

112TH CONGRESS
1ST SESSION

H. R. 2421

To provide for the treatment and temporary financing of short-time
compensation programs.

IN THE HOUSE OF REPRESENTATIVES

JULY 6, 2011

Ms. DELAURO (for herself, Mr. CONYERS, Mr. JACKSON of Illinois, Ms. RICHARDSON, Ms. NORTON, Mr. GUTIERREZ, and Mr. CICILLINE) introduced the following bill; which was referred to the Committee on Ways and Means

A BILL

To provide for the treatment and temporary financing of
short-time compensation programs.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Layoff Prevention Act of 2011”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

- Sec. 1. Short title; table of contents.
- Sec. 2. Treatment of short-time compensation programs.
- Sec. 3. Temporary financing of short-time compensation payments in States
with programs in law.
- Sec. 4. Temporary financing of short-time compensation agreements.

Sec. 5. Grants for short-time compensation programs.

Sec. 6. Assistance and guidance in implementing programs.

Sec. 7. Reports.

1 **SEC. 2. TREATMENT OF SHORT-TIME COMPENSATION PRO-**
2 **GRAMS.**

3 (a) DEFINITION.—

4 (1) IN GENERAL.—Section 3306 of the Internal
5 Revenue Code of 1986 (26 U.S.C. 3306) is amended
6 by adding at the end the following new subsection:

7 “(v) SHORT-TIME COMPENSATION PROGRAM.—For
8 purposes of this chapter, the term ‘short-time compensa-
9 tion program’ means a program under which—

10 “(1) the participation of an employer is vol-
11 untary;

12 “(2) an employer reduces the number of hours
13 worked by employees in lieu of layoffs;

14 “(3) such employees whose workweeks have
15 been reduced by at least 10 percent, and by not
16 more than the percentage, if any, that is determined
17 by the State to be appropriate (but in no case more
18 than 60 percent), are eligible for unemployment
19 compensation;

20 “(4) the amount of unemployment compensa-
21 tion payable to any such employee is a pro rata por-
22 tion of the unemployment compensation which would
23 otherwise be payable to the employee if such em-
24 ployee were totally unemployed;

1 “(5) such employees are not expected to meet
2 the availability for work or work search test require-
3 ments while collecting short-time compensation bene-
4 fits, but are required to be available for their normal
5 workweek;

6 “(6) eligible employees may participate, as ap-
7 propriate, in training (including employer-sponsored
8 training or worker training funded under the Work-
9 force Investment Act of 1998) to enhance job skills
10 if such program has been approved by the State
11 agency;

12 “(7) the State agency shall require employers to
13 certify that the employer will continue to provide
14 health benefits and retirement benefits under a de-
15 fined benefit plan (as defined in section 414(j)) and
16 contributions under a defined contribution plan (as
17 defined in section 414(i)) to any employee whose
18 workweek is reduced under the program under the
19 same terms and conditions as though the workweek
20 of such employee had not been reduced;

21 “(8) the State agency shall require an employer
22 to submit a written plan describing the manner in
23 which the requirements of this subsection will be im-
24 plemented (including a plan for giving advance no-
25 tice, where feasible, to an employee whose workweek

1 is to be reduced) together with an estimate of the
2 number of layoffs that would have occurred absent
3 the ability to participate in short-time compensation
4 and such other information as the Secretary of
5 Labor determines is appropriate;

6 “(9) in the case of employees represented by a
7 union, the appropriate official of the union has
8 agreed to the terms of the employer’s written plan
9 and implementation is consistent with employer obli-
10 gations under the applicable Federal laws; and

11 “(10) upon request by the State and approval
12 by the Secretary of Labor, only such other provi-
13 sions are included in the State law that are deter-
14 mined to be appropriate for purposes of a short-time
15 compensation program.”.

16 (2) EFFECTIVE DATE.—Subject to paragraph
17 (3), the amendment made by paragraph (1) shall
18 take effect on the date of the enactment of this Act.

