

Guidance Document

Pursuant to Neb. Rev. Stat. §84-901.03

This guidance document is advisory in nature but is binding on an agency until amended by such agency. A guidance document does not include internal procedural documents that only affect the internal operation of the agency and does not impose additional requirements or penalties on regulated parties or include confidential information or rules and regulations made in accordance with the Administrative Procedures Act. If you believe that this guidance document imposes additional requirement or penalties on regulated parties, you may request a review of the document.

Waiver of Federal Benefit Overpayment Under the Pandemic Unemployment Assistance, Pandemic Emergency Unemployment Compensation, Federal Pandemic Unemployment Compensation, and Lost Wage Assistance programs.

DISCLAIMER:

This Guidance Document is not intended to take the place of the law, but is intended to provide individuals with a general understanding of some of the requirements related to the Nebraska Department of Labor's waiver of overpayments established under the Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), Federal Pandemic Unemployment Compensation (FPUC), and Lost Wage Assistance (LWA) programs. For additional information, individuals may consult the CARES Act (Pub. L. 116-136) and the Continued Assistance Act (Pub. L. 116-260), and the corresponding federal Unemployment Insurance Program letters, or visit dol.nebraska.gov where information is provided on the Nebraska Employment Security Law (NESL) (*Neb. Rev. Stat.* §§48-601 through 48-683) and portions of the Nebraska Administrative Code related to NESL.

Waiver of overpayment

Under the CARES Act and the Continued Assistance Act, certain benefit overpayments may be waived if the claimant was not at fault for the overpayment **and** it would be against equity and good conscience to collect the overpayment. Pursuant to federal law, overpayments for Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation, Lost Wage Assistance (LWA), and Federal Pandemic Unemployment Compensation (FPUC) may be waived by a state if all conditions are met. Overpayments for regular state unemployment insurance benefits, Extended Benefits, "T-26", and TRADE benefits, are **not** eligible for waiver.

To apply for a waiver of an overpayment, a person must complete the application for waiver within the timeframe provided on the notice. If the overpayment involves multiple weeks of benefits, the individual may be required to provide information as to each week. Pursuant to federal law, the decision on the waiver by the Nebraska Department of Labor is final and may not be appealed. The determination that created the overpayment remains appealable in accordance with the existing provisions of the Nebraska Employment Security Law and the Nebraska Administrative Code, the CARES Act and the Continued Assistance Act.

The burden of proof is on the claimant to provide sufficient information to establish eligibility for the waiver of an overpayment. It is critical that claimants provide adequate information in their application in order for a waiver of an overpayment to be granted.

Elements required for waiver

In order to establish that an overpayment may be waived, claimants must show:

- The overpayment was for PUA, PEUC, LWA, or FPUC benefits;
- The claimant was not at fault for the overpayment; **and**
- It would be against equity and good conscience to collect the overpayment.

Claimant not at fault for the overpayment

- Information provided by the claimant was not relied upon in the determination that created the overpayment
 - o The following is a non-exhaustive list of overpayments where the claimant may not be at fault for the overpayment.
 - Claimant was paid under PUA when they had regular unemployment, PEUC or Extended Benefits eligibility at a weekly benefit amount (WBA) that was less than the individual's PUA WBA; when the weeks were moved to the correct program the claimant had an overpayment of PUA and FPUC;
 - Claimant provided all the requested information, but agency error caused a redetermination that created an overpayment; **or**
 - Claimant was originally determined eligible for a PUA weekly benefit amount of \$174 per week due to agency error and was only entitled to a PUA WBA of \$173 per week.

Against equity and good conscience

- For purposes of this guidance document, equity and good conscience shall mean that given the individual claimant's circumstances, fairness will be applied.
 - o Establishment of equity and good conscience will be based on a totality of the circumstances, the following may be considered:
 - Denial of the waiver of repayment of the overpayment would deprive the claimant of income required for basic necessities such as food, shelter, medicine, electricity, water, or transportation;
 - The claimant's household income is at or below the 2021 federal poverty guidelines.
 - 2021 federal poverty guidelines are available here: [2021-01969.pdf \(govinfo.gov\)](#);
 - Claimant's general health, including disability, competency, and mental or physical impairment;
 - Education level, including literacy;
 - Current employment status and history of employment;
 - Future earnings potential based on the individual's occupation, skills, and the local labor market;
 - Marital status and number of dependents, including whether other household members are employed;
 - The amount of the overpayment;
 - The claimant can establish he or she relinquished a valuable right or changed positions for the worse; and
 - Other factors indicating that repayment of the full amount would cause undue economic, physical, or mental hardship.