
D15-04
Reimbursable Employer Fraud Charging Issue
Revised Option 1: \$100,000 “Floor”

Date: April 16, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

REIMBURSABLE EMPLOYER FRAUD CHARGING ISSUE

REVISED OPTION 1: \$100,000 FLOOR

1. Description of Proposed Change

Identity theft is a problem for state unemployment insurance (UI) agencies. Thieves assume the work history of claimants in order to receive UI benefits, which results in fraudulent charges to employers' accounts.

Identity thieves file fraudulent claims posing as claimants who work for employers subject to reimbursement financing as well as employers subject to contribution financing. Currently, charges to employers' accounts for UI benefit overpayments resulting from identity theft are handled differently for contribution and reimbursable employers.

Under Wis. Stat. § 108.04 (13) (d) 3. a., fraudulently obtained UI benefits are restored to the contribution employer's account and the UI benefit charges are transferred to the fund's balancing account. This represents a form of risk sharing among contribution employers.

For governmental units, Indian tribes, and nonprofit organizations that have elected reimbursement financing, the overpayment remains charged to the employer's account until it is recouped by the department. The reimbursable employer bears all the risk in identity theft cases.

The department proposes that the law treat reimbursable employers in a similar manner as provided under Wis. Stat. § 108.04 (13) (d) 3. a. for contribution employers.

The department will set aside \$2 million in the UI Trust Fund (plus interest), to pay for identity theft charges against reimbursable employers. The department projects the \$2 million plus interest will cover UI benefit charges to reimbursable employers due to identity theft for several years. If the balance of the set aside funds is less than \$100,000 the department also proposes that the law provide that all reimbursable employers be assessed to pay the UI benefit charges due to identity theft. The assessment would be similar to the Reimbursable Employer Debt Assessment that is authorized by Wis. Stat. § 108.151(7) to recover bad debt that results from uncollectible reimbursement financing.

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2. Proposed Statutory Language

Create Wis. Stat. § 108.153.

108.0153 Liability of reimbursable employees for identity theft. (1) In this section:

(a) “Payroll” has the meaning given in s. 108.02 (21) (a).

(b) “Reimbursable employer” means an employer under s. 108.02 (13) (a) that is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

(2) Except as provided in par. (6), each reimbursable employer that is subject to this chapter as of the date that a rate of assessment is established under this section shall pay an assessment to the fund at a rate determined by the fund’s treasurer under subs. (3) and (4).

(3) On the effective date of this section, the fund’s treasurer shall set aside \$2,000,000 in the balancing account. The amount set aside, plus any future interest thereon, shall be used to restore benefit charges to reimbursable employers, under s. 108.04 (13) (d) 4. c. On June 30 of each year, the fund’s treasurer shall determine whether the amount set aside, plus interest thereon, is less than \$100,000 and, if the amount is less than \$100,000, the fund’s treasurer shall determine the rate of an assessment to be levied under sub. (2). Except as provided in sub. (6), the assessment shall become payable by all reimbursable employers as provided in sub. (7), unless the total amount of the assessment for all reimbursable employers would be less than \$20,000. The fund’s treasurer shall notify reimbursable employers that the provisions of s. 108.153(2) will become effective.

(4) The rate of assessment under this section for each calendar year shall be a rate, when applied to the payrolls of all reimbursable employers for the preceding calendar year, that will generate an amount equal to the amount that was allocated in the preceding calendar year to reimbursable employers’ accounts under s. 108.04 (13) (d) 4. c., but not more than \$200,000 for any year.

(5) Except as provided in sub. (6), the rate of each reimbursable employer’s assessment under this section for any calendar year is the product of the rate determined under sub. (4), multiplied by the reimbursable employer’s payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

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(6) If a reimbursable employer would otherwise be assessed an amount less than \$10 for a calendar year, the department shall, in lieu of requiring that reimbursable employer to pay an assessment for that calendar year, apply the amount that the reimbursable employer would have been required to pay to the other reimbursable employers subject to an assessment on a pro rata basis.

