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# Unemployment Insurance: Legislative Issues in the 118<sup>th</sup> Congress

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## Unemployment Insurance: Legislative Issues in the 118<sup>th</sup> Congress

The Unemployment Insurance (UI) system is a joint federal-state partnership that consists of two types of benefits: (1) permanently authorized programs including the Unemployment Compensation (UC) and the Extended Benefit (EB) programs and (2) temporary federal UI benefits created by congressional action to supplement the UC and EB programs during recessions. The U.S. Department of Labor (DOL) provides oversight of state UC and EB programs and the state administration of federal UI benefits. Although there are broad requirements under federal law regarding UC benefits and financing, the program specifics are set under each state's laws, resulting in 53 different UC programs operated in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. States operate their own UC and EB programs and administer any temporary federal UI benefits. State UC programs determine the weekly benefit amount and the number of weeks of UC available to unemployed workers. Most states provide up to 26 weeks of UC to eligible individuals. EB payment amounts and durations are based upon each state's UC program rules, with additional federal requirements specified in federal law.

The UI system's two primary objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions (i.e., by providing income support to unemployed workers who then spend this income, maintaining a certain level of economic activity). The UC program, created under the Social Security Act of 1935, provides unemployment benefits to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. To augment the UC program, federal law includes an automatic expansion of the regular UC benefit with the EB program, which was established by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA; P.L. 91-373). EB may provide up to an additional 13 or 20 weeks of benefits once regular UC benefits are exhausted, depending on worker eligibility, state law, additional federal eligibility requirements, and state economic conditions. The Consolidated Appropriations Act, 2023 (P.L. 117-328) provided \$3.1 billion in federal funds for the administration and activities of the UC program for FY2023.

Recently, congressional attention has centered on oversight of the COVID-19 pandemic UI programs, with a focus on improper payments—especially fraudulent overpayments and policy proposals to prevent and recover UI overpayments. (All temporary UI measures enacted in response to the pandemic expired at the beginning of September 2021. For details on these temporary measures, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.)

At the beginning of the 118<sup>th</sup> Congress, policymakers held several hearings to examine UI overpayments and fraud issues. On February 1, 2023, the House Oversight and Accountability Committee held a hearing on *Federal Pandemic Spending: A Prescription for Waste, Fraud and Abuse*, where much of the content concerned fraudulent COVID-19 UI benefit payments. On February 8, 2023, the House Committee on Ways and Means held the *Hearing on The Greatest Theft of Taxpayer Dollars: Unchecked Unemployment Fraud*. In addition, multiple UI program integrity bills have been introduced in the 118<sup>th</sup> Congress (H.R. 1163, S. 1018, H.R. 5107, and S. 1587). On May 11, 2023, the House passed the Protecting Taxpayers and Victims of Unemployment Fraud Act (H.R. 1163), after an amendment was added by the House Committee on Rules on May 9, 2023.

The Fiscal Responsibility Act of 2023 (FRA; P.L. 118-5; June 3, 2023) included three provisions that (1) rescinded specified amounts of unobligated UI administrative funding made available by the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2; March 11, 2021), (2) effectively reduced budgetary adjustments to discretionary spending limits for Reemployment Services and Eligibility Assessments, and (3) rescinded all unobligated funds for Short-Time Compensation grants created under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136, March 27, 2020). Additional legislation has been introduced in the 118<sup>th</sup> Congress related to the funding of UI administration (H.R. 1930, H.R. 1931, and H.R. 2811) and the sequestration of railroad unemployment and sickness benefits (S. 1274 and H.R. 2785).

The President's budget proposal for FY2024 includes a number of provisions addressing the administration and program integrity challenges of the UI system. These provisions include updating the administrative factors used in determining funding levels, a suite of integrity focused provisions, funding to continue to address fraud and IT modernization within the UI system, and additional funding to continue to build and support state UI data exchanges.

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The Unemployment Insurance (UI) system is a joint federal-state partnership that provides income support through weekly benefit payments. The UI system's two main objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions (i.e., by providing income support to unemployed workers who spend this income, maintaining a certain level of economic activity).<sup>1</sup> The UI system consists of two types of benefits: (1) permanently authorized programs such as the Unemployment Compensation (UC) and the Extended Benefit (EB) programs and (2) temporary federal UI benefits created by congressional action to supplement the UC and EB programs during recessions.

The UC program and the benefits it provides are the foundation of the UI system. The UC program, created under the Social Security Act of 1935, provides unemployment benefits to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. Although there are broad requirements under federal law regarding UC benefits and financing, the program specifics are set under each state's laws, resulting in 53 different UC programs operated in the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. The U.S. Department of Labor (DOL) provides oversight of state UC programs and state administration of all UI benefits. States operate their own UC programs and typically administer any temporary federal UI benefits. Most states provide up to 26 weeks of UC benefits.

To augment the UC program's economic stabilization efforts, federal law includes an automatic expansion of the regular UC benefit with the EB program, which was established by the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373). The EB program is based upon each state's underlying UC program rules and may provide up to an additional 13 or 20 weeks of benefits once regular UC benefits are exhausted, depending on worker eligibility, state law, additional federal eligibility requirements, and economic conditions in the state.

Federal policymakers often supplement these stabilization efforts by enacting temporary UI benefit expansions. During the 116<sup>th</sup> Congress, four temporary UI benefit measures were passed in response to the COVID-19 pandemic and the resulting economic recession. The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136; enacted March 27, 2020) established three of these temporary benefits. The authorization for the benefits was subsequently extended and expanded by two acts: (1) the Consolidated Appropriations Act, 2021 (P.L. 116-260, also known as the Continued Assistance for Unemployed Workers Act of 2020, or the Continued Assistance Act; enacted December 27, 2020),<sup>2</sup> which also established a fourth benefit; and (2) the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2, enacted March 11, 2021).<sup>3</sup> The federal authority for these temporary COVID-19 UI benefits expired on September 4, 2021.<sup>4</sup>

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<sup>1</sup> See, for example, President Franklin Roosevelt's remarks at the signing of the Social Security Act on August 14, 1935: "This law, too, represents a cornerstone in a structure which is being built but is by no means complete. It is a structure intended to lessen the force of possible future depressions. It will act as a protection to future Administrations against the necessity of going deeply into debt to furnish relief to the needy. The law will flatten out the peaks and valleys of deflation and of inflation. It is, in short, a law that will take care of human needs and at the same time provide the United States an economic structure of vastly greater soundness" (available at <http://www.ssa.gov/history/fdrstmts.html#signing>).

<sup>2</sup> Division N, Title II, Subtitle A.

<sup>3</sup> Title IX, Subtitle A.

<sup>4</sup> ARPA terminated the programs for weeks of unemployment ending on or before September 6, 2021. This had the effect of ending the programs in all states on September 4, 2021, with the exception of New York's programs, which terminated on September 5, 2021.

