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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20, Change 5

TO: STATE WORKFORCE AGENCIES

FROM: SUZAN G. LEVINE /s/
Principal Deputy Assistant Secretary

SUBJECT: Expanded Eligibility Provisions for the Pandemic Unemployment Assistance (PUA) Program

1. **Purpose.** To provide states with updated guidance for the PUA program, specifically regarding expanded eligibility provisions authorized under Section 2102(a)(3)(A)(ii)(I)(kk) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
2. **Action Requested.** The Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators provide the information contained in this Unemployment Insurance Program Letter (UIPL) and the attachments to appropriate program and other staff in state workforce systems to implement these changes to the PUA program.
3. **Summary and Background.**
 - a. Summary –The Department expands PUA eligibility to include three COVID-19 related reasons under which an individual may self-certify. This expansion is made under the authority provided by Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. These three reasons are added to the existing COVID-19 related reasons specified in items (aa)-(jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and the reason previously approved by the Secretary of Labor (Secretary) under Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act for individuals who are self-employed and experience a significant reduction of services because of COVID-19.

These additional reasons address circumstances when an individual is directly affected by the COVID-19 public health emergency. They are: (1) individuals who refuse to return to work that is unsafe or to accept an offer of new work that is unsafe; (2) certain individuals providing services to educational institutions or educational service agencies; and (3) individuals experiencing a reduction of hours or a temporary or permanent lay-off.

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These additional eligibility provisions apply retroactively to the beginning of the PUA program, though individuals who did not file an initial PUA claim on or before December 27, 2020 are limited to weeks of unemployment beginning on or after December 6, 2020. This limitation on backdating of a PUA claim is discussed in more detail in Section 4.b. of this UIPL. States must determine PUA effective dates consistent with instructions provided in Section C.15. of Attachment I to UIPL No. 16-20, Change 4.

States may seek additional funding of up to \$100,000 to cover startup costs for implementing the expanded eligibility provisions, including an update to the self-certification declaration as part of their initial PUA application and continued claim forms. States must submit the required request for funding (SF-424) electronically to covid-19@dol.gov, with a copy to the appropriate ETA Regional Office by March 15, 2021. Acknowledging that states need time to modify their initial PUA claim application and PUA continued claim forms to include these additional COVID-19 related reasons as part of the self-certification declaration, the Department expects many states will need until the end of March or later to have the new COVID-19 related reasons in place.

Attachment I provides a sample self-certification declaration that includes the original and new COVID-19 related reasons. ETA recommends that states use this with their initial PUA claim application and PUA continued claim forms. Attachment III provides instructions for completing the SF-424.

- b. Background – On March 27, 2020, the CARES Act was enacted (Public Law (Pub. L.) 116-136), which includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act created a new, temporary federal program called PUA and provided states with administrative funding to operate the program through an agreement with the Department.

PUA is a benefit of last resort and, in general, provides unemployment benefits to individuals who are: (1) not eligible for regular unemployment compensation (UC), Pandemic Emergency Unemployment Compensation (PEUC), or Extended Benefits (EB), including those who have exhausted all rights to such benefits, and those who are self-employed, seeking part-time employment, do not have sufficient wage history, or otherwise would not qualify for regular UC, PEUC, or EB; and (2) unemployed, partially unemployed, or unable or unavailable to work due to a specific COVID-19 related reason identified in Section 2102(a)(3)(A)(ii)(I)(aa)-(kk) of the CARES Act and Department guidance. Any weeks of benefits previously received under the regular UC or EB programs starting with week ending February 8, 2020 (February 9, 2020 for states with a Sunday week ending date) through week ending April 10, 2021 (April 11, 2021 for states with a Sunday week ending date) are deducted from the individual's PUA entitlement (*see* Section C.17. of Attachment I of UIPL No. 16-20, Change 4). States are reminded that PUA is 100 percent federally funded and states may not charge employers for these benefits.

The CARES Act authorized the Secretary to establish COVID-19 related reasons for which an individual may be eligible for PUA in addition to those specific COVID-19

related reasons specified in items (aa)-(jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act. To date, the Department has added one additional COVID-19 related reason under this authority found in Section 2102(a)(3)(A)(ii)(I)(kk). The Department most recently discussed this COVID-19 related reason in Section C.1.kk. of Attachment I to UIPL No. 16-20, Change 4, which provides that “[s]elf-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, may self-certify under item (kk).” This COVID-19 related reason remains in effect.

