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Concurrent Receipt of Social Security Disability Insurance (SSDI) and Unemployment Insurance (UI): Background and Legislative Proposals

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Summary

Social Security Disability Insurance (SSDI) and Unemployment Insurance (UI) are forms of social insurance that provide protection against the risk of economic loss due to specific adverse events. SSDI provides long-term benefits to nonelderly workers and their eligible dependents if the worker is unable to engage in *substantial gainful activity* (SGA) due to a qualifying impairment. UI provides temporary benefits to involuntarily unemployed workers who meet the requirements of state law. Although SSDI and UI serve largely separate populations, some individuals may be concurrently (simultaneously) eligible for benefits under both programs.

In 2012, the Government Accountability Office (GAO) examined the issue of overlapping SSDI and UI benefits. GAO found that in FY2010, 117,000 individuals received more than $850 million in concurrent benefit payments from the SSDI and UI programs. These individuals represented about 1% of the beneficiaries in each program, and the benefit payments they received constituted 0.2% of SSDI benefit outlays and 0.4% of UI benefit outlays for that year. The Social Security Administration (SSA) estimates that for each month in 2015, an average of about 0.34% of disabled-worker beneficiaries will be in concurrent receipt of SSDI and UI (approximately 30,000 people).

During the 114th Congress, several proposals have been introduced to deny or offset the SSDI benefits of disabled-worker beneficiaries who receive UI benefits. These proposals take one of three approaches.

- The first approach treats receipt of UI payments as engaging in SGA, which would prevent UI recipients from qualifying for SSDI. It could also lead to a suspension or termination of SSDI benefits for individuals already entitled to SSDI who receive UI payments based on work activity that occurred under an SSA-approved work incentive.
- The second approach suspends SSDI benefits for any month in which a disabled-worker beneficiary receives UI payments.
- The third approach reduces SSDI benefits, dollar for dollar, by the amount of UI benefits.

Supporters of these proposals argue that concurrent receipt of SSDI and UI benefits is "double dipping" or duplicative, because both programs are intended to replace lost earnings. They also maintain that receipt of one benefit is fundamentally contradictory with the eligibility requirements of the other: UI beneficiaries are required to be *able and available for work* (as determined under state law), whereas SSDI beneficiaries must be generally *unable to work* due to a severe physical or mental impairment that prevents them from performing SGA.

Opponents argue that concurrent receipt of SSDI and UI benefits is consistent and appropriate under law, because the SSDI program actively encourages beneficiaries to return to work through various work incentives. Many opponents also contend that denying or offsetting the SSDI benefits of individuals in receipt of UI discriminates against people with disabilities who have lost their job through no fault of their own.

This report provides an overview of the SSDI and UI programs and explores the issue of overlapping payments. It also examines many of the proposals introduced during the 114th Congress to prevent or reduce concurrent receipt of SSDI and UI. The report ends with a discussion of potential issues for SSA in implementing such proposals.

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Introduction

Although Social Security Disability Insurance (SSDI) and Unemployment Insurance (UI) both provide income support to eligible individuals, the two programs serve largely separate populations. SSDI provides long-term benefits to statutorily disabled individuals who worked in jobs covered by Social Security and to their eligible dependents. In contrast, UI provides temporary benefits to involuntarily unemployed workers who meet the requirements of state law. Under certain circumstances, however, individuals are eligible for both programs.

Several proposals have been introduced in the 114th Congress to prevent or reduce concurrent receipt of SSDI and UI benefits.[1] Proponents of these bills contend that concurrent receipt is "double dipping" or duplicative, inasmuch as each payment serves the same function of replacing lost earnings.[2] Opponents argue that concurrent receipt of SSDI and UI benefits is consistent and appropriate under law, because the SSDI program actively encourages beneficiaries to return to work through various work incentives.[3]

This report provides background on SSDI and UI and explains how individuals may be eligible for both programs concurrently. It also summarizes the competing arguments for and against concurrent eligibility and examines the legislative proposals introduced in the 114th Congress to deny or offset the SSDI benefits of individuals in receipt of UI. The report ends with a discussion of potential issues in implementing such proposals.

Background

Social Security Disability Insurance[4]

Enacted in 1956 under Title II of the Social Security Act, SSDI is part of the Old-Age, Survivors, and Disability Insurance (OASDI) program administered by the Social Security Administration (SSA). OASDI is commonly known as Social Security. Like Old-Age and Survivors Insurance (OASI)—the retirement component of Social Security—SSDI is a form of social insurance that replaces a portion of a worker's income based on the individual's career-average earnings in covered employment.[5] Specifically, SSDI provides benefits to insured workers under the full retirement age (FRA) who meet the statutory test of disability and to their eligible dependents. FRA is the age at which unreduced Social Security retirement benefits are first payable (currently 66). In June 2015, 10.9 million individuals received SSDI benefits, including 8.9 million disabled

[1] For information on current legislative issues concerning Unemployment Insurance (UI), see CRS Report R43993, *Unemployment Insurance: Legislative Issues in the 114th Congress*, by Julie M. Whittaker and Katelin P. Isaacs.

[2] Rep. Sam Johnson, "Unemployment and Disability Double-Dipping," remarks in the House, *Congressional Record*, daily edition, vol. 161, no. 23 (February 11, 2015), p. H927, https://www.congress.gov/crec/2015/02/11/CREC-2015-02-11-pt1-PgH927-2.pdf (hereinafter "Rep. Sam Johnson, remarks in the House 2015").

[3] Consortium for Citizens with Disabilities (CCD), *Oppose Cuts to Concurrent SSDI and UI Benefits: S. 499, H.R. 918, S. 343, and Similar Proposals Would Hurt SSDI Beneficiaries and Their Families, Discourage Work*, February 18, 2015, http://www.c-c-d.org/fichiers/CCD-DI-UI-Fact-Sheet-S499-HR918-S343-02-17-15.pdf (hereinafter "CCD, Concurrent SSDI and UI Benefits 2015").

[4] For more information on Social Security Disability Insurance (SSDI), see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by William R. Morton

[5] For more information on Old-Age and Survivors Insurance (OASI), see CRS Report R42035, *Social Security Primer*, by Dawn Nuschler.

workers, 145,000 spouses of disabled workers, and 1.8 million children of disabled workers.[6] SSA's Office of the Chief Actuary estimates that 167 million people will work in Social Security-covered employment in 2015.[7]

Eligibility

To qualify for SSDI, workers must be (1) insured in the event of disability and (2) statutorily disabled. To achieve insured status, individuals must have worked in covered employment for about a quarter of their adult lives before they became disabled and for at least 5 of the past 10 years immediately before the onset of disability.[8] However, younger workers may qualify with less work experience based on their age. In 2014, SSDI provided disability insurance to more than 151 million workers.[9]

To meet the statutory test of disability, an insured worker must be unable to engage in any *substantial gainful activity* (SGA) by reason of any medically determinable physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for at least one year.[10] In 2015, the SGA earnings limit is $1,090 per month for most workers and $1,820 per month for statutorily blind individuals.[11] Disability determinations are based on a five-step sequential evaluation process that takes into account a worker's medical records, age, education, and work experience. In general, workers must have a severe impairment that prevents them from doing any kind of substantial work that exists in the national economy.

Benefits

Cash benefits begin five full months after a beneficiary's disability onset date.[12] Initial benefits are based on a worker's career-average earnings, indexed to reflect changes in national wage levels. Benefits are subsequently adjusted to account for inflation through cost-of-living adjustments (COLAs), as measured by the Consumer Price Index for Urban Wage Earners and Clerical Workers (CPI-W).[13] However, benefits may be offset if a disabled worker also receives workers' compensation or certain other public disability benefits.[14] In June 2015, the average monthly benefit was $1,165 for disabled workers, $317 for spouses of disabled workers, and $350 for children of disabled workers.[15] In FY2014, SSDI paid out $141 billion in benefits to disabled workers and their dependents.[16]

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[6] Social Security Administration (SSA), "Benefits Paid by Type of Beneficiary," http://www.ssa.gov/oact/ProgData/icp.html.

[7] SSA, *Fact Sheet on the Old-Age, Survivors, and Disability Insurance Program*, April 16, 2015, http://www.ssa.gov/oact/FACTS/.

[8] For more information, see SSA, "Benefits Planner: Number of Credits Needed for Disability Benefits," http://www.socialsecurity.gov/planners/credits.html.

[9] SSA, "Disabled Insured Workers," http://www.ssa.gov/OACT/STATS/table4c2DI.html.

[10] 42 U.S.C. §423(d)(1). For information on substantial gainful activity (SGA), see 20 C.F.R. §§404.1571-404.1576.

[11] SSA, "Substantial Gainful Activity," http://www.ssa.gov/oact/cola/sga.html.

[12] For additional information on the five-month waiting period, see CRS Report RS22220, *Social Security Disability Insurance (SSDI): The Five-Month Waiting Period for Benefits*, by William R. Morton.

[13] See CRS Report 94-803, *Social Security: Cost-of-Living Adjustments*, by Julie M. Whittaker.

[14] For more information, see SSA, *How Workers' Compensation and Other Disability Payments May Affect Your Benefits*, No. 05-10018, June 2015, http://www.ssa.gov/pubs/EN-05-10018.pdf.

[15] SSA, "Benefits Paid by Type of Beneficiary," http://www.ssa.gov/oact/ProgData/icp.html.

[16] SSA, Office of the Chief Actuary (OACT), "Time Series for Selected Financial Items," accessed June 18, 2015,

In addition to cash benefits, disabled workers and certain dependents are eligible for health coverage under Medicare after 24 months of entitlement to cash benefits (29 months after the onset of disability).[17] In 2012, Medicare spending per disabled beneficiary averaged about $9,900.[18] Generally, disabled workers retain their benefits as long as they (1) are under FRA, (2) exhibit no substantial medical improvement, and (3) have average monthly earnings below the SGA limit.

Financing

Although commonly viewed as a single program, Social Security (OASDI) is financed through two legally distinct sources known as trust funds. A *trust fund* is an accounting mechanism in the U.S. Treasury that records and keeps track of revenues, offsetting receipts, or collections earmarked for a specific purpose.[19] The Federal Disability Insurance (DI) Trust Fund finances the benefits of disabled workers and their dependents, and the Federal Old-Age and Survivors Insurance (OASI) Trust Fund pays for the benefits of retired workers and their dependents as well as survivors of deceased workers. Administrative costs are also drawn from the trust funds. Each trust fund is a separate account in the U.S. Treasury, and under current law, the two trust funds may not borrow from one another.[20]

Most of the income of the two trust funds comes from dedicated payroll and self-employment taxes under the Federal Insurance Contributions Act (FICA) and the Self-Employment Contributions Act (SECA). FICA taxes are split evenly between employees and employers, whereas SECA taxes are borne fully by self-employed individuals. The Social Security FICA tax rate for employees and employers *each* is 6.2% (12.4% combined), with 0.9% allocated to the DI trust fund and 5.3% to the OASI trust fund (1.8% and 10.6% combined, respectively). The Social Security SECA rate is 12.4%, with 1.8% allocated to the DI trust fund and 10.6% to the OASI trust fund. Social Security payroll taxes are levied on covered earnings up to a taxable maximum of $118,500 for 2015.[21] Net payroll tax revenues credited to the DI trust fund totaled $109 billion in FY2014.[22]

The DI and OASI trust funds are also credited with income from the taxation of some Social Security benefits and interest earned on assets held by the trust funds. Occasionally, the trust funds receive income via reimbursements from the General Fund of the Treasury. In FY2014,

http://www.ssa.gov/oact/ProgData/tsOps.html (hereinafter "SSA, Time Series for Selected Financial Items").

[17] For more information, see SSA, "Medicare Information," http://www.ssa.gov/disabilityresearch/wi/medicare.htm. See also CRS Report R40425, *Medicare Primer*, coordinated by Patricia A. Davis and Scott R. Talaga.

