

Attachment I of UIPL No. 14-20, Change 1

**Questions and Answers about the
Coronavirus Aid, Relief, and Economic Security (CARES) Act
Unemployment Insurance (UI) Related Provisions**

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Emergency Flexibility for Merit Staffing

Refer to Section 4.d. of UIPL No. 14-20 for additional information regarding permissible flexibilities around merit staffing.

1. **Question:** My state is bringing over staff from other state agencies and contracting with a third-party vendor to process COVID-19 related applications and claims. What do we need to consider when it comes to confidentiality of unemployment compensation (UC) information?

Answer: Staff from other state agencies and from the third-party vendor are performing such tasks on the agency's behalf, which is permissible under the temporary emergency state staffing flexibility in Section 2106 of the CARES Act. Section 303(a)(1) of the Social Security Act (SSA) has long been interpreted to require states to have methods of administration in place to maintain the confidentiality of UC information. The basic confidentiality requirement is implemented through 20 C.F.R. Part 603. These other state agencies and third-party vendors are providing services necessary for the proper administration of the state's UC law and, as such, they may be permitted access to confidential UC information under 20 C.F.R. 603.6(a).

For state employees from other agencies, an agreement is not necessary because such employees are acting directly on behalf of the UI agency and are subject to the same requirements as UC agency state employees to maintain the confidentiality of the data.

For vendors and contractors, the agency must enter into a written, enforceable, terminable agreement that, at a minimum, contains the following:

- A listing of all parties to the agreement;
- A description of the specific tasks the agent or contractor will perform on behalf of the agency;
- A statement that those who are granted access to confidential UC information under the agreement will be limited to those with a need to access it and only for purposes listed in the agreement;
- Provision for safeguarding the information, as described in 20 C.F.R. 603.9; and
- Provision for on-site inspections of the agent or contractor to assure that the requirements of state law and the agreement are being met. Agents or contractors performing services on behalf of the agency should maintain a system sufficient to allow such inspections, should the agency decide that is necessary.

With regard to safeguards, the agreement must require the agent or contractor to use the information only for purposes authorized by law and consistent with the agreement.

2. **Question:** My state is planning to hire additional administrative law judges for an anticipated significant increase in appeals resulting from the unprecedented number of unemployment claims filed during the COVID-19 pandemic. Do the flexibilities around merit staffing described in UIPL No. 14-20 also apply to the appeals function?

Answer: Yes. The state has maximum flexibility to utilize non-merit staff through December 31, 2020, to quickly process applications and claims, as provided under Section 2106 of the CARES Act. This includes the appeals function as it relates to responding to workload and increased demand resulting from the spread of COVID-19.

As discussed in Section 4.d. of UIPL No. 14-20, the state must ensure that individuals making decisions have the knowledge and training necessary to make the correct decisions. The quality standards, as described in 20 C.F.R. Part 602 and further discussed in ET Handbook No. 301 (5th Edition, Change 1), *UI Performs: Benefits Timeliness and Quality Nonmonetary Determinations Quality Review*, ET Handbook No. 382 *Handbook for Measuring Unemployment Insurance Lower Authority Appeals Quality* (3rd Edition) and ET Handbook No. 395 (5th Edition), *Revision to the State Operations Handbook for the Unemployment Insurance (UI) Benefit Accuracy Measurement (BAM) Program*, remain in effect.

Paycheck Protection Program (PPP)

The Paycheck Protection Program (PPP) is a loan program enacted by Section 1102 of the CARES Act and administered by the U.S. Small Business Administration (SBA). The PPP is designed to assist small businesses keep their workers on the payroll by providing federally-guaranteed loans to eligible borrowers. Section 1106 of the CARES Act provides for forgiveness of up to the full principal amount of qualifying loans guaranteed under the PPP, depending on factors including the employer's use of the loan proceeds and maintenance of employee headcount and payroll as specified. Various features of the PPP and the loan forgiveness requirements have been altered by subsequently enacted legislation. Additional details are available at <https://www.sba.gov/funding-programs/loans/coronavirus-relief-options/paycheck-protection-program>.

