



American Jobs Act: Provisions for Hiring Targeted Groups, Preventing Layoffs, and for Unemployed and Low-Income Workers

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Summary

In response to continuing high rates of unemployment and a weak economy, President Obama announced his American Jobs Act on September 8, 2011. The proposal was introduced, by request, in the Senate on September 13, 2011 (S. 1549) and in the House on September 21, 2011 (H.R. 12). As stated by the President, the proposal aims to “put more people back to work and more money in the pockets of those who are working.” The Administration estimates the legislation would result in spending of \$447 billion, to be offset by revenue provisions included in the bill or savings achieved by the Joint Select Committee on Deficit Reduction.

This report describes provisions in the American Jobs Act that fall into three major categories:

- provisions to promote hiring and prevent layoffs among teachers, law enforcement officers, firefighters, veterans, and the long-term unemployed;
- provisions to assist unemployed workers through unemployment compensation and reemployment services; and
- provisions to expand workforce development opportunities for low-income adults and youth.

The report does not discuss tax provisions (except for specialized tax credits intended as hiring incentives) or proposals related to infrastructure (except for School Modernization grants).

The American Jobs Act would promote hiring and aim to prevent layoffs of teachers, law enforcement officers, and firefighters, through formula or competitive grants to government entities totaling \$35 billion. (The act also would provide \$30 billion for school modernization.) The act would promote hiring of veterans and long-term unemployed individuals through tax credits to employers, costing an estimated \$8 billion. It also would prohibit employment discrimination on the basis of an individual’s unemployed status.

The act focuses on the income and reemployment needs of unemployed workers, particularly the long-term unemployed. In addition to provisions that would extend certain temporary compensation programs, the act would authorize a new Reemployment NOW program, to help states address the reemployment needs of eligible individuals, and would expand federal funding for state-administered short-time compensation (or “work sharing”) programs. In total, these provisions would cost an estimated \$49 billion.

The workforce development needs of low-income adults and youth also are a focus of the act, which would provide a total of \$5 billion for three grant programs collectively called the Pathways Back to Work Act. Formula grants to states would support subsidized employment for low-income adults and summer and year-round employment opportunities for low-income youth. Competitive grants would support strategies and activities of “demonstrated effectiveness” to provide unemployed, low-income youth or adults with skills that would lead to employment.

Although they are not discussed in this report, tax reductions for employers (\$70 billion) and employees (\$175 billion)—largely through payroll tax cuts—form the largest single category of spending under the American Jobs Act. Another \$75 billion would go to infrastructure projects, including transportation (\$50 billion), an infrastructure bank (\$10 billion), and grants to rehabilitate foreclosed or vacant properties (\$15 billion), in addition to \$30 billion for school modernization.

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Introduction

In response to continuing high rates of unemployment and a weak economy, President Obama announced his American Jobs Act on September 8, 2011, before a joint session of Congress, and submitted formal legislation the following week.¹ The proposal was introduced, by request, in the Senate on September 13, 2011 (S. 1549), and in the House on September 21, 2011 (H.R. 12). The President stated the purpose of the legislation is to “put more people back to work and more money in the pockets of those who are working.”² The Administration estimates the legislation would result in spending of \$447 billion, to be offset by revenue provisions included in the bill or savings achieved by the Joint Select Committee on Deficit Reduction.³

This report describes provisions in the American Jobs Act that fall into three major categories:

- provisions intended to promote hiring and prevent layoffs among selected categories of workers, including teachers, law enforcement officers, firefighters, veterans, and the long-term unemployed;
- provisions to assist unemployed workers through unemployment compensation and reemployment services; and
- provisions to expand workforce development opportunities for low-income adults and youth.

The report does not discuss tax provisions (except for specialized tax credits intended as hiring incentives) or proposals related primarily to infrastructure (except for School Modernization grants).

To assist readers interested in provisions of the American Jobs Act that are not discussed in this report, the following section provides an outline of the act with footnotes referencing relevant reports. In addition, a Key Policy Staff table at the end of this report identifies CRS analysts and their areas of expertise, for major policy areas covered by the act. For a targeted list of CRS reports related to the broad issues of economic recovery and job creation, readers are referred to Issues in Focus: Economic Recovery and Jobs on the CRS website: <http://www.crs.gov/pages/subissue.aspx?cliid=489&parentid=4&preview=False>.

¹ White House documents related to the American Jobs Act, including state-by-state fact sheets, can be found at <http://www.whitehouse.gov/jobsact>.

² For a discussion of unemployment issues and policy options facing Congress, see CRS Report R41578, *Unemployment: Issues in the 112th Congress*, by Jane G. Gravelle, Thomas L. Hungerford, and Linda Levine.

³ The Joint Select Committee on Deficit Reduction was created by the Budget Control Act of 2011 (BCA, P.L. 112-25), and charged with a goal of reducing the deficit by \$1.5 trillion over the FY2012-FY2021 period. If Congress does not pass a bill developed by the Joint Committee that achieves at least \$1.2 trillion in deficit reduction by January 15, 2012, an automatic spending reduction process will be triggered. For background, see CRS Report R41965, *The Budget Control Act of 2011*, by Bill Heniff Jr., Elizabeth Rybicki, and Shannon M. Mahan.

Overview of the American Jobs Act

The American Jobs Act has four titles, as shown below.⁴ (Note that the body of this report is not organized in the sequence of the act, but rather by the three major topic areas identified above.)

Title I—*Relief for Workers and Businesses*—would extend and expand the existing temporary payroll tax reduction for 2012 and establish a tax credit for employers for increased payroll attributed to certain workers.⁵ The title includes other tax relief for businesses, including provisions related to bonus depreciation⁶ and tax withholding requirements for government contractors.⁷ (Title I provisions are not discussed in this report.)

Title II—*Putting Workers Back on the Job While Building and Modernizing America*—includes subtitles that would create hiring incentives for veterans (through the Work Opportunity Tax Credit); authorize grants to prevent layoffs and create jobs for teachers, law enforcement officers, and firefighters; and provide funding for the modernization, repair, and renovation of schools and colleges. (These provisions are all discussed in the body of this report.)

Title II also includes subtitles related to infrastructure development,⁸ including transportation infrastructure grants; establishment of an American Infrastructure Financing Authority; Project Rebuild to be administered by the Department of Housing and Urban Development for the purpose of rehabilitating and refurbishing foreclosed and vacant properties; and a National Wireless Initiative to expand access to high-speed wireless. (These provisions are not discussed in this report.)

Title III—*Assistance for the Unemployed and Pathways Back to Work*—includes an extension of certain temporary Unemployment Compensation (UC) provisions. The title also would create a Reemployment NOW program for beneficiaries of Emergency Unemployment Compensation (EUC08); and would clarify existing law and make grants for short-time compensation programs. The title would create incentives for employers to hire long-term unemployed workers through the Work Opportunity Tax Credit; and would create a Pathways Back to Work program to assist unemployed, low-income adults and youth. Finally, the title includes a provision intended to prohibit employment discrimination on the basis of an individual's unemployed status. (All Title III provisions are discussed in this report.)

⁴ In addition to the four titles that comprise the substantive body of the legislation, introductory sections include Buy American (Section 4) and wage rate (Section 5) requirements as well as the short title, table of contents, etc.

⁵ See CRS Report R41648, *Social Security: Temporary Payroll Tax Reduction in 2011*, by Dawn Nuschler and CRS Report R41034, *Business Investment and Employment Tax Incentives to Stimulate the Economy*, by Thomas L. Hungerford and Jane G. Gravelle. For a discussion of the effects of tax policy as stimulus, see CRS Report R41578, *Unemployment: Issues in the 112th Congress*, by Jane G. Gravelle, Thomas L. Hungerford, and Linda Levine.

⁶ See CRS Report R41034, *Business Investment and Employment Tax Incentives to Stimulate the Economy*, by Thomas L. Hungerford and Jane G. Gravelle and CRS Report RL31134, *Using Business Tax Cuts to Stimulate the Economy*, by Jane G. Gravelle.

⁷ See CRS Report R41924, *Tax Gap: Should the 3% Withholding Requirement on Payments to Contractors by Government Be Repealed?*, by James M. Bickley.

⁸ For a general discussion of the job-creation potential of public works infrastructure investments, see CRS Report R42018, *The Role of Public Works Infrastructure in Economic Recovery*, by Claudia Copeland, Linda Levine, and William J. Mallett.

Title IV—*Offsets*—includes tax provisions intended to offset costs of the American Jobs Act.⁹ The title also would increase the deficit reduction goal and automatic spending reduction trigger established in the Budget Control Act of 2011 (P.L. 111-125). (These provisions are not discussed in this report.)

Promoting Hiring and Preventing Layoffs

The American Jobs Act contains several provisions to promote hiring and prevent layoffs of selected categories of workers, specifically teachers, law enforcement officers, and firefighters, through formula or competitive grant programs to government entities. The act also would promote hiring of veterans and long-term unemployed individuals through tax credits to employers. Finally, the act would prohibit employment discrimination on the basis of an individual's unemployed status. These components of the act are discussed in the following sections.

Teacher Stabilization (Title II, Subtitle B)¹⁰

The act would provide \$30 billion for a Teacher Stabilization program, which would provide formula grants to states to “prevent teacher layoffs and support the creation of additional jobs in public early childhood, elementary, and secondary education” for the current school year (2011-2012 school year) and the following school year (2012-2013 school year). The Teacher Stabilization program bears similarities to the Education Jobs Fund, which was authorized by P.L. 111-226 and received \$10 billion for similar purposes. Those funds remain available through September 30, 2012. The current status of the Education Jobs Fund is discussed at the end of this section, and various provisions of the program are discussed where they are relevant to the discussion of the Teacher Stabilization program.

Distribution of Funds to States

Of funds appropriated for the proposed Teacher Stabilization program, 0.5% would first be reserved for the outlying areas, 0.5% would be reserved for the Secretary of Interior to carry out activities in schools operated or funded by the Bureau of Indian Education (BIE), and up to \$2 million would be reserved for administration and oversight of the program by the U.S. Department of Education (ED). The Secretary of ED would then be required to provide the remaining funds to state governors using a population-based formula. In determining these grants, 60% of a state's grant would be based on its population of children ages 5 through 17 relative to the overall U.S. population for this age group, and 40% would be based on the state's overall population relative to the overall U.S. population.¹¹ Funds appropriated for the Teacher Stabilization program would remain available to the Secretary until September 30, 2012. **Table**

⁹ See CRS Report RL32781, *Federal Deductibility of State and Local Taxes*, by Steven Maguire.

¹⁰ The American Jobs Act would also create a School Modernization grant program, to be administered by the Department of Education, which is discussed later in this report. See “School Modernization” section.

¹¹ Education Jobs Fund grants to states were made using a somewhat different population-based formula: 61% of each state's grant was based on the state's relative share of the population of individuals ages 5 to 24, and 39% of each state's grant was based on the state's relative share of the total population

A-1 shows estimated state grants under the Teacher Stabilization program as calculated by the White House.

Application Process

Funds would be awarded to state governors who had submitted an approvable application to the Secretary within 30 days of the law's enactment, in such a manner and containing such information as the Secretary may reasonably require. If a state governor failed to meet this requirement, the Secretary would be required to provide the state's share of funds to another entity or entities in the state under terms and conditions established by the Secretary. The specific entity or entities to whom these funds could be awarded is not defined in the legislation. The same terms and conditions that would apply to other grant recipients under the Teacher Stabilization program would also apply to any entity or entities that received funding in the aforementioned situation. The Secretary would be prohibited from allocating funds to another entity unless the governor provided an assurance that the state would meet the maintenance of effort (MOE) requirements for FY2012 and FY2013 (see discussion below). However, the Secretary would be permitted to allocate up to 50% of the funds available to a state to another entity in the state if the state educational agency (SEA) demonstrated that the state would meet the MOE requirements for FY2012, or if the Secretary determined the state would meet those requirements or comparable requirements established by the Secretary. If a state does not receive funds under the Teacher Stabilization program or only receives partial funding, the Secretary would be required to reallocate the remaining funds to the remaining states based on the aforementioned population-based formula.