[18] U.S. Department of Health and Human Services (HHS), Centers for Medicare & Medicaid Services (CMS), *Medicare & Medicaid Statistical Supplement*, 2013 edition, Table 3.4, http://www.cms.gov/Research-Statistics-Data-and-Systems/Statistics-Trends-and-Reports/MedicareMedicaidStatSupp/Downloads/2013_Section3.pdf#Table3.4. Figure is per enrollee and includes disabled workers, disabled widow(er)s, disabled adult children, and individuals entitled to Medicare because of end-stage renal disease (ESRD) only.

[19] For more information on federal trust funds, see CRS Report R41328, *Federal Trust Funds and the Budget*, by Mindy R. Levit.

[20] For SSA's perspective on the trust funds, see SSA, "Trust Fund FAQs," http://www.ssa.gov/oact/ProgData/fundFAQ.html.

[21] SSA, "Benefits Planner: Maximum Taxable Earnings (1937 - 2015)," http://www.socialsecurity.gov/planners/maxtax.html.

[22] SSA, Time Series for Selected Financial Items.

revenues from those sources to the DI trust fund totaled $5 billion.[23] All trust fund balances are invested in special-issue, interest-bearing U.S. government bonds.

In their 2015 report, the Social Security trustees project that under current law, the DI trust fund will be exhausted in the fourth quarter of calendar year 2016.[24] Upon depletion, the DI trust fund would have enough ongoing revenues to pay 81% of scheduled SSDI benefits.[25]

Unemployment Insurance[26]

UI is a form of social insurance that provides temporary income support to covered workers who become unemployed through no fault of their own and meet certain other state eligibility requirements. The cornerstone of this income support is the joint federal-state Unemployment Compensation (UC) program, which may provide a partial wage replacement through the payment of UC benefits for up to a maximum of 26 weeks in most states.[27] Authorized under Title III of the Social Security Act, the original intent of the UC program, among other things, was to help counter adverse economic shocks such as recessions.[28] Although federal laws and regulations provide broad guidelines on UC benefit coverage, eligibility, and benefit determination, the specifics regarding UC benefits are determined by each state.[29] This results in essentially 53 different programs.[30] As of June 27, 2015, the UC program covered approximately 134 million jobs and provided benefits to more than 2.3 million unemployed workers.[31]

UC benefits may be extended at the state level by the permanent Extended Benefit (EB) program if high unemployment exists within the state. Once regular unemployment benefits are exhausted, the EB program may provide up to an additional 13 or 20 weeks of benefits, depending on worker eligibility, state law, and economic conditions in the state. Prior to its expiration on December 28, 2013 (December 29, 2013, in New York State), the temporary Emergency Unemployment Compensation (EUC08) program provided additional benefits of up to 47 weeks, also depending on state economic conditions.

[23] Ibid.

[24] The Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds, *The 2015 Annual Report of the Board of Trustees of the Federal Old-Age and Survivors Insurance and Federal Disability Insurance Trust Funds*, July 22, 2015, p. 2, http://www.ssa.gov/oact/tr/2015/index.html. Projection is based on the trustees' 2015 intermediate assumptions.

[25] Ibid. For more information on the solvency of the DI trust fund, see CRS Report R43318, *The Social Security Disability Insurance (DI) Trust Fund: Background and Current Status*, by William R. Morton

[26] For additional information on UI, see CRS Report RL33362, *Unemployment Insurance: Programs and Benefits*, by Julie M. Whittaker and Katelin P. Isaacs.

[27] For more information on state Unemployment Compensation (UC) duration limits, see CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*, by Katelin P. Isaacs.

[28] See, for example, President Franklin Roosevelt's remarks at the signing of the Social Security Act at http://www.ssa.gov/history/fdrstmts.html#signing.

[29] The U.S. Department of Labor (DOL) pays administrative grants to states to administer the UC system.

[30] The District of Columbia, Puerto Rico, and the Virgin Islands are considered states in UC law.

[31] DOL, "Unemployment Insurance Weekly Claims Data," http://oui.doleta.gov/unemploy/claims.asp. Figure is seasonally adjusted.

Eligibility

In general, UC eligibility is based on attaining qualified wages and employment in covered work over a 12-month period (called a base period) prior to unemployment. To be monetarily eligible to receive any UC benefits, all states require a worker to have earned a certain amount of wages and have worked for a certain period within the base period. The methods states use to determine monetary eligibility vary greatly. Additionally, to meet and maintain eligibility for UC benefits, states require most covered workers to have lost their job through no fault of their own, and to be able, available, and actively seeking work.

Benefits

UC benefits are based on wages for covered work over a 12-month base period. Most state benefit formulas replace approximately half a claimant's average weekly wage up to a weekly maximum. All states disregard some earnings during unemployment as an incentive to take short-term or part-time work while searching for a permanent position. In general, the worker's UC payment equals the difference between the weekly benefit amount and earnings. As of June 30, 2015, the 12-month average weekly UC benefit was $321.[32] In FY2014, states spent $36 billion on regular UC benefits.[33] Any EB (or expired EUC08) benefit amount is equal to the eligible individual's weekly regular UC benefits.

Financing

The UC program is financed by federal taxes under the Federal Unemployment Tax Act (FUTA) and by state payroll taxes under the State Unemployment Tax Acts (SUTA), which are deposited in the appropriate accounts within the Unemployment Trust Fund (UTF).[34] The 0.6% effective net FUTA tax paid by employers on the first $7,000 of each employee's earnings (no more than $42 per worker per year) funds both federal and state administrative costs, loans to insolvent state UC accounts, the federal share of EB payments, and state employment services.[35] According to the Department of Labor (DOL), $5.5 billion in FUTA taxes were collected in FY2014.[36]

SUTA taxes on employers are limited by federal law to funding regular UC benefits and the state share of EB payments (50%). Federal law requires that the state tax be on at least the first $7,000 of each employee's earnings (it may be more) and requires that the maximum state tax rate be at least 5.4%. Federal law also requires the state tax rate to be based on the amount of UC paid to former employees, which is known as experience rating. *Experience rating* is a process for determining insurance premiums based on the cost of an insurance pool's past claims. In general,

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[32] DOL, "Monthly Program and Financial Data," http://oui.doleta.gov/unemploy/claimssum.asp.

[33] DOL, *Unemployment Insurance Outlook: President's Budget FY2016*, February 2, 2015, p. 10, http://oui.doleta.gov/unemploy/pdf/prez_budget.pdf (hereinafter "DOL, President's FY2016 Budget"). In FY2014, benefit outlays across all UI programs totaled $42 billion. This figure includes benefits paid out under the following UI programs: UC, EUC08, Unemployment Compensation for Ex-servicemembers (UCX), Unemployment Compensation for Federal Employees (UCFE), and Trade Adjustment Assistance (TAA).

[34] For more information on the Unemployment Trust Fund (UTF), see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*, by Julie M. Whittaker.

[35] The Federal Unemployment Tax Act (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%. For details on how delinquent loans affect the net FUTA tax, see CRS Report RS22954, *The Unemployment Trust Fund (UTF): State Insolvency and Federal Loans to States*, by Julie M. Whittaker.

[36] DOL, President's FY2016 Budget, p. 10.

the more UC benefits paid out to its former employees, the higher the tax rate of the employer, up to a maximum established by state law. In FY2014, $47 billion in SUTA taxes were collected.[37]

The EB program is funded 50% by the federal government and 50% by the states, although the American Recovery and Reinvestment Act of 2009 (ARRA; P.L. 111-5, as amended) temporarily provided for 100% federal funding of the EB program through December 31, 2013. The expired EUC08 benefit was 100% federally funded.

Concurrent Receipt of SSDI and UI Benefits

Under certain circumstances, individuals are eligible for both SSDI and UI benefits. As noted earlier, disability-insured workers generally meet the statutory requirements for SSDI if they have a severe impairment that prevents them from earning above the SGA limit ($1,090 per month in 2015). Meanwhile, covered workers who are unemployed through no fault of their own must be actively seeking, able, and available for work in order to be eligible for UI (as determined under state law). Therefore, individuals who are statutorily disabled under federal law but have an earnings history that meets state UC earnings thresholds under state law may be eligible to receive SSDI and UI concurrently if they are still searching for work.

Currently, there is no existing federal statute or regulation that prohibits concurrent receipt of SSDI and UI or offsets the SSDI benefits of individuals receiving UI payments.[38] According to SSA, "receipt of unemployment benefits does not preclude the receipt of Social Security disability benefits. The receipt of unemployment benefits is only one of many factors that must be considered in determining whether the claimant is disabled."[39] States, however, may elect to deny or reduce the UI benefits of individuals in receipt of SSDI benefits.[40] For example, Wisconsin prohibits concurrent receipt of SSDI and UI,[41] whereas Minnesota offsets the UI benefits (50%) of certain individuals with an effective date for beginning SSDI benefits after the start of their base period.[42]

Court Interpretations of Concurrent Eligibility for SSDI and UI

Generally, courts have interpreted the relationship between SSDI and UI benefits as inconsistent but not preclusive. This reading is based, in part, on the U.S. Supreme Court's ruling in *Cleveland v. Policy Management Systems Corp.*, which examined whether an individual's claim for, or receipt of, SSDI benefits would preclude the individual from pursuing a claim under the Americans with Disabilities Act of 1990 (ADA; P.L. 101-336, as amended).[43] In that case, an individual who had been awarded SSDI benefits pursued an action for disability discrimination under the ADA, claiming that her employer terminated her employment without reasonably accommodating her disability.[44] Ultimately, the Supreme Court held that a claimant's application for SSDI does not automatically preclude the claimant from pursuing a claim under the ADA.[45] The Supreme Court continued that the law does not contain a strong presumption against the claimant for receiving SSDI and pursuing an ADA claim. However, the claimant's application must explain why her receipt of SSDI benefits would be consistent with filing an ADA claim.

Although this case discussed the relationship between SSDI and the ADA, lower courts have relied upon similar reasoning to explain the relationship between SSDI and UI benefits. The 8th Circuit in *Jernigan v. Sullivan* noted that the receipt of UC may be inconsistent with a disability benefits claim.[46] The court discussed that the plaintiff's application for UC benefits adversely affected his application for disability by weakening his credibility. In this case, the court concluded that his application for unemployment compensation indicated that the plaintiff was able to work while he simultaneously claimed he was disabled and unable to engage in "substantial gainful work activity." The court noted that "a claimant may admit an ability to work by applying for unemployment compensation benefits because such an applicant must hold himself out as available, willing and able to work."[47] However, the

[43] Cleveland vs. Policy Mgmt. Sys. Corp., 526 U.S. 795 (1999). The ADA provides broad nondiscrimination protection in employment, public services, public accommodations and services operated by private entities, transportation, and

court did not go so far as to say that such a claim for unemployment compensation is conclusive proof that a claimant is not disabled. It was just an inconsistent claim in this case, particularly due to the simultaneous timing of the two claims.

Similarly, a U.S. district court held, in *Roberts v. Callahan,* that "receipt of unemployment benefits, however, does not mean that a claimant is able to work.... A desire to work likewise does not mean that a claimant can actually work."[48] In this case, the court had found the Administrative Law Judge's denial of the plaintiff's claims for SSDI and Supplemental Security Income (SSI) benefits erroneous and remanded the case for further consideration.

Disabled-worker beneficiaries may become entitled to UI benefits before or after their SSDI benefits first become payable. Under a *pre-entitlement to SSDI* scenario, an individual in receipt of UI may be eligible for but not yet entitled to SSDI benefits due to the five-month waiting period.[49] Individuals maintain their eligibility for both programs if they have earnings below the SGA limit and are able and available for at least part-time work. In an unpublished decision from the U.S. Court of Appeals for the Ninth Circuit, the court noted

> [The plaintiff's] receipt of unemployment benefits does not by itself support a conclusion that she is not credible. Generally, in order to be eligible for disability benefits under the Social Security Act, the person must be unable to sustain full-time work—eight hours per day, five days per week. However, under Oregon law, a person is eligible for unemployment benefits if she is available for some work, including temporary or part time opportunities. Therefore, [the plaintiff's] claim of unemployment in Oregon is not

telecommunications for individuals with disabilities. For more information, see CRS Report R43845, *Title I of the Americans with Disabilities Act (ADA): Employment Discrimination*, by Jane M. Smith.