The issues described below can impact any unemployment program, including regular UC and those provided for under the CARES Act.

3. **Question:** If an individual is working and being paid through PPP, how does this impact his or her eligibility for unemployment benefits?

Answer: The source of the funds an employer uses to pay salary or wages to an individual, whether the PPP or otherwise, does not change how an individual's eligibility for unemployment is determined.

If the individual is working full-time, he or she does not meet the definition of being "unemployed" and would be ineligible for benefits. Additionally, an individual receiving

full compensation through paid sick leave or paid family leave is not “unemployed” and is ineligible for UC. If the individual is working part-time, the state’s policies regarding partial unemployment and deductible earnings would apply when determining their eligibility for unemployment benefits.

If the individual filed for UC and received benefits for a given week, and later receives retroactive pay from his or her employer for that same week, the individual must inform the UC agency of the payment received. The amount of retroactive pay is deducted from the weekly benefit amount according to state law for deductible income. The state would establish an overpayment as appropriate under its normal procedures.

4. Question: If an individual is being paid through PPP but not performing any services, how does this impact his or her eligibility for unemployment benefits?

Answer: If an individual is receiving money from his or her employer, regardless of the source from which the employer obtained that money, state law provisions concerning deductible income would apply as described in Question 3.

As discussed most recently in UIPL No. 10-20, the Department has a longstanding legal interpretation of federal UC law that “unemployment” includes a reduction of both work hours and earnings. If an individual is receiving full compensation, then he or she does not meet the definition of being “unemployed” and would be ineligible for benefits.

5. Question: An individual was offered 80% of his or her previous salary to return to work under PPP. If the individual refuses to return, how does this impact his or her eligibility for unemployment benefits?

Answer: The state must apply the provisions of its law and Section 3304(a)(5) of the Federal Unemployment Tax Act (FUTA) with respect to prevailing wage to determine if this is an offer of suitable work, whether the source of the salary offered is a PPP loan or not. If the offer to return to work at a reduced salary is considered to be an offer of suitable work, then the state must assess whether the individual has good cause, under state law, for refusing the offer of suitable work. Refusing suitable work without “good cause” to continue collecting UC, including Federal Pandemic Unemployment Compensation (FPUC), is not allowable.

6. Question: May a sole proprietor or other self-employed individual apply for a PPP loan and also collect unemployment benefits?

Answer: It depends. The individual may be eligible for a partial unemployment benefit. Regardless of the source of funds, the sole proprietor or self-employed individual must report any income, which will be deducted consistent with state law as described in Question 3.

Trade Readjustment Allowances (TRA)

For additional information on Trade Readjustment Allowances (TRA) or Trade Adjustment Assistance (TAA) programs during this time, refer to the Frequently Asked Questions (FAQs) on the “Coronavirus (COVID-19) Resources” page at <https://www.workforcegps.org/>.

To qualify for TRA, an individual must have been entitled to regular UC (or would have been entitled to it if the individual had applied) for a week within the benefit period after the first qualifying separation and must have exhausted all rights to any regular UC benefits (section 231(a)(3) of the Trade Act of 1974 (Trade Act)). This regular UC claim filed or in effect (which includes an existing claim) after the first qualifying separation establishes the first benefit period and is often referred to as the “parent claim” for the individual’s TRA claim.

Coordination of Benefit Programs with TRA

7. **Question:** How is the order of benefit payments described in Section 4.b. of UIPL No. 14-20 coordinated for individuals eligible to receive TRA when an individual is collecting any TRA benefits (basic, additional, or completion)?

Answer: An individual must exhaust unemployment insurance benefits before payment of TRA (section 231(a)(3) of the Trade Act), which includes regular compensation, extended compensation, and federal supplemental compensation (section 247(11) of the Trade Act). This means that an individual must exhaust regular UC (except additional compensation), as well as any PEUC or EB that he or she may be eligible for before collecting TRA.

