

July 2012

INCOME SECURITY

Overlapping Disability and Unemployment Benefits Should be Evaluated for Potential Savings



G A O

Accountability * Integrity * Reliability

Why GAO Did This Study

The DI and UI trust funds face serious fiscal sustainability challenges. In addition to other services, both programs provide cash benefits to their targeted populations to replace lost earnings. DI is available to workers who are unable to engage in SGA because of physical or mental impairments expected to last at least 12 months or result in death. SGA is defined as work activity that involves significant physical or mental activities performed for pay or profit. UI provides temporary cash benefits to eligible workers who are able to work but remain involuntarily unemployed.

GAO was asked to determine the extent to which individuals received DI and UI benefits concurrently. To do so, GAO matched unemployment files with SSA disability files for fiscal year 2010. GAO also reviewed DI and UI case files for a nongeneralizable selection of 8 individuals – 4 from the top 50 recipients of concurrent DI and UI benefits in fiscal year 2010, and 4 who received UI benefits based on wages from multiple states. These examples cannot be generalized beyond those presented.

What GAO Recommends

DOL should work with SSA to (1) evaluate overlapping DI and UI cash benefit payments, taking appropriate action for any improper payments, and (2) assess whether cost savings or other benefits might be achieved by reducing or eliminating overlapping DI and UI cash benefit payments being made within the existing laws and regulations, seeking congressional authority to do so as appropriate. DOL and SSA agreed with the recommendations.

View [GAO-12-764](#). For more information, contact Richard J. Hillman at (202) 512-6722 or hillmanr@gao.gov.

July 2012

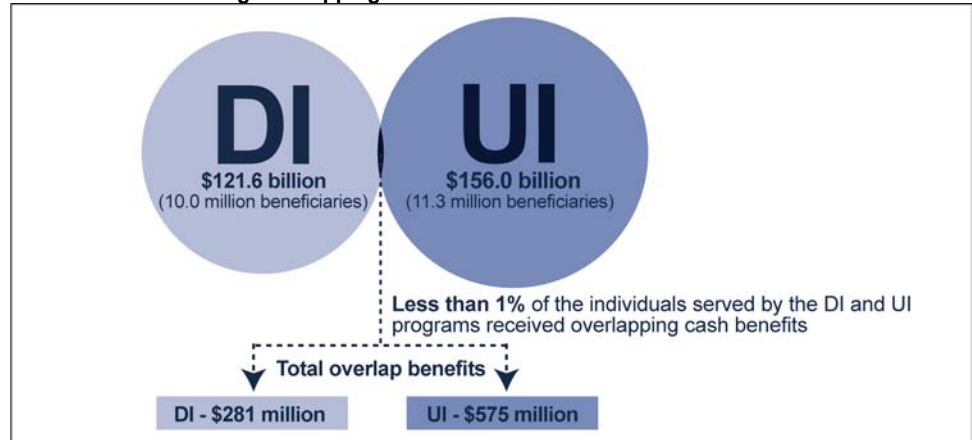
INCOME SECURITY

Overlapping Disability and Unemployment Benefits Should be Evaluated for Potential Savings

What GAO Found

In fiscal year 2010, 117,000 individuals received concurrent cash benefit payments from the Disability Insurance (DI) and Unemployment Insurance (UI) programs of more than \$850 million, which is allowable in certain circumstances under current program authority. While these individuals represented less than 1 percent of the total beneficiaries of both programs, the cash benefits they received totaled over \$281 million from DI and more than \$575 million from UI. One individual GAO selected for further investigation received over \$62,000 in overlapping benefits in a year. Based on GAO inquiries, state UI officials are reviewing the person's UI eligibility because of earnings that may be related to work that makes the person ineligible for UI benefits.

Beneficiaries Receiving Overlapping DI and UI Benefits in Fiscal Year 2010



Source: GAO analysis of data from the Social Security Administration and Department of Health and Human Services.

Under certain circumstances, individuals may be eligible for concurrent cash benefit payments due to differences in DI and UI eligibility requirements. Specifically, the Social Security Administration's (SSA) definition of a disability involves work that does not rise to the level of substantial gainful activity (SGA). In 2010, a monthly income of \$1,000 or more for a non-blind beneficiary generally demonstrated SGA. In contrast, the Department of Labor allows states' determination of "able and available for work" eligibility criteria for UI benefits to include work that does not rise to the level of SGA. Therefore, some individuals may have a disability under federal law but still be eligible for UI under state law because they are able and available for work that does not rise to the level of SGA. Although DI and UI generally provide separate services to separate populations—and thus are not overlapping programs—the concurrent cash benefit payments for individuals eligible for both programs are an overlapping benefit when both replace lost earnings. While SSA must reduce DI benefits for individuals receiving certain other government disability benefits, such as worker's compensation, no federal law authorizes an automatic reduction or elimination of overlapping DI and UI benefits. As a result, neither SSA nor DOL has any processes to identify these overlapping payments. Reducing or eliminating overlapping or improper payments could offer substantial savings, though actual savings are difficult to estimate because the potential costs of establishing mechanisms to do so are not readily available.

Contents

Letter		1
	Background	4
	Concurrent DI and UI Payments Resulted in Hundreds of Millions of Dollars in Overlapping Benefit Payments	8
	Conclusions	12
	Recommendations for Executive Action	13
	Agency Comments and Our Evaluation	13
Appendix I	Comments from Department of Labor	15
Appendix II	Comments from the Social Security Administration	17

Figures		
	Figure 1: DI and UI Benefit Payments for Fiscal Years 2005 through 2011	8
	Figure 2: Beneficiaries Receiving Overlapping DI and UI Benefits in Fiscal Year 2010	9

Abbreviations

CDR	continuing disability review
DI	Disability Insurance
DOL	Department of Labor
NDNH	National Directory of New Hires
SSA	Social Security Administration
SGA	substantial gainful activity
UI	Unemployment Insurance

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United States Government Accountability Office
Washington, DC 20548

July 31, 2012

The Honorable Carl Levin
Chairman
The Honorable Tom Coburn
Ranking Member
Permanent Subcommittee on Investigations
Committee on Homeland Security and Governmental Affairs
United States Senate

