

organizations not covered by regular unemployment compensation, and part-time workers may qualify for unemployment benefits." (Emphasis added). (See Exhibit 4).

Again, the guidance referenced above uses the terminology that a claimant "may" be eligible for PUA, rather than "shall" be eligible for PUA. This is an important distinction as the use of the word "may" shows that the finding of eligibility is dependent upon other eligibility requirements being met.

The claimant has the burden of proving eligibility for unemployment benefits. *Dwyer v UCC*, 321 Mich 178 (1948). On review of the record and the evidence submitted, along with the applicable law, the claimant has failed to meet her burden of establishing that she is able and available for full-time work as required under Michigan law. The claimant is therefore ineligible for benefits under the availability provision, Section 28(1)(c), of the Act.

**IMPORTANT: TO PROTECT YOUR RIGHTS, YOU MUST BE ON TIME**

This Order will become final unless an interested party takes ONE of the following actions: (1) files a written, signed, request for rehearing/reopening to the Administrative Law Judge, or by an office or agent office of the agency OR (2) files a written, signed, appeal to the Unemployment Insurance Appeals Commission at P.O. Box 30475, Lansing, MI 48909-7975 (Facsimile: 517-241-7326); OR (3) files a direct appeal, upon stipulation, to the Circuit Court on or before:

**March 5, 2021**

If you elect to file an appeal with the Unemployment Insurance Appeals Commission, your appeal should be filed within the deadline set forth in my decision/order. **Your appeal may be submitted to the Commission by US mail or fax. Additionally, you may file an appeal electronically by completing a fillable form on the Commission's website.** The website address is <https://www.michigan.gov/uiac> and that website includes instructions on how to file the appeal. Do not use your MiWAM account through the Unemployment Insurance Agency's online system to file an appeal to the Commission.

I, P. Osborne, certify a copy of this order has been sent on the day it was signed, to each of the parties at their respective addresses on record.

(SEE ATTACHED SHEET)

## English

**IMPORTANT!** This document(s) contains important information about your unemployment compensation rights, responsibilities and/or benefits. It is critical that you understand the information in this document.

**IMMEDIATELY:** If needed, call 1-866-500-0017 for assistance in the translation and understanding of the information in the document(s) you have received.

## Arabic

أ. "هام ! يحتوي هذا المستند (المستندات) على معلومات هامة عن حقوقك الخاصة بتعويضات البطالة، ومسؤولياتك وألزاماتك، وذلك فمن المهم جدًا أن تفهم البيانات الواردة في هذا المستند.  
على الفور: إذا كنت بحاجة إلى مساعدة اتصل بالرقم 1-866-500-0017 للحصول على مساعدة في ترجمة وفهم المعلومات الواردة في المستند (المستندات) التي تلقتها."

## Bengali

"গুরুত্বপূর্ণ! এই তথ্যপত্রে আপনার বেকার ভাতা অধিকার, দায়িত্ব এবং/অথবা সুবিধাগুলি সম্পর্কে গুরুত্বপূর্ণ সূচনা দেওয়া আছে। এটা গুরুত্বপূর্ণ যে, এই তথ্যপত্রে থাকা সূচনাগুলি আপনি ভালো করে বুঝে নবেন।  
অবিলম্বে: আপনি যে তথ্যপত্র(গুলি) পেয়েছেন এতে থাকা সূচনাগুলি বুঝা এবং অনুবাদের ক্ষেত্রে সাহায্য পেতে প্রয়োজনানুসারে 1-866-500-0017 নম্বরে ফোন করুন।"

## Spanish

**¡IMPORTANTE!** Este documento(s) contiene información importante sobre sus derechos, obligaciones y/o beneficios de compensación por desempleo. Es muy importante que usted entienda la información contenida en este documento.

**INMEDIATAMENTE:** Si necesita asistencia para traducir y entender la información contenida en el documento(s) que recibió, llame al 1-866-500-0017.

## Mandarin

重要提示！这份文件包含有关失业补偿的权利、责任和/或利益的重要信息。您需要理解本文件中的信息，这一点至关重要。立即：如果需要，请拨打1-866-500-0017，可获得帮助，以帮助您翻译和理解所收到的文件中的信息。

## Albanian

1. "E RËNDËSISHME! Ky dokument (dokumente) përmban informacion të rëndësishëm mbi të drejtat, përgjegjësitë dhe/ose përfitimet tuaja nga kompensimi i papunësisë. Është shumë e rëndësishme që ta kuptoni informacionin në këtë dokument.
2. **MENJËHERË:** Nëse është e nevojshme, telefononi në numrin 1-866-500-0017 për t'ju ndihmuar me përkthimin dhe kuptimin e informacionit të dokumentin (dokumenteve) që keni marrë."



## **REQUEST FOR REHEARING OR REOPENING BEFORE AN ADMINISTRATIVE LAW JUDGE**

When the appeal to the Administrative Law Judge (ALJ) has been dismissed for lack of prosecution or a party is in possession of newly discovered material information not available when the case was heard by the ALJ, the party may request rehearing in writing before the ALJ instead of appealing to the Unemployment Insurance Appeals Commission (Commission). A request for rehearing must be signed by the requesting party or their agent, and **RECEIVED** by the Michigan Office of Administrative Hearings and Rules (MOAHR) at **611 West Ottawa, 2nd Floor, Lansing, MI 48933** or by an office or agent office of the agency, within 30 calendar days after the date of this decision. The party requesting rehearing must also serve the request on the opposing party. A rehearing request received (as described above) more than 30 days after the decision is mailed, shall be treated as a request for reopening.

The ALJ may, for good cause, reopen and review this decision and issue a new decision or issue a denial of rehearing/reopening.

If a request for rehearing or reopening is not received by MOAHR, and an appeal to the Commission is not submitted, the hearing decision becomes final.

**If the Agency fails to comply with an ALJ decision or order more than 30 days, but within 1 year, after the date of mailing of the decision, you may request, in writing, that the ALJ reopen the matter. You must serve a copy of the request to reopen on the other party.**

## **APPEAL TO THE UNEMPLOYMENT INSURANCE APPEALS COMMISSION**

The Unemployment Insurance Appeals Commission (Commission) consists of up to seven members appointed by the governor and is not part of the Unemployment Insurance Agency (UIA).

An appeal to the Commission shall be in writing and signed by the party or his/her agent and **RECEIVED** directly by the COMMISSION within 30 days after the mailing of the ALJ's hearing decision or order denying rehearing or reopening. A timely appeal or request for rehearing/reopening may be made by personal service, postal delivery (**P.O. Box 30475, Lansing, MI 48909-7975**), facsimile transmission (**517.241.7326**), or other electronic means as prescribed by the Commission.

The timely appeal/request may also seek to present additional evidence in connection with the appeal or request an oral argument before the Commission. The Commission may consider written argument only if all parties are represented; by agreement of the parties; the Commission orders oral argument; or the Commission orders evidence be produced before it. For additional information, please review the Mich Admin Code, Rules 792.11416 through 792.11429 or visit <http://www.michigan.gov/lara/0,4601,7-154-35738--,00.html>.

An appeal cannot be requested by telephone, but information about the appeal process can be obtained by calling (800) 738-6372 or visiting [http://www.michigan.gov/documents/uia\\_UC1800\\_76144\\_7.pdf](http://www.michigan.gov/documents/uia_UC1800_76144_7.pdf).

## **BY-PASS OF COMMISSION/DIRECT APPEAL TO THE CIRCUIT COURT**

A party may by-pass appealing to the Commission and appeal a decision or final order of an ALJ directly to a circuit court in the county in which the Claimant resides or in the county in which the Claimant's place of employment is (or was) located, or if the Claimant is not a party to the case, the circuit court in the county in which the employer's principal place of business in this state is located, if the parties (Claimant and Employer), or their respective authorized agents/attorneys, sign a timely written stipulation agreeing to the direct appeal to the circuit court. **The stipulation must be mailed to the Michigan Office of Administrative Hearings and Rules, 3026 W. Grand Blvd, 2nd Floor Annex, Suite 2-700, Detroit, Michigan 48202.** Application for review to a circuit court must be made within 30 days after the mailing date decision or final order by any method permissible under the rules and practices of the circuit court.

The responsibility for properly and timely filing an appeal with the clerk of the circuit court rests with the party filing the appeal.

**EXHIBIT C**  
STATE OF MICHIGAN  
UNEMPLOYMENT INSURANCE APPEALS COMMISSION

UIAC 1852

In the Matter of

CHRISTINE M. HOLIFIELD,

Appeal Docket No.: 20-024143-262734W

Claimant

Agency Case No.: 24375735

ORDER ALLOWING WRITTEN ARGUMENT  
AND ORAL HEARING

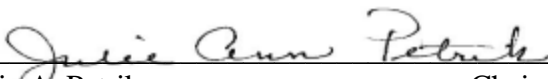
This case is before the Unemployment Insurance Appeals Commission (Commission) pursuant to the claimant's timely appeal from a December 8, 2020 decision issued by an Administrative Law Judge. The claimant has requested permission to submit written argument, in accordance with Section 34(4) of the Michigan Employment Security Act (Act) and Michigan Administrative Code (MAC) Rule 792.11423.

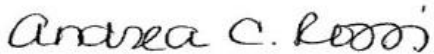
The Commission finds that the request of the claimant should be granted. We note that in the claimant's application, she included her written argument, which was properly served on the parties in this matter and will be considered by the Commission. The claimant may supplement her written argument, if she wishes to do so. Written argument, together with a statement of service on each party, shall be received by the Commission within 14 days after the mailing date of this order.

MAC Rule 792.11423(5) provides that a reply, if any, to another party's timely written argument, together with a statement of service on each party, shall be received by the Commission no later than 14 days after the mailed date of the other party's written argument.

The claimant also made a request to present oral argument in this matter under MAC Rule 792.11420(4). The Commission finds that the request of the claimant should be granted. A notice for the oral hearing will follow.

IT IS THEREFORE ORDERED that the claimant's request to submit written argument and oral argument are granted. The arguments and replies shall be received by the Commission within the time frames set forth herein.

  
Julie A. Petrik Chairperson

  
Andrea C. Rossi Commissioner

  
Alejandra Del Pino Commissioner

Dated and mailed from  
Lansing, Michigan, on February 18, 2021

# EXHIBIT D

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSI FI CATI ON Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE January 8, 2021

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20  
Change 4**

**TO:** STATE WORKFORCE AGENCIES

**FROM:** JOHN PALLASCH /s/  
Assistant Secretary

**SUBJECT:** Continued Assistance to Unemployed Workers Act of 2020—Pandemic  
Unemployment Assistance (PUA) Program: Updated Operating Instructions and  
Reporting Changes

1. **Purpose.** To provide states with updated guidance for the PUA program, as amended by the Continued Assistance to Unemployed Workers Act of 2020 (Continued Assistance Act) and updated instructions for reporting PUA program activities.
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests that State Workforce Administrators provide the information in this Unemployment Insurance Program Letter (UIPL) and all attachments to appropriate program and other staff in state workforce systems as they implement the changes to the PUA program and the required reporting of PUA activities as amended by the Continued Assistance Act.
3. **Summary and Background.**
  - a. Summary – On December 27, 2020, the President signed into law the Continued Assistance Act, which includes Unemployment Insurance (UI) related provisions that make the following changes to PUA:
    - i. extending PUA program authorization until March 14, 2021;
    - ii. adding a phaseout period, through weeks beginning on or before April 5, 2021, for individuals who have remaining entitlement to PUA and who are receiving PUA as of the end of the program (March 13, 2021, for states with a Saturday week ending date and March 14, 2021, for states with a Sunday week ending date);
    - iii. adding a new limitation on backdating claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act);

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- iv. increasing the maximum number of PUA weeks available from 39 weeks to 50 weeks, subject to limitations on the dates in which these additional 11 weeks may be collected;
- v. adding a requirement for individuals to submit documentation of employment or self-employment;
- vi. establishing the self-certification process for continued claims in statute;
- vii. permitting states to waive PUA overpayments under certain conditions;
- viii. providing a hold harmless provision for individuals who are currently receiving PUA after having exhausted Pandemic Emergency Unemployment Compensation (PEUC), but who are now eligible to receive additional benefit amounts available on the PEUC claim;
- ix. establishing in statute the existing PUA appeals guidance; and
- x. adding a requirement for states to verify the identity of PUA applicants.

In addition to the changes made by the Continued Assistance Act, the Department provides further guidance regarding fraud penalties imposed on individuals for PUA overpayments.

ETA has also revised the ETA 902P report to include additional data items for tracking PUA overpayment recovery activities, claim exhaustions, and overpayments resulting from identity theft.

All other PUA program parameters, as provided in Section 2102 of the CARES Act, PUA agreements, UIPL Nos. 16-20; 16-20, Change 1; 16-20, Change 2; and 16-20, Change 3, remain the same.

- b. Background – The Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. L. 116-136) created the PUA program to provide temporary assistance to individuals who are unemployed, partially unemployed, unable, or unavailable for work due to specified COVID-19 related reasons and who are not eligible for regular state or federal unemployment benefits. The CARES Act authorized PUA through weeks of unemployment ending before December 31, 2020.

**Importance of Program Integrity.** Addressing improper payments and fraud is a top priority for the Department and the entire UI system. It is critical that states implement UI programs and provisions to ensure that 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 identities.

The programs and provisions within the Continued Assistance Act, the Emergency Unemployment Insurance Stabilization and Access Act, and the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State UI program. These requirements include that an individual file certifications with respect to each week of unemployment that is paid and that an individual be able to work and available for work except as specifically provided for in statute. In addition, the Continued Assistance

Act includes new program integrity requirements for the PUA and PEUC programs with which states must comply.

Some states remain in the midst of managing extraordinary workloads due to the effects of the spread of COVID-19. During this time, 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 programs operated within the UI system.

UIPL No. 23-20, published on May 11, 2020, discusses program integrity for the UI system. UIPL No. 28-20, published on August 31, 2020, 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.

States play a fundamental role in ensuring the integrity of the UI system. While states have been provided some flexibilities as a result of the COVID-19 pandemic, those flexibilities are generally limited to emergency temporary actions as needed to respond to the spread of COVID-19. States must ensure that individuals only receive benefits in accordance with federal and state law.

ETA strongly encourages states to utilize the tools, resources, and services of the UI Integrity Center, funded by the Department and operated in partnership with the National Association of State Workforce Agencies. One of the key assets to support addressing fraud is the Integrity Data Hub (IDH), which includes a variety of data sets to prevent and detect fraud based on identity theft at the time of application, including an identity verification solution. ETA also encourages states to consult with the UI Integrity Center on data analytics and to prioritize IDH hits, as well as on other tools and solutions available through the private sector that complement the IDH. In UIPL No. 28-20, the Department explained its expectation that states connect to the IDH no later than March 31, 2021 and encouraged states to use their share of the funding provided through that UIPL to support IDH connection as soon as possible. There is also a range of other tools on the market that states should consider when combating fraud and ensuring program integrity.

**4. Guidance on Changes to PUA in the Continued Assistance Act.** An overview of key changes to the PUA program is provided below.

The Agreement Implementing the Relief for Workers Affected by Coronavirus Act that was signed by each state in March 2020, remains in effect along with the modifications and extensions required as a result of these updated provisions. When determining the appropriate course of action in administering the PUA program, states should first consult Section 2102 of the CARES Act, as amended by the Continued Assistance Act, and the subsequent operating instructions provided by the Department. 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. All other PUA program

parameters, as provided in Section 2102 of the CARES Act, PUA agreements, UIPL Nos. 16-20; 16-20, Change 1; 16-20, Change 2; and 16-20, Change 3, remain the same.

Detailed instructions for implementing the amendments are included in Attachment I, Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions and Attachment II, Handbook 401 Instructions for ETA 902 Pandemic Unemployment Assistance. Attachment III provides a matrix of eligibility requirements and benefit availability dependent on the claim filing date. Attachment I, Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions is structured to enable states to know what guidance is new, what is modified, and what has not changed.

**a. Changes to Program Dates and Benefit Duration.**

- i. **Extension of Program.** Section 201(a) of the Continued Assistance Act extends PUA authorization through weeks of unemployment ending on or before March 14, 2021. This means that for states where weeks of unemployment end on a Saturday, the last week payable is the week ending March 13, 2021, and for states with weeks ending on Sunday, the last week payable is the week ending March 14, 2021. Refer to section C.14. of Attachment I to this UIPL for additional detail.
- ii. **Phaseout Period.** Section 201(a)(3) of the Continued Assistance Act provides a phaseout period for individuals receiving PUA as of the end of the program (March 13, 2021, for states with a Saturday week ending date and March 14, 2021, for states with a Sunday week ending date), who have not yet exhausted their PUA entitlement. These individuals may continue to collect PUA for any week in which they have remaining entitlement and are otherwise eligible, except that no PUA is payable for any week beginning after April 5, 2021 (April 10, 2021 for states with a Saturday week ending date and April 11, 2021 for states with a Sunday week ending date). Refer to section C.5. of Attachment I to this UIPL for additional detail. States may not accept any new PUA claims for weeks of unemployment after March 13, 2021 for states with a Saturday week ending date and March 14, 2021, for states with a Sunday week ending date.
- iii. **New Limitations on Backdating.** As discussed in Question 4 of Attachment I to UIPL No. 16-20, Change 1, individuals filing for PUA must have their claims backdated to the first week during the Pandemic Assistance Period (PAP) that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. However, Section 201(f) of the Continued Assistance Act limits the availability of backdating for claims that are filed after December 27, 2020 to no earlier than December 1, 2020. Refer to section C.15. of Attachment I to this UIPL for additional detail.



- iv. **Modification to Benefit Duration.** The maximum number of weeks of PUA benefits is modified to increase from 39 weeks to 50 weeks. The number of weeks available continues to be reduced by any weeks of regular UC and Extended Benefits (EB) that the individual receives during the PAP. Individuals may only collect these additional 11 weeks of benefits with respect to weeks of unemployment beginning on or after December 27, 2020. Refer to section C.17. of Attachment I to this UIPL for additional detail.
  - v. **Notification Requirements.** States must re-determine existing PUA claims to reflect the additional weeks of potential eligibility. States must also identify each individual with a PUA claim on file and advise these individuals that they are potentially eligible for additional PUA benefits. States must provide these individuals with instructions for reopening their PUA claims (if the individual has stopped collecting PUA). Refer to section C.28 of Attachment I of this UIPL for additional detail.
- b. **New Requirement for Individuals to Submit Documentation of Employment or Self-Employment.** Section 241 of the Continued Assistance Act, creates a new requirement for individuals to submit documentation substantiating employment or self-employment. Refer to section C.2. of Attachment I to this UIPL for additional detail.
- i. **Filing New Applications for PUA.** Individuals filing a new PUA application on or after January 31, 2021 (regardless of whether the claim is backdated), are required to provide documentation within 21 days of application or the date the individual is directed to submit the documentation by the State Agency, whichever is later. The deadline may be extended if the individual has shown good cause for not submitting documentation under state UC law within 21 days.
  - ii. **Filing Continued Claims for PUA.** Individuals who applied for PUA before January 31, 2021 and receive a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), are required to provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, within 90 days of application or when directed to submit the documentation by the State Agency, whichever is later. The deadline may be extended if the individual has shown good cause under state UC law.
- c. **Continued Eligibility Requirements.** Individuals must provide a self-certification that their unemployment, partial unemployment, or inability or unavailability to work is specifically attributable to one or more of the COVID-19 related reasons specified in section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act and must identify that specific reason for each week that PUA is claimed. This applies with respect to weeks beginning on or after January 26, 2021 (30 days after the enactment of the Continued Assistance Act).

Additionally, in the case of states that made a good faith effort to implement the PUA program prior to the effective date of this provision, an individual will not be denied benefits for the weeks ending prior to January 26, 2021, solely for failing to submit a weekly self-certification. Refer to section C.7. of Attachment I to this UIPL for additional detail.

- d. **Overpayment Waiver Authority.** Section 201(d) of the Continued Assistance Act permits a state to waive repayment of a PUA overpayment if the state determines that:
  - i) the overpayment was without fault on the part of the individual and ii) that repayment would be contrary to equity and good conscience. Refer to section C.21.b. of Attachment I to this UIPL for additional detail.
- e. **Hold Harmless Provision for Individuals who are Provided Additional Benefit Amounts on a Previous PEUC claim.** Under the CARES Act, an individual must have exhausted all entitlement to regular UC, PEUC, and EB before filing for PUA. However, section 201(e) of the Continued Assistance Act provides a “hold harmless” provision for an individual who previously exhausted PEUC and is now receiving PUA, but as a result of Section 206(b) of the Continued Assistance Act becomes eligible for additional amounts of PEUC beginning on or after December 27, 2020. Refer to section C.6. of Attachment I to this UIPL for additional detail.
- f. **Requirement to Verify Identity.** Section 242 of the Continued Assistance Act requires that states must include procedures for identity verification or validation for timely payment, to the extent reasonable and practicable, by January 26, 2021 (30 days after the enactment of the Continued Assistance Act) to ensure that they have an adequate system for administering the PUA program. Refer to section C.3. of Attachment I to this UIPL for additional details.
- g. **Technical Correction for the Commonwealth of Northern Mariana Islands (CNMI).** Section 265 of the Continued Assistance Act provides that a Commonwealth Only Transitional Worker (CW-1) shall be considered a qualified alien for purposes of eligibility under the PUA and FPUC programs. This change primarily impacts claims in the Commonwealth of the Northern Mariana Islands. Refer to section C.8. of Attachment I to this UIPL for additional details.
- h. **Appeals Processes.** Section 201(c) of the Continued Assistance Act provides that individuals may appeal their rights on any PUA determination or redetermination made by the state and that all levels of appeals filed in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands shall be carried out by the applicable state that made the determination or redetermination and shall be conducted in the same manner and to the same extent as the state would conduct appeals of determinations and redeterminations regarding rights to regular compensation under state law.

With respect to any appeals filed in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau, all levels of appeals shall be carried out by the applicable entity within the territory in the same manner and to the same extent as appeals of regular unemployment compensation conducted under the unemployment compensation law of Hawaii. Refer to section C.20. of Attachment I to this UIPL for additional detail.

5. **Fraud Penalties for PUA Overpayments.** Consistent with the requirements of Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Pub. L. 112-40 (2011), if a state determines that it made an erroneous PUA payment to an individual due to fraud committed by the individual, the state must apply a minimum 15 percent penalty on such individual. Refer to Section C.21 of Attachment I to this UIPL for additional detail.
6. **Changes to the PUA Activity Report, ETA 902P.** ETA has revised the ETA 902P report to include additional data items that will be used to assess state overpayment recovery efforts for the PUA program, inform policy makers about the program, determine the effectiveness of identity theft prevention efforts, and assess additional program integrity needs. Please refer to Section E of Attachment I to this UIPL for additional detail.
7. **Inquiries.** We encourage states to contact the Department for technical assistance. Please direct inquiries to [covid-19@dol.gov](mailto:covid-19@dol.gov), with a copy to the appropriate ETA Regional Office.
8. **References.**
  - Continued Assistance to Unemployed Workers Act of 2020 (Continued Assistance Act);
  - Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. L. 116-136), Title II, Subtitle A;
  - Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Pub. L. 112-40;
  - Section 303(a)(1), (3), and (11) of the Social Security Act;
  - 5 C.F.R. Subpart C § 845.303 - Standards for Waiver of Overpayments;
  - 20 C.F.R. Part 625 -Disaster Unemployment Assistance;
  - UIPL No. 09-21, *Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) – Summary of Key Unemployment Insurance (UI) Provisions*, issued December 30, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3831](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3831);
  - UIPL 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*, August 31, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8044](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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4621);
- 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 5, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4628](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628);
- 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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5899);
- UIPL No. 16-20, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Pandemic Unemployment Assistance (PUA) Program Additional Questions and Answers*, issued July 21, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5479](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479);
- UIPL No. 16-20, Change 3, *Eligibility of Individuals who are Caregivers for Pandemic Unemployment Assistance in the Context of Scholl Systems Reopening*, issued August 27, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3849](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3849); and
- UIPL 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](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3675).

## 9. **Attachments.**

- Attachment I: Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions;
- Attachment II: UI Report Handbook No. 401, ETA 902P – Pandemic Unemployment Assistance;
- Attachment III: Processing PUA Claims Based on the Claim Filing Date;
- Attachment IV: PUA Provisions under the Consolidated Appropriations Act, 2021. Division N, Title II, Subtitle A, Chapter I, Continued Assistance to Unemployed Workers Act of 2020.



## **Attachment I to UIPL No. 16-20, Change 4**

### **Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions Revised January 8, 2021**

The following Implementation and Operating Instructions are structured to enable states to know what guidance is new, what is modified, and what is unchanged.