19 (3) TRANSITION PERIOD FOR EXISTING PRO-
20 GRAMS.—In the case of a State that is administering
21 a short-time compensation program as of the date of
22 the enactment of this Act and the State law cannot
23 be administered consistent with the amendment
24 made by paragraph (1), such amendment shall take
25 effect on the earlier of—

1 (A) the date the State changes its State
2 law in order to be consistent with such amend-
3 ment; or

4 (B) the date that is 2 years and 6 months
5 after the date of the enactment of this Act.

6 (b) CONFORMING AMENDMENTS.—

7 (1) INTERNAL REVENUE CODE OF 1986.—

8 (A) Subparagraph (E) of section
9 3304(a)(4) of the Internal Revenue Code of
10 1986 is amended to read as follows:

11 “(E) amounts may be withdrawn for the
12 payment of short-time compensation under a
13 short-time compensation program (as defined
14 under section 3306(v));”.

15 (B) Subsection (f) of section 3306 of the
16 Internal Revenue Code of 1986 is amended—

17 (i) by striking paragraph (5) (relating
18 to short-time compensation) and inserting
19 the following new paragraph:

20 “(5) amounts may be withdrawn for the pay-
21 ment of short-time compensation under a short-time
22 compensation program (as defined in subsection (v));
23 and”; and

1 (ii) by redesignating paragraph (5)
2 (relating to self-employment assistance
3 program) as paragraph (6).

4 (2) SOCIAL SECURITY ACT.—Section 303(a)(5)
5 of the Social Security Act is amended by striking
6 “the payment of short-time compensation under a
7 plan approved by the Secretary of Labor” and in-
8 serting “the payment of short-time compensation
9 under a short-time compensation program (as de-
10 fined in section 3306(v) of the Internal Revenue
11 Code of 1986)”.

12 (3) UNEMPLOYMENT COMPENSATION AMEND-
13 MENTS OF 1992.—Subsections (b) through (d) of sec-
14 tion 401 of the Unemployment Compensation
15 Amendments of 1992 (26 U.S.C. 3304 note) are re-
16 pealed.

17 **SEC. 3. TEMPORARY FINANCING OF SHORT-TIME COM-**
18 **PENSATION PAYMENTS IN STATES WITH PRO-**
19 **GRAMS IN LAW.**

20 (a) PAYMENTS TO STATES.—

21 (1) IN GENERAL.—Subject to paragraph (3),
22 there shall be paid to a State an amount equal to
23 100 percent of the amount of short-time compensa-
24 tion paid under a short-time compensation program
25 (as defined in section 3306(v) of the Internal Rev-

1 enue Code of 1986, as added by section 2(a)) under
2 the provisions of the State law.

3 (2) TERMS OF PAYMENTS.—Payments made to
4 a State under paragraph (1) shall be payable by way
5 of reimbursement in such amounts as the Secretary
6 estimates the State will be entitled to receive under
7 this section for each calendar month, reduced or in-
8 creased, as the case may be, by any amount by
9 which the Secretary finds that the Secretary's esti-
10 mates for any prior calendar month were greater or
11 less than the amounts which should have been paid
12 to the State. Such estimates may be made on the
13 basis of such statistical, sampling, or other method
14 as may be agreed upon by the Secretary and the
15 State agency of the State involved.

16 (3) LIMITATIONS ON PAYMENTS.—

17 (A) GENERAL PAYMENT LIMITATIONS.—

18 No payments shall be made to a State under
19 this section for short-time compensation paid to
20 an individual by the State during a benefit year
21 in excess of 26 times the amount of regular
22 compensation (including dependents' allow-
23 ances) under the State law payable to such in-
24 dividual for a week of total unemployment.

1 (B) EMPLOYER LIMITATIONS.—No pay-
2 ments shall be made to a State under this sec-
3 tion for benefits paid to an individual by the
4 State under a short-time compensation program
5 if such individual is employed by an employer
6 on a seasonal, temporary, or intermittent basis.

7 (b) APPLICABILITY.—

8 (1) IN GENERAL.—Payments to a State under
9 subsection (a) shall be available for weeks of unem-
10 ployment—

11 (A) beginning on or after the date of the
12 enactment of this Act; and

13 (B) ending on or before the date that is 3
14 years and 6 months after the date of the enact-
15 ment of this Act.

