

Congress of the United States
House of Representatives
Washington, DC 20515

February 6, 2021

The Honorable Janet Yellen
Secretary
U.S. Department of the Treasury
1500 Pennsylvania Avenue, N.W.
Washington, D.C. 20220

Mr. Al Stewart
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Secretary Yellen and Acting Secretary Stewart:

Throughout the COVID-19 public health emergency, the Internal Revenue Service (IRS) and the Department of Labor (DOL) have had to navigate unique challenges facing the agency and the American public, from administering new unemployment programs and Economic Impact Payments to extending the 2020 tax filing season by several months to accommodate the needs of the American people we serve. However, as the nation works to recover from this pandemic, we are increasingly concerned about the coming crisis for millions of American taxpayers who have had unemployment benefits fraudulently claimed in their names.

In response to the unemployment surge caused by the COVID-19 pandemic, Congress enacted the CARES Act, which greatly expanded unemployment insurance programs to help unemployed Americans. However, with these additional benefits came additional openings for fraud and identity theft. According to the Department of Labor's Office of Inspector General, the volume of fraudulent benefits could be as much as \$36 billion.¹ It has been reported in Ohio, for example, that "tens of thousands of those claims were filed fraudulently"² throughout 2020, and it's estimated that "at least 166,000 claims were filed for unemployment insurance in 2020 without the supposed claimant knowing."³ In California, state officials have confirmed that approximately 10 percent of unemployment benefits paid were fraudulent and are under investigation, valued at more than \$11 billion.^{4,5} These numbers are expected to grow in the coming weeks, particularly as our constituents began receiving forms for the 2021 tax filing season. As you know, unemployment benefits are considered taxable income and must be reported on IRS Form 1099-G.

While this will already be an unprecedented filing season due to the economic recovery measures enacted throughout 2020, the added burden of receiving a Form 1099-G for unemployment compensation a taxpayer may not have claimed places undue stress on our constituents at a time when many can least afford it. While we understand that Forms 1099-G are issued by the states

¹ <https://www.oig.dol.gov/public/reports/oa/2021/19-21-001-03-315.pdf>

² https://wenstrup.house.gov/uploadedfiles/2021.01.21_-_letter_to_representative_wenstrup.pdf

³ <https://www.fox19.com/2021/01/27/kentucky-man-baffled-receiving-ohio-unemployment-tax-documents/>

⁴ <https://www.latimes.com/california/story/2021-01-25/california-unemployment-fraud-11-billion-investigations>

⁵ <https://www.auditor.ca.gov/pdfs/reports/2020-128and628.1.pdf>

and appreciate the guidance the IRS has issued to states and taxpayers regarding identity theft and fraudulent unemployment benefits, we believe the guidance stops short of meaningfully alleviating burdens placed on the taxpayer and underestimates the scope of unemployment fraud in 2020.

In addition to the unprecedented burden placed on the states to reissue so many corrected Forms 1099-G with less than three months before the tax filing deadline on April 15, the most recent IRS guidance places the onus on the taxpayer to simply “file an accurate tax return, reporting only the income they received”⁶ should they be unable to obtain a revised Form 1099-G in time to file. However, many of our constituents will be wary of self-correcting this error for fear of adverse IRS action.

It is with these concerns in mind that we ask the IRS and DOL to take additional steps to protect taxpayers and reduce the burdens placed on the states who administer our unemployment programs.

We ask the IRS to take the following courses of action:

1. To address our concerns regarding “[t]axpayers who are unable to obtain a timely, corrected form from states,”⁷ we ask the agency to extend the deadline by which states are required to submit Forms 1099-G for those under review for fraudulent activity. For many taxpayers, receiving the Form 1099-G will be the first notice that they may be victims of fraud, and we are concerned that the filing season timeline will not allow for errors to be corrected in time. By extending the deadline for this subset of Form 1099-G recipients, states would be given more time to investigate alleged incidents of fraud and, ultimately, only submit accurate, corrected Forms 1099-G to the IRS for processing. This will help to mitigate and minimize IRS exposure by preventing subsequent “mismatch” audit flags in cases of unreported 1099-G income.
2. Even with an extended deadline and diligent follow-up on the part of states, there will be cases that fall through the cracks. For example, cases in which a fraudster filed an unemployment claim using a stolen identity but using a different address. In such cases, the IRS will receive a 1099-G form from the state, but the taxpayer will remain unaware. The IRS should implement a “hold harmless” process for those taxpayers whose 1099-G’s are flagged as unreported income if those taxpayers believe they are victims of identity theft or fraud, such that no penalties or interest will accrue against them. Therefore, we ask that the IRS issue clear guidance to the taxpayer and to IRS staff stating that for those who file an accurate tax return pursuant to the IRS’s most recent guidance, they will be held harmless until a final determination is made by the state unemployment administrator. If the amount initially reported on the 1099-G is determined to be valid, the IRS should then apply the amount to the tax year in which it was determined to be valid without any penalties or interest.

⁶ <https://www.irs.gov/newsroom/irs-offers-guidance-to-taxpayers-on-identity-theft-involving-unemployment-benefits>

⁷ Ibid [6]

3. Third, we ask that the IRS partner with the DOL and those in the tax preparation community to help educate the public on the issue of identity theft involving unemployment benefits and to work with states to normalize procedures for identifying and verifying fraudulent cases. Millions of Americans who file taxes electronically, often doing so without direct assistance from a tax professional, may not be aware of this known problem, and we believe the IRS is well-situated to work with those companies and individuals in the industry to help raise awareness more broadly.

4. Finally, we ask the IRS work with the DOL to track and report on the amount of fraudulent unemployment benefits that are removed from 1099-G forms due to fraud. States should be required to submit this information and the IRS or DOL should publicly report the amount of unemployment benefits that were ultimately “zeroed out” and not included on 1099-G forms as part of taxpayers’ aggregate incomes to track the national amount of fraudulent activity in the unemployment program.

Ultimately, we are seeking additional solutions from the IRS and DOL that will achieve the goals of reducing the burden placed on the states while also protecting taxpayers who are victims of fraud and already navigating a complicated filing season.

We ask IRS and DOL to make us aware of any regulatory or legislative barriers to implementing these solutions and any other recommendations the agencies have for specific measures that are needed to provide this relief. We stand ready to work with you to accomplish this goal.

Thank you for your consideration and for the tireless work IRS and DOL staff have conducted over the course of the COVID-19 public health emergency.

Sincerely,



Brad R. Wenstrup, D.P.M.
Member of Congress



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Tom Rice
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Kevin Hern
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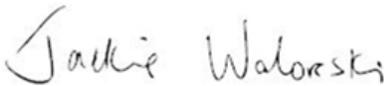
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