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INSIGHT

Unemployment Insurance Overpayment and Fraud Recovery and H.R. 1163

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The federal-state Unemployment Insurance (UI) system has faced long-standing program integrity challenges. The temporary, augmented, and expanded UI benefits created by Congress in response to the COVID-19 pandemic exacerbated program integrity concerns related to overpayments and fraud. For an overview of these UI program integrity issues, see CRS In Focus IF12243, *Unemployment Insurance Program Integrity: Recent Developments*.

Recently, there has been heightened congressional attention to UI overpayments, including the scope of fraudulent overpayments and policy proposals to prevent and recover UI overpayments and fraud. For example, on February 28, 2023, the House Committee on Ways and Means ordered to be reported an amendment in the nature of a substitute to H.R. 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act. On May 9, the House Committee on Rules met to consider H.R. 1163 and adopted an amendment, as recommended by the House Committee on Ways and Means.

State Procedures to Recover Regular UI Overpayments

Although there are broad requirements under federal law regarding UI benefits and financing, the specifics are set out under each state's laws. All state UI laws provide for the recovery of Unemployment Compensation (UC) and Extended Benefit (EB) overpayments. Federal law requires that states recover non-fraud and fraud overpayments by offsetting future payments of UC and EB. States may also offset overpayments with state tax refunds or lottery winnings. States can compel repayment by pursuing civil action in state court. In some states, UI laws also authorize denial or suspension of the professional licenses of individuals who owe an overpayment of UI benefits. Under federal law, states must recover overpayments due to fraud and overpayments due to misreported work from an individual's federal income tax refund through the Treasury Offset Program. Some states also assess interest on outstanding overpayment balances in cases of both fraud and non-fraud. In some situations, states apply fines and civil penalties when fraud is involved. States also have criteria for when overpayments are written off or cancelled (e.g., death, age of overpayment).

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Authorities Related to COVID-19 UI Overpayment Recovery

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), as amended, includes authority for recovery of COVID-19 UI payments through benefit offsets. These offsets are limited to no more than 50% of future UI benefits and are subject to a time limit of three years, except for benefit offsets of Pandemic Unemployment Assistance (PUA), which is not subject to a time limit. Additionally, all COVID-19 UI payments determined to be fraudulent are subject to a 15% penalty assessment.

Waivers from UI Non-fraud Overpayment Recovery

Many state UI laws include provisions to waive the overpayment of non-fraud overpayments in certain cases. Most, but not all, states waive repayment in certain circumstances. For example, states may waive non-fraud overpayments due to agency error or employer error. States may also waive non-fraud overpayments in situations in which the overpayment is made without fault and in which recovery would be against *equity and good conscience* or involves a financial hardship. According to the U.S. Department of Labor (DOL), the following 11 jurisdictions do not have waivers from overpayment recovery: Delaware, Kentucky, Mississippi, Missouri, Nebraska, New Mexico, New York, Oklahoma, Puerto Rico, Texas, and West Virginia.

The CARES Act, as amended, provides authority for all states to opt to waive certain overpayments of COVID-19 UI benefits in cases of non-fraud hardship. Additionally, there are limited circumstances in which states may use *blanket waivers* of certain categories of non-fraud overpayments. To waive COVID-19 UI benefit overpayments, states must determine that the individual is not at fault and that overpayment repayment would be contrary to equity and good conscience as determined under state law. Blanket waivers for groups of individuals who received COVID-19 UI non-fraud overpayments may occur in seven specific circumstances; in all other circumstances, states must make individual waiver determinations based on the facts and circumstances of the specific overpayment.

H.R. 1163

As ordered to be reported, H.R. 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act, includes proposals related to UI overpayment recovery and other UI program integrity measures. (The Congressional Budget Office released a cost estimate for H.R. 1163 on March 21, 2023.) Section 2 of H.R. 1163 would extend the time limit for benefit offsets for recovery of COVID-19 UI overpayments from 3 years to 10 years (and it would impose a 10-year time limit on benefit offset recovery for PUA overpayments). Section 2 would also allow states to retain 25% of recovered COVID-19 UI overpayments, which could then be used for certain program integrity activities.

Under Section 3 of H.R. 1163, states would be authorized to retain up to 5% of recovered overpayments of permanent-law UI benefits (UC and EB) and use those retained amounts for certain program integrity activities. Under current law, recovered overpayments attributable to state unemployment taxes (SUTA) may only be used for state UC benefits and the state's portion of EB payments. Section 4 would add statutory requirements for states to use certain types of data matching and data systems to ensure proper UI payments. Section 5 of the bill would extend the authority for emergency flexibility related to state staffing through December 31, 2030 (temporarily authorized in response to COVID-19, expired September 6, 2021). Section 6 of H.R. 1163 would extend the statute of limitations for criminal prosecution of COVID-19 UI fraud to 10 years (from 5 years currently). Section 7 of the bill, as ordered to be reported, would repeal Section 2118 of the CARES Act, as amended, which would eliminate the $2 billion in funding to DOL for UI program integrity purposes. According to the Biden Administration, $1.6 billion of this $2 billion in UI funding will be available to states by June 2023 (i.e., $400 million unobligated).

The House Committee on the Rules met on May 9, 2023, on H.R. 1163 and adopted a Manager's Amendment to H.R. 1163, submitted by Representative Jason Smith. This amendment would add a Section 8, which would deposit an amount equal to the retained recovered overpayments (from permanent-law UI benefits) into the state's SUTA account in the federal Unemployment Trust Fund. These new deposits would be paid for by redirecting the approximately $400 million in unobligated funds that would be rescinded under Section 7.

Additional Resources

CRS Report R47079, *Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response*

DOL-OIG, "OIG Oversight of the Unemployment Insurance Program," https://www.oig.dol.gov/doloiguioversightwork.htm

DOL, *2022 Comparison of State Unemployment Insurance Laws*, Chapter 6, "Overpayments," https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/overpayments.pdf

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