Distribution of Funds to the Local Level and Uses of Funds

Of the funds received by a state, not more than 10% could be reserved to make grants to state-funded early learning programs and not more than 2% could be reserved for administrative costs associated with the Teacher Stabilization program.¹² The American Jobs Act defines a state-funded early learning program as one that "provides educational services to children from birth to kindergarten entry" and that receives funding from the state. It is unclear whether a state-funded program that fails to serve the entire age range specified in the definition could use funds under the American Jobs Act. If states use funds to support state-funded early learning programs, the funds could only be used for "compensation, benefits, and other expenses, such as support services, necessary to retain early childhood educators, recall or rehire former early childhood educators, or hire new early childhood educators to provide early learning services." States would be required to obligate all funds used for these purposes by September 30, 2013.

Within 100 days of the receipt of funds, states would be required to provide the remaining funds to local educational agencies (LEAs) to support early childhood, elementary, and secondary education. Funds would be awarded to LEAs based on two measures: (1) 60% of the funds would be awarded on the basis of LEAs' relative shares of enrollment; and (2) 40% of the funds would be awarded based on an LEA's relative share of funds received by LEAs in the state under Title I-A of the Elementary and Secondary Education Act.¹³

¹² Under the Education Jobs Fund, states were not permitted to reserve funds for early childhood education.

¹³ For more information about the Title I-A program, see CRS Report RL33960, *The Elementary and Secondary Education Act, as Amended by the No Child Left Behind Act: A Primer*, by Rebecca R. Skinner.

LEAs receiving funds under the Teacher Stabilization program would only be permitted to use the funds for “compensation and benefits and other expenses, such as support services, necessary to retain existing employees, recall or rehire former employees, or hire new employees to provide early childhood, elementary, or secondary educational and related services.” LEAs would be prohibited from using funds for “general administrative expenses” or for “other support services or expenditures” as these terms are defined by the National Center for Education Statistics (NCES) for the Common Core of Data (CCD).¹⁴

Education Jobs Fund and Use of Funds

No additional information is provided in the American Jobs Act regarding exactly what constitutes compensation and benefits and other expenses, such as support services. However, the Education Jobs Fund had similar use of funds requirements, and ED issued guidance that addressed this issue.¹⁵ While ED may or may not issue similar guidance for the Teacher Stabilization program, given the similarities between the uses of funds between the two programs, it may be informative to examine the guidance issued by ED regarding the use of funds for the Education Jobs Fund.

According to guidance provided by ED, “compensation and benefits and other expenses, such as support services” includes, among other items, “salaries, performance bonuses, health insurance, retirement benefits, incentives for early retirement, pension fund contributions, tuition reimbursement, student loan repayment assistance, transportation subsidies, and reimbursement for childcare expenses.”¹⁶ Funds could be used to restore reductions in salaries and to provide salary increases, as well as to cover salary and benefits costs associated with eliminating furlough days.

With respect to which staff members may be supported with the funds, the guidance notes that the funds could be used for “teachers and other employees who provide school-level educational and related services.”¹⁷ The guidance goes on to include the following staff members as employees who may be supported with program funds: “principals, assistant principals, academic coaches, in-service teacher trainers, classroom aides, counselors, librarians, secretaries, social workers, psychologists, interpreters, physical therapists, speech therapists, occupational therapists, information technology personnel, nurses, athletic coaches, security officers, custodians, maintenance workers, bus drivers, and cafeteria workers.” The Education Jobs Fund money could not be used to pay for contractual school-level services (e.g., maintenance workers employed by an outside firm). For individuals that have both LEA-level and school-level responsibilities, only the portion of their salary and benefits that is attributable to their work on allowable school-level activities could be paid with funds from the Education Jobs Fund.

Statutory language specifically prohibits LEAs from using the Education Jobs Fund grants for “general administrative expenses” or “other support service expenditures” as these terms are defined for the CCD. In its guidance, ED indicated that prohibited administrative expenditures include those related to the operation of the superintendent’s office or the LEA’s board of

¹⁴ For more information about the CCD, see <http://nces.ed.gov/ccd>.

¹⁵ U.S. Department of Education, *Initial Guidance for States on the Education Jobs Fund Program*, August 13, 2010, <http://www2.ed.gov/programs/educationjobsfund/applicant.html>.

¹⁶ *Ibid.*

¹⁷ *Ibid.*

education, including the salaries and benefits of administrative employees at the LEA level.¹⁸ ED has also interpreted the prohibition on the use of funds for other support service expenditures to prohibit the use of funds for “fiscal services, LEA program planners and researchers, and human resource services.”

Rainy-Day Funds and Debt Reduction¹⁹

Similar to the Education Jobs Fund, the Teacher Stabilization program would include various prohibitions related to state rainy-day funds and debt reduction. Under the Teacher Stabilization program, states would be prohibited from using their funds to directly or indirectly establish, restore, or supplement a rainy-day fund. Further, states would be prohibited from using funds to reduce or retire state debt obligations. They would also be prohibited from supplanting state funds in a manner that would effectively establish, restore, or supplement a rainy-day fund or reduce or retire state debt obligations incurred by the state. The term “rainy-day fund” is not defined in the American Jobs Act. While there may be a general understanding of what this term means, the bill’s lack of a definition makes it difficult to predict how the prohibition would be applied across states.

Fiscal Accountability Requirements

A long-standing principle of federal aid to elementary and secondary education is that federal funding adds to, and does not substitute for, state and local education funding. That is, federal funds are awarded to provide a net increase in financial resources for specific types of educational services (such as the education of disadvantaged students or students with disabilities), rather than effectively providing general subsidies to state and local governments. All of the fiscal accountability requirements included in federal elementary and secondary education programs are intended to ensure that all federal funds represent a net increase in the level of financial resources available to serve eligible students, and that they do not ultimately replace funds that states or LEAs would provide in the absence of federal aid.

Two fiscal accountability requirements that apply to major federal K-12 education aid programs would also be relevant to the Teacher Stabilization program. The first requirement—maintenance of effort—requires, for example, that recipient LEAs must have provided, from state and local sources, a level of funding (either aggregate or per student) in the preceding year that is at least a specified percentage of the amount in the second preceding year. A second fiscal accountability requirement provides that federal funds must be used to supplement, not supplant (SNS), state and local funds that would otherwise be available for the education of students eligible to be served under the federal program in question. SNS provisions prohibit states and/or LEAs from using federal funds (1) to provide services that state and/or local funds have provided or purchased in the past; (2) to provide services that are required to be provided under federal, state, or local law; or (3) to provide services for some students (e.g., those eligible under specific federal programs) that are provided to other students with non-federal funds. Similar to the Education Jobs Fund, funds provided under the Teacher Stabilization program would not be subject to supplement, not supplant requirements (except as noted above). Thus, for example, an

¹⁸ Ibid.

¹⁹ For additional information about the provisions discussed in this subsection, please contact Steven Maguire at smaguire@crs.loc.gov or 7-7841.

LEA could use funds provided through the Teacher Stabilization program to pay the salary of a teacher currently being paid with state and local funds and shift the state and local funds to another purpose.

The Teacher Stabilization program includes MOE requirements for FY2012 and FY2013.²⁰ In order to receive Teacher Stabilization funds for state FY2012, a state would be required to provide an assurance to the Secretary that either

1. the state will maintain state support for early childhood, elementary, and secondary education, in the aggregate, or based on per pupil expenditures, and for public institutions of higher education (IHEs)²¹ at not less than the level of support provided to each of these two levels of education, respectively, for state FY2011; or
2. the state will maintain state support for early childhood, elementary, and secondary education and for public IHEs²² at a percentage of the total revenues available to the state that is equal to or greater than the percentage provided for state FY2011.

For state FY2013, the state would have to provide an assurance that similar MOEs would be met with respect to funding provided or revenues available for FY2012. It should be noted that the second MOE option available for both state FY2012 and state FY2013 does not require the state to meet the requirement separately for each level of education.

The Secretary would be permitted to waive the MOE requirements if the Secretary determined that a waiver would be equitable due to exceptional or uncontrollable circumstances (e.g., natural disaster) or a “precipitous decline” in the state’s financial resources.²³

Reporting Requirements

Each state receiving funds under the Teacher Stabilization program would be required to submit an annual report to the Secretary that includes a description of how the funds were expended or obligated and how many jobs were supported by the state using funds provided under the program. It should be noted that these requirements may not provide the type of detailed information that Congress may want as it considers a subsequent program or possible extension of the Teacher Stabilization program. For example, the reporting requirements may not result in information being reported on the specific type of staff supported with the funds; the extent to which funds were used for early childhood education, elementary education, and secondary education; the extent to which funds were used to provide compensation or benefits to existing employees versus rehiring employees or hiring new employees; or how funds were used in individual LEAs. Without more detailed information, it may be difficult to make an accurate determination about how many jobs were created versus supported, if this is information of interest to Congress. **Table A-1** includes estimates calculated by the White House of the number

²⁰ The Education Jobs Fund also included MOE requirements.

²¹ This does not include support for capital projects or for research and development or tuition and fees paid by students.

²² Ibid.

²³ While the Secretary was not permitted to waive the MOE requirements under the Education Jobs Fund, the Secretary is permitted to waive MOE requirements for ESEA programs based on authority provided under ESEA, Section 9521.

of jobs (for both teachers and first responders) that would be supported by the Teacher Stabilization state grants and First Responder Stabilization grants (described below).

Current Status of the Education Jobs Fund

As previously mentioned, P.L. 111-226 provided \$10 billion for an Education Jobs Fund.²⁴ Based on data maintained by ED, of the \$9.8 billion awarded to states, as of September 16, 2011 (most recent data available), the cumulative outlays for states totaled \$6.074 billion, meaning that about \$3.876 billion remained available to states.²⁵ The percent of awarded funds drawn down by states varied from about 5.3% in New Jersey to nearly 100% in several states.²⁶ The differences in the draw down rates may be attributed to several factors, including the timing of the grant awards (funds were awarded after the start of the 2010-2011 school year), no requirement for states to provide funds to LEAs within a certain time frame, and the ability to obligate funds through September 30, 2012, which would permit their use during the 2011-2012 school year.

First Responder Stabilization (Title II, Subtitle C)

The American Jobs Act would provide \$5 billion for a proposed Community Oriented Policing Stabilization Fund (the fund), which would be used to “prevent layoffs of, and support additional jobs for, law enforcement officers and other first responders.” Of the proposed appropriation for the fund, \$4 billion would be for the Community Oriented Policing Services (COPS) Office for a competitive grant program for hiring, rehiring, or retaining law enforcement officers. In addition, \$1 billion of the \$5 billion appropriation for the fund would be transferred to the Department of Homeland Security for the Staffing for Adequate Fire and Emergency Response (SAFER) grant program (discussed below).

Law Enforcement Officers

The Community Oriented Policing Services (COPS) program was created by Title I of the Violent Crime Control and Law Enforcement Act of 1994.²⁷ The mission of the COPS program is to advance community policing in all jurisdictions across the United States.²⁸ The COPS program awards grants to state, local, and tribal law enforcement agencies throughout the United States so they can hire and train law enforcement officers to participate in community policing, purchase and deploy new crime-fighting technologies, and develop and test new and innovative policing

²⁴ For more information about the Education Jobs Fund, see CRS Report R41353, *Education Jobs Fund Proposals in the 111th Congress*, by Rebecca R. Skinner and Steven Maguire.

²⁵ For more information, see <http://www.educationjobsfund.gov/where-money-going/Pages/agency-info.aspx>. The September 16, 2011, data were the most recent data available as of September 21, 2011.

²⁶ South Carolina did not receive funds under the Education Jobs Fund. Several of the outlying areas have drawn down 100% of their available funds. The following states had drawn down 98.5% of their funds: Georgia, Kansas, Missouri, Montana, Pennsylvania, and South Dakota.

²⁷ P.L. 103-322; 42 U.S.C. §3796dd et seq.

