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## ***S.A. 2712, the Worker, Homeownership, and Business Assistance Act of 2009 to H.R. 3548, the Emergency Unemployment Compensation Extension Act of 2009***

Summary and Background .....	1
Major Provisions .....	2
Legislative History .....	4
Expected Amendments .....	5
Administration Position.....	5
Resources .....	5
Appendix:	
Estimated Number of Federal Extension Exhaustions, by State .....	6

## Summary and Background

Last February, Congress enacted into law the *American Recovery and Reinvestment Act of 2009 (P.L. 111-5)* in response to the nation's worse economic recession in generations. This landmark legislation included an increase of \$25 billion in unemployment insurance payments and an extension of the term of coverage of unemployment insurance to ease the burdens of the suffering Americans hit hardest by the recession. The legislation also expanded and extended the first-time homebuyer tax credit in an effort to reinvigorate the struggling housing market. Moreover, the *Recovery Act* extended net operating loss (NOL) carry back provisions for small businesses hurt by the economic downturn.

Under current law, emergency compensation, which began in July 2008 as part of *Supplemental Appropriations Act, 2008 (P.L. 110-252)*, provides up to 20 weeks of unemployment benefits to certain workers who have exhausted their regular unemployment compensation benefits, with 13 additional weeks of coverage for workers in states with the highest unemployment rates. The *Recovery Act* extended the program through December 26, 2009.

Under current law, the homebuyer tax credit, which was originally created in 2008 as part of the *Housing and Economic Recovery Act of 2008 (P.L. 110-289)*, provides an up to \$8,000 (or up to 10 percent of the purchase price) refundable credit for taxpayers with incomes of up to \$75,000 for individuals and \$150,000 for married couples. The credit is phased out for taxpayers with incomes above those levels over the next \$20,000 (up to \$95,000 and \$170,000, respectively). The *Recovery Act* extended the program through November 30, 2009.

Moreover, under current law, businesses with negative taxable income (a net operating loss) can carry back those losses for two years in an effort to receive a refund for previously paid taxes. The *Recovery Act* expanded the carry back for business with \$15 million or less in gross receipts, allowing them to carry back losses for five years if those losses occurred in 2008.

Eight months later, while economists agree the economy is emerging from a recession by definition, it is clear that American families, businesses, and industries are still struggling and in need of the assistance and tax breaks provided in the *Recovery Act*. Emergency unemployment compensation is particularly needed given that unemployment is a lagging indicator in any recession, especially one of this size. While businesses are slow to fire at the beginning of an economic downturn, they are also slow to rehire at the beginning of a recovery period. Unemployment compensation benefits are critical to helping families make ends meet until they can find a job. Currently, approximately 7,000 people exhaust their benefits per day, and without an additional extension nearly 1.9 million Americans will lose their benefits by the end of 2009.

To this end, during consideration of **H.R. 3548**, the *Emergency Unemployment Compensation Extension Act of 2009*, Senate Majority Leader **Reid** and Senate Committee on Finance Chairman **Baucus** introduced a comprehensive substitute amendment (**S.A. 2712**) that would: 1) extend unemployment insurance by up to 14 additional weeks for jobless workers across the nation; 2) continue the \$8,000 first-time homebuyer credit through April 30, 2010, but with 60 days to close after that date; 3) provide a \$6,500 credit to new purchasers who have lived in their current residence for five or more years; and 4) extend and expand the carry back provision to allow all businesses to carry back losses incurred in 2008 or 2009 for five years. The legislation also contains other provisions aimed at helping the nation recover from economic recession as well as offsets to insure the measure is fully paid for.

The Senate began consideration of **H.R. 3548** during the week of October 26. On October 29, Senator Reid filed cloture on **S.A. 2712**. The Senate is expected to vote on that cloture motion on Monday November 2.

## Major Provisions

### *Emergency Unemployment Compensation Provisions*

**S.A. 2712** would:

- Extend unemployment insurance by up to 14 additional weeks for jobless workers; and
- Extend benefits for six additional weeks for workers in states with unemployment levels over 8.5 percent.