16 (2) THREE-YEAR FUNDING LIMITATION FOR
17 COMBINED PAYMENTS UNDER THIS SECTION AND
18 SECTION 4.—States may receive payments under
19 this section and section 4 with respect to a total of
20 not more than 156 weeks.

21 (c) TWO-YEAR TRANSITION PERIOD FOR EXISTING
22 PROGRAMS.—During any period that the transition provi-
23 sion under section 2(a)(3) is applicable to a State with
24 respect to a short-time compensation program, such State
25 shall be eligible for payments under this section. Subject

1 to paragraphs (1)(B) and (2) of subsection (b), if at any
2 point after the date of the enactment of this Act the State
3 enacts a State law providing for the payment of short-
4 time compensation under a short-time compensation pro-
5 gram that meets the definition of such a program under
6 section 3306(v) of the Internal Revenue Code of 1986, as
7 added by section 2(a), the State shall be eligible for pay-
8 ments under this section after the effective date of such
9 enactment.

10 (d) FUNDING AND CERTIFICATIONS.—

11 (1) FUNDING.—There are appropriated, out of
12 moneys in the Treasury not otherwise appropriated,
13 such sums as may be necessary for purposes of car-
14 rying out this section.

15 (2) CERTIFICATIONS.—The Secretary shall
16 from time to time certify to the Secretary of the
17 Treasury for payment to each State the sums pay-
18 able to such State under this section.

19 (e) DEFINITIONS.—In this section:

20 (1) SECRETARY.—The term “Secretary” means
21 the Secretary of Labor.

22 (2) STATE; STATE AGENCY; STATE LAW.—The
23 terms “State”, “State agency”, and “State law”
24 have the meanings given those terms in section 205

1 of the Federal-State Extended Unemployment Com-
2 pensation Act of 1970 (26 U.S.C. 3304 note).

3 **SEC. 4. TEMPORARY FINANCING OF SHORT-TIME COM-**
4 **PENSATION AGREEMENTS.**

5 (a) FEDERAL-STATE AGREEMENTS.—

6 (1) IN GENERAL.—Any State which desires to
7 do so may enter into, and participate in, an agree-
8 ment under this section with the Secretary provided
9 that such State's law does not provide for the pay-
10 ment of short-time compensation under a short-time
11 compensation program (as defined in section
12 3306(v) of the Internal Revenue Code of 1986, as
13 added by section 2(a)).

14 (2) ABILITY TO TERMINATE.—Any State which
15 is a party to an agreement under this section may,
16 upon providing 30 days' written notice to the Sec-
17 retary, terminate such agreement.

18 (b) PROVISIONS OF FEDERAL-STATE AGREEMENT.—

19 (1) IN GENERAL.—Any agreement under this
20 section shall provide that the State agency of the
21 State will make payments of short-time compensa-
22 tion under a plan approved by the State. Such plan
23 shall provide that payments are made in accordance
24 with the requirements under section 3306(v) of the

1 Internal Revenue Code of 1986, as added by section
2 2(a).

3 (2) LIMITATIONS ON PLANS.—

4 (A) GENERAL PAYMENT LIMITATIONS.—A
5 short-time compensation plan approved by a
6 State shall not permit the payment of short-
7 time compensation to an individual by the State
8 during a benefit year in excess of 26 times the
9 amount of regular compensation (including de-
10 pendents' allowances) under the State law pay-
11 able to such individual for a week of total un-
12 employment.

13 (B) EMPLOYER LIMITATIONS.—A short-
14 time compensation plan approved by a State
15 shall not provide payments to an individual if
16 such individual is employed by an employer on
17 a seasonal, temporary, or intermittent basis.

18 (3) EMPLOYER PAYMENT OF COSTS.—Any
19 short-time compensation plan entered into by an em-
20 ployer must provide that the employer will pay the
21 State an amount equal to one-half of the amount of
22 short-time compensation paid under such plan. Such
23 amount shall be deposited in the State's unemploy-
24 ment fund and shall not be used for purposes of cal-
25 culating an employer's contribution rate under sec-

1 tion 3303(a)(1) of the Internal Revenue Code of
2 1986.