[38] SSA classifies UI benefits as unearned income, which is not subject to the SGA limit.

[39] Memorandum from Frank A. Cristaudo, chief administrative law judge, to All Administrative Law Judges, August 9, 2010 (available upon request for congressional clients).

[40] For more information, see the subsection of this report titled "Reverse Offset States."

[41] Wisconsin Statutes, Section 108.04(12)(f), http://docs.legis.wisconsin.gov/statutes/statutes/108.pdf. See also State of Wisconsin, Department of Workforce Development, "Part 6: Eligibility Issues," https://dwd.wisconsin.gov/uiben/handbook/english/contentspart6.htm.

[42] Minnesota Statutes, Section 268.085, subdivision 4a, https://www.revisor.mn.gov/statutes/?id=268.085. See also State of Minnesota, Department of Employment and Economic Development, "Other Income that Reduces or Delays Payment," http://www.uimn.org/uimn/applicants/affectsbenefits/other-income/.

[43] Cleveland vs. Policy Mgmt. Sys. Corp., 526 U.S. 795 (1999). The ADA provides broad nondiscrimination protection in employment, public services, public accommodations and services operated by private entities, transportation, and telecommunications for individuals with disabilities. For more information, see CRS Report R43845, *Title I of the Americans with Disabilities Act (ADA): Employment Discrimination*, by Jane M. Smith.

[44] For more information, see SSA, "Social Security Ruling 00-1c," January 7, 2000, http://www.socialsecurity.gov/OP_Home/rulings/di/01/SSR2000-01-di-01.html. The ADA requires employers to provide some level of "reasonable accommodation" for employees with disabilities unless the accommodation would pose an undue hardship on the operation of the business.

[45] Cleveland vs. Policy Mgmt. Sys. Corp., 526 U.S. 795, 797 (1999).

[46] Jernigan vs. Sullivan, 948 F.2d 1070 (8th Cir. 1991).

[47] Ibid., p. 1074.

[48] Roberts vs. Callahan, 971 F. Supp. 498, 501-02 (D.N.M. 1997).

[49] According to SSA, the waiting period is designed to be "long enough to permit most temporary disabilities to be corrected or for the individual to show definite signs of probable recovery." For more information, see SSA, Program Operations Manual System (POMS), "DI 10105.070 Waiting Period for Disability Insurance Benefits (DIB)," April 18, 2013, http://policy.ssa.gov/poms.nsf/lnx/0410105070.

> necessarily inconsistent with her claim of disability benefits under the Social Security Act.[50]

Some individuals may pursue this claiming strategy to maintain a certain level of income support during the five-month waiting period (through UI benefits) until they are awarded SSDI benefits. Upon entitlement to SSDI, these individuals receive concurrent SSDI and UI benefits until they no longer meet the eligibility requirements for both programs.

Under a *post-entitlement to SSDI* scenario, SSDI beneficiaries with earnings below the SGA limit who are involuntarily terminated from their employment may be awarded UI benefits if they meet state-specific earnings thresholds. SSDI beneficiaries in this situation typically have some limited capacity to work, often in part-time employment. During the disability determination process, a disability examiner will assess a claimant's *residual functional capacity* (RFC), that is, his or her remaining ability to do sustained work activities. According to SSA, sustained work activities are (1) in an ordinary work setting, (2) on a regular and continuing basis, and (3) for eight hours a day, five days a week, or an equivalent work schedule.[51] Therefore, SSDI beneficiaries who are unable to perform sustained work activities on a full-time basis and have monthly earnings below the SGA threshold could potentially receive UI benefits should they subsequently lose their part-time job through no fault of their own.[52] (In 2013, less than 15% of SSDI beneficiaries had any annual earnings from paid employment.)[53]

SSDI beneficiaries may also be eligible for UI based on monthly earnings *above* the SGA limit if they participated in an approved work incentive, such as a *trial work period* (TWP).[54] A TWP allows beneficiaries to test their ability to work and still be considered statutorily disabled.[55] During the TWP, beneficiaries may earn any amount for up to 9 months (not necessarily consecutive) within a 60-month rolling period without having their benefits reduced or terminated.[56] In 2015, any month in which earnings exceed $780 is considered a month of "services" (i.e., work) and counted toward the beneficiary's nine-month TWP.[57] (Note that the TWP amount is less than the SGA amount.)[58]

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[50] Mulanax vs. Commissioner of Social Security, 293 Fed. Appx. 522 (9th Cir. 2008). For more information, see footnote 23 in U.S. Government Accountability Office (GAO), *Income Security: Overlapping Disability and Unemployment Benefits Should be Evaluated for Potential Savings*, GAO-12-764, July 31, 2012, p. 10, http://www.gao.gov/products/GAO-12-764 (hereinafter "GAO, Overlapping SSDI and UI Benefits 2012").

[51] SSA, POMS, "DI 24510.057 Sustainability and the Residual Functional Capacity (RFC) Assessment," August 9, 2012, http://policy.ssa.gov/poms.nsf/lnx/0424510057.

[52] Work performed on a part-time basis may constitute SGA.

[53] Testimony of David Weaver, associate commissioner, Office of Research, Demonstration, and Employment Support, SSA, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Social Security, *Financial Risk of Returning to Work*, 114th Cong., 1st sess., June 16, 2015, Appendix A, Table 9, http://www.ssa.gov/legislation/testimony_061615.html (hereinafter "Testimony of David Weaver 2015").

[54] In 2013, 2.4% of SSDI beneficiaries had annual earnings above the SGA threshold. See Testimony of David Weaver 2015, Appendix A, Table 9.

[55] Beneficiaries must continue to report their work activity and have a qualifying impairment.

[56] SSA, POMS, "DI 13010.035 The Trial Work Period (TWP)," April 18, 2013, http://policy.ssa.gov/poms.nsf/lnx/0413010035.

[57] SSA, POMS, "DI 13010.060 Determining Trial Work Period (TWP) Service Months and Evaluating Subsequent Work Activity," March 25, 2015, http://policy.ssa.gov/poms.nsf/lnx/0413010060. Special rules apply for self-employed beneficiaries.

[58] In 2013, about 136,000 SSDI beneficiaries participated in a TWP. During that time, their annual average and median earnings were $12,500 and $8,500, respectively. See Testimony of David Weaver 2015, Appendix A, Table 1.

Upon completion of the TWP, SSDI beneficiaries enter a 36-month re-entitlement period, known as the *extended period of eligibility* (EPE). During the EPE, beneficiaries can have their benefits reinstated for months in which their work activity falls below the SGA threshold.[59] The first month in which SGA is performed during the EPE and the two succeeding months are a grace period; SSA pays benefits during these months regardless of the level of earnings.[60]

For more information on work incentives for SSDI beneficiaries, see SSA's *2015 Red Book*, at http://www.ssa.gov/redbook/index.html.[61]

GAO Report on Overlapping SSDI and UI Benefits

In July 2012, the Government Accountability Office (GAO) released a report that examined the issue of overlapping SSDI and UI benefits.[62] GAO found that in FY2010, 117,000 individuals received more than $850 million in concurrent benefit payments from the SSDI and UI programs. Individuals were determined to be in concurrent receipt if they received SSDI benefits in all three months of the quarter for which they received UI benefits.[63] These individuals represented about 1% of the beneficiaries in each program, and the cash payments they received in FY2010 totaled more than $281 million from SSDI (0.2% of annual benefit outlays) and more than $575 million from UI (0.4% of annual benefit outlays).[64]

GAO also reviewed detailed SSDI and UI case files for a "nongeneralizable" selection of eight concurrent recipients.[65] During its examination, the agency found that some individuals received earnings while in receipt of both SSDI and UI benefits. Moreover, some individuals who collected SSDI benefits had sufficient earnings—sometimes from physically demanding jobs—to qualify for UI payments.[66] Based on these findings, GAO stated that concurrent receipt of SSDI and UI could be an indicator of improper payments.[67]

In response to a draft copy of the report, SSA stated that it performed a detailed review of the cases hand selected by GAO and found no improper payments issued due to concurrent receipt of

[59] "SSA, POMS, "DI 13010.210 Extended Period of Eligibility (EPE) – Overview," January 13, 2010, http://policy.ssa.gov/poms.nsf/lnx/0413010210. Beneficiaries must continue to have a qualifying impairment. In 2013, approximately 85,000 SSDI beneficiaries were suspended in the EPE. During that time, their annual average and median earnings were $24,500 and $17,500, respectively. See Testimony of David Weaver 2015, Appendix A, Table 2.

[60] 20 C.F.R. §404.1592a(a)(2)(i). The first month after the TWP in which SGA is performed is considered the month of disability cessation.

[61] SSA, *2015 Red Book: A Summary Guide to Employment Supports for Persons with Disabilities under the Social Security Disability Insurance and Supplemental Security Income Programs*, January 2015, http://www.ssa.gov/redbook/index.html.

[62] GAO, Overlapping SSDI and UI Benefits 2012.

[63] Ibid., pp. 2-3. According to GAO, "because our population of overlapping DI and UI beneficiaries includes only those individuals who received DI in all 3 months of the quarter for which the NDNH [National Directory of New Hires] reports the receipt of UI, our analysis understates the population of individuals who received overlapping DI and UI benefits in fiscal year 2010."

[64] In FY2010, benefit outlays totaled $123 billion for SSDI and $156 billion for UI. For SSDI payment data, see SSA, Time Series for Selected Financial Items. For UI payment data, see DOL, President's FY2016 Budget, p. 10.

[65] GAO, Overlapping SSDI and UI Benefits 2012, p. 3.

[66] The level of work activity needed to qualify for UI may indicate that a disabled-worker beneficiary has medically improved to the point where he or she no longer meets the definition of disability under Title II of the Social Security Act. However, as noted in the text, SSDI beneficiaries who are unable to perform sustained work activities on a full-time basis and have monthly earnings below the SGA threshold could potentially receive UI benefits should they subsequently lose their part-time job through no fault of their own.

[67] GAO, Overlapping SSDI and UI Benefits 2012, p. 10.

SSDI and UI.[68] Furthermore, SSA noted that receipt of income does not always mean that a person is working.[69]

Number of Concurrent SSDI and UI Recipients

As shown in **Table 1**, SSA's Office of the Chief Actuary estimates that for each month in 2015, an average of about 0.34% of disabled-worker beneficiaries will be in concurrent receipt of SSDI and UI benefits.[70]

Table 1. Estimated Average Monthly Number of Concurrent (or Near Concurrent) SSDI and UI Recipients, 2015-2024

(as a percentage of the number of disabled-worker beneficiaries entitled under current law)

	2015	2016	2017	2018	2019	2020	2021	2022	2023	2024
Individuals Entitled to SSDI and UI Benefits	0.34%	0.33%	0.32%	0.32%	0.31%	0.31%	0.30%	0.30%	0.30%	0.30%
Individuals Receiving UI Benefits Who Are in the 5-Month Waiting Period for SSDI Benefits	0.28%	0.28%	0.27%	0.27%	0.26%	0.26%	0.25%	0.25%	0.25%	0.25%

Source: Congressional Research Service (CRS) adapted from Letter from Stephen C. Goss, chief actuary, Social Security Administration (SSA), to the Honorable Sam Johnson, chairman, Subcommittee on Social Security, U.S. House of Representative, February 12, 2015, at http://www.ssa.gov/oact/solvency/JohnsonHatch_20150212.pdf.

