

Jobs for Economic Recovery Act

Section-by-Section Summary

Section 1: Short Title

The short title of this bill is the Jobs for Economic Recovery Act of 2020.

Section 2: Purpose

- To provide immediate funding for subsidized employment programs that will create job opportunities for those unemployed or underemployed as a result of COVID-19 when it is safe to provide such opportunities, taking into account the need to prevent the spread or recurrence of COVID-19;
- To expand subsidized employment programs that reconnect unemployed and underemployed workers to the workforce;
- To drive economic recovery by allowing for sufficient flexibility for state and local governments to create or expand programs that aim to fill community-specific workforce gaps and meet employer needs; and
- To prevent long-term joblessness and structural unemployment and provide work opportunities for individuals with barriers to employment.

Section 3: Employment, Training, and Supportive Services Program

Section 3(a): Amends the Social Security Act to add a new Title XIII—Reemployment and Other Job-Related Assistance and Benefits:

Sec. 1301: Purpose, Definitions, and Administration

- Provides states, tribes, local governments and nonprofit organizations funds to:
 - Promote subsidized employment programs for public and private-sector jobs that enable unemployed or underemployed individuals to earn income and connect to the workforce;
 - Expand the availability of jobs during economic downturns or in areas with high unemployment or poverty;
 - Provide economically and socially disadvantaged individuals and individuals with barriers to employment (such as the long-term unemployed, people with criminal records, former foster youth, and other populations) with wages and work experience;
 - Provide employers with new pathways into the workforce development system, enabling them to have a greater role in the training and hiring of new workers and labor market re-entrants;
 - Allow for sufficient flexibility for states, tribes, local governments and nonprofit organizations to design programs targeted at community-specific workforce gaps and employer needs.
- Defines eligible individuals as those assessed as unlikely to find regular unsubsidized employment due to being an individual with a barrier to employment (using WIOA definition), being a dislocated worker, or economic conditions.

- Defines employment services to include subsidized job placement in the public, private for-profit, private non-profit, or employment social enterprise sectors and includes payment or reimbursement of employer subsidies for wages, the employer share of payroll taxes, employer costs for unemployment insurance, employer costs for workers' compensation premiums, and costs attributable to supervision and other administration directly related to the employment of an eligible individual in the subsidized job placement.
- Defines evidence standards for the employment and training services as:
 - Tier-1 practices include those that:
 - Offer a new or potentially more effective strategy for addressing widely shared workforce challenges
 - Have not been systematically studied but are supported by a strong logic model
 - Depart from existing workforce strategies
 - Tier-2 practices include those that:
 - Expand knowledge about the efficacy of a workforce strategy and provide more information about the feasibility of implementing proven workforce strategies in different contexts; and
 - Have been implemented by a state program and evaluated, and the evaluation results indicate some potential for positive impacts on participant or system-wide outcomes; or
 - Have not been previously implemented by the state, but are supported by evidence of positive change and has been evaluated before using a pre- and post-assessment comparison between intervention and comparison groups and suggests some statistically significant positive change.
 - Tier-3 practices include those that:
 - Previously have been implemented by a program funded by a state; and
 - Previously have been evaluated using a quasi-experimental or random assignment design, and the evaluation findings indicate some statistically significant positive change.
- To be considered a tier-1, -2, or -3 practice, it must be intended, studied, or evaluated for purposes of making meaningful improvements in validated measures of important outcomes for eligible individuals and their families, such as recidivism, health, employment, and economic well-being over the short- and long-term.

Sec. 1302: State Plan Requirements

- As a condition of payment, requires states to submit to the Secretary of Health and Human Services a plan that describes:
 - The state's strategy for creating or expanding programs that offer subsidized employment for eligible individuals and moving such individuals into unsubsidized employment;
 - How such strategy fits with the state's overall strategy for, and assessment of, the state's workforce needs;

- The employment services, training, and other services or activities, and supportive services to be provided under the state program funded under this title;
- Which specific populations of eligible individuals the state will serve, with a focus on how the state plans to assess and serve the eligible individuals with serious or multiple barriers to employment;
- The strategies the state will use for outreach and engagement with eligible populations to ensure that such populations are aware of subsidized employment opportunities in their community;
- The strategies the state will use for outreach and engagement with employers to promote employers' use of the program and ensure they have the training necessary to support eligible individuals;
- The strategies the state will use to create employment plans for eligible individuals participating in the state program funded under this title and, based on such plans, assign and provide eligible individuals with employment services, training and other services and activities, and supportive services;
- How the state will coordinate the state program funded under this title with other relevant systems and programs based on the populations identified, which may include criminal justice, child support, juvenile justice, child welfare, homeless services, and other human services and workforce development programs of the state, including programs supported through the Workforce Innovation and Opportunity Act;
- A plan for regular, rigorous evaluation of the state program, including how the state plans to measure program outcomes and impacts; and
- How the state will address gaps in employment and earnings by race, ethnicity, age and gender and collect data to measure progress in addressing those gaps.
- Requires state to verify that new funding will supplement, and not supplant, existing state expenditures.
- Requires submission of state plan at least 90 days prior to state beginning to operate a program and subsequent state plans to be submitted at the same time and in the same manner as the state WIOA plan.
- Requires approval of state plan by the Secretary of Health and Human Services, in consultation with the Secretary of Labor as appropriate.