(7) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days. Any assessment which remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of s. 108.22, the department may:

(a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer is subject to reimbursement financing under s. 108.15;

(b) Terminate the reimbursable employer’s election of reimbursement financing under s. 108.151 (3) (b) or liquidate the employer’s assurance under s. 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under s. 108.151(2); or,

(c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer elected reimbursement financing under s. 108.152(1).

(8) If the payroll of a reimbursable employer for any quarter is adjusted to decrease the amount of the payroll after an employment and wage report for the reimbursable employer is filed under s. 108.205 (1), the department shall refund the amount of any assessment that was overpaid by the reimbursable employer under this section as a result of the adjustment.

Create Wis. Stat. §§ 108.16(6) (p) and 108.16(6m) (i) in order to authorize the department to credit the reimbursable employers’ accounts and to deposit the assessments into the balancing account.

108.16 (6) (p). Any amounts received for the balancing account under s. 108.153.

108.16 (6m) (i). Any amount to credit the account of an employer subject to reimbursement financing under s. 108.04 (13) (d) 4. c.

Amend Wis. Stat. §§ 108.22(1)(c) and 108.22(1m) in order to authorize the department to charge interest on delinquent assessments and to take collection action on delinquent assessments.

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108.22 (1) (c). Any report or payment, except a payment required by ss. 108.15 (5) (b), ~~or~~ 108.151 (5) (f) ~~or~~ 108.151 (7) or 108.153, to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by ss. 108.15 (5) (b), ~~or~~ 108.151 (5) (f) ~~or~~ 108.151 (7) or 108.153 is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

108.22 (1m). If an employer owes any contributions, reimbursements or assessments under s. 108.15, 108.151, 108.153, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer’s right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department’s lien is recorded.

Amend Wis. Stat. § 108.04(13) (d) 4. to authorize the department to Credit Reimbursable Employer’s Accounts who are victims of identity theft.

108.04 (13) (d) 4. To correct any erroneous payment not so adjusted from the account of an employer which is a ~~government unit, an Indian tribe, or a nonprofit organization and which has elected reimbursement financing~~ subject to reimbursement financing, the department shall:

a. ~~If recovery of an overpayment is permitted under s. 108.22 (8) (e), credit~~ Credit to the account benefits which would otherwise be payable to, or cash received from, the employee, ~~if recovery of an overpayment is permitted under s. 108.22 (8) (c); or~~

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b. ~~If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore~~ Restore the proper amount to the employer's account and charge that amount in accordance with s.

108.07(5); , if recovery of an overpayment is not permitted under s. 108.22 (8) (c); or

c. Restore the proper amount to the reimbursable employer's account, if the erroneous payment resulted from a false statement or representation about an individual's identity and the reimbursable employer was not at fault for the erroneous payment and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

Amend the definition of payroll under Wis. Stat. § 108.02 (21) (b) to exclude s. 108.153. Payroll under s. 108.153 only applies to the definition of payroll under 108.02 (21) (a).

108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s.~~ ss. 108.151 (7) (a) and 108.153, an employer's payroll for calendar years prior to 2009 includes only the first \$10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for calendar years after 2012 includes only the first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

Amend Wis. Stat. § 108.151(3)(b) to enable the department to terminate a non-profit's election of reimbursement financing if it fails to pay assessment.

108.151 (3) (b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies, or fails to pay the required assessments authorized by s. 108.151(7) or 108.153.

3. Proposer's Reason for the Change

If an identity thief files a claim using an employee's identity and the employer reports this timely to the department, there is no fault by the employer. Identity thieves randomly file claims against both reimbursable and contribution employers. This proposal will relieve employers which are subject to reimbursement financing of being solely responsible to pay charges for which they are not responsible.

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The proposal will represent risk sharing that is similar to what is provided to contribution employers.

