How States Can Recover Unemployment Insurance Overpayments

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Overview

Throughout 2020, unemployment insurance (UI) received a great deal of attention due to Congress's $600 weekly UI boost contained in the CARES Act.[1] Unfortunately, this bonus precipitated untold amounts of fraud, abuse, and other improper payments in UI systems across the country.[2-3] UI improper payments occur when payments are made incorrectly or in the incorrect amount for any reason, including bureaucratic mistakes, employer errors, and failure of employees to comply with program requirements.[4] An important subset of improper payments is UI fraud. The important distinction here is that these are *willful acts* to illegally obtain UI benefits for which one is unqualified, often involving concealment or deception of the facts, rather than simply mistakes or oversights.[5]

Recent reports suggest fraudsters may have stolen as much as $36 billion from UI trust funds in 2020 alone.[6] This is especially concerning considering the UI system paid out in total roughly $26 billion in the previous year.[7] Unbelievable stories of UI fraud are beginning to emerge, with countless untold cases still yet to be uncovered.[8]

This presents an important opportunity: States have the power to take action to recover improper UI payments, including both non-fraud overpayments and blatant UI fraud. With a variety of mechanisms at their disposal, states can take significant steps to preserve program integrity and protect the health of their UI trust funds.

How States Can Recover UI Fraud and Other Improper Payments

Between July 2019 and June 2020, more than eight percent of UI payments were made improperly, with at least a dozen states exceeding the federal standard and reaching double-digit levels of overpayments.[9] These numbers will surely increase once the full 2020 calendar year can be measured.

Unfortunately, on average, only about one in every three dollars spent on improper payments were recovered by states during this period, meaning **states were unable or unwilling to immediately recover approximately two-thirds of all UI improper payments**.[10] Some states barely recovered any improper payments.[11]

Thankfully, states have a menu of options at their disposal to recover overpayments, both fraudulent and non-fraudulent.

1. Eliminate Non-Fraud Overpayment Waivers

Many states waive non-fraud improper payments for certain reasons, both for administrative reasons (including agency and employer errors) and/or for consideration of individual circumstances (e.g. "financial hardship" and "equity or good conscience" waivers).[12] These latter two waivers are especially troublesome due to their ambiguous nature and the ability of state bureaucrats to grant them without restraint. All of these waivers are misguided policy: They directly contribute to the inability of states to recover improper payments.

A staggering 40 states have one or more of these types of waivers in place for non-fraud overpayments.[13] However, the 10 states that do not waive overpayments at all are more successful in recovering these improper payments. **Non-waiver states are nearly 14 percent more successful in recovering UI improper** payments compared to states using waivers.[14]

States can and should rescind waivers related to improper payments, whether for administrative mistakes or ambiguous considerations of individual circumstances. These waivers are an impediment to proper recovery of UI improper payments.

2. Use Benefit and Tax Refund Offsets

Another set of tools states have is to deduct UI improper payments from future UI benefits that the claimant is eligible for, and to deduct overpayments from their federal and state tax refunds.[15] States have discretion over what percent of the overpayment is offset against future benefits, and whether or not there is a time limit for benefit offsets.[16] States can pursue these offsets for both fraudulent and non-fraud improper payments.[17]

The 25 states that offset against tax refunds and 100 percent of future UI benefits are far more successful in recovering overpayments than states that have no or more limited offsetting mechanisms. On average, **states using these offsets are more than 37 percent more successful in recovering UI improper payments** compared to their counterparts.[18]

Deducting overpayments from future UI benefits and tax refunds is a powerful tool for states to recover UI fraud and other improper payments.

3. Charge Interest on Outstanding Overpayments

Several states charge interest on the balance of both fraud and non-fraudulent overpayments.[19] This is a prudent measure to encourage the recovery of improper payments and improve the health of UI trust funds.

The 17 states that assess interest on overpayment balances for both fraud and non-fraudulent overpayments are, on average, **54 percent more successful in recovering UI improper payments** compared to their counterparts that do not assess interest for fraud and non-fraud overpayments.[20] This simple policy tool is a substantively effective way to assist in the recovery of improper payments by states, which should be pursued.

4. Pursue Civil Action

States can also take civil action against claimants who received UI payments improperly as a means to compel repayment.[21] These actions are an effective tool for states to recoup both fraud and non-fraudulent overpayments.[22]

The 37 states that pursue civil action in these circumstances recover a greater percentage of overpayments compared to the 13 counterparts that do not pursue civil action for both fraud and non-fraudulent overpayments. On average, these 37 states are **33 percent more successful in recovering UI improper payments** compared to their counterparts that do not universally pursue civil action.[23]

Other Actions for Fraud Recovery

In cases of outright fraud, many states have chosen to employ additional tools to recover fraudulent overpayments. Every single state imposes fines or penalties on claimants who have defrauded the UI system, although they vary in degree.[24] Similarly, virtually all states have provisions allowing for prison time for UI fraud—although the harshness of criminal penalties varies wildly by states.[25]

States can improve their UI fraud recovery efforts and deter fraud in the first place by establishing more stringent fines and prison sentences for claimants who engage in fraud.