#### **A. Introduction (updated reference to Continued Assistance Act)**

On March 27, 2020, the President signed Public Law (Pub. L.) 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Section 2102 created a new federal program called Pandemic Unemployment Assistance (PUA) and provided funding to states for the administration of the program. On December 27, 2020, the President signed, the Consolidated Appropriations Act, 2020, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act), which amended the CARES Act and included certain changes to the PUA program. Under the new law, the maximum number of weeks available for the PUA program increases from 39 weeks to 50 weeks of benefits. These benefits are payable to individuals who are not eligible for regular UC, EB, or PEUC. This includes individuals who have exhausted all rights to such benefits, as well as individuals who are self-employed, seeking part-time employment, lacking sufficient work history, or who are otherwise not qualified for regular unemployment compensation (UC), EB, and Pandemic Emergency Unemployment Compensation (PEUC) under Section 2107 of the CARES Act, and who otherwise meet the eligibility requirements of Section 2102 of the CARES Act. The costs of the federal benefit and of program administration are 100% federally funded.

This guidance has been updated to include amendments made by the Continued Assistance Act and clarifications provided in Change 1, 2, and 3 to Unemployment Insurance Program Letter (UIPL) No. 16-20. Additionally, please note the new information below regarding overpayment fraud penalties and interest. Unless otherwise specified here, all other PUA program provisions, as provided in Section 2102 of the CARES Act, UIPL Nos. 16-20; 16-20, Change 1; 16-20, Change 2; and 16-20, Change 3, remain the same. The Agreement Implementing the Relief for Workers Affected by Coronavirus Act (hereinafter the Agreement) that the Department of Labor and states signed in March 2020 also remains in effect, along with the modifications and extensions required by these updated provisions. As set forth in Section XI of the Agreement, a state may terminate the Agreement with thirty days' written notice if it chooses to no longer administer one or more provisions specified in Section XIV, which includes the state's agreement to administer the PUA program.

## B. Definitions (updated as noted below)

This Section contains the definitions of terms used throughout this document, using definitions in 20 C.F.R. 625.2 and in Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA). References to 5 U.S.C. Chapter 85 relate to Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX).

1. “CARES Act” means Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II Subtitle A, The Relief for Workers Affected by Coronavirus Act.
2. “Additional compensation” means compensation totally financed by a state and payable under a state law by reason of conditions of high unemployment or by reason of other special factors, and when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85.
3. “Agreement” means the agreement between a state and the U.S. Department of Labor (Department) to administer the PUA Program. Under the Agreement, the state agency makes payments of PUA as the Department’s agent. PUA payments must be made in accordance with the CARES Act, including any applicable amendments, as interpreted by the Department in these instructions and any other instructions issued by the Department.
4. “Applicable state” means, with respect to an individual, the state from which the individual is receiving compensation.
5. “Applicable state law” means the unemployment compensation law of the applicable state for an individual.
6. “Benefit year” means, with respect to an individual, the benefit year as defined in the applicable state law.
7. “Compensation” shall have the meaning provided in 20 C.F.R. 265.2(d).
8. “COVID-19” means the 2019 Novel Coronavirus or 2019-nCoV.
9. “COVID-19 Public Health Emergency” means the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.
10. “Covered Individual” (**updated to include documentation requirement under Section 241 of the Continued Assistance Act**) means an individual who: (i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under Section 2107 of the CARES Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or Pandemic Emergency Unemployment Compensation under Section 2107, (ii) self-certifies that the individual is unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act (as described in subsection C.1. below), and (iii) provides required documentation of employment/self-employment within the applicable period of time (as described in subsection C.2. below).
11. “Department” means the U.S. Department of Labor.

12. “Extended compensation” means compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of the state law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (Pub. L. 91-373), and when so payable includes additional compensation and compensation payable pursuant to 5 U.S.C. Chapter 85. Extended compensation is referred to as Extended Benefits or EB.
13. “Federal Pandemic Unemployment Compensation” means the compensation payable under Section 2104 of the CARES Act and is referred to as FPUC.
14. “Pandemic Unemployment Assistance” means the compensation payable under Section 2102 of the CARES Act and is referred to as PUA.
15. “Pandemic Emergency Unemployment Compensation” means compensation payable under Section 2107 of the CARES Act and is referred to as PEUC.
16. “Regular compensation” means compensation payable to an individual under any state law or the unemployment compensation plan of a political subdivision of a state and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85 (parts 609 and 614 of this chapter), but not including extended compensation or additional compensation.
17. “Secretary” means the U.S. Secretary of Labor.
18. “State” means the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.
19. “State agency” means the agency of the state which administers its state law, and for Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, it means the agency designated in the Agreements entered into with the Department.
20. “State law” means the unemployment compensation law of a state, approved by the Secretary under Section 3304 of the Federal Unemployment Tax Act (FUTA). (26 U.S.C. § 3304(a)).
21. “Week” means a week as defined in the applicable state law.
22. “Week of unemployment” is defined as used in 20 C.F.R. 625.2(w).

Note: Except as otherwise provided in Section 2102 of the CARES Act, as amended by the Continued Assistance Act, or to the extent there is a conflict between Section 2102, as amended, and 20 C.F.R. Part 625, 20 C.F.R. Part 625 shall apply to Section 2102 as if the term “COVID-19 public health emergency” were substituted for the term “major disaster” each place it appears in 20 C.F.R. Part 625 and the term “pandemic” were substituted for the term “disaster” each place it appears in 20 C.F.R. Part 625.

## C. Operating Instructions

1. **Eligibility (updated as noted below to reflect changes from the Continued Assistance Act and includes clarifications to guidance provided in UIPL Nos. 16-20, Change 1; 16-20, Change 2; and 16-20, Change 3).** Section 2102 of the CARES Act provides for payment of PUA to “covered individuals.” A “covered individual” is someone who meets each of the following three conditions:

Condition #1: The individual is not eligible for regular UC, EB, or PEUC. This includes an individual who has exhausted all rights to such benefits, as well as an individual who is self-employed, seeking part-time employment, lacking sufficient work history, or who is otherwise not qualified for regular UC, EB, or PEUC. Self-employed individuals include independent contractors and gig economy workers.

Condition #2: The individual must self-certify that he or she is otherwise able and available to work within the meaning of applicable state law, except that the individual is unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 reason in Section 2102(a)(3)(A)(ii) of the CARES Act, as described below.

Condition #3 (**new**): Section 241 of the Continued Assistance Act requires that an individual must provide documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment, if he or she files a new application for PUA on or after January 31, 2021, or, if the individual applied for PUA before January 31, 2021 and receives PUA benefits on or after December 27, 2020 (the enactment date of the Continued Assistance Act). This requirement is described in further detail in Section C.2. below.

PUA is generally not payable to individuals who have the ability to telework with pay, or who are receiving paid sick leave or other paid leave benefits. However, an individual receiving paid sick leave or other paid leave benefits for less than his or her customary work week may still be eligible for a reduced PUA weekly benefit amount (WBA). The state must treat any paid sick leave or other paid leave received by a claimant in accordance with state law. Similarly, if an individual has been offered the option of teleworking with pay and does telework with pay but is working and earning less than the individual customarily worked/earned due to a COVID-19 related reason identified in Section 2102(a)(3)(A)(ii)(aa) through (kk) of the CARES Act, the individual may be eligible for a reduced PUA WBA. Income from such work would be treated in accordance with state law.

Under Condition #1, an individual “lacking sufficient work history” means an individual: 1) with a recent attachment to the labor force (meaning that he or she worked at some



point from the start of the applicable tax year to the date of filing – refer to C.2. for additional information on required documentation), 2) who does not have sufficient wages in covered employment to establish a claim under regular UC, and 3) who is unemployed or partially unemployed or unable or unavailable to work because of one of the COVID-19 related reasons identified under Section 2102 of the CARES Act. Examples of workers which may be seen as “lacking sufficient work history” include workers for certain religious entities, Peace Corps workers, AmeriCorps participants, and Fulbright program participants who are working, provided they satisfy Conditions #2 and #3 as described above. Individuals who had a bona fide offer to start working on a specific date and were unable to start due to one of the COVID-19 related reasons identified under Section 2102 of the CARES Act are also considered individuals with a recent attachment to the labor force.

*Additional details for Condition #2.* As described under Condition #2, an individual must self-certify that he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, unable to work or unavailable for work due to at least one of the following categories described below. These categories are set forth in Section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act.

Included for each of the categories are illustrative examples and explanations of circumstances that fall under each category. Additional examples are also provided in UIPL Nos. 16-20, Change 1; 16-20, Change 2, and 16-20, Change 3. Examples and explanations for each of the categories under items (aa) through (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act are not an exhaustive list of all examples within each category. If states consider other qualifying circumstances, such circumstances must align with one of the (aa)-(jj) reasons and be applied in a manner consistent with the examples below. Additionally, the Secretary, in his authority to approve additional items under Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act, has approved one additional circumstance under which an individual may satisfy Condition #2.

aa. The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. Examples may include:

- An individual who has to quit his or her job as a direct result of COVID-19 because the individual has tested positive for COVID-19 or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities, such as through telework, is not possible by virtue of such diagnosis or condition;
- An individual who has to quit his or her job due to coming in direct contact with someone who has tested positive for COVID-19 or has been diagnosed by a medical professional as having COVID-19, and, on the advice of a qualified medical health professional is required to resign from his or her position in order to quarantine.

bb. A member of the individual's household has been diagnosed with COVID-19. For example:

- A member of the individual's household has been diagnosed as having COVID-19 by a qualified medical professional or a member of the individual's household has tested positive for COVID-19 and the individual is unable to work as a result.

cc. The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. For example:

- An individual is "providing care" for a family member or a member of the individual's household if the provision of care requires such ongoing and constant attention that the individual's ability to perform other work functions is severely limited. An individual who is assisting a family member who is able to adequately care for him or herself is not "providing care" under this category.

dd. A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work. For example:

- An individual has "primary caregiving responsibility" for a child or other person in the household if he or she is required to remain at home to care for the child or other person.
- This includes an individual whose job allows for telework, but for whom the provision of care to the child or other person with a closed school or other facility requires such ongoing and constant attention that it is not possible for the individual to perform work at home.

ee. The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency. For example:

- An individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19.

ff. The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. For example:

- An individual who has been advised by a qualified medical professional that he or she may be infected with COVID-19 and that he or she therefore should self-quarantine. For example, an individual had direct contact with another person who has tested positive for COVID-19 or been diagnosed with COVID-19 by a

qualified medical professional and is advised by a health care provider to self-quarantine to prevent further possible spread of the virus. Such circumstances would render the individual unable to reach his or her place of employment.

- An individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by COVID-19.

gg. The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. Examples include, but are not limited to:

- An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19 or the employer has closed the place of employment.
- An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.

hh. The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19. For example:

- An individual whose head of household previously contributed the majority of financial support to the household died as a direct result of COVID-19, and the individual is now the person in the household expected to provide such financial support.

ii. The individual has to quit his or her job as a direct result of COVID-19 (example expanded). For example:

- An individual was diagnosed with COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation. States should also note that, for purposes of item (ii), an individual does not have to quit his or her job as a direct result of COVID-19 if paid sick leave or other paid leave benefits are available to the individual. Generally, an employee “has to quit” within the meaning of this Section only when ceasing employment is an involuntary decision compelled by the circumstances identified in this Section.

jj. The individual's place of employment is closed as a direct result of the COVID-19 public health emergency (examples added/updated). Some examples include, but are not limited to the following:

- If a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the resulting unemployment of affected individuals would be considered a direct result of COVID-19. While a government-mandated closure is not necessary to satisfy this category, the claimant must be able to self-certify that the business was closed “as a direct result of the COVID-19 public health emergency.”
- If a business has multiple parts and one or some of those parts is shut down due to restrictions imposed by COVID-19, affected staff from the parts of the business that shut down may be eligible for PUA. For example, a business may include both a restaurant and a brewery. If the individual's place of employment is the restaurant and the restaurant is shut down because of the COVID-19 pandemic, even if the brewery continues to operate, the individual who was employed in the restaurant may be eligible for PUA. An individual who is working reduced hours while his or her place of employment continues to operate does not satisfy the conditions to self-certify under item (jj).

kk. The individual meets any additional criteria established by the Secretary for unemployment assistance under this Section (approved criteria clarified).

To date, the Secretary has approved one additional criterion under item (kk): Self-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).

When states are developing the list of items (aa) through (kk) to include on their self-certification forms, states may use the following verbiage for item (kk): “I am self-employed (including an independent contractor or gig worker) and experienced a significant reduction of services because of the COVID-19 public health emergency.”

States are reminded that for each week of PUA claimed, states must ensure that an individual completes a self-certification form (either paper or online) that includes the following. (See UIPL 16-20, Change 1, Question 45).

- The identification of the specific applicable COVID-19 related reason(s) under Section 2102(a)(3)(A)(ii)(I) of the CARES Act, and
- A notice advising the individual that intentional misrepresentation on the self-certification is fraud.

Additionally, states are also required to take reasonable and customary precautions to deter and detect fraud. Refer to Section C.21. of this Attachment for additional details on



tools to combat fraud. While Condition #2 relies on self-certification to verify that an individual is covered under the PUA program, when investigating the potential for fraud and improper payments, the state has, and is encouraged to use, this authority to request supporting documentation about this COVID-19 related reason. 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 authority to request supporting documentation for fraud prevention is separate from the documentation requirement outlined in Section 241 of the Continued Assistance Act as discussed in Condition #3 above. States may request supporting documentation at any point during an investigation for potential fraud or improper payments.

States should bear in mind that many of the qualifying circumstances described in Section 2102(a)(3)(A)(ii) of the CARES Act are likely to be of limited duration and eligibility for PUA requires that the individual is otherwise able to work and available for work within the meaning of applicable state law. For example, an individual who has been advised to self-quarantine by a health care provider because of the individual's exposure to a person who has tested positive for COVID-19 and is therefore unable to reach his or her place of employment for purposes of item (ff) may be able to return to his or her place of employment within two weeks of the exposure if he or she has not exhibited symptoms of COVID-19 or tested positive for COVID-19. Similarly, a school is not closed as a direct result of the COVID-19 public health emergency, for purposes of item (dd), after the date the school year was originally scheduled to end, as described in more detail in UIPL No. 16-20, Change 3. As such, the expectation is that states will continue to assess an individual's ability to work and availability for work each week in which the individual is collecting PUA.

2. Requirement to submit documentation substantiating employment or self-employment (Section 241 of the Continued Assistance Act) (new). Section 241(a) of the Continued Assistance Act creates a new requirement for individuals to submit documentation to substantiate their employment or self-employment, or planned commencement of employment or self-employment.

Anyone that receives a payment of PUA on or after December 27, 2020, (the enactment date of the Continued Assistance Act) will be required to submit documentation substantiating employment or self-employment, or the planned commencement of employment or self-employment. This includes any individual who receives any payment of PUA on or after December 27, even if the payment is for a week of unemployment that occurred before December 27, 2020. The deadline for providing such documentation depends on when the individual filed the initial PUA claim.

- *Filing New Applications for PUA on or after January 31, 2021*. Individuals filing a new PUA application on or after January 31, 2021 (regardless of whether the claim is backdated), are required to provide documentation within 21 days of application or the date the individual is directed to submit the documentation by

the State Agency, whichever is later. The deadline may be extended if the individual has shown good cause under state UC law within 21 days.

- *Filing Continued Claims for PUA.* Individuals who have an existing PUA claim as of December 27, 2020, (the enactment date of the Continued Assistance Act) OR who file a new initial PUA claim before January 31, 2021, and who receive PUA on or after December 27, 2020, must provide documentation within 90 days of the application date or the date the individual is instructed to provide such documentation by the state agency (whichever date is later). The deadline may be extended if the state finds that the individual has shown good cause under state UC law for failing to submit the documentation within 90 days.

This documentation demonstrates a recent attachment to the labor force and serves as an important tool against fraud by requiring the individual to submit documentation to prove eligibility, rather than have such documentation automatically added to the file based on agency records. As such, states may not rely solely on agency records to satisfy this condition – the individual must submit documentation to the agency to be entitled to benefits.

- a. *Type of acceptable documentation.* The requirements to submit documentation substantiating employment or self-employment and to submit documentation for a higher WBA are distinct. As described in Section C of Attachment I and in Attachment II to UIPL No. 16-20, Change 1, an individual is already required to submit documentation substantiating wages if the individual is to receive a WBA that is higher than the state minimum WBA. However, the documentation that an individual submits in support of a higher WBA may also be used to satisfy the documentation requirement to substantiate employment or self-employment.

An individual who has not submitted documentation in support of a higher WBA must still provide documentation substantiating employment or self-employment. While documentation to support a higher WBA must demonstrate earnings during the entire look-back period, documentation to substantiate employment or self-employment need only demonstrate the existence of employment or self-employment at some point between the start of the applicable tax year and the date of filing.

In general, proof of employment includes, but is not limited to, paycheck stubs, earnings and leave statements showing the employer's name and address, and W-2 forms when available. Proof of self-employment includes, but is not limited to, state or Federal employer identification numbers, business licenses, tax returns, business receipts, and signed affidavits from persons verifying the individual's self-employment. Proof of employment with organizations such as the Peace Corps, AmeriCorps, and educational or religious organizations includes, but is not limited to, documentation provided by these organizations and signed affidavits from persons verifying the individual's attachment to such organizations. Proof of the planned commencement of employment includes, but is not limited to, letters offering employment, statements/affidavits by individuals (with name and contact

information) verifying an offer of employment. Proof of the planned commencement of self-employment includes, but is not limited to, business licenses, state or Federal employer identification numbers, written business plans, or a lease agreement. Individuals must present the proof of employment and the state may verify the proof submitted using records the state may have available, such as wage records or state revenue records.

- b. *Period during which documentation must substantiate employment or self-employment.* Such documentation must demonstrate proof of employment or self-employment (or the planned commencement of such employment or self-employment) at some point between the start of the applicable taxable year and the date of filing. For example, an individual filing a claim effective December 27, 2020, must submit documentation that substantiates employment or self-employment which occurred between January 1, 2019 (the start of the applicable tax year) and December 27, 2020. An individual filing a claim effective January 3, 2021, must submit documentation that substantiates employment or self-employment which occurred between January 1, 2020 (the start of the applicable tax year) and January 3, 2021.

Unlike the documentation requirement to receive a higher WBA, documentation to substantiate employment or self-employment need not cover the entire period in which an individual was working. States have discretion to determine if the documentation an individual submits substantiates an individual's employment, self-employment, or planned commencement of employment or self-employment.

- c. *Failure to Comply.* Individuals who do not provide documentation substantiating employment/self-employment (or planned employment/self-employment) within the required timeframe, as described above, are not eligible for PUA. For DUA, if the individual fails to submit documentation substantiating employment or self-employment, the state must establish an overpayment for the entire DUA claim, per 20 C.F.R. 625.6(e)(2). However, as provided in Section 241(b)(2) of the Continued Assistance Act, for PUA, if the individual fails to submit such documentation, the state may only establish an overpayment for those weeks of unemployment ending on or after December 27, 2020 (the enactment date of the Continued Assistance Act).

For example, an individual has a PUA claim effective on November 1, 2020, and files and is paid for weeks of unemployment ending November 7, 2020 through weeks ending January 9, 2021. Because the individual received a payment for PUA after December 27, 2020, the state must notify the individual on January 4, 2021 about the requirement to provide documentation substantiating employment/self-employment (or planned employment/self-employment) within 90 days (by April 4, 2021). If, in that timeframe, the individual fails to provide documentation or fails to show good cause to have the deadline extended, an overpayment must be established for all of the weeks paid beginning with the week ending January 2, 2021. This is because the individual cannot be deemed ineligible for a week of unemployment ending before the date of enactment solely for failure to submit documentation.

As another example, an individual files an initial PUA claim on February 4, 2021 and the claim is backdated to an effective date of December 13, 2020. On February 8, 2021, the state notifies the individual of the requirement to provide documentation substantiating employment/self-employment (or planned employment/self-employment). Because the initial claim was filed after January 31, 2021, the individual must provide such documentation within 21 days (or by February 28, 2021). If, in that timeframe, the individual fails to provide documentation or fails to show good cause to have the deadline extended, an overpayment must be established for all of the weeks paid beginning with the week ending January 2, 2021. This is because the individual cannot be ineligible for a week of unemployment ending before the date of enactment solely for failure to submit documentation.

The consequences of failing to provide documentation substantiating employment or self-employment are different from circumstances where the individual fails to submit documentation supporting calculation of a higher WBA. If the individual fails to provide documentation supporting a higher WBA, as described in Question 20 of Attachment I to UIPL No. 16-20, Change 1, the individual's WBA will be reduced based on whichever is higher – the record of wages already on file or the minimum PUA WBA. Under these circumstances, the state would only establish an overpayment for the difference between the higher WBA and the lower WBA.

- d. *Notification Requirements.* States must notify individuals filing new PUA claims on or after January 31, 2021, and individuals filing PUA continued claims on or after December 27, 2020 (the enactment date of the Continued Assistance Act), of the requirement to provide documentation to substantiate their employment or self-employment (or planned commencement of employment or self-employment). Such notice must include the applicable deadline and the ability to show good cause on or before the deadline for extending such deadline, and the disqualification for failure to provide required documentation, including the potential for an overpayment of benefits paid. States may refer to Attachment III of UIPL 09-21 for sample language.
3. Verification of Identity (Section 242(a) of the Continued Assistance Act) (new). Section 242(a) of Continued Assistance Act modifies Section 2102(f)(1) of the CARES 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” by January 26, 2021, which is 30 days after December 27, 2020 (enactment of the Continued Assistance Act). States that previously verified an individual's identity on a UC, EB, or PEUC claim within the last 12 months are not required to re-verify identity on the PUA claim, though the Department encourages the state to take additional measures if the identity is questioned. 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.

The Department strongly encourages states to use the Identity Verification (IDV) solution offered by the UI Integrity Center as part of its Integrity Data Hub (IDH) as one method to meet this requirement. This IDV solution offers states advanced fraud risk scoring to

maximize front-end ID verification, aiding states in assessing whether an individual is using a false, stolen, or synthetic ID. It is available to states at no cost and is a secure, robust, centralized, multi-state data system that allows participating state UI agencies to submit claims for cross matching and analysis to support the prevention and detection of improper payments, fraud, and ID theft.

There is also a range of other tools on the market that states may consider to satisfy this requirement for identity verification. States are also strongly encouraged to explore implementation of complementary and rigorous forms of identity verification solutions.

The Department will provide states with additional administrative funding to support state costs to implement PUA identity verification processes and solutions and to continue work to address fraud in both the PUA and PEUC programs.

4. Determining Exhaustees (no change). A PUA claimant ceases to be an exhaustee of regular UC, PEUC, and EB when he or she can establish a valid new benefit year. If an individual is no longer an exhaustee of regular UC, EB, or PEUC, the individual will not meet the definition of a covered individual and may not receive PUA benefits. Therefore, at each quarter change, the state must check to determine if an individual meets the state's requirements to establish a new benefit year. If individuals can establish a new benefit year, they are no longer eligible for PUA. In these cases, the claimants should be advised that they are no longer eligible for PUA and that they may file a regular UC, PEUC or EB claim.
5. Phaseout Period (Section 201(a) of the Continued Assistance Act) (new). Individuals receiving PUA as of the end of the program (March 13, 2021 for states with a Saturday week ending date and March 14, 2021, for states with a Sunday week ending date), who have not yet exhausted their PUA entitlement may continue to collect PUA for any week in which they have remaining entitlement and are otherwise eligible, except that no PUA is payable for any week beginning after April 5, 2021 (April 10, 2021 for states with a Saturday week ending date and April 11, 2021 for states with a Sunday week ending date).

Individuals are identified as "receiving" PUA if they have a PUA claim on file as of March 14, 2021 **and** are eligible for PUA with respect to week ending March 13, 2021 (or March 14, 2021, for states with a Sunday week ending date).

Similar to the guidance in section C.15. of this UIPL on backdating, if an individual filed a regular UC claim on or before March 14, 2021, and the state later determines that the individual is not eligible for regular UC, the state must use the date the claimant filed the regular UC claim as the date of filing for the PUA claim. For example, if the individual filed a regular UC application on March 1, 2021, and the state determined the claimant was not eligible for regular UC on March 20, 2021, the PUA application must be deemed to have been filed on March 1, 2021, and the claimant may be eligible for the phaseout period, provided they are also eligible for the payment of PUA with respect to week

ending March 13, 2021 (or March 14, 2021 for states with a Sunday week ending date). However, if for example, the individual first files a PUA claim on March 23, 2021, and the state backdates the claim and the individual met PUA eligibility requirements for the week ending March 13, 2021, the individual would not qualify for the phaseout because the individual did not have a PUA claim on file as of March 14, 2021.

In states where the week of unemployment ends on a Saturday, the last payable week of PUA for individuals who are eligible to participate in the phaseout period is the week ending April 10, 2021. In states where the week of unemployment ends on a Sunday, the last payable week of PUA for individuals who are eligible to participate in the phaseout period is the week ending April 11, 2021.

Instructions for accepting new applications after March 14, 2021 to be backdated to the program dates will be forthcoming in additional guidance.