4. Effects of Proposed Changes

- a. Policy. This proposal will provide for more equitable treatment of reimbursable employers whose accounts are charged as a result of identity theft.
- b. Administrative Impact. The administrative impact of this proposal is likely to be minor.
- c. Fiscal. See Attached Fiscal Estimate.

5. State and Federal Issues

A state’s UI law must conform to, and the administration of its law must substantially comply with, applicable federal requirements.

The department is not currently aware of any federal conformity issues with this proposal.

The department recommends that the statutory language associated with this proposal be sent to the U.S. Department of Labor for review.

6. Proposed Effective/Applicability Date

This proposal should be effective beginning on January 1, 2016.

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Reimbursable Employer Fraud Charging Issue
Option 2: \$1,000,000 “floor”

Date: April 16, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE
REIMBURSABLE EMPLOYER FRAUD CHARGING ISSUE

OPTION 2: \$1,000,000 “FLOOR”

1. Description of Proposed Change

Identity theft is a problem for state unemployment insurance (UI) agencies. Thieves assume the work history of claimants in order to receive UI benefits, which results in fraudulent charges to employers' accounts.

Identity thieves file fraudulent claims posing as claimants who work for employers subject to reimbursement financing as well as employers subject to contribution financing. Currently, charges to employers' accounts for UI benefit overpayments resulting from identity theft are handled differently for contribution and reimbursable employers.

Under Wis. Stat. § 108.04 (13) (d) 3. a., fraudulently obtained UI benefits are restored to the contribution employer's account and the UI benefit charges are transferred to the fund's balancing account. This represents a form of risk sharing among contribution employers.

For governmental units, Indian tribes, and nonprofit organizations that have elected reimbursement financing, the overpayment remains charged to the employer's account until it is recouped by the department. The reimbursable employer bears all the risk in identity theft cases.

The department proposes that the law treat reimbursable employers in a similar manner as provided under Wis. Stat. § 108.04 (13) (d) 3. a. for contribution employers.

The department will set aside \$2 million in the UI Trust Fund (plus interest), to pay for identity theft charges against reimbursable employers. The department projects the \$2 million plus interest will cover UI benefit charges to reimbursable employers due to identity theft for several years. If, as a result of substantial repayment of benefit charges to reimbursable employers, the balance of the set aside funds is less than \$1 million, the department also proposes that the Secretary will consult with the UIAC regarding an assessment. If, after consultation, the Secretary determines it is likely that interest on the remaining balance of the set aside funds will not fund the benefit charges against reimbursable employers due to identity theft, all reimbursable employers will be assessed to pay the UI benefit charges due to identity theft and to restore the balance of the funds set aside to \$2 million. The assessment would be similar to the Reimbursable Employer Debt Assessment that is authorized by Wis. Stat. § 108.151(7) to recover bad debt that results from uncollectible reimbursement financing.

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Option 2: \$1,000,000 “floor”

2. Proposed Statutory Language

Create Wis. Stat. § 108.153.

108.153 Liability of reimbursable employees for identity theft. (1) In this section:

(a) “Payroll” has the meaning given in s. 108.02 (21) (a).

(b) “Reimbursable employer” means an employer under s. 108.02 (13) (a) that is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

(2) Except as provided in par. (6), each reimbursable employer that is subject to this chapter as of the date that a rate of assessment is established under this section shall pay an assessment to the fund at a rate determined by the fund’s treasurer under subs. (3) and (4).

(3) On the effective date of this section, the fund’s treasurer shall set aside \$2,000,000 in the balancing account. The amount set aside, plus any future interest thereon, shall be used to restore benefit charges to reimbursable employers under s. 108.04 (13) (d) 4. c.