The Honorable Thomas R. Carper
Chairman
The Honorable Scott P. Brown
Ranking Member
Subcommittee on Federal Financial Management, Government
Information, Federal Services, and International Security
Committee on Homeland Security and Governmental Affairs
United States Senate

Both the Social Security Disability Insurance (DI) and Unemployment Insurance (UI) trust funds face serious fiscal-sustainability challenges. The Social Security Board of Trustees projects that the DI trust fund will be exhausted in 2016 and notes that changes designed to improve the financial status of the DI program are needed soon. In fiscal year 2010, more than 10 million beneficiaries received DI cash benefits.¹ Total benefit payments for fiscal year 2010 were \$121.6 billion, and the aging of the baby-boom generation is set to further strain the program. Similarly, we reported in April 2010 that state UI trust funds were at historically weak levels, with most requiring federal loans to pay benefits.² In fiscal year 2010, 11.3 million beneficiaries received UI cash benefits totaling \$156 billion, \$93 billion of which was paid by the federal government.³

¹ This 10 million beneficiaries figure includes about 0.2 million spouses and about 1.8 million dependent children.

² GAO, *Unemployment Insurance Trust Funds: Long-standing State Financing Policies Have Increased Risk of Insolvency*, [GAO-10-440](#) (Washington, D.C.: Apr. 14, 2010).

³ The federal government also provided \$5.5 billion to the states in fiscal year 2010 for administration of the UI program.

In addition to other services, the DI and UI programs both provide cash benefits to their targeted populations to replace lost earnings. The DI program, which is administered by the Social Security Administration (SSA), provides cash benefits to replace earnings for workers who are unable to engage in substantial gainful activity (SGA) because of physical or mental impairments expected to last at least 12 months or expected to result in death.⁴ SGA is defined as work activity that involves significant physical or mental activities performed for pay or profit.⁵ The federal-state UI program, which is federally administered by the Department of Labor (DOL), provides temporary cash benefits to eligible workers who are able to work but remain involuntarily unemployed.

In response to your request, we determined the extent to which individuals received DI and UI benefits concurrently by comparing disability benefit files to national records of work-related income and unemployment insurance. Under certain circumstances, individuals can legitimately receive DI and UI concurrently, but concurrent receipt could also be an indicator of improper payments. Although excluded from the scope of this report, we plan to conduct subsequent work to evaluate the internal controls of the DI program.

To determine the extent to which individuals received both DI and UI benefits in fiscal year 2010, we matched the National Directory of New Hires (NDNH) unemployment files with our extracts of SSA disability files of DI beneficiaries as of December 2010, the most current data at the time we began our work. To determine the subset of recipients who received DI and UI benefits at the same time during fiscal year 2010, we identified individuals who received DI benefits in all 3 months of the quarter for which they received UI benefits.⁶ For example, to be considered in receipt of overlapping DI and UI benefits under our criteria, an individual must have records in SSA disability files indicating the monthly receipt of DI benefits in January, February, and March of 2010, and must also have records in the NDNH indicating the quarterly receipt of UI benefits in the corresponding quarter of fiscal year 2010, which is the second quarter of fiscal year 2010. Because our population of

⁴ 42 U.S.C. § 423.

⁵ 20 C.F.R. §§ 404.1510, 404.1572.

⁶ UI benefit payments are represented as quarterly totals in the National Directory of New Hires.

overlapping DI and UI beneficiaries includes only those individuals who received DI in all 3 months of the quarter for which the NDNH reports the receipt of UI, our analysis understates the population of individuals who received overlapping DI and UI benefits in fiscal year 2010. For example, individuals who received overlapping DI and UI payments in only 1 or only 2 months of a quarter are not included in our population of individuals who received overlapping DI and UI benefits in fiscal year 2010. Because of differences in the timing of DI and UI payments, the amount of overlapping DI and UI payments for our population is estimated. For each instance of concurrent DI and UI benefits, we used the monthly DI benefit amounts in SSA's disability files and the quarterly UI benefit amounts in the NDNH to estimate the total amount of overlapping DI and UI benefits in fiscal year 2010. Our estimate of overlapping DI benefits is understated because it includes DI benefits payable for only 1 of the 3 months in a quarter for which an individual also received UI benefits. Thus, overlapping DI benefits that were payable in more than 1 month of a quarter are not included in our estimate.

We also reviewed detailed DI and UI case files for a nongeneralizable selection of eight individuals who received concurrent DI and UI benefits to corroborate SSA DI data and UI data in the NDNH. To do this, we drew a stratified random, nongeneralizable sample of eight individuals from two different populations. The first four individuals we selected were from a population comprising the top 50 recipients of concurrent DI and UI benefits in fiscal year 2010. The second four individuals we selected were from a population comprising the individuals who appeared to receive concurrent DI and UI benefits, the latter from multiple states in fiscal year 2010. Because we selected a small number of individuals for further investigation, the results cannot be projected to the population of individuals receiving concurrent DI and UI benefits. For these eight individuals, we obtained DI information from SSA and UI information from state UI offices to determine the total amount of DI and UI benefits received from 2008 to April 2012, the time frame for those benefits, and any applicable employment information that illustrate instances of individuals receiving concurrent DI and UI benefits. Although identifying improper payments was not the primary purpose of this audit, some individuals we selected for further review received improper DI or UI payments.

To determine the reliability of the SSA disability records and NDNH UI records, we reviewed documentation related to these databases and interviewed officials responsible for compiling and maintaining relevant DI and UI data. In addition, we performed electronic testing to determine the

validity of specific data elements in the databases that we used to perform our work. We also reviewed detailed DI and UI case files for the nongeneralizable selection of eight individuals selected as described above who received concurrent DI and UI benefits to corroborate SSA DI data and UI data in the NDNH. On the basis of our discussions with agency officials and our own testing, we concluded that the data elements used for this report were sufficiently reliable for our purposes.

We conducted this performance audit from December 2011 through July 2012 in accordance with U.S. generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our objective.

