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Unemployment Insurance Program Integrity: Recent Developments

Program integrity activities are designed to prevent fraud, waste, and abuse of government resources. The federal-state Unemployment Insurance (UI) system has faced long-standing program integrity challenges. The enhanced UI benefits created by Congress in response to the COVID-19 pandemic exacerbated program integrity concerns related to improper payments and fraud.

Background: UI Programs and Benefits

Under permanent law, the UI system has two components:

- *Unemployment Compensation* (UC) programs in 53 states (including DC, Puerto Rico, and the U.S. Virgin Islands), which provide state-financed weekly UC benefits to eligible unemployed workers; and
- the *Extended Benefit* (EB) program, which may provide additional weeks of unemployment benefits depending on state law, additional federal eligibility requirements, and state economic conditions.

COVID-19 UI Programs

In response to unemployment caused by the COVID-19 pandemic, Congress created three temporary, now-expired UI benefits through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136). These benefits were extended through the Continued Assistance for Unemployed Workers Act of 2020 (Division N, Title II, Subtitle A of P.L. 116-260) and Title IX, Subtitle A, of the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2):

- *Federal Pandemic Unemployment Compensation (FPUC)*, which supplemented weekly UI benefits (by $600 from March 29, 2020, through July 25, 2020; and $300 from December 27, 2020, through September 4, 2021). FPUC payments totaled $448.6 billion.
- *Pandemic Emergency Unemployment Compensation (PEUC)*, which provided additional weeks of UI benefits for individuals who exhausted other UI benefits and were able to work, available for work, and actively seeking work, subject to COVID-19-related flexibilities. PEUC payments totaled $85.1 billion.
- *Pandemic Unemployment Assistance (PUA)*, which provided UI benefits to individuals who were not otherwise eligible for UI benefits (e.g., self-employed, independent contractors, gig economy workers); unemployed, partially unemployed, or unable to work due to a specific COVID-19-related reason; and not able to telework and not receiving any paid leave. PUA payments totaled $131.2 billion.

P.L. 116-260 also authorized a smaller COVID-19 UI benefit: *Mixed Earner Unemployment Compensation (MEUC)*, which provided a $100 per week benefit augmentation for unemployed workers with income from both wage-and-salary jobs and self-employment who were not currently receiving PUA. MEUC totaled $62.9 million.

Administration

All UI programs and benefits (including temporary benefits) are administered by states with oversight provided by the Employment and Training Administration (ETA) of the U.S. Department of Labor (DOL). For more details on permanent-law UI benefits and expired COVID-19 UI benefits, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

UI Program Integrity

An *improper payment* is any payment that should not have been made or was made in an incorrect amount under statutory, administrative, or other legally applicable requirements. This includes any payment to an ineligible recipient. Improper payments include both overpayments and underpayments. UI *overpayments* are identified when a state determines that the individual received a payment, or a portion of a payment, to which the individual is not entitled. *Fraud*—a subset of overpayments—is defined under each state's UC laws, and, thus, what constitutes fraud varies from state to state. In general, fraud involves a knowing and willful act or concealment of material facts to obtain or increase benefits. Fraud determinations often include identifying a pattern of action or the claimant's certification of erroneous information under the penalty of perjury. Regular UC benefits do not employ one federal definition of *fraud*, yet several of the COVID-19 UI benefits did include statutory language related to fraud.

UI Program Integrity Challenges

Program integrity issues related to permanent-law UI programs have long been of concern. The improper payment estimate for the UI system has been above 10% for 14 of the past 18 years. The Office of Management and Budget (OMB) continues to designate UI as a "high-priority" program (i.e., a program with estimated improper payments of more than $100 million a year). The COVID-19 UI benefits heightened program integrity concerns. According to the most recent estimate, the UI improper payment rate for FY2021 was 17.9%, with a total of $73.8 billion in improper payments. (This estimate includes UC, EB, FPUC, and PEUC benefits.)

Recent UI program integrity challenges can be grouped into three categories. First, there are preexisting, administrative challenges related to the permanent-law structure of the UI system. For example, states are required to certify the

ongoing eligibility status of each claimant on a weekly basis, which is unique among income security programs. Adding to this administrative burden, federal requirements prioritize the timeliness of UI benefit payments in order to respond quickly to unexpected periods of unemployment. Yet decreased administrative funding and staffing over time as well as increased reliance on automated systems—often outdated and inadequately performing—make accurate eligibility determinations and benefit payments difficult.