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), was enacted, which includes the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) set out in Division N, Title II, Subtitle A. The Continued Assistance Act extends the PUA program and enacts several program integrity measures, including a requirement that all individuals receiving a PUA payment after December 27, 2020, submit documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment.

Where the CARES Act, as amended, and the operating instructions are silent, states should refer to the Disaster Unemployment Assistance (DUA) regulations at 20 C.F.R. Part 625.

The Department has published several UIPLs providing guidance to states regarding the PUA program.

- UIPL No. 16-20, published on April 5, 2020, provides implementation and operating instructions, instructions for obtaining administrative funding, and reporting instructions for the ETA 902-P report.
- UIPL No. 16-20, Change 1, published on April 27, 2020, includes several Questions and Answers, along with instructions for calculating an individual’s weekly benefit amount (WBA) and completing the ETA 9178-P Quarterly Narrative Progress Report.
- UIPL No. 16-20, Change 2, published on July 21, 2020, includes additional Questions and Answers.
- UIPL No. 16-20, Change 3, published on August 27, 2020, explains specific scenarios under which an individual who is a caregiver and affected by the reopening of school systems may be eligible for PUA.
- UIPL No. 16-20, Change 4, which the Department published on January 8, 2021, provides updated implementation and operating instructions, updates reporting instructions for the ETA 902-P report, and includes a summary table in Attachment III about how to process PUA claims based on the claim filing date.

Importance of Program Integrity. Addressing improper payments and fraud is a top priority for the Department and the entire UI system. States play a fundamental role in ensuring the integrity of the UI system. Especially during this time of extraordinary workloads, states should maintain a steadfast focus on UI functions and activities that ensure program integrity and the prevention and detection of improper payments and fraud across all programs operated within the UI system. It is critical that states implement processes that ensure payments are being made to eligible individuals and that states have aggressive strategies and tools in place to prevent, detect, and recover fraudulent payments, with a particular emphasis on imposter fraud by claimants using false or stolen identities.

Additionally, under the Continued Assistance Act, for states to have an adequate system for administering the PUA program, states must include procedures for identity verification or validation and for timely payment, to the extent reasonable and practicable, for all new PUA claims filed on or after January 26, 2021 (*see* Section C.3. of Attachment I to UIPL No. 16-20, Change 4).

UIPL No. 28-20, published on August 31, 2020, and UIPL No. 28-20, Change 1, published January 15, 2021, provides states with funding to assist with efforts to prevent and detect fraud and identity theft and recover fraud overpayments in the PUA and PEUC programs.

4. Guidance.

- a. **Expanded list of COVID-19 related reasons approved by the Department.** To be eligible for PUA, the state must verify that the individual is not eligible for regular UC (or PEUC or EB). The Department reminds states of other requirements for PUA:
- In general, an individual who has the ability to telework with pay, or who is receiving paid sick leave or other paid leave benefits is not eligible for PUA. *See* Section C.1. of Attachment I to UIPL No. 16-20, Change 4.
 - An individual must report any earnings from covered employment or income from self-employment each week. The individual's WBA must be reduced on account of such earnings and income as prescribed under state law. *See* the DUA regulations at 20 C.F.R. 625.6(f) for additional details regarding the effect earnings and income have on an individual's WBA. Question 15 of Attachment I to UIPL No. 16-20, Change 2, provides additional details regarding self-employment income.
 - An individual who continues to receive their full pay (*e.g.*, is not experiencing any reduction in pay) during the period they are not working is not considered to be "unemployed." *See* Section 4.a. of UIPL No. 10-20.

Individuals must also self-certify that they are unemployed, partially unemployed, or unable or unavailable to work for a COVID-19 related reason. Refer to Section 4.c. of

this UIPL for benefit payment control processes to address program integrity in the PUA program.

In addition to the current COVID-19 related reasons identified in items (aa)-(jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and the one reason previously approved under the Secretary's authority provided in Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act (*see* Section 4.b. of UIPL No. 16-20, Change 2, and Section C.1.kk. of Attachment I to UIPL No. 16-20, Change 4), the Department hereby establishes additional COVID-19 related reasons under which an individual may self-certify to establish eligibility for PUA. These additional COVID-19 related reasons are described below.