Sec. 1303: Use of Funds

- Allows states to use funds to provide eligible individuals with employment, training, and supportive services (services such as child and dependent care and transportation that are necessary to enable an individual to participate in employment activities); to train employers to use the program; and for the proper and efficient administration of the state program.
- Requires a minimum of 70% of funds paid to each state to be directed toward direct employment services (employer costs of wages, employer share of payroll and unemployment taxes, and workers' compensation premiums).
- States are required to utilize evidence-based practices that meet the requirements for being considered a tier-1, -2, or -3 practice for employment and training services and may only receive funds for training, services, and supports that directly result in employment. These criteria may be waived in an economic downturn.

- Beginning with the 21st fiscal year quarter for which the state carries out the program, at least 50% of the total amount expended by the state must be for employment and training services and supports that meet the requirements of a Tier-2 or -3 practice. This criterion is also suspended during downturns.
- States are eligible to receive funding to conduct an evaluation if:
 - The state submits to the Secretary a description of the proposed evaluation, and the Secretary determines that the design and approach of the proposed evaluation is rigorous, will measure program outcomes and impacts, and is likely to yield information that is credible and will be useful to the state.

Sec 1304: Payments to States

- States are eligible to receive the federal medical assistance percentage (FMAP) for the total amount expended by the state during the quarter to provide eligible individuals with employment and training services and supports and for the proper and efficient administration of the program.
- States will receive increased federal support during economic downturns up to a maximum of full federal funding in severe downturns. If the total unemployment in a quarter is:
 - 5.5%-6%, the federal share is FMAP + 20 pts;
 - 6%-6.5%, the federal share is FMAP + 30 pts;
 - 6.5%-7%, the federal share is FMAP + 40 pts;
 - 7% or greater, the federal share is FMAP + 50 pts or 100, whichever is lesser.
- Maintenance of Effort – As a condition of receiving payments, the total amount of state expenditures for employment and training services and supports through programs such as WIOA shall not be less than the amount of such expenditures for fiscal year 2019.
- Before each fiscal quarter, the Secretary shall estimate the amount each state will be entitled to for the quarter based on estimates provided by the states of how much will be expended for the quarter on employment and training services and supports.
- Caps administrative expenses at 15% of the amount spent by the state during the quarter of employment and training services and supports.
- Authorizes grant funding to states, tribes, and local governments, with no matching state requirement, for planning, implementation, and technical assistance.

Sec 1305: Other Program Requirements

- States must establish procedures to conduct assessment and employment plans that:
 - Assess an eligible individual’s job skills, education, past work experience, and potential barriers to employment within 30 days of the eligible individual commencing the state program.
 - Based on such assessment, create an individualized employment plan for each eligible individual participating in the program that specifies the ultimate employment goal of the eligible individual and the employment and training services and supports that will lead to such goal and will be provided by the state.
 - Requires workers with subsidized jobs to be assessed near the end of the subsidy period to determine whether the individual will remain with the

current employer or receive additional employment, training, or other services to maintain employment.

- These assessments and employment plans may not be used to discriminate against eligible individuals with the highest barriers to employment.
- Employment standards and criteria for subsidized jobs:
 - Subsidies for the job placement may only be used by an employer for the costs attributable to the hiring of, compensation for, or on-the-job training of, the eligible individual.
 - An employer may not be paid a subsidy that exceeds 120% of wage costs.
 - An eligible individual in a subsidized job placement cannot be paid less than the highest of: (A) the federal minimum wage, (B) the minimum wage of the state or locality, (C) (if determined appropriate by the state) the prevailing wage rate of the locality, as determined by the Secretary, or (D) a rate set for the eligible individual under a collective bargaining agreement that covers employees at the job placement.
 - An eligible individual shall be covered by all relevant employment and labor laws of the jurisdiction.
 - A subsidized job placement for an eligible individual cannot exceed 6 months, unless the placement is extended to accommodate time needed for training.
 - Employers participating in the program must make a good faith effort to hire the individual placed in a subsidized job in their company if the individual has demonstrated satisfactory performance and there is an available job.
 - Workers with disabilities must be placed at work sites integrated with workers who do not have disabilities, mirroring existing Competitive Integrated Employment rules.
 - For a site of employment where workers are covered by a collective bargaining agreement, no subsidized job placement shall be made at the site without the consent of all labor organizations representing its workers.
 - For employers who have previously participated in the program, the state shall consider feedback from workers previously placed with that employer when determining whether to continue placing individuals with that employer.
 - A subsidized job placement in a government agency is subject to the same civil service protections as similar jobs at such agency.
 - An eligible individual who works on average at least 30 hours per week in subsidized job placement shall be treated as a full-time employee for the purposes of employer shared responsibility payments under the Affordable Care Act [26 U.S.C. 4980H].
 - No more than 10% of an employer's employees may be eligible individuals in subsidized employment. Employers with fewer than 10 employees may employ 1 eligible individual, and employers with more than 500 employees may employ up to 50 eligible individuals.
 - If an eligible individual is unemployed for at least 4 weeks after completing a transitional job placement, the eligible individual may apply for a new subsidized job placement, but only with a different employer.
 - The Secretary may waive the six-month limit on length of job placement if unemployment rate is above 5.5 percent.