3 (c) PAYMENTS TO STATES.—

4 (1) IN GENERAL.—There shall be paid to each
5 State with an agreement under this section an
6 amount equal to—

7 (A) one-half of the amount of short-time
8 compensation paid to individuals by the State
9 pursuant to such agreement; and

10 (B) any additional administrative expenses
11 incurred by the State by reason of such agree-
12 ment (as determined by the Secretary).

13 (2) TERMS OF PAYMENTS.—Payments made to
14 a State under paragraph (1) shall be payable by way
15 of reimbursement in such amounts as the Secretary
16 estimates the State will be entitled to receive under
17 this section for each calendar month, reduced or in-
18 creased, as the case may be, by any amount by
19 which the Secretary finds that the Secretary's esti-
20 mates for any prior calendar month were greater or
21 less than the amounts which should have been paid
22 to the State. Such estimates may be made on the
23 basis of such statistical, sampling, or other method
24 as may be agreed upon by the Secretary and the
25 State agency of the State involved.

1 (3) FUNDING.—There are appropriated, out of
2 moneys in the Treasury not otherwise appropriated,
3 such sums as may be necessary for purposes of car-
4 rying out this section.

5 (4) CERTIFICATIONS.—The Secretary shall
6 from time to time certify to the Secretary of the
7 Treasury for payment to each State the sums pay-
8 able to such State under this section.

9 (d) APPLICABILITY.—

10 (1) IN GENERAL.—An agreement entered into
11 under this section shall apply to weeks of unemploy-
12 ment—

13 (A) beginning on or after the date on
14 which such agreement is entered into; and

15 (B) ending on or before the date that is 2
16 years and 13 weeks after the date of the enact-
17 ment of this Act.

18 (2) TWO-YEAR FUNDING LIMITATION.—States
19 may receive payments under this section with re-
20 spect to a total of not more than 104 weeks.

21 (e) SPECIAL RULE.—If a State has entered into an
22 agreement under this section and subsequently enacts a
23 State law providing for the payment of short-time com-
24 pensation under a short-time compensation program that
25 meets the definition of such a program under section

1 3306(v) of the Internal Revenue Code of 1986, as added
2 by section 2(a), the State—

3 (1) shall not be eligible for payments under this
4 section for weeks of unemployment beginning after
5 the effective date of such State law; and

6 (2) subject to paragraphs (1)(B) and (2) of sec-
7 tion 3(b), shall be eligible to receive payments under
8 section 3 after the effective date of such State law.

9 (f) DEFINITIONS.—In this section:

10 (1) SECRETARY.—The term “Secretary” means
11 the Secretary of Labor.

12 (2) STATE; STATE AGENCY; STATE LAW.—The
13 terms “State”, “State agency”, and “State law”
14 have the meanings given those terms in section 205
15 of the Federal-State Extended Unemployment Com-
16 pensation Act of 1970 (26 U.S.C. 3304 note).

17 **SEC. 5. GRANTS FOR SHORT-TIME COMPENSATION PRO-**
18 **GRAMS.**

19 (a) GRANTS.—

20 (1) FOR IMPLEMENTATION OR IMPROVED AD-
21 MINISTRATION.—The Secretary shall award grants
22 to States that enact short-time compensation pro-
23 grams (as defined in subsection (i)(2)) for the pur-
24 pose of implementation or improved administration
25 of such programs.

1 (2) FOR PROMOTION AND ENROLLMENT.—The
2 Secretary shall award grants to States that are eligi-
3 ble and submit plans for a grant under paragraph
4 (1) for such States to promote and enroll employers
5 in short-time compensation programs (as so de-
6 fined).

7 (3) ELIGIBILITY.—

8 (A) IN GENERAL.—The Secretary shall de-
9 termine eligibility criteria for the grants under
10 paragraph (1) and (2).

11 (B) CLARIFICATION.—A State admin-
12 istering a short-time compensation program, in-
13 cluding a program being administered by a
14 State that is participating in the transition
15 under the provisions of sections 2(a)(3) and
16 3(c), that does not meet the definition of a
17 short-time compensation program under section
18 3306(v) of the Internal Revenue Code of 1986
19 (as added by 2(a)), and a State with an agree-
20 ment under section 4, shall not be eligible to re-
21 ceive a grant under this section until such time
22 as the State law of the State provides for pay-
23 ments under a short-time compensation pro-
24 gram that meets such definition and such law.