6. Hold Harmless for Proper Administration (Section 201(e) of the Continued Assistance Act) (new). Generally, an individual must have exhausted all entitlement to regular UC, PEUC, and EB before filing for PUA. However, Section 201(e) of the Continued Assistance Act provides a “hold harmless” provision for an individual who previously exhausted PEUC and is now receiving PUA, but as a result of Section 206(b) of the Continued Assistance Act, becomes eligible for additional amounts of PEUC beginning on or after December 27, 2020. States may continue paying PUA to an individual currently receiving PUA who is newly eligible to receive PEUC due to the additional weeks of PEUC. This flexibility is allowed for an appropriate period of time as determined by the Secretary of Labor.

The Department considers four weeks of unemployment commencing on or after the date of enactment of the Continued Assistance Act an appropriate period of time for states to implement the additional amounts of PEUC and move an individual from his or her PUA claim back to PEUC. For states with a Saturday week ending date, this means that the week ending January 23, 2021 should be the last week that an individual is paid PUA before moving to the augmented PEUC claim and not the PUA claim (week ending January 24, 2021 for states with a Sunday week ending date).

During this time, an individual may remain eligible for PUA notwithstanding the fact that the individual now has additional entitlement to PEUC. Recognizing the unique circumstances states face and the number and complexity of UI programmatic changes that states must swiftly implement, should a state determine that it will not be able to transition individuals from PUA back to PEUC in that timeframe, the state must contact the appropriate ETA Regional Office to determine the earliest date that the state will be able to implement this transition.

Individuals may not receive payments under both the PUA and PEUC programs for the same week of unemployment. Any PUA payments made with respect to weeks of unemployment during this implementation period do not need to be moved from the PUA to PEUC claim. This will not affect the individual’s entitlement amounts to the

additional PEUC benefits. Should the individual later exhaust PEUC and resume filing against his or her PUA claim, such weeks of PUA will be deducted from the individual's overall PUA entitlement.

7. Continued Eligibility Requirements (Section 263 of the Continued Assistance Act) (new). Section 263 of the Continued Assistance Act requires individuals to recertify each week that he or she remains an individual described in Section 2102(a)(3)(A)(ii) of the CARES Act.

The Department interprets the use of the term “recertification” to mean the identification of the specific COVID-19 reason under Section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act that applies to a claimant's situation for each week that PUA is claimed. This amendment to Section 2102 of the CARES Act aligns with the requirement in Question 45 of Attachment I to UIPL 16-20, Change 1, that individuals are required to identify the specific COVID-19 related reason specified in Section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act for each week that PUA is claimed.

In short, to comply with the requirements in Section 263 of the Continued Assistance Act, all states must ensure that, with respect to weeks of unemployment beginning on or after January 26, 2021 (30 days after the enactment date of the Continued Assistance Act), their continued claim forms contain a self-certification process for PUA claimants to identify the specific COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act for which they are unemployed, partially unemployed, or unable or unavailable to work. For states with a Saturday week ending date, this begins with ending February 6, 2021. For states with a Sunday week ending date, this begins with week ending February 7, 2021.

For continued claims filed with respect to weeks ending before January 26, 2021 (January 30, 2021, for states with a Saturday week ending date and January 31, 2021 for states with a Sunday week ending date), if a state made a good faith effort to implement the PUA program, an individual will not be denied benefits solely for failing to submit a weekly recertification.

In general, states will be determined to have made a good faith effort to implement Section 2102 of the CARES Act, in accordance with rules similar to those in 20 C.F.R. 625.6, when the state confirmed the individual is a covered individual at the time of the initial application or by the first week of eligibility. The Department may also consider other factors, including those listed below. Part of a good faith effort includes the proper calculation of the PUA WBA in accordance with 20 C.F.R. 625.6 (see Question 2 of Attachment I to UIPL No. 16-20, Change 2). The Department will evaluate “good faith effort” in implementing Section 2102 of the CARES Act and identify any retroactive action needed on a state by state basis.



Examples of factors that the Department may consider in assessing whether or not the state made a good faith effort to implement Section 2102 include, but are not limited to, the following:

- The extent to which the state required individuals to self-certify that they were unemployed, partially unemployed, or unable or unavailable to work because of an identified COVID-19 related reason under Section 2102(a)(3)(A)(ii)(I) of the CARES Act either on its initial PUA application or as part of the individual's first continued claim certification (the first week of eligibility),
  - If a state paraphrased its description of the statute's COVID-related reasons (the (aa) through (kk)), the extent to which the state's paraphrasing reasonably captured the intent of the reasons, and
  - The extent to which the states' implementation of the self-certification requirement in Section 2102 of the CARES Act may have resulted in potentially eligible individuals not receiving benefits (*e.g.*, states that failed to provide the option for item (kk) may require some retroactive action).
8. Eligibility of CW-1 Visa holders in the Commonwealth of the Northern Mariana Islands (CNMI) (Section 265 of the Continued Assistance Act) (new). The eligibility of Commonwealth Only Transitional Workers (CW-1) for federal public benefits, such as DUA or PUA, is governed by the Public Responsibility and Work Opportunity Reconciliation Act of 1996 (PRWORA). Workers who fit into one of the categories of "qualified aliens" under PRWORA, as defined in 8 U.S.C. §1641, are potentially eligible for federal public benefits. Section 265 of the Continued Assistance Act defines CW-1 Visa holders to be qualified aliens under Section 431 of PRWORA for purposes of eligibility under Section 2102 or 2104 of the CARES Act (PUA and FPUC, respectively).

Therefore, CW-1 workers may receive PUA and FPUC if they meet all PUA eligibility requirements beginning with claims filed after December 27, 2020 (*i.e.*, claim effective dates beginning on or after January 3, 2021).

9. State PUA Agreements with the Department (modified). The PUA program is administered through voluntary agreements between states and the Department. The program is available in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, provided the state/territory signs an agreement with the Department. The Agreement that the Department of Labor and states signed in March 2020 also remains in effect with the modifications and extensions of these updated provisions. As set forth in Section XI of the Agreement, a state may terminate the Agreement with thirty day's written notice if it chooses to no longer administer one or more provisions specified in Section XIV, which includes the state's agreement to administer the PUA program.

10. Termination of PUA Agreement (**technical changes to align with the PUA**

**Agreement**). As provided in Section III of the Agreement, the Department reserves the right to terminate this Agreement immediately if it determines that the State does not have an adequate system for administering such assistance, including because the State is not adequately ensuring that individuals receiving benefits under the PUA Program are eligible for such benefits. If a state's agreement is terminated by the Department for failure to have an adequate system for administering the PUA program, the state must immediately stop any PUA payments.

Either party, upon thirty days written notice, may terminate the PUA Agreement. Under these circumstances, the PUA period will end 30 days after the date one of the parties to the agreement notifies the other party of its election to terminate the PUA agreement. No PUA payments may be made with respect to weeks of unemployment that begin after the date the termination of the Agreement is effective. However, PUA is payable for weeks of unemployment ending on or before such termination date.

11. Agreements between States (**no change**). One state that has entered into an agreement with the Department to operate a PUA program may choose to enter into an agreement with another state that has an agreement with the Department to operate the program on behalf of the other state.

12. Processing PUA Claims (**no change**).

a. *Applicability of State Law Provisions*. Under Section 2102(h) of the CARES Act, 20 C.F.R. Part 625 applies to the administration of this program except as otherwise provided in Section 2102. Consistent with 20 C.F.R 625.11, the terms and conditions of the state law of the applicable state for an individual which apply to claims for, and the payment of, regular compensation apply to the payment of PUA to individuals. The provisions of the applicable state law that apply to claims for PUA include, but are not limited to:

- Claim Filing and Reporting;
- Information and Due Process to individuals;
- Notices to individuals and employers, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to PEUC;
- Determinations, redeterminations, appeals, and hearings;
- Disqualification, including disqualifying income provisions;
- Ability to work and availability for work, absent a COVID-19 related circumstance listed above;
- The Interstate Benefit Payment Plan; and
- The Interstate Arrangement for Combining Employment and Wages.

- b. *Claims for PUA.* In processing claims for PUA, states must verify that individuals have no regular UC entitlement. If the individual is not eligible for regular UC because there are insufficient covered wages or the individual has an active UC claim with a definite or indefinite disqualification, then a state does not need to require the individual to file a regular UC initial claim. However, the state must have an established process whereby the individual's ineligibility for regular UC is documented on the application.

If the individual's eligibility for regular UC is questionable (for example, there are wages in the base period, but no claim is filed, or a job separation that has not been adjudicated), then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility.

13. PUA Work Search Requirements. As previously stated in Question #47 (Attachment I, UIPL No. 16-20, Change 1), work search requirements should be applied to PUA as appropriate. The applicable state UC laws related to continued claims are applicable to PUA claims, including work search. However, states may use the emergency flexibility described in UIPL No. 13-20 to temporarily modify or suspend work search requirements as needed to respond to the spread of COVID-19.
14. Establishment of the Effective Date of PUA claims – Beginning and Ending Dates of the PUA Program, including Claim Effective Dates (Section 201(a) of the Continued Assistance Act) (updated to reflect the extension of the PUA Program). Under Section 2102 of the CARES Act, states may begin making PUA payments after their agreement with the Secretary is signed. For most states, this occurred on March 28, 2020. Under Section 201 of the Continued Assistance Act, the period of applicability for the PUA program is extended to weeks of unemployment ending on or before March 14, 2021, unless the individual meets the requirements for phaseout payments (Refer to C.5. above). In states where the week of unemployment ends on a Saturday, the last payable week of PUA is the week ending March 13, 2021. In states where the week of unemployment ends on a Sunday, the last payable week of PUA is the week ending March 14, 2021.
15. Backdating Requirements and Limitations (Section 201(f) of the Continued Assistance Act) (new). As discussed in Question 4 of Attachment I to UIPL No. 16-20, Change 1, individuals filing for PUA must have their claim backdated to the first week during the Pandemic Assistance Period (PAP) in which the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. Section 201(f) of the Continued Assistance Act provides a limitation on backdating for claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).
- *PUA initial claims filed on or before December 27, 2020 (the enactment date of the Continued Assistance Act).* Initial PUA claims filed on or before this date

may be backdated no earlier than the week that begins on or after February 2, 2020, the first week of the PAP.

- *PUA initial claims filed after December 27, 2020 (the enactment date of the Continued Assistance Act).* Initial PUA claims filed after this date may be backdated no earlier than December 1, 2020 (a claim effective date of December 6, 2020 for states with a Saturday week ending date and a claim effective date of December 7, 2020, for states with a Sunday week ending date).

If an individual filed a regular UC claim on or before December 27, 2020, and the state later determines that the individual is not eligible for regular UC, the state should use the date the claimant filed the regular UC claim as the date of filing for the PUA claim, so long as the individual met the requirements for PUA as of that date. For example, if the individual filed a regular UC application on October 4, 2020 and the state determined the claimant was not eligible for regular UC on January 15, 2021, the PUA application will be deemed to have been filed on October 4, 2020 and the PUA claim will be backdated to that date.

16. Establishment of PUA Weekly Benefit Amount (Section 241 of the Continued Assistance Act) (updated to reflect changes from the Continued Assistance Act and clarifications provided in UIPL Nos. 16-20, Change 1).

- a. *Self-Attestation for establishing PUA WBA (new/reminder).* As provided for in 20 C.F.R. 625.6, states must establish the PUA WBA immediately upon the filing of the PUA claim based on documentation submitted, state wage records, or the claimant's self-attestation of wages/income earned during the base period for the PUA claim.

When the state establishes the PUA WBA based on the claimant's self-attestation of wages, the state must advise the claimant to submit proof to substantiate the wages used to establish the PUA claim within 21 days. Refer to Question 2 of Attachment I to UIPL No. 16-20, Change 2, for details on calculating the WBA based on an individual's self-attestation.

If the claimant fails to provide proof to substantiate the higher WBA within 21 days, states must recalculate any PUA claim that was originally established based on a claimant's self-attestation. In no case shall the state recalculate the PUA WBA lower than the PUA minimum WBA as outlined in UIPL No. 03-20.

NOTE: Providing documentation to support the calculation of a higher WBA is a separate requirement from the new requirement to provide documentation substantiating employment or self-employment as outlined in Section C.2. above.

- b. *Calculation of WBA (updated to confirm use of UIPL No. 03-20 for all PUA claims, a change to the FPUC payment information, and a reminder to use gross income for employment covered by the regular UI program and net income for*

**self-employment when calculating the WBA).** While there is no minimum monetary requirement for an individual to qualify for PUA, states must consider wages earned in the prior tax year to determine if the individual qualifies for a WBA that is higher than the state minimum PUA WBA. Section 2102(d) of the CARES Act requires the state to pay individuals the WBA under the UC law of the state where the covered individual was employed plus the FPUC payment in effect for the week being paid. The minimum WBA may not be less than the minimum WBA in 20 C.F.R. 625.6 before the amount of FPUC under Section 2104 of the CARES Act is added.

If an individual is self-employed or would not otherwise qualify for regular UC under a state's UC law, the individual's PUA WBA is calculated as provided in 20 C.F.R. 625.6 and is increased by the FPUC payment in effect for the weeks of unemployment being paid. If a self-employed individual or an individual who is "lacking sufficient work history" had earnings for the prior tax year that would result in a lower WBA than the minimum DUA WBA that is outlined UIPL No. 03-20 for the minimum DUA benefit, the individual's WBA must be the minimum amount listed in the UIPL.

All PUA claims within the PAP will use the minimum DUA WBA as published in UIPL No. 03-20. If an individual lives in a territory that does not have UC under its law, the individual's PUA WBA is calculated as provided in 20 C.F.R. 625.6.

When calculating the WBA, states must use the gross income for employment covered by the regular UC program and net income for self-employment. Refer to Attachment II of UIPL No. 16-20, Change 1, for additional detail.

c. *WBA payable (no change).*

- *Total Unemployment.* The WBA payable to an individual for a week of total unemployment is equal to the individual's most recent WBA (including any dependents' allowances) for the applicable PAP.
- *Partial and Part-Total Unemployment.* To determine the amount payable for a week of partial or part-total unemployment, the state will calculate the payment amount in accordance with the state law applicable to such a week of unemployment.

d. *Base Period for PUA Claims (new).* The base period to be utilized in computing the PUA WBA is the most recent tax year that has ended for the individual (whether an employee or self-employed) prior to the first week in which the individual certifies that his or her unemployment, partial unemployment, inability to work or unavailability for work was due to at least one of the reasons outlined in Section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act.

For example, if an individual files a new PUA claim effective January 3, 2021, the state would consider income from tax year 2020. If an individual files a new PUA claim effective December 27, 2020, the state would consider income from tax year 2019. Refer to Question 19 of UIPL No. 16-20, Change 1, for examples of acceptable documentation when the prior year's income tax return is not available.

17. Establishment of PUA Maximum Entitlement (Number of weeks of PUA) – Additional Weeks Available (Section 201(b) of the Continued Assistance Act) (updated). The maximum number of weeks of PUA benefits is increased from 39 weeks to 50 weeks, minus any weeks of regular UC and EB that the individual receives with respect to the PAP. Individuals may only collect these additional 11 weeks of benefits for weeks of unemployment beginning on or after December 27, 2020 (the enactment date of the Continued Assistance Act), which means the week ending January 2, 2021 for states with a Saturday week ending date and January 3, 2021 for states with a Sunday week ending date.

Individuals who establish PUA eligibility with respect to weeks of unemployment beginning on or after December 27, 2020 (the enactment date of the Continued Assistance Act) will have the duration established at 50 weeks, minus any weeks of regular UC and EB received during the applicable PAP.

Individuals who established PUA eligibility with respect to a week of unemployment beginning before December 27, 2020, must have their PUA claim augmented by 11 weeks (which represents the difference between the new number of 50 weeks minus the initial number of 39 weeks) for weeks of unemployment beginning on or after December 27, 2020.

If an individual files a new PUA claim after December 27, 2020, and is eligible for the claim to be backdated to no earlier than December 1, 2020, the state may establish the claim for 50 weeks of eligibility. However, any weeks of regular UC or EB received for weeks during the PAP (since January 27, 2020) must be subtracted from this amount. Additionally, the 11 extra weeks under the Continued Assistance Act are ONLY payable with respect to a week of unemployment beginning on or December 27, 2020 (the enactment date of the Continued Assistance Act) (*i.e.*, these additional benefits can only be paid for weeks of unemployment ending on or after January 2, 2021).

Additionally, as provided for in the CARES Act, during the period in which a state is triggered "on" to a high unemployment period (HUP) under EUCA, the PUA duration is extended for additional weeks as well. This only applies to states whose law provides for the optional Total Unemployment Rate (TUR) trigger and whose TUR meets the thresholds necessary to provide for a HUP. If the state's maximum duration for regular UC is 26 weeks, then all PUA claims must be augmented for 7 weeks during the HUP (this is equal to 80 percent of the regular UC duration available during periods of high unemployment minus 50 percent of the regular UC duration available during regular EB periods). If the state's maximum duration for regular UC is less than 26 weeks, then the

PUA augmentation during a HUP will be less than 7 weeks. For example, states with a maximum duration of 20 weeks of regular UC may pay up to an additional 6 weeks of PUA during a HUP.

18. Other PUA Operational Instructions (updated). When determining the appropriate course of action in administering the PUA program, states should first consult Section 2102 of the CARES Act, as amended by the Continued Assistance Act of 2020, and the subsequent operating instructions provided by the Department. Where the CARES Act, as amended, and the operating instructions are silent, states should refer to the DUA regulations at 20 C.F.R. Part 625. All other PUA program parameters, as provided in Section 2102 of the CARES Act, UIPL Nos. 16-20; 16-20, Change 1; 16-20, Change 2; and 16-20, Change 3, remain the same.
19. Secretary's Standard (no change). The procedures for reporting and filing claims for PUA must be consistent with these instructions and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (Employment Security Manual, Part V, Sections 5000 et. seq.).
20. Determination of Entitlement: Notices to Individuals (no change, except as noted below).
  - a. *Determination of Initial Claim*. When an individual files an initial claim for PUA the state agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum amounts of PUA payable. If denied PUA, the individual must be issued an appealable determination.
  - b. *Determination of Weekly Claims*. The state agency must promptly, upon the filing of a claim for a payment of PUA for a week of unemployment, determine whether the individual is entitled to a payment of PUA for such week, and, if entitled, the amount of PUA to which the individual is entitled to and issue a prompt payment.
  - c. *Redetermination*. An individual filing a PUA initial claim or weekly certification has the same rights to request a reconsideration of a determination as are provided for in the applicable state law for regular compensation.
  - d. *Notices to Individual*. The state agency must give written notice to the individual of any determination or redetermination of an initial claim and all weekly claims. Each notice must include such information regarding rights to reconsideration or appeal, or both, using the same process that is used for redeterminations of regular compensation.
  - e. *Promptness*. Full payment of PUA when due must be made as soon as administratively feasible.



f. *Secretary's Determination Standard.* The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming PUA must be consistent with the Secretary's "Standard for Claim Determinations—Separation Information" (Employment Security Manual (ESM), Part V, Sections 6010 et seq.). In processing claims, states must comply with Section 6013 of the ESM about conducting an investigation and Section 6014 of the ESM concerning gathering separation information from employers when the claim involves separation from an employer.

g. *Appeal and Hearing.*

- *Applicable State Law (revised).* To ensure that appeals and hearings are held promptly, the applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to PUA.

Additionally, Section 201(c) of the Continued Assistance Act, establishes in statute the Department's previous guidance from Section 13.g. of Attachment I to UIPL No. 16-20. States must continue to process PUA appeals in the same manner and to the same extent as the state would conduct appeals of determinations or redeterminations regarding rights to regular UC. Additionally, with respect to any appeal filed in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, appeals must be carried out by the applicable entity in the same manner and to the same extent as those conducted under the UC law of Hawaii. Any decision issued on appeal or review before December 27, 2020, (the enactment date of the Continued Assistance Act) is not affected by this provision. The Department intends to work individually with Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau to support implementation of these provisions.

- *Rights of Appeal and Fair Hearing.* The right of appeal and opportunity for a fair hearing for claims for PUA must be consistent with these instructions and with Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).
- *Promptness of Appeals Decisions.*
  - Decisions on appeals under the PUA Program must accord with the "Standard for Appeals Promptness—Unemployment Compensation" in 20 C.F.R. Part 650.

- Any applicable state law provision allowing the advancement or priority of UC cases on judicial calendars, or otherwise intended to provide for the prompt payment of UC when due, must apply to proceedings involving entitlement to PUA.

21. Fraud and Overpayments (**updated to reflect the Continued Assistance Act and other guidance**).

- a. Identity Theft and Imposter Claims (**new**). If the state determines that a PUA claim was filed by an individual who is not the owner of the Social Security number that was used to file the claim, the state must deny the entire PUA claim. Additionally, the state may not augment the PUA claim and may not send any notification of potential entitlement with regard to such claim.
- b. Fraud. An individual commits fraud if he or she knowingly has made or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of PUA to which such individual was not entitled.
  - *Disqualification Periods* (**updated**). 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). This Section sets the disqualification period for PUA and requires that the disqualification be based on when the fraud occurs.
    1. 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 PAP.
    2. If the fraud occurred 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.
  - *Fraud Penalties* (**new/updated**). States must apply a 15 percent penalty to an individual's overpayment when the state determines that it made an erroneous PUA payment to an individual due to fraud the individual committed. See Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Pub. L. 112-40 (2011). Section 251(a)(2) of the TAAEA requires assessing a 15 percent penalty in these circumstances to any "unemployment compensation program of the United States." "Unemployment compensation

program of the United States” is defined, in relevant part under the TAAEA, as including “any other Federal program providing for the payment of unemployment compensation.” PUA is one such program.

UIPL No. 02-12 provides that Section 251(b) of the TAAEA also requires, as a condition of administering “any” Federal UC program, that a state assess penalties against individuals determined to be overpaid under these programs due to fraud in the same manner as the state assesses and deposits these penalties under state law implementing Section 303(a)(11), SSA, with respect to UC paid out of the state’s unemployment fund. The 15 percent penalty amount is the minimum amount required; states may impose a greater penalty.

- *Tools for Combatting Fraud (new)*. The state should use the crossmatches 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. States are required to share information with the Department’s Office of Inspector General (OIG), and the Department strongly encourages states to 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 IDH which includes the IDV module, 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. 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.

- c. *Overpayments (changes as noted below)*. A PUA overpayment occurs when an individual has received a PUA payment to which he or she is not entitled.
  1. *Opportunity for a Hearing*. A State may not require repayment of a PUA overpayment until it determines that the payment was an overpayment, the individual was provided notice of the determination, the individual had an opportunity for a fair hearing, and the determination is final.
  2. *Authority to Waive Overpayments (new)*. Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and authorizes states to waive the repayment if the state determines that the payment of PUA was without fault on the part of any such individual and such repayment would be contrary to equity and good conscience. This waiver authority

applies to overpayments that meet this criteria at any time since the PUA program began.

The waiver provision is permissive. Therefore the state may choose not to waive the PUA overpayment. A state may also, if a state has an existing UC law that provides for the waiver of overpayments for equity and good conscience, apply its own definition of the terms “equity and good conscience” in applying the waiver.

If a state UC law provides for the waiver of overpayments but does not include a provision defining “equity and good conscience” the state must use the following provisions for equity and good conscience, when assessing whether an individual overpayment may be waived.

- It would cause financial hardship to the person from whom it is sought;
- The recipient of the overpayment can show (regardless of his or her financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either he/she has relinquished a valuable right or changed positions for the worse; or
- Recovery could be unconscionable under the circumstances.

States that choose to waive overpayments under Section 201(d) of the Continued Assistance Act must notify all individuals with a non-fault overpayment of their ability to request a waiver. The notification must include how to request the waiver.

Waiver determinations must be made on the facts and circumstance of each individual claim, blanket waivers are not permissible. For example, states cannot waive overpayments due to administrative error for a group of individuals before first assessing and documenting why each individual meets the state’s waiver requirements. The Department will monitor each state’s process for waivers when monitoring program implementation.

3. *Recovery Provisions (new)*. If the overpayment amount is not subject to waiver, the State agency must recover the amount of PUA to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular UC paid by the State.
4. *Benefit Offsets (updated)*. States must offset benefits from other unemployment programs, as described below, to recover PUA overpayments. A state has significant flexibility in the way it implements the offset requirement. While a state must attempt to recover the full amount of the overpayment, a state may limit the amount that will be deducted from each payment as noted on page 4 of UIPL No. 05-13, *Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment*

*Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012.*

- **Recovery by Cross-Program Offsets.** A state must recover PUA overpayments from any additional PUA payments to which the individual is entitled and from any other UC payable under state or Federal law administered by the state agency (including FPUC and PEUC from the CARES Act, and any other assistance or allowance payable with respect to a week of unemployment under any other state or Federal law).

Additionally, PUA payments must be reduced to recover overpayments from any state and federal unemployment benefit programs, if the state has a cross-program offset agreement in place under Section 303(g)(2), SSA (42 U.S.C. §503(g)(2)).

- **Recovery by Interstate Reciprocal Overpayment Recovery Arrangement (IRORA).** If a state has an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, the state must offset any state or Federal benefits to repay PUA overpayments in another state. These instructions supersede the prior instructions that PUA benefits could only be offset to recover other PUA overpayments in another state.
- **Limitation on offset amounts.** A state may not offset more than 50 percent from the PUA payment to recover overpayments from any state or Federal unemployment benefit program.

