

WSR 24-07-091

**PREPROPOSAL STATEMENT OF INQUIRY
EMPLOYMENT SECURITY DEPARTMENT**

[Filed March 19, 2024, 11:44 a.m.]

Subject of Possible Rule Making: This rule making will outline the employment security department's (department) process for processing waiver applications and adjudicating waiver eligibility for all claimants who were issued a decision that created an overpayment of benefits under Title 50 RCW or under the CARES Act for the week beginning February 2, 2020, through the week ending September 4, 2021.

Statutes Authorizing the Agency to Adopt Rules on this Subject: RCW 50.20.190, 50.24.020, 50.12.010, 50.12.042, and 50.12.040.

Reasons Why Rules on this Subject may be Needed and What They Might Accomplish: For 19 months, from February 2, 2020, through September 4, 2021, the unemployment insurance system implemented five new federal programs and made continuous systemic changes in response to 67 separate pieces of the United States Department of Labor (USDOL) guidance. During and after this time frame, many claimants were unable to reach the department to obtain answers to their questions about their unemployment benefits claims. Many of these claimants had no experience with the unemployment insurance system and were confused by the constant changing of the system. As a result of their confusion and their inability to reach department staff for guidance on how to answer questions or concerning what information was needed, many claimants answered questions incorrectly or in a manner that otherwise gave rise to an overpayment.

Currently, there are approximately 135,000 claimants with pandemic-era overpayments totaling more than \$725,000,000.00 who have not applied for a waiver. An overpayment of unemployment benefits occurs when someone received benefits that they are later found to have been ineligible to receive. A waiver, if approved, would allow a claimant financial relief from the overpayment.

The overpayment waiver project was developed by the department to address pandemic-era overpayments. The project has determined many of these claimants are potentially eligible for a waiver. Despite customer outreach, many claimants are not submitting waiver applications.

This rule making will put into rule the department's plan to send waiver applications to all claimants who have been issued a decision that created an overpayment of benefits under Title 50 RCW or under the CARES Act for the week beginning February 2, 2020, through the week ending September 4, 2021, and who have not had those overpayments reversed or applied for a waiver. The department will then review all completed applications and if a claimant does not return an application, the department will make a decision about the claimant's eligibility for a waiver based on available information.

Rules are needed to provide clarity on the department's process for handling pandemic-era overpayments and to maximize financial relief to claimants who are eligible for a waiver.

Other Federal and State Agencies that Regulate this Subject and the Process Coordinating the Rule with These Agencies: USDOL reviews the state's administration of the unemployment insurance program to ensure conformity to federal statutes and regulations. The state has broad flexibility in the implementation of the unemployment insurance laws so long as conformity is maintained. The proposed regulations will be shared with USDOL prior to adoption.

Process for Developing New Rule: Draft rules will be shared with the public and stakeholders. The department will solicit input from all parties and consider all comments in the development of final rules.

Interested parties can participate in the decision to adopt the new rule and formulation of the proposed rule before publication by contacting Lawrence Larson, P.O. Box 9046, phone 360-890-3460, fax 844-652-7096, TTY relay 711, email Lawrence.larson@esd.wa.gov, website <https://esd.wa.gov/newsroom/rulemaking/>.

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