- i. Individuals who refuse to return to work that is unsafe or accept an offer of new work that is unsafe. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.”*

For purposes of this COVID-19 related reason, unemployment benefits include regular UC, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemembers (UCX), PUA, PEUC, EB, Short-Time Compensation (STC), Trade Readjustment Allowances (TRA), Disaster Unemployment Assistance (DUA), and payments under the Self-Employment Assistance (SEA) program.

An individual is generally denied unemployment benefits if the state determines that the work is suitable and the individual did not have good cause for refusing such work. This new COVID-19 related reason applies only to individuals who had already been receiving unemployment benefits but were determined to be ineligible or disqualified under state law because they refused an offer of work at a worksite that was not in compliance with local, state, or national health and safety standards directly related to COVID-19. This is a separate COVID-19 related reason from item (ii) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which provides eligibility to an individual who quits their job as a direct result of COVID-19.

For example, an individual may self-certify under this new COVID-19 related reason who has previously been denied because the state law does not consider health and safety standards when assessing suitability or good cause, *or* who has previously been denied because the health and safety standards considered under state law are more restrictive than the local, state, or national COVID-19 health

standards. Below are a few non-exhaustive scenarios. *See* Section 4.b.iv. of this UIPL for additional details regarding PUA effective dates.

- An individual was laid off in June 2020 and began receiving regular UC. The individual was recalled to work in October 2020. However, because the worksite was not in compliance with the local mask mandate, the individual refused to return to work. The individual was disqualified from continued receipt of regular UC under state law. The individual is now eligible to apply for PUA under this new COVID-19 related reason.
- An individual was laid off in October 2020 and began receiving regular UC. The individual received a new job offer in January 2021, however, the new worksite was unsafe due to non-compliance with physical distancing measures under state law. The individual was disqualified from continued receipt of regular UC under state law. The individual is now eligible to apply for PUA under this new COVID-19 related reason.

An individual is not eligible for PUA if they are otherwise eligible for regular UC (or PEUC or EB). Many states have provisions in their state UC law that consider work that unreasonably exposes an individual to health and safety risks to be unsuitable work. The state may determine, if it is consistent with the state's law, that the work is not suitable. Or, the state may find the work is suitable but determine that the individual had good cause for refusing such work.¹ In these circumstances, the individual must continue to receive unemployment benefits, provided they are otherwise eligible. The individual is not eligible for PUA using this new COVID-19 related reason if the individual was determined eligible for continued unemployment benefits for refusal of work under state law. Moreover, an individual who is allowed continued unemployment benefits and subsequently exhausts such benefits is not eligible for PUA using this new COVID-19 related reason.

- ii. Certain individuals providing services to educational institutions or educational service agencies. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.”*

This new COVID-19 related reason addresses situations where an individual provides services to educational institutions or educational service agencies and is subject to significant volatility in the school schedule directly related to COVID-

¹ The Department reminds states that Section 4102(b) of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), set out at Division D of the Families First Coronavirus Response Act (Pub. L. 116-127), provides states with the authority to temporarily modify their good cause provisions as needed in response to the spread of COVID-19 (*see* Section 5.C. of UIPL No. 13-20).

19. Whether the individual is “between or within terms” and has a “contract” or “reasonable assurance” to return in the subsequent year or term will affect the individual’s ability to self-certify under this COVID-19 related reason, as described below.² Attachment II provides a graphical representation of the process for determining PUA eligibility.

- A. *Individual does not have a contract or reasonable assurance.* An individual who: (1) has provided services to an educational institution or educational service agency; (2) lacks a contract or reasonable assurance and, as a result, is not subject to the “between and within terms” denial provisions; and (3) is not otherwise eligible for regular UC (or PEUC or EB) may self-certify eligibility for PUA under this new COVID-19 related reason if they are subject to significant volatility in the school schedule.

If the individual does not have a contract or reasonable assurance to return **and** self-certifies eligibility under this new COVID-19 related reason (or another COVID-19 related reason that is applicable to their situation), the individual may use wages from the educational institution to potentially qualify for a WBA that is higher than the state’s minimum PUA WBA.

