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EXPLANATORY STATEMENT FOR THE UNEMPLOYMENT COMPENSATION PROGRAM INTEGRITY ACT OF 2011

The "Unemployment Compensation Program Integrity Act of 2011" would make important changes to the federal-state unemployment compensation (UC) system that would reduce erroneous payments of UC, underpayment of taxes and misclassification of employees as independent contractors; require penalties for claimant fraud and employer fault; improve collections of overpayments and contributions; and otherwise improve state administration. In addition, the legislation would allow states to continue operating short-time compensation programs and improve the operation of the federal-state extended benefits program.

Section 1 of the bill provides that the short title is the "Unemployment Compensation Program Integrity Act of 2011".

Section 2 of the bill provides flexibility to states in using unemployment fund moneys for program integrity purposes. Under current federal law, all overpayments of UC benefits, and all payments of UC contributions (or payments in lieu of contributions) by employers that are collected by a state must be deposited in the state's unemployment fund where they may be used only for the payment of UC. (Sections 3304(a)(3) and (4) of the Federal Unemployment Tax Act (FUTA) and sections 303(a)(4) and (5) of the Social Security Act (SSA).) Section 2 amends these limitations.

First, the section permits states to use up to 5 percent of each overpayment recovered to augment administrative funding for a broad range of program integrity activities. These activities include those related to deterring, detecting and recovering benefit overpayments

(which may include carrying out pilots and demonstration projects), and deterring and detecting employer fraud and evasion of required employer contributions, including the misclassification of employees as independent contractors and the ongoing implementation of the SUTA Dumping Prevention Act of 2005. ("SUTA" refers to state unemployment tax acts.). Similarly, the section permits states to use up to 5 percent of employer contributions (or payments in lieu of contributions) collected as a result of an investigation by the state to be used for these same purposes. If a state elects either (or both) of these options, it would be required to deposit amounts to be used for administrative financing in a subaccount of the state's book account in the Unemployment Trust Fund (UTF) that would be available for the integrity purposes described above. If the state decides that any amount it places in this subaccount is not needed for the designated purposes, the state may use these amounts for the payment of UC.

The section finally provides that, if a state elects to use either or both of these new options, the option will also be applied by the state to the administration of federal unemployment benefit programs, including UC for former federal and military personnel and Emergency Unemployment Compensation and Federal Additional Compensation. This requirement recognizes that the increased integrity efforts on the part of the states will also benefit the federal UC programs they administer. The percent of recoveries retained under these federal programs would be the same as the percent retained for state recoveries.

Section 3 amends the SSA to require states to assess a penalty of not less than 15 percent of the amount overpaid on any claim for benefits that is determined due to the claimant's fraud. The states would be required to immediately place the amounts of penalty paid in the subaccount of the state's book account in the UTF from which amounts may be withdrawn solely for the

integrity activities described above. As a result of this amendment, individuals who have defrauded the system - who are frequently required to do no more than repay the fraudulently received benefits - will be penalized and the penalty will be used in a way that will result in improved program integrity. If the state decides that any amounts it deposits in this special fund are not needed for the designated purposes, the state may use these amounts for the payment of UC.

This section provides that, as a condition for administering federal unemployment compensation programs, states will also assess a penalty on individuals receiving overpayments under such programs due to fraud, and also deposit those amounts in the subaccount of the state's book account in the UTF to carry out program integrity activities, in the same manner as the state assesses and deposits penalties under the state program.

Section 4 amends the FUTA to prohibit states from relieving an employer of benefit charges due to a benefit overpayment if the employer has caused the overpayment by failing to provide timely or adequate information in response to a request from the state UC agency, and if the employer has established a pattern of failing to respond timely or adequately to such requests. In determining whether an individual is eligible for UC, states rely on information provided by employers. When this information is not received on a timely basis, is inaccurate, or is incomplete, an ineligible individual may receive benefits. When UC is paid, the benefits are "charged" to an employer's experience rating account, which generally means the employer's contribution rate will increase. However, employers may be relieved of charges when an overpayment is declared or collected, even if the overpayment was caused by the employer's failure to timely or adequately respond to requests for information from the state. Under the

amendment, if the state determines the overpayment was the employer's fault due to failure to respond timely or adequately to an agency request for information and that the employer has a pattern of failing to respond timely or adequately to such requests, the employer's account may not be relieved of charges.

Section 5 would clarify the requirements relating to short-time compensation (STC or "worksharing") programs under which employers reduce the workweek of their employees in lieu of temporary layoffs and the affected employees receive a pro-rated share of their weekly benefit amount for the period not worked. The Department of Labor has taken the position that the current legislative authority for STC does not authorize certain state practices, such as making the payment of STC contingent on the employer entering into a plan with its employees and making such plan subject to approval by the state UC agency. During the current recession, the use of STC has increased considerably, which indicates that it is an attractive alternative to full-time lay-offs and should be continued. Amending federal law would address these issues and allow the Department to more actively promote this alternative. The Department may also, in other legislative proposals, explore ways to improve and incentivize state use of STC.