²⁸ While there are different definitions of “community policing,” the COPS Office defines “community policing” as “a philosophy that promotes organizational strategies, which support the systematic use of partnerships and problem-solving techniques, to proactively address the immediate conditions that give rise to public safety issues such as crime, social disorder, and fear of crime.” U.S. Department of Justice, Community Oriented Policing Services Office, *Community Policing Defined*, <http://www.cops.usdoj.gov/default.asp?Item=36>.

strategies.²⁹ COPS grants are managed by the COPS Office, which was created in 1994 by the Department of Justice (DOJ) to oversee the COPS program.

The American Jobs Act would require that grants be awarded in accordance with the conditions set forth in the authorizing legislation for the COPS program.³⁰ However, the matching requirement³¹ and maximum grant award amount³² would be waived under the proposed program. These waivers would allow the COPS Office to award grants to law enforcement agencies that cover the entire cost of hiring, rehiring, or retaining a law enforcement officer, but it also likely means that the COPS Office would award fewer grants than it would if both the matching and maximum grant amount conditions were left in place. While the matching and maximum grant amount requirements would be waived under this program, the COPS Office would still be required to ensure that, unless all eligible applicants receive awards, every state receives no less than 0.5% of the total appropriation³³ and that half of the total appropriation goes to law enforcement agencies serving jurisdictions of 150,000 or fewer.³⁴

In evaluating the current proposal, it might be useful to examine how the COPS Office awarded the funding it received under the American Recovery and Reinvestment Act of 2009 (ARRA, P.L. 111-5). The COPS Office established the COPS Hiring Recover Program (CHRP) to award the funds it received under ARRA. The COPS Office acknowledged that it had a statutory requirement to promote community policing, but that the intent of the ARRA was to preserve and create jobs and promote economic recovery; to assist those most impacted by the recession; and to stabilize state and local government budgets.³⁵ As such, applicants for funding under the CHRP were required to submit data on their community's fiscal health,³⁶ crime rate, and planned community policing activities.³⁷ The COPS Office used the data to develop a score for each application whereby 50% of the final score was based on fiscal health factors and the other 50% was based on the applicant's crime rate and planned community policing activities. Given that the purpose of the proposed American Jobs Act program is to prevent layoffs and support additional jobs for law enforcement officers, which would imply that funding should be targeted to areas where there is some level of fiscal distress, it is possible that the COPS Office could use the CHRP methodology as a blueprint for awarding grants under the proposed program. However,

²⁹ U.S. Department of Justice, Community Oriented Policing Services Office, About Community Oriented Policing Services Office, <http://www.cops.usdoj.gov/Default.asp?Item=35>.

³⁰ 42 U.S.C. §3796dd et seq.

³¹ Under current law (42 U.S.C. §3796dd(g)), recipients of a COPS grant are required to provide 25% of the cost of hiring a law enforcement officer. However, the matching requirement can be waived by the Attorney General. According to the COPS Office, the local match must be a cash match and the source of the funds may not be federal unless authorized by federal statute. The local match funds must be in addition to funds previously budgeted for specific law enforcement purposes and may not have come from other COPS grants. See U.S. Department of Justice, Community Oriented Policing Services Office, Local Match, at <http://www.cops.usdoj.gov/default.asp?Item=174>.

³² Under current law (42 U.S.C. §3796dd-3(c)), the COPS Office cannot award more than \$75,000 to a law enforcement agency for the cost of hiring a law enforcement officer.

³³ 42 U.S.C. §3796dd(f).

³⁴ 42 U.S.C. §3793(a)(11)(B).

³⁵ U.S. Department of Justice, Community Oriented Policing Services Office, *CHRP Background and Award Methodology*, <http://www.cops.usdoj.gov/Default.asp?Item=2267>.

³⁶ Questions about the community's fiscal health were related to unemployment, poverty, foreclosure rates, and changes in budgets for law enforcement agencies and local governments. Ibid.

³⁷ Ibid.

nothing in the current bill would require the COPS Office to use the CERP methodology when selecting applications for funding.

Firefighters

As mentioned above, \$1 billion of the proposed Community Oriented Policing Stabilization Fund would be transferred to a First Responder Stabilization Fund, from which the Secretary of Homeland Security would be directed to make competitive grants for the hiring, rehiring, or retention of firefighters. These grants would be competitively awarded through the existing SAFER grant program, currently housed at the Department of Homeland Security (DHS). SAFER grants are awarded directly to applying fire departments through a peer-review process that makes award decisions based on the merits of the applications received.³⁸

There are two categories of SAFER grants. *Hiring grants* (constituting about 90% of SAFER funding each year) helps career and combination fire departments meet the costs of employing firefighters. *Recruitment and retention grants* help volunteer and combination fire departments finance activities related to the recruitment and retention of volunteer firefighters. The SAFER program was established by the 108th Congress in Section 1057 of the FY2004 National Defense Authorization Act (P.L. 108-136), and is codified as Section 34 of the Federal Fire Prevention and Control Act of 1974 (15 U.S.C. 2229a). From FY2005 (the SAFER program's initial year) through FY2011, Congress has appropriated a total of \$1.5 billion to SAFER.

The SAFER statute, as it currently stands, does not allow fire departments to use SAFER grants to supplant local budget shortfalls. However, since FY2009, Congress has added provisions in appropriations legislation giving DHS the authority to waive these and other SAFER statutory requirements and restrictions that may impede the ability of some local fire departments to participate in the program. The American Jobs Act would include this waiver authority for the additional \$1 billion in grant money to be made available for FY2012. Specifically, this waiver authority would allow SAFER grants to be used to retain and rehire firefighters, and to fill positions eliminated through attrition. Additionally, the waivers would give DHS authority to eliminate cost-share requirements, remove the five-year requirement for the duration of the grant, and permit the amount of funding per position at levels exceeding the current limit of \$100,000.

Work Opportunity Tax Credits

The Work Opportunity Tax Credit (WOTC) is a non-refundable tax credit for employers who hire individuals of certain targeted groups. The credit is calculated as 40% of the first-year wages paid to the qualifying individual, up to a maximum amount of wages. For most qualified individuals, the maximum amount of first-year wages for calculating the WOTC is \$6,000.

The American Jobs Act would expand the WOTC for certain veterans and long-term unemployed persons. Under current law an employer may claim the WOTC on up to \$12,000 of first-year wages paid to certain qualified veterans. A qualified veteran is:

³⁸ For more information on the SAFER grant program, see CRS Report RL33375, *Staffing for Adequate Fire and Emergency Response: The SAFER Grant Program*, by Lennard G. Kruger.

1. a member of a family receiving Supplemental Nutrition Assistance Program (SNAP) benefits for at least 3 months in the year prior to the date the veteran is hired; *and*
2. eligible for disability compensation from the Department of Veterans Affairs (VA), *and*:
 - (a) was hired within one year of discharge or release from active military duty, *or*
 - (b) had aggregate periods of unemployment in the one-year period prior to being hired of six months or more.

Under current law there is no targeted group for long-term unemployed for the WOTC.

Veterans Targeted Group (Title II, Subtitle A)

The American Jobs Act would expand the targeted group for qualified veterans and change the amount of first-year wages that can be claimed for the WOTC, such that

- for veterans who are members of a family receiving SNAP benefits for at least three months in the year prior to being hired, the maximum wages for the credit would be \$6,000;
- for veterans who have been unemployed for an aggregate of at least four weeks, but less than six months, in the year prior to being hired, the maximum wages for the credit would be \$6,000;
- for veterans eligible for disability compensation from the VA and within one year of discharge or release from active military duty when hired, the maximum wages for the credit would be \$12,000;
- for veterans who have been unemployed for an aggregate of at six months or more in the year prior to being hired, the maximum wages for the credit would be \$14,000; and
- for veterans who are eligible for disability compensation from the VA and have been unemployed for an aggregate of six months or more in the year prior to being hired, the maximum wages for the credit would be \$24,000.

The act also would make the WOTC refundable for certain non-profit employers. For these non-profit employers, the refundable credit would be the lesser of the calculated WOTC for hiring veterans who qualify for the WOTC based on unemployment, or the payroll taxes paid by the non-profit. For this comparison, the credit rate for the calculated WOTC would be 26% rather than 40%. Non-profit employers eligible for the refundable credit would be 501(c) tax-exempt organizations and public higher education institutions.

The American Jobs Act also would extend the WOTC for qualified veterans to U. S. possessions³⁹ with a tax system that mirrors the U.S. tax system, with the Secretary of the Treasury paying to

³⁹ Possessions include American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

the possession the amount lost to the possession in taxes because of the expansion of the WOTC for qualified veterans.

Long-Term Unemployed Targeted Group (Title III, Subtitle B)

The American Jobs Act would also expand the WOTC by adding a new targeted group for individuals who are not students and have aggregate periods of unemployment of 6 months or more in the year prior to being hired. The maximum wages for calculating the WOTC for qualified long-term unemployed persons would be \$10,000.

As stated above with regard to veterans, the act would make the WOTC refundable for certain non-profit employers who hire from the long-term unemployed targeted group. For these non-profit employers, the refundable credit would be the lesser of the WOTC for hiring qualified long-term unemployed or the payroll taxes paid by the non-profit. For this comparison, the credit rate for the calculated WOTC would be 26% rather than 40%. As noted above, non-profit employers eligible for the refundable credit would be 501(c) tax-exempt organizations and public higher education institutions.

The act also would extend the WOTC for long-term unemployed to U. S. possessions⁴⁰ with a tax system that mirrors the U.S. tax system, with the Secretary of the Treasury paying to the possession the amount lost to the possession in taxes because of the expansion of the WOTC for long-term unemployed.

Prohibition of Discrimination on the Basis of Unemployed Status (Title III, Subtitle D)

The American Jobs Act would establish the Fair Employment Opportunity Act of 2011, which would prohibit employment discrimination against the unemployed. Designed to eliminate the economic burdens imposed by discrimination against the unemployed, the act would prohibit such discrimination in job advertising and hiring practices. The act appears to be modeled on Title VII of the Civil Rights Act of 1964, which prohibits discrimination in employment on the basis of race, color, national origin, sex, or religion.⁴¹ Specifically, much of the enforcement authority appears to be borrowed from Title VII and related statutes, as do the definitions for several of the terms in the act.

Coverage

Like Title VII, the Fair Employment Opportunity Act would prohibit employers and employment agencies from discriminating on the basis of unemployment status. Most public and private employers would be covered, although private employers who have fewer than 15 employees would be exempt. Like Title VII, the act would define “employer” to exclude “bona fide private membership” clubs that qualify for federal tax exemptions.

⁴⁰ Possessions include American Samoa, the Commonwealth of the Northern Mariana Islands, the Commonwealth of Puerto Rico, Guam, and the United States Virgin Islands.

⁴¹ 42 U.S.C. §§ 2000e et seq.

The act would also adopt Title VII's definition of "employment agency" with some modifications. Like Title VII, an employment agency would include any person (and his or her agents) who regularly seeks to procure employees for an employer or to procure opportunities for individuals to work as employees for an employer. The act, however, would significantly broaden the definition to also include any person who maintains a website or print medium that publishes advertisements or announcements regarding job openings for covered employees.

Likewise, most public and private employees would be protected, including employees covered by the Government Employee Rights Act of 1991 and the Congressional Accountability Act of 1995.⁴² Because the act is intended to prohibit discrimination against the unemployed, it would cover not only employees but also other affected individuals, defined to include any persons who were subject to an unlawful employment practice solely because of their status as unemployed. Under the act, the term "status as unemployed" would be defined to include individuals who, at the time of application for employment or at the time of the alleged violation, do not have a job, are available for work, and are searching for employment.

Prohibited Acts

Under the act, it would be unlawful for employers to: (1) publish an advertisement or announcement stating that individuals who are unemployed are not qualified for the employment opportunity or indicating that the employer will not consider or hire an unemployed individual for the employment opportunity; (2) fail or refuse to consider, or fail or refuse to hire, an individual because of that individual's status as unemployed; and (3) direct or request that an employment agency disqualify unemployed individuals from consideration, screening, or referral to the employer.