(a) The fund’s treasurer shall monitor the charges to the balancing account under s. 108.04 (13) (d) 4. c. and the cash balance of the funds set aside, plus interest thereon under this subsection. The fund’s treasurer shall notify the secretary of workforce development when the cash balance of the funds set aside, plus interest thereon, is less than \$1,000,000. The secretary of workforce development shall then consult with the council on unemployment insurance. If the secretary of workforce development, after consulting with the council on unemployment insurance, determines there is a reasonable likelihood that the amount of future accrued interest on the remaining funds set aside may become inadequate to restore benefit charges to reimbursable employers under s. 108.04(13)(d)4.c., the fund’s treasurer shall notify reimbursable employers that the provisions of s. 108.153(2) will become effective.

(b) On June 30 of each year, the treasurer shall determine the rate of an assessment to be levied under sub. (2).

(c) Except as provided in sub. (6), the assessment shall become payable by all reimbursable employers as provided in sub. (7), unless the total amount of the assessment for all reimbursable employers would be less than \$20,000 for any year. If the total amount of the assessment for all reimbursable employers is less

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than \$20,000 for any year, the fund’s treasurer shall postpone the assessment for one year. If the fund’s treasurer postpones the assessment, the total assessment for the following year shall include the amounts that the department would have assessed for the calendar years for which the fund’s treasurer postponed the assessment.

(4) The rate of assessment under this section for each calendar year shall be a rate, when applied to the payrolls of all reimbursable employers for the preceding calendar year, that will generate an amount equal to the amount that was allocated in the preceding calendar year to reimbursable employers’ accounts under s. 108.04 (13) (d) 4. c., plus an amount sufficient to restore the balance of the funds set aside to \$2,000,000. The total amount of the assessment under this section shall not exceed \$200,000 for any year. If the amount of the assessment under this section would have exceeded \$200,000 for any year, the amount by which the assessment would have exceeded \$200,000 shall carry forward and be made part of the assessment for the following year.

(5) Except as provided in sub. (6), the rate of each reimbursable employer’s assessment under this section for any calendar year is the product of the rate determined under sub. (4), multiplied by the reimbursable employer’s payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

(6) If a reimbursable employer would otherwise be assessed an amount less than \$10 for a calendar year, the department shall, in lieu of requiring that reimbursable employer to pay an assessment for that calendar year, apply the amount that the reimbursable employer would have been required to pay to the other reimbursable employers subject to an assessment on a pro rata basis.

(7) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days. Any assessment which remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of s. 108.22, the department may:

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(a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer is subject to reimbursement financing under s. 108.15;

(b) Terminate the reimbursable employer’s election of reimbursement financing under s. 108.151 (3) (b) or liquidate the employer’s assurance under s. 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under s. 108.151(2); or,

(c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer elected reimbursement financing under s. 108.152(1).

(8) If the payroll of a reimbursable employer for any quarter is adjusted to decrease the amount of the payroll after an employment and wage report for the reimbursable employer is filed under s. 108.205 (1), the department shall refund the amount of any assessment that was overpaid by the reimbursable employer under this section as a result of the adjustment.

Create Wis. Stat. §§ 108.16(6) (p) and 108.16(6m) (i) in order to authorize the department to credit the reimbursable employers’ accounts and to deposit the assessments into the balancing account.

108.16 (6) (p). Any amounts received for the balancing account under s. 108.153.

108.16 (6m) (i). Any amount to credit the account of an employer subject to reimbursement financing under s. 108.04 (13) (d) 4. c.

Amend Wis. Stat. §§ 108.22(1)(c) and 108.22(1m) in order to authorize the department to charge interest on delinquent assessments and to take collection action on delinquent assessments.

108.22 (1) (c). Any report or payment, except a payment required by ss. 108.15 (5) (b)₂ or 108.151 (5) (f) or 108.151 (7) or 108.153, to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by ss. 108.15 (5) (b)₂ or 108.151 (5) (f) or 108.151 (7) or 108.153 is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

108.22 (1m). If an employer owes any contributions, reimbursements or assessments under s. 108.15, 108.151, 108.153, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the

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Option 2: \$1,000,000 “floor”

department has a perfected lien upon the employer’s right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department’s lien is recorded.

