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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20, Change 2

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Additional Questions and Answers

1. **Purpose.** As states have gained experience administering the PUA program under the CARES Act, Public Law (Pub. L. 116-136), they have identified additional questions about program operations. The purpose of this Unemployment Insurance Program Letter (UIPL) is to address those questions concerning the PUA program.
2. **Action Requested.** The Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators provide the information contained in this UIPL to appropriate program and other staff in state workforce systems as they implement the PUA program.
3. **Summary and Background.**
 - a. Summary – The CARES Act was signed into law on March 27, 2020, and includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act creates the temporary PUA program, which provides unemployment benefits for individuals who are: 1) ineligible for regular Unemployment Compensation (UC), Extended Benefits (EB), and Pandemic Emergency Unemployment Compensation (PEUC) under Section 2104 of the CARES Act; and 2) unemployed due to one or more of the COVID-19 reasons set out in Section 2102(a)(3)(A)(ii) of the CARES Act. The Department previously issued UIPL Nos. 16-20 and 16-20, Change 1 to provide guidance to states on implementing and operating the PUA program.

This UIPL provides states with responses to questions addressing various aspects of PUA, and coordination of PUA with other programs, including regular UC, EB, as well as the UI-related programs established by the CARES Act.

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- b. Background – The Department provided operating, financial, and reporting instructions for the PUA program in UIPL No. 16-20, issued on April 5, 2020. The Department addressed questions received during a webinar held on the topic, as well as questions submitted through the Department’s designated e-mail for COVID-19 UI-related inquiries (covid-19@dol.gov) in UIPL No. 16-20, Change 1, issued on April 27, 2020.

The Department issued UIPL No. 23-20 on May 11, 2020 to remind states of program integrity functions required for the regular UC program and the UI programs authorized by the CARES Act. Addressing improper payments and fraud in the UI program is a top priority for the Department and the entire UI system. During this time of extraordinary UI claims workload, there is a heightened need for states to 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 UI programs.

To help prevent and detect improper payments, states are strongly encouraged to provide a mechanism for employers to report information when workers refuse to return to suitable work for reasons that do not support their continued eligibility for benefits.

4. **Guidance**

- a. Questions and Answers. Attachment I contains answers to additional questions received through the Department’s designated e-mail for COVID-19 UI related inquiries (covid-19@dol.gov).
- b. Clarification on item (kk) of acceptable COVID-19 related reasons. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act provides for the Secretary of Labor to establish any additional criteria under which an individual may self-certify eligibility for PUA benefits. Section C.1.k. of Attachment I to UIPL No. 16-20 provides for coverage of an independent contractor whose ability to continue performing his or her customary work activities is severely limited because of the COVID-19 public health emergency. The example provided includes a driver of a ride sharing service who has been forced to suspend operations because of COVID-19. Question 42 of Attachment I to UIPL No. 16-20, Change 1, explains that an independent contractor who experiences a “significant diminution of work as a result of COVID-19” may be eligible for PUA.

With these examples in UIPL Nos. 16-20 and 16-20, Change 1, the Secretary provides coverage under item (kk) to those self-employed individuals who experienced a significant diminution of services because of the COVID-19 public health emergency, even absent a suspension of services.

- 5. **Inquiries.** We encourage states to contact the Department for technical assistance. Please direct inquiries to **covid-19@dol.gov**, with a copy to the appropriate ETA Regional Office.

6. References.

- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II Subtitle A Relief for Workers Affected by Coronavirus Act;
- Section 3304(a)(18) of the Federal Unemployment Tax Act (26 U.S.C. 3304(a)(18);
- 20 C.F.R. Part 625;
- 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 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. 03-20, *Minimum Disaster Unemployment Assistance (DUA) Weekly Benefit Amount: January 1 – March 31, 2020*, issued December 12, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3675;
- UIPL No. 01-16, *Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures*, issued October 1, 2015, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5763; and
- UIPL No. 17-95, *Withholding of Income Tax From Unemployment Compensation – Amendments Made by Public Law 103-465*, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=423.