- B. *Individual has a contract or reasonable assurance.* An individual is generally not eligible for PUA if they: (1) have provided services to an educational institution or educational service agency; and (2) are filing for a week that is between or within terms and they have a contract or reasonable assurance to return in the subsequent year or term, and, as a result, they are denied regular UC (or PEUC or EB). However, the individual may be eligible for PUA if they have other non-educational employment from which they are able to self-certify that they are unemployed, partially unemployed, or unable or unavailable to work for a different COVID-19 related reason. As described in Section 4.e.i. of UIPL No. 10-20, Change 1, wages from the educational institution may not be used to calculate the individual’s PUA WBA.

If school schedules or planned school openings are disrupted and an individual is found to no longer have a contract or reasonable assurance to return in the subsequent year or term, then they can establish eligibility going forward as described in subparagraph (A) under this new COVID-19 related reason or another COVID-19 related reason that is applicable to their situation.

² UIPL No. 10-20, Change 1, provides additional information about the “between and within terms” denial provision within the context of COVID-19. UIPL No. 05-17 clarifies the Department’s interpretation of the terms “contract” and “reasonable assurance” and assists states in applying these terms consistent with federal law requirements.

Federal law allows retroactive payments of regular UC (or PEUC or EB) under certain circumstances for individuals in a nonprofessional capacity if they no longer have a contract or reasonable assurance. *See* Section 4.d.(4). of UIPL No. 05-17. When determining if such individuals may receive PUA for weeks previously denied under regular UC (or PEUC or EB) because the individual had a contract or reasonable assurance and the individual was later found not to have reasonable assurance, states must first determine if the individual qualifies for regular UC (or PEUC or EB) under the state’s backdating provisions. If the individual does not qualify for backdating for regular UC, then they may retroactively self-certify for PUA under this new COVID-19 related reason. States must determine PUA effective dates consistent with instructions provided in Section 4.b.iv. of this UIPL and Section C.15. of Attachment I to UIPL No. 16-20, Change 4.

The individual must report any earnings each week that they file for PUA. The individual’s WBA must be reduced on account of such earnings and income as prescribed under state law. Individuals who receive a full salary during periods of disruption are not considered to be “unemployed” and would not be eligible for PUA. *See* Section 4.a. of UIPL No. 10-20.

- iii. Individuals experiencing a reduction of hours or a temporary or permanent lay-off. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: “*An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.*”

This new COVID-19 related reason expands eligibility beyond the current provision of item (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which is limited to situations where the individual’s place of employment is closed. Under this new COVID-19 related reason, if an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or the individual has experienced a reduction in hours, the individual may now self-certify eligibility.

Generally, individuals in covered employment who are laid off, are experiencing a reduction in hours, or are working part-time as a result of partial business closure would qualify for regular UC (or PEUC or EB) and therefore would not be eligible for PUA. However, such individuals may not be eligible for regular UC (or PEUC or EB) because, for example, they lack sufficient wages to qualify, have a previous disqualification, or have exhausted regular UC, PEUC, and EB. This expanded COVID-19 related reason establishes a circumstance under which they may self-certify eligibility for PUA.³

³ For examples of individuals who may qualify for PUA with previous disqualifications, refer to Questions 30, 31, and 33 of Attachment I to UIPL No. 16-20, Change 1, or Question 12 of Attachment I to UIPL No. 16-20, Change 2.

The individual must report any earnings from the reduced hours when filing continued claims and such amounts must be deducted from the PUA weekly benefit amount in accordance with the state law. *See* Section C.16.c. of Attachment I to UIPL No. 16-20, Change 4.

b. **Processing claims using the expanded list of COVID-19 related reasons.** This section describes the steps that each state must take to: (1) update the self-certification declarations to include the new COVID-19 related reasons; (2) notify individuals of the expanded list of COVID-19 related reasons; (3) establish eligibility, as appropriate, using the expanded list of COVID-19 related reasons; and (4) adhere to the backdating limitations for retroactive PUA claims as described below.

i. States must update the self-certification declarations to include the new COVID-19 related reasons. States must modify their initial PUA claim application and PUA continued claim forms to include these additional COVID-19 related reasons as part of the self-certification declaration. Such changes are retroactive to the beginning of the PUA program. States must determine PUA effective dates consistent with instructions provided in Section C.15. of Attachment I to UIPL No. 16-20, Change 4.