Amend Wis. Stat. § 108.04(13) (d) 4. to authorize the department to Credit Reimbursable Employer’s Accounts who are victims of identity theft.

108.04 (13) (d) 4. To correct any erroneous payment not so adjusted from the account of an employer which is ~~a government unit, an Indian tribe, or a nonprofit organization and which has elected reimbursement financing~~ subject to reimbursement financing, the department shall:

a. ~~If recovery of an overpayment is permitted under s. 108.22 (8) (c), credit~~ Credit to the account benefits which would otherwise be payable to, or cash received from, the employee, if recovery of an overpayment is permitted under s. 108.22 (8) (c); or

b. ~~If recovery of an overpayment is not permitted under s. 108.22 (8) (c), restore~~ Restore the proper amount to the employer’s account and charge that amount in accordance with s. 108.07(5)-, if recovery of an overpayment is not permitted under s. 108.22 (8) (c); or

c. Restore the proper amount to the reimbursable employer’s account, if the erroneous payment resulted from a false statement or representation about an individual’s identity and the reimbursable employer was not at fault for the erroneous payment and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

Amend the definition of payroll under Wis. Stat. § 108.02 (21) (b) to exclude s. 108.153. Payroll under s. 108.153 only applies to the definition of payroll under 108.02 (21) (a).

108.02 (21) (b) Notwithstanding par. (a), except as provided in ~~s. ss.~~ ss. 108.151 (7) (a) and 108.153, an employer’s payroll for calendar years prior to 2009 includes only the first \$10,500 of

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Option 2: \$1,000,000 “floor”

wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for calendar years after 2012 includes only the first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

Amend Wis. Stat. § 108.151(3) (b) to enable the department to terminate a non-profit's election of reimbursement financing if it fails to pay assessment.

108.151 (3) (b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies, or fails to pay the required assessments authorized by s. 108.151(7) or 108.153.

3. Proposer's Reason for the Change

If an identity thief files a claim using an employee's identity and the employer reports this timely to the department, there is no fault by the employer. Identity thieves randomly file claims against both reimbursable and contribution employers. This proposal will relieve employers which are subject to reimbursement financing of being solely responsible to pay charges for which they are not responsible.

The proposal will represent risk sharing that is similar to what is provided to contribution employers.

4. Effects of Proposed Changes

- a. Policy. This proposal will provide for more equitable treatment of reimbursable employers whose accounts are charged as a result of identity theft.
- b. Administrative Impact. The administrative impact of this proposal is likely to be minor.
- c. Fiscal. See Attached Fiscal Estimate.

5. State and Federal Issues

A state's UI law must conform to, and the administration of its law must substantially comply with, applicable federal requirements.

Reimbursable Employer Fraud Charging Issue

Option 2: \$1,000,000 “floor”

The department is not currently aware of any federal conformity issues with this proposal.

The department recommends that the statutory language associated with this proposal be sent to the U.S. Department of Labor for review.

6. Proposed Effective/Applicability Date

This proposal should be effective beginning on January 1, 2016.

D15-04: Reimbursable Employer Fraud Charging Issue
Option 3: No Set Aside, Cover First \$1 Million of Charges

Date: April 16, 2015
Proposed by: DWD
Prepared by: Andy Rubsam

ANALYSIS OF PROPOSED UI LAW CHANGE

REIMBURSABLE EMPLOYER FRAUD CHARGING ISSUE

OPTION 3: NO SET ASIDE, FIRST \$1 MILLION OF FRAUD CHARGES COVERED

1. Description of Proposed Change

Identity theft is a problem for state unemployment insurance (UI) agencies. Thieves assume the work history of claimants in order to receive UI benefits, which results in fraudulent charges to employers' accounts.

Identity thieves file fraudulent claims posing as claimants who work for employers subject to reimbursement financing as well as employers subject to contribution financing. Currently, charges to employers' accounts for UI benefit overpayments resulting from identity theft are handled differently for contribution and reimbursable employers.