7. Attachment(s).

- **Attachment I:** Additional Questions and Answers about the Pandemic Unemployment Assistance (PUA) Program

Attachment I of UIPL No. 16-20, Change 2

**Additional Questions and Answers about the
Pandemic Unemployment Assistance (PUA) Program**

Refer to UIPL Nos. 16-20 and 16-20, Change 1 for additional information regarding administration of the PUA program.

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Calculating Benefit Entitlement (including the Weekly Benefit Amount (WBA))

1. **Question:** If an individual was previously eligible for regular UC and now qualifies for PUA, should the WBA from the regular UC claim carry over?

Answer: No. The state must calculate a WBA specific to the PUA claim. The WBA for PUA must be calculated according to 20 C.F.R. 625.6, with calendar year (CY) 2019 as the base period. Refer to Attachment II of UIPL No. 16-20, Change 1 for additional information on calculating the PUA WBA. This is true even if the PUA WBA is lower than the prior WBA under other state or federal benefit programs.

2. **Question:** If a state temporarily implemented the PUA program paying the minimum PUA WBA pending the claimant's provision of income documentation as set forth in UIPL No. 03-20, what steps must the state take to fully implement PUA requirements for calculating the PUA WBA?

Answer: States must accept documentation of income to determine a claimant's eligibility for a higher PUA WBA at any time during the Pandemic Assistance Period. The provisions set out in 20 C.F.R. 625.6 apply with respect to calculation of the PUA WBA to the same extent and in the same manner as in the case of DUA. The state must take into account any existing wage records and consider the individual's declaration of self-employment and other wages at the time of initial claim filing to calculate the WBA. The individual will then have 21 days to submit documentation substantiating the declaration to continue receiving a WBA above the minimum PUA WBA, as described in Question 20 of Attachment I to UIPL No. 16-20, Change 1.

If, at the time of implementing the PUA program, the state processed claims using the minimum PUA WBA, the state must provide a monetary determination for all PUA claims and include notice that the individuals may submit documentation to be considered for a higher PUA WBA at any time during the Pandemic Assistance Period. The state must immediately issue a monetary redetermination if the state determines the documentation is sufficient to permit a re-computation for a higher PUA WBA. The monetary determination applies to all weeks of unemployment that the individual filed during the Pandemic Assistance Period. The state must recalculate the PUA WBA for any weeks previously paid and provide supplementary payment as appropriate. Further, the state must ensure that new PUA claims are processed in accordance with 20 C.F.R. 625.6 moving forward.

3. **Question:** If the documents submitted by a self-employed individual only show the gross income, can this be used to support a higher WBA?

Answer: No. The monetary determination for a self-employed individual must be based on proof of net income. As discussed in Question 19 of Attachment I to UIPL No. 16-20, Change 1, acceptable documentation includes, but is not limited to, state agency wage

records, pay check stubs, bank receipts, business records, ledgers, contracts, invoices, and billing statements. If the state is unable to determine net income based on the proof provided, the individual will receive the minimum PUA WBA.

Refer to Question 15 for how an individual reports self-employment income when filing a continued claim.

4. Question: May a Peace Corps participant, who is no longer volunteering because his or her volunteer site is closed due to COVID-19, use wages from the Peace Corps to be considered for a higher PUA WBA?

Answer: Yes. Although wages from a Peace Corps participant are generally considered to be a stipend and not “covered wages” for purposes of regular UC, 20 C.F.R. 625.6(a)(1) provides that wages not covered under state law shall be treated “in the same manner and with the same effect as covered employment and wages” when calculating the PUA WBA.

5. Question: Must the state offer an individual the option of withholding federal taxes from PUA?

Answer: While this is not required for PUA, the state is strongly encouraged to provide it as an option for PUA recipients. Question 24 in Attachment I to UIPL No. 16-20, Change 1, confirms that PUA benefits are subject to federal income taxation. The state *is* required to offer an individual the option of withholding federal taxes from regular UC, as detailed in Section 3304(a)(18) of the Federal Unemployment Tax Act (FUTA) and discussed in UIPL No. 17-95.

Additionally, the state must inform the individual that PUA benefits are included in the individual’s gross income for federal income tax purposes and that the individual will receive Form 1099-G to file with his or her income tax return. This information may be included on the Notice of Monetary Determination, in the Benefit Rights Information packet, or anywhere else that the state deems appropriate for notifying individuals.