Likewise, the act would prohibit employment agencies from: (1) publishing an advertisement or announcement stating that individuals who are unemployed are not qualified for the employment opportunity or indicating that the employment agency or employer will not consider or hire an unemployed individual for the employment opportunity; (2) screening, failing or refusing to consider, or failing or refusing to refer for employment an individual because of that individual's status as unemployed; and (3) limiting, segregating, or classifying an unemployed individual in any manner that would limit or tend to limit the individual's access to information about jobs. In addition, the act would bar both employers and employment agencies from interfering with or retaliating against individuals who exercise their rights under the act.

The act clarifies that it is not intended to preclude an employer or employment agency from considering an individual's employment history or examining the reasons behind an individual's unemployed status when making employment decisions about an individual. Such consideration or examination may include an assessment of whether the individual's previous employment in a similar position is job-related or consistent with business necessity.

Enforcement and Remedies

Enforcement procedures under the act would parallel the enforcement provisions of Title VII. Thus, the Department of Justice (DOJ) would enforce the act against state and local governments,

⁴² Id. at § 2000e-16; 2 U.S.C. § 1301.

and administrative enforcement with respect to private employment would be delegated to the Equal Employment Opportunity Commission (EEOC), which would have the same authority to receive and investigate complaints, to negotiate voluntary settlements, and to seek judicial remedies as it currently exercises under Title VII. Similarly, in devising remedies for unemployment discrimination under the act, a federal court would have the same jurisdiction and powers as the court has to enforce Title VII. In general, federal courts possess broad remedial discretion under Title VII, including the ability to enjoin the unlawful employment practice and to “order such affirmative action as may be appropriate, which may include, but is not limited to, reinstatement or hiring of employees, with or without back pay ... or any other relief as the court deems appropriate.”⁴³

Individuals who sue for violations of the advertising provisions of the act could be awarded the following remedies: an injunction prohibiting the unlawful employment practice; reimbursement of costs; liquidated damages not to exceed \$1,000 for each day of the violation; and reasonable attorney’s fees.⁴⁴ Remedies for other violations of the act would be patterned on Title VII’s remedial provisions. Under Title VII, victims of discrimination may seek equitable relief, including limited back pay awards for wage, salary, and fringe benefits lost as the result of discrimination. Private employers who intentionally discriminate in violation of the statute may be liable for capped compensatory and punitive damages,⁴⁵ while plaintiffs may seek awards of compensatory, but not punitive, damages against federal, state, and local governmental agencies. Unlike Title VII, the act would limit damages to \$5,000 for cases in which wages, salary, employment benefits, or other compensation has not been lost.

Finally, the act would waive the states’ Eleventh Amendment immunity from suit for unemployment discrimination against employees or applicants within any state program or activity that receives federal financial assistance.⁴⁶

Compensation and Services for Unemployed Workers

The American Jobs Act focuses on the income and reemployment needs of unemployed workers, particularly the long-term unemployed who might qualify for benefits under the temporary Emergency Unemployment Compensation (EUC08) program, or the Extended Benefits (EB) program that provides benefits beyond the usual Unemployment Compensation (UC) maximum

⁴³ 42 U.S.C. § 2000e-5(g).

⁴⁴ Section 375(c)(1)(D) specifies that “no person identified in Section 103(a) of this Act shall be eligible to receive attorney’s fees” but such section does not appear to exist.

⁴⁵ 42 U.S.C. § 1981a(b).

⁴⁶ The Eleventh Amendment provides states with immunity from claims brought under federal law in both federal and state courts. U.S. Const. amend. XI. Although Congress may waive the states’ sovereign immunity by “appropriate” legislation enacted pursuant to § 5 of the Fourteenth Amendment, U.S. Const. amend. XIV, the scope of congressional power to create a private right of action against the states for monetary damages has been substantially narrowed by a series of Supreme Court decisions. See, e.g., *Bd. of Trs. of the Univ. of Ala. v. Garrett*, 531 U.S. 356 (2001); *Kimel v. Bd. of Regents*, 528 U.S. 62 (2000); *United States v. Morrison*, 529 U.S. 598 (2000); *Alden v. Maine*, 527 U.S. 706 (1999); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Seminole Tribe v. Florida*, 517 U.S. 44 (1996). For more information on these rulings and on waiver of state sovereign immunity more generally, see CRS Report RL30315, *Federalism, State Sovereignty, and the Constitution: Basis and Limits of Congressional Power*, by Kenneth R. Thomas.

of 26 weeks.⁴⁷ In addition to provisions that would extend certain temporary programs and expand services for certain EUC08 claimants, the act also would authorize a new Reemployment NOW program, that would provide formula grants to states to address the reemployment needs of eligible individuals, and would expand federal funding for state-administered short-time compensation (or “work sharing”) programs. These provisions are discussed in the following sections.

Unemployment Compensation (Title III, Subtitle A, Part I)

Extension of Temporary Provisions: EUC08, 100% EB Federal Financing, EB Three-Year Lookback Trigger Option, and Increased Railroad Unemployment Benefits

The American Jobs Act proposes to extend several temporary federal provisions related to unemployment benefits and programs that are otherwise scheduled to expire.⁴⁸ In general, basic income support for unemployed workers is provided through the joint federal-state UC program, which generally pays up to 26 weeks of unemployment benefits.

Unemployment benefits may be extended at the state level by the permanent EB program if high unemployment exists within the state. Once regular unemployment benefits are exhausted, the EB program may provide up to an additional 13 or 20 weeks of benefits, depending on worker eligibility, state law, and state economic conditions.⁴⁹ Under permanent law (P.L. 91-373), the EB program is funded 50% by the federal government and 50% by the states. The 2009 stimulus package (P.L. 111-5, as amended, most recently by P.L. 111-312) temporarily provides for 100% federal funding of the EB program until January 4, 2012.

In addition to extending the temporary 100% federal financing of EB, P.L. 111-312 also allows states to temporarily use lookback calculations based on three years of unemployment rate data (rather than the current lookback of two years of data) as part of their EB triggers if states would otherwise trigger off or not be on a period of EB benefits. Using a two-year versus a three-year EB trigger lookback is an important adjustment because some states are likely to trigger off their EB periods in the near future despite high, sustained—but not increasing—unemployment rates. This temporary option to use three-year EB trigger lookbacks expires the week ending on or before December 31, 2011.

The American Jobs Act would provide a year-long extension of the 100% federal financing of the EB program through calendar year 2012. In addition, it would extend authorization for states to use three-year lookbacks for state EB triggers during this period. It would not create additional weeks of EB benefits.

It is projected that the impact of maintaining the three-year lookback for state EB triggers would be that the effective maximum availability of unemployment benefits from all programs would

⁴⁷ For background on these and related programs, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Katelin P. Isaacs and Julie M. Whittaker.

⁴⁸ See CRS Report R41508, *Upcoming Unemployment Insurance Benefit Expirations*, by Katelin P. Isaacs.

⁴⁹ Additional details on the EB program may be found in CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Katelin P. Isaacs and Julie M. Whittaker.

likely decrease from 99 weeks to 79 by mid-year for almost all states.⁵⁰ This projection reflects current economic models that have most states continuing to experience high unemployment rates that are not increasing—and, thus, failing to be 10% higher than in any of the previous three years.

To supplement UC and EB benefits and respond to the most recent recession, Congress created a temporary unemployment insurance program, the EUC08 program. The EUC08 program began in July 2008. EUC08 has been amended by Congress eight times (most recently by P.L. 111-312), and is scheduled to expire the week ending on or before January 3, 2012. Currently, the EUC08 program provides up to four tiers of additional weeks of unemployment benefits to certain workers who have exhausted their rights to regular UC benefits. Tiers I (up to an additional 20 weeks) and II (up to an additional 14 weeks) are available in all states. Tier III (up to an additional 13 weeks) is available in states with a total unemployment rate of at least 6%. Tier IV (up to additional six weeks) is available in states with a total unemployment rate of at least 8.5%.⁵¹

The act would provide a year-long extension of the EUC08 authorization through calendar year 2012. However, the act would not expand the number of weeks of unemployment benefits available to the unemployed beyond what is currently available. (For example, it would not authorize a “tier V” of EUC08 benefits.)

The proposed American Jobs Act would also extend the temporary increased railroad unemployment benefits—authorized under the American Recovery and Reinvestment Act (ARRA; P.L. 111-5, as amended)—for an additional year through June 30, 2012. The funds would continue to be financed with funds still available under the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (P.L. 111-312).⁵²

Reemployment Services

The proposal would impose new federal requirements and appropriate new federal funds for states to provide reemployment and eligibility assessments to certain EUC08 claimants. The proposal would require states to enter into agreements with the Department of Labor (DOL) and require new EUC08 claimants to report to or check in with their local One-Stop Career Centers.⁵³ The American Jobs Act would provide \$200 per unemployed worker in federal funding for states to conduct Reemployment and Eligibility Assessments in order to review new EUC08 claimants' eligibility for benefits and provide an assessment of their work search efforts.

⁵⁰ For a visual representation and breakdown of the up to 99 week maximum UI benefits, see Appendix A in CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Katelin P. Isaacs and Julie M. Whittaker.

⁵¹ For full details on EUC08, including the program's legislative history, see CRS Report RS22915, *Temporary Extension of Unemployment Benefits: Emergency Unemployment Compensation (EUC08)*, by Katelin P. Isaacs and Julie M. Whittaker.

⁵² For more details on unemployment benefits for railroad workers, see CRS Report RS22350, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*, by Alison M. Shelton.

⁵³ For background on One-Stop Centers, see CRS Report R41135, *The Workforce Investment Act and the One-Stop Delivery System*, by David H. Bradley.

Self-Employment Assistance

The Jobs Act also would authorize states to enter into new agreements with DOL to pay Self-Employment Assistance (SEA) benefits for up to 26 weeks to individuals receiving EUC08 benefits who (1) have at least 26 weeks of EUC08 remaining benefits and (2) are participating in entrepreneurial training activities. The new SEA proposal is distinct from the existing authorization for states to set up SEA programs under state laws that are available to individuals receiving regular, state Unemployment Compensation (UC) benefits.⁵⁴

Under this proposal, SEA benefits would be identical in amount to EUC08 benefits and be paid in lieu of EUC08 benefits, for up to 26 weeks to individuals who choose to participate and are currently eligible for EUC08 benefits in states that enter into DOL agreements. SEA participants would be exempt from the work availability and work search requirements under EUC08. Instead, individuals receiving SEA benefits would be required to engage in activities related to starting their own businesses. SEA benefits would be available to up to 1% of all EUC08 recipients in each participating state. An individual receiving SEA benefits would be able to stop participation and receive any remaining EUC08 benefits at any time (since an individual's total EUC08 entitlement—from all tiers of EUC08 available in his or her state—may not exceed 26 weeks). States with agreements to pay SEA benefits would be able to use Reemployment NOW funds (see description below) to finance SEA administrative, start-up costs, if specified in an approved state Reemployment NOW plan.

Reemployment NOW Program (Title III, Subtitle A, Part II)

The act would establish a “Reemployment NOW” program with \$4 billion in direct appropriations. These federal funds would be allotted to states based on a two-part formula: (1) two-thirds would be distributed to states based upon each state's share of the U.S. total number of unemployed persons and (2) one-third would be distributed to the states based on each state's share of the long-term unemployed (measured as unemployment spells of at least 27 weeks). Up to 1% of the funds would be available for program administration and evaluation.

To receive a Reemployment NOW allotment, a state would have to submit a plan describing (1) activities to assist the reemployment of eligible individuals; (2) performance measures; (3) coordination of efforts with Title I of the Workforce Investment Act of 1998, the Wagner-Peyser Act, and other appropriate federal programs; (4) timelines for implementation; (5) estimates of quarterly enrollments; (6) assurances that the state will provide appropriate reemployment services to any participating EUC08 claimants; and (7) assurances that the state will provide information to DOL relating to the fiscal, performance, and other matters, including employment outcomes and program impacts that DOL determines is necessary to effectively monitor the activities. DOL would be required to provide Congress and the public with both guidance as well as program evaluation for activities conducted with Reemployment NOW funds.

⁵⁴ See CRS Report R41253, *The Self-Employment Assistance (SEA) Program*, by Katelin P. Isaacs, for additional information on the permanent-law state option to provide SEA benefits to individuals eligible for regular, state-financed UC.