Under Wis. Stat. § 108.04 (13) (d) 3. a., fraudulently obtained UI benefits are restored to the contribution employer's account and the UI benefit charges are transferred to the fund's balancing account. This represents a form of risk sharing among contribution employers.

For governmental units, Indian tribes, and nonprofit organizations that have elected reimbursement financing, the overpayment remains charged to the employer's account until it is recouped by the department. The reimbursable employer bears all the risk in identity theft cases.

The department proposes that the law treat reimbursable employers in a similar manner as provided under Wis. Stat. § 108.04 (13) (d) 3. a. for contribution employers.

The department will pay, from the UI Trust Fund balancing account, the first \$1 million of identity theft charges that are charged to reimbursable employers. The department projects that \$1 million will cover identity theft fraud charges for many years. The treasurer of the UI Trust Fund will inform the Secretary after reimbursable employers are credited for the first \$1 million of identity theft benefit charges. At that time, the Secretary will consult with the Council on Unemployment Insurance regarding an assessment for repayment of future identity theft benefit charges to reimbursable employers.

After consultation with the Council, if the Secretary determines that reimbursable employers should be assessed for future identity theft benefit charges, all reimbursable employers will be assessed an amount in order to pay benefit charges against reimbursable employers due to identity theft. The assessment would be similar to the Reimbursable Employer Debt Assessment that is authorized by Wis. Stat. § 108.151(7) to recover bad debt that results from uncollectible reimbursement financing.

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Option 3: No Set Aside, Cover First \$1 Million of Charges

The benefit of this option is that employers will not be assessed in order to restore any amount of set aside funds under this proposal, which will result in lower overall assessments if the \$1 million is ever fully paid.

2. Proposed Statutory Language

Create Wis. Stat. § 108.153.

108.153 Liability of reimbursable employees for identity theft. (1) In this section:

(a) “Payroll” has the meaning given in s. 108.02 (21) (a).

(b) “Reimbursable employer” means an employer under s. 108.02 (13) (a) that is subject to reimbursement financing under s. 108.15, 108.151, or 108.152.

(2) Except as provided in par. (6), each reimbursable employer that is subject to this chapter as of the date that a rate of assessment is established under this section shall pay an assessment to the fund at a rate determined by the fund’s treasurer under subs. (3) and (4).

(3) The fund’s treasurer shall tally the amounts used to restore benefit charges to reimbursable employers under s. 108.04 (13) (d) 4. c. The fund’s treasurer shall inform the secretary of workforce development when the total amount used to restore benefit charges to reimbursable employers under s. 108.04 (13) (d) 4. c. for all years exceeds \$1,000,000. The secretary of workforce development shall then consult with the council on unemployment insurance regarding an assessment to reimbursable employers.

(a) If the secretary of workforce development, after consulting with the council on unemployment insurance, determines that reimbursable employers should be assessed to pay for the restoration of future benefit charges to reimbursable employers under s. 108.04 (13) (d) 4. c., the fund’s treasurer shall notify reimbursable employers that the provisions of s. 108.153 (2) will become effective.

(b) On June 30 of each year after the secretary of workforce development determines that reimbursable employers should be assessed to pay for the restoration of future benefit charges to reimbursable employers under s. 108.04 (13) (d) 4. c., the treasurer shall determine the rate of an assessment to be levied under sub. (2).

(c) Except as provided in sub. (6), the assessment shall become payable by all reimbursable employers as provided in sub. (7), unless the total amount of the assessment for all reimbursable employers is less than \$20,000 for any year. If total amount of the assessment is less than \$20,000 for any year, the fund’s

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treasurer shall postpone the assessment until the following year. If the fund's treasurer postpones the assessment, the total assessment for the following year shall include the amounts that the department would have assessed for the calendar years for which the fund's treasurer postponed the assessment.