Eligibility – Initial Claims

6. Question: Does the CARES Act contain an age requirement to receive PUA benefits?

Answer: No, but it is possible that federal or state laws relating to the employment of minors might prohibit an individual from qualifying for PUA. To be eligible for PUA, Section 2102(a)(3)(A)(ii)(I) of the CARES Act provides that individuals must self-certify that they are “otherwise able to work and available for work within the meaning of applicable State law, except that the individual is unemployed, partially unemployed, or unable or unavailable to work” because of one or more of the COVID-19 related reasons.

Consistent with federal and state laws on employment of minors, there may be restrictions on the number of hours, days, and types of work an individual may perform. If federal and state laws on restricting minors' employment do not make it illegal to employ the individual, and the individual meets the state's able and available requirements, the individual may be eligible for PUA.

7. Question: My state generally finds that a corporate shareholder is not "unemployed" because he or she continues to act on behalf of the company. Is a corporate shareholder eligible for PUA?

Answer: It depends. If the individual is a corporate shareholder and providing services for the corporation, the individual may be eligible for regular UC, depending on state law. If the individual performed services for the corporation and received compensation and is not eligible for regular UC, then he or she may be eligible for PUA, provided the individual is unemployed, partially unemployed, or unable or unavailable to work due to one or more of the COVID-19 related reasons listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

8. Question: An individual is participating in work study and has directed that his or her wages be sent directly to pay the costs of tuition, room and board, and books. The individual is now unable to work due to a school closure because of COVID-19. Can he or she collect PUA?

Answer: An individual participating in work study who is not eligible for regular UC, whose worksite closed as a direct result of COVID-19, and who has suffered a loss of income, may be eligible for PUA.

9. Question: Is an incarcerated individual who is no longer participating in the work release program because the jail closed this program due to COVID-19 eligible for PUA?

Answer: No. The termination of a work release program is not an identified COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Further, the incarcerated individual is not "otherwise able to work and available for work within the meaning of applicable State law" because of his or her incarcerated status.

10. Question: Is a self-employed child care provider who is providing child care for fewer children as a result of the COVID-19 pandemic eligible for PUA?

Answer: If the self-employed child care provider can establish that he or she has experienced a significant diminution of his or her customary full-time services because of COVID-19, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. This individual's benefit amount may be reduced because of income from continued partial employment.

11. Question: Is a freelance writer who works from home, but is no longer getting paid for any work, eligible for PUA?

Answer: It depends. Section 2102(a)(3)(B) of the CARES Act provides that an individual who has the ability to telework with pay is not covered under PUA. However, if the freelance writer has experienced a significant diminution of freelance work because of COVID-19, regardless of his or her ability to telework, he or she may be eligible for PUA under the additional eligibility criterion established by the Secretary pursuant to Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, though his or her benefit amount may be reduced because of income from continued partial employment.

Eligibility – Not Eligible for Regular Unemployment Compensation (UC)

12. Question: Is an individual eligible for PUA if he or she is disqualified from regular UC because of a prior quit or termination?

Answer: This question arises from a state’s confusion with Question 33 in UIPL No. 16-20, Change 1, which provides that an individual may be eligible for PUA if he or she is disqualified from regular UC because of a prior quit or termination, and the “Program Integrity” statement, which advises that an individual is only entitled to benefits if he or she is no longer working through no fault of his or her own.

The answer depends on the facts. The key factor is the reason that the individual is unemployed, partially unemployed, or unable or unavailable to work for the week in question.

Question 33 in Attachment I to UIPL No. 16-20, Change 1 advises that if the individual is disqualified from regular UC for a cause that occurred prior to the individual’s COVID-19 related reason, he or she may be eligible for PUA. Additionally, Question 31 in Attachment I to UIPL No. 16-20, Change 1, advises that if the individual is currently unemployed, partially unemployed, or unable or unavailable to work because of at least one of the COVID-19 related reasons listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.

Stated another way, if the individual is disqualified from regular UC because of the prior separation issue, but is currently unable or unavailable to work for one of the listed COVID-19 related reasons in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, then the individual may be eligible for PUA.

