

This is an amendment to 11.3.300 NMAC Section 25 effective 11/19/2024.

**11.3.300.325 OVERPAYMENTS AND ~~[WAIVER]~~ WAIVERS OF OVERPAYMENTS ~~[PURSUANT TO THE TRADE ACTS OR ANY ENACTED FEDERAL EXTENSION PROGRAM]:~~**

**A.** Trade acts or any enacted federal extension program overpayment waivers: The department shall use the process set forth ~~[herein]~~ in this subsection to evaluate disputes of overpayments paid under the Trade Acts, the Trade Adjustment Assistance (TAA), Trade Readjustment Assistance (TRA), Federal Extended Benefits, or any enacted federal extension program under the following circumstances:

(1) When a decision of the department results in an overpayment, an appealable determination will be sent to the claimant. The claimant may file an appeal no later than 15 days from the date of the determination in accordance with 11.3.500 NMAC.

(2) At the department's discretion, a request for review of an overpayment may be administratively initiated to determine if a waiver of overpayment will be approved. A waiver will be approved if the department determines that:

- (a) the application was made timely;
- (b) payment was made without the fault of the claimant; and
- (c) requiring repayment would be contrary to equity and good conscience.

(3) The department's affirmative finding of any one of the following factors of fault precludes a waiver:

- (a) that the claimant knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or
- (b) that the claimant knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or
- (c) that the claimant knew or should have known that he was not eligible for the payment; or
- (d) that the department has previously issued a determination of fraud in regards to the overpayment.

(4) The department shall consider the following factors in determining whether, in equity and good conscience, the department should require repayment:

- (a) whether the overpayment was the result of a decision on appeal;
- (b) whether the claimant was given notice that repayment would be required in the event of reversal on appeal;
- (c) whether the recovery of the overpayment would cause an extraordinary and lasting financial hardship to the claimant, resulting in the claimant's inability to obtain minimal necessities of food, medicine and shelter for at least 30 days and period of financial hardship lasting at least three months, and
- (d) whether, if recoupment from other benefits is proposed, the length of time of extraordinary and lasting financial hardship shall be the longest potential period of benefit eligibility as seen at the time of the request for waiver of determination.

(5) In determining whether fraud has occurred, the department shall consider the following factors:

- (a) whether the claimant knowingly made, or caused another to make, a false statement or representation of a material fact resulting in the overpayment;
- (b) whether the claimant knowingly failed, or caused another to fail, to disclose a material fact resulting in the overpayment.

~~[B.]~~ (6) If a determination of fraud is made, the claimant shall be ineligible for any further TAA, TRA or any other enacted federal extension program benefits and shall be ineligible for waiver of any overpayment.

~~[C.]~~ (7) A finding that the TAA or TRA overpayment was not the result of a decision on appeal or that the recovery would not cause extraordinary and lasting financial hardship shall preclude a waiver.

~~[D.]~~ (8) If a TAA or TRA claimant fails, without good cause, to complete training, a job search or a relocation, any TAA or TRA payment to such claimant that is not properly and necessarily expended in attempting to complete the activity shall constitute an overpayment. Such overpayments shall be recovered or waived according to the standards of fault, equity and good conscience contained in 11.3.300.325 NMAC.

**B.** Coronavirus Aid, Relief and Economic Security (CARES) Act overpayment waivers: The department shall use the process set forth in this subsection to evaluate disputes of overpayments paid under section 2105 of the CARES Act to specifically include Pandemic Unemployment Assistance (PUA) benefits, Federal Pandemic Unemployment Compensation (FPUC) benefits, Mixed Earners Unemployment Compensation (MEUC) benefits, and Pandemic Emergency Unemployment Compensation (PEUC) benefits:

(1) Claimants who were assessed an overpayment of CARES Act benefits are eligible to apply for a waiver of all or part of the federal benefit overpayment. A waiver will be approved if the department determines that:

(a) payment was made without the fault of the claimant; and  
(b) requiring repayment would be contrary to equity and good conscience. Equity and good conscious, for the purposes of this subsection, exists when at least one of three circumstances exists: 1) recovery would cause financial hardship to the person from whom it is sought; 2) the recipient of the overpayment can show that due to the notice that such overpayment could be made or because of the incorrect payment, either the claimant has relinquished a valuable right or changed positions for the worse; or 3) recovery would be unconscionable under the circumstances.

(2) Claimants seeking an overpayment waiver must affirmatively request an overpayment review. Waivers will be considered on an individual basis and shall not be granted as a matter of course unless a blanket waiver is specifically approved by the US Department of Labor.

(3) Claimants may file an application for a waiver of a federal CARES Act overpayment by completing the application in their online account or by contacting the department's operations center.

(4) The department's affirmative finding of any one of the following factors of fault precludes a waiver:

(a) that the claimant knowingly made a material misrepresentation, which misrepresentation resulted in the overpayment; or

(b) that the claimant knowingly failed to disclose a material fact, which failure to disclose resulted in the overpayment; or

(c) that the department has previously issued a determination of fraud in regards to the overpayment. Claimants may appeal the underlying fraud determination by following procedures outlined in 11.3.500 NMAC.

(5) After the waiver application has been adjudicated, a determination shall be issued informing the claimant of the outcome of the request, the overpayment amount waived, the reason any amount was not waived, and explaining the claimant's right to appeal the determination in accordance with 11.3.500 NMAC.

**[D] C.** In any event, no repayment shall be required or deduction made until a notice and an opportunity for fair hearing have been provided to the claimant in accordance with 11.3.500 NMAC, a determination has been issued by the department, and the determination has become final. Once a waiver application has been received by the department, all collections activity, including benefit offsets, collections notices, or liens shall cease until the waiver application has been processed and the decision is deemed final or all appeal deadlines under 11.3.500 NMAC or NMRA 1-077 have expired.

[11.3.300.325 NMAC - Rp, 11.3.300.325 NMAC, 11/1/2018 A, 10/29/2019; A, 11/19/2024]