Maryland
DEPARTMENT OF LABOR

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House Bill 955

Date: March 1, 2022
Committee: Economic Matters Committee
Bill Title: Unemployment Insurance - Procedures for Overpayment of Benefits Procedures - Alterations
Re: Letter of Information

House Bill 955 ("H.B. 955" or "the Bill") would amend the Labor and Employment Article of the Annotated Code of Maryland in two ways; it: (1) disallows some notices via a claimant's BEACON portal and (2) changes predetermination procedures, notices and collections for overpayments. The major fiscal and operational impacts of each of these changes are described below.

1. *Disallows some notices via a claimant's BEACON portal*

The Division of Unemployment Insurance ("Division") is subject to federal regulations and internal policies about the transmittal of a claimant's personal identifiable information ("PII"). The Division may mail documentation containing PII but may not send PII in email form unless the attachment containing the PII is encrypted.

Due to extensive identity theft fraud during the pandemic, the Division has prepared, printed and mailed thousands of letters, notices, and updates to undeliverable addresses and to addresses where the claim application does not match any person living there. The Division currently puts a "mail block" on those claims and defaults claimants to receive notifications via their online portal, but HB 955 would require email or mail delivery even for those addresses.

The Bill may drive the Division to send all notices by mail, which would double the budget for mailing supplies (currently about 51% of claimants who have selected a preferred method of communication, have chosen to be alerted to correspondence in their BEACON portal via text or email). This would add an annual cost of approximately $1,680,000.

2. *Changes predetermination procedures, notices and collections for overpayments*

Because the Bill's proposed changes would require the Secretary to provide to a claimant a 30-day period to respond in writing or by telephone before making a finding of overpayment, the Division would be required to continue payments to the claimant for the extra 30-day period specified in the bill. 42 U.S.C. § 303(a)(1) requires states to pay unemployment insurance benefits "when due." In *California Department of Human Resources v. Java* (1971), the Supreme

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Court held that a California statute which required the State to freeze payments pending the outcome of an appeal violated the "when due" requirement.

To that end, Allowing claimants to have 30 days to respond to the Division's fact finding on an issue would result in more weeks that a claimant is overpaid if that decision is upheld on appeal. This is longer than the Division took to review overpayment assessments prior to the pandemic and if a case involves fraud, the Division may pay out additional benefits which may not be recoverable.

The Division has a process for overpayment predeterminations. Before making a determination that a payment is improper, the Division conducts an investigation. This includes promptly contacting the individual to whom the potential overpayment was made and providing the individual a reasonable amount of time to be heard, including the ability to rebut any information received from other sources (such as computer crossmatch hits, government database hits, outside tips, and more sources); independently verifying information received from other sources; and gathering all relevant information, which may include supporting documents and statements from either the individual to whom the payment was made or others.

If a controversy exists after the fact finding by a UI professional and the UI Professional cannot complete the determination due to that controversy, a *Java* hearing is held. The hearing is held telephonically by a different and more senior UI Professional than the UI Professional who conducted the fact finding. After the *Java* hearing, the individual or claimant is provided with a written determination which provides sufficient information to understand the basis for the determination (including the facts on which the determination is based, the reason for allowing or denying benefits, the legal basis for the determination, and potential penalties or consequences) as well as information regarding how and when an appeal of the overpayment determination may be appealed.

It is important to note that the CARES Act overpayments were unique in the history of the UI program in Maryland. Due to the special circumstances of the pandemic, the Division was required by USDOL to allow claimants to self-attest the wages used to determine their eligibility as well as their weekly benefit amount ("WBA"). This was done to ensure that individuals were paid quickly rather than wait for staff-reviewed WBA calculations. USDOL also required the Division to amend a claimant's WBA based on the proof of income they later submitted or to reduce a claimant's WBA to the minimum allowed by the Act if they failed to provide proof of income as required. This process, which was unusual, created many overpayments.

Finally, the bill lengthens the process unnecessarily. This lengthened process will require additional staff hours for each claimant that chooses to respond to the Secretary's notice by mail or phone. Because the BEACON 2.0 system does not account for this 30-day predetermination process, this provision of the Bill may require the Division to work with its vendor to make coding changes to allow for this lengthened and different process for determining overpayments. The Division's vendor has estimated a cost of $50,000 to make the coding changes required.

The Department respectfully requests that the Committee consider this information.