13. Question: How might penalty weeks affect an individual's eligibility for PUA, depending on my state law?

Since addressing the question of penalty weeks with Question 37 of Attachment I to UIPL No. 16-20, Change 1, the Department received a few follow-up questions. We provide this additional clarification.

- A. Is an individual eligible for PUA when the state law provides that an individual is eligible for regular UC, but must serve penalty weeks before receiving regular UC?

Answer: No. Where state law says that the individual is eligible for regular UC, but not paid until the penalty weeks are served, the individual does not meet the eligibility requirement in Section 2102(a)(3)(A)(i) of the CARES Act to be ineligible for regular UC. Therefore, the individual may not receive PUA. Additionally, because the individual is eligible for regular UC and ineligible for PUA, the individual cannot serve fraud penalty weeks through a PUA claim.

- B. Is an individual eligible for PUA when the state's law requires that an individual serve penalty weeks before being eligible for regular UC?

Answer: It depends. If, under the state's law, the individual is **not** eligible for regular UC, PEUC, or EB while serving the penalty weeks, and the individual is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual may be eligible for PUA. State law will determine whether the weeks of filing for PUA may be used to satisfy such penalty weeks for regular UC.

Eligibility – COVID-19 Related Reasons

14. Question: If an individual becomes unemployed for reasons unrelated to COVID-19, and now is unable to find work because businesses have closed or are not hiring due to COVID-19, is he or she eligible for PUA?

Answer: No. An individual is only eligible for PUA if the individual is otherwise able to work and available to work but is unemployed, partially unemployed, or unable or unavailable for work for a listed COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Not being able to find a job because some businesses have closed and/or may not be hiring due to COVID-19 is not an identified reason.

Eligibility – Ongoing

15. **Question:** How does a self-employed individual in the process of reopening his or her business report earnings for the week?

Answer: The provisions set out in 20 C.F.R. 625.6(f) apply with respect to reportable income to the same extent and in the same manner as in the case of DUA. A self-employed individual must report gross income when filing a continued claim. Because the term is undefined in the regulation, state law will determine the definition of “gross income” for purposes of a self-employed individual.

Refer to Question 3 for how self-employment income is evaluated when calculating the weekly benefit amount.

16. **Question:** Is an individual who refuses an offer of work due to legitimate COVID-19 health and safety concerns eligible for PUA?

Answer: It depends. To qualify for PUA, an individual must be otherwise able to work and available for work within the meaning of applicable state law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19-related reasons outlined in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. An individual is considered available for work under state law if the individual does not limit his or her availability for suitable work. Many states, however, have suitable work provisions that consider work that unreasonably exposes an individual to safety risks to be unsuitable.

If an individual receiving PUA is offered and refuses work that unreasonably exposes him or her to COVID-19, the state may conclude that the work is not suitable, if permitted under the state’s suitable work provisions. The individual may still be eligible for PUA, provided the other eligibility requirements are met.

Likewise, if an individual were to refuse work that would be considered suitable under state law, but turned the work down for one of the COVID-19-related reasons in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual would still be eligible for PUA.

Additionally, the individual may still be eligible for PUA if he or she were to refuse work that would be considered suitable under state law, but turned the work down for “good cause” under state law. To continue to be eligible for PUA after turning down suitable work for “good cause,” this individual still must be unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons.

17. Question: Under DUA, an individual is no longer eligible for benefits when the conditions caused by the disaster no longer exist. When does an individual's eligibility for PUA end?

Answer: To be eligible for benefits, the individual must meet the requirements to be a covered individual under section 2102(a)(3)(A) of the CARES Act, including that the person 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 the CARES Act. As discussed in Question 45 of Attachment I to UIPL No. 16-20, Change 1, eligibility is determined on a weekly basis and the individual must certify for an identified COVID-19 related reason each week to receive payment. The individual ceases to be eligible when he or she no longer meets the requirements to be a covered individual in a given week.

18. Question: May an individual who stops receiving PUA benefits reopen the PUA claim and resume receiving benefits if he or she becomes unemployed again due to a qualifying COVID-19 reason?

Answer: Yes. An individual may reopen the PUA claim and resume receiving benefits, provided he or she meets the eligibility requirements.