Notes: The table provides an estimate of the number of individuals who would be expected to be in receipt of UI payments and either (1) entitled to Social Security disability benefits or (2) in their five-month waiting period, under current law, expressed as a percentage of disabled-worker beneficiaries entitled under current law. The estimate is based on the intermediate assumptions of the 2014 Social Security trustees report. Concurrent recipients include a small number of people who are not disabled workers: (1) disabled adult children of disabled workers and (2) disabled widow(er)s and disabled adult children whose benefits are paid from the Old-Age and Survivors Insurance (OASI) trust fund. Individuals in the five-month waiting period include a small number of disabled widow(er)s whose benefits are paid from the OASI trust fund.

Between January and June of 2015, an average of about 8.9 million disabled-worker beneficiaries were entitled to SSDI.[71] Therefore, based on OACT's projections, approximately 30,000 individuals were in receipt of SSDI and UI benefits in June 2015 (0.34% of 8.9 million).[72] OACT also estimates that for each month in 2015, the average number of dual-eligible individuals receiving UI benefits who are in the five-month waiting period for SSDI benefits (i.e., *near-*

[68] Ibid., p. 20.

[69] Ibid., p. 23. For example, in one of the eight cases selected by GAO, SSA said that wages received by a concurrent beneficiary were not actually wages but a buy-out from when the beneficiary separated from employment.

[70] Letter from Stephen C. Goss, chief actuary, SSA, to the Honorable Sam Johnson, chairman, Subcommittee on Social Security, U.S. House of Representative, February 12, 2015, at http://www.ssa.gov/oact/solvency/JohnsonHatch_20150212.pdf (hereinafter "Letter from Stephen C. Goss on H.R. 918"). The projection is from OACT's cost estimate for H.R. 918, the Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act. The number of concurrent recipients includes a small number of people who are not disabled workers: (1) disabled adult children of disabled workers and (2) disabled widow(er)s and disabled adult children whose benefits are paid from the OASI trust fund. For more information on the types of Social Security benefits, see CRS Report R42035, *Social Security Primer*, by Dawn Nuschler.

[71] SSA, "Benefits Paid by Type of Beneficiary," http://www.ssa.gov/oact/ProgData/icp.html.

[72] Does not include (1) disabled adult children of disabled workers and (2) disabled widow(er)s and disabled adult children whose benefits are paid from the OASI trust fund.

concurrent recipients) will be about 25,000 (0.28% of 8.9 million).[73] OACT projects these numbers to decrease in future years.

The decline in the number of concurrent (or near concurrent) SSDI and UI recipients is attributable largely to the decrease in the unemployment rate following the recent recession. When the economy is strong and the demand for labor is high, more individuals who could qualify for SSDI might decide to seek or continue employment because firms may be more willing to provide higher compensation or greater workplace accommodation for workers with disabilities. However, during economic downturns, these individuals are often less likely to find reemployment opportunities following a job loss. As a result, individuals with disabilities who might otherwise choose to work may apply for SSDI as a form of long-term support while receiving UI benefits in the short term. As the economy recovers from the recession, the incentives for some individuals with disabilities to apply for both UI and SSDI will decrease, resulting in fewer concurrent recipients (see **Figure A-1** and **Figure A-2** in **Appendix A**).

In addition, the falling unemployment rate has contributed to the decline in the number of concurrent beneficiaries by reducing the potential overlapping period of entitlement to UI and SSDI. When workers first experience a work limitation due to a disability, they typically do not immediately transition onto SSDI.[74] Instead, workers gradually reduce their employment as their capacity to work declines.[75] Upon finally experiencing a job loss, some individuals with disabilities apply for UI shortly thereafter. Disabled workers who are awarded UI benefits and who eventually apply for SSDI typically wait at least several months before doing so.[76] Most studies find that the share of SSDI applicants in receipt of UI is markedly low.[77] (Workers, including those with disabilities, generally do not qualify for UI if they voluntarily quit their job.)

Under normal economic conditions, the potential overlapping period of entitlement to both UI and SSDI is relatively short because most states provide up to a maximum of 26 weeks (about six months) of regular UC benefits (see **Figure A-3** in **Appendix A**). Indeed, some dual-eligible individuals may experience a gap between their receipt of UI and their entitlement to SSDI. The gap is a function of, among other things, the (1) duration of UI benefits, (2) the timing of filing an SSDI application, (3) the duration of processing an SSDI application, and (4) the five-month

[73] Does not include UI recipients in the five-month waiting period for disabled widow(er)'s benefits.

[74] See Nicole Maestas, Kathleen J. Mullen, and Alexander Strand, "Does Disability Insurance Receipt Discourage Work? Using Examiner Assignment to Estimate Causal Effects of SSDI Receipt," *American Economic Review*, vol. 103, no. 5 (August 2013), pp. 1797-1829. See also Stephan Linder, "From Working to Applying: Employment Transitions of Applicants for Disability Insurance in the United States," *Journal of Social Policy*, vol. 42, no. 2 (April 2013), pp. 329-348.

[75] Allison Thompkins et al., To Apply or Not to Apply: The Employment and Program Participation of Social Security Disability Insurance Applicants and Non-applicants, Mathematica Policy Research, Disability Research Consortium (DRC) Working Paper no. 2014-05, June 2014, http://www.disabilitypolicyresearch.org/~/media/publications/pdfs/disability/drc_ssdi_applicants_wp.pdf (hereinafter "Thompkins et al. 2014"). See also HHS, Office of the Assistant Secretary for Planning and Evaluation (ASPE), Office of Disability, Aging and Long-Term Care Policy, "Pre-Application Activities of Social Security Disability Insurance Applicants," ASPE Issue Brief, April 2014, http://aspe.hhs.gov/daltcp/reports/2014/SSDIpaaIB.cfm.

[76] Norma B Coe et al., "How Do People with Disabilities Cope While Waiting for Disability Insurance Benefits?," *IZA Journal of Labor Policy*, vol. 3, no. 1 (January 30, 2014), Figure 3, http://www.izajolp.com/content/pdf/2193-9004-3-1.pdf (hereinafter "Norma B Coe et al. 2014"). See also Matthew S. Rutledge, "Disability Insurance: Does Extending Unemployment Benefits Help?," *Issue Brief*, Center for Retirement Research at Boston College, no. 11-14, November 2011, http://crr.bc.edu/briefs/disability-insurance-does-extending-unemployment-benefits-help/.

[77] Andreas I. Mueller, Jesse Rothstein, and Till M. von Wachter, *Unemployment Insurance and Disability Insurance in the Great Recession*, October 2014, http://www.econ.ucla.edu/tvwachter/papers/M-R-vW_oct2014.pdf. See also Thompkins et al. 2014 and Norma B Coe et al. 2014.

waiting period. However, during adverse economic conditions such as a recession, the duration of UI benefits is extended—via EB and the temporary, now-expired EUC08—creating a greater potential overlapping period of entitlement to UI and SSDI. With the expiration of UI extensions, the maximum duration of UI benefits in many states has declined, resulting in a reduction in the potential overlapping period of entitlement. Furthermore, some states have legislatively shortened the maximum duration of regular UC to 20 weeks or less.[78]

Arguments For and Against Preventing or Reducing Concurrent Receipt of SSDI and UI

Proponents of eliminating or abating concurrent receipt of SSDI and UI benefits argue that the practice is "double dipping" or duplicative, because both programs are intended to replace lost earnings.[79] They often point to GAO's 2012 report, which noted that "while the DI and UI programs generally serve separate populations and provide separate services—thus not meeting our definition for overlapping programs—the concurrent cash benefit payments made to individuals eligible for both programs are an overlapping service for the replacement of their lost earnings."[80] From their perspective, concurrent receipt of SSDI and UI pays workers twice for essentially the same reason. (In 2014, GAO suggested that Congress should consider "passing legislation to require SSA to offset DI benefits for any UI benefits received in the same period.")[81]

Proponents also maintain that receipt of one benefit is fundamentally contradictory with the eligibility requirements of the other, in that UI beneficiaries are required to be *able and available for work* (as determined under state law), whereas SSDI beneficiaries must be generally *unable to work* due to a severe physical or mental impairment.[82] In their view, either a worker is (1) disabled and thus potentially eligible for SSDI or (2) able and therefore possibly eligible for UI—not both.[83] They often characterize concurrent receipt of SSDI and UI as a "loophole" and point out that receipt of certain benefits may reduce a disabled worker's SSDI benefits, such as workers' compensation or other public disability benefits.[84]

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[78] CRS Report R41859, *Unemployment Insurance: Consequences of Changes in State Unemployment Compensation Laws*, by Katelin P. Isaacs. See also GAO, Unemployment Insurance: States' Reductions in Maximum Benefit Durations Have Implications for Federal Costs, GAO-15-281, May 21, 2015, http://www.gao.gov/products/GAO-15-281.

[79] See Rep. Sam Johnson, "Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act of 2013," extensions of remarks, *Congressional Record*, daily edition, vol. 159, no. 48 (April 11, 2013), p. E432, https://www.congress.gov/crec/2013/04/11/CREC-2013-04-11-pt1-PgE432-2.pdf.

[80] GAO, Overlapping SSDI and UI Benefits 2012, p. 10.

[81] GAO, *2014 Annual Report: Additional Opportunities to Reduce Fragmentation, Overlap, and Duplication and Achieve Other Financial Benefits*, GAO-14-343SP, April 8, 2014, p. 82, http://www.gao.gov/products/GAO-14-343SP.

[82] Rep. Sam Johnson, remarks in the House 2015.

[83] See U.S. House Committee on Ways and Means, Subcommittee on Social Security, *Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act of 2015 (H.R. 918): Questions and Answers*, February 12, 2015, http://waysandmeans.house.gov/wp-content/uploads/2015/06/HR-918-QA-FINAL.pdf.

[84] Office of Sen. Rob Portman, "Portman Offers Amendment to Prevent Duplicative Spending by Ending Double-Dipping between Unemployment & Disability Benefits," January 8, 2014, http://www.portman.senate.gov/public/index.cfm/2014/1/portman-offers-amendment-to-prevent-duplicative-spending-by-ending-double-dipping-between-unemployment-disability-benefits.

In contrast, opponents of preventing or reducing concurrent receipt of SSDI and UI argue that the practice is consistent and appropriate under law, because SSDI allows beneficiaries who have some capacity to work to earn up to the SGA threshold ($1,090 per month in 2015).[85] They also point out that SSA permits beneficiaries participating in work incentives, such as a TWP, to test their ability to work without losing their benefits. They contend that denying or offsetting the SSDI benefits of individuals in receipt of UI would discourage disabled-worker beneficiaries from attempting to return to work.[86]

In addition, many opponents contend that such proposals discriminate against individuals with disabilities who have lost their job through no fault of their own.[87] They assert that, as a matter of fairness, individuals with disabilities who have paid into SSDI and UI should be able to collect benefits from both programs if they meet the respective eligibility requirements.[88] Furthermore, opponents argue that, even when combined, concurrent benefits are "extremely modest," and that preventing or reducing concurrent receipt of SSDI and UI would adversely affect workers with disabilities and their families.[89] They cite the 2012 GAO report, which estimated that the average quarterly amount of total overlapping SSDI and UI benefits in FY2010 was about $3,300—or $1,100 per month.[90]

Legislative Proposals in the 114th Congress to Prevent or Reduce Concurrent Receipt of SSDI and UI

Several proposals have been introduced in the 114th Congress to deny or limit overlapping SSDI and UI benefits. These proposals take one of three approaches:

- The first approach treats receipt of UI payments as engaging in SGA for SSDI eligibility purposes (H.R. 918 and S. 499);
- The second approach suspends SSDI benefits for any month in which a disabled-worker beneficiary receives UI payments (S. 343); and

[85] CCD, Concurrent SSDI and UI Benefits 2015.

[86] Statement for the record from CCD, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Human Resources, *Protecting the Safety Net from Waste, Fraud, and Abuse*, 114th Cong., 1st sess., June 3, 2015, http://www.c-c-d.org/fichiers/CCD-WM-on-SSI-waste-fraud-abuse-stt—FINAL-6-17-15.pdf.