**22. Effect of Other UI-Related Programs on Eligibility for PUA (updated).**

- a. *Trade Readjustment Allowances (TRA).* PUA is payable only if the individual is not eligible for or has exhausted TRA (basic, additional, or completion). Eligibility for DUA (and accordingly PUA) requires that the individual NOT be eligible for “compensation” as defined at 20 C.F.R. 625.4(i). The definition of “compensation” at 20 C.F.R. 625.2(d) includes TRA. See UIPL No. 14-20, Change 1, Attachment I, Question 7. Therefore, to be eligible for PUA, an individual must have exhausted their entitlement to TRA.
- b. *Disaster Unemployment Assistance (DUA).* If an individual is eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (42 U.S.C. 5177), the individual 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. See UIPL No. 14-20, Change 1, Attachment I, Question 16.

23. Effect of State Additional Compensation (also known as Additional Benefits or AB) (no change). Section 2102 of the CARES Act and, by reference, DUA regulations at 20 C.F.R. Part 625 require that an individual have no rights to regular UC, EB, or additional compensation in order to meet the eligibility requirements for PUA.
24. Effect of Federal Pandemic Unemployment Compensation (FPUC) (updated to reflect changes from the Continued Assistance Act). Section 2102 of the CARES Act provides that FPUC payments provided under Section 2104 of the CARES Act must be added to the PUA WBA. With respect to weeks of unemployment beginning after the state signed the Agreement and ending on or before July 31, 2020. Section 203 of the Continued Assistance Act made modifications to the FPUC payment dates and amounts payable. FPUC payments are reauthorized for weeks of unemployment beginning after December 26, 2020, and ending on or before March 14, 2021.
25. Record Maintenance and Disposal of Records (no change). The state must maintain PUA payment data as required by the Department.
  - a. *Record Maintenance*. Each state will maintain records on the administration of the PUA program and will make all such records available for inspection, examination, and audit by such federal officials, employees as the Department may designate, or as may be required by the law. Reference ET Handbook No. 401, UI Report Handbook for details.
  - b. *Disposal of Records*. The electronic/paper records created in the administration of the PUA program must be maintained by the state for three years after final action (including appeals or court action) on the payments, or for less than the three-year period if copied by micro photocopy or by an electronic imaging method. At the end of the three-year period, the PUA records shall be transferred to state accountability under the conditions for the disposal of records that apply to UCFE and UCX records, as explained in Chapter X of ET Handbook No. 391 (1994 Edition) (OMB No. 1205-0179) and Chapter I of ET Handbook No. 384 (1994 Edition) (OMB No. 1205-0176).
26. Disclosure of Information (no change). Information in records made and maintained by the state agency in administering the PUA program must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation, and the entitlement of individuals thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 C.F.R. Part 603. As provided under 20 C.F.R. 603.4(b), the

confidentiality requirements do not apply when such information is being provided in the aggregate, provided it cannot be combined with other publicly available information to reveal any such identifying particulars about an individual or the individual's past or present employer.

27. Inviolate Rights to PUA (**no change**). The rights of individuals to PUA must be protected in the same manner and to the same extent as the rights of persons to regular UC are protected under the applicable state law. Such measures must include protection of individuals from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to PUA. In the same manner and to the same extent, individuals must be protected from discrimination and obstruction in regard to seeking, applying for, and receiving PUA.

28. Notifications (**changes as noted below**).

- a. *Identification and Notification of Potentially Eligible Claimants* (**updated**). The state must identify individuals who are potentially eligible for PUA and provide them with appropriate written notification of their potential entitlement to PUA, including filing instructions. This includes notifying claimants who were found ineligible for regular UC.

States must also identify each individual with a PUA claim on file and advise these individuals that they are potentially eligible for additional PUA benefits. States must provide these individuals with instructions for reopening their PUA claims (if the individual has stopped collecting PUA). States may include these instructions in the monetary redetermination notice or a separate notice. In addition to this individual notification, states may also want to post the availability of additional PUA benefits on their websites or other social media.

Additionally, 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. See C.21. above.

States are not required to take a new PUA application for an individual with an existing PUA claim, whether the individual is in active claim filing status or not at the time he or she requests to resume filing. However, states must ensure that individuals remain eligible for PUA, including checking for entitlement to regular UC, PEUC, and EB and requesting a self-certification that the individual's unemployment, partial unemployment, or inability or unavailability to work is specifically attributable to one or more of the COVID-19 related reasons specified in section 2102(a)(3)(A)(ii)(I)(aa) through (kk) of the CARES Act. This self-certification may be done at the time the individual returns to resume collecting PUA or as part of the continued claim process before payment is released. States must document its evaluation of the individual's eligibility for UC in the state's system.



- b. *Interstate Claims.* PUA is payable to individuals filing under the Interstate Benefit Payment Plan in the same manner and to the same extent that benefits are payable to intrastate claimants. The liable state is responsible for identifying and notifying all potentially eligible interstate claimants of their potential eligibility, including filing instructions.
- c. *Notification of Media.* To assure public knowledge of the PUA program's status, the state must notify all appropriate news media having coverage throughout the state of the beginning and any extensions of the PUA program. This includes the extension of the PUA program to March 14, 2021 and the availability of up to an additional 11 weeks of benefits.

#### **D. Financial Information and Instructions (updated):**

1. Payment to States. Requesting PUA Benefit Funds—Under Section 2102(f)(2) of the CARES Act, each state that has entered into an agreement with the Secretary to pay PUA, will be paid an amount equal to 100 percent of the amount of PUA paid to eligible individuals by the state under the agreement and in full accordance with the CARES Act and these instructions. States will request funds from the Extended Unemployment Compensation Account through the Automated Standard Application for Payments (ASAP) system. Drawdown requests must adhere to the funding mechanism stipulated in the Treasury-State Agreement executed under the Cash Management Improvement Act of 1990. Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).

There will be one new line in the ASAP for making drawdowns to pay PUA benefits, refer to #3 below for drawdown instructions. The line will be clearly labeled PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA).

Section 2102(f)(2)(B) authorizes the Secretary to determine the amounts to be paid to states for processing PUA workloads. Such costs will be based on workload counts reported on the ETA902P report and will incorporate minute per unit factors and salary rates identical to those used in the computation of the regular UC program above base administrative costs.

Administrative costs will be computed on the ETA 902P report, line 301, column 17. *See* Attachment VI for additional detail. The supplemental budget request process will be used for states to request funds for implementation.

**Augmenting Claims.** Augmentations of claims are counted as monetary redeterminations. States will receive administrative funding for monetary redetermination activity related to the augmentation of PUA entitlement that does not meet the definition under ET Handbook No. 401 for an initial, additional or a transitional claim. Such counts should be reported in the comments section of the ETA902P report and labeled "Monetary Redeterminations = "#####".

Consistent with treatment of monetary redeterminations on the UI-3 report, five minutes per redetermination will be funded. The National Office will compute the additional reimbursement associated with these counts by applying the same hours and salary rate information used in the monthly administrative cost formula on line 301, column 17.

2. PUA Accounting Obligational Authority. The Grant Officer will assign a separate line on the UI program notices of obligational authority for PUA administrative grant funds, and a separate sub-account for PUA will be set up in the Payment Management System for states to draw down PUA administrative funds.

Administrative Fund Accounting—Because of the separate appropriation for PUA administrative funds and the availability of these funds until expended, states must track and report PUA administrative expenditures and obligations separately from the regular UI program. Therefore, states must establish a separate fund ledger and must submit a separate ETA 9130 for the PUA program. States must include any PUA administrative expenditures and obligations incurred in March 2020 in their June 30, 2020, PUA ETA 9130 report.

3. Time Distribution. To ensure that PUA costs are tracked separately, states must charge time used for all PUA activities to the appropriate UI functional activity codes as outlined in Appendix E to ET Handbook No. 410 under the separate PUA fund ledger; however, states must combine regular and PUA staff year usage data in Section A of the UI-3 worksheet.
4. Accounting for PUA Payments (Benefits). PUA advances to the states' Unemployment Trust Fund (UTF) accounts and disbursements for PUA benefit payments will be reported on the monthly ETA 2112. Do not use a separate form for this report. (*See Reporting Instructions*.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with Department of Labor records.
5. Processing Refunds. There are two scenarios for returning funds to the program line for PUA.
  - a. The most likely scenario will be when the state has funds in its state benefit payment account and must return those funds to the Extended Unemployment Compensation Account. This should be completed as a negative amount posted to the appropriate line in ASAP. To accomplish this, the total draw for the day in ASAP must be greater than the negative balance posted to the appropriate line.
  - b. The second scenario is when a state actually has the funds in its Federal UI account that are required to be returned to the appropriate program line. This should be accomplished by the state processing a book transfer transaction that accomplishes a transfer from its UI account to the appropriate program under the Extended Unemployment Compensation Account.

## E. Reporting Instructions

1. ETA 2112. PUA benefit payment activity must be reported in the aggregate on the regular ETA 2112 report.
  - a. Line 23c. Pandemic Unemployment Assistance. Report in columns C and E the amount of Federal funds received as advances or reimbursement for PUA.
  - b. Line 42c. PUA Activity. Enter in columns C and F the net amount for which the Federal government is liable for PUA.
2. States are reminded that if a regular program initial claim is taken when verifying that a claimant is not eligible for regular UI before proceeding with a PUA claim, the state must record and report that as only a PUA initial claim and the regular program initial claim must not be reported. Regular program initial claims taken to verifying that a PUA claimant is not eligible for regular UI should be excluded from the regular State UI initial claims reported on the ETA538, ETA539, and ETA5159 reports.

Similarly, states are reminded that as they work through backlogs, backdated continued claims processed should be reported in the ETA 538 and ETA 539 reports reflecting the weeks of unemployment for which the backdated claims were claimed. States should revise previous ETA 539 reports to include the backdated claims and avoid reporting multiple weeks of backdated claims for single claimants in the same week.

3. ETA 902 (changes as noted below). ETA has revised the ETA 902P report to include additional data items for tracking of overpayment recovery activities, PUA claim final payments, and a section for overpayment activity related to identity theft. This guidance supersedes the reporting instructions provided in Attachment VI to UIPL No. 16-20.

The ETA 902P now includes the following additional data cells:

### Section A, Application and Payment Activities

Columns 14, 15, and 16, Overpayments. The Overpayments header for columns 14, 15, and 16 has been renamed to Overpayments Established.

Column 18, Final Payments. Enter the number of final payments made to claimants for PUA. A final payment for PUA is defined as the last PUA payment a claimant receives during the pandemic assistance period because the claimant has exhausted their entitlement to the program. Excluded from the definition is the last payment to an individual if, but for the end of the pandemic assistance period, the individual would otherwise be entitled to further PUA benefits. Final payments should be reported based on the augmented 50-week PUA availability.

## Section C, Overpayment Activity (all activity EXCEPT Identity Theft) and Administration

Column 16A Overpayment Recoveries. In column 16A, Amount, enter in line 301, the total amount of all PUA recoveries collected for the reporting period. In line 302, provide a sub-breakout of the amount of recoveries involving fraud. States must begin including this information in subsequent ETA 902P report submissions.

## Section D, Overpayment Activity Related to Identity (ID) Theft

Column 19, 20, and 21, ID Theft Overpayments Established. In column 19, Cases, line 401, enter the number of ID theft cases established, including willful misrepresentation (fraud) determined during the report period as an ID theft overpayment. In line 402 provide a sub-breakout of the number of ID theft cases determined as ID theft fraud cases. In column 20, Weeks, enter in line 401 the number of weeks of PUA overpaid in connection with the ID theft cases reported in column 19; enter the number of weeks of ID theft fraud overpayments included in line 402. In column 21, Amount, enter in line 401, the amount overpaid represented by ID theft cases reported in column 19. Provide a sub-breakout of the amount involving ID theft fraud in line 402. Do not include overpayments established as a result of failure to report issues where the claimant did not respond or failed to provide sufficient information to verify identity.

Column 21A, ID Theft Overpayment Recoveries. In column 21A, Amount, enter in line 401, the total amount of all PUA ID theft recoveries collected for the reporting period. Provide a sub-breakout of the amount of ID theft recoveries involving fraud in line 402.

Timeline for submitting new reporting components. Any ETA 902P report submitted after the publication of this UIPL must include the additional components. For ETA 902P reports previously submitted for prior months, states may submit amended reports, for each month, containing the following:

- PUA overpayment recovery data in column 16A;
- PUA ID Theft Overpayments Established data in columns 19, 20, and 21; and,
- PUA ID theft overpayment recovery data in column 21A.

Alternatively, states have the option of including cumulative amounts for all prior months, in the Comments section of the next ETA 902P report submission for:

- PUA overpayment recoveries;
- PUA ID theft overpayment Cases, Weeks, and Amount(s); and,
- PUA ID theft overpayment recoveries.

Comments Section: Report the number of monetary redeterminations related to the augmentation of PUA claims that do not meet the definition under ET Handbook No. 401

for an initial, additional or a transitional claim. Such counts should be reported in the comments section of the ETA902P report and labeled “Monetary Redeterminations = “#####””.

Refer to Attachment II of this UIPL for the revised report template and instructions about this reporting.

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ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE

**Attachment II to UIPL No. 16-20 Change 4**

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE ACTIVITIES

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**A. Facsimile of Form**

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE  
ACTIVITIES

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE ACTIVITIES (PUA)

<b>STATE:</b>	<b>REGION:</b>	<b>REPORT FOR PERIOD ENDING:</b>
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**SECTION A. APPLICATION AND PAYMENT ACTIVITIES**

CATEGORY	LINE NO.	INITIAL APPS.	NO. DETERM. ELIG.	FIRST PAYMTS.	WKS. CLAIMED	WKS. COMP.	AMOUNT COMP.	FINAL PAYMTS.
		1	2	3	4	5	6	18
<b>Total</b>	<b>101</b>							
<b>Self - Employed</b>	<b>102</b>							

**SECTION B. DENIAL AND APPEALS ACTIVITY**

CATEGORY	LINE NO.	WKS.OF PUA DENIED	APPEALS FILED		APPEALS DISPOSED		FAVOR OF APPELLANT	
			STATE	R A	STATE	R A	STATE	R A
		7	8	9	10	11	12	13
<b>Total</b>	<b>201</b>							
<b>Self - Employed</b>	<b>202</b>							

**SECTION C. OVERPAYMENT ACTIVITY (all activity EXCEPT Identity Theft) AND ADMINISTRATION**

CATEGORY	LINE NO.	OVERPAYMENTS ESTABLISHED			OVERPAYMENT RECOVERIES	ADMINISTRATIVE COSTS
		CASES	WEEKS	AMOUNT	AMOUNT	
		14	15	16	16A	17
<b>Total</b>	<b>301</b>					
<b>Fraud</b>	<b>302</b>					



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SECTION D. OVERPAYMENT ACTIVITY RELATED TO IDENTITY (ID) THEFT					
CATEGORY	LINE NO.	ID THEFT OVERPAYMENTS ESTABLISHED			ID THEFT OVERPAYMENT RECOVERIES
		CASES	WEEKS	AMOUNT	AMOUNT
		19	20	21	21A
Total	401				
Fraud	402				

Comments:

OMB No.: NA  
NA

OMB Expiration Date: NA

OMB Burden Minutes:

**OMB Burden Statement:** Section 2116(a), Division B, Title II of the CARES Act states that “Chapter 35 of Title 44, United States Code, (commonly referred to as the “Paperwork Reduction Act of 1995”) shall not apply to the amendments made by this subtitle.” Therefore these reporting instructions do not require additional OMB approval and the submission of this information is required to obtain or retain benefits under the SSA 303(a)(6).

## **B. Purpose**

The ETA 902P report contains monthly data on Pandemic Unemployment Assistance (PUA) activities provided by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. Law 116-136), enacted on March 27, 2020. PUA is a temporary Federal program created under the CARES Act to provide relief for workers affected by the coronavirus who do not qualify for other Federal benefits such as regular unemployment insurance or extended benefits.

## **C. Scope and Duration of the Report**

1. The first report shall be sent in the month following the date the state agreement to participate in the PUA program, and later reports shall be sent each month that PUA activity continues to occur, such as for payments made for weeks in the pandemic assistance period (PAP) issued as a result of appeals.
2. Reports should be submitted monthly through the end of the Pandemic Assistance Period and until all payment and appeals activity is complete.

## **D. Due Date and Transmittal**

Reports shall be submitted electronically each month providing PUA activities performed during the preceding calendar month. Reports are due in the National Office on the 30th of the month following the month to which data relate. South

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Pacific Island jurisdictions must submit hardcopy reports, as there is no electronic submittal method available to them at this time.

For South Pacific Island jurisdictions via email to [UI-Reports@uis.doleta.gov](mailto:UI-Reports@uis.doleta.gov). If mailed, one copy should be sent to the National Office addressed as follows:

U.S. Department of Labor, ETA  
Attn: Pandemic Unemployment Assistance  
Coordinator/Program Specialist  
Division of Unemployment Insurance Operations

Frances Perkins Building  
200 Constitution  
Avenue, N.W.  
Washington, D.C. 20210

One copy should also be sent to the San Francisco ETA Regional Office.

**E. General Reporting Instructions**

1. In all instructions, reference to State UI (UC) claims will include UCFE, UCX, TRA, RRA (Railroad), EB, and any other program included and/or defined under 20 C.F.R. 625.2(d).
2. Self-employed applicants are those who have filed an initial request for PUA and for whom it was determined that their primary reliance for income is on their performance of services in their own business or farm. These individuals include independent contractors, gig economy workers, and workers for certain religious entities.

Payments of UI made to replace erroneously paid PUA should not be reported on the ETA 902P, but should be reported on the appropriate UI reports, i.e., ETA 5159.

**F. Definitions**

1. Effective Date of an Initial Application. **(updated)** Refer to Section C.15 of this UIPL for information on effective dates of PUA claims.
2. Eligible. **(updated)** Meets qualifications for receiving Pandemic Unemployment Assistance, as specified in Section 2102 of the CARES Act. If an individual is eligible for UC, EB, and PEUC, such individual is not eligible for PUA and should not be counted in any PUA Activities report.
3. Fraud. An overpayment for which material facts to the determination or payment of a claim are found to be knowingly misrepresented or concealed (*i.e.*, willful misrepresentation) by the claimant in order to obtain benefits to which the individual is not legally entitled. All states have definitions for

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fraud and impose disqualifications for fraudulent misrepresentation to obtain or increase benefits.

4. Identity (ID) Theft. The crime of obtaining and using the personal or financial information of another individual to file or attempt to file a claim for UI benefits.
5. Identity Theft Overpayment (cases) Established. Any single issue involving an ID theft overpayment that has been determined for a claimant within a single calendar month and for which: 1) a formal notice of determination has been issued, or 2) a formal notice of determination has not been issued, since ownership of the ID theft overpayment has not been assigned, due to a state's inability to identify the individual responsible for generating the ID theft overpayment. An ID theft overpayment that covers one or more weeks (or partial weeks) of benefits shall be counted as one ID theft case if all weeks of ID theft overpayments are included in the same notice of determination. An ID theft overpayment covering consecutive weeks of benefits that span two months should be reported for the month in which the notice of determination is issued, or if no notice of determination is issued, report when the investigation reaches conclusion. This does not include overpayments established as a result of failure to report issues where the claimant did not respond or failed to provide sufficient information to verify identity.
6. Overpayments (cases) Established. Any single issue involving an overpayment that has been determined for a claimant within a single calendar month and for which a formal notice of determination has been issued. An overpayment that covers one or more weeks (or partial weeks) of benefits shall be counted as one case if all weeks of overpayments are included in the same notice of determination. An overpayment covering consecutive weeks of benefits that span two months should be reported for the month in which the notice of determination is issued. Overpayments Established includes all overpayment EXCEPT those involving identity theft. An overpayment should be reported here if such overpayment is established as a result of failure to report issues where the claimant did not respond or failed to provide sufficient information to verify identity.

#### **G. Item by Item Instructions**

1. Report Period Ended. Enter the month, last day of the month, and four digit year to which the data relate; e.g., 01/31/2020.
2. State. Enter the two-letter Federal Information Processing Standards (FIPS) State Alpha Code (identical to the two-letter U.S. Postal Service abbreviation) of the state or South Pacific Island jurisdiction as it appears in FIPS Publication 5-2. The National Institute of Standards and Technology issued the FIPS publication on May 28, 1987.

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3. Section A. Application and Payment Activities.

- a. Column 1, Initial Applications. Enter the number of initial applications for PUA taken during the report period. This will equal the number of initial applications that were completed and/or number of applications entered into an automated system through an electronic/telephone claims taking system during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs.
- b. Column 2, Number Determined Eligible. Enter the number of individuals determined eligible for PUA during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs.
- c. Column 3, First Payments. Enter the number of payments which represent, for any individual, the first week for which assistance is paid in the pandemic assistance period.
- d. Column 4, Weeks Claimed. Enter the total number of weeks for which PUA is claimed during the report period whether or not PUA is actually paid. If claims are filed weekly, the number of weeks will equal the number of weekly received during the report period. If claims are filed other than weekly claims, the number of weeks will equal the number of weeks during the report period.
- e. Column 5, Weeks Compensated. Enter the number of weeks of unemployment for which PUA was paid during the report period. A week of unemployment compensated is any week of unemployment for which PUA funds are paid, regardless of amount.
- f. Column 6, Amount Compensated. Enter the amount of PUA funds represented by the weeks reported in column 5.
- g. Column 18, Final Payments. Enter the number of final payments made to claimants for PUA. A final payment for PUA is defined as the last PUA payment a claimant receives during the pandemic assistance period because the claimant has exhausted their entitlement to the program. Excluded from the definition is the last payment to an individual if, but for the end of the pandemic assistance period, the individual would otherwise be entitled to further PUA benefits.

4. Section B. Denial and Appeals Activity.

- a. Column 7, Weeks of PUA Denied. Enter the number of weeks of unemployment where a PUA payment was denied for which an individual,

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except for the reason of the denial, would have been eligible to receive a PUA payment.

NOTE: For columns 8 through 13, the entries refer to the number of cases received or disposed of during the report period by authority (i.e., first level state appeals authority and the second level state higher authority). All cases, including cases disposed of before reaching the appeals authority, should be included. Definitions of case, authority, disposal, etc., are those developed for the PUA program where found or, when these do not exist, are those used in the state UI program.

- b. Columns 8 and 9, Appeals Filed. In columns 8 and 9, distribute, by type of authority, the appeal cases or requests for review received during the month. In addition, provide a sub-breakout of the Total for self-employed individuals in line 202.
  - c. Columns 10 and 11, Appeals Disposed. Enter in columns 10 and 11 the total number of cases disposed during the month by authority level. In line 202, provide the number of cases disposed of involving self-employed individuals.
  - d. Columns 12 and 13, Favor of Appellant. Enter in columns 12 and 13 the number of appeal decisions included in columns 10 and 11, which were in favor of the appellant by authority level. In line 202 enter a breakout of self-employed individuals who appealed and had the decision in their favor.
5. Section C. Overpayment Activity and Administration (all activity EXCEPT for Identity Theft).
- a. Columns 14, 15, and 16, Overpayments Established. In column 14, Cases, line 301, enter the number of cases established, including willful misrepresentation (fraud) determined during the report period as an overpayment. In line 302 provide a sub-breakout of the number of cases determined as fraud cases. In column 15, Weeks, enter in line 301 the number of weeks of PUA overpaid in connection with the cases reported in column 14; enter the number of weeks of fraud overpayments included in line 302 In column 16, Amount, enter in line 301, the amount overpaid represented by cases reported in column 14. Provide a sub-breakout of the amount involving fraud in line 302.
  - b. Column 16A Overpayment Recoveries. In column 16A, Amount, enter in line 301, the total amount of all PUA recoveries collected for the reporting period. Provide a sub-breakout of the amount of recoveries involving fraud in line 302.
  - c. Columns 17, Administrative Costs. This data cell will self-populate and

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reflect computed administrative costs based on workload items reported in Section A. and Section B. above. Minute per unit factors reflected in the annual UIPL advisory communicating target allocations for base administrative grants and staff year usage information from the UI-1 report will be used to compute staffing levels needed to process the initial claims (line 101 column 1), weeks claimed (line 101 column 4) and appeals disposed (line 201 column 10) workload. Staff salary rates will reflect the rates used for quarterly above base computations. Staffing costs will be increased by the applicable factor to account for leave, and resulting costs will be increased by 19% to account for overhead.

Time factors and staff salary rates necessary for the computations of administrative costs described above for Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau will be communicated to each territory separately.