**S.A. 2712** would also:

- Ensure the additional \$25 per week in unemployment insurance benefits provided by the *Recovery Act* do not count against a family's eligibility for the Supplemental Nutritional Assistance Program, formerly known as food stamps;
- Update the Unemployment Insurance Modernization provisions in the *Recovery Act* to provide that victims of sexual assault who have left their jobs have a "compelling family reason" for benefits;
- Specify that railroad workers who face expiring unemployment benefits will be eligible for the extension of benefits; and
- Allow states to temporarily pay tier three benefits before tier two benefits in order to avoid payment delay and to ease implementation of Emergency Unemployment

Compensation benefits, but tier two and tier three benefits must be exhausted before an individual may qualify for tier four benefits.

**Offset.** The unemployment compensation provisions of **S.A. 2712**, which is estimated to cost \$2.4 billion, are fully offset by an extension of the *Federal Unemployment Tax Act* (FUTA) until June 30, 2011.

## ***Business and Homebuyer Assistance Provisions***

### **HOMEBUYER TAX CREDIT**

**S.A. 2712** would:

- Extend through April 30, 2010 the tax credit for first-time homebuyers (up to \$8,000 or up to 10 percent of the purchase price of the residence), allowing 60 days to close, provided that the homes are under a binding contract by that date;
- Provide homebuyer tax credit of up to \$6,500 to owners who have been in the same principal residence for five consecutive years during the previous eight years;
- Increase the income limitations to \$125,000 for individuals and \$225,000 for joint filers;
- Phase out the credit for individuals with incomes above \$125,000 for individuals and \$225,000 for joint filers at the same rate as current law (over the next \$20,000);
- Limit the credit to purchases of principal residences equal to or less than \$800,000;
- Eliminate the 36-month recapture requirement for military personnel, including members of the Foreign Service and intelligence community, forced to sell as a result of an official extended duty of service; and
- Extend the tax credit for one year for military personnel serving outside the United States for at least 90 days in 2009 or 2010.

**S.A. 2712** would also include anti-fraud language. The measure would not extend the credit to taxpayers under the age of 18 on the date of purchase unless that person is married to a taxpayer above the age of 18. The amendment would also require a properly executed copy of the settlement statement to be attached to the tax return. Moreover, the substitute would expand the restriction on a residence acquired from a family member to include a residence acquired from a spouse's family member.

**S.A. 2712** would also extend math and clerical error authority to the Internal Revenue Service.

## **NET OPERATING LOSSES**

**S.A. 2712** would expand and extend the five-year carry back period to allow all business (not just those with gross receipts of \$15 million or less) to carry back new operating losses for up to five years for losses incurred in either 2008 or 2009 (not both). Small businesses, however, that have already elected to carry back in 2008 under current law may also elect to carry back losses from 2009. The substitute would permit 100 percent of the business' income to be offset in the first four carry back years, but the offset would be limited to 50 percent of income from the fifth year.

## **MILITARY HOMEOWNER ASSISTANCE PROGRAM**

Under current law, military personnel who sell a home that has declined in value as a result of a base closure can receive a Homeowner Assistance Program (HAP) payment to adjust for the decline. These payments are tax exempt. The *Recovery Act* expanded the HAP payment to military personnel selling their home as a result of a permanent reassignment and other purposes, but the payments are not tax exempt. **S.A. 2712** would exempt *all* military HAP payments.

## **OFFSETS**

**S.A. 2712** would provide that the homebuyer and business assistance provisions, which would cost approximately \$21 billion over ten years, be offset by: 1) delaying implementation of worldwide allocation of interest for an additional seven years, which would raise an estimated \$20 billion over ten years; and 2) increasing the penalty for failure to fail a partnership or S-corporation return, which would raise an estimated \$1.2 billion over ten years.

# **Legislative History**

On September 10, 2009, Rep. McDermott introduced **H.R. 3548**, the *Unemployment Compensation Extension Act of 2009* in the House. On September 22, the House passed **H.R. 3548** by a vote of 331-83 ([Roll No. 722](#)).

On October 8, 2009, the bill was placed on the Senate Legislative Calendar. Senators **Reid**, **Baucus**, **Reed**, and **Shaheen** offered **S.A. 2668**, a substitute amendment to **H.R. 3548**. The text of that amendment was nearly identical to the emergency unemployment compensation provisions summarized above. Despite several attempts by Senate Majority Leader **Reid**, Senate Minority Leader McConnell objected to all requests that the legislation be approved by unanimous consent and all consent agreements to include a limited list of minority and majority amendments and avoid

the procedural delay of cloture. Unable to get an agreement, Senator **Reid** filed cloture on the motion to proceed to the bill and cloture on that motion was invoked on October 27.