[87] Sen. Tom Harkin, "Unemployment Compensation," Senate debate, *Congressional Record*, daily edition, vol. 160, no. 7 (January 13, 2014), pp. S285-S288, https://www.congress.gov/crec/2014/01/13/CREC-2014-01-13-pt1-PgS285.pdf.

[88] Ibid. Although UI taxes are paid by employers, most labor economists agree that the total burden of the tax is ultimately borne by employees in the form of lower wages and benefits than would otherwise be paid. See, for example, U.S. Congressional Budget Office (CBO), *The Distribution of Household Income and Federal Taxes, 2008 and 2009*, July 2012, p. 20, http://www.cbo.gov/sites/default/files/43373-AverageTaxRates_screen.pdf.

[89] CCD, Concurrent SSDI and UI Benefits 2015.

[90] Testimony of Rebecca D. Vallas, Esq., director of policy, Poverty to Prosperity Program, Center for American Progress, in U.S. Congress, House Committee on Ways and Means, Subcommittee on Human Resources, *Protecting the Safety Net from Waste, Fraud, and Abuse*, 114th Cong., 1st sess., June 3, 2015, http://waysandmeans.house.gov/wp-content/uploads/2015/06/Rebecca-Vallas-Testimony-060315-HR4.pdf. See also GAO, Overlapping SSDI and UI Benefits 2012, p. 9.

- The third approach reduces SSDI benefits, dollar for dollar, by the amount of UI payments (the President's FY2016 budget).

Each of these approaches would result in savings to the SSDI program. Because UI payments are often less on a monthly basis than SSDI benefits, the Office of the Chief Actuary (OACT)[91] and the Congressional Budget Office (CBO)[92] estimate that some individuals would forgo UI payments to maintain receipt of SSDI benefits, resulting in savings to the UI programs as well.[93] However, because these proposals reduce total benefit levels, they are also projected to increase spending on certain means-tested programs, such as Supplemental Security Income (SSI), as well as decrease revenues from the taxation of benefits.[94]

For an overview of similar proposals introduced in the 113th Congress, see CRS Report R42936, *Unemployment Insurance: Legislative Issues in the 113th Congress*, by Julie M. Whittaker and Katelin P. Isaacs.

H.R. 918 and S. 499

H.R. 918 and S. 499, identical bills both titled the Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act, were introduced on February 12, 2015, by Representative Sam Johnson and Senator Orrin G. Hatch, respectively.[95] The bills would amend Section 223(d) of the Social Security Act to deem any month in which an individual receives a UI benefit (e.g., UC, EB, or Trade Adjustment Assistance [TAA]) as a month of engaging in SGA for purposes of determining SSDI eligibility.[96] This amendment would be applicable to individuals who initially apply for SSDI on or after January 1, 2016.

Treating receipt of UI payments as evidence of SGA would affect disabled workers differently, depending on their status.

- For individuals applying for SSDI on or after January 1, 2016, receipt of UI benefits would prevent applicants from meeting all the eligibility criteria for SSDI benefits.[97] As noted earlier, claimants must complete a five-month waiting

[91] See Letter from Stephen C. Goss on H.R. 918, and Letter from Stephen C. Goss, chief actuary, SSA, to Sen. Tom Coburn, January 7, 2014, http://www.ssa.gov/oact/solvency/TCoburn_20140107.pdf (hereinafter "Letter from Stephen C. Goss on S. 1099").

[92] CBO, *Proposals for Social Security—CBO's Estimate of the President's Fiscal Year 2016 Budget*, March 12, 2015, https://www.cbo.gov/publication/50017 (hereinafter "CBO, Social Security Proposals in the President's FY2016 Budget").

[93] Most UI savings would be credited to states because UI benefits are generally state outlays; however, state UI accounts in the UTF are included in the federal budget.

[94] CBO, Social Security Proposals in the President's FY2016 Budget. Supplemental Security Income (SSI) is a federal assistance program administered by SSA that provides monthly cash payments to elderly, blind, or disabled individuals (including blind or disabled children) who have limited income and assets. For more information, see CRS Report RL32279, *Primer on Disability Benefits: Social Security Disability Insurance (SSDI) and Supplemental Security Income (SSI)*, by William R. Morton.

[95] These bills are nearly identical to H.R. 1502, the Social Security Disability Insurance and Unemployment Benefits Double Dip Elimination Act, which was introduced in the 113th Congress by Rep. Sam Johnson. For more information, see CRS Report R42936, *Unemployment Insurance: Legislative Issues in the 113th Congress*, by Julie M. Whittaker and Katelin P. Isaacs.

[96] 42 U.S.C. §423(d). TAA provides federal assistance to workers who have been adversely affected by foreign trade. For more information, see CRS Report R42012, *Trade Adjustment Assistance for Workers*, by Benjamin Collins.

[97] 20 C.F.R. §404.315.

period before entitlement to cash benefits can begin.[98] During the waiting period, individuals must meet the insured requirements for SSDI and be under a qualifying disability (i.e., statutorily disabled) for five full consecutive months.[99] However, under H.R. 918 and S. 499, claimants receiving UI benefits would be deemed to be engaging in SGA and would therefore not meet the definition of disability under Title II of the Social Security Act. As a result, months of UI receipt would not be counted toward the five-month waiting period. Because UI is temporary, the legislation would likely delay entitlement to SSDI for disabled workers in receipt of UI benefits and for their eligible dependents.[100]

- For individuals entitled to SSDI on or after January 1, 2016, and participating in a TWP, any month for which a UI benefit is payable would be deemed to be a month of "services rendered" (i.e., work) and would therefore count toward the nine-month TWP. The TWP allows disabled-worker beneficiaries to test their ability to work without the risk of losing their benefits.[101] Treating a month of UI receipt as a month of work would cause some SSDI beneficiaries to exit the TWP sooner than they otherwise would under current law.
- For individuals entitled to SSDI on or after January 1, 2016, who exhaust their TWP, any month in which a UI payment is received would result in a suspension or termination of entitlement to SSDI benefits for themselves and their dependents. Under H.R. 918 and S. 499, disabled-worker beneficiaries in the 36-month EPE would be ineligible for reinstated SSDI benefits for any month after the grace period in which a UI payment is received.[102] Beneficiaries who receive a UI payment after the 36-month EPE would be terminated from the program, because they would no longer meet the statutory definition of disability.[103]

OACT estimated that if H.R. 918 were implemented on January 1, 2016, it would reduce Social Security benefit payments by $5.7 billion in total for calendar years 2015 through 2024 (nearly all savings would stem from SSDI).[104] The bill would also reduce UI payments by an estimated $1.2 billion over the same period.

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[98] 42 U.S.C. §423(c)(2). The first month counted as part of the waiting period can be no more than 17 months before the month of application. See CRS Report RS22220, *Social Security Disability Insurance (SSDI): The Five-Month Waiting Period for Benefits*, by William R. Morton.

[99] See SSA, POMS, "DI 10105.070 Waiting Period for Disability Insurance Benefits (DIB)," April 18, 2013, http://policy.ssa.gov/poms.nsf/lnx/0410105070.

[100] It would also delay entitlement to Medicare for disabled workers and certain eligible dependents.

[101] 42 U.S.C. §422(c) and 20 C.F.R. §404.1592.

[102] The first month in which SGA is performed during the EPE and the two succeeding months are a grace period; SSA pays benefits during these months regardless of the level of earnings. For more information, see 20 C.F.R. §404.1592a(a)(2)(i).

[103] Generally, individuals terminated from the SSDI rolls due to work activity are eligible for expedited reinstatement (EXR) within five years from when their benefits ended if their medical condition has not improved and they are unable to perform SGA. For more information, see SSA, POMS, "DI 13050.001 Expedited Reinstatement – Overview," March 10, 2011, http://policy.ssa.gov/poms.nsf/lnx/0413050001.

[104] Letter from Stephen C. Goss on H.R. 918. The estimate is based on the intermediate assumptions of the 2014 Social Security trustees report. The proposal would deny or limit Social Security payments to all disabled beneficiaries, including not only disabled workers but also (1) disabled adult children of disabled workers and (2) disabled widow(er)s and disabled adult children whose benefits are paid from the OASI trust fund. The reduction in Social Security (OASDI) benefits would result in a small reduction in taxes paid on benefits to the OASI and DI trust funds.

S. 343

S. 343, the Reducing Overlapping Payments Act, was introduced on February 3, 2015, by Senator Jeff Flake. The bill would amend Title II of the Social Security Act so that disabled-worker beneficiaries and their eligible dependents would have their SSDI benefits reduced to zero for any month in which the disabled-worker beneficiary receives a UI payment. Although workers and their dependents would be entitled to SSDI, their benefits would be effectively suspended until the disabled-worker beneficiary is no longer in receipt of UI.[105]

In 2014, OACT released a cost estimate for an identical bill to S. 343 that was introduced in the 113th Congress by Senator Tom Coburn—S. 1099, the Reducing Overlapping Payments Act. If S. 1099 had been implemented starting in July 2014, OACT estimated that it would have reduced SSDI benefit payments by $2.9 billion in total for calendar years 2014 through 2023.[106] The bill would have also reduced UI payments by an estimated $2.0 billion over the same period.

President's FY2016 Budget

The President's FY2016 budget contains a proposal that would offset SSDI benefits, dollar for dollar, for any month in which an SSDI beneficiary is in receipt of UI payments.[107] This means that each dollar of the UI benefit would reduce the SSDI benefit by one dollar.[108] CBO estimated that the President's proposal would reduce SSDI outlays by $1.65 billion for FY2016 through FY2025.[109] The proposal would also reduce UI outlays by an estimated $0.51 billion over the same period.[110]

Table 2. Proposals in the 114th Congress to Prevent or Reduce Concurrent Receipt of SSDI and UI

Proposal	Approach	Cost Estimate
H.R. 918 and S. 499	Treats receipt of UI as SGA for purposes of SSDI eligibility	*Calendar Years 2015-2024*[a] OASDI savings: $5.7 billion UI savings: $1.2 billion

[105] S. 343, the Reducing Overlapping Payments Act, uses a broader definition of UI benefits than the one used in H.R. 918 or S. 499; it uses the personal tax definition under Section 85(b) of the Internal Revenue Code (IRC; 26 U.S.C. §85[b]), which includes more types of UI benefits. This definition includes any amounts received under the UC laws of the United States or of a state; state UI benefits and benefits paid to an individual by a state or the District of Columbia from the federal UTF; and railroad UC benefits, disability benefits paid as a substitute for UC, TAA, and Disaster Relief and Emergency Assistance.

[106] Letter from Stephen C. Goss on S. 1099. The estimate is based on the intermediate assumptions of the 2013 Social Security trustees report. The reduction in SSDI benefits would result in a small reduction in taxes paid on benefits.

[107] U.S. Office of Management and Budget (OMB), *Analytical Perspectives, Budget of the United States Government, Fiscal Year 2016*, February 2, 2015, p. 192, https://www.whitehouse.gov/omb/budget/Analytical_Perspectives (hereinafter "OMB, Analytical Perspectives FY2016"). The President's proposal does not specify whether the offset would apply to family benefits payable on the disabled worker's earnings record.

[108] The Congressional Research Service (CRS) assumes that the offset proposal described in the President's FY2016 budget is the same as the one presented in the President's FY2015 budget. For more information on the offset proposal in the President's FY2015 budget, see Letter from Stephen C. Goss, chief actuary, SSA, to Sylvia Mathews Burwell, director, OMB, March 4, 2014, http://www.ssa.gov/oact/solvency/FY15Budget_20140304.pdf.

[109] CBO, Social Security Proposals in the President's FY2016 Budget.

[110] Ibid. CBO estimated that the President's proposal would also reduce revenues by $236 million and increase SSI outlays by $53 million for FY2016 through FY2025.