Acknowledging that states need time to modify their initial PUA claim application and PUA continued claim forms to include these additional COVID-19 related reasons as part of the self-certification declaration, the Department expects many states will need until the end of March or later to have the new COVID-19 related reasons in place.

Attachment I provides a sample self-certification declaration, which includes the original and new COVID-19 related reasons that ETA recommends states use with their initial PUA claim application and PUA continued claim forms. Additionally, states must comply with the following instructions when updating the self-certification declarations.

A. *Paraphrasing of the COVID-19 related reasons is not permissible.*

Acknowledging that eligibility under the PUA program is limited to specific COVID-19 related reasons, states must include the specific text for each item as provided in the CARES Act statute and Department guidance, including this UIPL. States may shorten the original COVID-19 related reason approved by the Secretary to read, “The individual is self-employed and experienced a significant reduction of services because of COVID-19.” However, **states may not paraphrase** the other COVID-19 related reasons except to personalize the responses (*e.g.*, instead of saying “The individual has been...” the state may write “I have been...”).

While states must include the specific text for each item, to help individuals understand the COVID-19 related reasons and to comply with the requirements outlined in UIPL No. 02-16, Change 1, states may translate the

text into the appropriate languages for their population and provide examples consistent with Section C.1. of Attachment I to UIPL No. 16-20, Change 4, and Section 4.a. of this UIPL as an additional resource.

- B. *Individuals must be permitted to select more than one COVID-19 related reason.* Acknowledging that an individual may have more than one COVID-19 related reason affecting their unemployment or inability to work in a given week, states must provide individuals with the ability to choose more than one COVID-19 related reason on each self-certification declaration for the initial application and continued claim forms.

For example, an individual may have quit their job because their child, for which they are the primary caregiver, is unable to attend school because the school is closed to in-person instruction as a direct result of the COVID-19 public health emergency. The individual continues to be unable to work because the child continues to be unable to attend school in-person. Under these circumstances, the individual may self-certify that they are unemployed under item (dd) and unavailable under item (ii) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

As another example, an individual may be unable to work because they are the primary caregiver of a child who is unable to attend school because the school is closed to in-person instruction as a direct result of the COVID-19 public health emergency. That same individual may also be immunocompromised and unable to reach their place of employment because they have been advised by a health care provider to self-quarantine. Under these circumstances, the individual may self-certify that they are unable or unavailable to work under both items (dd) and (ff) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

- C. *Individuals must be permitted to select different COVID-19 related reasons each week.* Acknowledging that an individual's circumstances may change over time, states must provide individuals with the ability to select different COVID-19 related reasons each week on the continued claim form, rather than automatically carrying over an individual's response from the initial claim application or prior week's certification.

To continue the examples in paragraph B., the school may reopen in a subsequent week to provide in-person instruction. With this change in circumstances, the first and second individuals may no longer self-certify under item (dd) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act because the school is no longer closed. However, both individuals may continue to self-certify under the other COVID-19 related reasons that are applicable to their respective situations.

D. *Individuals must be permitted to file and select no COVID-19 related reasons.* Acknowledging that, along with an individual’s changing circumstances, an individual might continue to file after they are no longer unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason, the initial claim application and continued claim forms must provide an option for the individual to self-certify that none of the COVID-19 related reasons apply. For example, the state could provide an option for the individual to select “None of the above.” However, if the individual self-certifies that none of the COVID-19 related reasons apply, the individual will be denied for the week in question because they no longer meet the eligibility requirements for PUA and the state must issue a written, appealable determination (*see* Section C.20. of Attachment I to UIPL No. 16-20, Change 4).

ii. Notification of the expanded list of COVID-19 related reasons.

A. *Notification to individuals.* States must notify **every** individual who had previously filed a PUA claim at any time while the PUA program was in effect, and was denied for **any** week because they were not unemployed, partially unemployed, or unable or unavailable to work for one of the COVID-19 related reasons available at the time. This notification must advise the individual of the opportunity to self-certify to the complete list of COVID-19 related reasons, including the new criteria provided in Section 4.a. of this UIPL. Such notification must occur individually as described in Section C.28. of Attachment I to UIPL No. 16-20, Change 4.