Background

Disability Insurance

As the nation's largest cash-assistance program for workers with disabilities, DI provides benefits to eligible individuals under Title II of the Social Security Act. An individual is eligible to receive DI benefits if he or she has a medically determinable physical or mental impairment that (1) has lasted (or is expected to last) at least 1 year or is expected to result in death and (2) prevents the individual from engaging in SGA.⁷ SGA is defined as work activity that involves significant physical or mental activities performed for pay or profit.⁸ For individuals whose impairment is anything other than blindness, earnings averaging over \$1,000 a month for calendar year 2010 generally demonstrate SGA. For blind individuals, earnings averaging over \$1,640 a month for the year 2010 generally demonstrate SGA for DI.⁹ The amount of earnings that generally

⁷ 42 U.S.C. § 423.

⁸ 20 C.F.R. §§ 404.1510, 404.1572.

⁹ 74 Fed. Reg. 55614 (October 28, 2009). For calendar year 2012, earnings averaging over \$1,010 a month generally demonstrate SGA for individuals whose impairment is anything other than blindness. For calendar year 2012, earnings averaging over \$1,690 a month generally demonstrate SGA for individuals who are blind. 76 Fed. Reg. 66111 (October 25, 2011).

demonstrates SGA can vary from year to year.¹⁰ For example, the SGA amount for individuals with disabilities, other than blindness, was \$980 in 2009.¹¹ Individuals with disabilities must also have a specified number of recent work credits under the Social Security program at the onset of medical impairment.¹² An individual may qualify on the basis of the work record of a deceased spouse or the work record of a parent who is deceased, retired, or considered eligible for disability benefits, meaning one disability beneficiary can generate multiple monthly disability payments.

DI benefits are financed by payroll taxes paid into the Federal Disability Insurance Trust Fund by covered workers and their employers, on the basis of each worker's earnings history. Cash benefits are payable monthly, as long as the worker remains eligible for benefits, until the worker reaches full retirement age or dies. In fiscal year 2010, more than 10 million beneficiaries received DI benefits totaling \$121.6 billion, and the program's average monthly benefit was about \$922. As directed by federal law, SSA must reduce DI benefits for individuals receiving certain other government disability benefits, such as worker's compensation.¹³ However, SSA may not reduce DI benefits for individuals receiving UI or for individuals earning less than SGA. As mentioned, the Social Security Board of Trustees projects that the DI trust fund will be exhausted in 2016 and noted that changes designed to improve the financial status of the DI program are needed soon.

Unemployment Insurance

Established by the Social Security Act of 1935, the federal-state UI program temporarily and partially replaces the lost earnings of those who become unemployed through no fault of their own. To be eligible for UI benefits, unemployed workers must meet eligibility requirements established by state laws that conform to federal law, including that they have worked recently, be involuntarily unemployed, and be able and

¹⁰ DI benefits are based on the worker's past average monthly earnings, indexed to reflect changes in national wage levels (up to 5 years of the worker's low earnings are excluded).

¹¹ 73 Fed. Reg. 64651 (October 30, 2008).

¹² Specifically, eligible individuals must have worked 5 out of the last 10 years or 20 quarters out of the last 40 quarters. 42 U.S.C. § 423(c)(1); 20 C.F.R. §§ 404.130, 404.132.

¹³ 42 U.S.C. § 424a. According to SSA, the intent of the offset provision is to ensure that the combined benefits from workers' compensation and Social Security are not excessive.

available for work. Whereas federal statutes and regulations provide broad guidelines on UI eligibility, the specifics of UI eligibility are determined by each state. According to DOL, all states require that a claimant must have earned a specified amount of wages, worked a certain number of weeks in covered employment, or must have met some combination of the wage and employment requirements within his/her base period.¹⁴ To be eligible for benefits, claimants must also be free from disqualification for acts such as voluntary leaving without good cause, discharge for misconduct connected with the work, and refusal of suitable work. In addition to these eligibility requirements, all states require that a claimant must be able and available for work. However, “able and available for work” requirements vary among the states, according to DOL. For example, a few states specify that a worker must be physically able, or mentally and physically able, to work. Likewise, while some states require that a worker must be available for work, other states require that a worker must be available for suitable work; still other states require that a worker be available for work in the worker’s usual occupation or for work in which the worker is reasonably fitted by training and experience. According to DOL, in addition to being able and available for work, all states require by law or by practice that a worker be actively seeking work or making a reasonable effort to obtain work.¹⁵ Finally, some state laws expressly prohibit denying UI eligibility on the basis of illness or disability under certain circumstances.¹⁶

UI benefits and administrative costs are financed primarily by taxes levied on employers.¹⁷ These taxes are deposited in the appropriate accounts within the Unemployment Trust Fund, which consists of 53 state accounts

¹⁴ Under all state UI laws, a worker’s benefit rights depend on his/her experience in covered employment in a past period, called the base period.

¹⁵ This requirement did not become effective in Pennsylvania until January 1, 2012. See 2011 Pa. Laws 6, § 4.

¹⁶ Specifically, at least 10 states have laws indicating that no worker shall be considered ineligible due to illness or disability occurring after the worker has filed a UI claim and registered for work, as long as the worker does not refuse suitable work when offered. These states include: Alaska, Delaware, Hawaii, Idaho, Maryland, Massachusetts, Nevada, North Dakota, Tennessee, and Vermont.

¹⁷ The federal taxes on employers are under the authority of the Federal Unemployment Tax Act (FUTA), and the state taxes are under the authority given by each state’s relevant unemployment tax acts. At least three states, Alaska, New Jersey, and Pennsylvania also withhold UI taxes from employee wages.