Proposal	Approach	Cost Estimate
S. 343[b]	Suspends SSDI benefits for any month in which an individual receives a UI benefit	*Calendar Years 2014-2023*[a] SSDI savings: $2.9 billion UI savings: $2.0 billion
President's FY2016 Budget	Offsets SSDI benefits by the UI benefit amount (dollar for dollar)	*Fiscal Years 2016-2025*[c] SSDI savings: $1.65 billion UI savings: $0.51 billion

Source: CRS.

Notes: SSA's Office of the Chief Actuary (OACT) and the Congressional Budget Office (CBO) use different economic, demographic, and programmatic assumptions to construct their respective cost estimates. For OACT cost estimates of similar proposals introduced in the 113th Congress, see SSA, "Proposals Affecting Trust Fund Solvency," at http://www.ssa.gov/oact/solvency/index.html.

a. OACT.

b. The cost estimate is for S. 1099 from the 113th Congress, which is identical to S. 343 in the 114th Congress.

c. CBO.

Potential Issues in Implementing Proposals to Deny or Offset the SSDI Benefits of People Receiving UI

As noted earlier, the only benefits that may reduce a disabled worker's SSDI payments under current law are workers' compensation or certain other public disability benefits (WC/PDB).[111] Section 224 of the Social Security Act requires SSA to reduce the SSDI payments of disabled workers whose combined disability benefits from SSDI and WC/PDB exceed 80% of the worker's average earnings prior to the onset of disability.[112] Congress first enacted this offset when it created SSDI in 1956 to provide "ample protection ... against duplicate public payments."[113] However, administering the WC/PDB offset has proved challenging for SSA. In the past, both GAO and SSA's Office of the Inspector General (OIG) have been critical of SSA's ability to apply the WC/PDB offset in an accurate and consistent manner. The following section examines potential issues in implementing the proposals discussed in this report based on SSA's experience in administering the WC/PDB offset.

Improper Payments

One potential difficulty with denying or offsetting the SSDI benefits of individuals in receipt of another type of benefit is that it would increase the complexity of administering SSDI, which could result in improper payments. According to the Office of Management and Budget (OMB), an *improper payment* is "any payment that should not have been made or that was made in an

[111] The workers' compensation and public disability benefit (WC/PDB) offset does not apply to veterans benefits payable under Title 38, public disability benefits (except WC) payable to public employees based on employment covered under Social Security, public benefits based on need (such as SSI), or private pension or private insurance benefits.

[112] 42 U.S.C. §424a and 20 C.F.R. §404.408. See also SSA, POMS, "DI 52101.001 Introduction to Workers' Compensation/Public Disability Benefit (WC/PDB) Offset Provisions," May 20, 2014, http://policy.ssa.gov/poms.nsf/lnx/0452101001.

[113] Sen. Walter F. George, "Social Security Act Amendments of 1956—Conference Report," remarks in the Senate, *Congressional Record*, vol. 102, part 11 (July 27, 1956), p. 15108.

incorrect amount under statutory, contractual, administrative, or other legally applicable requirements."[114] Improper payments are composed of both overpayments and underpayments. An *overpayment* is a payment that is higher than it should have been; an *underpayment* is a payment that is lower than it should have been.[115] Improper payments stem from errors and other instances of waste, fraud, and abuse (not all improper payments are due to fraud).[116]

According to GAO, "the risk of improper payments increases in programs with … complex criteria for computing payments."[117] Over the years, GAO and SSA's OIG have both highlighted complexity as a factor in improper payments associated with the WC/PDB offset.[118] For example, in 2011, SSA's OIG estimated that 12% of the WC offset cases it examined had payment errors, with about half stemming from overpayments and the other half from underpayments.[119] The OIG noted that the overpayments linked to the WC offset were due to a variety of factors, including verification errors, inaccurate WC payment data, and incorrect calculations.

Under any of the proposals discussed in this report, improper payments could occur should SSA fail to verify receipt of UI for SSDI applicants and beneficiaries. Overpayments would occur when SSA improperly pays SSDI benefits to individuals in receipt of UI; underpayments would occur when individuals who are mistakenly deemed to be in receipt of UI by SSA are denied their full SSDI benefits. In FY2013, verification and local administration errors, which include errors related to non-verification of other income, accounted for 26% of the improper payments in the Social Security (OASDI) program.[120]

The dollar-for-dollar offset proposal would further complicate administrating SSDI because the offset would require SSA to not only verify receipt of UI but also determine the amount of UI payments for each month of concurrent entitlement. Any change in a disabled-worker beneficiary's UI payments would require SSA to re-compute the individual's monthly SSDI benefit. Problems with the timeliness or reliability of UI payment data or a miscalculation of the SSDI benefit amount could result in underpayments or overpayments. Administrative and documentation errors, which include errors related to incorrect computations, accounted for 66% of the improper payments in the Social Security program in FY2013.[121]

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[114] OMB, *Appendix C to Circular No. A-123: Requirements for Effective Estimation and Remediation of Improper Payments*, October 20, 2014, p. 7, https://www.whitehouse.gov/sites/default/files/omb/memoranda/2015/m-15-02.pdf.

[115] Ibid., p. 26. See also CRS Report R42878, *Improper Payments and Recovery Audits: Legislation, Implementation, and Analysis*, by Garrett Hatch.

[116] Legally, "fraud" is an act of criminal deception committed willfully and knowingly with the intent to procure some financial gain, such as an unauthorized SSDI benefit or an unauthorized increase in an SSDI benefit. See SSA, OIG, "What is Fraud, Waste, or Abuse?," http://oig.ssa.gov/what-abuse-fraud-and-waste.

[117] GAO, *Strategies to Manage Improper Payments: Learning from Public and Private Sector Organizations*, GAO-02-69G, October 1, 2001, p. 8, http://www.gao.gov/products/GAO-02-69G.

[118] See, for example, GAO, *Workers' Compensation: Action Needed to Reduce Payment Errors in SSA Disability and Other Programs*, GAO-01-367, May 4, 2001, http://www.gao.gov/products/GAO-01-367 (hereinafter "GAO, WC Payment Errors 2001"). See also SSA, Office of the Inspector General (OIG), *Effects of State Awarded Workers' Compensation Payments on Social Security Benefits*, A-04-96-61013, September 30, 1998, http://oig.ssa.gov/effects-state-awarded-workers-compensation-payments-social-security-benefits (hereinafter "OIG, Effects of WC Payments on SSDI 1998").

[119] SSA, OIG, *Accuracy of Fiscal Year 2009 Title II Disability Insurance Benefit Payments Involving Workers' Compensation Offsets*, A-04-10-11014, p. 3, February 23, 2011, http://oig.ssa.gov/accuracy-fiscal-year-2009-title-ii-disability-insurance-benefit-payments-involving-workers.

[120] SSA, *Agency Financial Report, Fiscal Year 2014*, November 10, 2014, p. 166, http://www.ssa.gov/finance/.

[121] Ibid. See also SSA, "Reducing Improper Payments," http://www.socialsecurity.gov/improperpayments/.

Verifying UI Payment Data Using the National Directory of New Hires

SSA's inability to verify WC payment data independently contributes to its problems in administering the WC offset. According to GAO, "SSA relies heavily on individuals to report their WC benefits and this has caused significant payment errors in the DI program."[122] Although SSA has undertaken several initiatives over the years to obtain WC/PDB data from states, local governments, and private insurers, such efforts have resulted in limited access to the necessary data.[123]

To limit improper payments related to the implementation of the proposals discussed in this report, SSA would need to develop a method of reliably and accurately verifying the state UI payment information of SSDI applicants and beneficiaries. One option would be for SSA to match its administrative data with UI payment information contained in the National Directory of New Hires (NDNH).[124] The NDNH is a national database of new hire (W-4), quarterly wage, and UI information administered by the Office of Child Support Enforcement (OCSE) at the Department of Health and Human Services (HHS).[125] The original purpose of the NDNH was to assist state child support agencies in locating noncustodial parents and enforcing child support orders.[126] Over the years, the NDNH has been extended to several additional programs and agencies to verify program eligibility, ensure payment accuracy, and collect overpayments.

Federal law restricts access to the NDNH database to "authorized" persons.[127] Under Section 453(j)(4) of the Social Security Act, the Secretary of HHS is required to share information from the NDNH with the Commissioner of Social Security.[128] SSA currently has a Computer Matching and Privacy Protection Act (CMPPA) Agreement[129] with OCSE, which allows the agency to online query access the wage and UI information of SSDI and SSI recipients for program eligibility and payment purposes.[130] However, the current agreement is limited because it permits

[122] GAO, WC Payment Errors 2001, p. 8.

[123] The President's FY2016 budget includes a proposal to develop a process to collect WC information from states and private insurers. For more information, see OMB, Analytical Perspectives FY2016, p. 130.

[124] OACT and GAO both matched SSA administrative data to UI payment information contained in the National Directory of New Hires (NDNH) to construct their respective estimates of the number of concurrent SSDI and UI recipients.

[125] HHS, Office of Child Support Enforcement (OCSE), "Overview of National Directory of New Hires," http://www.acf.hhs.gov/programs/css/resource/overview-of-national-directory-of-new-hires.

[126] For more information, see CRS Report RS22889, *The National Directory of New Hires*, by Carmen Solomon-Fears.

[127] See HHS, OCSE, Federal Parent Locator Service, *A Guide to the National Directory of New Hires*, January 27, 2015, http://www.acf.hhs.gov/programs/css/resource/a-guide-to-the-national-directory-of-new-hires.

[128] 42 U.S.C. §653(j)(4).

[129] Computer Matching and Privacy Protection Act of 1988 (P.L. 100-503), as amended. See SSA, "Agreement Types," http://www.ssa.gov/dataexchange/agreement_types.html#sb=1. See also SSA, POMS, "DI 13010.700 Office of Child Support and Enforcement Data Query," July 18, 2014, http://policy.ssa.gov/poms.nsf/lnx/0413010700.

[130] SSA, "Privacy Act of 1974, as Amended; Computer Matching Program (SSA/ Office of Child Support Enforcement (OCSE))—Match Number 1074," 79 *Federal Register* 62699-62700, October 20, 2014, http://www.gpo.gov/fdsys/pkg/FR-2014-10-20/pdf/2014-24815.pdf. More specifically, the agreement allows SSA to online query access for SSI, SSDI, and Ticket to Work programs; as well as SSI quarterly batch match. The agreement assists SSA in "(1) establishing or verifying eligibility or payment amounts, or both under the SSI program; (2) establishing or verifying eligibility or continuing entitlement under the DI program; and (3) in administering the Ticket programs." The Ticket to Work program provides SSDI and SSI beneficiaries (aged 18-64) with a voucher or "ticket" to obtain employment and other support services (see CRS Report R41934, *Ticket to Work and Self-Sufficiency Program: Overview and Current Issues*, by William R. Morton. For information on SSA's use of the NDNH to detect UI receipt for SSI recipients, see SSA, POMS, "SI 02310.065 Unemployment Compensation Match (U5 Diary)," June 20, 2014, http://policy.ssa.gov/poms.nsf/lnx/0502310065.

SSA to access the UI information of only certain SSDI beneficiaries.[131] For the agency to verify receipt of UI for all SSDI beneficiaries, SSA would likely need to enter into a new agreement with OCSE.[132]

It remains to be seen whether the information in the NDNH (or any other database) would allow SSA to administer any of the aforementioned proposals in a reliable and accurate manner so as to minimize improper payments. Although UI information for individuals who applied for or received UI benefits is transmitted by state agencies to the NDNH on a quarterly basis, SSDI benefits are paid out monthly.[133] The lag between the two periods, coupled with reporting delays, may result in SSA improperly paying benefits. One solution to this would be to require states to submit UI payment data on a monthly rather than quarterly basis.