Allowable program uses of Reemployment NOW funds would include the following:

- The “*Bridge to Work*” program would allow individuals to continue to receive EUC08 benefits as wages for work performed in a short-term work experience placement. The Bridge to Work placement would last up to eight weeks and would be required to compensate claimants at a rate equivalent to the minimum wage. The state would be permitted to augment the EUC08 benefit with Reemployment NOW funds to meet this criteria. For individuals participating at least 25 hours per week in a Bridge to Work program, work search requirements would be suspended during the participation and wages paid would not offset EUC08 benefit amounts. Any earnings acquired during program participation would not be considered earnings for the purposes of employment taxes, but would be treated as unemployment benefits for tax purposes.
- *Wage insurance* would authorize states to provide an income supplement to EUC08 claimants who secure reemployment at a lower wage than their separated employment. The benefit level would be determined by the states, although it could not be more than 50% of the difference between the worker’s wage at the time of separation and the worker’s reemployment wage. States would also establish a maximum benefit amount that an individual could collect. The duration of wage insurance payments would be limited to two years. Wage insurance under this proposal would also be limited to individuals who (1) are at least 50 years of age; (2) earn not more than \$50,000 per year from reemployment; (3) are employed on a full-time basis as defined by the state; and (4) are not employed by the employer from which the individual was separated.
- *Enhanced reemployment services* would allow states to use funds to provide EUC08 claimants and individuals who have exhausted all entitlements to EUC08 benefits with reemployment services that are more intensive than any reemployment services provided by the states previously (for instance, one-on-one assessments, counseling, or case management).
- *Start-up of SEA state programs* would authorize states to use funds for any administrative costs associated with the start-up of SEA agreements (as described above).
- *Additional innovative programs* would allow states to use funds for programs other than the programs described above. These programs would be required to facilitate the reemployment of EUC08 claimants, among other requirements.

Short-Time Compensation Program (Title III, Subtitle A, Part III)

The American Jobs Act would clarify requirements related to short-time compensation (STC or “work sharing”) programs and provide temporary federal financing to support state work sharing programs.⁵⁵ This proposal would temporarily federally finance 100% of STC benefits for up to

⁵⁵ Work sharing is a program within the federal-state UC system that provides pro-rated unemployment benefits to workers whose hours have been reduced in lieu of a layoff. In a typical example of work sharing, a firm that needs to reduce its 100-person workforce by 20% would, in lieu of laying off 20 workers, instead reduce the work hours of the entire workforce by 20%, on a temporary basis. For additional details, see CRS Report R40689, *Compensated Work Sharing Arrangements (Short-Time Compensation) as an Alternative to Layoffs*, by Alison M. Shelton.

three years in states that meet the new definition of an STC program, with a transition period for states with existing STC programs that do not meet the new definition (currently 22 states have STC programs). States without existing STC programs would be allowed to enter into an agreement with DOL for up to two years in order to receive federal reimbursement for administrative expenses, as well as temporary federal financing of 50% of STC payments to individuals, with employers paying the other 50% of STC costs. Under this proposal, if a state that enters into an agreement with the Secretary of Labor subsequently enacts a law providing for STC, that state would be eligible to receive 100% of federal financing. The proposal would award DOL grants to eligible states, with one-third of each state's grant available for implementation and improved administration purposes and two-thirds of each state's grant available for program promotion and enrollment of employers. The maximum amount of all grants to states would be \$700 million. Finally, the proposal would provide \$1.5 million for DOL to submit a report to Congress and the President, within four years of enactment, on the implementation of this provision, including a description of states' best practices, analysis of significant challenges, and a survey of employers in states without STC programs.

Workforce Development for Low-Income Adults and Youth

Title III, Subtitle C of the American Jobs Act would authorize the Pathways Back to Work Act of 2011 (Pathways Act), which would provide funds for three grant programs to promote the employment of unemployed low-income adults and youth. Overall, the Pathways Act would provide \$5 billion for these initiatives through a combination of formula and competitive grants. Funds provided under the Pathways Act would remain available for obligation by the Department of Labor (DOL) until December 31, 2012, and would remain available for expenditure by grantees until September 30, 2013. For all three Pathways Act initiatives, the Secretary of Labor would be allowed to reserve up to 1% of the allocated funding for each initiative to provide technical assistance, evaluations, and administration. The three grant programs are described in the following sections.

Subsidized Employment for Unemployed, Low-Income Adults (Title III, Subtitle C, Section 364)

The first of the three Pathways Act programs would provide \$2 billion for the purpose of subsidizing employment of unemployed, low-income adults.

Purpose

Funds provided under the subsidized employment initiative of the Pathways Act would be used by state and local entities for two main purposes.

First, administering entities would be authorized to use a range of strategies to recruit employers and identify employment opportunities. Priority would be for opportunities likely to develop into unsubsidized employment within in-demand or emerging occupations in the relevant local area. State and local entities would have the authority to determine the level (i.e., the percentage of

wages and costs that the employer would receive for providing employment) and duration of the subsidy.

Second, funds provided under this initiative would be available for support services, such as transportation and child care, that would assist individuals in obtaining and keeping subsidized employment.

Eligibility and Administration

To be eligible to participate in activities supported by this initiative, individuals would have to be

- at least 18 years of age;
- without employment and seeking assistance under the American Jobs Act; and
- low-income, generally defined as an individual with an income or a member of a family with an income below the poverty level.⁵⁶

With regard to the low-income requirement, the proposal would provide an exception to this general definition of a low-income individual. Specifically, Section 368(6)(C) of the American Jobs Act would allow state and local entities administering the grant funds to increase the threshold for eligibility to 200% of the poverty line.

States would have the option of administering funds for subsidized employment activities through state and local Workforce Investment Boards (WIBs), entities responsible for administering the Temporary Assistance for Needy Families (TANF) program, or a combination of these entities.

To receive formula allotments (described below) under the subsidized employment initiative, a state would be required to submit a plan to the Secretary of Labor that includes, at a minimum, strategies to provide subsidized employment opportunities; requirements the state will apply for participant eligibility; administration plans; performance outcomes expected to be achieved; coordination strategies with WIA Title I (state formula grant programs), TANF, and other relevant state and local programs; implementation timelines and estimates of placement in subsidized employment by quarter; and assurances of effective program monitoring and compliance. Similarly, local entities must submit plans to the Governor of the state, containing the same elements in the state plan, in order to receive allotments from the state.

Funding

Each state with a plan approved by the Secretary of Labor would receive an allotment from the \$2 billion provided for subsidized employment activities. For purposes of this section, the term “State” refers to the 50 states, the District of Columbia, and Puerto Rico. Of the total appropriated amount of \$2 billion, the Secretary of Labor would make two reservations before allotting to states. One, up to 0.25% of the total appropriated would be reserved for outlying areas to provide

⁵⁶ “Low-income” in this part of the American Jobs Act is defined by reference to Section 101(25) of the Workforce Investment Act of 1998 (WIA; P.L. 105-220), which generally defines low-income as an individual having an income, or being part of a family with an income, below the poverty line.

subsidized employment opportunities.⁵⁷ Two, 1.5% of the total appropriated would be reserved for Native American programs to provide subsidized employment opportunities.⁵⁸

Following these reservations, the remainder of funds would be allocated to states on the basis of the following factors:

- one-third of the funds would be allocated on the basis of each state's relative share of total unemployment in areas of substantial unemployment (ASU);⁵⁹
- one-third of the funds would be allocated on the basis of each state's relative share of excess unemployment; and⁶⁰
- one-third of the funds would be allocated on the basis of each state's relative share of economically disadvantaged adults and youth.⁶¹

For any state that did not submit a state plan or receive approval of a state plan by the Secretary of Labor, the amount of funding that the ineligible state would have received would go to the competitive grant program authorized under Section 366 of the proposed Jobs Act. Likewise, for any locality that did not submit a local plan or receive approval of a local plan by the governor, the amount of funding that the ineligible locality would have received would be reallocated to eligible local entities under the same grant formula.

After funds are allotted to states, the governor of each state would be allowed to reserve up to 5% of the state's allotment for administration and technical assistance. The remaining funds would then be allocated to the entities chosen to administer the subsidized employment programs. If the state chose to administer Pathways Act programs through WIBs, funds would be allocated by the same formula used to allot funds to states (with "local workforce investment areas" in place of "states" in the formula factors). Each local area would be allowed to reserve up to 10% of the allocated funds for administration. If the state chose to administer the Pathways Act programs

⁵⁷ "Outlying areas" refers to the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

⁵⁸ Specifically, the funds reserved for Native American programs would go to grantees of programs authorized under Section 166 of WIA.

⁵⁹ For purposes of the proposed American Jobs Act, the term ASU would be defined as any contiguous area with a population of at least 10,000 and that has an average rate of unemployment of at least 6.5% for the most recent 12 months. This concept is similar to that used in the WIA Title I state grant formulas for Youth and Adult Activities. As defined in Sections 127(b)(2)(B) and 132(b)(1)(B)(v)(III), an ASU is "any area that is of sufficient size and scope to sustain a program of workforce investment activities carried out under this subtitle and that has an average rate of unemployment of at least 6.5 percent for the most recent 12 months."

⁶⁰ This concept is the same as that used in the WIA Title I state grant formulas for Youth and Adult Activities. That is, excess unemployment is defined (in Sections 127(b)(2)(D) and 132(b)(1)(B)(v)(VI)) as the higher of "the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in the state" or "the number that represents the number of unemployed individuals in excess of 4.5 percent of the civilian labor force in areas of substantial unemployment in such state."

⁶¹ This concept is similar to the one used for the Title I state grant formulas for Youth and Adult Activities, except that the proposed American Jobs Act combines the youth and adult populations to cover ages 16 to 72. For the state formula grants for WIA Youth Activities, "disadvantaged youth" is defined (in Section 127(b)(2)(C)) as an "individual who is age 16 through 21 who received an income, or is a member of a family that received a total family income, that, in relation to family size, does not exceed the higher of the poverty line or 70 percent of the lower living standard income level."⁸³ Similarly, a "disadvantaged adult" in WIA is defined (in Section 132(b)(1)(B)(v)(IV)) the same as a disadvantaged youth with the exception that the reference individual is age 22 to 72.

through the TANF program, funds would be allocated to local entities in a way the state determines appropriate.

Performance Accountability

As with programs authorized under WIA, the proposed Pathways Act programs would require grantees to collect and report performance measures. All three proposed Pathways Act initiatives—subsidized employment, youth employment, and work-based strategies—would require grantees to provide the following information:

- number of individuals participating in and completing participation in grant-funded activities;
- expenditures of grant funds;
- number of jobs created through grant-funded activities; and
- demographic characteristics of participants in grant-funded activities.

In addition to the common reporting requirements listed above, grantees under Section 364 would be required to report the following performance outcomes for participants:

- entry into unsubsidized employment;
- retention in unsubsidized employment; and
- earnings in unsubsidized employment.⁶²

Summer Employment and Year-Round Employment Opportunities for Low-Income Youth (Title III, Subtitle C, Section 365)

The second of the three Pathways Act programs would provide \$1.5 billion for the purpose of providing employment opportunities for low-income youth.

Purpose

Funds provided under the youth employment initiative of the Pathways Act would be used by state and local WIBs for two main purposes.

First, WIBs would be authorized to provide summer employment opportunities to low-income youth (ages 16 to 24). These employment opportunities would be required to have direct linkages to academic and occupational learning. Funds provided under this initiative would be available for support services, such as transportation and child care, that would assist eligible youth in obtaining and keeping employment.

Second, WIBs would be authorized to provide year-round employment opportunities to low-income youth (ages 16 to 24). These opportunities could be combined with youth activities

⁶² These performance measures are nearly identical to those required under the performance accountability provisions in WIA Section 136(b)(2)(A)(i).

authorized under Section 129 of WIA. For year-round employment opportunities, priority would be given to out-of-school youth who are high school dropouts or who have a high school degree or equivalent but are basic skills deficient.

