

Overpayments and Waivers

This brief is part of the Unemployment Insurance Policy Hub created by the National Employment Law Project as a reference guide for state advocates to support efforts that will strengthen the economic security of workers and their families. For other Policy Hub resources, see www.uipolicyhub.org.

Unemployment Insurance (UI) Overpayments and Waivers Definitions

Determination: A decision that the state agency makes regarding a worker's claim for UI benefits. Many deadlines and timelines are tied to the date of determination.

Improper Payment: A benefit payment to a worker that is either higher or lower than it should be. This includes both overpayments and underpayments.

Overpayment: When a state agency finds it has paid a worker UI benefits the worker was not entitled to.

Recovery: A state's action to collect overpaid UI benefits.

Waiver: When a state agency gives up its right to recover a worker's overpaid UI benefits. The decision that the benefits were overpaid still stands, but the worker does not have to pay the benefits back.

Overview

When unemployed workers receive unemployment insurance (UI) benefits, they typically spend the money immediately on necessities such as groceries or rent. This can lead to a household financial crisis if workers are later required to pay the benefits back. State agencies can require a worker to repay UI benefits if they find that those benefits, or part of those benefits, were improperly paid. This is known as an overpayment.

Overpayment determinations can be devastating for workers because they can come weeks, months, or even years after a worker has received and spent the benefits. Workers may be able to avoid repaying the benefits by challenging the overpayment determination or seeking an overpayment waiver. Unfortunately, several states do not permit waivers and those states that do tend to have uneven and overly complicated processes to request a waiver. This creates uncertainty for workers and can lead to drastic financial consequences. To ensure workers are not unjustly penalized for mistakes and misunderstandings, states

must reform their systems to reduce overpayments and, when necessary, provide for easily accessible waivers.

Overpayments can disproportionately harm Black workers and other workers of color. Due to historic exclusions from wealth-building opportunities over generations, Black and Latinx workers are less likely than white households to have sufficient personal wealth or savings.¹ Similarly, because of structural racism in the economy, workers of color are also paid less on average than white workers, and women are paid less on average than men. These realities make paying back long-spent benefits more burdensome.

Workers with limited English proficiency are also disproportionately harmed by overpayments. Navigating applications, forms, and online systems in English or that are poorly translated opens these workers up to more opportunities for misunderstandings and mistakes that could lead to potential overpayments. The same language barriers lock out workers from properly appealing the overpayment determination or applying for a waiver.

Overpayment processes across the states

Overpayment determinations and processes vary by state, but all states must assess whether the overpayment was caused by fraud when making the determination. Although there was vast national attention on criminal enterprises using stolen identities to defraud the UI system during the pandemic, most overpayments are the result of mistakes or misunderstandings, not fraud. The three most common errors causing overpayments are:

- Agency error in determining that someone is eligible for UI (later finding them ineligible).
- Workers mistakenly failing to notify the state agency when they have returned to work.
- Onerous and confusing work search requirements.² See the work search brief at www.uipolicyhub.org for more details.

Rather than directly addressing these common errors to reduce overpayments in the first place, many states have spent decades focused on detecting alleged fraud by individual workers. For example, it is common practice in many states to issue a determination of “fraud” for most overpayments with little evidence of intent to commit fraud. This practice is disastrous for workers because overpayments determined by the state to be fraudulent must be repaid with mandatory penalties.

Challenging overpayments and accessing overpayment waivers

Once an overpayment determination is made, workers can appeal the determination and any related finding of fraud. But, if a worker loses their appeal, they may be forced to repay the benefits. If workers successfully appeal the fraud determination, or if there is no initial finding of fraud (fraud-based overpayments can never be waived), workers may be able to avoid paying back the benefits by seeking an overpayment waiver. However, not all states allow waivers. As of 2022, 11 states, plus Puerto Rico, do not have a permanent overpayment waiver provision: Delaware, Kentucky, Missouri, Montana, Nebraska, New Mexico, New York, Oklahoma, Texas, Virginia, and West Virginia.³ Some states without an official waiver law, like New York, have other laws that stop the agency from collecting overpayments when the worker received the benefits in good faith and did not make a factually false statement or willful misrepresentation,⁴ but workers are often unaware of this right to nonpayment.

