

# Waive nonfraud overpayments when collection would be unfair



## What is it?

States are stepping up efforts to recoup UI benefits paid to workers who are later found to be ineligible. A majority of such overpayments are a result of confusion over program rules and not due to willful acts of fraud. States should enact policies that allow for waiver of nonfraud overpayments when the worker was not at fault in causing the overpayment and paying the benefits would create undue hardship for the worker.



## Key arguments in favor

**Most overpayments are not due to fraud.** Of all the overpayments currently detected, only one in three is classified as fraud, that is, is caused by actively lying or deceiving the state to receive benefits. The Department of Labor estimates that, when undetected overpayments are also considered, only one in four of all possible overpayments are fraudulent.

**Nonfraud overpayments often occur because of confusion over program rules.** One-third of the nonfraud overpayments established in 2003 were the result of claims initially approved by the state, but later denied due to successful employer appeals or agency reversals. Other reasons for overpayments involve mistakes by agencies in application of rules, or confusion by claimants about requirements for reporting other forms of income. Many of these overpayments are not the fault of the claimant, and forcing workers to repay them is unfair.

**States should adopt rules that do not require repayment if it would violate principles of “equity and good conscience.”** This standard allows the state to examine the fairness of the repayment. It avoids, for example, “gotcha” situations, where workers have already spent jobless benefits on important needs and don’t have the resources to pay the state back. Several states’ laws allow waivers in cases of financial hardship because recovery would defeat the purpose of UI by pushing the claimant and his family further into poverty. States should examine the family hardship that would be caused by repaying the overpayment, as one — but not the only — criteria under their waiver procedure.



## Key arguments against and responses to them

**Opponents say:** States should recoup as many overpayments as possible to maintain the integrity of the UI system.

**Response:** The core purpose of the UI system is to ameliorate the difficulties facing jobless families during times of unexpected unemployment by timely delivering income support. Overzealous recovery that unnecessarily hurts families or

discourages workers from seeking UI benefits undermines these goals. Waiving repayment does not affect the charging of benefits to an individual employer's account.



## Which states do it?

At least half of the states have provisions for waiving nonfraud overpayments if recovery would violate principles of equity and good conscience.



## Model legislation

### Maine

5. If, after due notice, any person refuses to repay amounts erroneously paid to that person as unemployment benefits, the amounts due from that person are collectible in the manner provided provided that there is no recovery of payments from any person who, in the judgment of at least 2 commission members, is without fault and where, in the judgment of the commission, such recovery would defeat the purpose of benefits otherwise authorized or would be against equity and good conscience. No recovery may be attempted until the determination of an erroneous payment is final as to law and fact and the individual has been notified of the opportunity for a waiver under this subsection.

ME. REV. STAT. ANN. tit. 26, § 1051.

### Model rules on waiver factors

Factors to be considered shall include, but are not limited to the following:

1. The claimant's general health and earning capacity;
2. Whether other individuals depend or rely upon the claimant for support and sustenance;
3. The claimant's employment status at the time of the request;
4. The claimant's current family income and reasonable expenses;
5. The existing long and short-term debts of the claimant and his or her family;
6. Any extraordinary medical or other expenses of the claimant and his for her family;
7. Whether the claimant has received unemployment benefits as a windfall, for example, where a back-pay award is later received;
8. The notice, if any, and the clarity of such notice provided by the bureau to the claimant of the possibility of a later determination of erroneously paid amounts.
9. Change of Position: A claimant will be considered to have detrimentally changed his or her position in reliance upon the receipt of benefits if the claimant has taken any reasonable action or incurred a necessary financial obligation in the conduct of his or her affairs which the claimant would not have taken but for the receipt of the benefits.

Adapted from Maine and California Regulations  
CODE ME. R. tit. 12 § 172-26, CAL. CODE REGS. tit. 22, § 1375-1

## References

U.S. DEP'T OF LABOR, CALENDAR YEAR 2002  
BENEFIT ACCURACY MEASUREMENT DATA  
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[www.ows.doleta.gov](http://www.ows.doleta.gov).

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