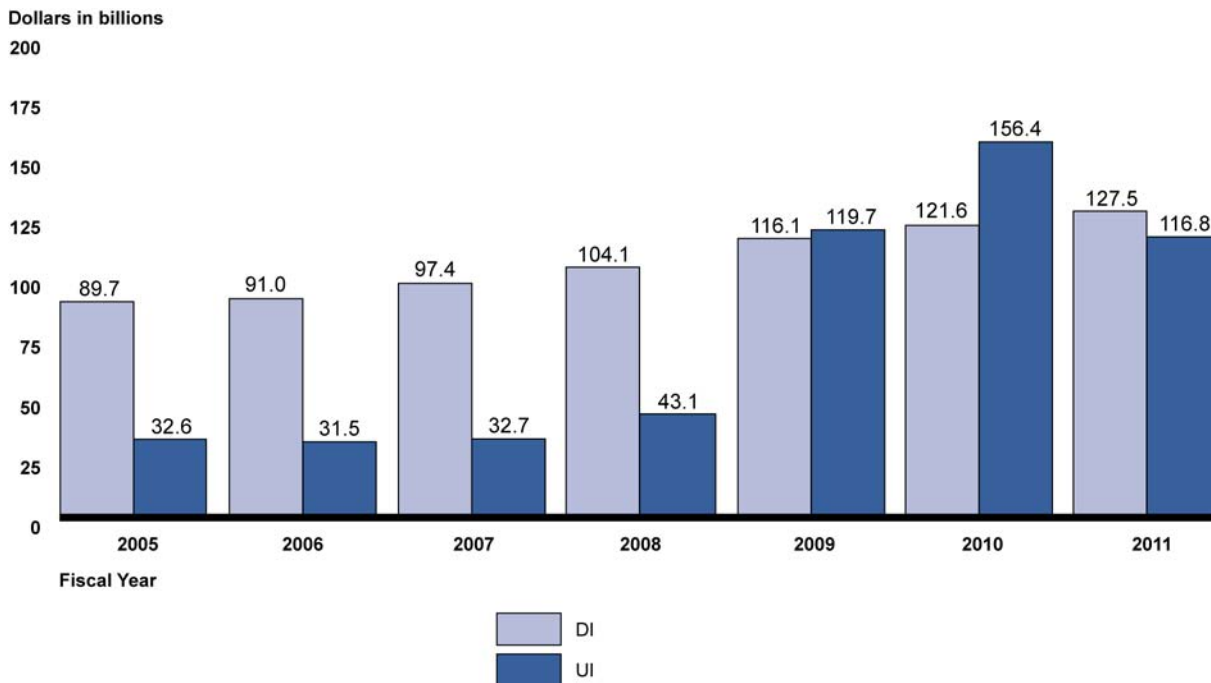
and other federal accounts dedicated to special purposes. The severity and length of the recent recession, and the slow pace of recovery, have placed a heavy demand on state UI trust funds, resulting in very large numbers of workers receiving benefits for very long periods of time. Since mid-2008, Congress and the states have temporarily extended the period of time that displaced workers can receive UI benefits to up to 99 weeks, though the maximum number of weeks of available benefits varies among the states.¹⁸ In April 2010, GAO reported that state UI trust funds were at historically weak levels, with most requiring federal loans to pay benefits.¹⁹ During fiscal year 2010, state agencies paid 11.3 million beneficiaries \$156.4 billion in federal and state unemployment benefits.²⁰ UI benefits vary substantially during a business cycle. As shown in figure 1, UI benefits varied substantially from 2005 to 2011, while DI benefits steadily increased during those years.

¹⁸ As of January 8, 2012, eligible unemployed workers could potentially receive the maximum 99 weeks of benefits in 17 states, according to DOL's data, though some individuals may be eligible for fewer weeks in these states. However, pursuant to the Unemployment Benefits Extension Act of 2012, part of the Middle Class Tax Relief and Job Creation Act of 2012, the number of total weeks a recipient may receive benefits will gradually decrease throughout 2012. See Pub. L. No. 112-96, §§ 2122 - 2123, 126 Stat. 156, 163 - 167.

¹⁹ [GAO-10-440](#).

²⁰ During fiscal year 2011, state agencies paid 9.9 million beneficiaries \$113.3 billion in federal and state unemployment benefits.

Figure 1: DI and UI Benefit Payments for Fiscal Years 2005 through 2011



Source: Social Security Administration and Department of Labor.

Note: Dollar amounts in figure 1 are presented in actual dollars rather than real (inflation adjusted) dollars.

Concurrent DI and UI Payments Resulted in Hundreds of Millions of Dollars in Overlapping Benefit Payments

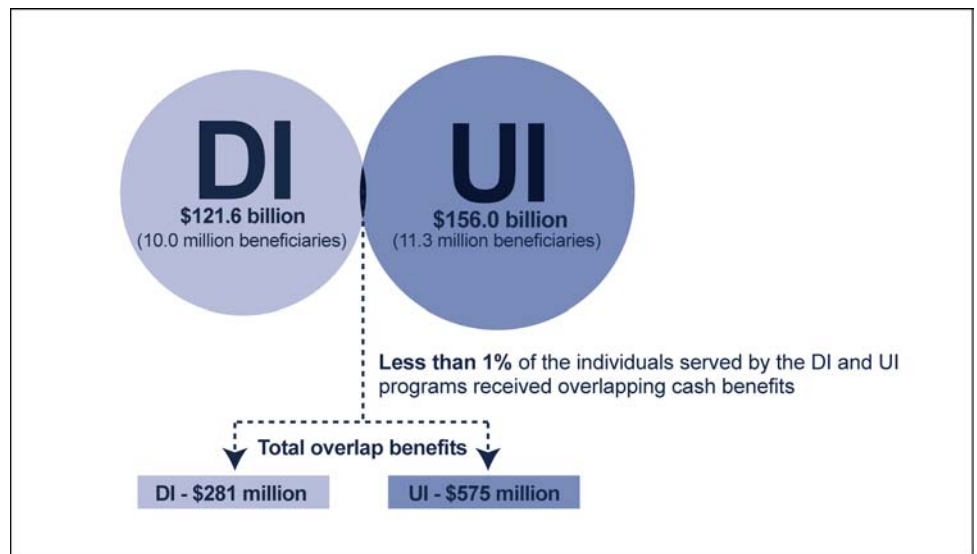
In fiscal year 2010, 117,000 individuals received concurrent cash benefit payments of more than \$850 million.²¹ As shown in figure 2, these individuals represented less than 1 percent of the total beneficiaries of both programs. However, estimated overlapping cash benefits paid to these individuals totaled over \$281 million from the DI program and more than \$575 million from the UI program.²² For individuals receiving

²¹ As previously mentioned, our analysis understates the population of individuals who received concurrent DI and UI benefits in fiscal year 2010 because it includes only those individuals who received DI in all 3 months of a quarter.