Section 4.b.i of UIPL No. 14-20 states that “[i]f the individual meets the qualifications to receive [TRA], such benefits will be payable after the programs listed above [including regular UC, PEUC, EB, and PUA].” However, eligibility for DUA (and accordingly PUA) requires that the individual NOT be eligible for “compensation” at 20 C.F.R. 625.4(i). The definition of “compensation” at 20 C.F.R. 625.2(d) includes TRA.

Therefore, to correct what was stated in UIPL No. 14-20, PUA is payable only if the individual is not eligible for or has exhausted TRA (basic, additional, or completion).

8. **Question:** The individual received 26 weeks of regular UC and 26 weeks of basic TRA at the time that PEUC becomes available. Would the individual be eligible to receive the full 13 weeks of PEUC, if otherwise eligible?

Answer: Yes. Receiving TRA and regular UC does not reduce the amount of PEUC available. Provided the regular UC claim has a benefit year end date on or after July 1, 2019, PEUC is payable to the individual based on the regular UC claim if all other eligibility requirements are met. Reference Questions B.5. and 6. from Attachment I of UIPL No. 17-20, Change 1, for additional information on the correct benefit year to use for establishing PEUC entitlement.

9. Question: If the individual covered by a TAA certification exhausts PEUC and is not participating in TAA training, is the claimant potentially eligible for PUA?

Answer: It depends. An individual may receive basic TRA with a waiver of the TAA training if the state determines it is not feasible or appropriate for the worker to be in the training. If the individual is eligible to receive basic TRA, then the individual would not be eligible for PUA.

Additional and completion TRA require actual participation in TAA training. If an individual is receiving additional or completion TRA and is no longer participating in training, the individual will no longer be eligible for TRA and may be eligible for PUA. However, not being able to participate in TAA training because the school closed in response to the spread of COVID-19 does not make the individual a covered individual under PUA. The individual must be unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of CARES Act.

Coordination of Benefit Programs with TRA – Subsequent UC Eligibility

Section 232(d) of the Trade Act provides that when an individual collecting TRA establishes a subsequent UC eligibility and is eligible to receive UC, the individual has the option of choosing to receive UC or remain on TRA. Questions 10-12 address this particular situation.

10. Question: If an individual elects to remain on TRA, how does this impact the individual's eligibility for other benefits once the TRA claim is exhausted?

Answer: If, after exhausting TRA, the individual remains unemployed, the individual may qualify for a new regular UC claim. If the individual is no longer eligible for a regular UC claim and is unemployed, partially unemployed, or unable or unavailable to work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA.

11. Question: If the individual is collecting PEUC at the time he or she becomes eligible for the new UC claim, what options does the claimant have?

Answer: If the individual is collecting PEUC at the time he or she becomes eligible for the new UC claim, the individual would no longer qualify for the PEUC claim. At this point the individual can either establish the new UC claim and collect on that claim, or establish the new UC claim and then switch back to TRA on the parent claim to collect the remaining TRA benefits.

12. Question: If an individual elects to file a new regular UC claim, how does it impact the individual's eligibility for TRA once the new regular UC claim is exhausted?

Answer: If, after exhausting the new regular UC claim, the individual remains unemployed, the individual must exhaust all entitlement to PEUC and EB based on this new regular UC claim before returning to the original TRA claim.

Duration of TRA Benefits

13. Question: Basic TRA allows for up to 52 weeks of benefits, minus any amount of regular UC or EB collected for that benefit period. Are weeks of PEUC also deducted from basic TRA entitlement? If so, does this only apply to PEUC based on the same benefit period as the basic TRA claim or to all PEUC claims?

Answer: Yes. Weeks of PEUC are deducted from basic TRA entitlement. UI entitlement includes regular UC, PEUC, and EB. As such, the weeks of PEUC entitlement with respect to the "first" benefit period reduce the maximum basic TRA entitlement.

14. Question: PUA provides for up to 39 weeks of benefits, minus any weeks of regular UC or EB collected during the Pandemic Assistance Period. Are weeks of basic TRA also deducted from PUA entitlement?