The Department reminds states that if the state determines that a PUA claim was filed by an individual that did not own the identity, the state may not send any notification of potential entitlement to the individual.

Because states should have notified all individuals of the opportunity to file for PUA at the time a regular UC, PEUC, or EB claim was denied of the opportunity to file for PUA, states need not individually notify such individuals who did not apply for PUA about the expanded eligibility provisions.

B. *Notification to media.* To assure public knowledge of the status of the PUA program, consistent with Section C.28.c. of Attachment I to UIPL No. 16-20, Change 4, states must notify all appropriate news media having coverage throughout the state of the new eligibility provisions of the PUA program. States may also post general information about the expanded eligibility provisions on their websites and other social media.

iii. Establishing eligibility using the expanded list of COVID-19 related reasons. To establish eligibility for PUA based on one of the new COVID-19 related reasons, the individual must complete an initial PUA application (if they have not already

filed a PUA claim) and the state must verify that the individual is not eligible for regular UC (or PEUC or EB). Additionally, the state must provide the individual with a self-certification declaration including the expanded list of COVID-19 related reasons to assess initial eligibility for the PUA claim.

If the state determines that the individual is not eligible for PUA, the state must issue an appealable determination. *See* Section C.20. of Attachment I to UIPL No. 16-20, Change 4.

An individual who establishes retroactive initial eligibility for PUA must then be required to complete continued claim forms for each week (including the self-certification declaration that includes the original and expanded list of COVID-19 related reasons) to receive payment. States must process this additional information and make retroactive payment as appropriate. This includes paying FPUC at the appropriate amount for any weeks paid during the relevant time period (*i.e.*, FPUC payments at the \$600 amount for eligible weeks of unemployment between the weeks ending April 4, 2020 and July 25, 2020 (or between the weeks ending April 5, 2020 and July 26, 2020 for states with a Sunday week ending date) and FPUC at the \$300 dollar amount for weeks of unemployment between the weeks ending January 2, 2021 and March 13, 2021 (or between the weeks ending January 3, 2021 and March 14, 2021 for states with a Sunday week ending date). *See* UIPL Nos. 15-20 and 15-20, Change 3, for additional information regarding FPUC payments.

Individuals filing new PUA initial claims that have not been through the state's identity verification process must have their identities verified to be eligible (*see* Section C.3. of Attachment I to UIPL No. 16-20, Change 4). The Department also strongly encourages states to validate the identity for reopened claims that have not previously been verified.

iv. Effective dates.

A. *Existing PUA claims.* For individuals with a PUA claim filed on or before December 27, 2020, the expanded COVID-19 related reasons provided in Section 4.a. of this UIPL are to be applied retroactively based on the effective date of an individual's existing PUA claim.

However, if the new COVID-19 related reason applied before the effective date of the individual's existing PUA claim, the claim must be backdated to the date that the new COVID-19 related reason applied. For example, an individual may have filed a new PUA claim before December 27, 2020 with an effective date in April 2020 based on the previous COVID-19 related reasons available. With the addition of the new COVID-19 related reason, the individual actually may have first been eligible in February 2020. Because this existing PUA claim was filed on or before December 27, 2020, the state must backdate the PUA claim from April 2020 to February 2020 – when the individual first met the applicable COVID-19 related reason.

B. *New PUA claims.* For individuals filing an initial PUA claim after December 27, 2020, states must determine PUA effective dates for new PUA claims consistent with instructions provided in Section C.15. of Attachment I to UIPL No. 16-20, Change 4. For example, if an individual files a new PUA claim after the publication of this UIPL because of circumstances occurring in July 2020, absent a PUA claim already being on file and consistent with the Continued Assistance Act, the claim effective date may not be any earlier than December 1, 2020 (weeks of unemployment beginning on or after December 6, 2020), and retroactive benefits may not be awarded prior to that date.

- c. **Benefit payment control processes.** Section 2102 of the CARES Act relies on self-certification to verify that an individual is unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason. However, states have multiple tools to identify and address suspicion of fraud in the PUA program.