Priority in both summer and year-round programs would be for opportunities within in-demand or emerging occupations in the relevant local area or in the public or non-profit sectors that meet community needs and for opportunities that link year-round participants to activities that would provide youth with industry-recognized certificates or credentials.

Eligibility and Administration

To be eligible to participate in activities supported by this initiative, individuals would have to

- be between the ages of 16 and 24;
- be low-income, generally defined as an individual with an income or a member of a family with an income below the poverty level;⁶³ and
- meet one of more of these characteristics: deficient in basic literacy skills; a school dropout; a homeless, runaway or foster child; pregnant or a parent; an offender; an individual requiring additional assistance to complete an educational program or secure and hold employment.⁶⁴

With regard to the low-income requirement, the act would provide an exception to the general definition of a low-income youth. Specifically, Section 368(4)(B) would allow local WIBs administering the grant funds to increase the threshold for eligibility to 200% of the poverty line.

Funds provided under the youth employment section of the Pathways Act would be administered through state and local Workforce Investment Boards (WIBs).

To receive formula allotments (described below) under the youth employment initiative, a state would be required to submit a modification of the state plan required under Section 112 of WIA to the Secretary of Labor that includes, at a minimum, strategies to provide summer and year-round employment opportunities; requirements the state will apply for participant eligibility, including targeting assistance to certain low-income youth; performance outcomes expected to be achieved; implementation timelines and estimates of placement in summer and year-round employment by quarter; and assurances of effective program monitoring and compliance. Similarly, local WIBs would be required to submit modifications to local plans required under Section 118 of WIA to the governor of the state, describing the strategies and activities to implement summer and year-round employment opportunities for low-income youth, in order to receive allotments from the state.

⁶³ “Low-income” in this part of the American Jobs Act is defined by reference to Section 101(25) of the Workforce Investment Act of 1998 (WIA; P.L. 105-220), which generally defines low-income as an individual having an income, or being part of a family with an income, below the poverty line.

⁶⁴ These characteristics are from Section 101(13)(C) of WIA.

Funding

Each state with a plan approved by the Secretary of Labor would receive an allotment from the \$1.5 billion provided for youth employment activities. For purposes of this section, the term “State” refers to the 50 states, the District of Columbia, and Puerto Rico. Of the total appropriated amount of \$1.5 billion, the Secretary of Labor would make two reservations before allotting to states. One, up to 0.25% of the total appropriated would be reserved for outlying areas to provide summer and year-round employment opportunities to low-income youth.⁶⁵ Two, 1.5% of the total appropriated would be reserved for Native American programs to provide summer and year-round employment opportunities to low-income youth.⁶⁶

Following these reservations, the remainder of funds would be allocated to states on the basis of the same three equally weighted factors used for the subsidized employment for low-income adults initiative, described above.

For any state that did not submit a state plan or receive approval of a state plan by the Secretary of Labor, the amount of funding that the ineligible state would have received would go to the competitive grant program authorized under Section 366 of the proposed Act. Likewise, for any local WIB that did not submit a local plan or receive approval of a local plan by the governor, the amount of funding that the ineligible local WIB would have received would be reallocated to eligible local workforce investment areas under the same grant formula.

After funds are allotted to states, the governor of each state would be allowed to reserve up to 5% of the state’s allotment for administration and technical assistance. The remaining funds would then be allocated to local WIBs by the same formula used to allot funds to states (with “local workforce investment areas” in place of “states” in the formula factors). Each local area would be allowed to reserve up to 10% of the allocated funds for administration.

Performance Accountability

As with programs authorized under WIA, the proposed Pathways Act programs would require grantees to collect and report performance measures. As noted above, the three proposed Pathways Act initiatives—subsidized employment, youth employment, and work-based strategies—would require grantees to provide the following information:

- number of individuals participating in and completing participation in grant-funded activities;
- expenditures of grant funds;
- number of jobs created through grant-funded activities; and
- demographic characteristics of participants in grant-funded activities.

In addition to the common reporting requirements listed above, grantees under both the youth employment (Section 365) and work-based strategies initiatives (Section 366, described below)

⁶⁵ “Outlying areas” refers to the United States Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

⁶⁶ Specifically, the funds reserved for Native American programs would go to grantees of programs authorized under Section 166 of WIA.

would be required to report the following performance outcomes for low-income youth participating in summer employment:

- work readiness skill attainment; and
- placement in or return to secondary or postsecondary education or training, or entry into unsubsidized employment.

For youth participating in year-round employment, under activities authorized by Section 365 or Section 366, grantees would be required to report

- placement in or return to post-secondary education;
- attainment of a high school diploma or equivalent;
- attainment of an industry-recognized credential; and
- entry into unsubsidized employment, retention in unsubsidized employment, and earnings in unsubsidized employment.

Work-Based Employment Strategies of Demonstrated Effectiveness (Title III, Subtitle C, Section 366)

The third of the three Pathways Act programs would provide \$1.5 billion in funding for competitive grants to eligible entities to provide a range of activities and strategies for the purpose of providing employment opportunities for unemployed, low-income adults and youth.

Purpose

Funds provided under the work-based strategies initiative of the Pathways Act would be used by eligible entities to carry out strategies and activities of “demonstrated effectiveness” to provide unemployed, low-income youth or adults with skills that would lead to employment. These activities and strategies could include

- on-the-job training;
- sector-based training;
- employer- or labor-management based partnership involving a work-experience component;
- attainment of industry-recognized credentials in fields with demand or growth potential;
- connections to immediate work opportunities, including subsidized employment;
- career academies; and
- adult basic education.

Eligibility and Administration

Entities eligible to apply for and receive funding under this section of the Pathways Act would include local elected officials (e.g., mayors) in collaboration with a local WIB or an entity eligible

to receive funding under Section 166 of WIA (Native American programs). These eligible entities would be allowed to include partners, including employers, adult or postsecondary educational providers (including community colleges), community-based organizations, joint labor-management committees, work-related intermediaries, or other appropriate organizations.

Funding

The \$1.5 billion in funding appropriated for work-based strategies would be distributed on a competitive grant basis following the submission of applications from eligible entities to the Secretary of Labor. The Secretary of Labor would develop the application but elements would include a description of work-based strategies to be carried out, strategies for targeting assistance to meet the needs of the local population and local employers, a description of the expected outcomes, evidence that grant funds would be spent expeditiously and efficiently, strategies for coordination with other government programs, evidence of employer commitment to participate, and assurances of effective program monitoring and compliance.

Priority in awarding grants would be given to eligible entities applying from areas of high poverty and high unemployment.

Performance Accountability

As with programs authorized under WIA, the proposed Pathways Act programs would require grantees to collect and report performance measures. As stated earlier, the three proposed Pathways Act initiatives—subsidized employment, youth employment, and work-based strategies—would require grantees to provide the following information:

- number of individuals participating in and completing participation in grant-funded activities;
- expenditures of grant funds;
- number of jobs created through grant-funded activities; and
- demographic characteristics of participants in grant-funded activities.

In addition to the common reporting requirements listed above, grantees under Section 366 would be required to report the same information for youth participants as required of grantees under Section 365 (described above), and the following performance outcomes for low-income adults participating in grant-funded activities:

- attainment of an industry-recognized credential; and
- entry into unsubsidized employment, retention in unsubsidized employment, and earnings in unsubsidized employment.

School Modernization

The American Jobs Act would authorize two new grant programs for the modernization, renovation, and repair of education facilities. Part I of Title II, Subtitle D would authorize a new elementary and secondary education school facilities grant program. Part II of Title II, Subtitle D would authorize a new grant program of federal assistance for eligible postsecondary education

facilities. Currently, the majority of federal support for education facilities is attributable to interest exemptions and tax credits on bonds.⁶⁷ The federal government also provides grant and loan support for facilities serving certain populations, facilities with specific needs, and facilities serving particular purposes.

Under the proposed two programs, funds could be used for the modernization, renovation, and repair of eligible facilities. Funds could not be used for routine maintenance costs or for stadiums or other facilities primarily used for athletic contests or exhibitions or other events for which admission is charged to the general public. Elementary and secondary education facilities funds could not be used for new construction. Postsecondary education facilities funds could not be used on facilities used for sectarian instruction, religious worship, or a school or department of divinity; or in which a substantial portion of the functions of the facilities are subsumed in a religious mission. Modernization, renovation, and repair would include activities such as facilities assessments, roofing, installation of heating systems, code compliance, and reducing or eliminating hazards.

The use of funds under both programs would also be required to adhere to the wage rates in the Davis-Bacon Act, as amended.⁶⁸ In addition, funds used on elementary, secondary, or postsecondary facilities would have to use American iron, steel, and manufactured goods, unless waived. Funds for each program would be used to supplement, not supplant (SNS), other federal, state, and local funds that would otherwise be used for the modernization, renovation, and repair of eligible facilities.

Elementary and Secondary Schools Modernization (Title II, Subtitle D, Part I)

The proposed Americans Jobs Act would appropriate a one-time amount of \$25 billion for obligation by the Secretary of Education (Secretary) through FY2012 for early learning, elementary, or secondary education facilities. The program would provide a 0.5% set-aside for Bureau of Indian Education (BIE)-funded schools, a 0.5% set-aside for the outlying areas,⁶⁹ and a set-aside of an amount deemed necessary for the Department of Education's National Center for Education Statistics (NCES) to conduct a survey of public school construction, modernization, renovation, and repair needs. The Administration has estimated that the survey may require \$5 million (see **Table A-2**). The act does not suggest a methodology for distributing the funds among the BIE-funded schools or outlying areas.

⁶⁷ For a description of federal programs that support education facilities, see CRS Report R41142, *School Construction and Renovation: A Review of Federal Programs*, by Cassandra Dortch.

⁶⁸ The Davis-Bacon Act, as amended, requires that all laborers and mechanics employed in construction projects and minor remodeling projects assisted under any applicable program shall be paid at wage rates not less than those prevailing in the locality for similar work as determined by the Secretary of Labor. See CRS Report R40663, *The Davis-Bacon Act and Changes in Prevailing Wage Rates, 2000 to 2008*, by Gerald Mayer.

⁶⁹ The outlying areas are the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

Distribution of Funds to States and 100 Largest LEAs

The remainder of funds after the set-asides would be allocated by formula to states and 100 local educational agencies (LEAs) in the same manner that funds were allocated for qualified school construction bonds (QSCBs)⁷⁰ in CY2009 and CY2010. The 100 LEAs are those with the largest numbers of children aged 5-17 living in poverty (hereafter referred to as the 100 largest LEAs). The states, which include the District of Columbia and Puerto Rico, would each receive an allocation of 100% of the remaining funds in proportion to their FY2011 allocations under Title I-A of the ESEA, reduced by the amount received by the largest LEAs in the state (see **Table A-2**).⁷¹ The 100 largest LEAs would receive 40% of the remaining funds in proportion to their FY2011 allocations under Title I-A of the Elementary and Secondary Education Act (ESEA) (see **Table A-3**).⁷² The states and 100 largest LEAs would have to obligate their funds within 24 months of enactment of the AJA.

Distribution of Funds to the Local Level and Uses of Funds

Of the funds received by the state and the largest LEAs in the state, the lesser of 1% or \$750,000 could be reserved by the state for administrative costs associated with the Elementary and Secondary Schools Modernization program. After the administrative reservation, states, in turn, would award both competitive and formula subgrants to LEAs, including charter schools that are their own LEAs but excluding the 100 largest LEAs. Formula subgrants would be awarded from 50% of the state's remaining allocation in proportion to the FY2011 ESEA Title I-A allocation of each LEA that was not one of the 100 largest LEAs.⁷³ The minimum LEA formula subgrant would be \$10,000. LEAs would have to obligate their formula funds within 24 months of enactment.

States would award competitive grants to LEAs, which are not one of the 100 largest LEAs, from the other 50% of the state's remaining allocation based on "objective criteria" with priority for project need and rural LEAs.⁷⁴ States would be required to give priority to the use of green building/energy rating standards.⁷⁵ LEAs would have to obligate their competitive funds within 36 months of enactment.

