Congressional Research Service
Informing the legislative debate since 1914

IN FOCUS

November 14, 2022

# Lost Wages Assistance: Benefits and Program Integrity

In response to unemployment caused by the COVID-19 pandemic, Congress created several temporary Unemployment Insurance (UI) benefits through legislation. One of these temporary COVID-19 UI benefits—Federal Pandemic Unemployment Compensation (FPUC)—supplemented weekly UI benefits by $600 a week from March 29, 2020, through July 25, 2020. FPUC was subsequently reauthorized at $300 a week from December 27, 2020, through September 4, 2021. During the five-month lapse in FPUC authorization in the summer of 2020, President Donald Trump used executive action to create the new Lost Wages Assistance (LWA) benefit to temporarily supplement UI benefits, relying upon existing authority in the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. §§5121 et seq.).

## Lost Wages Assistance

On August, 8, 2020, President Trump issued a Presidential Memorandum authorizing other needs assistance (ONA) for major disasters declared by the President pursuant to Section 401 of the Stafford Act (42 U.S.C. §5170) for the COVID-19 pandemic. In part, the creation of LWA was a response to the expiration (on July 25, 2020) of the enhanced FPUC $600 weekly supplement. The now-expired LWA benefit was payable for a period of unemployment that began retroactively on or after July 26, 2020, and ended on or before September 6, 2020.

As described in Federal Emergency Management Agency (FEMA) guidelines to the states, the LWA program was authorized to provide up to $44 billion in grants to states to supplement the weekly benefits of certain eligible UI claimants in participating states, subject to a cost-sharing requirement of 25% for ONA under Section 408 of the Stafford Act (42 U.S.C. §5174(g)(2)). States were able to satisfy this cost-sharing requirement by either paying $100 a week to eligible claimants or by demonstrating that the total UI benefits paid with state unemployment funds in the aggregate met the amount of the 25% match.

### Benefit Payments

Fifty-four jurisdictions—49 states (all except South Dakota), the District of Columbia, Guam, the Commonwealth of the Northern Mariana Islands (CNMI), Puerto Rico, and the U.S. Virgin Islands—applied for and received grant awards to make LWA payments. LWA benefits were paid to eligible claimants with underlying weekly UI benefit amounts of at least $100 as a $300-per-week supplement (federally financed), or, if a state chose to contribute an additional $100 a week in state funds, the total supplement would have been $400 a week. Kentucky, Montana, and Guam elected to contribute the additional $100, for a total $400 weekly supplement in those jurisdictions. All participating jurisdictions paid up to six weeks of LWA benefits except the CNMI (three weeks), Florida (four weeks), and Idaho (five weeks). Eligible claimants might have received as much as $1,800 in LWA if their jurisdiction participated in the program for the full six weeks (claimants from Kentucky, Montana, and Guam may have received as much as $2,400). According to FEMA data, LWA expenditures amounted to $36.5 billion.

### Eligibility

Claimants in participating jurisdictions did not need to apply separately for LWA to receive the supplemental benefits. Instead, individuals were potentially eligible if they received at least $100 per week (before taxes and deductions) from one of the permanent-law UI programs (e.g., Unemployment Compensation [UC], Extended Benefits, Self-Employment Assistance, Short-Time Compensation, and Trade Readjustment Allowances) or from one of the temporary COVID-19 UI programs. Individuals were required to self-certify that they were unemployed or partially unemployed due to disruptions caused by the pandemic in order to be eligible for LWA.

Disaster Unemployment Assistance (DUA) benefits are separately authorized under Section 410 of the Stafford Act (42 U.S.C. §5177) and were not included in the list of eligible benefits to be supplemented by LWA. During this period, any DUA payment would have been based on eligibility due to a disaster other than the COVID-19 declaration used to create the LWA program.

## Administration

LWA was administered by each participating jurisdiction through a grant agreement with FEMA. Each jurisdiction distributed the funds through their UI system, as a supplemental payment. The Presidential Memorandum directed the Department of Labor (DOL) to provide technical assistance to FEMA and the participating jurisdictions on the implementation of LWA through the existing UI system.

As detailed in the Presidential Memorandum, the LWA administrative structure relied heavily on the framework for administering DUA benefits. As required by the memorandum, DOL's Employment and Training Administration (ETA) issued guidance to states on the implementation of LWA on August 12, 2020. ETA and FEMA provided additional technical assistance separately to the CNMI and Guam regarding the state match requirement because those jurisdictions do not operate permanent-law UI programs.

## Improper Payments

An *improper payment* is any payment that should not have been made or that was made in an incorrect amount under statutory, administrative, or other legally applicable requirements. This includes any payment to an ineligible recipient or made as a result of fraud. Improper payments include both overpayments and underpayments.