Second, UI program integrity challenges regularly increase during recessionary periods as permanent-law UI benefits automatically expand as unemployment rises during recessions. At the same time, temporary UI benefits created in response to recessions add to the administrative burden of state UI agencies. Thus, state UI agencies not only make more eligibility determinations due to an increased volume of UI claims during recessions; they may also be administering new UI programs that may require different rules and structures than permanent-law programs do. States may also face challenges in increasing staffing during recessionary periods that are preceded by years of low unemployment and low UI claims.

Third, there were program integrity challenges specific to the COVID-19 UI response. For example, PUA provided unemployment benefits to a new population of workers not previously covered by the UI system. States struggled with identity verification for PUA claimants, as they did not have information on the prior work and earnings of these individuals. Additionally, the magnitude of the FPUC benefit ($600 a week or $300 a week) overwhelmed previous recession responses ($25 a week in 2009 and 2010) and may have provided incentives for UI fraud. For a full discussion of the factors underlying UI program integrity challenges, see CRS Report R47079, *Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response*.

UI Improper Payment Reporting

UI improper payment reporting is required as part of the regular administration of UC benefits conducted by states, with oversight performed by ETA. UI improper payment data are estimated using the DOL Benefit Accuracy Measurement (BAM) survey. BAM estimates include regular state UC benefits, UC for federal employees, and UC for military servicemembers. BAM estimates do not include EB payments or the temporary COVID-19 UI benefits. DOL provides BAM-generated UI improper payment data to OMB for publication on PaymentAccuracy.gov.

DOL's Office of Inspector General (DOL-OIG) recommended that ETA estimate an improper payment rate for COVID-19 UI benefits. ETA reported an improper payment rate for FPUC and PEUC in FY2021 of 18.7% and stated that it plans to report the PUA improper payment rate later in 2022. ETA also requires that states make monthly reports of COVID-19 UI overpayments, but not all states have provided these reports or have reported accurate data.

As described below, DOL-OIG and the Government Accountability Office (GAO) have estimated or reported COVID-19 UI improper payments and fraud. Thus, there are several sources of existing program data as well as estimates on COVID-19 UI improper payments. Yet, significant limitations and gaps in data exist. For example, establishing that fraud has occurred may require investigation by relevant law enforcement agencies. Thus, the full scope of UI improper payments and fraud may not be known for some time.

Recent DOL-OIG Work

DOL-OIG performs oversight of UI programs, including COVID-19 UI programs. DOL-OIG has characterized the program integrity challenges faced by the UI system in responding to the COVID-19 pandemic as "a perfect storm." DOL-OIG estimated that, applying ETA's 18.7% improper payment rate for FPUC and PEUC, as much as $163 billion in COVID-19 UI benefits could have been paid improperly. In a September 2022 memorandum, DOL-OIG identified $45.6 billion of potentially fraudulent UI benefits paid from March 2020 to April 2022. In another September 2022 report, DOL-OIG estimated the amount of PUA improper payments based on samples from four states selected for being high risk (California, Georgia, Kentucky, and Michigan). DOL-OIG estimated that from March 28, 2020, through September 30, 2020, $30.4 billion of the $71.7 billion in PUA and FPUC benefits were paid improperly (42.4%) and an estimated $9.9 billion was paid to likely fraudsters (13.8%). This estimate was not designed to be representative of PUA fraud nationally. ETA has not yet released its own estimated PUA improper payment rate (scheduled for later in 2022), but it provided guidance to states in July 2022 on the methodology for doing so.

Recent GAO Work

GAO has also analyzed COVID-19 UI program integrity issues in a series of reports. In June 2022, GAO reported the following UI overpayments from ETA data as of March 29, 2022: $35.1 billion in actual overpayments from April 2020 to December 2021, including $8.1 billion in UC and EB overpayments; $11.8 billion in FPUC overpayments; $2.0 billion in PEUC overpayments; and $13.3 billion in PUA overpayments. Also in June 2022, GAO added the UI system to its "High Risk List … for waste, fraud, abuse, and mismanagement, or in need of broad-based transformation."

Recent Congressional Interest

On September 21, 2022, the House Education and Labor Subcommittee held a hearing on "Examining the Administration of the Unemployment Insurance System," which addressed the administrative challenges—including program integrity issues—that the UI system faced in response to the COVID-19 pandemic. Additionally, UI program integrity issues have been legislatively active. There have been a number of bills introduced in the 117th Congress that would address UI program integrity issues, including S. 490/H.R. 1458, S. 1699/H.R. 3268, S. 2742, S. 2898, S. 4507/H.R. 8000, H.R. 723, H.R. 4190, H.R. 6224, and H.R. 8661.

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