In states that have implemented overpayment waivers, there is great variety in how and when workers can access the waivers. Generally, workers can get waivers for nonfraud overpayments if they meet two criteria: (1) the worker was without fault in causing the overpayment; and (2) repayment would be against equity and good conscience. State law determines both these criteria, and determinations vary by state. Typically, an overpayment is without fault if it was due to something outside the worker's control, such as agency or employer error. States generally find it is against equity and good conscience to recover the overpayment if repayment would cause the worker some form of financial harm.

Not all states use both criteria to determine whether a worker is eligible for a waiver. For example, in New Hampshire, overpayments are waived if the agency simply finds that the claimant was without fault in causing the overpayment.⁵ Other states, like Connecticut, will also grant waivers if repayment would defeat the purpose of the benefits.⁶ Even when states have similar statutory language, broad agency discretion in defining and applying these standards often results in disparity in access to waivers across states for similar circumstances.

Recovery of overpayments

If an overpayment determination becomes final and a waiver is not granted, states can begin overpayment recovery and collection procedures. Workers may be able to seek payment plans to manage the repayment, but states can also use many punitive measures to seek recovery. These include initiating civil cases in court, deducting from the worker's future UI payments, or referring the debt to the US Treasury to seek recovery from the worker's federal tax returns. Many times, a worker may not even know they have outstanding debt until their tax return is intercepted years after they received UI benefits. This time delay is exacerbated by the fact that many states do not limit the time that state agencies can review and assess an overpayment. Workers may receive notices of overpayment years after receiving benefits. It is not uncommon for a worker to no longer reside at the same address or not closely monitor mail from the state agency. To guard against workers facing financial ruin years after receiving UI benefits, states must have strong protections for workers.

Federal Requirements and Guidance

Federal law provides only minimum requirements for states to follow in assessing overpayments and waivers. Indeed, despite the US Department of Labor (USDOL) highly encouraging states to implement overpayment waivers, federal law does not require states to have an overpayment waiver policy. State legislatures and agencies have broad flexibility in designing their state laws and policies regarding overpayment and waiver. The current federal requirements are described below.

Due process requirements

Federal law requires states to provide workers with due process, including proper notice and appeal rights.⁷ This includes contacting the worker about a potential overpayment and giving them an opportunity to present evidence and be heard prior to making a final determination that an overpayment has occurred.⁸ Once the state agency has made an overpayment determination, it must provide the worker with a written notice that has "sufficient information" for the worker to understand the reason why the overpayment was established.⁹ The notice must also state the worker's right to appeal and, if applicable, the right to a waiver.¹⁰ In determining whether the overpayment is due to fraud, states cannot

use automation. In other words, all fraud determinations must be made by agency staff.¹¹ However, this does not stop states from using automation to identify suspected fraudulent claims. In practice, it means *final* determinations of fraud are assessed by agency staff.¹²

Overpayment waiver requirements

Federal law prohibits states from waiving any overpayment due to fraud. For this reason, state agencies are required to assess each overpayment to determine whether it was caused by fraud. State law defines what constitutes fraud. States must assess at least a 15 percent penalty on all fraudulent claims, but states are allowed to assess even higher penalties, and there is no federal limit.¹³ Further, for regular state UI programs, states must assess each waiver application separately and cannot grant waiver to a broad group of claims at one time (known as a blanket waiver), even when the overpayments were all due to one systemic problem or agency error. The process is different for the temporary federal UI programs that were in place during the pandemic (Pandemic Unemployment Assistance, Federal Pandemic Unemployment Compensation, and Pandemic Emergency Unemployment Compensation). For those benefits, USDOL allows blanket waivers for certain categories of overpayments. For the federal rules governing overpayment waiver of the temporary federal pandemic programs, see the fact sheet *Understanding and Improving Overpayment Waivers for Federal and State Unemployment Insurance Benefits*.