As negotiations were ongoing, Senators **Reid** and **Baucus** worked with a bipartisan group of Senators to construct a new substitute amendment that included **S.A. 2668**'s unemployment compensation provisions and new homebuyer and business assistance tax provisions.

The Senate began consideration of **H.R. 3548** on October 29. This new substitute amendment (**S.A. 2712** summarized above) was filed on October 29. On that same day, Senator **Reid** filed cloture on both the underlying bill and **S.A. 2712**. The Senate is expected to vote on the motion to invoke cloture on **S.A. 2712** on November 2.

## Amendments

The DPC will distribute information to our staff listservs on amendments as it becomes available.

## Administration Position

The Obama Administration issued a Statement of Administrative Policy in support of **H.R. 3548** on October 27. Moreover, the Administration has indicated its strong support for the homebuyer buyer tax credit extension.

## Resources

Congressional Budget Office, Preliminary Estimate: Substitute Amendment to H.R. 3548 (October 8, 2009), available [here](#) (an estimate of **S.A. 2668**).

Congressional Research Service, Temporary Extension of Unemployment Benefits: Emergency Unemployment Compensation, available [here](#).

Congressional Research Service, Unemployment Insurance: Available Unemployment Benefits and Legislative Activity, available [here](#).

Congressional Research Service, The First-Time Homebuyer Tax Credit, available [here](#).

Congressional Research Service, Net Operating Losses: Proposed Extension of Carryback Period, available [here](#).

Democratic Policy Committee, Legislative Bulletin: H.R. 1: *the American Recovery and Reinvestment Act of 2009*, as amended (Modernization of Unemployment Compensation), available [here](#).

Senate Committee on Finance, “Unemployment Insurance Benefits: Where Do We Go From Here?,” Hearing Statements and Testimony, available [here](#).

Appendix: Estimated Number of Federal Extension Exhaustions, by State  
Through September and December 2009

**National Employment Law Project, August 2009**

<b>State</b>	<b>Total Exhaustions through September 2009</b>	<b>Total Exhaustions through December 2009</b>
Alabama	0	37,794
Alaska	2,252	3,700
Arizona	5,142	22,632
Arkansas	5,076	8,273
California	68,713	154,328
Colorado	0	13,853
Connecticut	4,922	11,739
Delaware	0	3,518
District of Columbia	945	3,703
Florida	27,359	114,508
Georgia	13,844	58,887
Hawaii	2,774	5,456
Idaho	3,055	9,395
Illinois	20,266	50,028
Indiana	9,848	50,343
Iowa	19,845	30,914
Kansas	0	3,819
Kentucky	3,814	14,025
Louisiana	0	8,773
Maine	0	4,838
Maryland	15,650	25,681
Massachusetts	0	39,530
Michigan	25,534	62,753
Minnesota	6,776	13,754
Mississippi	12,895	19,109
Missouri	4,091	20,556
Montana	2,814	5,688
Nebraska	9,308	13,849
Nevada	5,041	14,135
New Hampshire	0	1,478
New Jersey	22,355	41,576
New Mexico	0	1,577
New York	0	89,662
North Carolina	15,033	32,171
North Dakota	3,187	4,195
Ohio	11,642	64,545
Oklahoma	0	5,943
Oregon	4,981	11,235
Pennsylvania	19,960	60,910
Puerto Rico	1,537	6,437
Rhode Island	2,489	4,483
South Carolina	13,775	21,852
South Dakota	954	1,543
Tennessee	8,299	32,788

<b>State</b>	<b>Total Exhaustions through September 2009</b>	<b>Total Exhaustions through December 2009</b>
Texas	0	48,596
Utah	10,731	18,226
Vermont	1,172	1,860
Virgin Islands	1,052	1,350
Virginia	0	12,877
Washington	4,628	10,455
West Virginia	0	3,756
Wisconsin	8,834	24,180
Wyoming	2,158	3,900