6. Section D. Overpayment Activity Related to Identity (ID) Theft.
  - a. Columns 19, 20, and 21 ID Theft Overpayments Established. In column 19, Cases, line 401, enter the number of ID theft cases established, including willful misrepresentation (fraud) determined during the report period as an ID theft overpayment. In line 402 provide a sub-breakout of the number of ID theft cases determined as ID theft fraud cases. In column 20, Weeks, enter in line 401 the number of weeks of PUA overpaid in connection with the ID theft cases reported in column 19; enter the number of weeks of ID theft fraud overpayments included in line 402. In column 21, Amount, enter in line 401, the amount overpaid represented by ID theft cases reported in column 19. Provide a sub-breakout of the amount involving ID theft fraud in line 402.
  - b. Column 21A ID Theft Overpayment Recoveries. In column 21A, Amount, enter in line 401, the total amount of all PUA ID theft recoveries collected for the reporting period. Provide a sub-breakout of the amount of ID theft recoveries involving fraud in line 402.

## **H. Checking the Report**

1. General Checks. Entries should be made for all required items. If the item is inapplicable, or if applicable but no activity corresponding to the items occurred during the report period, a zero should be entered. A report containing missing data cannot be sent to the National Office, but can be stored on the state's system.
2. Arithmetic Checks.
  - a. For columns 1, 2, and 8 through 13, the entries in line 102 and 202 respectively, should be equal to or less than the entries in line 101 or

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201.

- b. For columns 14 through 16A, the entries in line 302 should be equal to or less than line 301.
  - c. For columns 19 through 21A, the entries in line 402 should be equal to or less than line 401.
3. Signature. Signature is only required if reports are sent manually to the National Office.

## Processing PUA Claims Based on the Claim Filing Date

	<b>SCENARIO 1</b> <b>Claim filed on or before</b> <b>December 27, 2020</b>	<b>SCENARIO 2</b> <b>Claim filed after</b> <b>December 27, 2020 and</b> <b>on or before December</b> <b>31, 2020</b>	<b>SCENARIO 3</b> <b>Claim filed on or after</b> <b>January 1, 2021 and</b> <b>before January 31, 2021</b>	<b>SCENARIO 4</b> <b>Claim filed on or after</b> <b>January 31, 2021</b>
<b>Pandemic Assistance Period</b>	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)
<b>Last week payable for states with a Saturday week ending date</b>	March 13, 2021 (unless individual qualifies for the phaseout period)	March 13, 2021 (unless individual qualifies for the phaseout period)	March 13, 2021 (unless individual qualifies for the phaseout period)	March 13, 2021 (unless individual qualifies for the phaseout period)
<b>Earliest possible claim effective date<sup>1</sup></b>	February 2, 2020	December 6, 2020	December 6, 2020	December 6, 2020
<b>Wages considered for calculating the weekly benefit amount (WBA)</b>	Calendar Year (CY) 2019	CY 2019	If claim is effective on or after January 1, 2021 ( <i>i.e.</i> , claim effective January 3, 2021 or later for states with a Saturday week ending date), then CY 2020  If claim is effective before January 1, 2021, then CY 2019	If claim is effective on or after January 1, 2021 ( <i>i.e.</i> , claim effective January 3, 2021 or later for states with a Saturday week ending date), then CY 2020  If claim is effective before January 1, 2021, then CY 2019

<sup>1</sup> The claim must be backdated to the first week during the Pandemic Assistance Period that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in section 2102(a)(3)(A)(ii)(i) of the CARES Act.



	<b>SCENARIO 1</b> <b>Claim filed on or before</b> <b>December 27, 2020</b>	<b>SCENARIO 2</b> <b>Claim filed after</b> <b>December 27, 2020 and</b> <b>on or before December</b> <b>31, 2020</b>	<b>SCENARIO 3</b> <b>Claim filed on or after</b> <b>January 1, 2021 and</b> <b>before January 31, 2021</b>	<b>SCENARIO 4</b> <b>Claim filed on or after</b> <b>January 31, 2021</b>
<b>Guidance for determining the state's minimum PUA WBA</b>	UIPL No. 03-20	UIPL No. 03-20	UIPL No. 03-20	UIPL No. 03-20
<b>Duration of benefits<sup>2</sup></b>	39 weeks + 11 weeks which may only be collected for weeks of unemployment ending on or after January 2, 2021	50 weeks	50 weeks	50 weeks
<b>Requirement to submit documentation substantiating employment or self-employment</b>	Yes, if the individual receives a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), documentation is due within 90 days of the application or when directed by the State Agency (whichever is later).	Yes, if the individual receives a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), documentation is due within 90 days of the application or when directed by the State Agency (whichever is later).	Yes, if the individual receives a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), documentation is due within 90 days of the application or when directed by the State Agency (whichever is later).	Yes, documentation is due within 21 days of the initial application or when directed by the State Agency (whichever is later).

<sup>2</sup> Duration must subtract any weeks of regular unemployment compensation (UC) or Extended Benefits (EB) received during the Pandemic Assistance Period. Additionally, if a state is in a High Unemployment Period, the individual's account is to be augmented by up to 7 weeks as discussed in section C.17 of attachment I to this UIPL.

	<b>SCENARIO 1</b> <b>Claim filed on or before</b> <b>December 27, 2020</b>	<b>SCENARIO 2</b> <b>Claim filed after</b> <b>December 27, 2020 and</b> <b>on or before December</b> <b>31, 2020</b>	<b>SCENARIO 3</b> <b>Claim filed on or after</b> <b>January 1, 2021 and</b> <b>before January 31, 2021</b>	<b>SCENARIO 4</b> <b>Claim filed on or after</b> <b>January 31, 2021</b>
<b>Documentation substantiating employment or self-employment must represent activity during this time period</b>	CY 2019 to date of filing	CY 2019 to date of filing	If claim is effective on or after January 1, 2021 ( <i>i.e.</i> , claim effective January 3, 2021 or later for states with a Saturday week ending date), then CY 2020 to date of filing  If claim is effective before January 1, 2021, then CY 2019 to date of filing	If claim is effective on or after January 1, 2021( <i>i.e.</i> , claim effective January 3, 2021 or later for states with a Saturday week ending date), then CY 2020 to date of filing  If claim is effective before January 1, 2021, then CY 2019 to date of filing
<b>If documentation is not provided within the required timeframe, these weeks must be established as an overpayment</b>	Any paid weeks of unemployment ending on or after January 2, 2021	Any paid weeks of unemployment ending on or after January 2, 2021	Any paid weeks of unemployment ending on or after January 2, 2021	Any paid weeks of unemployment ending on or after January 2, 2021

**TITLE II-ASSISTANCE TO INDIVIDUALS, FAMILIES, AND BUSINESSES**  
**Subtitle A-Unemployment Insurance**  
**CHAPTER I-CONTINUED ASSISTANCE TO UNEMPLOYED WORKERS**

The following Sections are relevant to the Pandemic Unemployment Assistance program.

**Subchapter I-Extension of CARES Act Unemployment Provisions**

**SEC. 201. EXTENSION AND BENEFIT PHASEOUT RULE FOR PANDEMIC UNEMPLOYMENT ASSISTANCE.**

IN GENERAL.-Section 2102(c) of the CARES Act (15 U.S.C. 9021(c)) is amended-

(1) in paragraph (1)-

- (A) by striking "paragraph (2)" and inserting "paragraphs (2) and (3)"; and
- (B) in subparagraph (A)(ii), by striking "December 31, 2020" and inserting "March 14, 2021"; and

- (2) by redesignating paragraph (3) as paragraph (4); and
- (3) by inserting after paragraph (2) the following:

"(3) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO PANDEMIC UNEMPLOYMENT ASSISTANCE AS OF MARCH 14, 2021.-

"(A) IN GENERAL.-Subject to subparagraph (B), in the case of any individual who, as of the date specified in paragraph (1)(A)(ii), is receiving pandemic unemployment assistance but has not yet exhausted all rights to such assistance under this section, pandemic unemployment assistance shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for pandemic unemployment assistance.

"(B) TERMINATION.- Notwithstanding any other provision of this subsection, no pandemic unemployment assistance shall be payable for any week beginning after April 5, 2021."

(b) INCREASE IN NUMBER OF WEEKS.-Section 2102(c)(2) of the CARES Act (15 U.S.C. 9021(c)(2)) is amended-

- (1) by striking "39 weeks" and inserting "50 weeks; and
- (2) by striking "39-week period " and inserting "50-week period".

(c) APPEALS.-

(1) IN GENERAL.-Section 2102(c) of the CARES Act (15 U.S.C. 9021(c)), as amended by subsections (a) and (b), is amended by adding at the end the following:

"(5) APPEALS BY AN INDIVIDUAL.-

"(A) IN GENERAL.-An individual may appeal any determination or redetermination regarding the rights to pandemic unemployment assistance under this section made by the State agency of any of the States.

"(B) PROCEDURE.-All levels of appeal filed under this paragraph in the 50 states, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands-

"(i) shall be carried out by the applicable State that made the determination or redetermination; and

"(ii) shall be conducted in the same manner and to the same extent as the applicable State would conduct appeals of determinations or redeterminations regarding rights to regular compensation under State law.

"(C) PROCEDURE FOR CERTAIN TERRITORIES.-With respect to any appeal filed in Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, Republic of the Marshall Islands, and the Republic of Palau-

"(i) lower level appeals shall be carried out by the applicable entity within the State;

"(ii) if a higher level appeal is allowed by the State, the higher level appeal shall be carried out by the applicability entity within the State; and

"(iii) appeals described in clauses (i) and (ii) shall be conducted in the same manner and to the same extent as appeals of regular unemployment compensation are conducted under the unemployment compensation law of Hawaii."

(2) EFFECTIVE DATE.-The amendment made by paragraph (1) shall take effect as if enacted as part of division A of the CARES Act (Public Law 116-136), except that any decision issued on appeal or review before the date of enactment of this Act shall not be affected by the amendment made by paragraph (1).

(d) WAIVER AUTHORITY FOR CERTAIN OVERPAYMENTS OF PANDEMIC UNEMPLOYMENT ASSISTANCE.-Section 2102(d) of the CARES Act (15 U.S.C. 9021(d)) is amended by adding at the end the following:

"(4) WAIVER AUTHORITY.-In the case of individuals who have received amounts of pandemic unemployment assistance to which they were not entitled, the State shall require such individuals to repay the amounts of such pandemic unemployment assistance to the State agency, except that the State agency may waive such repayment if it determines that-

"(A) the payment of such pandemic unemployment assistance was without fault on the part of any such individual; and

"(B) such repayment would be contrary to equity and good conscience."

(e) HOLD HARMLESS FOR PROPER ADMINISTRATION.-In the case of an individual who is eligible to receive pandemic unemployment assistance under section 2102 the CARES Act (15 U.S.C. 9021) as of the day before the date of enactment of this Act and on the date of enactment of this Act becomes eligible for pandemic emergency unemployment

compensation under section 2107 of the CARES Act (15 U.S.C. 9025) by reason of the amendments made by section 206(b) of this subtitle, any payment of pandemic unemployment assistance under such section 2102 made after the date of enactment of this Act to such individual during an appropriate period of time, as determined by the Secretary of Labor, that should have been made under such section 2107 shall not be considered to be an overpayment of assistance under such section 2102, except that an individual may not receive payment for assistance under section 2102 and a payment for assistance under section 2107 for the same week of unemployment.

(f) **LIMITATION.**-In the case of a covered individual whose first application for pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) is filed after the date of enactment of this Act, subsection (c)(1)(A)(i) of such section 2102 shall be applied by substituting "December 1, 2020" for "January 27, 2020".

(g) **EFFECTIVE DATE.**-The amendments made by subsections (a), (b), (c), and (d) shall apply as if included in the enactment of the CARES Act (Public Law 116-136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act.

## **SEC. 203. EXTENSION OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.**

(a) **IN GENERAL.**-Section 2104(e) of the CARES Act (15 U.S.C. 9023(e)) is amended to read as follows:

"(e) **APPLICABILITY.**-An agreement entered into under this section shall apply-

- (1) to weeks of unemployment beginning after the date on which such agreement is entered into and ending on or before July 31, 2020; and
- "(2) to weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021."

(b) **AMOUNT.**-

(1) **IN GENERAL.**-Section 2104(b) of the CARES Act (15 U.S.C. 9023(b)) is amended-

- (A) in paragraph (1)(B), by striking "of \$600" and inserting "equal to the amount specified in paragraph (3)"; and
- (B) by adding at the end the following new paragraph:

"(3) **AMOUNT OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.**-

"(A) **IN GENERAL.**- The amount specified in this paragraph is the following amount:

- "(i) For weeks of unemployment beginning after the date on which an agreement is entered into under this section and ending on or before July 31, 2020, \$600.

- "(ii) For weeks of unemployment beginning after December 26, 2020 (or, if later, the date on which such agreement is entered into), and ending on or before March 14, 2021, \$300."

(2) TECHNICAL AMENDMENT REGARDING APPLICATION TO SHORT-TIME COMPENSATION PROGRAMS AND AGREEMENTS.-Section 2104(i)(2) of the CARES Act (15 U.S.C. 9023(i)(2)) is amended-

(A) in subparagraph (C), by striking "and" at the end;

(B) in subparagraph (D), by striking the period at the end and inserting"; and"; and

(C) by adding at the end the following:

"(E) short-time compensation under a short-time compensation program (as defined in section 3306(v) of the Internal Revenue Code of 1986).".

## **SEC. 206. EXTENSION AND BENEFIT PHASEOUT RULE FOR PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION.**

(a) IN GENERAL.-Section 2107(g) of the CARES Act (15 U.S.C. 9025(g)) is amended to read as follows:

"(g) APPLICABILITY.-

"(1) IN GENERAL.-Except as provided in paragraphs (2) and (3), an agreement entered into under this section shall apply to weeks of unemployment-

"(A) beginning after the date on which such agreement is entered into; and

"(B) ending on or before March 14, 2021.

"(2) TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION AS OF MARCH 14, 2021.-In the case of any individual who, as of the date specified in paragraph (1)(B), is receiving Pandemic Emergency Unemployment Compensation but has not yet exhausted all rights to such assistance under this section, Pandemic Emergency Unemployment Compensation shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for Pandemic Emergency Unemployment Compensation.

"(3) TERMINATION.-Notwithstanding any other provision of this subsection, no Pandemic Emergency Unemployment Compensation shall be payable for any week beginning after April 5, 2021.".

(b) INCREASE IN NUMBER OF WEEKS.-Section 2107(b)(2) of the CARES Act (15 U.S.C. 9025(b)(2)) is amended by striking "13" and inserting "24".

(c) COORDINATION RULES.-

(1) COORDINATION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.-Section 2107(b) of the CARES Act (15 U.S.C. 9025(b)) is amended by adding at the end the following:

"(4) COORDINATION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION WITH REGULAR COMPENSATION.-

"(A) IN GENERAL.-If-

"(i) an individual has been determined to be entitled to pandemic emergency unemployment compensation with respect to a benefit year;  
"(ii) that benefit year has expired;  
"(iii) that individual has remaining entitlement to pandemic emergency unemployment compensation with respect to that benefit year; and  
"(iv) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least \$25 less than the individual's weekly benefit amount in the benefit year referred to in clause (i), then the State shall determine eligibility for compensation as provided in subparagraph (B).

"(B) DETERMINATION OF ELIGIBILITY.-For individuals described in subparagraph (A), the State shall determine whether the individual is to be paid pandemic emergency unemployment compensation or regular compensation for a week of unemployment using one of the following methods:

"(i) The State shall, if permitted by State law, establish a new benefit year, but defer the payment of regular compensation with respect to that new benefit year until exhaustion of all pandemic emergency unemployment compensation payable with respect to the benefit year referred to in subparagraph (A)(i).

"(ii) The State shall, if permitted by State law, defer the establishment of a new benefit year (which uses all the wages and employment which would have been used to establish a benefit year but for the application of this subparagraph), until exhaustion of all pandemic emergency unemployment compensation payable with respect to the benefit year referred to in subparagraph (A)(i).

"(iii) The State shall pay, if permitted by State law-

"(I) regular compensation equal to the weekly benefit amount established under the new benefit year; and

"(II) pandemic emergency unemployment compensation equal to the difference between that weekly benefit amount and the weekly benefit amount for the expired benefit year.

"(iv) The State shall determine rights to pandemic emergency unemployment compensation without regard to any rights to regular compensation if the individual elects to not file a claim for regular compensation under the new benefit year."

(2) COORDINATION OF PANDEMIC EMERGENCY UNEMPLOYMENT COMPENSATION WITH EXTENDED COMPENSATION.-

(A) INDIVIDUALS RECEIVING EXTENDED COMPENSATION AS OF THE DATE OF ENACTMENT.- Section 2107(a)(5) of the CARES Act (15 U.S.C. 9025(a)(5)) is amended-

(i) by striking "RULE.-An agreement" and inserting the following:  
"RULES.-

"(A) IN GENERAL.-Subject to subparagraph (B), an agreement";  
and

(ii) by adding at the end the following:

"(B) SPECIAL RULE.-In the case of an individual who is receiving extended compensation under the State law for the week that includes the date of enactment of this subparagraph (without regard to the amendments made by subsections (a) and (b) of section 206 of the Continued Assistance for Unemployed Workers Act of 2020), such individual shall not be eligible to receive pandemic emergency unemployment compensation by reason of such amendments until such individual has exhausted all rights to such extended benefits."

(B) ELIGIBILITY FOR EXTENDED COMPENSATION.- Section 2107(a) of the CARES Act (15 U.S.C. 9025(a)) is amended by adding at the end the following:

"(8) SPECIAL RULE FOR EXTENDED COMPENSATION.-At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this paragraph and before April 12, 2021, an individual's eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note)) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins-

"(A) after the date as of which such individual exhausts all rights to pandemic emergency unemployment compensation; and

"(B) during an extended benefit period that began on or before the date described in subparagraph (A)."

(d) EFFECTIVE DATE.-

(1) IN GENERAL.-Except as provided in paragraph (2), the amendments made by this section shall apply as if included in the enactment of the CARES Act (Public Law 116-136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act.

(2) COORDINATION RULES .- The amendments made by subsection (c)(1) shall apply to individuals whose benefit years, as described in section 2107(b)(4)(A)(ii) of the CARES Act, expire after the date of enactment of this Act.

**Subchapter IV-Improvements to Pandemic Unemployment Assistance to  
Strengthen Program Integrity**

**SEC. 241. REQUIREMENT TO SUBSTANTIATE EMPLOYMENT OR  
SELF-EMPLOYMENT AND WAGES EARNED OR PAID TO CONFIRM  
ELIGIBILITY FOR PANDEMIC UNEMPLOYMENT ASSISTANCE.**

(a) IN GENERAL.-Section 2102(a)(3)(A) of the CARES Act (15 U.S.C. 9021(a)(3)(A)) is amended-

(1) in clause (i), by striking "and" at the end;



(2) by inserting after clause (ii) the following:

"(iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; and".

(b) **APPLICABILITY.**—

(1) **IN GENERAL.**—Subject to paragraphs (2) and (3), the amendments made by subsection (a) shall apply to any individual who files a new application for pandemic unemployment assistance or claims pandemic unemployment assistance for any week of unemployment under section 2102 of the CARES Act (15 U.S.C. 9021) on or after January 31, 2021.

(2) **SPECIAL RULE.**—An individual who received pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) for any week ending before the date of enactment of this Act shall not be considered ineligible for such assistance for such week solely by reason of failure to submit documentation described in clause (iii) of subsection (a)(3)(A) of such section 2102, as added by subsection (a).

(3) **PRIOR APPLICANTS.**—With respect to an individual who applied for pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) before January 31, 2021, and receives such assistance on or after the date of enactment of this Act, clause (iii) of subsection (a)(3)(A) of such section shall be applied by substituting “90 days” for “21 days”.

## **SEC. 242. REQUIREMENT FOR STATES TO VERIFY IDENTITY OF APPLICANTS FOR PANDEMIC UNEMPLOYMENT ASSISTANCE.**

(a) **IN GENERAL.**—Section 2102(f) of the CARES Act (15 U.S.C. 9021(f)) is amended—

(1) in paragraph (1), by inserting “, including procedures for identity verification or validation and for timely payment, to the extent reasonable and practicable” before the period at the end; and

(2) in paragraph (2)(B), by inserting “and expenses related to identity verification or validation and timely and accurate payment” before the period at the end.

(b) **APPLICABILITY.**—The requirements imposed by the amendments made by this section shall apply, with respect to agreements made under section 2102 of the CARES Act, beginning on the date that is 30 days after the date of enactment of this Act.

## **SEC. 263. CONTINUING ELIGIBILITY FOR CERTAIN RECIPIENTS OF PANDEMIC UNEMPLOYMENT ASSISTANCE.**

(a) IN GENERAL.—Section 2102(c) of the CARES Act (15 U.S.C. 9021(c)), as amended by section 201, is further amended by adding at the end the following:

“(6) CONTINUED ELIGIBILITY FOR ASSISTANCE.—As a condition of continued eligibility for assistance under this section, a covered individual shall submit a recertification to the State for each week after the individual’s 1st week of eligibility that certifies that the individual remains an individual described in subsection (a)(3)(A)(ii) for such week.”.

(b) EFFECTIVE DATE; SPECIAL RULE.—

(1) IN GENERAL.—The amendment made by subsection (a) shall apply with respect to weeks beginning on or after the date that is 30 days after the date of enactment of this section.

(2) SPECIAL RULE.—In the case of any State that made a good faith effort to implement section 2102 of division A of the CARES Act (15 U.S.C. 9021) in accordance with rules similar to those provided in section 625.6 of title 20, Code of Federal Regulations, for weeks ending before the effective date specified in paragraph (1), an individual who received Pandemic unemployment assistance from such State for any such week shall not be considered ineligible for such assistance for such week solely by reason of failure to submit a recertification described in subsection (c)(5) of such section 2102.

# EXHIBIT E

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Unemployment Insurance
	<b>CORRESPONDENCE SYMBOL</b> OUI/DUIO
	<b>DATE</b> April 5, 2020

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20**

**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) Program Operating, Financial,  
and Reporting Instructions

1. **Purpose.** To provide states with operating, financial, and reporting instructions for the PUA program authorized by Section 2102 of the CARES Act of 2020, Public Law (Pub. L.) 116-136.
2. **Action Requested.** The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) requests that State Workforce Administrators provide the information in this Unemployment Insurance Program Letter (UIPL) and all attachments to appropriate program and other staff in state workforce systems as they implement the Unemployment Insurance (UI)-related provisions in the CARES Act that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19).
3. **Summary and Background.**
  - a. Summary – On March 27, 2020, President signed into law the CARES Act, which includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits, and provides funding to states for the administration of the program. Individuals receiving PUA benefits may also receive the \$600 weekly benefit amount (WBA) under the Federal Pandemic Unemployment Compensation (FPUC) program if they are eligible for such compensation for the week claimed.
  - b. Background – The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The CARES Act includes a provision of temporary benefits for individuals who have exhausted their entitlement to regular unemployment compensation (UC) as well as coverage for individuals who are not

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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eligible for regular UC (such as individuals who are self-employed or who have limited recent work history). These individuals may also include certain gig economy workers, clergy and those working for religious organizations who are not covered by regular unemployment compensation, and other workers who may not be covered by the regular UC program under some state laws.

**Importance of Program Integrity.** The programs and provisions in the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State UI program must be adhered to. In addition, some of the CARES Act programs include new eligibility requirements which states will need to apply. These requirements include that individuals are only entitled to benefits if they are no longer working through no fault of their own and that individuals must be able and available to work.

States play a fundamental role in ensuring the integrity of the UI program. While states have been provided some flexibilities as a result of COVID-19, those flexibilities are generally limited to dealing with the effects of COVID-19, as discussed in UIPL Nos. 10-20 and 13-20. States must ensure that individuals only receive benefits in accordance with these statutory provisions.

Further, quitting work without good cause to obtain UI benefits is fraud under PUA. Specifically related to PUA, 20 C.F.R. 625.14 governs overpayments and disqualifications for fraud. States are expected to enforce this provision.

The Department is actively working with states receiving funding under the CARES Act to provide UI benefits only to individuals who are entitled to such benefits. The Department will also be actively engaged with its Office of the Inspector General (OIG) to ensure program integrity. The CARES Act includes an appropriation of \$26 million to the Department's OIG (Section 2115) to carry out audits, investigations, and other oversight activities related to states' adherence to existing UI laws and policies, as well as the provisions of the CARES Act.

**4. Guidance.** An overview of key information about the PUA program is provided below.

**a. Program overview.**

PUA provides benefits to covered individuals, who are those individuals not eligible for regular unemployment compensation or extended benefits under state or Federal law or pandemic emergency unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. Covered individuals also include self-employed, those seeking part-time employment, individuals lacking sufficient work history, and those who otherwise do not qualify for regular unemployment compensation or extended benefits under state or Federal law or PEUC.

PUA is also generally not payable to individuals who have the ability to telework with pay or who are receiving paid sick leave or other paid leave benefits. However, individuals receiving paid sick leave or other paid leave benefits for less than their customary work week may still be eligible for PUA. The state must treat any paid sick leave or paid leave received by a claimant in accordance with the income restrictions set out in Disaster Unemployment Assistance (DUA) at 20 C.F.R. 625.13. Similarly, if an individual has been offered the option of teleworking with pay and does, but works less than the individual worked prior to the COVID-19 pandemic, income from such work must be treated in accordance with the income restrictions set out in DUA at 20 C.F.R. 625.13.