Bottom Line: States Should Recover UI Overpayments

States have an opportunity and an obligation to recover both fraudulent and non-fraud overpayments. These measures will improve the health and solvency of UI trust funds, preserve resources for the truly needy, and deter fraudsters to begin with. Now more than ever, requiring the recovery of UI overpayments is critical.

Further, states have a menu of options at their disposal to assist in overpayment recovery efforts. States that pursue overpayment recovery policies to their fullest extent are far more successful in recovering overpayments.

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[1] Public Law 116-136 (2020), https://www.congress.gov/116/bills/hr748/BILLS-116hr748enr.pdf.

[2] Josh Waters, "Congress's destructive $600 weekly unemployment bonus is boosting fraud and killing jobs," Foundation for Government Accountability (2020), https://thefga.org/research/unemployment-bonus-fraud.

[3] Joseph Horvath and Jonathan Bain, "Top 10 Examples of Outrageous Unemployment Fraud in 2020—And How to Fix It," Foundation for Government Accountability (2020), https://thefga.org/research/unemployment-fraud-examples/.

[4] U.S. Department of Labor, "Chart – Unemployment Insurance Improper Payment Rates," U.S. Department of Labor (2020), https://oui.doleta.gov/unemploy/pdf/UI_Improper_PaymentRates.pdf.

[5] Ibid.

[6] Nick Penzenstadler, "How scammers siphoned $36B in fraudulent unemployment payments from US," USA Today (2020), https://www.msn.com/en-us/news/us/how-scammers-siphoned-2436b-in-fraudulent-unemployment-payments-from-us/ar-BB1clxvg.

[7] Joseph Horvath and Jonathan Bain, "Top 10 Examples of Outrageous Unemployment Fraud in 2020—And How to Fix It," Foundation for Government Accountability (2020), https://thefga.org/research/unemployment-fraud-examples/.

[8] Ibid.

[9] Author's calculations based on unemployment insurance improper payment rates from CY2019 Q3 through CY2020 Q2, disaggregated by state. See, e.g., U.S. Department of Labor, "2020 Improper Payment Rates 1-Year Data," U.S. Department of Labor (2020), https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/data#:~:text=%2F30%2F2019)-,Improper%20payment%20data%20for%20the%20Unemployment%20Insurance%20(UI)%20program%20derived,unemployment%20insurance%20(UI)%20system.

[10] Ibid.

[11] Ibid.

[12] U.S. Department of Labor, "Comparison of State Unemployment Insurance Laws: Chapter 6," U.S. Department of Labor (2020), https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf.

[13] Ibid.

[14] Author's calculations based on unemployment insurance improper payment rates from CY2019 Q3 through CY2020 Q2, disaggregated by non-fraud overpayment waivers. See, e.g., U.S. Department of Labor, "2020 Improper Payment Rates 1-Year Data," U.S. Department of Labor (2020), https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/data#:~:text=%2F30%2F2019)-,Improper%20payment%20data%20for%20the%20Unemployment%20Insurance%20(UI)%20program%20derived,unemployment%20insurance%20(UI)%20system.

[15] U.S. Department of Labor, "Comparison of State Unemployment Insurance Laws: Chapter 6," U.S. Department of Labor (2020), https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf.

[16] Ibid.

[17] Ibid.

[18] Author's calculations based on unemployment insurance improper payment rates from CY2019 Q3 through CY2020 Q2, disaggregated by benefit offsets. See, e.g., U.S. Department of Labor, "2020 Improper Payment Rates 1-Year Data," U.S. Department of Labor (2020), https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/data#:~:text=%2F30%2F2019)-,Improper%20payment%20data%20for%20the%20Unemployment%20Insurance%20(UI)%20program%20derived,unemployment%20insurance%20(UI)%20system.

[19] U.S. Department of Labor, "Comparison of State Unemployment Insurance Laws: Chapter 6," U.S. Department of Labor (2020), https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf.

[20] Author's calculations based on unemployment insurance improper payment rates from CY2019 Q3 through CY2020 Q2, disaggregated by interest assessments. See, e.g., U.S. Department of Labor, "2020 Improper Payment Rates 1-Year Data," U.S. Department of Labor (2020), https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/data#:~:text=%2F30%2F2019)-,Improper%20payment%20data%20for%20the%20Unemployment%20Insurance%20(UI)%20program%20derived,unemployment%20insurance%20(UI)%20system.

[21] U.S. Department of Labor, "Comparison of State Unemployment Insurance Laws: Chapter 6," U.S. Department of Labor (2020), https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf.

[22] Ibid.

[23] Author's calculations based on unemployment insurance improper payment rates from CY2019 Q3 through CY2020 Q2, disaggregated by civil action authorization. See, e.g., U.S. Department of Labor, "2020 Improper Payment Rates 1-Year Data," U.S. Department of Labor (2020), https://www.dol.gov/agencies/eta/unemployment-insurance-payment-accuracy/data#:~:text=%2F30%2F2019)-,Improper%20payment%20data%20for%20the%20Unemployment%20Insurance%20(UI)%20program%20derived,unemployment%20insurance%20(UI)%20system.

[24] U.S. Department of Labor, "Comparison of State Unemployment Insurance Laws: Chapter 6," U.S. Department of Labor (2020), https://oui.doleta.gov/unemploy/pdf/uilawcompar/2020/overpayments.pdf.

[25] Ibid.

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