Overpayment recovery

Federal law restricts states from starting to recover an overpayment until an official determination of the overpayment has been made.¹⁴ Similarly, if a state allows waivers, the state cannot start to recover the overpayment until the window for applying for a waiver has passed, or, if the worker applies for a waiver, the waiver determination has been made. However, states have the ability to begin recovering overpaid funds during the appeals process. States may, but are not required to, wait until a final determination is made.¹⁵

Mandatory reporting and integrity measures

Another factor that can influence state legislature and agency decisions around overpayments and waivers are federal reporting and integrity measure requirements. Every state must participate in the Benefit Accuracy Measurement (BAM) program.¹⁶ BAM is a statistical survey used to identify state UI improper payment rates and the causes for the improper payments, among other things. The state must then report the survey results to USDOL and meet certain standards, known as “integrity measures.” USDOL requires states to have an improper payment rate of less than 10 percent and a recovery rate of at least 68 percent. States that do not meet these standards can face additional scrutiny and oversight by USDOL as well as possible sanctions and loss of administrative funding. Given these requirements and possible consequences for not meeting the requirements, states often prioritize policies that support meeting these measures, at a cost to workers.

Policy Recommendations

Given the complexity of the UI system, it is unsurprising that simple mistakes and misunderstandings lead to workers being overpaid benefits. However, federal pressure on states to meet integrity standards—focused solely on controlling for overpayments and eradicating alleged fraud by individuals—has led to overly aggressive state processes that punish workers for unintentional mistakes and undercut the very purpose of UI benefits. Rather than providing workers with economic stability while searching for work, the UI

system can destabilize workers by forcing them to repay benefits they may have already spent on necessities. While federal UI reform is needed to simplify processes and change incentives to avoid overpayments in the first place, states have the power to implement many reforms that center equity, ease administrative burdens, and ensure workers are not forced to pay for unintentional mistakes. Specifically, states should:

- 1. Enact strong overpayment waiver laws that limit agency discretion.** All states should implement a permanent overpayment waiver law that requires the state agency to waive all nonfraud overpayments. A state can choose to waive all overpayments that are without fault of the worker or that would be against equity and good conscience.

State law should clearly define that “without fault” means the worker provided, or attempted to provide, correct information and that state action or delay with the information caused the overpayment. More specifically, overpayments are without fault of the worker when:

- The worker provided incorrect information due to conflicting, changing, or confusing information or instructions from the state.
- The worker was unable to reach the state despite the worker’s best efforts to inquire or clarify what information was needed.
- The worker faced any language, education, literacy, or other similar barriers.
- The overpayment was due to agency error or mistake.
- The employer provided incorrect or untimely information.

State law should also clearly define when and under what circumstances it is against equity and good conscience to recover the overpayment. Enumerated circumstances helps workers understand what they need to prove and provides direction to the agency to make waiver determinations. Providing examples of acceptable circumstances will also protect against implicit racism and bias that can arise in individual determinations.

The purpose of UI is to provide economic stability to workers between jobs. States should consider “against equity and good conscience” to include not only economic challenges but also other circumstances workers may face when forced to repay benefits that undercut the purpose of UI. Such circumstances include when:

- The worker is receiving, or has received in the past year, any public benefits (i.e., SNAP, Medicaid, TANF, WIC, LIHEAP, and any other similar state programs).
- Recovery of overpayment would cause financial hardship to the worker.
- Regardless of their financial situation, the worker can show that due to receiving UI benefits or because of the incorrect benefit payment, the worker has either relinquished a valuable right or changed positions for the worse.
- There is substantial delay between receipt of the benefits and the overpayment determination, including when the state fails to meet federal timeliness standards for determinations and appeals.
- The worker certifies that the overpaid benefits were used to meet their ordinary living expenses.
- The overpayment was caused directly by state or employer error or the employer failing to provide timely and accurate information.¹⁷