In general, PUA provides up to 39 weeks of benefits to qualifying individuals who are otherwise able to work and available for work within the meaning of applicable state UC law, except that they are unemployed, partially unemployed, or unable or unavailable to work due to one of the COVID-19 related reasons identified in Section 2102(a)(3)(A)(ii)(I) of the CARES Act and listed below:

- The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis;
- A member of the individual's household has been diagnosed with COVID-19;
- The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;
- A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;
- The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;
- The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;
- The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;
- The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;
- The individual has to quit his or her job as a direct result of COVID-19; or
- The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.

For purposes of determining eligibility for PUA, regular UC includes state UC, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-servicemembers (UCX), Trade Readjustment Allowances (TRA), DUA, Short-Time Compensation (STC), and payments under the Self-Employment Assistance (SEA) programs. 20 C.F.R. 625.2(d)(1). Extended benefits mean compensation provided under the provisions of the Federal-State Extended

Unemployment Compensation Act of 1970. 20 C.F.R. 625.2(d)(3). *See* UIPL No. 14-20 for additional information regarding coordination across programs. PUA is not payable in conjunction with state additional compensation.

The PUA WBA is equal to the WBA authorized under state UC law where the individual was employed. In no case will the amount be less than the minimum WBA described in 20 C.F.R. 625.6. For individuals without reported wages sufficient to establish a WBA, the WBA will be calculated according to processes for DUA benefits set out in 20 C.F.R. 625.6.

For weeks of unemployment beginning on or after March 27, 2020, and ending on or before July 31, 2020, individuals eligible to receive PUA are also eligible to receive FPUC, authorized under section 2104 of the CARES Act. FPUC provides an additional \$600 per week. *See* UIPL No. 15-20 for additional information.

The duration of PUA benefits is generally limited to 39 weeks, minus any weeks of regular UC and Extended Benefits (EB) the individual received. The weeks for which an individual collected PEUC may not be deducted from the individual's PUA entitlement.

- b. **Relationship between PUA and DUA.** Section 2102(h) of the CARES Act provides that regulations at 20 C.F.R. Part 625 shall apply to the PUA program “except as otherwise provided in this section or to the extent there is a conflict” between section 2102 and 20 C.F.R. Part 625. These regulations “shall apply to this section as if (1) the term ‘COVID-19 public health emergency’ were substituted for the term ‘major disaster’ each place it appears in such 20 C.F.R. Part 625; and (2) the term ‘pandemic’ were substituted for the term ‘disaster’ each place it appears in 20 C.F.R. Part 625.”

Like DUA, the PUA program is an emergency program activated in response to a crisis and designed to provide benefits to certain individuals who are ineligible for or who have exhausted entitlement to regular unemployment compensation or extended benefits. Like DUA, PUA has a defined assistance period, and a set minimum WBA which is determined based on each state's WBA. In addition, PUA benefits and the cost of its administration are federally funded. To the extent possible, the PUA program should be administered using the same initial application, weekly certifications, adjudication, and appeal procedures utilized by the state for the DUA program. 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.

- c. **Important program dates.** PUA is payable for weeks of unemployment, partial unemployment, or inability to work caused by the COVID-19 related reasons listed above beginning on or after January 27, 2020. For states where the week of unemployment ends on a Saturday, the first week for which PUA may be paid is the week ending February 8, 2020. In states where the week of unemployment ends on a Sunday, the first week for which PUA may be paid is the week ending February 9, 2020.

PUA is not payable for any week of unemployment ending after December 31, 2020. Accordingly, in states where the week of unemployment ends on a Saturday, the last

week that PUA may be paid is the week ending December 26, 2020. For states where the week of unemployment ends on a Sunday, the last week that PUA is payable is the week ending December 27, 2020.

- d. **Program administration.** The cost of PUA benefits is 100% federally funded. Implementation costs and ongoing administrative costs are also 100% federally funded.

The PUA program is administered through a voluntary agreement between states and the Department. The program is available in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, provided the state/territory signs an agreement with the Department.

States that have entered into an agreement with the Secretary of Labor (Secretary) to operate a PUA program may enter into agreements to operate the PUA program on behalf of other states that have also entered into agreements with the Secretary.

- e. **PUA Implementation Costs Reimbursement for One Time/Additional Administrative Costs.** Section 2102(f) provides for the payment of all additional administrative expenses, as determined by the Secretary, incurred by the states to implement and operate the PUA program. To aid in the determination of the necessity of additional administrative expenses to implement the program, states requesting payments of such costs are required to submit Supplemental Budget Requests (SBRs) detailing the program startup costs. These SBRs must be limited to one-time costs that are attributable to implementation of the PUA program.

Examples of 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/or
- Overhead related only to the above.

The estimated cost basis for all items must be included in the SBR Application. Calculations for costs of state staff and contractors must be shown in accordance with the SBR instructions in ET Handbook No. 336. For application submission instructions refer to Attachment IV, Supplemental Budget Request Application; and Attachment V, Instructions for Completing the SF424 and SF424A.

ETA requires a state to submit its PUA implementation SBR Application along with required SF424 and SF424A forms. ETA encourages states to submit these forms by April 30, 2020, by electronic submission to the National Office at [covid-19@dol.gov](mailto:covid-19@dol.gov) with a copy to the appropriate Regional Office.

State agencies will receive reimbursement for on-going workload costs through the new ETA902P report. More specific information is included in Attachment I, Section E, and “Reporting Instructions.”

- f. **Additional Guidance and Instructions.** Additional guidance and instructions on implementing and operating the PUA program are provided in the attachments to this UIPL. Attachment I of this UIPL provides states with the implementation and operating instructions, including definitions, administrative requirements, financial information, and reporting information. Attachment II provides the general provisions concerning conditions and assurances for PUA. Attachment III provides the statutory language in Section 2102 of the CARES Act creating PUA. Attachment IV is the SBR Application template. Attachment V is the Instructions for completing the Standard Form (SF) 424 and SF 424A.
- g. **Inquiries.** We encourage states to contact the Department for technical assistance. Please direct inquiries to [covid-19@dol.gov](mailto:covid-19@dol.gov), with a copy to the appropriate Regional Office.
- h. **References.**
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), Title II, Subtitle A – Relief for Workers Affected by Coronavirus Act;
  - Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note);
  - 20 C.F.R. Part 625 – Disaster Unemployment Assistance;
  - Unemployment Insurance Program Letter (UIPL) No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, issued March 12, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8893](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8893);
  - UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued on April 2, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3390](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390);
  - UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued on April 4, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9297](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297);
  - ETA Handbook No. 356 *Disaster Unemployment Assistance*, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2124](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2124); and
  - ET Handbook No. 401, *UI Report Handbook*, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7774](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7774).
- i. **Attachment(s).**
- Attachment I: Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions



- Attachment II: General Provisions for Administering the Pandemic Unemployment Assistance (PUA) Program
- Attachment III: Statutory Language of Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020
- Attachment IV: Supplemental Budget Request Application
- Attachment V: Instructions for Completing the SF424 and SF424A
- Attachment VI: Handbook No. 401 Reporting Instructions for ETA 902-Pandemic Unemployment Assistance

**Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions**

**A. Introduction:**

On March 27, 2020, the President signed Public Law (Pub. L.) 116-136, the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020. Section 2102 creates a new federal program called Pandemic Unemployment Assistance (PUA) and provides funding to states for the administration of the program. The PUA program generally allows states that enter into an agreement with the Secretary of Labor to pay up to 39 weeks of benefits to individuals who are not eligible to receive or who have exhausted regular unemployment compensation (UC), Extended Benefits (EB), and Pandemic Emergency Unemployment Compensation (PEUC) under Section 2107, and who otherwise meet the eligibility requirements of the CARES Act. The costs of the new federal benefit and of program administration are 100% federally funded. This guidance explains the eligibility requirements and other administrative functions associated with the program.

**B. Definitions:**

This section contains the definitions of terms used throughout this document, using definitions in 20 C.F.R. 625.2 and in section 205 of the Federal-State Extended Unemployment Compensation Program (hereafter called the Federal-State EB Law). References to 5 U.S.C. chapter 85 relate to Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX).

1. “Act” means Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II Subtitle A, The Relief for Workers Affected by Coronavirus Act.
2. “Additional compensation” means compensation totally financed by a state and payable under a state law by reason of conditions of high unemployment or by reason of other special factors, and when so payable, includes compensation payable pursuant to 5 U.S.C. chapter 85.
3. “Agreement” means the agreement between a state and the U.S. Department of Labor (Department) to administer the PUA Program. Under the agreement, the state agency makes payments of PUA as the Department’s agent. PUA payments must be made in accordance with the Act as interpreted by the Department in these instructions and any other instructions issued by the Department.
4. “Applicable state” means, with respect to an individual, the state from which the individual is receiving compensation.
5. “Applicable state law” means the unemployment compensation law of the applicable state for an individual.
6. “Benefit year” means, with respect to an individual, the benefit year as defined in the applicable state law.
7. “Compensation” shall have the meaning provided in 20 C.F.R. 265.2(d).
8. “COVID-19” means the 2019 Novel Coronavirus or 2019-nCoV.

9. “COVID-19 Public Health Emergency” means the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.
10. “Covered Individual” means an individual who is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107 of the Act, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and provides self-certification that the individual meets the requirements in Section C.1, below.
11. “Department” means the U.S. Department of Labor.
12. “Extended compensation” means compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of the state law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (Pub. L. 91-373), and when so payable includes additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85. Extended compensation is referred to as Extended Benefits or EB.
13. “Federal Pandemic Unemployment Compensation” means the compensation payable under section 2104 of the Act and is referred to as FPUC.
14. “Pandemic Unemployment Assistance” means the compensation payable under section 2102 of the Act and is referred to as PUA.
15. “Pandemic Emergency Unemployment Compensation” means compensation payable under section 2107 of the Act and is referred to as PEUC.
16. “Regular compensation” means compensation payable to an individual under any state law or the unemployment compensation plan of a political subdivision of a state and, when so payable, includes compensation payable pursuant to 5 U.S.C. chapter 85 (parts 609 and 614 of this chapter), but not including extended compensation or additional compensation.
17. “Secretary” means the U.S. Secretary of Labor.
18. “State” means the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.
19. “State agency” means the agency of the state which administers its state law and, for Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau it means the agency designated in the Agreements entered into with the Department.
20. “State law” means the unemployment compensation law of a state, approved by the Secretary under Section 3304 of the Federal Unemployment Tax Act (FUTA). (26 U.S.C. § 3304(a)).
21. “Week” means a week as defined in the applicable state law.
22. “Week of unemployment” is defined as used in 20 C.F.R. 265.2(w).

Note: Except as otherwise provided in Section 2102 of the Act or to the extent there is a conflict between Section 2102 and 20 C.F.R. Part 625, 20 C.F.R. Part 625 shall apply to Section 2102 as if the term “COVID-19 public health emergency” were substituted for the

term “major disaster” each place it appears in 20 C.F.R. Part 625 and the term “pandemic” were substituted for the term “disaster” each place it appears in 20 C.F.R. Part 625.

## **C. Operating Instructions:**

### **1. Eligibility.**

Section 2102 of the Act provides for payment of PUA to “covered individuals”. “Covered individuals” are those individuals not qualified for regular unemployment compensation, extended benefits under state or Federal law, or pandemic emergency unemployment compensation (PEUC), including those who have exhausted all rights to such benefits. “Covered individuals” also include self-employed, individuals seeking part-time employment, individuals lacking sufficient work history, or those otherwise not qualified for regular UC, extended benefits under state or federal law, or PEUC.

For purposes of PUA coverage, an individual “lacking sufficient work history” means an individual (1) with a recent attachment to the labor force (2) who does not have sufficient wages in covered employment during the last 18 months to establish a claim under regular UC, and (3) who became unemployed or partially unemployed because of one of the COVID-19 related reasons identified under Section 2102. Demonstration of a recent attachment to the labor force for PUA coverage purposes also includes individuals who had a bona fide offer to start working on a specific date and were unable to start due to one of the COVID-19 related reasons identified under Section 2102.

“Self-employed individuals” as defined in 20 C.F.R 625.2(n) means individuals whose primary reliance for income is on the performance of services in the individual’s own business, or on the individual’s own farm. These individuals include independent contractors, gig economy workers, and workers for certain religious entities.

PUA is generally not payable to individuals who have the ability to telework with pay, or who are receiving paid sick leave or other paid leave benefits. However, an individual receiving paid sick leave or other paid leave benefits for less than his or her customary work week may still be eligible for a reduced PUA WBA. The state must treat any paid sick leave or paid leave received by a claimant in accordance with the income restrictions set out in DUA at 20 C.F.R. 625.13, if the pay or paid leave exceeds the PUA WBA. Similarly, if an individual has been offered the option of teleworking with pay and does telework with pay, but is working less than the individual customarily worked prior to the COVID 19 pandemic, the individual may be eligible for a reduced PUA WBA. Income from such work would be treated in accordance with the income restrictions set out in DUA at 20 C.F.R. 625.13.

To be a “covered individual” under PUA, an individual must also self-certify that he or she is otherwise able to work and available for work, as provided under state law, except that the individual is unemployed, partially unemployed, unable to work or unavailable for work due to at least one of the following categories described below. Included for each of the categories are illustrative examples and explanations of circumstances that fall

under each category. These examples and explanations for each of the categories are not an exhaustive list of all COVID-19 related circumstances that may qualify an individual for PUA benefits, however, should other qualifying circumstances be used they must be identified and applied in a manner consistent with the examples below.

- a) The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and is seeking a medical diagnosis. Examples may include:
- An individual who has to quit his or her job as a direct result of COVID-19 because the individual has tested positive for the coronavirus or has been diagnosed with COVID-19 by a qualified medical professional, and continuing work activities, such as through telework, is not possible by virtue of such diagnosis or condition;
  - An individual who has to quit his or her job due to coming in direct contact with someone who has tested positive for the coronavirus or has been diagnosed by a medical professional as having COVID-19, and, on the advice of a qualified medical health professional is required to resign from his or her position in order to quarantine.
- b) A member of the individual's household has been diagnosed with COVID-19. For example:
- A member of the individual's household has been diagnosed as having COVID-19 by a qualified medical professional or a member of the individual's household has tested positive for COVID-19 and the individual is unable to work as a result.
- c) The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. For example:
- An individual is "providing care" for a family member or a member of the individual's household if the provision of care requires such ongoing and constant attention that the individual's ability to perform other work functions is severely limited. An individual who is assisting a family member who is able to adequately care for him or herself is not "providing care" under this category.
- d) A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work. For example:
- An individual has "primary caregiving responsibility" for a child or other person in the household if he or she is required to remain at home to care for the child or other person.
  - This includes an individual whose job allows for telework, but for whom the provision of care to the child or other person with a closed school or other

facility requires such ongoing and constant attention that it is not possible for the individual to perform work at home.

- e) The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency. For example:
- An individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19.
- f) The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. Examples include:
- An individual who has been advised by a qualified medical professional that he or she may be infected with the coronavirus and that he or she therefore should self-quarantine. For example, an individual had direct contact with another person who has tested positive for the coronavirus or been diagnosed with COVID-19 by a qualified medical professional, and is advised by a health care provider to self-quarantine to prevent further possible spread of the virus. Such circumstances would render the individual unable to reach his or her place of employment.
  - An individual whose immune system is compromised by virtue of a serious health condition and is therefore advised by a health care provider to self-quarantine in order to avoid the greater-than-average health risks that the individual might face if he or she were to become infected by the coronavirus.
- g) The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency. For example:
- An individual is unable to reach his or her job because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of the coronavirus or the employer has closed the place of employment.
  - An individual does not have a job because the employer with whom the individual was scheduled to commence employment has rescinded the job offer as a direct result of the COVID-19 public health emergency.
- h) The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19. For example:
- An individual whose head of household previously contributed the majority of financial support to the household died as a direct result of COVID-19, and the individual is now the person in the household expected to provide such financial support.

- i) The individual has to quit his or her job as a direct result of COVID-19. For example:
- An individual was diagnosed with COVID-19 by a qualified medical professional, and although the individual no longer has COVID-19, the illness caused health complications that render the individual objectively unable to perform his or her essential job functions, with or without a reasonable accommodation.
- j) The individual's place of employment is closed as a direct result of the COVID-19 public health emergency. For example:
- If a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of individuals who worked in the business would be considered a direct result of COVID-19.
- k) The individual meets any additional criteria established by the Secretary for unemployment assistance under this section.
- The Secretary has determined that, in addition to individuals who qualify for benefits under the other criteria described above, an individual who works as an independent contractor with reportable income may also qualify for PUA benefits if he or she is unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing his or her customary work activities, and has thereby forced the individual to suspend such activities. For example, a driver for a ridesharing service who receives an IRS Form 1099 from the ride sharing service may not be eligible for PUA benefits under the other criteria outlined above, because such an individual does not have a "place of employment," and thus cannot claim that he or she is unable to work because his or her place of employment has closed. However, under the additional eligibility criterion established by the Secretary here, the driver may still qualify for PUA benefits if he or she has been forced to suspend operations as a direct result of the COVID-19 public health emergency, such as if an emergency state or municipal order restricting movement makes continued operations unsustainable.

States are required to do the following to ensure the efficacy and integrity of the self-certification process:

- Include information on the self-certification form (either paper or on-line), that the claimant completes, including:
  - Separate from the actual certification, an acknowledgement that the claimant understands that making the certification is under penalty of perjury; and
  - Information that advises the claimant that intentional misrepresentation in self-certifying that he or she falls in one or more of these categories is fraud.
- Provide clear messaging on-line that claimants may be subject to criminal prosecution if they are found to have committed fraud.

States are also required to take reasonable and customary precautions to deter and detect fraud, such as, for example, a random audit of a sample of claims to detect fraud.

States should bear in mind that many of the qualifying circumstances described in section 2102(a)(3)(A)(ii)(I) are likely to be of short term duration. For example, an individual who has been advised to self-quarantine by a health care provider because of the individual's exposure to a person who has tested positive for the coronavirus, and is therefore unable to reach his or her place of employment for purposes of 2102(a)(3)(A)(ii)(I)(ff), may be able to return to his or her place of employment within two weeks of the exposure if he or she has not exhibited symptoms of COVID-19 or tested positive for the coronavirus. Similarly, a school is not closed as a direct result of the COVID-19 public health emergency, for purposes of 2102(a)(3)(A)(ii)(I)(dd), after the date the school year was originally scheduled to end. As such, the expectation is that states will continue to apply their able, available, and actively seeking work standards as outlined in state law.

States should also note that, for purposes of section 2102(a)(3)(A)(ii)(I)(ii), an individual does not have to quit his or her job as a direct result of COVID-19 if paid sick leave or other paid leave benefits are available to the individual. Generally, an employee "has to quit" within the meaning of this section only when ceasing employment is an involuntary decision compelled by the circumstances identified in the section.

In general, a determination about whether actions are a "direct result", as explained above, should be made based on 20 C.F.R. 625.5(c). When making a determination under the regulation, states should take into account specific circumstances unique to the COVID-19 public emergency. For example, if a business is shut down due to an emergency declaration or due to necessary social distancing protocols, the unemployment of individuals who worked in the business would be considered a direct result of COVID-19.

Individuals who meet the following criteria are not eligible for PUA:

- a. Individuals who have the ability to telework with pay. When addressing issues about the availability of paid telework, the state must determine whether the claimant has been offered the option of continuing to work for pay by teleworking. If so, and claimants were offered to continue to work the same number of hours, claimants are not eligible for PUA.
- b. Individuals receiving paid sick leave or other paid leave benefits. If claimants receive such leave for their customary work hours, they are not eligible for PUA. The state must treat any paid sick leave or paid leave received by a claimant in accordance with the income restrictions set out in DUA at 20 C.F.R. 625.13.

If the state has further questions in determining whether an individual's qualifying circumstances are a direct result of the COVID-19 public health emergency (as distinguished from circumstances that are a direct result of COVID-19 under the terms of section 2102), the state should refer to 20 C.F.R. 625.5(c).



2. Determining Exhaustees. A PUA claimant ceases to be regular UC, PEUC, and EB exhaustee when he or she can establish a valid new benefit year. If an individual is no longer a regular UC, EB, or PEUC exhaustee, the individual will not meet the definition of a covered individual and may not receive PUA benefits. Therefore, at each quarter change, the state must check to determine if an individual meets the state's requirements to establish a new benefit year. If individuals can establish a new benefit year, they are no longer eligible for PUA. In these cases, the claimants should be advised that they are no longer eligible for PUA and that they may file a regular UC, PEUC or EB claim.
3. Beginning and Ending Dates of the PUA Program. Under Section 2102 of the Act, states may begin making PUA payments after their agreement with the Secretary is signed.

Once the agreement is signed, PUA must be paid starting with weeks of unemployment beginning on or after January 27, 2020, if the individual meets PUA's eligibility requirements. In states where the week of unemployment ends on Saturday, the first week for which PUA may be paid is the week ending February 8, 2020. In states where the week of unemployment ends on Sunday, the first week for which PUA may be paid is the week ending February 9, 2020.

Thus, PUA claims may be backdated to February 2, 2020, the first week of the Pandemic Assistance Period (PAP), if the individual otherwise meets the eligibility requirements to receive PUA as of that date, including the requirement that the individual's unemployment was due to the COVID-19 related reasons listed in section C.1.

States may not make PUA payments with respect to weeks of unemployment ending after December 31, 2020. Thus, in states where weeks of unemployment end on a Saturday, the last compensable week for the PUA program is the week ending December 26, 2020. In states where the week of unemployment ends on Sunday, the last compensable week for the PUA program is the week ending December 27, 2020.

4. State PUA Agreements with the Department. The PUA program is administered through voluntary agreements between states and the Department. The program is available in all 50 states, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau, provided the state/territory signs an agreement with the Department.
5. Termination of PUA Agreement. Either party, upon thirty days written notice, may terminate the PUA Agreement. The Department reserves the right to terminate this Agreement if it determines that the State does not have an adequate system for administering such assistance, including because the State is not adequately ensuring that individuals receiving benefits under the PUA Program are eligible for such benefits. In the case of termination, the PUA period will end 30 days after the date one of the parties to the agreement notifies the other party of its election to terminate the PUA agreement. No PUA payments may be made with respect to weeks which begin after the date the

termination of the agreement is effective. However, PUA is payable for weeks of unemployment ending on or before such termination date.

6. Agreements between States. One state that has entered into an agreement with the Department to operate a PUA program may choose to enter into an agreement with another state that has an agreement with the Department to operate the program on behalf of the other state.
7. Processing PUA Claims.
  - a. Applicability of State Law Provisions. Under Section 2102(h) of the Act, 20 C.F.R. Part 625 applies to the administration of this program except as otherwise provided in Section 2102. Consistent with 20 C.F.R 625.11, the terms and conditions of the state law of the applicable state for an individual which apply to claims for, and the payment of, regular compensation apply to the payment of PUA to individuals. The provisions of the applicable state law that apply to claims for PUA include, but are not limited to:
    - Claim Filing and Reporting;
    - Information and Due Process to individuals;
    - Notices to individuals and employers, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to PEUC;
    - Determinations, redeterminations, appeals, and hearings;
    - Disqualification, including disqualifying income provisions;
    - Ability to work and availability for work, absent a COVID-19 related circumstance listed above;
    - The Interstate Benefit Payment Plan; and
    - The Interstate Arrangement for Combining Employment and Wages.
  - b. Claims for PUA. In processing claims for PUA, states must verify that individuals have no regular UI entitlement. If the individual is not eligible for regular UI because there are insufficient covered wages or the individual has an active UI claim with a definite or indefinite disqualification, then a state does not need to require the individual to file a regular UI initial claim. However, the state must have an established process whereby the individual's ineligibility for regular UI is documented on the application.
  - c. If the individual's eligibility for regular UI is questionable (for example, there are wages in the base period but no claim is filed, or a job separation that has not been adjudicated), then the state must first require the individual to file a regular UI initial claim. If the individual is subsequently disqualified, then the state may consider the individual for PUA eligibility.
8. Establishment of the Effective Date of PUA claims. The Pandemic Assistance Period (PAP) begins February 2, 2020 (the first week following the beginning date provided

by the CARES Act) and ends on December 26, 2020 (the last week provided by the CARES Act, in states where weeks of unemployment end on a Saturday) or December 27, 2020 (the last week provided by the CARES Act, in states where weeks of unemployment end on a Sunday).

PUA claims are effective the week filed. However, they must be backdated to the first week during the PAP in which the individual meets the definition of a covered individual.

9. Establishment of PUA Weekly Benefit Amount. Section 2102(d) of the Act requires the state to pay individuals the WBA under the UC law of the state where the covered individual was employed plus the \$600 FPUC payment. The minimum WBA may not be less than the minimum WBA in 20 C.F.R. 625.6 before the amount of FPUC under Section 2104 of the Act is added.