Section 6 of the bill amends FUTA to permit a more flexible use of state unemployment fund moneys in a state's clearing account before such funds are transferred to the Unemployment Trust Fund. In all states, employer contributions are deposited in a clearing account. Under current law, states are required to transfer all moneys received in this clearing account immediately to their accounts in the Unemployment Trust Fund and to use such moneys only for the payment of UC. Section 6(a) allows states to retain moneys in their clearing account and to use earnings credits or actual interest earnings on such moneys to pay reasonable charges for

banking services associated with the clearing account. This is consistent with treatment of a state's benefit payment account under the Cash Management Improvement Act of 1990. In addition, section 6(b) amends applicable provisions in the Internal Revenue Code to provide that states may retain funds in their clearing accounts to assist in covering the costs for services in which the bank receives and processes remittances it receives directly from employers. This will allow states to take advantage of state-of-the-art banking services, which will accelerate the deposit of employer contributions. This provision is effective upon enactment. Finally, section 6(c) amends title XII of the SSA to provide that amounts retained as compensating balances are not to be considered for purposes of determining a state's eligibility for advances to pay UC or administrative expenses, providing the flexibility for states to maintain such balances to cover banking costs.

Section 7 amends title IV-D of the SSA to require, as a condition of the state's child support enforcement grant, that rehires be reported by all employers to the state directory of new hires. The state directory would, as it already does with respect to the current information reported on new hires, transmit this information to the National Directory of New Hires (NDNH).

The state and national directories of new hires were established under Title IV-D of the SSA for the purposes of locating individuals who were delinquent in paying child support. State UC agencies have found the state directory of new hires to be extremely useful in identifying individuals who claim UC benefits after they have returned to work and, pursuant to an amendment enacted in 2004, states are using the NDNH for this purpose. The NDNH allows states access to a wider universe of employers, including federal agencies and multi-state

employers who report all new hires to a single state.

However, the effectiveness of this system is limited because employers do not report rehire of individuals who had previously worked for them, which is critical in determining whether individuals were improperly receiving UC benefits. This amendment would require employers to report individuals who were rehired after being separated from employment for at least 60 days. This section also contains conforming amendments relating to access to the National Directory of New Hires by the Secretary of the Treasury and provision of health care coverage for children, and a transition period to provide states with sufficient time to incorporate this new element.

Section 8 amends section 303(e) of the SSA, pertaining to the disclosure of UC information for purposes related to support obligations enforced under section 454 of the SSA, and the intercept of these obligations from UC. The Department of Labor interprets the current section as being limited only to child support obligations, thereby excluding support obligations for custodial parents enforced under these plans. The amendment would make it clear that the section applies to support obligations for the custodial parent of such child. The result would be that, where the obligations are being enforced by the state child support agency, the state UC agency would (under the conditions contained in section 303(e)) be required to disclose to the child support enforcement agency information about UC claimants owing support obligations to custodial parents, and to deduct from UC obligations owed custodial parents, as well as support obligations owed the children.

Section 9 amends section 908 of the SSA, pertaining to the Advisory Council on Unemployment Compensation. Current law requires that the Secretary of Labor convene a new

Council every four years. The amendments provide that the Secretary may periodically convene a Council and provides the Secretary the authority to define the scope of any such Council.

Section 10 of the bill amends the Federal-State Extended Unemployment Compensation Act of 1970 that authorizes the Extended Benefits (EB) program. Under current law, an individual must conduct a systematic and sustained search for work. It also requires that "tangible evidence" of this work search be submitted to the state UC agency before EB may be paid. When this provision was enacted in 1980, paper claims filing resulted in relatively simple administration of this requirement – claimants would simply attach the work search to their regular claim. However, states have since adopted automated claims filing methods, such as interactive voice response systems, which are not readily adaptable to receiving the details of the individual's work search. This has created an administratively cumbersome system. The amendment would retain the requirement that the individual conduct the required work search. However, instead of requiring that "tangible evidence" be submitted with each claim, the individual would be required to maintain such evidence and to produce it upon request of the state UC agency. This would parallel current state administration of their own work search requirements and would also relieve the states of a major administrative burden during a period of heavy workload.

Section 11 of the bill provides the Secretary of Labor the authority to issue operating instructions or regulations necessary to implement the amendments made by the Unemployment Compensation Program Integrity Act of 2011.

Section 12 provides that the provisions of the Act are effective upon the date of enactment, unless otherwise specified.