

Unemployment Insurance Overpayment and Fraud Recovery

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The federal-state Unemployment Insurance (UI) system has faced long-standing program integrity challenges. The temporary, [augmented, and expanded UI benefits](#) created by Congress in response to the COVID-19 pandemic exacerbated program integrity concerns related to overpayments and fraud. For an overview of these UI program integrity issues, see CRS In Focus IF12243, *Unemployment Insurance Program Integrity: Recent Developments*.

Recently, there has been [heightened congressional attention](#) to UI overpayments, including the scope of [fraudulent overpayments](#) and [policy proposals](#) to prevent and recover UI overpayments and fraud. For example, on February 28, 2023, the House Committee on Ways and Means ordered to be reported an amendment in the nature of a substitute to H.R. 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act.

This Insight summarizes existing state and federal authorities for the recovery of UI overpayments, including fraudulent payments. It also discusses authorities to waive overpayments in cases of non-fraud and non-fault. Finally, it provides examples of proposals to enhance or extend methods for UI overpayment recovery.

State Procedures to Recover Regular UI Overpayments

Although there are broad requirements under federal law regarding UI benefits and financing, the specifics are set out under each state's laws. All [state UI laws](#) provide for the recovery of benefit overpayments. [Federal law](#) requires that states recover [non-fraud](#) and [fraud](#) overpayments by offsetting future payments of UI benefits. States may also offset overpayments with state tax refunds or lottery winnings. States can compel repayment by pursuing civil action in state court. In some states, UI laws also authorize denial or suspension of the professional licenses of individuals who owe an overpayment of UI benefits. Under [federal law](#), states must recover overpayments due to fraud and overpayments due to misreported work from an individual's federal income tax refund through the [Treasury Offset Program](#). Some states also assess interest on outstanding overpayment balances in cases of both [fraud](#) and [non-fraud](#). In some situations, states apply fines and civil penalties when [fraud](#) is involved. States also have criteria for when overpayments are [written off](#) or cancelled (e.g., death, age of overpayment).

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Authorities Related to COVID-19 UI Overpayment Recovery

The Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136), as [amended](#), includes authority for recovery of COVID-19 UI payments through [benefit offsets](#). These offsets are limited to no more than 50% of future UI benefits and are subject to a time limit of three years, except for benefit offsets of [Pandemic Unemployment Assistance](#) (PUA), which is [not subject](#) to a time limit. Additionally, all COVID-19 UI payments determined to be fraudulent are subject to a [15% penalty](#) assessment.

Waivers from UI Non-fraud Overpayment Recovery

Many state UI laws include provisions to [waive](#) the overpayment of non-fraud overpayments in certain cases. Most, but not all, states waive repayment in certain circumstances. For example, states may waive non-fraud overpayments due to agency error or employer error. States may also waive non-fraud overpayments in situations in which the overpayment is made without fault and in which recovery would be against *equity and good conscience* or involves a financial hardship. According to the U.S. Department of Labor (DOL), the following [11 jurisdictions](#) do not have waivers from overpayment recovery: Delaware, Kentucky, Mississippi, Missouri, Nebraska, New Mexico, New York, Oklahoma, Puerto Rico, Texas, and West Virginia.

The CARES Act, as amended, provides authority for all states to opt to waive certain overpayments of COVID-19 UI benefits in cases of non-fraud hardship. Additionally, there are limited circumstances in which states may use *blanket waivers* of certain categories of non-fraud overpayments. To waive COVID-19 UI benefit overpayments, states must determine that the individual is not at fault and that overpayment repayment would be contrary to [equity and good conscience](#) as determined under state law. Blanket waivers for groups of individuals who received COVID-19 UI non-fraud overpayments may occur in [seven, specific circumstances](#); in all other circumstances, states must make individual waiver determinations based on the facts and circumstances of the specific overpayment.

Proposals to Enhance or Extend UI Overpayment Recovery

As ordered to be reported, H.R. 1163, the Protecting Taxpayers and Victims of Unemployment Fraud Act, includes several proposals that would enhance or extend UI overpayment recovery, among other UI program integrity measures. (The Congressional Budget Office released a [cost estimate](#) for H.R. 1163 on March 21, 2023.) Section 2 of H.R. 1163 would extend the time limit for benefit offsets for recovery of COVID-19 UI overpayments from 3 years to 10 years (and it would impose the same 10-year time limit on benefit offset recovery for PUA overpayments). Section 2 would also allow states to retain 25% of recovered COVID-19 UI overpayments, which could then be used for certain program integrity purposes. This latter proposal was also included in several bills in the 117th Congress (S. 1699, S. 4507, H.R. 3268, and H.R. 8000).

Under Section 3 of H.R. 1163, states would also be authorized to retain up to 5% of recovered overpayments of permanent-law UI benefits and use those retained amounts for certain program integrity purposes. (Under current law, states are not permitted to retain recovered overpayments.) This proposal is also included in DOL's Office of Inspector General's "[OIG Recommendations to Congress](#)" and was included in several bills in the 117th Congress (S. 4507, H.R. 8000, and H.R. 8661).

Section 6 of H.R. 1163 would extend the statute of limitations for criminal prosecution of COVID-19 UI fraud to 10 years (from 5 years currently). This proposal is also included in DOL's Office of Inspector General's "[OIG Recommendations to Congress](#)."

Additional Resources

CRS Report R47079, *Unemployment Insurance: Program Integrity and Fraud Concerns Related to the COVID-19 Pandemic Response*

DOL-OIG, “OIG Oversight of the Unemployment Insurance Program,” <https://www.oig.dol.gov/doloiguooversightwork.htm>

DOL, *2022 Comparison of State Unemployment Insurance Laws*, Chapter 6, “Overpayments,” <https://oui.doleta.gov/unemploy/pdf/uilawcompar/2022/overpayments.pdf>

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