- Safeguards against displacing or infringing on promotion opportunities of existing workers. An employer shall not use an individual subsidized job placement if:
 - (1) It will result in layoff or partial displacement (such as through a reduction in hours, wages, or employment benefits) of an existing employee or position;
 - (2) Such individual will assume any duties or responsibilities of an employee participating in a strike, collective bargaining, or union organizing;
 - (3) It will infringe upon the promotional opportunities of an existing employee of the employer; or
 - (4) Such individual will perform the same work or substantially the same work as an individual who has been laid off or partially displaced and has not received an offer to be restored to their prior position.
- The state shall establish a procedure for filing and adjudication of grievances from eligible individuals, labor organizations, and other interested individuals concerning participating employers, including grievances related to proposed placements of eligible workers with such employers.

Sec 1306: Reports; Technical Assistance; Research; Audit Requirement

- States must submit quarterly reports to the Secretary including the data and information required by the Secretary.
- The Secretary must study and submit annual reports to Congress that measure the performance of the state programs, include information on the categories of individuals and employers served, and describe the types of funded activities.
- The Secretary must coordinate with the Secretary of Labor on aligning performance measures and regulations for this state program and those funded under WIOA.
- The Secretary must create new performance measures that address income gains, poverty reduction, and poverty alleviation for eligible individuals and their families participating in the state programs.
- The Secretary, in consultation with the Secretary of Labor, shall determine the data states should collect and report and the extent to which that data collection and reporting and required evaluations can be coordinated with the state program requirements funded under WIOA.
- Requires the HHS Inspector General audit a sample of state programs once every two years to ensure compliance with program requirements and to identify and protect against any waste, fraud, or abuse.

Sec. 1307: Direct Funding and Administration for Programs Operated by Indian Tribes

- Allows any tribe or consortium operating a TANF program to be eligible to receive direct funding from HHS for the operation of an employment and training program and receive a federal match at the FMAP rate.

Sec 1308: Direct Funding and Administration for Programs Operated by Local Governments

- Allows a local government, or a consortium of local governments, to establish an employment and training program if their state does not elect to establish a state program or if they can demonstrate that a local program would meet a need or serve a population that is not met or sufficiently served by the state program.

Sec. 1309: Grants to Nonprofit Organizations

- Authorizes the Secretary, in consultation with the Secretary of Labor, to award multi-year grants on a competitive basis to nonprofits applying for employment services programs, which may include regional programs or programs which serve specific populations.
- Grantees will be selected based on the applicant's experience providing transitional jobs, ability to recruit individuals to be served by the grant and provide work opportunities, size of the population to be served by the applicant, and any other criteria the Secretary determines appropriate.
- Appropriations are authorized for this program for fiscal years 2020 through 2025.

Section 3(b): Program Performance Incentives

- Requires the Secretary to enter into an agreement with the National Academy of Sciences to evaluate and analyze the relationships between engagement, impacts, and outcome measures. The evaluation shall also examine the issue of program performance and include recommendations to Congress on whether and how program performance might be tied to fiscal incentives.

Section 3(c): Public Information About Availability of Employment Services

- Requires the Secretary to make information publicly available to jobseekers online about whether they are eligible for state, local, or tribal program employment services, and the agency to contact for further information.

Section 4: Employee Retention Work Opportunity Credit

- Creates a new Employee Retention Credit (§ 51(l) of the Internal Revenue Code) for employers that retain workers hired through the program on or before December 31, 2021.
- Sets the credit value equal to 40% of the eligible individual's second year of wages up to a cap of \$6,000.
- Requires a GAO study to evaluate:
 - Whether the retention credit had a meaningful impact on retention as compared with other currently existing and previous subsidized employment programs; and
 - Whether such retention credit was easily understood by employers and had an impact on hiring decisions.
- Extends the Work Opportunity Credit with respect to workers hired on or before December 31, 2022.

Section 5: Conforming Amendments

Section 6: Effective Date; Regulations

The Jobs for Economic Recovery Act will be effective January 1, 2022. However, upon enactment, states, Indian tribes, and local governments will have an option to accelerate funding to immediately operate an employment assistance program that provides employment services, training, or supportive services, including services designed to reemploy individuals unemployed as a result of COVID-19. Such funds may not be used to provide services that cannot be provided safely due to a COVID-19 outbreak. Such programs will not be subject to the requirements in sections 1303, 1304(c), 1305, and 1306 of Title XIII of the Social Security Act.