²² UI benefits increased dramatically in 2009 through 2011 from prior levels. According to a 2010 announcement by the National Bureau of Economic Research (NBER), a trough in business activity occurred in the U.S. economy in June 2009. According to NBER, the trough marks the end of the declining phase and the start of the rising phase of the business cycle. Economic activity is typically below normal in the early stages of an expansion, and it sometimes remains so well into the expansion.

overlapping benefits in fiscal year 2010, we estimate the average quarterly amount of overlapping cash benefit payments to be \$1,093 in DI and \$2,231 in UI, for a quarterly average of \$3,324 in overlapping benefits.

Figure 2: Beneficiaries Receiving Overlapping DI and UI Benefits in Fiscal Year 2010



Source: GAO analysis of data from the Social Security Administration and Department of Health and Human Services.

Note: Our estimate of overlapping DI benefits is understated because it includes DI benefits payable for only 1 of the 3 months in a quarter for which an individual also received UI benefits. Thus, overlapping DI benefits that were payable in more than 1 month of a quarter are not included in our estimate.

Differences in program rules and definitions allow individuals in certain circumstances to receive overlapping DI and UI benefits without violating eligibility requirements. As mentioned, SSA's definition of a disability involves work that does not rise to the level of SGA. For 2010, a non-blind person who is earning more than a \$1,000 a month is ordinarily considered to be engaging in SGA. In contrast, states' determination of "able and available for work" criteria for UI benefits may include performing work that does not rise to the level of SGA. As a result, some individuals may have a disability under federal law but still be able and available for work under state law, thus eligible to receive DI and UI

concurrently.²³ SSA officials stated that UI is considered unearned income and therefore does not affect DI benefits.²⁴ DOL officials acknowledged that certain individuals may be eligible for both DI and UI, depending on the applicable state laws regarding UI eligibility. Because these overlapping payments may be allowed under both programs' eligibility requirements, and no federal law authorizes an automatic reduction or elimination of benefits if a recipient receives both payments, neither SSA nor DOL have any processes to identify these overlapping payments. As such, the costs associated with establishing mechanisms to reduce or eliminate these overlapping payments are not readily available.

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. We define overlaps as programs that have similar goals, devise similar strategies and activities to achieve those goals, or target similar users.²⁵ Our prior work on overlapping government programs has found that, in some instances, overlapping programs or activities have led to inefficiencies, and we have determined that greater efficiencies or effectiveness might be achievable. However, in other instances, it may be appropriate for multiple agencies or entities to be involved in the same programmatic or policy area due to the nature or magnitude of the federal effort.

²³ For example, in an unpublished decision from the United States Court of Appeals for the Ninth Circuit, the court said: “[W]e note that [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 necessarily inconsistent with her claim of disability benefits under the Social Security Act.” *Mulanax v. Comm’r of Soc. Sec.*, 293 Fed. Appx. 522 (9th Cir. 2008) (citations omitted).

²⁴ DI benefits are only reduced in specified situations, such as receipt of worker’s compensation or certain other public disability benefits.

²⁵ GAO, *2012 Annual Report: Opportunities to Reduce Duplication, Overlap and Fragmentation, Achieve Savings, and Enhance Revenue*, [GAO-12-342SP](#) (Washington, D.C.: Feb. 28, 2012).

Although current program rules allow overlapping benefits under certain circumstances, concurrent receipt of DI and UI benefits can also be an indicator of improper payments. For example, some individuals who have a disability as determined by SSA may be receiving improper UI payments because they are not “able and available” for work. Similarly, some individuals receiving UI benefits may be receiving improper DI payments because they no longer have a disability as defined by SSA.²⁶ Specifically, being “able and available” for work may indicate that an individual’s medical condition no longer prevents him or her from performing work that rises to the level of SGA. As mentioned, neither SSA nor DOL have any processes to identify overlapping DI and UI payments. As a result, neither SSA nor DOL currently evaluates whether overlapping payments made to these individuals may be proper or improper.

The eight individuals we selected for further review received overlapping benefits in fiscal year 2010.²⁷ For example, one individual we selected from the top 50 recipients of concurrent benefits in our population received over \$62,000 in overlapping DI and UI benefits in a single year. Of the \$62,000 in overlapping benefits received by this individual,²⁸ \$27,528 were DI benefits and \$34,534 were UI benefits.²⁹ In addition to receiving overlapping DI and UI benefits in both 2010 and 2011, SSA records indicate that the individual also received over \$7,000 in earnings in these years. On the basis of our inquiries, state UI officials are currently reviewing the adjudication of this individual’s UI claim because these

²⁶ A person’s DI benefits may be terminated for a variety of reasons, including that the disabled beneficiary is no longer disabled because of a medical recovery or successful reentry to the workforce.

²⁷ For our review, we obtained DI and UI information for these eight individuals beyond fiscal year 2010. Of the eight individuals we selected for further investigation, SSA determined that one individual had a DI benefit overpayment. Additionally, three individuals had UI benefit overpayments, as determined by the appropriate state UI office. Because we selected a small number of individuals for our review, the results cannot be projected to the population of individuals receiving overlapping DI and UI benefits.

²⁸ Both DI and UI benefits are based on prior wages. In 2008, the individual earned over \$100,000 in wages on which these benefits, in part, were based.

²⁹ Although the individual was eligible for DI benefits in 2009, SSA did not actually pay the DI benefits for most of 2009. According to an SSA official, the DI benefit payments were put on hold during a representative payee review. The individual’s SSA case file indicates that her disability is due to Affective Disorders and Substance Addiction Disorders (Drugs). If SSA determines a legally competent adult is unable to manage or direct the management of his or her own benefits, SSA appoints a representative payee.

earnings may be related to work that makes this individual ineligible for UI benefits. The Massachusetts UI benefits were exhausted after 99 weeks as of June, 2011. As of April, 2012, the individual remains in current pay status in the DI program, with a monthly DI benefit amount of \$2,377.