⁷⁰ Qualified School Construction Bonds (QSCBs; 26 U.S.C. § 54F) were authorized as a new tax credit bond program under the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5). QSCBs made bond proceeds available for the construction, rehabilitation, or repair of, or for the acquisition of land for, K-12 public school facilities. The national bond volume cap for QSCBs was \$11 billion in each of CY2009 and CY2010. In addition, the Department of Treasury allocated \$200 million in each of 2009 and 2010 to the U.S. Department of the Interior for Indian tribal governments to construct or repair BIE-funded schools.

⁷¹ Funds for states that do not apply for their allocation, that apply for less than their full allocation, or that do not use their full allocation in a timely way could be redistributed by the Secretary to the other states or the LEAs in the state.

⁷² Funds for LEAs that do not apply for their allocation, that apply for less than their allocation, or that do not use their full allocation in a timely manner could be redistributed by the Secretary to the state in which the LEA is located.

⁷³ Funds for LEAs that do not apply for their allocation, that apply for less than their allocation, or that do not use their full allocation in a timely manner could be redistributed by the state to the other LEAs in the state that are not one of the 100 largest LEAs.

⁷⁴ An LEA could receive both a formula and competitive award.

⁷⁵ The green building/energy rating standards would have to be certified, verified, or consistent with the applicable provisions of the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, Energy Star, the Collaborative for High Performance Schools (CHPS) Criteria, Green Globes, or an equivalent program that includes a verifiable method to demonstrate compliance with such program.

All LEAs, including the 100 largest LEAs, could use the funds to support direct costs, interest on newly issued bonds, or payments for other newly issued financing instruments for modernization, renovation, and repair or a combination of these uses.

Private School Participation⁷⁶

The proposal would require that the equitable participation requirements for private school students authorized under section 9501 of the ESEA apply to the funding provided for the Elementary and Secondary Schools Modernization program.⁷⁷ Section 9501 requires that LEAs (or other grantees under relevant programs) shall “after timely and meaningful consultation with appropriate private school officials provide to those children and their teachers or other educational personnel, on an equitable basis, special educational services or other benefits that address their needs under the program.” Under the American Jobs Act, equitable participation requirements for private school students would only apply to students enrolled in private nonprofit elementary and secondary schools with child poverty rates of at least 40%. In addition, all services, benefits, material, and equipment provided would be required to be secular, neutral, and nonideological. The services provided would be equitable in comparison to services provided to public school students and staff, and would be required to be provided in a timely manner. The expenditures for private school students would be required to be equal to those for public school students, taking into account the number and educational needs of the children to be served. Under the proposal, expenditures for services would be considered equal if the per-pupil expenditures under the Elementary and Secondary Schools Modernization program for students enrolled in eligible private schools were consistent with the per-pupil expenditures for children enrolled in the public schools of the LEA receiving funds under the program, unless there is insufficient need in the eligible private schools.

Eligible private schools would be able to use funds for:

- modifications of school facilities necessary to meet the standards applicable to public schools under the Americans with Disabilities Act of 1990 (42 U.S.C. 12101 et seq.);
- modifications of school facilities necessary to meet the standards applicable to public schools under section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794); and
- asbestos or polychlorinated biphenyls abatement or removal from school facilities.

When implementing the provisions of section 9501 for ESEA programs, the control of funds used to provide services and the title to materials, equipment, and property purchased with those funds remains with a public agency. For the purposes of the Elementary and Secondary Schools Modernization program, however, these requirements would not apply, and private schools receiving funds under the program would retain the title to their property.

⁷⁶ For more information about how these provisions would apply with respect to the American Jobs Act, please contact Becky Skinner at rskinner@crs.loc.gov or 7-6600.

⁷⁷ For more information about the section 9501 provisions, see CRS Report R41445, *Selected Church-State Issues in Elementary and Secondary Education*, by Cynthia Brougher and Rebecca R. Skinner.

Potential Issue of Grant Size

The minimum LEA formula subgrant of \$10,000 may not be of sufficient size to support substantial modernization, renovation, or repair. **Table A-4** provides examples of construction, modernization, renovation, and repair project estimates from the Alabama Department of Education, the Wyoming School Facilities Department, and Illinois State Board of Education.

Community College Modernization (Title II, Subtitle D, Part II)

The American Jobs Act would appropriate \$5 billion for obligation by the Secretary in FY2012 to modernize, renovate, or repair existing facilities used by postsecondary students pursuing two-year and less-than-two-year degrees/certificates. The program would provide a 0.25% set-aside for tribally controlled colleges and universities and a 0.25% set-aside for the outlying areas.⁷⁸ The act does not suggest a methodology for distributing the funds among the tribally controlled colleges and universities and outlying areas.

Distribution of Funds to States

The remainder of funds after the set-asides would be allocated by formula to the states, including Puerto Rico and the District of Columbia, that have approved applications using a formula based on a combination of postsecondary enrollment and degree/certificate awards (see **Table A-2**). In determining these grants, each grant would be based on the sum of

- the numbers of students enrolled in two-year public and two-year private not-for-profit institutions of higher education (IHEs)⁷⁹ in the state; and
- the estimated number of students who are pursuing two-year and less-than-two-year degrees/certificates and who are enrolled in four-year public IHEs that award a “significant number”⁸⁰ of two-year and less-than-two-year degrees/certificates in the state (see formula below).

The estimated number of students at four-year IHEs would be calculated as the total enrollment at four-year public IHEs that award a significant number of two-year and less-than-two-year degrees/certificates multiplied by the ratio of two-year and less-than-two-year degrees/certificates awarded at such IHEs to all degrees/certificates awarded at such IHEs. The proposal would require the Secretary to use data from the Department of Education’s Integrated Postsecondary Education Data System (IPEDS) to determine grant amounts. The minimum state grant amount is \$2.5 million.

⁷⁸ The outlying areas are the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.

⁷⁹ Institution of higher education (IHE) is as defined in section 101 of the Higher Education Act, as amended.

⁸⁰ “Significant number” is not defined in the proposed legislation.

$$\text{State Grant} = \frac{\text{NP2E} + \text{Pub4E} * (\text{2YrDeg} / \text{AllDeg})}{\sum (\text{NP2E} + \text{Pub4E} * (\text{2YrDeg} / \text{AllDeg}))} * \text{APP}$$

Where:

NP2E = Two-year public and two-year private not-for-profit IHE enrollment

Pub4E = Four-year public IHE enrollment

2YrDeg = Total of two-year and less-than-two-year degrees/certificates awarded at public four-year IHEs

AllDeg = Total of all degrees/certificates awarded at public four-year IHEs

APP = Program allocation after set-asides

∑ = Sum (for all approved states)

The proposal would require each state application to include estimated start dates for each project. Although many states have capital plans and capital project priority lists for public IHEs, states may need to solicit similar information from the private IHEs, develop a process for verifying cost estimates, and establish standards for estimating costs.

States receiving a grant would be required to report annually on the use of funds to the Secretary starting on September 30, 2012.⁸¹ The report would include a description of projects funded and planned for funding, subgrant amounts, and the number of jobs created. The Secretary would in turn consolidate the state reports annually for the Senate Committee on Health, Education, Labor, and Pensions and the House Committee on Education and the Workforce.

Distribution of Funds to the Local Level and Uses of Funds

Of the funds received by the state, the lesser of 1% or \$750,000 could be reserved for administrative costs associated with the Community College Modernization program. The proposal does not establish a methodology or process for further distributing funds to eligible IHEs, except that states would be required to consider the extent to which IHEs plan to use green building/energy rating standards.⁸² Grants could only be made to eligible IHEs—two-year public IHEs, two-year private not-for-profit IHEs, and four-year public IHEs.

IHEs could use the funds to modernize, renovate, or repair existing facilities used by postsecondary students pursuing two-year and less-than-two-year degrees/certificates. Four-year IHEs could not use the funds for facilities that are not available to students pursuing two-year and less-than-two-year degrees/certificates. IHEs would have to obligate their funds within 36 months of enactment.

⁸¹ States would be required to continue to report annually until their program funds were exhausted.

⁸² The green building/energy rating standards would have to be certified, verified, or consistent with the applicable provisions of the Leadership in Energy and Environmental Design (LEED) Green Building Rating System, Energy Star, the Collaborative for High Performance Schools (CHPS) Criteria, Green Globes, or an equivalent program that includes a verifiable method to demonstrate compliance with such program.

Appendix. Related Tables

Table A-1. Estimated State Grants and Jobs Supported Under the Teacher Stabilization Program and Competitive Grants for First Responders, as Proposed by the American Jobs Act

State	Estimated State Grant Under the Teacher Stabilization Program and Competitive Grants for First Responders	Estimated Number of Educator and First Responder Jobs
Alabama	\$451,500,000	7,000
Alaska	\$70,500,000	900
Arizona	\$625,500,000	9,700
Arkansas	\$278,300,000	4,100
California	\$3,621,300,000	37,300
Colorado	\$478,600,000	7,000
Connecticut	\$336,300,000	3,800
Delaware	\$83,000,000	1,100
District of Columbia	\$45,100,000	500
Florida	\$1,669,500,000	25,900
Georgia	\$956,700,000	12,800
Hawaii	\$122,300,000	1,500
Idaho	\$159,800,000	2,500
Illinois	\$1,235,500,000	14,500
Indiana	\$629,300,000	9,100
Iowa	\$287,200,000	4,100
Kansas	\$278,500,000	4,300
Kentucky	\$406,500,000	6,100
Louisiana	\$434,400,000	6,300
Maine	\$117,300,000	1,800
Maryland	\$541,700,000	6,000
Massachusetts	\$591,800,000	6,300
Michigan	\$945,500,000	11,900
Minnesota	\$504,400,000	6,900
Mississippi	\$290,300,000	4,600
Missouri	\$565,200,000	9,100
Montana	\$90,100,000	1,400
Nebraska	\$176,100,000	2,800
Nevada	\$258,300,000	3,600
New Hampshire	\$120,900,000	1,700

State	Estimated State Grant Under the Teacher Stabilization Program and Competitive Grants for First Responders	Estimated Number of Educator and First Responder Jobs
New Jersey	\$831,100,000	9,300
New Mexico	\$200,100,000	3,100
New York	\$1,769,800,000	18,000
North Carolina	\$900,300,000	13,400
North Dakota	\$59,900,000	1,000
Ohio	\$1,093,800,000	14,200
Oklahoma	\$359,600,000	5,900
Oregon	\$350,700,000	4,600
Pennsylvania	\$1,155,300,000	14,400
Rhode Island	\$94,300,000	1,100
South Carolina	\$429,500,000	6,400
South Dakota	\$77,600,000	1,600
Tennessee	\$596,000,000	9,400
Texas	\$2,565,500,000	39,500
Utah	\$303,000,000	5,100
Vermont	\$55,500,000	800
Virginia	\$742,300,000	10,800
Washington	\$627,800,000	8,500
West Virginia	\$162,800,000	2,600
Wisconsin	\$536,000,000	7,400
Wyoming	\$52,500,000	700
Total	\$29,334,800,000	392,400

Source: Table prepared by CRS, September 21, 2011, based on White House estimates of the effect of the American Jobs Act on states; individual state-by-state fact sheets are available online at <http://www.whitehouse.gov/jobsact#overview>.

Notes: The total appropriation for the Teacher Stabilization program is \$30 billion. These funds would be distributed to states using a population-based formula. Grants for first responders authorized by Title II, Subtitle C of the American Jobs Act would be provided as competitive grants and do not appear to be included in the estimates above, despite the assertion in White House fact sheets that the funds were for both purposes. After required and optional set-asides under the Teacher Stabilization program (i.e., for the outlying areas (\$150 million), Bureau of Indian Education (\$150 million), and administration and oversight (\$2 million)) are added to the state grant total shown in this table, the difference between that total and the total \$30 billion appropriation for the Teacher Stabilization program equals \$363.2 million, which could be Puerto Rico's grant amount. The estimated number of jobs included in this table represent the White House's estimate of the number of educator and first responder jobs that would be supported by the two grants. It is not possible to discern how many of the estimated number of jobs would be for educators versus first responders.