### UI and DUA Improper Payments

The UI program's improper payment rate has long been of concern (see the discussion in CRS In Focus IF12243, *Unemployment Insurance Program Integrity: Recent Developments*). This rate was exceptionally high during the COVID-19 pandemic. For example, for the third quarter of FY2022, ETA reported a UI improper payment rate for FY2021 of 17.9%, with a total of $73.8 billion in improper payments. Additionally, DOL's Office of the Inspector General (DOL-OIG) flagged DUA administrative issues in a report released on September 20, 2020. DOL-OIG stated that ETA had not established adequate controls to ensure states paid DUA benefits only to eligible individuals and paid them as promptly as administratively feasible after the disasters of Hurricanes Harvey, Irma, and Maria.

### Estimates of LWA Improper Payments

LWA faced similar challenges to those of the UI and DUA programs. In its September 16, 2022, report, the Department of Homeland Security's Office of the Inspector General (DHS-OIG), audited 21 state UI programs that distributed approximately $30 billion in LWA (more than 80% of the total $36.5 billion paid in LWA). This review detected $3.3 billion in potentially fraudulent payments. Additionally, it identified $21.6 million in overpayments and $403 million in payments made without obtaining claimants' required self-certifications of eligibility for LWA. One state was unable to capture self-certification of regular UI beneficiaries and was responsible for $341 million (over 85%) of the missing self-certification overpayments. (DHS-OIG calculated the LWA overpayments using different assumptions and methods than DOL uses; thus, the overpayment calculations are not directly comparable.)

The report asserted that, in relying on the states' UI programs to determine claimants' eligibility and distribute LWA, FEMA lost an opportunity to safeguard $36.5 billion in disbursed LWA payments, directly affecting its ability to respond to future emergencies and disasters. In response, FEMA officials stated their goal was to expedite LWA benefits by fitting LWA program requirements into the jurisdictions' existing UI processes.

### Improper Payment Recovery

Under UI laws, states may waive a UI overpayment if that overpayment was not the fault of the claimant and requiring repayment would be against "equity and good conscience" or would otherwise defeat the purpose of the state's UI law. Under the LWA grant agreements, participating jurisdictions were responsible for recovering LWA payments obtained fraudulently, expended for unauthorized items or services, expended for items for which assistance is received from other means, and awards made in error (44 C.F.R. §206.120(f)(5)). Any provision of a jurisdiction's law authorizing waiver of recovery of improper payments, including those discharged in bankruptcy, did not relieve the jurisdiction of the responsibility to return the total sum of improperly expended funds to FEMA.

This repayment requirement was modified in Section 262, "Lost Wages Assistance Recoupment Fairness," of the Continued Assistance for Unemployed Workers Act of 2020 (Division N, Title II, Subtitle A, of the Consolidated Appropriations Act, 2021; P.L. 116-260). Section 262 allowed participating jurisdictions to waive repayment of LWA overpayments if the individual was not at fault for the payment, and repayment would be contrary to equity and good conscience. Additionally, Section 262 waived the requirement for states to repay FEMA for the LWA overpayments that were waived under the section. However, states still must repay all remaining overpayments to FEMA.

## Resources


CRS Report R46687, *Unemployment Insurance (UI) Benefits: Permanent-Law Programs and the COVID-19 Pandemic Response*.

CRS Report RS22022, *Disaster Unemployment Assistance (DUA)*.

CRS Report R47015, *FEMA's Individuals and Households Program (IHP)—Implementation and Considerations for Congress*.

CRS In Focus IF12243, *Unemployment Insurance Program Integrity: Recent Developments*.

The White House, "Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019," August 8, 2020, https://trumpwhitehouse.archives.gov/presidential-actions/memorandum-authorizing-needs-assistance-program-major-disaster-declarations-related-coronavirus-disease-2019/.

FEMA, *Lost Wages Supplemental Payment Assistance Guidelines*, April 22, 2022, https://www.fema.gov/disaster/coronavirus/governments/supplemental-payments-lost-wages-guidelines.

DOL, Employment and Training Administration, *Unemployment Insurance Program Letter No. 27-20, Presidential Memorandum on Authorizing the Other Needs Assistance Program for Major Disaster Declarations Related to Coronavirus Disease 2019 (COVID-19)-Unemployment Insurance (UI)-Related Technical Assistance for States Administering Lost Wages Assistance (LWA)*, August 12, 2020, https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-27-20.

DOL, Office of Inspector General, *ETA Should Do More to Assist Vulnerable States to Prepare for Disaster Unemployment Assistance Implementation*, 04-20-002-03-315, September 20, 2020, https://www.oig.dol.gov/public/reports/oa/2020/04-20-002-03-315.pdf.

DHS, Office of the Inspector General, *FEMA Did Not Implement Controls to Prevent More than $3.7 Billion in Improper Payments from the Lost Wages Assistance Program*, OIG-22-69, September 16, 2022, https://www.oversight.gov/sites/default/files/oig-reports/DHS/OIG-22-69-Sep22.pdf.



**Julie M. Whittaker**, Specialist in Income Security

**Katelin P. Isaacs**, Specialist in Income Security

## Disclaimer