Six of the individuals we selected for further investigation received overlapping DI and UI benefits for 18 months or more. For example, one individual began receiving DI benefits in 2004 originally due to disorders of the back, and received overlapping DI and UI payments, which totaled over \$107,000, in 36 different months from 2008 to 2011. During that period, this individual worked for construction companies and received UI benefit payments from New Mexico in 2008, Wisconsin in 2009,³⁰ Kansas in 2010, and Montana in 2011. Montana officials stated that they also received wage data from North Dakota for use in adjudicating the UI claim in their state. As of April, 2012, this individual was no longer receiving UI benefits from these states, but continued to receive cash benefits from the DI program. SSA officials told us that this individual is currently under a continuing disability review to determine if the beneficiary is ineligible for DI due to work at or above the SGA level.³¹

Conclusions

DI and UI provide important safety nets for American workers who have lost their income. However, both trust funds face serious fiscal sustainability challenges, prompting the need to examine opportunities for potential cost savings. While the programs target different populations and generally provide separate services, existing rules and definitions result in a limited number of individuals being eligible for overlapping DI and UI payments. However, the concurrent receipt of these benefits can also provide an indicator of improper payments related to DI or UI. Because these overlapping payments may be allowed under both programs' eligibility requirements, and no federal law authorizes an automatic reduction or elimination of benefits if a recipient receives both payments, neither SSA nor Labor has a process to identify these overlapping benefit payments. As a result, for individuals receiving both

³⁰ This individual admitted to concealing work activity in order to receive UI benefits from Wisconsin in 2010. Wisconsin subsequently determined this individual would forfeit more than \$2,900 in UI benefits as a result of this activity.

³¹ SSA conducts work-related continuing disability reviews (CDR) to determine if beneficiaries are ineligible for DI due to work at or above the SGA level. 20 C.F.R. §§ 404.1589 - 404.1590.

DI and UI benefits, the government is replacing a portion of their lost earnings not once, but twice. Reducing or eliminating this overlap and potential improper payments could offer substantial savings, though actual savings are difficult to estimate because the potential costs of establishing mechanisms to do so are not readily available.

Recommendations for Executive Action

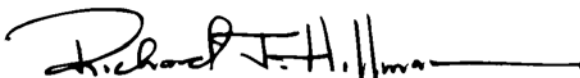
We recommend that the Secretary of Labor work with the Commissioner of SSA to (1) evaluate the circumstances under which individuals are receiving overlapping DI and UI payments, taking appropriate action, as necessary, for any payments determined to be improper, and (2) assess whether cost savings or other benefits might be achieved by reducing or eliminating overlapping DI and UI cash benefit payments being made within the existing laws and regulations, seeking congressional authority to do so as appropriate.

Agency Comments and Our Evaluation

We provided a draft of this report to SSA and DOL for comment. DOL and SSA provided written comments to the draft which can be found in appendices I and II. DOL and SSA agreed with our recommendation that DOL work with SSA to evaluate overlapping DI and UI benefits, taking appropriate action for any payments determined to be improper, and assessing whether cost savings or other benefits might be achieved by reducing or eliminating overlapping DI and UI cash benefit payments. DOL and SSA also both recognized that the states play an important role in the UI program, and DOL recommended that we encourage states to participate in addressing the report's recommendations. In this regard, we agree that states' programmatic knowledge would significantly contribute to the evaluation of overlapping DI and UI benefits and encourage state participation as appropriate. We also believe that it will be important for DOL to reach out to the states in carrying out our recommendations to evaluate these overlapping benefits. DOL and SSA also provided technical comments, which we incorporated as appropriate.

As agreed with your offices, unless you publicly announce the contents of this report earlier, we plan no further distribution until 30 days from the report date. At that time, we will send copies to the Commissioner of the Social Security Administration, the Secretary of Labor, and other interested parties. In addition, the report will be available at no charge on the GAO website at <http://www.gao.gov>.

If you or your staff have questions about this report, please contact me at (202) 512-6722 or hillmanr@gao.gov. Contact points for our Offices of Congressional Relations and Public Affairs may be found on the last page of this report.

A handwritten signature in black ink, appearing to read "Richard J. Hillman", followed by a horizontal line.

Richard J. Hillman
Managing Director, Forensic Audits and Investigative Service

Appendix I: Comments from Department of Labor

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



JUL 16 2012

Mr. Greg Kutz
Director, Forensic Audits and Investigative Services
U.S. Government Accountability Office

Dear Mr. Kutz:

On behalf of the U.S. Department of Labor (Department), I want to thank you for the opportunity to review and comment on the Government Accountability Office's (GAO) draft report entitled, *Income Security: Overlapping Disability and Unemployment Benefits Should be Evaluated for Potential Savings* (GAO-12-764).

The GAO report recommends the following:

Labor should work with SSA to (1) evaluate overlapping Disability Income (DI) and Unemployment Insurance (UI) cash benefit payments, taking appropriate action for any payments determined to be improper; and (2) assess whether cost savings or other benefits might be achieved by reducing or eliminating overlapping DI and UI cash benefit payments being made with the existing laws and regulations, seeking congressional authority to do so, as appropriate.

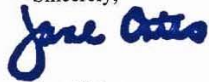
While limited in scope and depth, the report uncovered sufficient evidence indicating the potential for improper payments to individuals concurrently collecting UI and DI benefits, making additional investigation worthwhile as recommended. The Department supports GAO's recommendation; however, it notes that since these programs serve different populations under different State UI and DI laws and regulations, assessing overlapping benefit payments and determining appropriate recommendations and courses of action based on this assessment will require significant time, effort, and resources that may exceed those currently available to either SSA or the Department. The Department recognizes the critical role that states play in evaluating overlapping DI and UI cash benefits payments and taking corrective action for improper payments, and therefore, recommends that GAO strongly encourage states to participate in addressing the report's recommendation given that their programmatic knowledge would significantly contribute to a successful analysis.

