



MAY 26 2011

The Honorable Sander Levin
United States House of Representatives
Washington, District of Columbia 20515

Dear Representative Levin:

Thank you for your letter along with Representative Doggett to Secretary of Labor Hilda L. Solis, requesting an assessment of the effects of HR 1745 on the payment of unemployment benefits. Secretary Solis asked that I respond to your letter on her behalf.

In your letter, you state that the majority's summary of this bill says "Each State could continue paying exactly the same benefits as today...and have all the money they need to do so. In fact, absent action by a State legislature, that is exactly what will happen." You first ask whether every state is certain to receive "all the money they need" under the bill to pay for all of the unemployment benefits provided under current law.

Every state would not be certain, under the terms of HR 1745, to receive sufficient funds to pay for Emergency Unemployment Compensation (EUC) and Extended Benefits (EB), as provided under current law. First, if national demand for these programs is higher than projected—for instance if the employment situation does not improve as much as CBO projects—then states overall would not have enough funds to ensure that every unemployed worker who is entitled to these benefits would receive them. Second, the methodology for determining each state's share of the funds provided for in this bill could leave specific states underfunded. The state-level allocation is simply to apply their share of total Federal EUC and EB unemployment benefits paid out over the previous 12 months to the new total amount available. Thus, even if the total amount of funding is sufficient in aggregate, there may well be differences across the states in changes in the demand for EUC and EB that will leave some states underfunded. For instance, over the past year unemployment overall in the U.S. fell 0.8 percentage points, but that included substantial decreases in unemployment in some states, smaller decreases in unemployment in others, and even rising unemployment in three states. These types of differences in states' economic situation mean that some states are quite likely to be underfunded.

Finally, it is our understanding that the total amount of funds that would be available for these benefits under this bill (\$31 billion) is based on a portion of the Congressional Budget Office's estimate of expected outlays under current law (CBO's estimate is \$600 million higher). However, it should be noted that CBO states that their estimates are designed to be in the middle of the distribution of possible outcomes. This means that about half the time the actual amount needed will exceed their estimate.

You also ask whether it is true that "absent action by a State legislature" a state will necessarily provide "the same benefits as today." This statement is not accurate. While

the bill limits the purposes for which the transferred monies may be used, there is nothing in the bill that requires a state to pay benefits. For example, if a state wanted to use the transferred funds to repay advances, an expenditure which must be authorized by state law, there is nothing in the bill that requires the state to pay benefits while it waits for the state legislature to pass a bill authorizing that use of the funds.

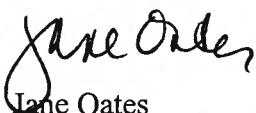
Moreover, Federal law does not require state legislative action to terminate EUC. EUC is a Federal program administered by states under an agreement between the state and the Secretary of Labor. The agreements currently in place, following the provision in Federal law, specify that they may be terminated by either party on thirty days' written notice. Thus, should a state want, "absent action by [the] State legislature," to terminate the agreement to administer the EUC program, it currently has the authority to do so. CBO's cost estimate recognized this possibility and assumed that some states would opt out of EUC. In addition, enactment of this bill would necessitate that the agreements with each state be amended since, for weeks of unemployment ending after July 7, 2011, there would no longer be any reimbursement to the states for EUC benefits paid. Thus, states could not continue to make EUC payments if they do not consent to modifications to the agreement. Therefore the default will be for the EUC program to end without states taking action to modify their agreement.

With respect to the EB program, while Federal law establishes its requirements, EB is paid by states under their own laws. Many states modified their EB laws to make it easier to go on, and remain on, EB longer. However these modifications are generally contingent on 100 percent Federal funding of EB. The savings provision in this bill is intended to enable states to stay on EB after 100 percent Federal funding and the other special EB provision expire. However, we do not believe it is possible to guarantee that every state can or will interpret its own EB laws consistent with the savings provision. While Federal law certainly can require a state to include certain provisions in its law as a condition of the State receiving certain incentives, we are uncertain that Federal law can mandate that states interpret their laws a certain way regardless of these incentives. Accordingly, if a state interprets its law as terminating the EB modifications when the bill terminates 100 percent Federal funding of EB, the state will likely trigger off EB.

For these reasons, it is not accurate that states will necessarily provide the same benefits as today absent state legislative action. Moreover, some states are unlikely to have the funding necessary to provide the same benefits as they would under current law.

If you have additional questions, please contact Mr. Adri Jayaratne, Senior Legislative Officer, Office of Congressional and Intergovernmental Affairs, at (202) 693-4600.

Sincerely,



Jane Oates
Assistant Secretary