In addition to timeliness, the accuracy of the data contained in the NDNH may present SSA with certain problems in administering the aforementioned proposals. In 2013, the OIG reported that SSA was unable to verify the accuracy of about 26% of the names and Social Security numbers (SSNs) on quarterly wage reports in the NDNH due to incomplete or insufficient data reporting.[134] The non-verifiable records required SSA staff to independently substantiate the names and SSNs of some beneficiaries, which resulted in less time spent on other administrative activities. Although the OIG noted that "the non-verifiable records did not negatively impact SSA's ability to identify improper payments in its SSI program," the resources used to verify such records may reduce potential savings from proposals that would prevent or limit concurrent receipt.[135]

Reverse Offset States

Another potential issue in implementing the proposals discussed in this report is that some states already deny or reduce the *UI benefits* of individuals in receipt of *SSDI benefits*.[136] As noted earlier, Wisconsin generally prohibits individuals in receipt of SSDI benefits from claiming UI benefits.[137] At the same time, Minnesota offsets the UI benefits (50%) of certain individuals with

[131] According to SSA, its current computer matching agreement with OCSE gives SSA online query access to UI data in the NDNH for SSDI beneficiaries participating in the Ticket to Work program only. In addition, SSA does not have the authority to send a batch file to OCSE to match UI data to all SSDI beneficiaries. Information provided to CRS by an SSA official on June 10, 2015.

[132] Ibid. SSA is currently working on a new data sharing agreement with OCSE; the agency does not expect the new agreement to be completed until the end of 2015.

[133] HHS, OCSE, Federal Parent Locator Service, *Guide for Data Submission*, January 28, 2015, https://www.acf.hhs.gov/sites/default/files/ocse/ndnh_guide_for_data_submission.pdf.

[134] SSA, OIG, *Accuracy of Quarterly Wage Data and Their Impact on Social Security Benefits*, A-03-12-11213, March 12, 2013, http://oig.ssa.gov/audits-and-investigations/audit-reports/A-03-12-11213.

[135] Ibid., p. 4.

[136] The Unemployment Insurance Query (UIQ) system provides state UI agencies (under written agreements) with access to Social Security benefit payment data. See SSA, "Data Exchange Applications," http://www.socialsecurity.gov/dataexchange/applications.html. See also SSA, POMS, "GN 03314.155 Automated Data Exchanges Between SSA and State Agencies," September 15, 2006, http://policy.ssa.gov/poms.nsf/lnx/0203314155. For more information on SSA's outgoing data exchange programs, see GAO, *Information Technology: Social Security Administration's Data Exchanges Support Current Programs, but Better Planning is Needed to Meet Future Demands*, GAO-09-966, October 16, 2009, http://www.gao.gov/products/GAO-09-966.

[137] Wisconsin Statutes, Section 108.04(12)(f), http://docs.legis.wisconsin.gov/statutes/statutes/108.pdf. See also State of Wisconsin, Department of Workforce Development, "Part 7—Eligibility Issues," part U, https://dwd.wisconsin.gov/ui201/b7201.htm#ssdi.

an effective date for beginning SSDI benefits after the start of their base period.[138] If one of the proposals in this report were enacted and implemented, dual-eligible individuals in these states could be subject to a "double offset."[139] Under this scenario, both SSA and the state would deny their respective benefits or offset the benefits provided by the other, leaving dual-eligible individuals with little or no benefit income. (CRS does not have data on the number of states that deny or reduce the UI benefits of individuals in receipt of SSDI.)[140]

When lawmakers reestablished the WC offset in 1965, they created an exception in instances in which a state law or plan reduced the WC benefits of individuals entitled to SSDI benefits.[141] Under current law, SSA will not reduce the SSDI benefit if the worker's WC/PDB payment is subject to a reduction under an approved reverse offset plan in effect on or before February 18, 1981.[142] SSA currently recognizes the reverse offset plans of 17 states, the Commonwealth of Puerto Rico, and the Railroad Retirement Board (RRB).[143]

To prevent individuals eligible for SSDI and UI from having both their benefits denied or reduced, a similar reverse offset provision could be created to allow SSA to enter into agreements with states to ensure that such individuals receive at least one type of benefit. Congress could allow states with recognized plans to deny or reduce the UI benefits of individuals in receipt of SSDI. As with the reverse offset for WC/PDB, lawmakers could limit this provision to states with a reverse offset in effect before a specified date.

Potential Issues with Reverse Offset Agreements

In 1980, GAO issued a report recommending that the provision authorizing states with approved plans to reduce the WC benefits of SSDI recipients should be revoked.[144] In the report, GAO stated that the reverse offset provision (1) reduced offset savings to the DI trust fund (2) and shifted the financial responsibility for *occupational-related* injuries from employers to Social Security taxpayers.[145] In addition, GAO noted that the reverse offset provision caused "some inequities in benefits to disabled workers" because it did not require states to apply a similar 80% combined SSDI/WC limit.[146] Consequently, disabled workers in states that applied a reverse offset may have received a larger amount of combined benefits compared with disabled workers

[138] Minnesota Statutes, Section 268.085, subdivision 4a, https://www.revisor.mn.gov/statutes/?id=268.085. See also State of Minnesota, Department of Employment and Economic Development, "Other Income that Reduces or Delays Payment," http://www.uimn.org/uimn/applicants/affectsbenefits/other-income/.

[139] OIG, Effects of WC Payments on SSDI 1998, p. 2.

[140] Although DOL documents the states that reduce UI benefits because of receipt Social Security retirement benefits (OASI), the agency does not track the states that deny or offset UI benefits due to receipt of SSDI. See DOL, *Comparison of State Unemployment, 2015*, p. 5-47, http://workforcesecurity.doleta.gov/unemploy/pdf/uilawcompar/2015/nonmonetary.pdf.

[141] The WC/PDB offset was first enacted when SSDI was created under the Social Security Amendments of 1956 (P.L. 84-880) and repealed shortly thereafter under the Social Security Amendments of 1958 (P.L. 85-840). The WC component of the offset was reinstituted under the Social Security Amendments of 1965 (P.L. 89-97). The offset expanded to include certain PDB again under the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).

[142] 42 U.S.C. §424a(d) and 20 C.F.R. §404.408(b)(2)(i).

[143] See SSA, POMS, "DI 52105.001 Reverse Offset Plans," November 27, 2013, http://policy.ssa.gov/poms.nsf/lnx/0452105001.

[144] U.S. General Accounting Office (now the Government Accountability Office), *Legislation Authorizing States to Reduce Workers' Compensation Benefits Should Be Revoked*, HRD-80-31, March 6, 1980, http://www.gao.gov/products/HRD-80-31.

[145] Ibid., p. i.

[146] Ibid. p. ii.

in states without an approved reverse offset plan. Shortly after the release of the GAO report, Congress limited the reverse offset provision under the Omnibus Budget Reconciliation Act of 1981 (P.L. 97-35).[147]

Allowing states to deny or offset the UI benefits of SSDI recipients under one of the proposals discussed in this report would raise similar issues to those highlighted by GAO in 1980. As with the reverse WC offset, a reverse UI offset would likely reduce potential savings to the DI trust fund. Because the majority of UI benefit outlays are from the UC program, a reverse UI offset would essentially subsidize state accounts in the UTF with federal dollars that would otherwise go to the DI trust fund under one of the aforementioned proposals. In other words, the flow of potential savings from a UI offset would be redirected (partially) from the SSDI program to the UI programs.

In addition, a reverse UI offset may create variation across states in the total amount of benefits payable to dual-eligible individuals. Under the proposals discussed in this report, individuals eligible for both SSDI and UI would receive, regardless of their state of residence, either their UI benefit only or a combined SSDI and UI benefit equal to the higher of the two amounts. However, should Congress permit states with approved plans to deny or offset the UI benefits of individuals in receipt of SSDI, then the total amount of benefits payable to such individuals could be greater or less than the amount payable to similarly situated individuals residing in states that do not reverse offset. After all, states with approved plans could choose to apply different criteria to the reverse offset to make it more or less favorable to dual-eligible individuals. To ensure uniformity, SSA could require that each state adhere to pre-established offset criteria as a condition for approval of a state plan.

A final point to consider is that UI and SSDI benefits are treated differently for federal income tax purposes; therefore, a reverse UI offset could also lead to variation in the amount of after-tax income of dual-eligible individuals across states. UI benefits are included in gross income and thus subject to the federal income tax. In contrast, only a portion of Social Security benefits are taxable for some higher-income Social Security beneficiaries. Higher-income beneficiaries pay tax on up to 85% of their benefits, but benefits for lower-income beneficiaries are not taxed. The share of Social Security benefits that is taxable depends on whether the individual's provisional income exceeds certain thresholds.[148] *Provisional income* equals adjusted gross income *plus* otherwise tax-exempt interest income (i.e., interest from tax-exempt bonds), *plus* 50% of Social Security benefits. Around half of all Social Security beneficiaries pay tax on some of their benefits, but a smaller share of SSDI beneficiaries pay tax on benefits, because they tend to have little income outside of their Social Security benefits.[149] For more information, see CRS Report RS21356, *Taxation of Unemployment Benefits*, by Julie M. Whittaker and CRS Report RL32552,

[147] For more information, see John A. Svahn, "Omnibus Reconciliation Act of 1981: Legislative History and Summary of OASDI and Medicare Provisions," *Social Security Bulletin*, vol. 44, no. 10 (October 1981), http://www.ssa.gov/policy/docs/ssb/v44n10/.

[148] For more information on these thresholds, see U.S. Congress, Senate Committee on the Budget, *Tax Expenditures: Compendium of Background Material on Individual Provisions*, committee print, prepared by CRS, 113th Cong., 2nd sess., December 2014, S.Prt. 113-32 (Washington: GPO, 2014), pp. 989-990, http://www.gpo.gov/fdsys/pkg/CPRT-113SPRT91950/pdf/CPRT-113SPRT91950.pdf.

[149] In December 2010, an estimated 52% of disabled-worker beneficiaries had total family income below 200% of the poverty threshold. For more information, see Michelle Stegman Bailey and Jeffrey Hemmeter, *Characteristics of Noninstitutionalized DI and SSI Program Participants, 2010 Update*, Research and Statistics Note no. 2014-02, February 2014, Table 5, http://www.ssa.gov/policy/docs/rsnotes/rsn2014-02.html.

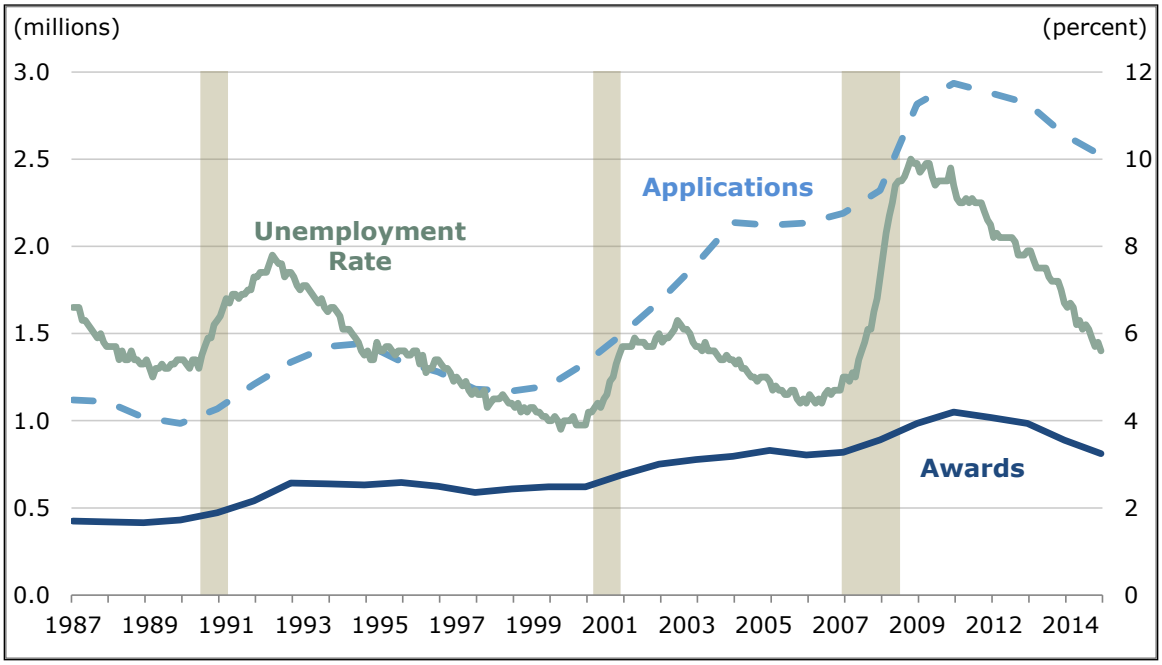
Social Security: Calculation and History of Taxing Benefits, by Julie M. Whittaker and Katelin P. Isaacs.