The Department believes the report is a timely reminder that more work can be done to encourage improved data sharing and better alignment of Federal benefit payment systems to reduce overlap and help eliminate improper payments. The description of the analysis conducted and its shortcomings, as well as the recognition that the results cannot be generalized, supports the notion that further analysis into concurrent receipt of UI and DI would be beneficial and potentially provide insights leading to policy and law changes that would result in savings by ensuring individuals only receive fair compensation when stricken with disabilities and unemployment. Methodologies developed for additional analysis should uncover improper payments, an issue the Department is aggressively attacking. The Department is committed to

working with our partner agencies to further explore this issue and looks forward to working with SSA.

Enclosed are the Department's technical comments on the draft report. If you would like additional information, please do not hesitate to call me at (202) 693-2700.

Sincerely,



Jane Oates
Assistant Secretary

Enclosure

Appendix II: Comments from the Social Security Administration



SOCIAL SECURITY
Office of the Commissioner

July 20, 2012

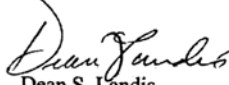
Mr. Gregory D. Kutz
Director, Forensic Audits and Investigative Services
United States Government Accountability Office
441 G. Street, NW
Washington, D.C. 20548

Dear Mr. Kutz:

Thank you for the opportunity to review the draft report, "INCOME SECURITY: Overlapping Disability and Unemployment Benefits Should be Evaluated for Potential Savings" (GAO-12-764). Please see our enclosed response.

If you have any questions, please contact me at (410) 965-0520. Your staff may contact Amy Thompson, Senior Advisor for Records Management and Audit Liaison Staff, at (410) 966-0569.

Sincerely,


Dean S. Landis
Deputy Chief of Staff

Enclosure

SOCIAL SECURITY ADMINISTRATION BALTIMORE, MD 21235-0001

**COMMENTS ON THE GOVERNMENT ACCOUNTABILITY OFFICE DRAFT
REPORT, "INCOME SECURITY: OVERLAPPING DISABILITY AND
UNEMPLOYMENT BENEFITS SHOULD BE EVALUATED FOR POTENTIAL
SAVINGS" (GAO-12-764)**

GENERAL COMMENTS

We stand ready to work with the Department of Labor (DOL) and the Congress to evaluate current policies regarding the receipt of Disability Insurance (DI) and Unemployment Insurance (UI). We appreciate GAO's candor regarding the limitations of its study, including its acknowledgement that "the results cannot be projected to the population of individuals receiving concurrent DI and UI benefits" and that its findings are not "generalizable." We agree that no clear conclusions can be drawn without further study. GAO's difficulty in producing a more thorough report may indicate that getting to the heart of the issues will require significant resources as these programs may not readily lend themselves to comparison and data may not be readily available.

GAO suggests that receipt of payments from UI and DI may be an indicator for improper payments. GAO acknowledges that under current law receipt of payments from both of these programs is permissible; therefore, dual receipt alone is not a flag for improper payments. Absent detail about GAO's assertion, we looked at the nine cases GAO originally identified (although GAO limited its report to eight of these cases) to try to understand how these cases may signal improper payments within the DI program. Unfortunately, with the limited information GAO provided, we were unable to make that connection. Some of the nine beneficiaries had income posted after entitlement to DI benefits, but not all of that income was relevant to DI under current law, and our existing processes had already identified income that was relevant.

It is important to note that Congress has created a complex array of statutory rights that attempt to encourage DI beneficiaries to return to the workforce. If we determine that a beneficiary is in fact working, we apply a complex set of rules as prescribed by Congress that generally allow the beneficiary to transition off of our rolls, often over many years during which they may come in and out of pay status. The President's FY 2013 budget includes a proposal called the Work Incentives Simplification Pilot (WISP) that would simplify these rules to make it easier for our beneficiaries to understand and for our employees to administer. We believe that eliminating these complexities would encourage return to work and reduce improper payments.

It is also important to understand that income does not always indicate that a person is working or that the work changes entitlement status—we must obtain additional information to understand the nature of that income, which could be sick pay, for example, rather than work. It would be incorrect to presume that any income after disability onset represents work or an ability to work.

Our current processes, which include many automated data matches, identify potentially material income for our review to support our obligations under current law. If Congress changes the law

regarding UI and DI, we would likely implement similar tools. The reason that we do not currently have a process to identify dual receipt of DI and UI simply reflects current law; we do have processes to identify material income.

Also, though largely unreferenced in the report, we understand that some States allow for offset of UI benefits because of DI receipt, which highlights the importance of involving the States in this discussion. We currently provide data to those States.

At the exit conference, GAO agreed to provide a technical appendix describing the data, methodologies, and estimation procedures used to support your findings and conclusions; however, the report does not contain that appendix, which makes it difficult to fully evaluate the findings and conclusions. Thus, we agree that SSA and DOL will need to work together to provide more thoughtful/thorough information to Congress and the Administration.

RECOMMENDATION

The Secretary of Labor work with the Commissioner of SSA to: (1) evaluate the circumstances under which individuals are receiving overlapping DI and UI payments, taking appropriate action, as necessary, for any payments determined to be improper; and (2) assess whether cost savings or other benefits might be achieved by reducing or eliminating overlapping DI and UI cash benefit payments being made within the existing laws and regulations, seeking congressional authority to do so as appropriate.

RESPONSE

While the GAO report is limited, we agree that the agencies should work together to understand and investigate the overarching policy question—whether recipients should be able to receive both DI and UI payments. We are happy to work with DOL to see if we can develop more definitive data to help Congress consider this issue. We note that States play a critical role in determining eligibility for UI and respectfully request that GAO more fully acknowledge that role in its final report. Our standard procedure is to address improper payments that we identify, and we have already reviewed the cases GAO used for this study.

TECHNICAL COMMENTS

Page 2, Footnote 4:

Provide the full citation to the statute for the definition of disability. We suggest revising the citation to read “42 U.S.C. § 423(d)(1)” instead of “42 U.S.C. § 423.” The same comment applies to footnote 6 on page 5. In addition, please note that in the draft document the ending period is missing in both footnotes 2 and 6.

Page 2, 1st first full sentence:

Add a footnote to the end of the sentence to provide the citation to our regulations, i.e., 20 C.F.R. §§ 404.1510, 404.1572. The same comment applies on page 5, under “Background, Disability Insurance,” the first paragraph, third sentence.