(4) The rate of assessment under this section for each calendar year shall be a rate, when applied to the payrolls of all reimbursable employers for the preceding calendar year, that will generate an amount equal to the amount paid in the preceding calendar year to reimbursable employers' accounts under s. 108.04 (13) (d) 4. c. The total amount of the assessment under this section shall not exceed \$200,000 for any year. If the amount of the assessment under this section would have exceeded \$200,000 for any year, the amount by which the assessment would have exceeded \$200,000 shall carry forward and be made part of the assessment under this section for the following year.

(5) Except as provided in sub. (6), the rate of each reimbursable employer's assessment under this section for any calendar year is the product of the rate determined under sub. (4), multiplied by the reimbursable employer's payroll for the preceding calendar year, as reported by the reimbursable employer under s. 108.15 (8), 108.151 (8), 108.152 (7), or 108.205 (1), or, in the absence of reports, as estimated by the department.

(6) If a reimbursable employer would otherwise be assessed an amount less than \$10 for a calendar year, the department shall, in lieu of requiring that reimbursable employer to pay an assessment for that calendar year, apply the amount that the reimbursable employer would have been required to pay to the other reimbursable employers subject to an assessment on a pro rata basis.

(7) The department shall bill assessments under this section to a reimbursable employer at its last known address in the month of September of each year and the assessment shall be due to the department within 20 days. Any assessment which remains unpaid after its applicable due date is a delinquent payment. If a reimbursable employer is delinquent in paying an assessment under this section, in addition to pursuing action under the provisions of s. 108.22, the department may:

(a) Pursue action authorized under s. 108.15 (6), if the reimbursable employer is subject to reimbursement financing under s. 108.15;

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(b) Terminate the reimbursable employer's election of reimbursement financing under s. 108.151 (3) (b) or liquidate the employer's assurance under s. 108.151 (4) (b), if the reimbursable employer elected reimbursement financing under s. 108.151(2); or,

(c) Pursue action authorized under s. 108.152 (6), if the reimbursable employer elected reimbursement financing under s. 108.152(1).

(8) If the payroll of a reimbursable employer for any quarter is adjusted to decrease the amount of the payroll after an employment and wage report for the reimbursable employer is filed under s. 108.205 (1), the department shall refund the amount of any assessment that was overpaid by the reimbursable employer under this section as a result of the adjustment.

Create Wis. Stat. §§ 108.16(6) (p) and 108.16(6m) (i) in order to authorize the department to credit the reimbursable employers' accounts and to deposit the assessments into the balancing account.

108.16 (6) (p). Any amounts received for the balancing account under s. 108.153.

108.16 (6m) (i). Any amount to credit the account of an employer subject to reimbursement financing under s. 108.04 (13) (d) 4. c.

Amend Wis. Stat. §§ 108.22(1)(c) and 108.22(1m) in order to authorize the department to charge interest on delinquent assessments and to take collection action on delinquent assessments.

108.22 (1) (c). Any report or payment, except a payment required by ss. 108.15 (5) (b), or 108.151 (5) (f) or 108.151 (7) or 108.153, to which this subsection applies is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law or rule of the department, no later than its due date as determined under par. (b). Any payment required by ss. 108.15 (5) (b), or 108.151 (5) (f) or 108.151 (7) or 108.153 is delinquent, within the meaning of par. (a), unless it is received by the department, in the form prescribed by law, no later than the last day of the month in which it is due.

108.22 (1m). If an employer owes any contributions, reimbursements or assessments under s. 108.15, 108.151, 108.153, or 108.19 (1m), interest, fees, or payments for forfeitures or other penalties to the department under this chapter and fails to pay the amount owed, the department has a perfected lien upon the employer's right, title, and interest in all of its real and personal property located in this state in the amount finally determined to be owed, plus costs. Except where creation of a lien is barred or stayed by bankruptcy or other insolvency law, the

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lien is effective when the department issues a determination of the amount owed under s. 108.10 (1) and shall continue until the amount owed, plus costs and interest to the date of payment, is paid. If a lien is initially barred or stayed by bankruptcy or other insolvency law, it shall become effective immediately upon expiration or removal of such bar or stay. The perfected lien does not give the department priority over lienholders, mortgagees, purchasers for value, judgment creditors, and pledges whose interests have been recorded before the department's lien is recorded.