The law should clearly state that a worker can establish any one of these bases via a written statement signed by the worker. Colorado recently passed legislation that mirrors many of these recommendations.¹⁸

- 2. Require notices and forms to use plain language, be translated, and clearly inform workers of their rights and obligations.** Although federal law requires states to inform workers in a timely manner of the reason for an overpayment determination, their right to appeal, and, if applicable, their right to a waiver, states often fail to meet this standard. Claimants regularly complain about confusing and frightening overpayment notices that leave them perplexed about the cause of the overpayment or how to correct it. To address these concerns, states must create and implement robust standards, including plain language notices available in multiple languages and provided to claimants in multiple ways (e.g., email, text, mail, online platform, etc.). States should engage with workers and community-based organizations working with jobless workers in this process.
- 3. Hold employers and their agents accountable.** States must ensure employers comply with the obligation to provide the agency with timely and accurate information to ensure workers' UI claims can be properly assessed. In most states, the worker is penalized when delayed and inaccurate information leads to an overpayment. However, in Hawaii, employers who fail to provide the agency with the required information in a timely manner are held solely responsible for the overpayment, and the state may charge the employer's UI account for the full overpayment amount.¹⁹ Similarly, in Georgia, employer accounts can still be charged for a claim that was later found to be improper if the employer failed to provide timely information.²⁰ All states should adopt similar practices to support positive employer behavior.
- 4. Ensure equitable, worker-centered implementation of state overpayment and waiver law.** Strong policy language is an important first step to ensure workers are not unfairly punished for unintentional mistakes that lead to overpayment. However, equally important is state agencies' implementation of the policy and the overpayment waiver processes. State agencies should adopt the policies and practices that center the needs of workers who face the most significant access barriers, such as workers with disabilities, workers with limited English proficiency, and workers with technological barriers. These policies and practices should include:
 - **Assessing waiver eligibility at the outset.** The onus should be on the state agency, not the worker, to assess a worker's eligibility for a waiver during the overpayment determination process. To the extent the state agency needs additional information from the worker to determine whether the worker qualifies for a waiver, the state agency should proactively reach out to the worker for that information and request the minimal necessary information. This avoids unnecessary burdens for workers and increases administrative efficiency.
 - **Prohibiting recovery until overpayment determination is final.** Determinations should not be deemed final while there are pending appeals or pending waiver applications. Recovery should cease even if a pending appeal or application is untimely. It is important that recovery only be allowed when there is a final determination that the debt is in fact owed and appeals have been exhausted.

- **Setting a reasonable statute of limitations.** States should restrict the time the state agency has to make a redetermination, issue an overpayment, and seek recovery of overpayments. Ensuring a timely process will protect workers from having to defend against overpayments years after receipt of benefits.
- **Require robust data collection and reporting.** States should be collecting detailed data broken down by key demographic metrics (i.e., race, ethnicity, gender, disability, language) throughout the overpayment and waiver process. They should also track the amount of overpayments assessed, how many overpayments are successfully reversed on appeal, and the number of waiver requests that are approved or denied as well as the reasons for denial. This data should be easily accessible to the public online and kept updated.

Use NELP's overpayment waiver model state legislation available at www.uipolicyhub.org to help draft a bill to implement many of these policy recommendations. Please note that drafting legislation can vary depending on state-specific legal and policy issues. For example, existing state UI law may use certain terms or phrases that the model language would not reflect. Similarly, different states laws may not include all sections in the model state legislation.

Research Findings and Arguments to Support Reform

Strong overpayment and waiver laws are essential to the purpose of UI.