As described in Question 23 of Attachment I to UIPL No. 16-20, Change 2, states have authority to request supporting documentation when investigating the potential for fraud and improper payments. For example, the DUA regulation at 20 C.F.R. 625.14(h) refers to the Secretary's "Standard for Fraud and Overpayment Detection" found in Sections 7510 *et seq.* of the *Employment Security Manual* (20 C.F.R. Part 625 Appendix C). Requests for supporting documentation and a state's investigative and adjudicative practices must be done in alignment with the processes described in UIPL No. 01-16 to ensure individuals are afforded appropriate procedural protections.

States must use the required cross matches and tools, and should use the other cross matches and tools described in Section 4.b. of UIPL No. 23-20 to monitor for suspicious activity on PUA claims, as they do for regular UC. States must share PUA claim information with the Department's Office of Inspector General (OIG) for the purposes of investigating fraud. Moreover, the Department strongly recommends that states collaborate with the UI Integrity Center (Center). The Center, funded by the Department and operated by the National Association of State Workforce Agencies, provides states with the Integrity Data Hub (IDH), which includes identity verification (IDV), the Suspicious Actor Repository (SAR), suspicious e-mail domains, Multi-State Cross Match (MSCM), foreign internet protocol (IP) address detection, and the Fraud Alert system.⁴ The Center has provided states with new tools to support data mining to detect fraud. The Center also identifies, organizes, shares, and supports promising and innovative integrity practices and provides state-specific consulting, mentoring, and technical assistance. There is also a range of other tools on the market that states should consider when combating fraud and ensuring program integrity.

Additionally, the Department strongly recommends as a best practice that states implement two new cross matches as part of the benefit payment control process for PUA to ensure integrity in applying the expanded COVID-19 related reasons provided in this

⁴ Note that the Integrity Data Hub is currently only available to the 50 states, plus the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

UIPL. These may be conducted only after the individual has established initial eligibility for PUA based on self-certification. States may choose to perform these cross matches before the first PUA payment is issued or later. Additionally, states may develop other cross matches not already discussed in this UIPL to strengthen program integrity in the PUA program.

- i. Cross match of state unemployment claim records with respect to individuals who self-certify that they refused work that is unsafe because of the COVID-19 public health emergency.

If the state identifies any discrepancies through this cross match (*e.g.*, the individual does not have a previous unemployment claim or the individual was disqualified for a reason other than refusing work because of health and safety standards at the worksite), the state must review information already on file and take any action necessary to address the discrepancies.

If the information on file with the state contradicts the individual's PUA self-certification (*e.g.*, previous adjudication of the issue determined that the worksite was in compliance with health and safety standards or previous adjudication of the issue determined that the individual refused work due to a reason that was not because of unsafe working conditions), then the state has reasonable suspicion of fraud and must open an investigation to conduct fact finding to determine if the individual's PUA eligibility is valid.

Because the PUA self-certification may be different from the state's provisions for suitable work and good cause (*e.g.*, the new COVID-19 related reason accounts for local, state, and national health and safety standards directly related to COVID-19), it is possible for an individual to be denied unemployment benefits under state law for health and safety standards and be eligible for PUA.

If the state does not identify any discrepancies through this cross match (*e.g.*, the individual has a previous unemployment claim, the individual refused work because the worksite was not in compliance with health and safety standards, the individual was denied continued benefits, and the state record does not contain information which contradicts this self-certification), the state does not have reasonable suspicion of fraud to open an investigation.

- ii. Cross match of state unemployment claim records and individuals who self-certify that they were providing services to educational institutions or educational service agencies and are unemployed or partially unemployed because of volatility in the work schedule caused by the COVID-19 public health emergency.

If the state identifies any discrepancies through this cross match (*e.g.*, the individual does not have a record of providing services to an educational institution or educational service agency), the state may have reasonable suspicion of fraud.

The state's follow-up investigation regarding these results may include whether the individual provided services to an educational institution or educational service agency prior to filing for PUA and, if so, whether the individual is subject to the "between and within terms" denial provision during the time that such individual was receiving PUA.

If the investigation finds that the individual (at the time of certifying under this COVID-19 related reason) is subject to the "between and within terms" denial provision because they have a contract or reasonable assurance to return at the subsequent year or term, then the PUA payment is improper – unless the individual meets the condition of having other non-educational employment and also self-certifies for a different COVID-19 related reason, as described in Section 4.a.iii.B. of this UIPL. An overpayment must be established and state law will determine whether or not such an overpayment is considered fraudulent.

