

Attachment III to UIPL No. 16-20 Change 6

Assessment of a State's Good Faith Effort in Implementing the PUA Program

As discussed in Section 4.e. of this UIPL, ETA will assess each state's PUA implementation to determine if the state made a good faith effort to implement the PUA program in accordance with Section 2102 of the CARES Act and 20 C.F.R. 625.6. This assessment will determine what, if any, retroactive action is required by the state.

Acknowledging that the eligibility requirements for the PUA program evolved over time in response to legislative enactments, states may have had multiple implementation phases for administering PUA. ETA will work with each state to review initial applications and continued claim forms to determine if the state made a good faith effort to implement the PUA program.

Step 1: Evaluate the state's implementation of Monetary Determinations. ETA defines a good faith effort "in accordance with 20 C.F.R. 625.6" to mean that a state took the following actions:

- a. provided a Monetary Determination for all PUA claims and included notice that individuals may submit documentation to be considered for a higher PUA weekly benefit amount (WBA) at any time during the Pandemic Assistance Period;
- b. issued a monetary redetermination if the state determined that such documentation was sufficient to permit a re-computation for a higher PUA WBA. *See* Question 2 of Attachment I to UIPL No. 16-20, Change 2; and
- c. when establishing a WBA based on self-attestation and the individual failed to submit proof of earnings/income within 21 days, the state issued a Monetary Redetermination reducing the WBA and established an overpayment as appropriate.

States that did not make a good faith effort will be required to take the following actions, based on the reason why the state was determined to not have made a good faith effort to implement the monetary determination:

1. Notify all individuals receiving PUA that they may submit documentation to demonstrate that they may be eligible for a higher WBA at any time during the Pandemic Assistance Period (see Section 4.d. and Attachment II of this UIPL for additional details about accepting such documentation after the program expiration date).
2. If the state received documentation from an individual that is sufficient to permit a re-computation of the PUA WBA, the state must process the request and issue a Monetary Redetermination and issue supplementary payment(s) as appropriate.
3. If the state relied on self-attestation to calculate a WBA higher than the minimum WBA and the state has not yet taken action for individuals who either failed to respond with proof of earnings/income within 21 days (and did not provide any documentation subsequent to the 21-days that would support the higher WBA) or for individuals whose documentation did not support the higher WBA amount, the state must issue a Monetary

Redetermination reducing the WBA and establish an overpayment as appropriate. *See* UIPL No. 20-21 for information regarding PUA overpayments.

Step 2: Evaluate the state’s implementation of the self-certification. ETA defines a good faith effort to implement the self-certification declaration to mean that the state took the following actions:

- a. the state obtained a self-certification either on the initial PUA application or as part of the individual’s first continued claim certification (the first week of eligibility);
- b. the language used on the state’s self-certification reasonably captures the intent of the COVID-19 related reasons in Section 2102(a)(3)(A)(ii)(I) of the CARES Act and Department guidance; and
- c. the state assessed whether the individual was otherwise able to work and available for work within the meaning of applicable state law (“able and available” status) except for the self-certified COVID-19 related reason(s).

A Note on Evaluating Underpayments. Section C.7. of Attachment I to UIPL No. 16-20, Change 4, advised that an evaluation of good faith effort may also include the extent to which the state’s implementation of the self-certification requirement may have resulted in potentially eligible individuals not receiving benefits. In Section 4.b.1. of UIPL No. 16-20, Change 5, ETA provided states instructions to retroactively evaluate all claims that were previously denied and additional instructions are provided in Section 4.a. of this UIPL. **Provided the state complies with the requirements of UIPL No. 16-20, Change 5, no further retroactive action is needed in ensuring potentially eligible individuals were not denied benefits.**

States that did not make a good faith effort will be required to take the following actions, based on the reason why the state was determined to not have made a good faith effort to implement the self-certification:

1. Seek retroactive self-certifications from any individuals who were not asked to self-certify to the approved COVID-19 related reason(s) at some point during their claim series to assess eligibility.
2. Seek retroactive self-certifications from individuals who were paid based on an unapproved, overly-expansive COVID-19 related reason who were not asked to self-certify to the approved COVID-19 related reason(s) at some point during their claim series to assess eligibility.
3. If the state failed to include an eligibility question regarding an individual’s able and available status on the continued claim form, or if the state included such a question but failed to properly adjudicate the eligibility issue when an individual reported that they were either unable or unavailable to work (for a reason other than the approved COVID-19 related reason(s) described in Attachment I of this UIPL), the state must retroactively request such status for every paid week and, if the individual responds that they were not able and available for any given week, properly adjudicate the eligibility issue and establish overpayments where appropriate.

For any of these possible retroactive actions: If the individual is provided an opportunity to self-certify that they were unemployed, partially unemployed, or unable or unavailable to work due to the full list of approved COVID-19 related reason(s) and the individual is determined to not have actually qualified for PUA for the weeks already paid, the individual must be determined ineligible and an overpayment must be established for any week in which the individual did not meet the PUA eligibility requirements. *See* UIPL No. 20-21 for further information regarding PUA overpayments and evaluating eligibility to waive recovery of such overpayments.