Overpayment and waiver policy reform is essential to ensure the UI system continues to serve its purpose of supporting workers who have lost their jobs and stabilizing the overall economy during economic downturns. In good times and bad, unemployment can be a crisis for workers. UI is a lifeline for workers, ensuring they can continue to care for themselves and their families while they search for a new job. This was particularly true during the pandemic, when unemployment benefits, including the federal pandemic programs that workers fought for and won, kept millions of workers out of poverty.²¹

UI benefits also help sustain consumer demand during economic downturns. When the economy slows down and unemployment rises, decreased consumer spending is a major obstacle to economic recovery.²² UI benefits are one of the most efficient and well-targeted means of economic stimulus. Economists find that a \$100 increase in government spending on UI leads to between \$70 and \$90 in additional economic growth in the private sector.²³ UI puts money into the hands of consumers who need it and will spend it quickly, supporting businesses and stabilizing the state's economy. When states demand that workers pay back UI benefits, they pull money out of local economies and hinder economic recovery. When states assess workers' overpayments and use aggressive recovery measures, it harms workers, the state, and undermines the purpose of UI.

Overzealous overpayment and recovery measures harm workers.

It is stressful and frightening for workers to learn they owe hundreds, if not thousands, back to the state. Workers worry about how to make payments and may be negatively impacted by believing they did something wrong. This financial and emotional toll on workers is unnecessary and counterproductive, particularly when the initial overpayments are through no fault of the worker.

Overzealous overpayment and recovery measures waste agency resources.

Funding for UI administration has either remained flat or been slashed over the better part of the last four decades, leaving state agencies under resourced. Zealously pursuing nonfraud overpayments wastes already scarce agency resources. Instead, states should focus time and resources on improving the initial intake and application process to minimize improper payments in the first place and ensure timely payments overall.

Having to repay benefits can disproportionately harm Black workers and other workers of color.

Due to historic exclusions from wealth-building opportunities over generations, Black and Latinx workers are less likely than white households to have sufficient personal wealth or savings to cushion the blow of unemployment.²⁴ For every dollar in wealth held by the typical white family, the typical Black family has just 12 cents, while the typical Latinx family has 21 cents.²⁵ Similarly, as a result of structural racism in the economy, workers of color are also paid less on average than white workers, and women are paid less on average than men. Lower incomes, as well as lower wealth, make it more difficult for workers of color to repay long-spent benefits.

Data and State Comparison Resources

Compare your state's overpayment and waiver processes to other states.

Consult USDOL's annual [Comparison of State Unemployment Insurance Laws](#) for a detailed comparisons of states' overpayment and waiver processes, including:

- Reasons states waive recovery of the overpayment (Table 6-1)
- Recovery of nonfraud overpayments (Table 6-2)
- Fraud penalties (Table 6-3)
- Overpayment write-off provisions (Table 6-4)

Evaluate the accuracy of your state's UI payments.

Use USDOL's [Unemployment Insurance Payment Accuracy by State](#) tool to find your state's improper payment rate and compare to other states. Simply click on a state to get more detailed information, including the root causes of the state's overpayments.

Download the yearly improper payment data derived from the BAM survey using the [Unemployment Insurance Payment Accuracy Datasets](#). The data downloads in spreadsheet and PDF formats and includes improper payment rates, integrity rates, overpayments by cause, and overpayments by responsibility.

Evaluate your state's recovery processes and rates.

Consult the USDOL's [Unemployment Insurance Recovery Core Measures](#) to find your state's recovery rate. This is the ratio of the amount of improper payments recovered to the adjusted amount of improper overpayments established (established overpayments minus overpayments waived). Compare your state to up to 14 other states at a time and view recovery rates across years and quarters. This will show how well your state is meeting the USDOL integrity measure of having at least a 68 percent recovery rate.