25 (b) AMOUNT OF GRANTS.—

1 (1) IN GENERAL.—The maximum amount avail-
2 able for making grants to a State under paragraphs
3 (1) and (2) shall be equal to the amount obtained
4 by multiplying \$700,000,000 (less the amount used
5 by the Secretary under subsection (e)) by the same
6 ratio as would apply under subsection (a)(2)(B) of
7 section 903 of the Social Security Act (42 U.S.C.
8 1103) for purposes of determining such State’s
9 share of any excess amount (as described in sub-
10 section (a)(1) of such section) that would have been
11 subject to transfer to State accounts, as of October
12 1, 2010, under the provisions of subsection (a) of
13 such section.

14 (2) AMOUNT AVAILABLE FOR DIFFERENT
15 GRANTS.—Of the maximum incentive payment deter-
16 mined under paragraph (1) with respect to a
17 State—

18 (A) one-third shall be available for a grant
19 under subsection (a)(1); and

20 (B) two-thirds shall be available for a
21 grant under subsection (a)(2).

22 (c) GRANT APPLICATION AND DISBURSAL.—

23 (1) APPLICATION.—Any State seeking a grant
24 under paragraph (1) or (2) of subsection (a) shall
25 submit an application to the Secretary at such time,

1 in such manner, and complete with such information
2 as the Secretary may require. In no case may the
3 Secretary award a grant under this section with re-
4 spect to an application that is submitted after De-
5 cember 31, 2014.

6 (2) NOTICE.—The Secretary shall, within 30
7 days after receiving a complete application, notify
8 the State agency of the State of the Secretary’s find-
9 ings with respect to the requirements for a grant
10 under paragraph (1) or (2) (or both) of subsection
11 (a).

12 (3) CERTIFICATION.—If the Secretary finds
13 that the State law provisions meet the requirements
14 for a grant under subsection (a), the Secretary shall
15 thereupon make a certification to that effect to the
16 Secretary of the Treasury, together with a certifi-
17 cation as to the amount of the grant payment to be
18 transferred to the State account in the Unemploy-
19 ment Trust Fund (as established in section 904(a)
20 of the Social Security Act (42 U.S.C. 1104(a))) pur-
21 suant to that finding. The Secretary of the Treasury
22 shall make the appropriate transfer to the State ac-
23 count within 7 days after receiving such certifi-
24 cation.

1 (4) REQUIREMENT.—No certification of compli-
2 ance with the requirements for a grant under para-
3 graph (1) or (2) of subsection (a) may be made with
4 respect to any State whose—

5 (A) State law is not otherwise eligible for
6 certification under section 303 of the Social Se-
7 curity Act (42 U.S.C. 503) or approvable under
8 section 3304 of the Internal Revenue Code of
9 1986; or

10 (B) short-time compensation program is
11 subject to discontinuation or is not scheduled to
12 take effect within 12 months of the certifi-
13 cation.

14 (d) USE OF FUNDS.—The amount of any grant
15 awarded under this section shall be used for the implemen-
16 tation of short-time compensation programs and the over-
17 all administration of such programs and the promotion
18 and enrollment efforts associated with such programs,
19 such as through—

20 (1) the creation or support of rapid response
21 teams to advise employers about alternatives to lay-
22 offs;

23 (2) the provision of education or assistance to
24 employers to enable them to assess the feasibility of

1 participating in short-time compensation programs;
2 and

3 (3) the development or enhancement of systems
4 to automate—

5 (A) the submission and approval of plans;
6 and

7 (B) the filing and approval of new and on-
8 going short-time compensation claims.

9 (e) ADMINISTRATION.—The Secretary is authorized
10 to use 0.25 percent of the funds available under subsection
11 (g) to provide for outreach and to share best practices with
12 respect to this section and short-time compensation pro-
13 grams.

14 (f) RECOUPMENT.—The Secretary shall establish a
15 process under which the Secretary shall recoup the
16 amount of any grant awarded under paragraph (1) or (2)
17 of subsection (a) if the Secretary determines that, during
18 the 5-year period beginning on the first date that any such
19 grant is awarded to the State, the State—

20 (1) terminated the State's short-time compensa-
21 tion program; or

22 (2) failed to meet appropriate requirements
23 with respect to such program (as established by the
24 Secretary).