This report first provides background on the permanently authorized UI programs—UC and EB—as well as the now-expired COVID-19 UI programs: Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), Pandemic Unemployment Assistance (PUA), and Mixed-Earner Unemployment Compensation (MEUC). The report then discusses several UI policy issues that are relevant in the 118<sup>th</sup> Congress:

- the sequester order required by the Budget Control Act of 2011 (P.L. 112-25) and implemented on March 1, 2013 (after being delayed by P.L. 112-240), which affects some types of UI expenditures in FY2023;
- the authority for, structure of, and status of federal loans to states to pay UC benefits if state unemployment tax revenue is insufficient;
- the Reemployment Services and Eligibility Assessment (RESEA) program, which provides federal funding to states to provide in-person reemployment services and also addresses UI overpayments;
- UI reform policies in the President’s budget proposal for FY2024, including high-level reform priorities as well as proposals related to antifraud measures and UI administrative and program integrity funding;
- UI program integrity legislation (H.R. 1163 and S. 1018);
- legislation that would impact funding of UI administration (H.R. 1930, H.R. 1931, and H.R. 2811); and
- legislation that would permanently end the sequestration of railroad unemployment and sickness benefits (S. 1274 and H.R. 2785).

## Unemployment Compensation Program

Federal law sets broad requirements that state UC programs must follow. These include the broad categories of jobs and workers that must be covered by the programs, the method for triggering the EB program, the floor on the maximum state unemployment tax rate imposed on employers (5.4%), and how the states will repay Unemployment Trust Fund (UTF) loans.<sup>5</sup> While broad requirements regarding UC benefits and financing are established under federal law, the program specifics are set under each state’s laws. DOL provides oversight of state UC programs and funds the state administration of all UI benefits. States operate their own UC programs and also administer any temporary federal UI benefits. All states require a worker to have earned a certain amount of wages or to have worked for a certain period of time (or both) within a 12-month period to be eligible to receive UC benefits. The methods states use to determine eligibility vary greatly.

In general, UC eligibility requires each individual to

- have attained qualified wages and employment in UC-covered work<sup>6</sup> over a 12-month base period,<sup>7</sup> prior to unemployment;

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<sup>5</sup> For details on how the UTF operates, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

<sup>6</sup> *Covered work* refers to any job that is subject to unemployment payroll taxes (i.e., Federal Unemployment Tax Act or state unemployment taxes) as well as most state and local government employment.

<sup>7</sup> The *base period* is the period during which wages earned or hours/weeks worked are examined to determine a worker’s monetary entitlement to UC. Almost all states use the first four of the last five completed calendar quarters preceding the filing of the claim as their base period. However, federal law allows states to develop expanded (continued...)

- have lost their jobs through no fault of their own; and
- be able to work, available for work, and actively seeking work.

These eligibility requirements are constructed to ensure UC benefits are directed toward workers with labor market experience who are unemployed because of economic conditions. Self-employed workers—potentially including independent contractors and gig economy workers—are the largest group of workers generally excluded from eligibility for UC benefits.

UC benefit calculations are generally based on wages for covered work over the base period, as noted above. Most state benefit formulas replace half of a claimant’s average weekly wages up to a weekly maximum. There is considerable variation by state in the weekly UC benefit amount. As of January 2023, the maximum weekly benefit amounts ranged from \$235 (Mississippi) to \$1015 (Massachusetts).<sup>8</sup> As of July 2023, the 12-month average for the national weekly benefit amount was estimated to be \$425.<sup>9</sup>

## UC Financing

The UC program is financed by federal taxes under the Federal Unemployment Tax Act (FUTA) and by state payroll taxes under each state’s State Unemployment Tax Act (SUTA).<sup>10</sup> The effective net FUTA tax is 0.6% on the first \$7,000 of each covered employee’s annual earnings (equaling no more than \$42 per worker per year, paid by the employer). FUTA revenue funds federal and state administrative costs, loans to insolvent state UC accounts, the federal share (50%) of EB payments, and state Employment Services (ES).<sup>11</sup>

Federal law limits what states may use SUTA revenue to fund; it requires that SUTA revenue only fund regular UC benefits and the state share (50%) of EB payments. Additionally, federal law requires that all states’ SUTA tax apply to at least the first \$7,000 of each covered employee’s earnings and that each state’s maximum unemployment tax rate be at least 5.4%. Federal law also requires each employer’s state unemployment tax rate to be based on the amount of UC paid to former employees (known as *experience rating*). Within these broad requirements, each state has great flexibility in determining its SUTA structure. In general, the more UC benefits paid out to its former employees, the higher the employer’s tax rate—up to a maximum established by state law. FUTA and SUTA funds are deposited in the appropriate accounts within the UTF.<sup>12</sup>

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definitions of the base period. For a summary of these expanded definitions, see Table 3-1, *States with Extended or Alternative Base Periods*, available at <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/monetary.pdf>.

<sup>8</sup> Among states that provide dependents’ allowances, the maximum benefit was \$1,522 (Massachusetts, reporting at least 20 dependents to qualify for the maximum payment). See DOL, *Significant Provisions of State Unemployment Insurance Laws, Effective January 2023*, <https://oui.doleta.gov/unemploy/content/sigpros/2020-2029/January2023.pdf>. Dependents’ allowances are amounts paid on top of the weekly benefit amount in some states, using each state’s definition of *dependent*.

<sup>9</sup> DOL, Employment and Training Administration (ETA), “Monthly Program and Financial Data,” <https://oui.doleta.gov/unemploy/claimssum.asp> (accessed September 6, 2023).

<sup>10</sup> 23 U.S.C. §§3301-11.

<sup>11</sup> FUTA imposes a 6.0% gross tax rate on the first \$7,000 paid annually by employers to each employee. Employers in states with programs approved by the federal government and with no delinquent federal loans may credit 5.4 percentage points against the 6.0% tax rate, making the minimum net federal unemployment tax rate 0.6% unless a state has an outstanding loan. Details on how delinquent loans affect the net FUTA tax are in CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*. For information on the ES, see CRS In Focus IF12144, *The U.S. Employment Service: Service Delivery and Merit Staffing*.

<sup>12</sup> For details on the UTF, see CRS Report RS22077, *Unemployment Compensation (UC) and the Unemployment Trust Fund (UTF): Funding UC Benefits*.

## Extended Benefit Program

The EB program may provide up to an additional 13 or 20 weeks of benefits for individuals who were previously eligible for UC benefits once regular UC benefits are exhausted, depending on worker eligibility, state law, additional federal eligibility requirements, and economic conditions in the state.

### Extended Benefit Triggers

The EB program is triggered on when a state's insured unemployment rate (IUR) or total unemployment rate (TUR) reaches certain levels.<sup>13</sup> All states must pay up to 13 weeks of EB if the IUR for the previous 13 weeks is at least 5% and is 120% of the average of the rates for the same 13-week period in each of the two previous years. States may choose to enact two other optional thresholds (states may choose one, two, or none). If the state has chosen one or more of the EB trigger options, it would provide the following:

- Option 1—based upon the IUR<sup>14</sup>
  - up to an additional 13 weeks of benefits if the state's IUR is at least 6%, regardless of previous years' averages.
- Option 2—based upon the TUR<sup>15</sup>
  - up to an additional 13 weeks of benefits if the state's TUR is at least 6.5% and is at least 110% of the state's average TUR for the same 13 weeks in either of the previous two years; or
  - up to an additional 20 weeks of benefits if the state's TUR is at least 8% and is at least 110% of the state's average TUR for the same 13 weeks in either of the previous two years. (This is designated as a High Unemployment Period [HUP] for EB.)