Using USDOL data sets, the Century Foundation has created the [Unemployment Insurance Data Explorer](#) to help make the data sets more accessible. Find each state's overpayment and

recovery rates, the percentage of total UI payments that are overpayments (including how many are fraud versus nonfraud), and how much the state has recovered through the tax program and other overpayment recovery processes.

References and Essential Articles

Understanding and Improving Overpayment Waivers for Federal and State Unemployment Insurance Benefits, National Employment Law Project, February 2022, <https://www.nelp.org/publication/understanding-and-improving-overpayment-waivers-for-federal-and-state-unemployment-insurance-benefits/>.

Relevant UI Program Letters (UIPLs)

- [No. 01-16 and 01-16, Change 1](#) (guidance on state requirements regarding overpayments and waivers for regular UI benefits)
- [No. 20-21 and 20-21, Change 1](#) (guidance on overpayment waivers for federal pandemic benefits)

Endnotes

¹ Angela Hanks, Danyelle Solomon, and Christian E. Weller, “Systemic Inequality,” Center for American Progress, February 21, 2018, <https://www.americanprogress.org/article/systemic-inequality/>.

² “Unemployment Insurance Benefit Payments—UI Payment Integrity Information,” US Department of Labor Employment and Training Administration, https://oui.doleta.gov/unemploy/improp_pay.asp#.

³ “Comparison of State Unemployment Insurance Laws 2021,” US Department of Labor, 2021, chapter 6, <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2021/complete.pdf>.

⁴ See N.Y. Labor Law § 597.

⁵ N.H. Rev. Stat. Ann § 282-A:165, II.

⁶ Conn. Agencies Regs. § 31-272-4.

⁷ “Unemployment Insurance Program Letter No. 01-16,” US Department of Labor Employment and Training Administration, 2, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-01-16>.

⁸ *Id.*

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

¹² Stephanie Wykstra, “Government’s Use of Algorithm Serves Up False Fraud Charges,” Undark, June 1, 2020, <https://undark.org/2020/06/01/michigan-unemployment-fraud-algorithm/>.

¹³ 42 U.S.C. § 503(a)(11)(A).

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ 20 C.F.R. Part 602.

¹⁷ Alabama (Ala. Admin. Code R. 480-4-4.07), Florida (Fla. Stat. § 443.151), and Maine (Me. Rev. Stat. Ann. Tit. § 1194) already recognize automatic waivers when employers fail to timely report wages or other relevant information pursuant to state law.

¹⁸ Unemployment Compensation Act of 2022, SB22-234, Colorado General Assembly, <https://leg.colorado.gov/bills/sb22-234>.

¹⁹ Haw. Rev. Stat. Ann. § 383-33.

²⁰ Ga. Code Ann. § 34-8-157.

²¹ Amy Traub, “7 Things We Learned About Unemployment Insurance During the Pandemic,” National Employment Law Project, November 16, 2021, <https://www.nelp.org/publication/7-things-we-learned-about-unemployment-insurance-during-the-pandemic/>.

²² “Policy Basics: Fiscal Stimulus,” Center on Budget and Policy Priorities, May 21, 2020, <https://www.cbpp.org/research/economy/fiscal-stimulus>.

²³ Gabriel Chodorow-Reich, “Geographic Cross-Sectional Fiscal Spending Multipliers: What Have We Learned?,” National Bureau of Economic Research, July 2017, <https://www.nber.org/papers/w23577>; Marco Di Maggio and Amir Kermani, “The Importance of Unemployment Insurance as an Automatic Stabilizer,” National Bureau of Economic Research, September 2016, <https://www.nber.org/papers/w22625>.

²⁴ Hanks, Solomon, and Weller, “Systemic Inequality.”

²⁵ Ana Hernandez Kent and Lowell Ricketts, “Wealth Gaps between White, Black and Hispanic Families in 2019,” Federal Reserve Bank of St. Louis, January 5, 2021, <https://www.stlouisfed.org/on-the-economy/2021/january/wealth-gaps-white-black-hispanic-families-2019>.