1 (g) FUNDING.—There are appropriated, out of mon-
2 eys in the Treasury not otherwise appropriated, to the
3 Secretary, \$700,000,000 to carry out this section, to re-
4 main available without fiscal year limitation.

5 (h) REPORTING.—The Secretary may establish re-
6 porting requirements for States receiving a grant under
7 this section in order to provide oversight of grant funds.

8 (i) DEFINITIONS.—In this section:

9 (1) SECRETARY.—The term “Secretary” means
10 the Secretary of Labor.

11 (2) SHORT-TIME COMPENSATION PROGRAM.—
12 The term “short-time compensation program” has
13 the meaning given such term in section 3306(v) of
14 the Internal Revenue Code of 1986, as added by sec-
15 tion 2(a).

16 (3) STATE; STATE AGENCY; STATE LAW.—The
17 terms “State”, “State agency”, and “State law”
18 have the meanings given those terms in section 205
19 of the Federal-State Extended Unemployment Com-
20 pensation Act of 1970 (26 U.S.C. 3304 note).

21 **SEC. 6. ASSISTANCE AND GUIDANCE IN IMPLEMENTING**
22 **PROGRAMS.**

23 (a) IN GENERAL.—In order to assist States in estab-
24 lishing, qualifying, and implementing short-time com-
25 pensation programs (as defined in section 3306(v) of the

1 Internal Revenue Code of 1986, as added by section 2(a)),
2 the Secretary of Labor (in this section referred to as the
3 “Secretary”) shall—

4 (1) develop model legislative language which
5 may be used by States in developing and enacting
6 such programs and periodically review and revise
7 such model legislative language;

8 (2) provide technical assistance and guidance in
9 developing, enacting, and implementing such pro-
10 grams;

11 (3) establish reporting requirements for States,
12 including reporting on—

13 (A) the number of estimated averted lay-
14 offs;

15 (B) the number of participating employers
16 and workers; and

17 (C) such other items as the Secretary of
18 Labor determines are appropriate.

19 (b) MODEL LANGUAGE AND GUIDANCE.—The model
20 language and guidance developed under subsection (a)
21 shall allow sufficient flexibility by States and participating
22 employers while ensuring accountability and program in-
23 tegrity.

24 (c) CONSULTATION.—In developing the model legisla-
25 tive language and guidance under subsection (a), and in

1 order to meet the requirements of subsection (b), the Sec-
2 retary shall consult with employers, labor organizations,
3 State workforce agencies, and other program experts.”

4 **SEC. 7. REPORTS.**

5 (a) INITIAL REPORT.—

6 (1) IN GENERAL.—Not later than 4 years after
7 the date of the enactment of this Act, the Secretary
8 of Labor shall submit to Congress and to the Presi-
9 dent a report or reports on the implementation of
10 the provisions of this Act.

11 (2) REQUIREMENTS.—Any report under para-
12 graph (1) shall include the following:

13 (A) A description of best practices by
14 States and employers in the administration,
15 promotion, and use of short-time compensation
16 programs (as defined in section 3306(v) of the
17 Internal Revenue Code of 1986, as added by
18 section 2(a)).

19 (B) An analysis of the significant chal-
20 lenges to State enactment and implementation
21 of short-time compensation programs.

22 (C) A survey of employers in States that
23 have not enacted a short-time compensation
24 program or entered into an agreement with the
25 Secretary on a short-time compensation plan to

1 determine the level of interest among such em-
2 ployers in participating in short-time compensa-
3 tion programs.

4 (D) Other matters related to the imple-
5 mentation of the provisions of this Act as the
6 Secretary of Labor determines appropriate.

7 (b) SUBSEQUENT REPORTS.—After the submission of
8 the report under subsection (a), the Secretary of Labor
9 may submit such additional reports on the implementation
10 of short-time compensation programs as the Secretary
11 deems appropriate.

12 (c) FUNDING.—There are appropriated, out of any
13 moneys in the Treasury not otherwise appropriated, to the
14 Secretary of Labor, \$1,500,000 to carry out this section,
15 to remain available without fiscal year limitation.

○