Under current law, concurrent SSDI and UI recipients pay federal income tax on their respective benefits when appropriate. However, if states were allowed to operate with approved reverse offset plans under one of the discussed proposals, then dual-eligible individuals would be subject to federal taxation on only one kind of benefit or on a reduced amount of combined benefits. Consequently, similarly situated dual-eligible individuals living across the country could pay different amounts of federal income tax, depending on the type or composition of their benefits. One solution to this would be to equalize the federal tax treatment of benefits paid to dual-eligible individuals affected by one of the proposals discussed in this report. Congress created a similar provision for the WC offset when it subjected Social Security benefits to federal taxation under the Social Security Amendments of 1983 (P.L. 98-21).[150]

[150] When lawmakers debated subjecting Social Security benefits to federal taxation in the early 1980s, they realized that such a measure would create a disparity in the tax treatment of disability benefits for concurrent SSDI and WC recipients. Because WC payments were (and still are) generally not taxable at the federal level, individuals in non-reverse offset states (where SSDI benefits were reduced) could pay less federal tax than individuals in reverse offset states (where WC benefits were reduced). To equalize the tax treatment of the two benefits for concurrent recipients, Congress enacted Section 86(d)(3) of the IRC (26 U.S.C. §86[d][3]), which specifies that the definition of "social security benefit" for taxation purposes includes the portion of the WC payment that equals the reduction in the SSDI benefit. Effectively, this means that federal income taxes are computed based on the amount of SSDI benefits *before* the WC offset is applied. As a result, all concurrent SSDI and WC beneficiaries are subject to the same potential level of federal taxation (with up to 85% of Social Security benefits subject to tax), regardless of the type of WC offset applicable in the state in which they live. For more information, see CRS Report RL32552, *Social Security: Calculation and History of Taxing Benefits*, by Julie M. Whittaker and Katelin P. Isaacs. See also SSA, POMS, "DI 52150.090 Taxation of Benefits when Workers' Compensation/Public Disability Benefit (WC/PDB) Offset is Involved," December 11, 2013, http://policy.ssa.gov/poms.nsf/lnx/0452150090.

Appendix A. Supplemental Figures

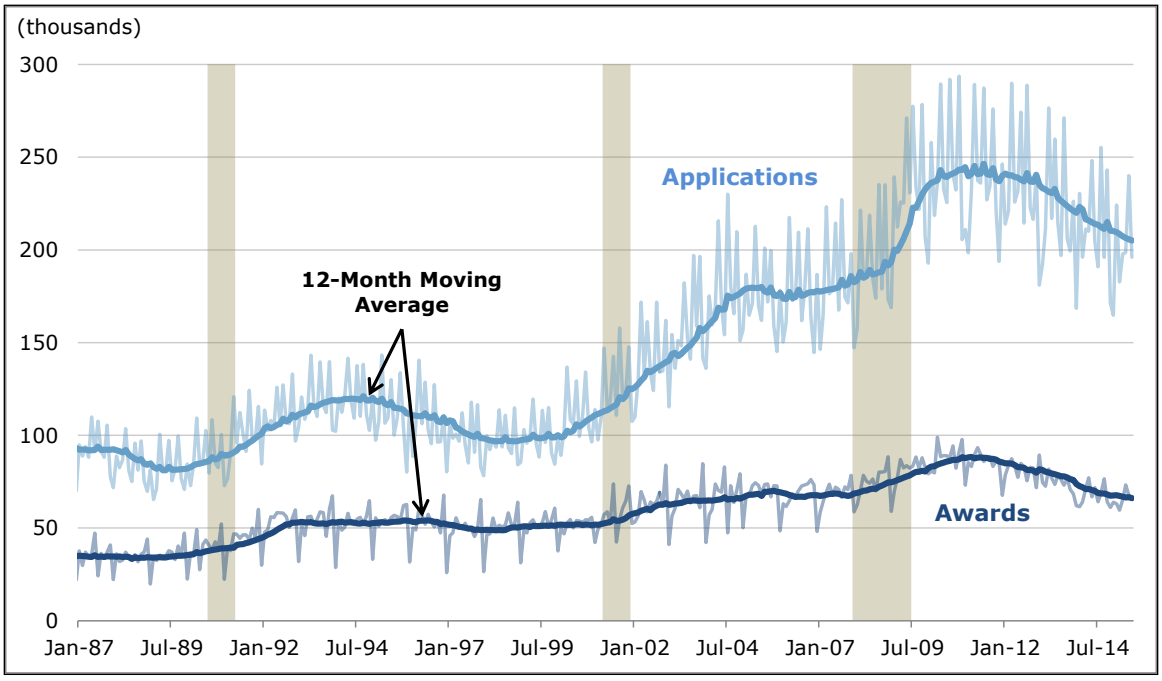
Figure A-1. Annual Number of SSDI Applications and Awards, 1987-2014



Source: CRS. Application and award data compiled from the following sources: SSA, *Annual Statistical Supplement, 2014,* Table 6.C7, http://www.ssa.gov/policy/docs/statcomps/supplement/2014/6c.html#table6.c7; and SSA, "Selected Data from Social Security's Disability Program," http://www.ssa.gov/OACT/STATS/dibStat.html. Unemployment data are from the Bureau of Labor Statistics (BLS), "Labor Force Statistics from the Current Population Survey," LNS14000000, http://data.bls.gov/cgi-bin/surveymost?ln. Recession data are from the National Bureau of Economic Research (NBER), "US Business Cycle Expansions and Contractions," http://www.nber.org/cycles.html.

Notes: Shaded areas indicate a recession. NBER defines recession as a "significant decline in economic activity spread across the economy, lasting more than a few months, normally visible in real GDP [gross domestic product], real income, employment, industrial production, and wholesale-retail sales." The unemployment rate is the number of all unemployed individuals aged 16 and older as a percentage of the civilian non-institutionalized labor force. BLS considers individuals to be unemployed if they (1) do not have a job, (2) have actively looked for work in the past four weeks, and (3) are currently available for work.

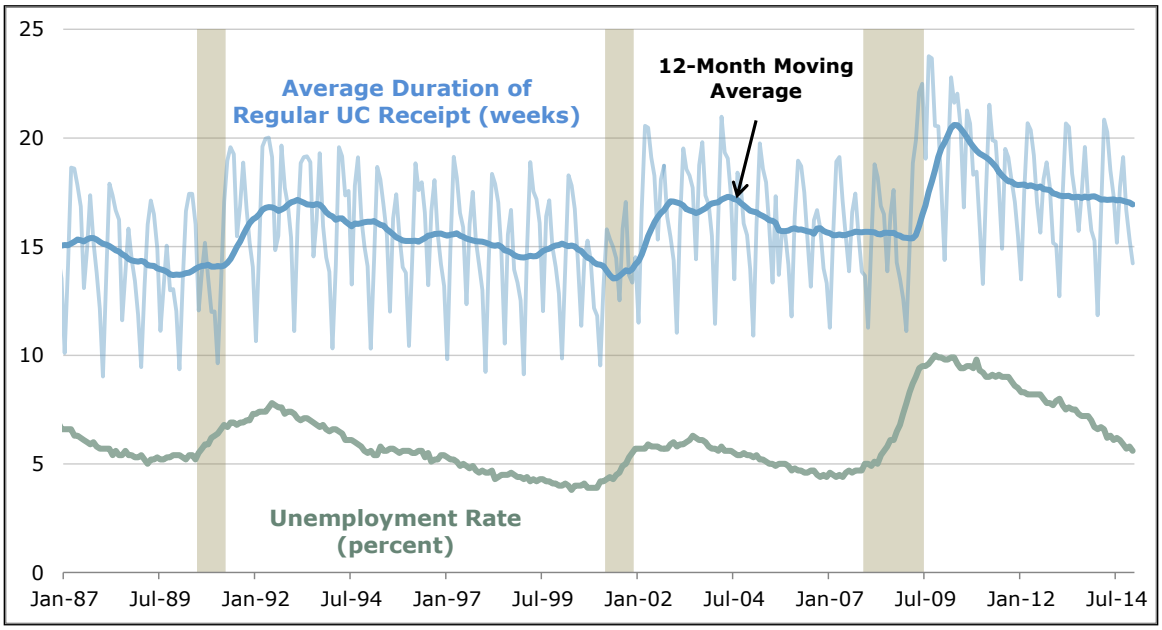
Figure A-2. Monthly Number of SSDI Applications and Awards, January 1987-June 2015



Source: CRS figure based on data from SSA, "Selected Data From Social Security's Disability Program," http://www.ssa.gov/OACT/STATS/dibGraphs.html.

Note: Shaded areas indicate a recession.

Figure A-3. Average Duration of UC Benefit Receipt, January 1987-December 2014



Source: CRS figure based on data from the Department of Labor (DOL), "Unemployment Insurance Chartbook: Average Duration of Persons Collecting UI Benefits," http://oui.doleta.gov/unemploy/chartbook.asp.

Notes: Shaded areas indicate a recession. Applies to regular UC benefits only; it does not include EB or EUC08.

Appendix B. Acronyms

ADA	Americans with Disabilities Act
ARRA	American Recovery and Reinvestment Act
ASPE	Assistant Secretary for Planning and Evaluation
BLS	Bureau of Labor Statistics
CBO	Congressional Budget Office
CCD	Consortium for Citizens with Disabilities
CMS	Centers for Medicare & Medicaid Services
CMPPA	Computer Matching and Privacy Protection Act
COLA	Cost-of-Living Adjustment
CPI-W	Consumer Price Index for Urban Wage Earners and Clerical Workers
DI	Disability Insurance
DOL	Department of Labor
DRC	Disability Research Consortium
EB	Extended Benefit
EPE	Extended Period of Eligibility
ESRD	End-Stage Renal Disease
EUC08	Emergency Unemployment Compensation
EXR	Expedited Reinstatement
FICA	Federal Insurance Contributions Act
FRA	Full Retirement Age
FUTA	Federal Unemployment Tax Act
GAO	Government Accountability Office
GPO	Government Publishing Office
HHS	Department of Health and Human Services
IRC	Internal Revenue Code
NBER	National Bureau of Economic Research
NDNH	National Directory of New Hires
OACT	Office of the Chief Actuary
OASDI	Old-Age, Survivors, and Disability Insurance
OASI	Old-Age and Survivors Insurance
OCSE	Office of Child Support Enforcement
OIG	Office of the Inspector General
OMB	Office of Management and Budget
PDB	Public Disability Benefits
RFC	Residual Functional Capacity

RRB	Railroad Retirement Board
SECA	Self-Employment Contributions Act
SGA	Substantial Gainful Activity
SSA	Social Security Administration
SSDI	Social Security Disability Insurance
SSI	Supplemental Security Income
SSN	Social Security Number
SUTA	State Unemployment Tax Acts
TAA	Trade Adjustment Assistance
TWP	Trial Work Period
UC	Unemployment Compensation
UCFE	Unemployment Compensation for Federal Employees
UCX	Unemployment Compensation for Ex-servicemembers
UI	Unemployment Insurance
UIQ	Unemployment Insurance Query
UTF	Unemployment Trust Fund
WC	Workers' Compensation

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