- d. **Additional administrative costs for implementation.** Section 4.d. of UIPL No. 09-21 provides \$250,000 to cover startup costs for states implementing the PUA program. Additional funding of up to \$100,000 is available to states under this UIPL to cover costs for implementing these expanded eligibility provisions, including an update to the self-certification declaration as part of their initial PUA application and continued claim forms as described in this UIPL. States must submit a signed SF-424 form to request this funding.

Permissible implementation costs include:

- Computer programming and other technology costs;
- Implementation of necessary business processes required for program implementation;
- Training and travel;
- Notices to beneficiaries; and
- Overhead related only to the above.

States will receive funding to administer claims under these provisions as part of their usual submissions of workload counts to the Department. Such ongoing administrative costs must not be included in the request for implementation funding. *See* Attachment II of UIPL No. 16-20, Change 4, for updated instructions on the ETA 902P report.

States that need funding in addition to the \$100,000 offered under this UIPL to cover implementation costs must submit a Supplemental Budget Request (SBR) detailing such costs along with the required SF-424 form. The basis for these estimated costs must be included in the SBR application. Calculations for costs for state staff and contractors should be shown in accordance with the SBR instructions in ET Handbook No. 336, 18th Edition, Change 4, *Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines*.

States must submit the required request for funding electronically to covid-19@dol.gov, with a copy to the appropriate ETA Regional Office by March 15, 2021. For SBR application instructions, refer to UIPL No. 16-20, Attachment IV, Supplemental Budget Request (SBR) Application Template. For information on completing the SF-424, refer to Attachment III of this UIPL, Instructions for Completing the SF-424.

Additionally, please note that grantees that receive supplemental grant awards for implementing these program changes must submit a quarterly progress report using the form ETA 9178-P to the appropriate ETA Regional Office. The form ETA 9178-P requires the grantee to provide ETA with narrative updates on supplemental grant activities. Attachments III and IV to UIPL No. 16-20, Change 1 contain form ETA 9178-P and instructions for completing the form ETA 9178-P and timeline for the submission of these status reports.

5. **Inquiries.** Please direct inquiries to covid-19@dol.gov with a copy to the appropriate ETA Regional Office.

6. **References.**

- Consolidated Appropriations Act, 2021, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (Pub. L. 116-260) (Continued Assistance Act);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act;
- Families First Coronavirus Response Act (Pub. L. 116-127), including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA);
- 20 C.F.R. Part 625, Disaster Unemployment Assistance;
- UIPL No. 28-20, Change 1, *Additional Funding for Identity Verification or Verification of Pandemic Unemployment Assistance (PUA) Claimants and Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft as well as Recover Fraud Overpayments in the PUA and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued January 15, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9897;
- UIPL No. 28-20, *Addressing Fraud in the Unemployment Insurance (UI) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued August 31, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8044;
- UIPL No. 23-20, *Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued May 11, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4621;

- UIPL No. 16-20, Change 4, *Continued Assistance to Unemployed Workers Act of 2020 – Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued January 8, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6973;
- UIPL No. 16-20, Change 3, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Eligibility of Individuals who are Caregivers for Pandemic Unemployment Assistance (PUA) in the Context of School Systems Reopening*, issued August 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3849;
- UIPL No. 16-20, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Additional Questions and Answers*, issued July 21, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479;
- UIPL No. 16-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers*, issued April 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5899;
- UIPL No. 16-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions*, issued April 05, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628;
- UIPL No. 10-20, Change 1, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19) – Interpretation of “Between and Within Terms” Denial Provisions in Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA)*, published May 15, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8879;
- UIPL No. 05-17, *Interpretation of “Contract” and “Reasonable Assurance” in Section 3304(a)(6)(A) of the Federal Unemployment Tax Act*, published December 22, 2016, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8999;
- UIPL No. 02-16, Change 1, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information*, published May 11, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5491; and
- ET Handbook No. 336, 18th Edition, Change 4, *Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines*.

7. Attachment(s).

- **Attachment I:** Sample Self-Certification Declaration for Individuals Claiming PUA.
- **Attachment II:** PUA Eligibility for Certain Individuals Providing Services to Educational Institutions or Educational Service Agencies.
- **Attachment III:** Instructions for Completing the SF-424.