Answer: No. Section 2102(c)(2) of the CARES Act provides that PUA is payable for 39 weeks including any weeks for which the individual received regular compensation or extended benefits. Because section 2102 of the CARES Act defers to DUA regulations for the definition of "regular compensation" and TRA is not included in this reference (20 C.F.R. 625.2(d)(1)), weeks of basic TRA are not deducted from PUA entitlement.

15. Question: An individual received 26 weeks of regular UC and 22 weeks of basic TRA prior to qualifying for 13 weeks of PEUC. After exhausting PEUC, what remaining TRA entitlement might the individual have?

Answer: The maximum benefit amount (MBA) for basic TRA is 52 times the TRA WBA, minus the total sum of UI entitlement (section 233(a) of the Trade Act). As described earlier, UI entitlement includes regular UC, PEUC, and EB. The 26 weeks of regular UC plus the 22 weeks of basic TRA plus the 13 weeks of PEUC exceed the maximum amount of TRA payable. As such, the individual would have no remaining basic TRA entitlement for this benefit period.

Reference TEGl No. 05-15, Change 1 for information about potential eligibility for additional and completion TRA.

Coordination of Programs

16. **Question:** What is the relationship between PUA and Disaster Unemployment Assistance (DUA) when a location is triggered onto DUA?

Answer: It depends. As stated in Section 4.b of UIPL No. 16-20, if an individual is eligible for DUA with respect to a week of unemployment, he or she is not eligible to receive PUA for that week. This is because eligibility for both PUA and DUA is based on the reason for an individual's unemployment. If an individual's unemployment is directly caused by a major disaster then the individual's unemployment is not due to a COVID-19 reason and the individual would not qualify for PUA.

Conversely, if the reason for the individual's unemployment is because of a listed COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual's unemployment is not a direct result of a major disaster and the individual would not qualify for DUA.

17. **Question:** If an individual elects to take "leave without pay," is he or she eligible for unemployment benefits?

Answer: Leave without pay is considered a temporary separation from employment. Its effect on UI eligibility depends on the reason that the individual took leave without pay. If an individual separates from his or her job solely to receive unemployment benefits, the individual would be disqualified from receiving unemployment benefits. Additionally, because the individual is not unemployed because of a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual would also not be eligible for PUA.

The state must determine what the individual is taking "leave without pay" in lieu of, as this separation may be considered a discharge, voluntary quit, or lay-off under existing state law and state good cause/just cause provisions would apply depending on the facts.

18. **Question:** In UIPL No. 23-20, ETA strongly encourages states to request that employers provide information when a worker refuses to return to his or her job for reasons that do not support continued eligibility for benefits. What should a state do to meet this request?

Answer: States have ultimate flexibility in achieving this request. ETA suggests that the state provide an option to report this information directly to the state UI agency, such as an email address or by providing a link on its website that allows employers to file a report. ETA also encourages the state to communicate the availability of such a reporting mechanism to employers through its social media platforms and other regular employer communications.

If the state receives information to substantiate refusal of a bona fide offer of work, the state must investigate the issue and make a determination of eligibility according to state

law. Such an investigation will consider whether the offer of work was for suitable work under state law and, if so, whether the claimant had good cause under state law for refusing the offer.

19. Question: May an individual receive STC benefits while filing against a PEUC claim?

Answer: Yes. Provided that the state has an STC law that conforms to Section 3306(v) of the Federal Unemployment Tax Act (FUTA) and the individual is part of an employing unit that is subject to a state-approved STC agreement, he or she may continue to receive STC benefits after exhaustion of the regular UC claim during the period the individual is eligible to receive PEUC (*i.e.*, STC-PEUC).

20. Question: May a state be reimbursed for both PEUC under Section 2107 of the CARES Act and STC benefits under either Section 2108 or 2109 of the CARES Act?

Answer: No. STC-PEUC benefits that are payable while an individual is filing PEUC cannot be double-reimbursed. Any STC-PEUC benefits that are subject to payment under Sections 2104 and 2107 of the CARES Act for costs of FPUC and PEUC cannot also be submitted for reimbursement under Sections 2108 or 2109 of the CARES Act. Because FPUC and PEUC are federally funded programs, there is no state cost for which to seek reimbursement.