If an individual is self-employed or would not otherwise qualify for UC under a state's law, the individual's PUA WBA is calculated as provided in 20 C.F.R. 625.6 and is increased by the \$600 FPUC payment. If a self-employed individual or an individual who is "lacking sufficient work history" had earnings for the prior tax year that would result in a lower WBA than the minimum DUA WBA that is outlined in the quarterly UIPL for the Minimum DUA benefit, the individual's WBA must be the minimum amount listed in the quarterly UIPL. Since the PAP began on February 2, 2020, the state's minimum PUA WBA for the period February 2, 2020, through March 31, 2020, will be calculated based on UIPL No. 3-20. If an individual lives in a territory that does not provide unemployment compensation under its law, the individual's PUA WBA is calculated as provided in 20 C.F.R. 625.6.

10. Establishment of PUA Maximum Entitlement (Number of weeks of PUA). The total number of weeks in which a covered individual may receive PUA may not exceed 39 weeks and such total must include any week for which a covered individual received regular compensation or extended benefits under any state or federal law.

Section 2102 of the Act provides that if extended benefits duration is extended after March 27, 2020, the 39-week period shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended. Thus, if a state enters a "high unemployment period," as provided in section 202(b)(3)(B) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note), up to an additional 7 weeks of benefits for a total of 46 weeks of PUA benefits would be available to eligible individuals. However, note that PUA entitlement must be reduced by the amount of regular compensation and extended benefits the individual received.

11. Other PUA Operational Instructions.

- a. Total Unemployment. The WBA payable to an individual for a week of total unemployment is equal to the individual's most recent WBA (including any dependents' allowances) for the applicable PAP.

- b. Partial and Part-Total Unemployment. To determine the amount payable for a week of partial or part-total unemployment, the state will calculate the payment amount in accordance with the state law applicable to such a week of unemployment.
  - c. The terms and conditions of the state law which apply to claims for regular compensation and extended benefits and the payment thereof shall apply to claims for PUA and the payment thereof except as provided in these operating instructions and any additional guidance issued regarding the PUA program.
12. Secretary's Standard. The procedures for reporting and filing claims for PUA must be consistent with these instructions and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (Employment Security Manual, Part V, sections 5000 et. seq.).
13. Determination of Entitlement: Notices to Individuals.
- a. Determination of Initial Claim. When an individual files an initial claim for PUA the state agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum amounts of PUA payable. If denied PUA, the individual must be issued an appealable determination.
  - b. Determination of Weekly Claims. The state agency must promptly, upon the filing of a claim for a payment of PUA for a week of unemployment, determine whether the individual is entitled to a payment of PUA for such week, and, if entitled, the amount of PUA to which the individual is entitled to and issue a prompt payment.
  - c. Redetermination. An individual filing a PUA initial claim or weekly certification has the same rights to request a reconsideration of a determination as are provided for in the applicable state law for regular compensation.
  - d. Notices to Individual. The state agency must give written notice to the individual of any determination or redetermination of an initial claim and all weekly claims. Each notice must include such information regarding rights to reconsideration or appeal, or both, using the same process that is used for redeterminations of regular compensation.
  - e. Promptness. Full payment of PUA when due must be made as soon as administratively feasible.
  - f. Secretary's Determination Standard. The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming PUA must be consistent with the Secretary's "Standard for Claim Determinations—Separation

Information" (Employment Security Manual (ESM), Part V, sections 6010 et seq.). In processing claims, states must comply with section 6013 of the ESM about conducting an investigation and section 6014 of the ESM concerning gathering separation information from employers when the claim involves separation from an employer.

g. Appeal and Hearing.

- Applicable State Law. To ensure that appeals and hearings are held promptly, the applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to PUA.
- Rights of Appeal and Fair Hearing. The right of appeal and opportunity for a fair hearing to claims for PUA must be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).
- Promptness of Appeals Decisions.
  - Decisions on appeals under the PUA Program must accord with the "Standard for Appeals Promptness—Unemployment compensation" in 20 C.F.R. Part 650.
  - Any applicable state law provision allowing the advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, must apply to proceedings involving entitlement to PUA.

- h. Fraud and Overpayment. The requirements of 20 C.F.R. 625.14 shall apply with respect to PUA overpayments and fraud to the same extent and in the same manner as in the case of DUA.
- i. A state may also use other federal UC to recover PUA overpayments made in that state, regardless of whether the state has an agreement under Section 303(g)(2) of the Social Security Act (SSA) (42 U.S.C. §503(g)(2)). This includes FPUC and PEUC.
- j. Further, if a state has an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, PUA may only be used to offset PUA overpayments for another state. However, a state may use state or other federal UC paid in that state to recover PUA overpayments for other states.

14. Effect of Other UI-Related Programs on Eligibility for PUA.

- a. Trade Readjustment Allowances (TRA). Individuals are not eligible for TRA until PUA entitlement is exhausted. The provisions of Section 233(d) of the Trade Act of 1974, as amended, (relating to reduction of EB entitlement because of the receipt of TRA in the most recent benefit year) are not applicable to determinations of entitlement to PUA.
- b. Disaster Unemployment Assistance (DUA). If an individual is eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (42 U.S.C. 5177) the individual is not eligible to receive PUA for that week.

15. Effect of State Additional Compensation (AC). Section 2102 of the Act and, by reference, DUA regulations at 20 C.F.R. Part 625 require that an individual have no rights to regular compensation, extended benefits, or additional compensation in order to meet the eligibility requirements for PUA.

16. Effect of Federal Pandemic Unemployment Compensation (FPUC). Section 2102 of the Act provides that the \$600 FPUC payments provided under section 2104 of the Act be added to the PUA WBA. Note that the FPUC payment may be made separately from the PUA payment or combined with that payment, and that FPUC payments may only be made with respect to weeks of unemployment ending on or before July 31, 2020.

17. Coordination Rule. Section 2102 of the CARES Act requires, as a condition of PUA eligibility, that an individual not be eligible for regular compensation or extended benefits under state or federal law or pandemic emergency unemployment compensation under Section 2107, or to have exhausted all rights to regular unemployment or extended benefits under state or federal law or pandemic emergency unemployment compensation under Section 2107.

18. Record Maintenance and Disposal of Records. The state must maintain PUA payment data as required by the Department.

- a. Record Maintenance. Each state will maintain records on the administration of the PUA program and will make all such records available for inspection, examination, and audit by such federal officials, employees as the Department may designate, or as may be required by the law. Reference ET Handbook No. 401, *UI Report Handbook* for details.
- b. Disposal of Records. The electronic/paper records created in the administration of the PUA program must be maintained by the state for three years after final action (including appeals or court action) on the payments, or for less than the three-year period if copied by micro photocopy or by an electronic imaging method. At the end of the three-year period, the PUA records shall be transferred to state accountability under the conditions for the disposal of records that apply to UCFE and UCX records, as explained in Chapter X of ET Handbook No. 391 (1994

Edition) (OMB No. 1205-0179) and Chapter I of ET Handbook No. 384 (1994 Edition) (OMB No. 1205-0176).

19. Disclosure of Information. Information in records made and maintained by the state agency in administering the PUA program must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation, and the entitlement of individuals thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 C.F.R. Part 603. As provided under 20 C.F.R. 603.4(b), the confidentiality requirements do not apply when such information is being provided in the aggregate, provided it cannot be combined with other publicly available information to reveal any such identifying particulars about an individual or the individual's past or present employer.
20. Inviolate Rights to PUA. The rights of individuals to PUA must be protected in the same manner and to the same extent as the rights of persons to regular UC are protected under the applicable state law. Such measures must include protection of individuals from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to PUA. In the same manner and to the same extent, individuals must be protected from discrimination and obstruction in regard to seeking, applying for, and receiving PUA.
21. Notifications.
  - a. *Identification and Notification of Potentially Eligible Claimants*. The state must identify individuals who are potentially eligible for PUA and provide them with appropriate written notification of their potential entitlement to PUA, including filing instructions. This includes notifying claimants who were found ineligible for UC as far back as January 27, 2020.
  - b. *Interstate Claims*. PUA is payable to individuals filing under the Interstate Benefit Payment Plan in the same manner and to the same extent that benefits are payable to intrastate claimants. The liable state is responsible for identifying and notifying all potentially eligible interstate claimants of their potential eligibility, including filing instructions.
  - c. *Notification of Media*. To assure public knowledge of the status of the PUA program, the state must notify all appropriate news media having coverage throughout the state of the beginning of the PUA program.

#### **D. Financial Information and Instructions:**

1. Payment to States. Requesting PUA Benefit Funds—Under Section 2102(f)(2) of the CARES Act, each state that has entered into an agreement with the Secretary to pay PUA, will be paid an amount equal to 100% of the amount of PUA paid to eligible individuals by the state under the agreement and in full accordance with the CARES Act and these instructions. States will request funds from the Extended Unemployment Compensation Account (EUCA) through the Automated Standard Application for Payments (ASAP)

system. Drawdown requests must adhere to the funding mechanism stipulated in the Treasury-State Agreement executed under the Cash Management Improvement Act of 1990. Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).

There will be one new line in the ASAP for making drawdowns to pay PUA benefits, refer to #3 below for drawdown instructions. The line will be clearly labeled PANDEMIC UNEMPLOYMENT ASSISTANCE (PUA).

Section 2102(f)(2)(B) authorizes the Secretary to determine the amounts to be paid to states for processing PUA workloads. Such costs will be based on workload counts reported on the ETA902P report, and will incorporate minute per unit factors and salary rates identical to those used in the computation of the regular UC program above base administrative costs.

Administrative costs will be computed on the ETA 902P report, line 301, column 17. *See* Attachment VI for additional detail. The supplemental budget request process will be used for states to request funds for implementation.

2. PUA Accounting Obligational Authority. The Grant Officer will assign a separate line on the UI program notices of obligational authority for PUA administrative grant funds, and a separate sub-account for PUA will be set up in the Payment Management System for states to draw down PUA administrative funds.

Administrative Fund Accounting—Because of the separate appropriation for PUA administrative funds and the availability of these funds until expended, states must track and report PUA administrative expenditures and obligations separately from the regular UI program. Therefore, states must establish a separate fund ledger and must submit a separate ETA 9130 for the PUA program. States must include any PUA administrative expenditures and obligations incurred in March 2020 in their June 30, 2020, PUA ETA 9130 report.

3. Time Distribution. To ensure that PUA costs are tracked separately, states must charge time used for all PUA activities to the appropriate UI functional activity codes as outlined in Appendix E to ET Handbook No. 410 under the separate PUA fund ledger; however, states must combine regular and PUA staff year usage data in Section A of the UI-3 worksheet.
4. Accounting for PUA Payments (Benefits). PUA advances to the states' UTF accounts and disbursements for PUA benefit payments will be reported on the monthly ETA 2112. Do not use a separate form for this report. (*See* Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with Department of Labor records.
5. Processing Refunds. There are two scenarios for returning funds to the program line for PUA.



- a. The most likely scenario will be when the state has funds in its state benefit payment account and needs to return those funds to the EUCA. This should be completed as a negative amount posted to the appropriate line in ASAP. To accomplish this, the total draw for the day in ASAP must be greater than the negative balance posted to the appropriate line.
- b. The second scenario is when a state actually has the funds in its Federal UI account that are required to be returned to the appropriate program line. This should be accomplished by the state processing a book transfer transaction that accomplishes a transfer from its UI account to the appropriate program under the EUCA account.

## **E. Reporting Instructions**

1. ETA 2112. PUA benefit payment activity must be reported in the aggregate on the regular ETA 2112 report.
  - a. Line 23c. Pandemic Unemployment Assistance. Report in columns C and E the amount of Federal funds received as advances or reimbursement for PUA.
  - b. Line 42c. PUA Activity. Enter in columns C and F the net amount for which the Federal government is liable for PUA.
2. ETA 538. Total PUA initial claims processed during the report period and total PUA continued claims reflecting unemployment for the previous week will be reported in the comments section and labeled as “PUA IC” and “PUA CC” followed by the number. For example: “PUA IC =239” “PUA CC =15,135”. Regular initial claims and continued claims should not include PUA claims.
3. ETA 539. Total PUA initial claims processed during the report period and total PUA continued claims reflecting unemployment for the previous week will be reported in the comments section and labeled as “PUA IC” and “PUA CC” followed by the number. For example: “PUA IC =239” “PUA CC =15,135”. Regular initial claims and continued claims should not include PUA claims.
4. ETA 902. See Attachment VI for detailed instructions about this reporting.

**General Provisions for Administering the Pandemic Unemployment Assistance (PUA) Program**

**CERTIFICATIONS AND ASSURANCES**

1. **Compliance with Federal Requirements.** States must comply with the provisions contained in the states' Agreements with the Department to administer PUA and all applicable PUA funding instruments. States must perform such duties and functions in accordance with Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards at 2 C.F.R. Part 200 and 2 C.F.R. Part 2900 applicable to all grants and cooperative agreements. Additionally, the Department's administrative requirements for grants and cooperative agreements at 29 C.F.R. Parts 31, 32, 38, 96, and 98 apply to grant funds provided for these activities.
2. **Prohibition on Subsidization of Forced or Indentured Child Labor.** States, consistent with section 103 of the Further Consolidated Appropriations Act, 2020, Pub. L. 116- 94 and in accordance with Executive Order No. 13126, must not obligate or expend funds made available to administer PUA for the procurement of goods, mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the U.S. Department of Labor prior to enactment of the Department's 2008 appropriation.
3. **Salary and Bonus Pay Limitations.** States, in compliance with section 101 of the Further Consolidated Appropriations Act, 2020, PUB. L. 116- 94, must not use funds provided for PUA administration to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109-149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular No. A-133. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from sub-recipients of such funds, taking into account PUA, including the relative cost-of-living in the state, the compensation levels for comparable state or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs. *See* TEGL No. 5-06 for further clarification. The incurrence of costs and the receipt of reimbursement for these costs under this award certifies that the Grantee has read the above condition and is in compliance.
4. **Veterans' Priority Provisions.** This program, funded by the U.S. Department of Labor, is subject to the provisions of the "Jobs for Veterans Act" (JVA), Public L. 107-288 (38 U.S.C. §4215). The JVA provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services. The veterans' priority is implemented by 20 C.F.R. Part 1010 (73 Fed. Reg. 78132, Sept. 19, 2008). Please note that to obtain priority service a veteran must meet the program's eligibility requirements. Training and Employment Guidance Letter (TEGL) No. 10-09 (November 10, 2009) provided general guidance on the scope of the veterans' priority statute and its effect on current employment and training programs. In addition to TEGL 10-09, a series of questions

and answers related to priority of service is posted at:  
[https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2816](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2816) for fifteen (15) programs administered by ETA.

The Workforce Innovation and Opportunity Act (WIOA) State Plan requires states to describe the policies and strategies in place to ensure, pursuant to the JVA, that priority of service is provided to veterans (and certain spouses) who otherwise meet the eligibility requirements for all employment and training programs funded by the U.S. Department of Labor and administered by ETA. *See Required Elements for Submission of the Unified or Combined State Plan and Plan Modifications under the Workforce Innovation and Opportunity Act*, OMB Control No. 1205-0522. In addition, the states are required to provide assurances that they will comply with the Veterans' Priority Provisions established by the JVA. States must adhere to JVA requirements, as interpreted by the Department, in administering PUA.

- 5. Certifications and Assurances.** In administering PUA, states must fully comply with the State Quality Service Plan (SQSP) assurances. These SQSP assurances are detailed in Chapter 1, Part VIII of the "Unemployment Insurance State Quality Service Plan (SQSP) Assurances," ET Handbook No. 336 (18<sup>th</sup> Edition, Change 4).
- A. Assurance of Equal Opportunity (EO).**
  - B. Assurance of Administrative Requirements and Allowable Cost Standards.**
  - C. Assurance of Management Systems, Reporting, and Recordkeeping.**
  - D. Assurance of Program Quality.**
  - E. Assurance on Use of Unobligated Funds.**
  - F. Assurance of Prohibition of Lobbying Costs.**
  - G. Drug-Free Workplace.**
  - H. Assurance of Contingency Planning.**
  - I. Assurance of Conformity and Compliance.**
  - J. Assurance of Automated Information Systems Security.**
  - K. Assurance of Confidentiality.**

The Office of Management and Budget (OMB), SF 424 B *Assurances-Non- Construction Programs*, signed and submitted by each state with its State Quality Service Plan annual submission, also apply.

**Statutory Language of Title II, Subtitle A, Section 2102 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020**

**SEC. 2102. PANDEMIC UNEMPLOYMENT ASSISTANCE.**

(a) Definitions.--In this section:

(1) COVID-19.--The term "COVID-19" means the 2019 Novel Coronavirus or 2019-nCoV.

(2) COVID-19 public health emergency.--The term "COVID-19 public health emergency" means the public health emergency declared by the Secretary of Health and Human Services on January 27, 2020, with respect to the 2019 Novel Coronavirus.

(3) Covered individual.--The term "covered individual"--

(A) means an individual who--

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 2107; and

(ii) provides self-certification that the individual--

(I) is 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--

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) a child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work;

(ee) the individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency;

(ff) the individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19;

(gg) the individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency;

(hh) the individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits

under State or Federal law or pandemic emergency unemployment compensation under section 2107 and meets the requirements of subclause (I); and

(B) does not include--

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

(4) Secretary.--The term "Secretary" means the Secretary of Labor.

(5) State.--The term "State" includes the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau.

(b) Assistance for Unemployment as a Result of COVID-19.--Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of title 26, United States Code) or waiting period credit.

(c) Applicability.--

(1) In general.--Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual--

(A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19--

(i) beginning on or after January 27, 2020; and

(ii) ending on or before December 31, 2020; and

(B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

(2) Limitation on duration of assistance.--The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after the date of enactment of this Act, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

(3) Assistance for unemployment before date of enactment.--The Secretary shall establish a process for making assistance under this section available for weeks beginning on or after January 27, 2020, and before the date of enactment of this Act.

(d) Amount of Assistance.--

(1) In general.--The assistance authorized under subsection (b) for a week of unemployment, partial unemployment, or inability to work shall be--

(A)(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; and

(ii) the amount of Federal Pandemic Unemployment Compensation under section 2104; and

(B) in the case of an increase of the weekly benefit amount after the date of enactment of this Act, increased in an amount equal to such increase.

(2) Calculations of amounts for certain covered individuals.-- In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 2104.

(3) Allowable methods of payment.--Any assistance provided for in accordance with paragraph (1)(A)(ii) shall be payable either--

(A) as an amount which is paid at the same time and in the same manner as the assistance provided for in paragraph

(1)(A)(i) is payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any assistance provided for in paragraph (1)(A)(i).

(e) Waiver of State Requirement.--Notwithstanding State law, for purposes of assistance authorized under this section, compensation under this Act shall be made to an individual otherwise eligible for such compensation without any waiting period.

(f) Agreements With States.--

(1) In general.--The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies.

(2) Payments to states.--There shall be paid to each State which has entered into an agreement under this subsection an amount equal to 100 percent of--

(A) the total amount of assistance provided by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary), including any administrative expenses necessary to facilitate processing of applications for assistance under this section online or by telephone rather than in-person.

(3) Terms of payments.--Sums payable to any State by reason of such State's having an agreement under this subsection shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subsection for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(g) Funding.--

(1) Assistance.--

(A) In general.--Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used to make payments to States pursuant to subsection (f)(2)(A).

(B) Transfer of funds.--Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are

appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(2) Administrative expenses.--

(A) In general.--Funds in the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used to make payments to States pursuant to subsection (f)(2)(B).

(B) Transfer of funds.--Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(3) Certifications.--The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under paragraphs (1) and (2).

(h) Relationship Between Pandemic Unemployment Assistance and Disaster Unemployment Assistance.--Except as otherwise provided in this section or to the extent there is a conflict between this section and section 625 of title 20, Code of Federal Regulations, such section 625 shall apply to this section as if--

(1) the term ``COVID-19 public health emergency" were substituted for the term ``major disaster" each place it appears in such section 625; and

(2) the term ``pandemic" were substituted for the term ``disaster" each place it appears in such section 625.

**Attachment IV to UIPL No. 16-20**

**Supplemental Budget Request (SBR) Application**

**Instructions:** States must complete the application using the suggested format and instructions below for the projects/activities for which the state is seeking funding. This application is to be combined with a completed SF-424 and an SF-424A covering all projects/activities.

<b>Unemployment Insurance Supplemental Budget Request Abstract</b>		
<b>State Name:</b>		
<b>Total Funds Requested for All Projects:</b>		
<b>Name, Title, and Address of Grant Notification Contact (<i>Typically the State Workforce Agency Administrator</i>)</b> <b>Name:</b> <b>Title:</b> <b>Address:</b>		
<b>Name, E-Mail Address, and Phone Number of SBR Project or Fiscal Manager</b> <b>Name:</b> <b>E-Mail Address:</b> <b>Telephone Number:</b>		
<b>Provide the following information for each project (<i>add additional rows as needed</i>):</b>		
<b>Project Name</b>	<b>Total Cost of Project</b>	<b>Proposed Completion Date</b>



<b>Project Description</b>
<b>Project Timeline</b>

<b>Description of Costs</b>			
<b>State Agency Staff Costs:</b>			
<b>Type of Position</b>	<b>Total Hours</b>	<b>Cost Per Hour</b>	<b>Total</b>
<b>Contract Staff Costs:</b>			
<b>Type of Position</b>	<b>Total Hours</b>	<b>Cost Per Hour</b>	<b>Total</b>
<b>Hardware, Software and Telecommunications Equipment:</b>			
<b>Item Description</b>	<b>Cost Per Item</b>	<b>Quantity</b>	<b>Total</b>
<b>Other Costs:</b>			
<b>Item</b>	<b>Cost</b>	<b>Explanation</b>	

## SECTION INSTRUCTIONS

**Name of Project:** Provide the name of the proposed project.

**Amount of Funding Request for this Project:** Provide the total amount of funds requested in this individual project.

**State Contact:** Provide name, telephone number, and e-mail address of the individual who can answer any questions relating to the proposal.

**Project Description:** Provide a brief description of the projects/activities for which the state seeking funding.

**Project Timeline:** Provide a list of the dates and the milestones for this project.

**Description of Costs:** Provide an explanation of all costs included in the project.

- **State Agency Staff Costs:** Use the table format provided in this attachment to request state staff to support project implementation.
- **Contract Staff Costs:** Use the table format provided in this attachment to request contract staff to support project implementation.
- **Hardware, Software, and Telecommunications Equipment:** Provide an itemized list of hardware, software, and telecommunications equipment including the cost per item and the number of each item requested. A description of each item must provide any information needed to identify the specific item and a description of the size and capacity of each item if applicable.
- **Other:** Identify each item of cost not covered elsewhere and provide the expected cost per item. The need for each item must be explained.

**Instructions Completing the SF-424 and SF-424A**

**I. Application for Federal Assistance (SF-424)**

Use the current version of the form for submission. Expired forms will not be accepted. SF-424, Expiration Date 12/31/2022, Office of Management and Budget (OMB) Control No. 4040-0004 (Grants.gov). <http://www.grants.gov/web/grants/forms/sf-424-family.html>

**Section # 8, APPLICANT INFORMATION:**

- Legal Name: The legal name must match the name submitted with the System for Award Management (SAM). Please refer to instructions at <https://www.sam.gov>
- Employer/Tax Identification Number (EIN/TIN) : Input your correct 9-digit EIN and ensure that it is recorded within SAM
- Organizational DUNS: All applicants for Federal grant and funding opportunities are required to have a 9-digit Data Universal Numbering System (D-U-N-S®) number, and must supply their D-U-N-S® number on the SF-424. Please ensure that your state is registered with the SAM. Instructions for registering with SAM can be found at <https://www.sam.gov> . Additionally, the state must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration. To remain registered in the SAM database after the initial registration, there is a requirement to review and update the registration at least every 12 months from the date of initial registration or subsequently update the information in the SAM database to ensure it is current, accurate, and complete. Failure to register with SAM and maintain an active account will result in a rejection of your submission.
- Address: Input your complete address including Zipcode+4; Example: 20110-831. For lookup, use link at <https://tools.usps.com/go/ZipLookupAction!input.action>
- Organizational Unit: Input appropriate Department Name and Division Name, if applicable
- Name and contact information of person to be contacted on matters involving this application. Provide complete and accurate contact information including telephone number and email address for the point of contact

**Section # 9, Type of Applicant 1:** Select Applicant Type: Input “State Government”

**Section # 10, Name of the Federal Agency:** Input “Employment and Training Administration”

**Section # 11, Catalog of Federal Domestic Assistance Number:** Input “17.225”;  
CFDA Title: Input “Unemployment Insurance”

**Section # 12, Funding Opportunity Number and Title:** Input “UIPL No. 16-20,  
Pandemic Unemployment Assistance Implementation Grants”

**Section # 13, Competition Identification Number:** Leave Blank

**Section # 14, Areas Affected by Project:** Input the place of performance for the project implementation; Example “NY” for New York

**Section # 15, Descriptive Title of Applicant’s Project:** Input “Pandemic  
Unemployment Assistance Implementation Grants”

**Section # 16, Congressional Districts of:**

- Applicant: Input the Congressional District of your home office. For lookup, use link at [www.house.gov](http://www.house.gov) with Zipcode + 4
- Program/Project: Input the Congressional District where the project work is performed. If it’s the same place as your home office, input the congressional district for your home office. For lookup, use link at [www.house.gov](http://www.house.gov) with Zipcode+4

**Section # 17, Proposed Project**

- Start Date: Input a valid start date for the project (earliest start date will be March 27, 2020)
- End Date: Input a valid end date for the project

**Section # 18, Estimated Funding (\$):** Input the estimated funding requested. Ensure that the funding requested matches the TOTALS in Section B – Budget Categories of the SF424A

**Section #s 19 – 20:** Complete as per instructions for Form SF-424

**Section # 21, Authorized Representative:** Please select the “I AGREE” check box and provide complete information for your authorized signatory including contact information such as telephone number and email address. If your Authorized Representative has changed from your previous application submission for this program, please include a letter from a higher level leadership authorizing the new signatory for the application submission

**Remember to get the SF-424 signed and dated by the Authorized representative**

## **II. Budget Information -Non-Construction Programs (SF-424A)**

Use the current version of the form for the submission. Expired forms will not be accepted. SF 424A, Expiration Date 02/28/2022, OMB Control No. 4040-0006  
<https://apply07.grants.gov/apply/forms/readonly/SF424A-V1.0.pdf>

**Section B – Budget Categories:** Ensure that TOTALS in Section 6, Object Class Categories matches the Estimated Funding requested in the SF-424.