No more than 13 weeks are available in total (or 20 weeks if the HUP conditions have been met) as the triggers are not additive. When a state triggers off of an EB period, all EB benefit payments

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<sup>13</sup> The TUR is the three-month average of the ratio of unemployed workers to all workers (employed and unemployed) in the labor market. The TUR is essentially a three-month average version of the unemployment rate published by the Bureau of Labor Statistics (BLS) and based on data from the BLS's monthly Current Population Survey. The IUR is the ratio of UC claimants divided by individuals in UC-covered jobs. In addition, the IUR uses a different base of workers in its calculations than the TUR. The IUR excludes several groups used in TUR calculations: self-employed workers, unpaid family workers, workers in certain nonprofit organizations, and several other (primarily seasonal) categories of workers. The IUR also excludes those who have exhausted their UC benefits (even if they are receiving EB benefits), new entrants or re-entrants to the labor force, disqualified workers whose unemployment is considered to have resulted from their own actions rather than from economic conditions, and eligible unemployed persons who do not file for benefits. As a result, the IUR in a state is often much lower than its TUR.

<sup>14</sup> If EB is activated (triggers on) based upon the IUR, the EB period is immediately in effect. See Section 203(a)(1) of P.L. 91-373, as amended.

<sup>15</sup> By law, a state triggering on to an EB period based upon a TUR-based trigger will begin to offer those benefits on the third week after the first week for which there is a state "on" indicator. See Section 203(a)(1) of P.L. 91-373.



in the state cease immediately, regardless of individual entitlement.<sup>16</sup> That is, EB benefits are not phased out (grandfathered) when a state triggers off the program.<sup>17</sup>

## EB Eligibility and Benefit Amount

The EB benefit amount is equal to the eligible individual's weekly regular UC benefit. The EB program imposes federal restrictions on individual eligibility for EB beyond the state requirements for regular UC, and it requires that a worker make a "systematic and sustained" work search (as defined by state law). Furthermore, the worker may not receive benefits if he or she refused an offer of *suitable* work, which is defined as "any work within such individual's capabilities."<sup>18</sup> In addition, claimants must have worked at least 20 weeks of full-time covered employment (or the equivalent as defined by the state) during their base periods.

## EB Financing

Under permanent law, FUTA revenue finances 50% of the EB payments and 100% of EB administrative costs. States fund the other 50% of EB benefit costs through their SUTA revenue.

### *Temporary EB Financing Change (Expired)*

Section 4105 of the Families First Coronavirus Response Act (FFCRA; P.L. 116-127), as amended, temporarily provided 100% federally financed EB (with the exception of state and local government employees) for states that received both halves of the emergency administrative grants authorized under FFCRA, beginning with enactment on March 18, 2020.<sup>19</sup> The Continued Assistance Act (P.L. 116-260) extended the authority for this 100% federal financing of EB

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<sup>16</sup> If an EB period is deactivated based upon the state failing to meet IUR-based trigger requirements (i.e., it triggers off), the EB period is immediately ended. If an EB period triggers off based upon a state failing to meet TUR-based trigger requirements, the EB period will end on the third week after the first week for which there is a state "off" indicator. See Section 203(a)(2) of P.L. 91-373, as amended.

By federal law, an EB period shall last for at least 13 consecutive weeks. Likewise, if an EB period triggers off, a new EB period may not begin until the 14<sup>th</sup> week after the off period began. See Section 203(b) of P.L. 91-373, as amended.

EB benefits on interstate claims are limited to two extra weeks unless both the worker's state of residence and the worker's state of previous employment are in an EB period. The rules for triggering on and off EB based upon multiple triggers are provided in Title 20, Section 615.11, of the *Code of Federal Regulations*.

For remaining entitlement to EB, if a state's HUP is deactivated but the state TUR remains at or above 6.5%, see page 5, "CH 1-17. Question," at [https://oui.doleta.gov/dmstree/uipl/uipl2k9/uipl\\_1209c1.pdf](https://oui.doleta.gov/dmstree/uipl/uipl2k9/uipl_1209c1.pdf).

<sup>17</sup> The Continued Assistance Act (P.L. 116-260) provided a temporary option for states that had triggered off an EB period to disregard the mandatory 13-week off period (discussed in the previous footnote) for weeks between November 1, 2020, and December 31, 2021, if state law permitted such an action.

<sup>18</sup> State UC programs have their own definitions related to work search and refusal of suitable work. See Tables 5.14 and 5.16 in DOL, ETA, 2021 *Comparison of State Unemployment Insurance Laws*, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/nonmonetary.pdf>.

<sup>19</sup> Section 4102(a) of FFCRA provided up to a total of \$1 billion in "emergency administrative grants" to states in calendar year 2020. Half of each state's share of the emergency administrative grant was available if the state met certain requirements related to UC eligibility notifications and claims access. The second half of each state's share was available if a state qualified for the first half and experienced at least a 10% increase in UC claims over the previous calendar year and met certain other requirements related to easing UC eligibility requirements for individuals affected by COVID-19. Additionally, there were reporting requirements to DOL and the committees of jurisdiction within one year for states that received these grants. DOL published the state shares of the emergency administrative grants in Unemployment Insurance Program Letter (UIPL) No. 13-20, "Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020," March 22, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8634](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634). By June 11, 2020, according to DOL, all states met the statistical criteria for receiving both halves of these FFCRA grants (see <https://oui.doleta.gov/unemploy/pdf/IC3MOMarch.pdf>).

through March 13, 2021 (March 14, 2021, in New York).<sup>20</sup> ARPA (P.L. 117-2) subsequently extended this authority through September 6, 2021, after which it expired.

### ***Temporary State Adoption of Optional EB Triggers Based on Expired 100% Federal Financing for EB***

Some states reacted to this temporary 100% federal financing by enacting temporary EB trigger options that remained in place for the duration of the increased federal cost share. According to DOL, 13 states adopted more responsive TUR triggers but authorized a sunset for these triggers tied to the availability of the 100% federal financing for EB.<sup>21</sup>

## **Temporary COVID-19 Pandemic UI Programs (Expired)**

The 116<sup>th</sup> Congress created several temporary UI benefits through the CARES Act in response to the COVID-19 pandemic and the resulting economic recession.<sup>22</sup> 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 ARPA (P.L. 117-2):

- *Federal Pandemic Unemployment Compensation*, 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 \$443.3 billion.<sup>23</sup>
- *Pandemic Emergency Unemployment Compensation*, 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 \$85.2 billion.<sup>24</sup>
- *Pandemic Unemployment Assistance*, 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 \$131.7 billion.<sup>25</sup>

P.L. 116-260 also authorized a smaller COVID-19 UI benefit: *Mixed Earner Unemployment Compensation*, which provided a \$100 per week benefit augmentation for unemployed workers

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<sup>20</sup> For subsequent UI benefit expiration dates provided below, the benefit expiration date in New York was one calendar day later, which is due to different state definitions of *week*.

<sup>21</sup> According to DOL, these states were California, Colorado, Delaware, the District of Columbia, Georgia, Illinois, Kentucky, Massachusetts, Michigan, Nevada, New York, Ohio, and Texas. Some states cited the federal law in their sunset dates, while other states used specific dates that aligned with an upcoming expiration of the 100% federal financing of EB. Texas's EB TUR trigger statute requires that if 100% federal financing of EB is available, then Texas must promulgate a regulation to use it (based on DOL-ETA email communication with CRS, January 16, 2021).

<sup>22</sup> For a summary of research on the potential impact of the temporary programs on employment and consumer spending during this period, see CRS In Focus IF12143, *How Did COVID-19 Unemployment Insurance Benefits Impact Consumer Spending and Employment?*.

<sup>23</sup> DOL, Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through March 31, 2023, data downloaded on April 25, 2023, [https://oui.doleta.gov/unemploy/docs/cares\\_act\\_funding\\_state.html](https://oui.doleta.gov/unemploy/docs/cares_act_funding_state.html).

<sup>24</sup> Ibid.

<sup>25</sup> Ibid.

with income from both wage-and-salary jobs and self-employment who were not currently receiving PUA. MEUC payments totaled \$77.0 million.<sup>26</sup>

Under ARPA, all of the COVID-19 UI programs—FPUC, PEUC, PUA, and MEUC—expired September 4, 2021.<sup>27</sup> For details on these programs, see CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

## Lost Wages Assistance

During the five-month lapse in FPUC authorization in the summer of 2020, President Donald Trump used executive action to create the Lost Wages Assistance (LWA) benefit to temporarily supplement UI benefits, relying upon existing authority in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121 et seq.).<sup>28</sup>

The now-expired LWA benefit was payable for a six-week period of unemployment that began retroactively on or after July 26, 2020, and ended on or before September 6, 2020. As described in Federal Emergency Management Agency (FEMA) guidelines to the states, the LWA program was authorized to provide up to \$44 billion in grants to states to supplement the weekly benefits of certain eligible UI claimants in participating states, subject to a cost-sharing requirement of 25% for Other Needs Assistance under Section 408 of the Stafford Act (42 U.S.C. §5174(g)(2)).<sup>29</sup> States were able to satisfy this cost-sharing requirement by either paying \$100 a week to eligible claimants or by demonstrating that the total UI benefits paid with state unemployment funds in the aggregate met the amount of the 25% match.

## Unemployment Insurance Benefits and the Sequester

The sequester order required by the Budget Control Act of 2011 (P.L. 112-25) and implemented on March 1, 2013 (after being delayed by P.L. 112-240), affects some types of UI expenditures.<sup>30</sup> UC payments are not subject to the sequester reductions. EB and most forms of administrative funding are subject to the sequester reductions.<sup>31</sup>

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<sup>26</sup> CRS calculation based upon DOL, ETA2112 UI Financial Transaction Summary Report, downloaded on April 25, 2023. Data available at <https://oui.doleta.gov/unemploy/DataDownloads.asp>.

<sup>27</sup> The law terminated the programs for weeks of unemployment ending on or before September 6, 2021. This had the effect of ending the programs in all states on September 4, 2021, with the exception of New York's programs, which terminated on September 5, 2021.

<sup>28</sup> The White House, "Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019," August 8, 2020, <https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/>.

<sup>29</sup> FEMA, *Lost Wages Supplemental Payment Assistance Guidelines*, April 22, 2022, <https://www.fema.gov/disaster/coronavirus/governments/supplemental-payments-lost-wages-guidelines>.

<sup>30</sup> For more information, see CRS Report R42972, *Sequestration as a Budget Enforcement Process: Frequently Asked Questions*.

<sup>31</sup> The Emergency Unemployment Compensation program, when it was available (including any benefit payments delayed from prior fiscal years), was also subject to the sequester reductions. See CRS Report R43133, *The Impact of Sequestration on Unemployment Insurance Benefits: Frequently Asked Questions*, for additional information on the impact of sequestration on UI benefits generally and specifically for sequestration in FY2013 and FY2014. Also see CRS Report R43993, *Unemployment Insurance: Legislative Issues in the 114th Congress*, for additional information on the implications of the sequester order for FY2015 and FY2016; CRS Report R44836, *Unemployment Insurance: (continued...)*

## FY2023 Sequester of Unemployment Insurance Benefits

The FY2023 sequestration order requires a 5.7% reduction in all nonexempt nondefense mandatory expenditures, but no sequestration reductions are applicable to discretionary programs, projects, and activities.<sup>32</sup> The federal share of any EB expenditures payable in FY2023 are required to be reduced by 5.7% for the weeks of unemployment during FY2023. As of the cover date of this report, no state has been in an EB payable period in FY2023.

In its March 22, 2023, program guidance, DOL announced that the temporary COVID-19 UI benefits created under the CARES Act and subsequently extended under the Continued Assistance Act and ARPA (as well as MEUC, which was created under the Continued Assistance Act) were not subject to FY2023 sequestration:

The PPAs [programs, projects, and activities] established through enactment of the CARES Act, as amended, expired September 6, 2021. Although residual benefit payments will continue to be issued to claimants beyond the expiration of these programs, the Department, in consultation with OMB, has determined these residual benefit payments to be obligations incurred when the week of unemployment was experienced. Therefore, residual benefit payments will continue to be charged to the FY 2021 budget authority and will not be subject to the 5.7 percent sequestration reduction.<sup>33</sup>

## State UC Loans and Solvency Concerns

If a recession is deep enough and if SUTA revenue is inadequate for a sustained duration, states may have insufficient funds to pay for UC benefits.<sup>34</sup> Federal law, which requires states to pay these benefits, provides a loan mechanism within the UTF framework that an insolvent state may use to meet its UC benefit payment obligations.<sup>35</sup> States must pay back these loans and are charged interest on loans that are not repaid by the end of the fiscal year in which they were obtained.<sup>36</sup> If the loans are not paid back within a certain period (approximately two years,

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*Legislative Issues in the 115th Congress*, for additional information on the implications of the sequester order for FY2017 and FY2018; CRS Report R45478, *Unemployment Insurance: Legislative Issues in the 116th Congress*, for additional information on the implications of the sequester order for FY2019 and FY2020; and CRS Report R46789, *Unemployment Insurance: Legislative Issues in the 117th Congress, First Session*, for additional information on the implications of the sequester order for FY2021.

<sup>32</sup> Office of Management and Budget (OMB), *OMB Report to the Congress on the BBEDCA 251A Sequestration for Fiscal Year 2023*, March 28, 2022, [https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA\\_251A\\_Sequestration\\_Report\\_FY2023.pdf](https://www.whitehouse.gov/wp-content/uploads/2022/03/BBEDCA_251A_Sequestration_Report_FY2023.pdf).

<sup>33</sup> DOL, UIPL 04-23, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-04-23>, p. 2.

<sup>34</sup> For details, see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

<sup>35</sup> Federal UC law does not prohibit states from using loan resources outside of the UTF. Depending on state law, states may have other funding measures available and may be able to use funds from outside of the UTF to pay the benefits (such as through issuing bonds).

<sup>36</sup> For a full explanation of the interest charges, see the “Interest Charges on Loans” section in CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*. Section 4103 of FFCRA (P.L. 116-127, as amended) temporarily waived interest payments and the accrual of interest on federal advances (loans) to states to pay UC benefits from March 18, 2020, through September 6, 2021. This temporary measure did not reduce any underlying loan principal.

depending on the timing of the beginning of the loan period), the state's employers may face increased net FUTA rates until the loans are repaid.<sup>37</sup>

Immediately before the COVID-19-related recession began, 31 states were determined to have accrued enough funds in their UTF accounts to meet or exceed the minimally solvent standard as defined by DOL in order to be prepared for a recession.<sup>38</sup> However, the rapid increase in the number of individuals receiving regular UC benefits during the COVID-19-related recession strained many states' trust fund balances.

At the end of FY2019, *one* jurisdiction (the U.S. Virgin Islands) had a federal UTF loan totaling \$64 million. In comparison, by the end of FY2020 *19* jurisdictions had federal UTF loans collectively totaling \$34.1 billion (California, Colorado, Connecticut, Delaware, Georgia, Hawaii, Illinois, Indiana, Kentucky, Massachusetts, Minnesota, New Jersey, New Mexico, New York, Ohio, Pennsylvania, Texas, the U.S. Virgin Islands, and West Virginia). By the end of FY2021, the number of jurisdictions with outstanding federal loans had decreased to *12* (California, Colorado, Connecticut, Hawaii, Illinois, Massachusetts, Minnesota, New Jersey, New York, Pennsylvania, Texas, and the U.S. Virgin Islands), but the aggregate outstanding loans had increased to \$45.6 billion. By March 21, 2023, the number of jurisdictions with outstanding federal loans had decreased to *five* (California, Colorado, Connecticut, New York, and the U.S. Virgin Islands), and the outstanding loan amount had decreased to \$27.2 billion.<sup>39</sup>

## Reemployment Services and Eligibility Assessments

Beginning in FY2015, DOL has funded state efforts to conduct in-person interviews with selected UI claimants while “addressing individual reemployment needs of UI claimants, and working to prevent and detect UI overpayments” through the voluntary RESEA program.<sup>40</sup> The purpose of the interviews is to (1) ensure that claimants are complying with the eligibility rules, (2) determine if reemployment services are needed for the claimant to secure future employment, (3) refer the individual to reemployment services as necessary, and (4) provide labor market information that addresses the claimant's specific needs.

In 2017, Section 30206 of P.L. 115-123 codified the authority for DOL under permanent law to administer a RESEA program, with funding scheduled to increase over future fiscal years.<sup>41</sup> The 2017 law also set out various requirements for states to use certain types of evidence-based

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<sup>37</sup> For details on how states may borrow federal funds to pay for UC benefits, see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*.

<sup>38</sup> DOL, Office of Unemployment Insurance, *State Unemployment Insurance Trust Fund Solvency Report 2020*, February 2020, <https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf>.

<sup>39</sup> Data on jurisdictions and loan amounts for each quarter are available by selecting the data category “loan” at [https://oui.doleta.gov/unemploy/data\\_summary/DataSum.asp](https://oui.doleta.gov/unemploy/data_summary/DataSum.asp). Current balances are available at <https://fiscaldata.treasury.gov/datasets/ssa-title-xii-advance-activities/advances-to-state-unemployment-funds-social-security-act-title-xii>.

<sup>40</sup> Since FY2005, DOL has provided some type of reemployment services through discretionary appropriations. For additional background, see CRS Report R43044, *Expediting the Return to Work: Approaches in the Unemployment Compensation Program*; and DOL, ETA, Unemployment Insurance Program Letter, UIPL 3-17, December 8, 2016, p. 2, [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_03-17.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_03-17.pdf).

<sup>41</sup> The law created a new Section 306 of the Social Security Act. Just over a month later, on March 23, 2018, the Consolidated Appropriations Act, FY2018 (P.L. 115-141) provided \$2.6 billion in state grants from the UTF for administering state UI laws as authorized under Title III of the Social Security Act (including not less than \$120 million for RESEA and UC improper payment reviews and to provide reemployment services and referrals to training, as appropriate) and provided that such activities would not be subject to the newly created Section 306 of the Social Security Act for that fiscal year (FY2018).

interventions for UI claimants under RESEA and allocated discretionary funding for RESEA across three categories (base funding, outcome payments, and research and technical assistance). State RESEA programs must include reasonable notice and accommodations for UI beneficiaries selected for participation.<sup>42</sup> In FY2022, states expended \$50.5 million on RESEA services for 919,192 participants.<sup>43</sup>

Section (1)(b)(4) of Division A, Title I of P.L. 118-5 created new a budgetary exemption (i.e., an adjustment to the statutory spending limits under the FRA) for a portion of RESEA spending. Versions of this exemption were in effect prior to the FRA, but this new exemption is less funding than what was previously allowed.<sup>44</sup> The budgetary exemption was effectively reduced to \$265 million (from \$433 million) in FY2024 and to \$271 million (from \$533 million) in FY2033.<sup>45</sup>

## Recent Change in Methodology for RESEA Outcome Payments

Section 306(g) of the Social Security Act provides DOL with authority to change the RESEA allocation formula, including the methodology for outcome payments. In a 2021 *Federal Register* notice, DOL announced that it would apply an interim methodology for the purposes of RESEA outcome payments based on an existing metric used for each state's ES program.<sup>46</sup> Subsequently, DOL developed a regression-based statistical model based on a variety of state-level data factors, including the state unemployment rates, UC reciprocity rate, annual percentage change in job openings, UC duration, and net job changes by year. After testing this model against recent RESEA data, DOL determined that the statistical model and its RESEA-specific targets are a more effective and reliable means of assessing RESEA performance than the interim use of ES targets. In December 2022, DOL notified Congress of the transition to the new statistical model that would be applied to FY2022 RESEA outcome payments. The 90-day notification period concluded on March 23, 2023.<sup>47</sup>

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<sup>42</sup> On April 4, 2019, DOL published a proposed methodology to allocate base RESEA funds and outcome payments. DOL requested state and public comments on this proposal by May 6, 2019 (DOL, ETA, "Allocating Grants to States for Reemployment Services and Eligibility Assessments [RESEA] and Determining Outcome Payments in Accordance With Title III, Section 306 of the Social Security Act," 84 *Federal Register* 13319-21, April 4, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-04-04/pdf/2019-06558.pdf>).

On August 8, 2019, DOL published a notice that summarizes and responds to the public comments and sets out the RESEA allocation formula that was effective beginning in FY2021 (DOL, ETA, "Allocating Grants to States for Reemployment Services and Eligibility Assessments [RESEA] in Accordance With Title III, Section 306 of the Social Security Act [SSA]," 84 *Federal Register* 139018-20, August 8, 2019, <https://www.govinfo.gov/content/pkg/FR-2019-08-08/pdf/2019-16988.pdf>).

<sup>43</sup> Unpublished data provided to CRS by DOL, January 17, 2023.

<sup>44</sup> See Section 251(b)(2)(E)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177). For information on the previous RESEA adjustments under BBEDCA, see CRS Report R45778, *Exceptions to the Budget Control Act's Discretionary Spending Limits*.

<sup>45</sup> This new adjustment effectively supersedes the other budgetary adjustments outlined in Section 314 of the Congressional Budget Act of 1974 (2 U.S.C. §645), where funding for RESEA is limited to \$433 million in FY2024 and \$533 million in FY2025.

<sup>46</sup> Specifically, this was each state's Wagner-Peyser Act-funded ES program negotiated target for the Reemployment Rate in the 2<sup>nd</sup> Quarter After Program Exit Quarter. For background on ES, see CRS In Focus IF12144, *The U.S. Employment Service: Service Delivery and Merit Staffing*.

<sup>47</sup> DOL, ETA, Training and Employment Notice 22-22, *Announcing Unemployment Insurance (UI) Reemployment Services and Eligibility Assessments (RESEA) Program Outcome Payments for Fiscal Year (FY) 2022*, March 23, 2023, <https://www.dol.gov/agencies/eta/advisories/ten-22-22>.

## President’s Budget Proposal for FY2024

The FY2024 budget request includes several provisions intended to improve the administration and integrity of the UI program.<sup>48</sup> These provisions include updating the factors used in determining administrative funding levels, a package of integrity-focused provisions, funding to continue to address fraud and IT modernization within the UI system, and additional funding to continue to build and support the UI Integrity Center’s Integrity Data Hub (IDH) cross-match systems. It also includes an additional, broader package of proposed reforms to address systemic fraud such as identity theft and other fraud in the UI program, increase funding for the COVID-19 Fraud Strike Force Teams, and provide additional funding for Inspectors General (including the DOL Inspector General).

### Proposed UI Program Administrative Funding

The FY2024 budget request includes \$3.7 billion for administration of the UI system, which is an increase of 15% over the FY2023 amount of \$3.2 billion.<sup>49</sup> This amount includes almost \$3.0 billion to “fully” fund states’ projected workload to administer UI. Additionally, the budget request includes \$550 million in funding for RESEA. The budget would provide a fourth installment of \$6 million to modernize IT infrastructure. It would also provide \$150 million for program integrity purposes, including state grants to reduce fraud through identity verification services and other IT infrastructure improvements.

### Proposed Program Integrity Legislation

The President’s FY2024 budget request also recommends a package of legislative changes to improve UI program integrity and to provide additional funding to states to help ensure proper UI payments. These proposals would do the following:

- codify the requirement for states to data match with the National Directory of New Hires (NDNH; administered by the Department of Health and Human Services) and the Prisoner Update Processing System (PUPS, administered by the Social Security Administration) to help ensure that UI benefits are correctly paid to eligible individuals in a timely manner<sup>50</sup>;
- require states to disclose information to the DOL Office of the Inspector General (DOL-OIG) in order to streamline DOL-OIG’s ability to conduct audits and investigations in the UI program; this includes authorizing DOL-OIG to have direct access to the Interstate Connection Network (ICON), which is used for the

<sup>48</sup> DOL, *Fiscal 2024 Budget*, Volume 1: FY2024 Congressional Budget Justification, Employment and Training Administration, State Unemployment Insurance and Employment Service Operations, <https://www.dol.gov/sites/dolgov/files/general/budget/2024/CBJ-2024-V1-07.pdf>.

<sup>49</sup> For an overview of current funding for UI administration, see CRS In Focus IF10838, *Funding the State Administration of Unemployment Compensation (UC) Benefits*.

<sup>50</sup> One way that states can ensure that UI benefits are correctly paid to eligible individuals in a timely manner is by accessing available data sources to match claimant information with eligibility-related characteristics. States are currently required, via DOL program guidance, to use the National Directory of New Hires (NDNH) to make sure, for instance, that UI claimants have not returned to work (for permanent-law UI programs, see DOL, ETA, “National Effort to Reduce Improper Payments in the Unemployment Insurance (UI) Program,” UIPL No. 19-11, June 10, 2011, <https://wdr.doleta.gov/directives/attach/UIPL/UIPL19-11.pdf>; and DOL, ETA, “National Directory of New Hires (NDNH) and State Directory of New Hires (SDNH) Guidance and Best Practices,” UIPL No. 13-19, June 17, 2019, [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_13-19.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-19.pdf)). Currently, there is *no statutory requirement* for states to use NDNH or several other related data cross matches.

- electronic transmission of interstate claims, as well as the IDH system, which is used in cross matching UI claimants against other databases to prevent and detect fraud and improper payments<sup>51</sup>;
- allow the DOL Secretary to require a portion of a state’s administrative grant to be used to correct failing performance and/or have the state participate in required technical assistance activities offered by DOL<sup>52</sup>;
  - authorize states to retain up to 5% of recovered fraudulent UI overpayments for program integrity use<sup>53</sup>;
  - require states to use penalty and interest collections solely for UI administration<sup>54</sup>;
  - provide states the authority to issue a formal warning when claimants do not clearly meet the work search requirements<sup>55</sup>; and
  - allow states to use contract support in recovery efforts under the Treasury Offset Program (TOP).<sup>56</sup>

## Laws Enacted in the 118<sup>th</sup> Congress

This section provides summary information on the one piece of legislation with UI provisions enacted in the 118<sup>th</sup> Congress, at the time of this report.

### P.L. 118-5, the Fiscal Responsibility Act of 2023

The Fiscal Responsibility Act of 2023 (FRA; P.L. 118-5; June 3, 2023) included three provisions that (1) rescinded specified amounts of unobligated UI administrative funding made available by the American Rescue Plan Act of 2021 (ARPA; P.L. 117-2 ; March 11, 2021), (2) effectively reduced budgetary adjustments to discretionary spending limits for Reemployment Services and Eligibility Assessments, and (3) rescinded all unobligated funds for Short-Time Compensation grants created under the Coronavirus Aid, Relief, and Economic Security Act (CARES Act, P.L. 116-136, March 27, 2020).

ARPA provided \$2 billion in additional UI administrative funding to the U.S. DOL in FY2021 to “detect and prevent fraud, promote equitable access, and ensure the timely payment of benefits.” This funding was made available until expended and can be used for (1) federal administrative

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<sup>51</sup> For background on recent DOL-OIG challenges related to direct access to state UI data, see the section on “Data Access” at <https://www.oig.dol.gov/doloiguioversightwork.htm>.

<sup>52</sup> For an overview of the federal funding of state UI administration, see CRS In Focus IF10838, *Funding the State Administration of Unemployment Compensation (UC) Benefits*.

<sup>53</sup> For an overview of UI fraud recovery issues, see CRS Insight IN12127, *Unemployment Insurance Overpayment and Fraud Recovery and H.R. 1163*.

<sup>54</sup> In some situations, states apply fines and civil penalties when fraud is involved with UI benefit overpayments. See DOL, *2022 Comparison of State Unemployment Insurance Laws*, Table 6-3, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/overpayments.pdf#page=6>.

<sup>55</sup> Under federal law (SSA §303(a)(12)), each state’s UI laws must require that individuals be able to work, available for work, and actively seeking work, as a condition of benefit eligibility, among other requirements.

<sup>56</sup> Under federal law (SSA §303(m)), states must recover UI overpayments due to fraud and to misreported work from an individual’s federal income tax refund through the TOP. States may use contractors for recovery of SUTA debts but are prohibited from using contractors for recovery of UC and EB payments. For details, see DOL, ETA, “Recovery of Certain Unemployment Compensation Debts under the Treasury Offset Program,” UIPL 02-19, December 12, 2018, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-02-19>.



costs, (2) system-wide infrastructure, and (3) grants to states and territories administering all UI benefits for program integrity and fraud prevention purposes, including for identity verification and faster claims processing.<sup>57</sup>

Section 24 of Division B, Title I of the FRA rescinded \$1 billion in unobligated funding from the ARPA UI administrative funding (i.e., under Section 2118 of the CARES Act, as amended). Because this FRA provision specifically rescinds unobligated funding, grant awards that have already been awarded to states would not be affected. According to DOL guidance, approximately \$500 million of this funding remains to be awarded after the rescission is applied for the three, authorized purposes.<sup>58</sup>

Section (1)(b)(4) of Division A, Title I of P.L. 118-5 created new a budgetary exemption (i.e., an adjustment to the statutory spending limits under the FRA) for a portion of RESEA spending. Versions of this exemption were in effect prior to the FRA, but this new exemption is less funding than what was previously allowed.<sup>59</sup> The budgetary exemption was effectively reduced to \$265 million (from \$433 million) in FY2024 and to \$271 million (from \$533 million) in FY2033.<sup>60</sup>

Section 2110(g) of the CARES Act made available \$100 million for federal grants to state to support Short Time Compensation programs. Section 74 of Division B, Title I of the FRA rescinded unobligated balances of these grants.<sup>61</sup>

## Legislative Proposals in the 118<sup>th</sup> Congress

This section provides summary information on all legislation introduced in the 118<sup>th</sup> Congress that would amend UI programs and benefits.

### UI Integrity Proposals

Program integrity issues, such as improper benefit payments, have long been of concern for the permanent-law UI programs. The improper payment estimate for the UI system has been above 10% for 14 of the past 18 years.<sup>62</sup> 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 enhanced UI benefits created in response to the COVID-19 pandemic exacerbated program integrity concerns related to improper payments and fraud. (For more background on this issue, see CRS Insight IN12127, *Unemployment Insurance Overpayment and Fraud Recovery and H.R. 1163*. For background on program integrity concerns

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<sup>57</sup> This UI administrative funding was authorized under Section 9032 of ARPA, which created Section 2118 of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act; P.L. 116-136; March 27, 2020), as amended.

<sup>58</sup> DOL, UIPL 11-23, July 13, 2023, p. 2, <https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2023/UIPL%2011-23/UIPL%2011-23.pdf>.

<sup>59</sup> See Section 251(b)(2)(E)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177). For information on the previous RESEA adjustments under BBEDCA, see CRS Report R45778, *Exceptions to the Budget Control Act's Discretionary Spending Limits*.

<sup>60</sup> This new adjustment effectively supersedes the other budgetary adjustments outlined in Section 314 of the Congressional Budget Act of 1974 (2 U.S.C. §645), where funding for RESEA is limited to \$433 million in FY2024 and \$533 million in FY2025.

<sup>61</sup> DOL, UIPL 22-20, July 19, 2023, p.1, <https://www.dol.gov/sites/dolgov/files/ETA/advisories/UIPL/2020/UIPL%2022-20%2C%20Change%201/UIPL%2022-20%20Change%201%20%28Complete%20PDF%29.pdf>.

<sup>62</sup> For more information, see <https://www.paymentaccuracy.gov/payment-accuracy-high-priority-programs/>.

for the LWA benefit, see CRS In Focus IF12249, *Lost Wages Assistance: Benefits and Program Integrity*.)

Recently, congressional attention has focused on UI improper payments, including the scope of fraudulent overpayments and policy proposals to prevent and recover UI overpayments (including fraudulent payments). In February 2023, the House Oversight and Accountability Committee<sup>63</sup> and the House Committee on Ways and Means<sup>64</sup> held hearings where much of the content concerned COVID-19 UI benefit fraudulent payments.

### **H.R. 1163 and S. 1587**

On February 24, 2023, Representative Jason Smith introduced the Protecting Taxpayers and Victims of Unemployment Fraud Act (H.R. 1163). On May 11, 2023, Senator Mike Crapo introduced S. 1587, a companion bill to H.R. 1163. 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.<sup>65</sup>

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 the same 10-year time limit on benefit offset recovery for PUA overpayments).<sup>66</sup> The bill would also allow states to retain 25% of recovered COVID-19 UI overpayments, which could then be used for certain program integrity purposes. H.R. 1163 would authorize states to retain up to 5% of recovered overpayments of permanent-law UI benefits and use those retained amounts for certain program integrity purposes. (Under current law, states are not permitted to retain recovered overpayments.)

H.R. 1163 would also add statutory requirements for states to use certain types of data matching and data systems to ensure proper UI payments.<sup>67</sup> H.R. 1163 would extend the statute of limitations for criminal prosecution of COVID-19 UI fraud to 10 years (from 5 years currently). It would extend the authority for emergency flexibility related to state staffing through December 31, 2030.<sup>68</sup> In addition, H.R. 1163 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.<sup>69</sup> The

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<sup>63</sup> U.S. Congress, House Oversight and Accountability Committee, *Federal Pandemic Spending: A Prescription for Waste, Fraud and Abuse*, hearing, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., February 1, 2023, <https://oversight.house.gov/release/comer-announces-first-hearing-on-rampant-waste-of-taxpayer-dollars-in-covid-relief-programs/>.

<sup>64</sup> U.S. Congress, House Committee on Ways and Means, *Hearing on The Greatest Theft of Taxpayer Dollars: Unchecked Unemployment Fraud*, hearing, 118<sup>th</sup> Cong., 1<sup>st</sup> sess., February 8, 2023, <https://waysandmeans.house.gov/event/hearing-on-the-greatest-theft-of-taxpayer-dollars-unchecked-unemployment-fraud/>.

<sup>65</sup> On March 21, 2023, the Congressional Budget Office (CBO) released a cost estimate for this version of H.R. 1163, available at <https://www.cbo.gov/system/files/2023-03/H.R.1163.pdf>.

<sup>66</sup> CBO, H.R. 1163, Protecting Taxpayers and Victims of Unemployment Fraud Act, As ordered reported by the House Committee on Ways and Means on February 28, 2023, Publication 5019, March 21, 2023, <https://www.cbo.gov/publication/59019>.

<sup>67</sup> For additional background on this issue, see the “Data Matching” section in CRS Report R47079, *Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response*.

<sup>68</sup> Section 2106 of P.L. 116-127 temporarily waived federal requirements regarding merit staffing for state UC programs on an emergency basis in response to COVID-19 until December 31, 2020. This waiver was limited to certain temporary actions taken by states to quickly process UI claims, including rehiring former employees and temporary hiring. This authority was subsequently extended through March 13, 2021, by P.L. 116-260 and then through September 6, 2021, by P.L. 117-2.

<sup>69</sup> Section 9032 of P.L. 117-2 amended Section 2118 of P.L. 116-136 to provide \$2 billion in additional UI administrative funding to DOL in FY2021 to “detect and prevent fraud, promote equitable access, and ensure the (continued...)”

Congressional Budget Office estimated that repealing Section 2118 would decrease direct spending by \$400 million over the 2023-2033 period.<sup>70</sup>

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. The amendment adds 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 UTF. These new deposits would be paid for by redirecting the approximately \$400 million in unobligated funds that would be rescinded under Section 7.

On May 11, 2023, the House considered the amended version of H.R. 1163 on the floor and voted to pass this UI program integrity legislation.<sup>71</sup>

### **S. 1018 and H.R. 5107**

On March 28, 2023, Senator Roger Marshall introduced the Pandemic Unemployment Fraud Recoupment Act (S. 1018). On August 1, 2023, Representative Brad Finstad introduced H.R. 5107, a companion bill to S. 1018. This bill 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 the same 10-year time limit on benefit offset recovery for PUA overpayments). It would also provide new authority to offset UI benefits in order to recover LWA payments with a 10-year time limit (there is no time limit under current law). S. 1018 would extend the statute of limitations for criminal prosecution of COVID-19 UI fraud to 10 years (from 5 years currently).

## **Changes to UI Funding**

### **H.R. 1930 and H.R. 1931**

As part of a release of over 500 bills that would reduce nondefense discretionary spending to 2020 levels,<sup>72</sup> Representative Andy Biggs introduced H.R. 1930 and H.R. 1931 on March 29, 2023. These bills would limit the amount of federal funding in FY2024 available for federal UI and Employment Service Operations to \$84,066,000 and for expenses of the federal administration of employment and training programs to \$108,674,000 (including federal funding for U.S. DOL staff that provide national UI program administration).

### **H.R. 2811**

On April 25, 2023, Representative Jodey Arrington introduced the Limit, Save, Grow Act of 2023 (H.R. 2811). The bill was passed by the House on April 26, 2023, and was received by the Senate

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timely payment of benefits.” This funding is available until expended and may be used for (1) federal administrative costs, (2) system-wide infrastructure, and (3) grants to states and territories administering all UI benefits for program integrity and fraud prevention purposes, including for identity verification and faster claims processing. See <https://www.whitehouse.gov/briefing-room/statements-releases/2023/03/02/fact-sheet-president-bidens-sweeping-pandemic-anti-fraud-proposal-going-after-systemic-fraud-taking-on-identity-theft-helping-victims/>.

<sup>70</sup> CBO, H.R. 1163, Protecting Taxpayers and Victims of Unemployment Fraud Act, As ordered reported by the House Committee on Ways and Means on February 28, 2023, Publication 5019, March 21, 2023, <https://www.cbo.gov/publication/59019>, p. 6.

<sup>71</sup> See the recorded vote at <https://clerk.house.gov/evs/2023/roll211.xml>.

<sup>72</sup> “Congressman Biggs Releases Bill Text for 500+ Spending Cut Bills,” press release, April 4, 2023, <https://biggs.house.gov/media/press-releases/congressman-biggs-releases-bill-text-500-spending-cut-bills>.

on May 1, 2023.<sup>73</sup> Among many other provisions, the bill would establish caps on discretionary funding for FY2024 through FY2033. Specific to the UI program, Section (1)(b)(4) of H.R. 2811 would create new adjustments (budgetary exemptions) to discretionary spending limits for RESEA spending.<sup>74</sup> The proposed budgetary adjustments would begin at \$265 million in FY2024 and gradually rise to \$317 million in FY2033.<sup>75</sup> Also pertinent to the UI program, H.R. 2811 would rescind certain unobligated balances from six laws enacted between 2020 and 2022, including approximately \$400 million of unobligated funds for UI program integrity measures originally authorized under Section 2118 of the CARES Act, as amended.

## Railroad UI (RRUI) Sequestration Exemption

On April 20, 2023, Representative Jan Schakowsky introduced the Railroad Employee Equity and Fairness (REEF) Act (H.R. 2785). On April 25, 2021, Senator Deb Fischer introduced S. 1274 as the Senate companion bill to H.R. 2785. Both bills would permanently exempt railroad UI and sickness benefits from the BCA mandatory sequester, effective on the date prior to March 13, 2020 (i.e., the date of the presidential declaration issued under the National Emergencies Act in response to COVID-19).<sup>76</sup>

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<sup>73</sup> For cost estimates of H.R. 2811, see CBO, *CBO's Estimate of the Budgetary Effects of H.R. 2811, the Limit, Save, Grow Act of 2023*, As posted on the website of the House Committee on Rules on April 19, 2023, Publication 59102, April 26, 2023, <https://www.cbo.gov/publication/59102>; and CBO, *CBO's Estimate of the Budgetary Effects of Amendment 22 to H.R. 2811, the Limit, Save, Grow Act of 2023, as adopted by the House Committee on Rules on April 26, 2023*, Publication 5911, April 26, 2023, <https://www.cbo.gov/publication/59111>.

<sup>74</sup> See Section 251(b)(2)(E)(i) of the Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA; P.L. 99-177) For information on the previous RESEA adjustments under BBEDCA, see CRS Report R45778, *Exceptions to the Budget Control Act's Discretionary Spending Limits*.

<sup>75</sup> If enacted, this would likely supersede the other budgetary adjustments outlined in Section 314 of the Congressional Budget Act of 1974 (2 U.S.C. §645), where funding for RESEA is limited to \$433 million in FY2024, \$533 million in FY2025, \$608 million in FY2026, and \$633 million in FY2027.

<sup>76</sup> For more information on railroad UI benefits, including the temporary exemption from sequestration for railroad UI benefits enacted under the Continued Assistance to Rail Workers Act of 2020 (CARWA; enacted under P.L. 116-260 on December 27, 2020), see CRS Report RS22350, *Railroad Retirement Board: Retirement, Survivor, Disability, Unemployment, and Sickness Benefits*.

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