Amend Wis. Stat. § 108.04(13) (d) 4. to authorize the department to Credit Reimbursable Employer's Accounts who are victims of identity theft.

108.04 (13) (d) 4. To correct any erroneous payment not so adjusted from the account of an employer which is ~~a government unit, an Indian tribe, or a nonprofit organization and which has elected reimbursement financing~~ subject to reimbursement financing, the department shall:

a. ~~If recovery of an overpayment is permitted under s. 108.22 (8) (e), credit~~ Credit to the account benefits which would otherwise be payable to, or cash received from, the employee, if recovery of an overpayment is permitted under s. 108.22 (8) (c); or

b. ~~If recovery of an overpayment is not permitted under s. 108.22 (8) (e), restore~~ Restore the proper amount to the employer's account and charge that amount in accordance with s. 108.07(5); , if recovery of an overpayment is not permitted under s. 108.22 (8) (c); or

c. Restore the proper amount to the reimbursable employer's account, if the erroneous payment resulted from a false statement or representation about an individual's identity and the reimbursable employer was not at fault for the erroneous payment and shall thereafter reimburse the balancing account by crediting to it benefits which would otherwise be payable to, or cash recovered from, the individual who caused the erroneous payment.

Amend the definition of payroll under Wis. Stat. § 108.02 (21) (b) to exclude s. 108.153. Payroll under s. 108.153 only applies to the definition of payroll under 108.02 (21) (a).

108.02 (21) (b) Notwithstanding par. (a), except as provided in s. ~~ss.~~ 108.151 (7) (a) and 108.153, an employer's payroll for calendar years prior to 2009 includes only the first \$10,500 of wages paid by an employer to an individual during each calendar year, for calendar years 2009 and 2010 includes only the first \$12,000 of such wages, for calendar years 2011 and 2012 includes only the first \$13,000 of such wages, and for calendar years after 2012 includes only the

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first \$14,000 of such wages, including any wages paid for any work covered by the unemployment insurance law of any other state, except as authorized in s. 108.17 (5).

Amend Wis. Stat. § 108.151(3)(b) to enable the department to terminate a non-profit's election of reimbursement financing if it fails to pay assessment.

108.151 (3) (b) The department may terminate any election as of the close of any calendar year if the department determines that the employer has failed to make the required reimbursement payments or no longer satisfies the requirements of sub. (4), or whenever s. 108.16 (8) applies, or fails to pay the required assessments authorized by s. 108.151(7) or 108.153.

3. Proposer's Reason for the Change

If an identity thief files a claim using an employee's identity and the employer reports this timely to the department, there is no fault by the employer. Identity thieves randomly file claims against both reimbursable and contribution employers. This proposal will relieve employers which are subject to reimbursement financing of being solely responsible to pay charges for which they are not responsible.

The proposal will represent risk sharing that is similar to what is provided to contribution employers.

4. Effects of Proposed Changes

- a. Policy. This proposal will provide for more equitable treatment of reimbursable employers whose accounts are charged as a result of identity theft.
- b. Administrative Impact. The administrative impact of this proposal is likely to be minor.
- c. Fiscal. See Attached Fiscal Estimate.

5. State and Federal Issues

A state's UI law must conform to, and the administration of its law must substantially comply with, applicable federal requirements.

The department is not currently aware of any federal conformity issues with this proposal.

The department recommends that the statutory language associated with this proposal be sent to the U.S. Department of Labor for review.

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6. Proposed Effective/Applicability Date

This proposal should be effective beginning on January 1, 2016.