**Attachment VI to UIPL No. 16-20**

**Handbook 401 Instructions for ETA 902 Pandemic Unemployment Assistance**

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE ACTIVITIES

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**A. Facsimile of Form**

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE ACTIVITIES

<b>STATE:</b>		<b>REGION:</b>		<b>REPORT FOR PERIOD</b>			
<b>SECTION A. APPLICATION AND PAYMENT ACTIVITIES</b>							
CATEGORY	LINE NO.	INITIAL APPS.	NO. DETERM. ELIG.	FIRST PAYMTS.	WKS. CLAIMED	WKS. COMP	AMOUNT COMP.
		1	2	3	4	5	6
<b>Total</b>	<b>101</b>						
<b>Self-Employed</b>	<b>102</b>						

<b>SECTION B. DENIAL AND APPEALS ACTIVITY</b>								
CATEGORY	LINE NO.	WKS.OF PUA DENIED	APPEALS FILED		APPEALS DISPOSED		FAVOR OF APPELLANT	
			STATE	H A	STATE	H A	STATE	R A
		7	8	9	10	11	12	13
<b>Total</b>	<b>201</b>							
<b>Self - Employed</b>	<b>202</b>							
<b>SECTION C. OVERPAYMENT ACTIVITY AND ADMINISTRATION</b>								
CATEGORY	LINE NO.	OVERPAYMENTS			ADMINISTRATIVE COSTS			
		CASES	WEEKS	AMOUNT	PERSONNEL			
		14	15	16	17			
<b>Total</b>	<b>301</b>							
<b>Fraud</b>	<b>302</b>							
Signature				Title				

Comments:



**OMB No.:** NA  
**Minutes:** NA

**OMB Expiration Date:** NA

**OMB     Burden**

**OMB Burden Statement:** Section 2116(a), Division B, Title II of the CARES Act states that “Chapter 35 of Title 44, United States Code, (commonly referred to as the “Paperwork Reduction Act of 1995”) shall not apply to the amendments made by this subtitle.” Therefore these reporting instructions do not require additional OMB approval and the submission of this information is required to obtain or retain benefits under the SSA 303(a)(6).

## **B. Purpose**

The ETA 902P report contains monthly data on Pandemic Unemployment Assistance (PUA) activities provided by the CARES Act, enacted on March 27, 2020. PUA is a temporary Federal program to provide relief for workers affected by the coronavirus who do not qualify for other Federal benefits such as regular unemployment insurance or extended benefits.

## **C. Scope and Duration of the Report**

1. The first report shall be sent in the month following the date the state agreement to participate in the PUA program, and later reports shall be sent each month that PUA activity continues to occur, such as for payments made for weeks in the pandemic assistance period (PAP) issued as a result of appeals.
2. Reports should be submitted monthly through the end of the Pandemic Assistance Period and until all payment and appeals activity is complete.

## **D. Due Date and Transmittal**

Reports shall be submitted electronically each month providing PUA activities performed during the preceding calendar month. Reports are due in the National Office on the 30th of the month following the month to which data relate. South Pacific Island jurisdictions must submit hardcopy reports, as there is no electronic submittal method available to them at this time.

For South Pacific Island jurisdictions, one copy should be sent to the National Office addressed as follows:

U.S. Department of Labor, ETA  
Attn: Office of Unemployment Insurance  
Frances Perkins Building  
200 Constitution Avenue, N.W.  
Washington, D.C. 20210  
Attention: Pandemic Unemployment Assistance Coordinator/Program  
Specialist  
Division of Unemployment Insurance Operations

One copy should also be sent to the San Francisco ETA Regional Office.

## **E. General Reporting Instructions**

1. In all instructions, reference to State UI (UC) claims will include UCFE, UCX, TRA, RRA (Railroad), EB, and any other program included and/or defined under 20 C.F.R. 625.2(d).
2. Self-employed applicants are those who have filed an initial request for PUA and for whom it was determined that their primary reliance for income is on their performance of services in their own business or farm.
3. Payments of UI made to replace erroneously paid PUA should not be reported on the ETA 902P, but should be reported on the appropriate UI reports, i.e., ETA 5159.

## **F. Definitions**

- 1.Effective Date of an Initial Application. The effective day is the first day of the first week of unemployment provided that week of unemployment is in the pandemic assistance period (PAP). PUA claims may be backdated to the beginning of the PAP, February 2, 2020.
- 2.Eligible. Meets qualifications for receiving Pandemic Unemployment Assistance, as specified in Section 2102 of the CARES Act. If an individual is eligible for UC, such individual is not eligible for PUA and should not be counted in any PUA Activities report.

## **G. Item by Item Instructions**

- 1.Report Period Ended. Enter the month, last day of the month, and four digit year to which the data relate; e.g., 01/31/2020.
- 2.State. Enter the two-letter Federal Information Processing Standards (FIPS) State Alpha Code (identical to the two-letter U.S. Postal Service abbreviation) of the state or South Pacific Island jurisdiction as it appears in FIPS Publication 5-2. The National Institute of Standards and Technology issued the FIPS publication on May 28, 1987.
- 3.Section A. Application and Payment Activities.
  - a. Column 1, Initial Applications. Enter the number of initial applications for PUA taken during the report period. This will equal the number of initial applications that were completed and/or number of applications entered into an automated system through an electronic/telephone claims taking system during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs.
  - b. Column 2, Number Determined Eligible. Enter the number of individuals determined eligible for PUA during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs.
  - c. Column 3, First Payments. Enter the number of payments which represent, for any individual, the first week for which assistance is paid in the pandemic assistance period.
  - d. Column 4, Weeks Claimed. Enter the total number of weeks for which PUA is claimed during the report period whether or not PUA is actually paid. If claims are filed weekly, the number of weeks will equal the number of weekly received during the report period. If claims are filed other than weekly claims, the number of weeks will equal the number of weeks during the report period.
  - e. Column 5, Weeks Compensated. Enter the number of weeks of unemployment for which PUA was paid during the report period. A week of unemployment

compensated is any week of unemployment for which PUA funds are paid, regardless of amount.

- f. Column 6, Amount Compensated. Enter the amount of PUA funds represented by the weeks reported in column 5.

#### 4. Section B. Denial and Appeals Activity.

- a. Column 7, Weeks of PUA Denied. Enter the number of weeks of unemployment where a PUA payment was denied for which an individual, except for the reason of the denial, would have been eligible to receive a PUA payment.

NOTE: For columns 8 through 13, the entries refer to the number of cases received or disposed of during the report period by authority (i.e., first level state appeals authority and the second level state higher authority). All cases, including cases disposed of before reaching the appeals authority, should be included. Definitions of case, authority, disposal, etc., are those developed for the PUA program where found or, when these do not exist, are those used in the state UI program.

- b. Columns 8 and 9, Appeals Filed. In columns 8 and 9, distribute, by type of authority, the appeal cases or requests for review received during the month. In addition, provide a sub-breakout of the Total for self-employed individuals in line 202.
- c. Columns 10 and 11, Appeals Disposed. Enter in columns 10 and 11 the total number of cases disposed during the month by authority level. In line 202, provide the number of cases disposed of involving self-employed individuals.
- d. Columns 12 and 13, Favor of Appellant. Enter in columns 12 and 13 the number of appeal decisions included in columns 10 and 11, which were in favor of the appellant by authority level. In line 202 enter a breakout of self-employed individuals who appealed and had the decision in their favor.

#### 5. Section C. Overpayment Activity.

- a. Columns 14, 15, and 16, Overpayments. In column 14, Cases, line 301, enter the number of cases, including willful misrepresentation (fraud) determined during the report period as an overpayment, regardless of when it occurred. In line 302 provide a sub-breakout of the number of cases determined as fraud cases. In column 15, Weeks, enter in line 301 the number of weeks of PUA overpaid in connection with the cases reported in column 14; enter the number of weeks of fraud overpayments included in line 301. In column 16, Amount, enter in line 301, the amount overpaid represented by cases reported in column 14. Provide a sub-breakout of the amount involving fraud in line 302.
- b. Columns 17, Administrative Costs. This data cell will self-populate and reflect computed administrative costs based on workload items reported in Section A. and Section B. above. Minute per unit factors reflected in the annual UIPL advisory communicating target allocations for base administrative grants and staff year usage

information from the UI-1 report will be used to compute staffing levels needed to process the initial claims (line 101 column 1), weeks claimed (line 101 column 4) and appeals disposed (line 201 column 10) workload. Staff salary rates will reflect the rates used for quarterly above base computations. Staffing costs will be increased by the applicable factor to account for leave, and resulting costs will be increased by 19% to account for overhead.

Time factors and staff salary rates necessary for the computations of administrative costs described above for Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau will be communicated to each territory separately.

## **H. Checking the Report**

1.General Checks. Entries should be made for all required items. If the item is inapplicable, or if applicable but no activity corresponding to the items occurred during the report period, a zero should be entered. A report containing missing data cannot be sent to the National Office, but can be stored on the state's system.

### 2.Arithmetic Checks.

- a. For columns 1, 2, and 8 through 13, the entries in line 102 and 202 respectively, should be equal to or less than the entries in line 101 or 201.
- b. For columns 14 through 16, the entries in line 302 should be equal to or less than line 301.

Signature. Signature is only required if reports are sent manually to the National Office.

# EXHIBIT F

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Unemployment Insurance
	<b>CORRESPONDENCE SYMBOL</b> OUI/DL
	<b>DATE</b> March 12, 2020

**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 10-20**

**TO: STATE WORKFORCE AGENCIES**

**FROM: JOHN PALLASCH**   
Assistant Secretary

**SUBJECT:** Unemployment Compensation (UC) for Individuals Affected by the  
Coronavirus Disease 2019 (COVID-19)

1. **Purpose.** To provide guidance to states regarding unemployment compensation (UC) flexibilities related to COVID-19.
2. **Action Requested.** The Department of Labor's (DOL's) Employment and Training Administration (ETA) requests State Workforce Administrators to provide information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in the state's workforce system.
3. **Summary and Background.**
  - a. Summary: This UIPL provides guidance to states regarding UC eligibility for individuals affected by COVID-19.
  - b. Background: The Administration is actively working with states to ensure they have the guidance needed about UC flexibilities related to COVID-19 in order to assist individuals affected by the disease. The Unemployment Insurance (UI) program requires individuals to be able and available for work and to actively seek work (we refer to these as the *able, available, and work search requirements* throughout this UIPL). However, states have significant flexibility in implementing these requirements, as well as in determining the type of work that may be suitable given the individual's circumstances. In short, an individual may be quarantined or otherwise affected by COVID-19 but still eligible for UC, depending on state law. To clarify, UI is not intended to be used as paid sick leave.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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#### **4. Guidance and Information.**

This UIPL provides guidance on the following UC issues related to COVID-19:

- a. Determining whether an individual is “unemployed”;
- b. Determining if the individual is able to work, available for work, and actively seeking work;
- c. Examples for assessing UC eligibility;
- d. Employer charging, with consideration for impact on trust fund solvency;
- e. Impact of eliminating the waiting week; and
- f. Promotion of Short-Time Compensation.

##### **a. Determining whether an individual is “unemployed”**

The Department has a longstanding legal interpretation of federal UC law that “unemployment” includes a reduction of both work hours and earnings.

The Department first defined “unemployment” in 1950 in its model for state legislation to meet the requirements of federal UC law. The model defined “week of unemployment” as “any week during which [an individual] performs less than full-time work for any employing unit if the wages payable to [the individual] with respect to such week are less than the weekly benefit amount.” (Manual of State Employment Security Legislation 1950.)

The Department further clarified the meaning of the term “unemployment” in UIPL No. 08-98: “Federal law limits the payment of UC to periods in which an individual has experienced unemployment, that is, an actual reduction in hours worked.” UIPL 08-98 cited, among other things, a January 31, 1939, Social Security Board statement that explained that “[S]ince ... any benefits paid under a State law must be paid with respect to unemployment, a State’s plan for the payment of partial benefits must safeguard against the payment for reduced earnings without accompanying unemployment.”

An individual receiving paid sick leave or paid family leave is still receiving pay. Thus, generally speaking, the individual is not “unemployed,” so the individual is ineligible for UC.

##### **b. Determining if the individual is able to work, available for work, and actively seeking work**

Federal UC law requires that claimants be able to work, available for work, and actively seeking work. 42 USC 503(a)(12) (Section 303(a)(12) of the Social Security Act (SSA)). These federal requirements cannot be categorically waived or exempted for individuals affected by COVID-19. Yet states have significant discretion to establish how individuals demonstrate that they are meeting these requirements.

The Department has interpreted and enforced the federal able, available, and work search requirements since the inception of the federal-state UC program. As far back as 1939, the Chair of the Social Security Board explained in a letter to the Governor of California, “The

entire legislative history [of the UC titles of the original SSA] . . . all indicate, either expressly or by implication, the compensation contemplated under [these titles] is compensation to individuals who are able to work but are unemployed by reason of lack of work.”

The able and available requirements were codified in federal regulation at 20 CFR 604.4 in 2007. The regulation’s accompanying notice explained, “The UC program is designed to provide temporary wage insurance for individuals who are unemployed due to a lack of suitable work. The [able and available requirements] implement this design by testing whether the fact that an individual did not work for any week was involuntary due to the unavailability of suitable work.” 72 Fed. Reg. 1890 (Jan. 16, 2007). In 2012, Congress codified the able, available, and work search requirements at Section 303(a)(12) of the SSA.

Federal UC law makes some exceptions to these requirements, such as for state-approved training. (Section 3304(a)(8) of the Federal Unemployment Tax Act (FUTA)). Federal UC law also permits some substitutions for these requirements, such as participation in the Short-Time Compensation program. (Section 3306(v)(5) of FUTA.) However, exceptions to this requirement are limited to those included in FUTA or SSA and there is no exception from the able, available, and work search requirements for an individual affected by COVID-19.

Even so, states have flexibility to determine what type of work is suitable for an individual and what it means for that individual to be able, available, and seeking work, even when quarantined or otherwise affected by COVID-19.

Under 20 CFR 604.5(a), a state may consider an individual available for work under any of the following circumstances:

- (1) The individual is available for any work for all or a portion of the week claimed, provided that any limitation placed by the individual on his or her availability does not constitute a withdrawal from the labor market.
- (2) The individual limits his or her availability to work which is suitable for such individual as determined under the State UC law, provided the State law definition of suitable work does not permit the individual to limit his or her availability in such a way that the individual has withdrawn from the labor market . . .
- (3) The individual is on temporary lay-off and is available to work only for the employer that has temporarily laid off the individual.

Further, the regulations explicitly address individuals whose most recent separation occurred due to illness or physical injury, explaining that they may be considered able to work and available for work until such time as they are offered suitable employment and decline it due to that illness or injury (20 CFR 604.4(b)). In addition, federal law requires that an individual actively search for work. However, as with the able and available requirements, states have considerable discretion to determine the types of suitable work which individuals must seek.



Taken together, the federal UC framework gives states significant flexibility to determine standards for ability to work, availability to work, and suitable work in the context of COVID-19.

### **c. Examples for assessing UC eligibility**

The following scenarios are meant to help states assess UC eligibility for individuals affected by COVID-19. In each, the individuals may be unemployed as they have reduced hours and pay.

Federal law permits states to exercise the flexibilities described below. An individual need not quit or be discharged to potentially be eligible for benefits. Therefore, we encourage states to review their laws in light of COVID-19's effects. Other scenarios than these may arise. We encourage states to contact DOL for technical assistance.

#### *Scenario 1: Employer temporarily ceases operations.*

*An employer or employing unit temporarily shuts down due to COVID-19 with the expectation that the individual will return when business resumes.*

Federal law would permit a state to treat the separation here as a temporary layoff. States have significant discretion to determine able, available, and work search requirements, and they can determine that the suitable work for this individual is the job he or she intends to return to after business resumes. As provided in 20 CFR 604.5(a)(3), individuals are able to and available for work if their employer temporarily laid them off and the individuals remain available to work only for that employer. Thus, for states that take this approach, individuals may only need to be able and available for that job and, to meet the work search requirement, take reasonable steps to preserve their ability to come back to that job.

#### *Scenario 2: Individual is quarantined and will return to employer.*

*An individual is quarantined by a medical professional or under government direction, and the employer has instructed the individual to return to work after the quarantine is over or has not provided clear instruction to do so.*

Federal law would permit a state to treat the separation for the period of the quarantine as a temporary layoff. Again, states have significant discretion to determine able, available, and work search requirements, and can determine that the suitable work for this individual is the job he or she intends to return to after quarantine ends. Therefore, for states taking this approach, individuals may only need to be able and available for that job and, to meet the work search requirement, take reasonable steps to preserve their ability to come back to that job. However, if the individual does not return to the employer after the quarantine ends, the state will need to reassess eligibility.

Scenario 3: Individual is not returning to the employer.

*An individual is quarantined by a medical professional under government direction or leaves employment due to a reasonable risk of exposure or infection (i.e.; self-quarantine) or to care for a family member and either does not intend to return to the employer or the employer will not allow the individual to return.*

Federal law would permit a state law to determine whether the separation here is a quit or a discharge and whether the circumstances are allowable under the state's good cause/just cause provisions. If permitted under the state's good cause/just cause provision, states should consider how they will adjudicate the reasonableness of an individual's separation for reasonable risk of exposure. One such factor could be considering if the individual is in a population that is particularly susceptible to COVID-19.

An individual who leaves work with good cause, however, must still meet all other eligibility requirements to receive benefits, including the able, available, and work search requirements. For example, if state law permits, states may determine that a quarantined individual is still able, available, and seeking work, provided it is work that is suitable for an individual who is quarantined and that limitation does not constitute a withdrawal from the labor market. (20 CFR 604.5(a)(1)).

**d. Employer charging and trust fund impacts**

Many states do not charge individual employers for benefit costs under certain limited circumstances. These "noncharging" provisions are found in practically all state experience-rating laws. When determining, in the context of COVID-19, whether certain unemployment benefits should be charged to employers, states should consider how to fairly distribute the costs to employers.

If states consider changing their laws to increase availability of UI benefits in the context of the COVID-19 virus, they should also consider the impacts on trust-fund solvency. There are currently 21 states and jurisdictions below the recommended solvency standard and only 31 states that meet the eligibility criteria for interest-free borrowing. (*State Unemployment Insurance Trust Fund Solvency Report*, Feb. 2020).

**e. Impact of eliminating the waiting week**

In most states, an individual who is otherwise eligible for benefits must first serve a waiting period. This is not federally required, although it is a longstanding practice in the UI program that may give states time to assess eligibility and deter fraud. However, to facilitate individuals' ability to comply with quarantine orders, states should consider temporarily waiving such requirements.

States should understand that if they trigger Extended Benefits while the waiting week is waived, they will not be reimbursed for the federal share of the first week of all Extended Benefit claims. (Section 204(a)(2) of the Federal-State Extended Unemployment Act of 1970).

## **f. Promotion of Short-Time Compensation**

The Short-Time Compensation (STC) program, also known as worksharing, helps employers avert layoffs. The program allows employers with a state-approved STC plan to reduce the hours of their employees in lieu of layoffs, while permitting these employees to receive payment for partial unemployment. Employees benefit because they do not suffer a complete loss of employment and they are paid STC when their hours are reduced. Employers benefit because they are able to reduce labor costs temporarily while still maintaining their skilled workforce. In this way, STC protects employer investments in recruiting and training.

In the context of COVID-19, STC can be an important resource for employers whose business temporarily declines. STC provides a safety net to employees with reduced hours; it helps employers retain their workforce; and it saves jobs. There are currently 28 states who have enacted or amended STC laws in response to changes made by Congress in the Middle Class Tax Relief and Job Creation Act of 2012. We strongly urge states to consider implementing and promoting use of the STC program to avert layoffs where possible.

5. **Inquiries.** Please direct inquiries to the appropriate Regional Office.

6. **References.**

- Section 303, Social Security Act, 42 USC § 503
- Section 3304 Federal Unemployment Tax Act (FUTA), 26 USC § 3304
- Section 3306 Federal Unemployment Tax Act (FUTA), 26 USC § 3306
- Federal-State Extended Unemployment Act of 1970, 26 USC § 3304 note
- 20 CFR Part 604
- Unemployment Insurance Program Letter 08-98, “*Unemployment Compensation (UC) – Payment Only for Periods of Unemployment*”  
<https://wdr.doleta.gov/directives/attach/UIPL8-98.cfm>
- Manual of State Employment Security Legislation 1950 (Blue book)  
[https://oui.doleta.gov/dmstree/pl/blue\\_book.pdf](https://oui.doleta.gov/dmstree/pl/blue_book.pdf)
- *State Unemployment Insurance Trust Fund Solvency Report* (Feb. 2020)  
<https://oui.doleta.gov/unemploy/docs/trustFundSolvReport2020.pdf>



## **EXHIBIT G**

July 27, 2020

Mr. Caleb Frostman  
Secretary  
State of Wisconsin  
Department of Workforce Development  
P.O. Box 7946  
Madison, WI 53707

Dear Secretary Frostman:

The U.S. Department of Labor (Department) received your letter regarding Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pandemic Unemployment Assistance (PUA) eligibility for State of Wisconsin recipients of Social Security Disability Insurance (SSDI) payments. Your correspondence was forwarded to the Department's Employment and Training Administration (ETA) for response. ETA is responsible for administering the federal-state Unemployment Insurance (UI) program within the Department.

Wisconsin's state law provides that an individual is "ineligible for benefits" for each week in the month in which an individual receives SSDI.<sup>1</sup> Wisconsin interprets this provision of its law as a prohibition on receiving regular unemployment compensation (UC) for individuals receiving SSDI.<sup>2</sup> The plain language text of the Wisconsin law, and the Department's understanding of the State's interpretation of its law, would disqualify individuals who receive SSDI from eligibility for regular UC. Because these individuals are ineligible for regular UC, they meet the PUA eligibility requirement of "not eligible for regular compensation." Therefore, if they are unemployed, have reduced employment, or are unable to work or are unavailable to work due to one of the specified COVID-19 reasons outlined in the CARES Act or the Department's guidance in UI Program Letter No. 16-20, they may be eligible for PUA benefit.<sup>3</sup>

Because Section 2102 of the CARES Act does not provide for the treatment of other income an individual may have, the Disaster Unemployment Assistance (DUA) regulations govern this issue. The DUA regulation at 20 C.F.R. 625.13(a)(6) provides that the prorated amount of SSDI an individual receives is required to be deducted from DUA payments but only to the extent that this benefit would be reduced under the applicable state law. Under Wisconsin law, SSDI income is not reduced from an individual's entitlement to regular UC because, under the State's law, an individual is ineligible for any UC if they are receiving SSDI. Therefore, it appears that under Wisconsin law, SSDI income would not be reduced from an individual's DUA (or PUA) entitlement.

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<sup>1</sup> See Wis. Stat. Ann. § 108.04(12)(f)a (West 2020).

<sup>2</sup> See Wis. Stat. Ann. § 108.04(12)(f) (West 2020).

<sup>3</sup> Accessible at [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4628](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628).

Thank you for your commitment to ensuring that payments of PUA are consistent with the applicable state and federal laws and regulations for this program. If you have any additional questions, please contact ETA at (202) 693-2772.

Sincerely,

A handwritten signature in blue ink, appearing to read "John Pallasch".

John Pallasch  
Assistant Secretary for Employment and Training

2014 WL 3973380

Only the Westlaw citation is currently available.

UNPUBLISHED OPINION. CHECK  
COURT RULES BEFORE CITING.UNPUBLISHED  
Court of Appeals of Michigan.Michael T. **ROSS**, Claimant–Appellee,  
v.ACRISURE P1, **L.L.C.**, