

Section by Section Summary

Section 1. Short Title.

This section provides the bill's title, "Guaranteeing Unemployment Assistance and Reducing Deception, or GUARD Act."

Title I – Payment Recovery for Pandemic Fraud Victims and Taxpayers

Section 101. Support for Federal Recovery of Payments Made Due to Fraud.

This section authorizes up to \$5 million in appropriations in each of fiscal years 2023 and 2024 to fund the multi-agency task force addressing pandemic unemployment fraud if the funding provided by the American Rescue Plan Act is exhausted.

Section 102. Support for State Recovery of Payments Made Due to Fraud.

Subsection (a). This subsection ensures that federal reimbursement will be paid to state unemployment programs for administrative costs directly related to identifying potential fraud in past payments under the temporary pandemic unemployment programs, recovering payments made due to fraud, and supporting Department of Justice and Office of the Inspector General prosecutions of criminals who perpetuated fraud schemes.

Subsection (b). This subsection requires that before receiving any reimbursement under this section, states must commit to submit annual reports on open fraud investigations and recoveries related to the pandemic unemployment programs.

Subsection (c). This subsection exempts payments to states for pandemic-related UI fraud recovery from the Balanced Budget and Deficit Control Act sequester, which is currently requiring the Department of Labor to leave a portion of these costs unreimbursed.

Section 103. Defined Point of Contact for Identity Theft Victims.

This section requires all state unemployment agencies to ensure that individuals who report identity theft related to unemployment compensation are provided with help to resolve issues related to the identity theft, including a clear point of contact within the state organization, coordinating with other agencies, and providing updates to the individual. The Secretary of Labor is required to provide states with guidance about how to comply with this section within 60 days of enactment, and also to provide technical and financial assistance if needed. States that fail to comply with this requirement within 60 days of DOL providing guidance will be subject to penalties up to the loss of their federal administrative funding.

Title II – Preventing Future Unemployment Fraud and Improving Program Integrity

Section 201. Mandatory Participation in Information Sharing Systems.

Subsection (a). This subsection requires state unemployment programs to participate in various data cross-matching systems that have been effective in identifying patterns of fraud and flagging cases for investigation. The subsection requires the Secretary of Labor to designate

specific systems to match employer data used to identify individuals applying for benefits in more than one state; identify fictitious employers and employer fraud; identify bank account diversion fraud; identify individuals who are incarcerated and ineligible for benefits; and any other effective cross-matching programs; and to update the required systems as new patterns or systems become available. The section also mandates state cross-matching of unemployment data with the National Database of New Hires maintained by the Department of Health and Human Services Child Support Enforcement Office (OCSE), which includes quarterly wage information for most U.S. workers. States must provide the Department of Labor Office of the Inspector General with direct access to the data system used to identify individuals who apply in multiple states (currently the Identity Data Hub).

Subsection (b). This subsection requires the Secretary of Labor to issue formal regulations (with standard notice and opportunity to comment) designating the required systems. The regulation must include the method and frequency of required cross-matching, designate a period of time for states to implement new systems, and take into account issues of equity, access, and due process, and to ensure information is correct and up-to-date. This subsection may lead to additional regulatory action in the future if new systems become available or previously designated systems are no longer useful.

Subsection (c). This subsection specifies that states must comply with these new requirements within two years of a regulation designating them being final.

Section 202. Improving program integrity through communication with claimants.

This section clarifies current law which requires recipients of unemployment insurance benefits to be able to work, available to work, and actively seeking work to ensure that states may issue one warning to individuals who have failed to submit documentation of their work search, a policy which states have found often prevents longer-term overpayments and results in individuals coming into full compliance.

Section 203. Retention of Certain Recoveries for Program Integrity and Equitable Access.

Subsection (a). This subsection amends the current law which requires states to deposit all recovered unemployment overpayments and missing collections in the State Trust Fund and use trust funds only for benefit payments, and instead allows state unemployment insurance programs to retain 5 percent of recovered overpayments and missed employer collections due to fraud. States may use those funds to finance administrative investments which will improve program integrity and equitable access in the future. The subsection also requires states to deposit penalties and interest related to those cases in a separate account to be used for costs related to improving technology, access, and program integrity. States with an improper payment rate of 10 percent or higher must use at least 50 percent of the penalty and interest funds for program integrity improvements.

Subsection (b). This subsection makes conforming technical amendments to the Internal Revenue Code and Social Security Act.

Subsection (c). The Secretary of Labor is required to issue guidance for implementation of this section within one year of enactment, and states are allowed to begin using the special funds once the Secretary certifies that their separate accounts comply with the guidance.

Subsection (d). This subsection states that the provisions in this section apply either two years after enactment or the date in which a state meets the requirements, whichever is earlier.

Title III – Improving Equity and Accountability

Section 301. Additional Targeted Penalties to Enforce Federal Requirements.

Subsection (a). The subsection allows the Secretary to withhold up to 15 percent of a state’s administrative funding grant for violation of any federal performance requirement, including (but not limited to) failure to report data, pay benefits timely, or cross-match for fraud prevention. The Secretary may make the withheld funds available to the state to take specific corrective actions. The Secretary would also have authority to reduce or waive penalties in times of high workloads or when the state is making significant progress. The new penalties are to be used as an alternative to the current law penalty of withholding the entire state administrative funding grant for the year for non-compliance, but the option of imposing the full penalty available to the Secretary if needed.

Subsection (b). Under the subsection, the Secretary is required to issue interim final regulations within two years of enactment. The regulations must include the specific circumstances in which the new penalties will be imposed, a definition of “substantial noncompliance” by a state, the method used to determine the size of the penalty and any increase caused by failure to take corrective action, how the state will be notified, and the circumstances in which states will be allowed to reinvest the penalty amount to take corrective action, as well as the allowable uses of reinvested penalties. The new penalties will be available to the Secretary to enforce the federal law related to administrative performance in years after the regulation is finalized.

Current law regarding nonconformity to federal law (which can trigger a tax penalty) is not altered by this section.

Subsection (c). The regulations issued by the Secretary must be in place before penalties can be withheld.

Section 302. Setting and Enforcing Overall Standards for Equity, Performance, and Program Integrity.

Subsection (a). This subsection requires the Secretary of Labor to establish new performance standards for state unemployment insurance programs, which will be enforced using the penalties in Section 303 of the Social Security Act (as expanded by Section 301 of this Act). The new standards must address equity (including, but not limited to, race, ethnicity, gender, and disability status), access, payment timeliness, program integrity, and assistance in fraud recovery, and set minimum acceptable performance levels. The Secretary may also propose standards in other performance areas, as well.

This section also requires the Secretary of Labor to set minimum standards for technology used to administer the unemployment insurance program to ensure that the “vast majority of individuals” can easily understand and use systems to file initial and continuing claims for benefits.

Many of the data elements needed for performance measurement are already being reported to the Department of Labor by states. This subsection specifies that if additional data is needed to measure performance levels, states are required to report the additional data to the Department of Labor, and any collected data is subject to privacy standards and use limitation specified in Title IV of the bill. States that fail to report data could be subject to penalty under Section 303 and are also ineligible for the performance bonuses in Subsection (c) in any fiscal year in which they have not provided all required data for that year and previous fiscal years.

This subsection also provides for new state bonuses to reward program improvement or sustained excellence. The performance bonuses will be provided annually in any year in which appropriations are provided. They are based on prior year performance starting in fiscal year 2024 and will remain available to states for two years after appropriation, to facilitate long-term investments and planning. Up to \$280 million a year is authorized for appropriation for this purpose. The bonuses will be scaled based on both the size of the state’s UI-covered population, the state’s projected claims volume, and the quality of the state’s performance. Bonuses may be used for state administrative costs or for reemployment services. If the Secretary determines that not enough states qualified for bonuses to award the full appropriation, funds may be reserved by the Secretary to pay bonuses in future years.

Finally, this subsection requires the Secretary to biannually assess state performance regarding equitable access to and receipt of earned unemployment benefits across racial and ethnic groups, compare state performance, and provide analysis of state policies which may be causal factors for the difference in performance. The Secretary is required to publish the first report four years after enactment, and then to issue an updated report every two years thereafter. The report must be submitted to the Committees on Ways and Means and Finance and also made publicly available. The Secretary is also required to negotiate specific corrective action plans to correct serious problems identified in the analysis, in addition to having the option to levy penalties under Section 303 of the Social Security Act. The new performance measurement is in addition to, not in place of, any other statutory or regulatory tools available to the Secretary to enforce federal laws and standards.

Subsection (b). This subsection requires the Secretary to issue regulations implementing this section within 18 months of enactment.

Subsection (c). This section is effective for fiscal years beginning two or more years after the date of enactment.

Title VI – General Provisions

Section 401. Centralized Support and Technical Assistance for State Program Improvement.

In any year in which funding is available from either the American Rescue Plan Act or annual appropriations, the Secretary of Labor is required to provide states with centralized support services, including assistance to make access to earned benefits more equitable, assistance to prevent fraud and recover overpayments, and assistance to make timely and accurate payments. The assistance may include, but is not limited to, “tiger teams” to provide consultative assessments and technology or process solutions which have been prototyped and tested by the Department of Labor. The section also authorizes the Secretary of Labor to store state performance data in a centralized database and specifies conditions for safe storage and non-disclosure.

Section 402. Implementation.

Subsection (a). This subsection exempts the provisions in this bill from the Paperwork Reduction Act in order to speed up implementation by approximately a year.

Subsection (b). This subsection authorizes the Secretary of Labor to issue any regulations, operating instructions, or guidance needed to implement the provisions in the bill.

Section 403. Authorization of Appropriations.

This section authorizes the Secretary of Labor to use any remaining funds from the \$2 billion appropriation provided to support program integrity, access, and equity in the American Rescue Plan Act and also authorizes additional appropriations as necessary starting in fiscal year 2024 to implement the provisions of the bill.