery of overpayments of regular unemployment benefits paid by the State.

(B) Opportunity for hearing

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

(4) Review

Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

(f) Definitions

In this section, the terms “compensation”, “regular compensation”, “extended compensation”, “benefit year”, “base period”, “State”, “State agency”, “State law”, and “week” have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

(g) Applicability

An agreement entered into under this section shall apply to weeks of unemployment—

(1) beginning after the date on which such agreement is entered into; and

(2) ending on or before September 6, 2021.

(Pub. L. 116–136, div. A, title II, §2107, Mar. 27, 2020, 134 Stat. 323; Pub. L. 116–260, div. N, title II, §§206(a)–(c), 261(b)(2), Dec. 27, 2020, 134 Stat. 1954, 1962; Pub. L. 117–2, title IX, §9016(a)–(d), Mar. 11, 2021, 135 Stat. 119, 120.)

Editorial Notes

REFERENCES IN TEXT

The amendments made by subsections (a) and (b) of section 206 of the Continued Assistance for Unemployed Workers Act of 2020, referred to in subsec. (a)(5)(B), are the amendments made by subsecs. (a) and (b) of section 206 of chapter 1 of subtitle A of title II of div. N of Pub. L. 116–260, which amended this section.

The amendments made by subsections (a) and (b) of section 9016 of the American Rescue Plan Act of 2021,

referred to in subsec. (a)(5)(B), are the amendments made by subsecs. (a) and (b) of section 9016 of Pub. L. 117-2, which amended this section.

Sections 203(c) and 205 of the Federal-State Extended Unemployment Compensation Act of 1970, referred to in subsecs. (a)(8) and (f), respectively, are sections 203(c) and 205 of Pub. L. 91-373, which are set out in a note under section 3304 of Title 26, Internal Revenue Code.

The Social Security Act, referred to in subsec. (d)(2)(A), is act Aug. 14, 1935, ch. 531, 49 Stat. 620. Title III of the Act is classified generally to subchapter III (§ 501 et seq.) of chapter 7 of Title 42, The Public Health and Welfare. For complete classification of this Act to the Code, see section 1305 of Title 42 and Tables.

AMENDMENTS

2021—Subsec. (a)(5)(B). Pub. L. 117-2, § 9016(c), inserted “or for the week that includes March 11, 2021 (without regard to the amendments made by subsections (a) and (b) of section 9016 of American Rescue Plan Act of 2021)” after “2020”.

Subsec. (a)(8). Pub. L. 117-2, § 9016(d), substituted “September 6, 2021” for “April 12, 2021” in introductory provisions.

Subsec. (b)(2). Pub. L. 117-2, § 9016(b), substituted “53 times” for “24 times”.

Subsec. (g). Pub. L. 117-2, § 9016(a), amended subsec. (g) generally. Prior to amendment, subsec. (g) related to applicability, transition rule, and termination date.

2020—Subsec. (a)(4)(A). Pub. L. 116-260, § 261(b)(2), struck out “and” at end of cl. (i), substituted “section 9023(b)(1)(B) of this title; and” for “section 9023 of this title;” in cl. (ii), and added cl. (iii).

Subsec. (a)(5). Pub. L. 116-260, § 206(c)(2)(A), substituted “rules” for “rule” in heading, designated existing provisions as subpar. (A), inserted subpar. heading, substituted “Subject to subparagraph (B), an agreement” for “An agreement”, and added subpar. (B).

Subsec. (a)(8). Pub. L. 116-260, § 206(c)(2)(B), added par. (8).

Subsec. (b)(2). Pub. L. 116-260, § 206(b), substituted “24 times” for “13 times”.

Subsec. (b)(4). Pub. L. 116-260, § 206(c)(1), added par. (4).

Subsec. (g). Pub. L. 116-260, § 206(a), amended subsec. (g) generally. Prior to amendment, text read as follows: “An agreement entered into under this section shall apply to weeks of unemployment—

“(1) beginning after the date on which such agreement is entered into; and

“(2) ending on or before December 31, 2020.”

Statutory Notes and Related Subsidiaries

EFFECTIVE DATE OF 2021 AMENDMENT

Pub. L. 117-2, title IX, § 9016(e), Mar. 11, 2021, 135 Stat. 120, provided that: “The amendments made by this section [amending this section] shall apply as if included in the enactment of the CARES Act (Public Law 116-136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment ending on or before March 14, 2021.”

EFFECTIVE DATE OF 2020 AMENDMENT

Pub. L. 116-260, div. N, title II, § 206(d), Dec. 27, 2020, 134 Stat. 1956, provided that:

“(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section [amending this section] shall apply as if included in the enactment of the CARES Act (Public Law 116-136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act [Dec. 27, 2020].

“(2) COORDINATION RULES.—The amendments made by subsection (c)(1) shall apply to individuals whose benefit years, as described in section 2107(b)(4)(A)(ii) of the CARES Act [15 U.S.C. 9025(b)(4)(A)(ii)], expire after the date of enactment of this Act.”

§ 9026. Temporary financing of short-time compensation payments in States with programs in law

(a) Payments to States

(1) In general

Subject to paragraph (3), there shall be paid to a State an amount equal to 100 percent of the amount of short-time compensation paid under a short-time compensation program (as defined in section 3306(v) of title 26) under the provisions of the State law.

(2) Terms of payments

Payments made to a State under paragraph (1) shall be payable by way of reimbursement in such amounts as the Secretary estimates the State will be entitled to receive under this section for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary’s estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(3) Limitations on payments

(A) General payment limitations

No payments shall be made to a State under this section for short-time compensation paid to an individual by the State during a benefit year in excess of 26 times the amount of regular compensation (including dependents’ allowances) under the State law payable to such individual for a week of total unemployment.

(B) Employer limitations

No payments shall be made to a State under this section for benefits paid to an individual by the State under a short-time compensation program if such individual is employed by the participating employer on a seasonal, temporary, or intermittent basis.

(b) Applicability

Payments to a State under subsection (a) shall be available for weeks of unemployment—

- (1) beginning on or after March 27, 2020; and
- (2) ending on or before September 6, 2021.

(c) New programs

Subject to subsection (b)(2), if at any point after March 27, 2020, the State enacts a State law providing for the payment of short-time compensation under a short-time compensation program that meets the definition of such a program under section 3306(v) of title 26, the State shall be eligible for payments under this section after the effective date of such enactment.

(d) Funding and certifications

(1) Funding

There are appropriated, out of moneys in the Treasury not otherwise appropriated, such sums as may be necessary for purposes of carrying out this section.

(2) Certifications

The Secretary shall from time to time certify to the Secretary of the Treasury for pay-