19. Question: May an individual collecting PUA also participate in a Short-Time Compensation (STC) plan with his or her employer?

Answer: No. The STC program covers individuals whose employer is reducing the number of hours worked by the individual to avoid layoffs. Eligibility for the PUA program, by contrast, requires that the individual 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 the CARES Act. None of the listed COVID-19 related reasons cover a scenario in which the employer is seeking to reduce hours to avoid layoffs.

Overpayments and Fraud

20. Question: May an overpayment of PUA benefits be waived if the individual was not at fault?

Answer: No. The provisions set out in 20 C.F.R. 625.14 apply with respect to PUA overpayments to the same extent and in the same manner as in the case of DUA. As described in 20 C.F.R. 625.14(e), there is no waiver provision for PUA overpayments, regardless of cause. Any overpayments must be recovered through offset of future benefits and the state's normal collection procedures.

21. Question: May a state impose its 15 percent fraud penalty when an individual commits fraud on a PUA claim?

Answer: No. The provisions set out in 20 C.F.R. 625.14 apply with respect to PUA overpayments and fraud to the same extent and in the same manner as in the case of DUA. States may not apply their state penalties and disqualification periods to PUA overpayments. However, 20 C.F.R. 625.14(j) provides that applicable criminal prosecution and penalties are available.

22. Question: May a state impose its own disqualification period when an individual commits fraud on a PUA claim?

Answer: No. The provisions set out in 20 C.F.R. 625.14 apply with respect to PUA overpayments to the same extent and in the same manner as in the case of DUA. 20 C.F.R. 625.14(i) sets the disqualification period for PUA and requires that the disqualification be based on when the fraud occurs.

If the fraud was in connection with the initial application (for example, the individual says he or she quit the job because of COVID-19 and the state determines the individual was fired for reasons not related to COVID-19), the individual would be disqualified for the entire Pandemic Assistance Period.

If the fraud happened during the continued claim series, the disqualification would apply to the week the fraud occurred, plus the next two compensable weeks for PUA that immediately follow that week. If the individual is not otherwise entitled to PUA following the week of fraud, then the disqualification would be assessed on the first two weeks in which the individual once again becomes eligible for PUA.

23. Question: Because the state must rely on self-certification to assess eligibility for PUA, what tools does a state truly have in addressing the suspicion of fraud?

Answer: This question arises because UIPL No. 23-20 requires that a state implement the same integrity functions that it uses for regular UC to address fraud in the PUA program. While Section 2102 of the CARES Act relies on self-certification to verify that an individual is covered under the PUA program, the state has authority to request supporting documentation when investigating the potential for fraud and improper payments. 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).

The state should use the cross-matches and tools described in Section 4.b. of UIPL No. 23-20 to monitor for suspicious activity on PUA claims, as it does for regular UC. This includes the requirement to share information with the Department's Office of Inspector General (OIG) and the strong recommendation to collaborate with the UI Integrity Center

(Center). The Center, established by the Department and operated by the National Association of State Workforce Agencies, provides states with the Integrity Data Hub (IDH), which includes 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. The Center has provided states with new tools to support data mining to detect fraud. In addition, the Center is hosting weekly calls with states, the Department, and the Department's Office of the Inspector General to share information regarding fraud schemes and successful state practices to abort them and claw back funds, including working with banks to help with fraud detection and recovery. The Center also identifies, organizes, shares, and supports promising and innovative integrity practices and provides state-specific consulting, mentoring, and technical assistance.

If a state has reasonable suspicion of fraudulent activity on a claim, then the state may request supporting documentation to address the concern. Requests for supporting documentation and a state's investigative and adjudicative practices should be done in alignment with the processes described in UIPL No. 01-16 to ensure due process is afforded to the individual.

Financial Information and Reporting

24. Question: Is the state required to submit monthly reports of Pandemic Unemployment Assistance Activities (ETA 902P) if there is no activity in the initial months of implementing the program?

Answer: Yes. As described in Section C. of Attachment VI to UIPL No. 16-20, the state must begin submitting the ETA 902P report in the month following the date of the agreement and continue through the end of the Pandemic Assistance Period and until all payment and appeals activities are complete.