Table A-2. Estimated State Grants Supported Under the Elementary and Secondary Schools Modernization Grants and Community College Modernization Program, as Proposed by the American Jobs Act

(Dollars in millions)

State/Entity	Elementary and Secondary Schools Modernization Grants			Community College Modernization Grants
	Total for 100 Largest LEAs	State Amount Reduced by Amounts Received by 100 Largest LEAs	Total State Amount	
Alabama	88.7	301.6	390.3	67.5
Alaska	0	62.0	62.0	2.5
Arizona	148.0	396.4	544.4	116.6
Arkansas	0	270.7	270.7	42.4
California	1,297.6	1,515.0	2,812.6	1,131.1
Colorado	75.5	189.6	265.1	57.5
Connecticut	0	185.0	185.0	38.0
Delaware	0	73.3	73.3	11.6
District of Columbia	0	84.7	84.7	2.5
Florida	1,090.7	189.6	1,280.3	288.4
Georgia	408.7	500.8	909.5	140.6
Hawaii	0	82.2	82.2	18.9
Idaho	0	93.6	93.6	11.2
Illinois	609.0	502.6	1,111.6	212.7
Indiana	74.1	369.3	443.4	79.8
Iowa	0	132.6	132.6	56.7
Kansas	48.5	142.9	191.4	45.3
Kentucky	75.1	315.8	390.9	54.7
Louisiana	227.6	289.2	516.8	40.7
Maine	0	90.7	90.7	12.8
Maryland	212.0	103.8	315.8	93.9
Massachusetts	92.4	286.2	378.6	68.8
Michigan	347.8	578.5	926.3	157.7
Minnesota	107.5	167.0	274.5	87.8
Mississippi	35.0	300.2	335.2	63.1
Missouri	106.2	316.0	422.2	69.1
Montana	0	77.1	77.1	5.7
Nebraska	45.3	61.4	106.7	21.4
Nevada	153.9	14.5	168.4	39.1
New Hampshire	0	70.1	70.1	8.7

State/Entity	Elementary and Secondary Schools Modernization Grants			Community College Modernization Grants
	Total for 100 Largest LEAs	State Amount Reduced by Amounts Received by 100 Largest LEAs	Total State Amount	
New Jersey	70.7	447.9	518.6	123.8
New Mexico	63.1	133.7	196.8	49.2
New York	1,754.2	265.8	2,020.0	235.3
North Carolina	234.4	441.3	675.7	163.1
North Dakota	0	58.9	58.9	6.5
Ohio	356.6	628.9	985.5	148.3
Oklahoma	83.9	183.5	267.4	57.5
Oregon	0	253.2	253.2	71.2
Pennsylvania	440.4	503.6	944.0	113.2
Puerto Rico	0	896.6	896.6	7.9
Rhode Island	0	85.6	85.6	12.7
South Carolina	80.2	301.2	381.4	70.8
South Dakota	0	75.6	75.6	4.7
Tennessee	191.3	283.4	474.7	61.8
Texas	1,211.9	1,120.2	2,332.1	458.4
Utah	0	138.7	138.7	37.1
Vermont	0	57.5	57.5	5.3
Virginia	0	425.3	425.3	110.1
Washington	0	365.1	365.1	83.9
West Virginia	0	161.2	161.2	15.4
Wisconsin	168.9	199.8	368.7	79.9
Wyoming	0	56.3	56.3	11.7
BIE-funded schools	NA	NA	125.0	NA
Outlying areas ^a	NA	NA	125.0	12.5
Tribally controlled colleges ^b	NA	NA	NA	12.5
NCES survey	NA	NA	5.0	NA
Total ^c	9,898.0	15,102.0	25,000.0	5,000.0

Source: Table prepared by CRS, September 21, 2011, based on White House estimates of the effect of the American Jobs Act on states, available online at <http://www.whitehouse.gov/the-press-office/2011/09/13/fact-sheet-repairing-and-modernizing-americas-schools>.

Notes: NA means not applicable.

- The outlying areas are the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Republic of Palau.
- The eligible tribally controlled colleges and universities are as defined in section 316 of the Higher Education Act, as amended.
- Total may not add due to rounding.

Table A-3. Estimated Grants to the 100 Largest LEAs Supported Under the Elementary and Secondary Schools Modernization Grants, as Proposed by the American Jobs Act

(Sorted alphabetically by state and then LEA)

State	100 Large Local Educational Agencies ^a	Estimated Elementary and Secondary Schools Modernization Grant (dollars in millions)
Alabama	Birmingham City School District	35.2
Alabama	Mobile County School District	53.5
Arizona	Mesa Unified District	58.8
Arizona	Phoenix Union High School District	32.7
Arizona	Tucson Unified District	56.5
California	Bakersfield City Elementary School District	34.7
California	Fresno Unified School District	97.5
California	Long Beach Unified School District	75.5
California	Los Angeles Unified School District	743.5
California	Oakland Unified School District	42.4
California	Sacramento City Unified School District	46.9
California	San Bernardino City Unified School District	60.3
California	San Diego City Unified School District	91.8
California	San Francisco Unified School District	29.8
California	Santa Ana Unified School District	36.2
California	Stockton Unified School District	39.0
Colorado	Denver County School District I	75.5
Florida	Brevard County School District	30.0
Florida	Broward County School District	125.3
Florida	Dade County School District	267.0
Florida	Duval County School District	80.8
Florida	Escambia County School District	30.2
Florida	Hillsborough County School District	122.8
Florida	Lee County School District	34.8
Florida	Marion County School District	28.2
Florida	Orange County School District	87.3
Florida	Palm Beach County School District	98.4
Florida	Pasco County School District	32.4
Florida	Pinellas County School District	54.0
Florida	Polk County School District	61.3
Florida	Volusia County School District	38.2
Georgia	Atlanta City School District	78.6

State	100 Large Local Educational Agencies^a	Estimated Elementary and Secondary Schools Modernization Grant (dollars in millions)
Georgia	Clayton County School District	37.5
Georgia	Cobb County School District	42.9
Georgia	DeKalb County School District	86.3
Georgia	Fulton County School District	45.8
Georgia	Gwinnett County School District	79.2
Georgia	Richmond County School District	38.4
Illinois	Chicago Public School District 299	609.0
Indiana	Indianapolis Public Schools	74.1
Kansas	Wichita Unified School District 259	48.5
Kentucky	Jefferson County School District	75.1
Louisiana	Caddo Parish School District	40.1
Louisiana	East Baton Rouge Parish School District	51.6
Louisiana	Jefferson Parish School District	50.2
Louisiana	Orleans Parish School District	85.7
Maryland	Baltimore City Public Schools	114.2
Maryland	Montgomery County Public Schools	46.5
Maryland	Prince George's County Public Schools	51.3
Massachusetts	Boston School District	92.4
Michigan	Detroit City School District	347.8
Minnesota	Minneapolis Public School District	53.0
Minnesota	St. Paul Public School District	54.5
Mississippi	Jackson Public School District	35.0
Missouri	Kansas City School District	34.2
Missouri	St. Louis City School District	72.0
Nebraska	Omaha Public Schools	45.3
Nevada	Clark County School District	153.9
New Jersey	Newark City School District	70.7
New Mexico	Albuquerque Public Schools	63.1
New York	Buffalo City School District	67.6
New York	New York City	1,630.6
New York	Rochester City School District	56.0
North Carolina	Charlotte-Mecklenburg Schools	82.3
North Carolina	Cumberland County Schools	32.3
North Carolina	Forsyth County Schools	31.5
North Carolina	Guilford County Schools	42.3
North Carolina	Wake County Schools	46.0

State	100 Large Local Educational Agencies^a	Estimated Elementary and Secondary Schools Modernization Grant (dollars in millions)
Ohio	Cincinnati City School District	61.1
Ohio	Cleveland Municipal School District	129.6
Ohio	Columbus City School District	111.6
Ohio	Toledo City School District	54.3
Oklahoma	Oklahoma City Public Schools	47.2
Oklahoma	Tulsa Public Schools	36.7
Pennsylvania	Philadelphia City School District	395.6
Pennsylvania	Pittsburgh School District	44.8
South Carolina	Charleston County School District	34.2
South Carolina	Greenville County School District	46.0
Tennessee	Memphis City School District	123.5
Tennessee	Nashville-Davidson County School District	67.8
Texas	Aldine Independent School District	50.4
Texas	Alief Independent School District	44.8
Texas	Arlington Independent School District	39.1
Texas	Austin Independent School District	69.3
Texas	Brownsville Independent School District	60.0
Texas	Corpus Christi Independent School District	28.2
Texas	Dallas Independent School District	191.6
Texas	Edinburg Consolidated Independent School District	32.8
Texas	El Paso Independent School District	66.2
Texas	Fort Worth Independent School District	84.9
Texas	Garland Independent School District	30.8
Texas	Houston Independent School District	233.6
Texas	La Joya Independent School District	34.8
Texas	Laredo Independent School District	37.3
Texas	Northside Independent School District	35.1
Texas	Pasadena Independent School District	33.0
Texas	Pharr-San Juan-Alamo Independent School District	31.6
Texas	San Antonio Independent School District	69.1

State	100 Large Local Educational Agencies ^a	Estimated Elementary and Secondary Schools Modernization Grant (dollars in millions)
Texas	Ysleta Independent School District	39.3
Wisconsin	Milwaukee School District	168.9
Total ^b		9,898.0

Source: Table prepared by CRS, September 21, 2011, based on White House estimates of the effect of the American Jobs Act on states, available online at <http://www.whitehouse.gov/the-press-office/2011/09/13/fact-sheet-repairing-and-modernizing-americas-schools>.

- a. The 100 largest local educational agencies have the largest numbers of children aged 5-17 living in poverty. The American Jobs Act does not define Hawaii, the District of Columbia, and the Commonwealth of Puerto Rico as local educational agencies.
- b. Total may not add due to rounding.

Table A-4. Examples of Estimated Modernization, Renovation, and Repair Costs in Alabama, Wyoming, and Illinois

Entity	Project description	Project budget (\$)
Shelby County, Alabama	Door replacement at single school	6,500 - 35,000
Albertville City, Alabama	Install generator	20,000 - 35,000
Montgomery County, Alabama	Air conditioning and heat for the lunchroom	50,000
Mountain Brook City, Alabama	Replace Roof	75,000 - 450,000
Big Horn, Wyoming	LEED Certification	126,000
School district total, Illinois by building	Fire protection (detectors, alarms, etc.)	168,457
Jefferson County, Alabama	Replace cooling tower	181,000
School district total, Illinois by building	Asbestos abatement	205,019
School district total, Illinois by building	Technological upgrading	217,964
Campbell County, Wyoming	Upgrade electrical system and lighting in high school	248,275
School district total, Illinois by building	Accessibility measures	434,436
Central High School, Wyoming	Building renovations to high school	755,204
Vestavia Hills City, Alabama	Re-model lunchroom	988,303
Goshen High School, Wyoming	Renovations to high school	1,241,519
Birmingham City, Alabama ^a	HVAC Controls Upgrade: District Wide	1,500,000
Jefferson County, Alabama	Renovate high school	2,243,817
Birmingham City, Alabama ^a	Technology Refresh District wide to include Printers, Copiers, Desktop Computers, Interactive Board and Wireless system	22,000,000

Source: Alabama Department of Education, Capital Plan Five Year Plan As of 9/22/2011, available at http://schools.alsde.edu/CapitalPlan/public_report.aspx and U.S. Department of Education, Common Core of Data, 2009-2010 Total Students (UG, PK-12) (District), available at <http://nces.ed.gov/ccd/> on September 23, 2011; Wyoming School Facilities Department, available at http://www.wyoming.gov/loc/03302010_1/reports/

Pages/AnnualReports.aspx on September 26, 2011; and Illinois State Board of Education, Capital Needs Assessment Survey Results, December, 2010, available at http://www.isbe.state.il.us/finance/pdf/cnas_FY11.pdf on September 26, 2011.

Notes: These costs are based on publically available estimates of school renovation and repair. These examples are illustrative and may not be representative of costs across the nation.

- a. Birmingham City School District is one of the 100 largest LEAs. Under the Elementary and Secondary Schools Modernization program, it would receive funds directly from the federal government.

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