On page 2, footnote 5:

Use the acronym “NDNH” instead of “National Directory of New Hires.”

Page 2, second full paragraph:

The report indicates that you considered one-month’s DI benefits, while the UI data is on a quarterly basis. Absent supporting documentation, we cannot determine the significance of this different timeframe.

Page 3, first full paragraph, last sentence

“Although identifying improper payments was not the primary purpose of this audit, some individuals we selected for further review received improper DI or UI payments.”

Comment

It is difficult to respond to this statement because there is no corroborating evidence indicating that individuals received improper payments due to concurrent receipt of DI and UI benefits or that concurrent receipt is a potential indicator of improper payments. As GAO acknowledged in its report, the limited scope and depth of the cases reviewed renders the results non-generalizable.

Our detailed review of the cases hand-selected by GAO revealed no improper payments issued on the basis of concurrent receipt of DI and UI. Three of the nine cases did involve work after onset, and our current processes identified these cases for review prior to the GAO report. We have applied work rules to these cases, and while some of the beneficiaries did not receive a payment for some months, all but one of them continue to be eligible for benefits under current law.

Page 5, under “Background, Disability Insurance,” 1st paragraph:

Move footnote 7 at the end of the fourth sentence to the end of the fifth sentence to clarify that the citation in the text of footnote 7, as revised, applies to both sentences. In revising the text of footnote 7, give the citations for the authority that authorizes the change in the monthly amounts deemed to be Substantial Gainful Activity in 2010 and 2012. Accordingly, revise the text of the footnote to read “74 FR 55614 (October 28, 2009). For calendar year 2012, earnings averaging

over \$1,010 a month generally demonstrate SGA for individuals whose impairment is anything other than blindness. For calendar year 2012, earnings averaging over \$1,690 a month generally demonstrate SGA for individuals who are blind. 76 FR 66111 (October 25, 2011).”

Page 5, under “Background, Disability Insurance,” 1st paragraph, 7th sentence:

Insert a footnote at the end of the sentence to include the citation that supports the stated SGA amount of \$980 in 2009. The text of the footnote would read “73 FR 64651 (October 30, 2008).”

Page 5, under “Background, Disability Insurance,” 1st paragraph, 8th sentence:

Insert the term “the” between the phrases “onset of” and “medical impairment.”

Page 5, 2nd paragraph states:

“Cash benefits are payable monthly until the worker reaches full retirement age or dies.”

Comment

Please note there are many other reasons cash benefit payments are discontinued (terminated or suspended), such as for a successful return to work, medical improvement, incarceration, or failure to cooperate with our requests for information.

Page 5, 2nd paragraph states:

You cite figures of 10 million beneficiaries receiving DI benefits and \$121.6 billion in payments. We would appreciate a better understanding of these numbers and the population that you included in the study to determine the overlap of the programs.

Page 5, footnote 9:

Insert the phrase “of coverage” between the phrases “20 quarters” and “out of the last 40 quarters.” In addition, give the citations for the statute and regulatory provisions that apply to the requirements for quarters of coverage; i.e., 42 U.S.C. § 223(c)(1); 20 C.F.R. §§ 404.130, 404.132.

Page 8, figure 1:

It appears these figures are in actual dollars, rather than real (inflation adjusted) dollars. Since we index our benefits to inflation, it is more appropriate to provide these in real dollars in order to more accurately show the actual growth in the program, rather than benefit increases for inflation.

Page 9, figure 2:

You consider “overlapping payments” to be the total amount of payments under both programs. We presume that Congress would consider preventing a person from receiving both payments and may allow, for example, a person to receive only the higher of the two. Therefore, mathematically, the total of both benefit amounts should not be considered the overlap amount. Would GAO provide us with duplication of payments applying this criteria—the sum total of the lower benefit for those people who currently receive both UI and DI, which is a more realistic definition of overlap?

Page 9, footnote 19:

Add the parenthetical phrase “(citations omitted)” immediately following the quoted text in this footnote, since the citations that appear in the decision are not included in the quoted text.

Page 10, first full sentence

“Because these overlapping payments may be allowed under both programs’ eligibility requirements and no federal law authorizes an automatic reduction or elimination of benefits if a recipient receives both payments, neither SSA nor DOL have any processes to identify these overlapping payments.”

Comment

We have not had a programmatic reason to evaluate UI payments because we do not have the legal authority to deny or offset DI payments due to the receipt of UI. However, we provide Social Security Number verification and DI information, as appropriate, to requesting States so they can administer applicable UI offsets where applicable under State law. If what GAO means to say is that receipt of UI or DI may be an indicator of non-eligibility to the other program, it does not offer data to support that assertion. We will work with DOL to try to better understand the policy issue, and we will develop processes that support any change Congress decides to make.

Page 10, last paragraph states:

“Specifically, being ‘able and available’ for work may indicate that an individual’s medical condition no longer prevents him or her from performing work that rises to the level of SGA. As mentioned, neither SSA nor DOL have any processes to identify overlapping DI and UI payments. As a result, neither SSA nor DOL currently evaluates whether overlapping payments made to these individuals may be proper or improper.”

Comment

Congress encourages DI beneficiaries to return to work; thus, DI beneficiaries are permitted to work and receive DI benefits in accordance with the law. The report does not help us understand whether someone’s pursuit of UI is an indicator that the person should not be eligible for DI. We reviewed the cases GAO picked and cannot make that connection based on the medical evidence.

Page 11, first full paragraph:

“In addition to receiving overlapping DI and UI benefits in both 2010 and 2011, the individual also received over \$7,000 in wages in these years.

Comment

Our records indicate that the “over \$7,000 in wages” in 2010 and 2011 were not actually wages, but instead a buy-out from when the beneficiary separated from employment, which is another example of why we cannot automatically assume that income is earnings from work.

Page 12, Footnote 28 states:

“SSA is required to periodically conduct work-related continuing disability reviews (CDR) to determine if beneficiaries are ineligible for DI due to work at or above the SGA level.”

Comment

We are required to periodically conduct medical CDRs. As another important program integrity measure, we also conduct work CDRs based on a DI beneficiary’s work activity.

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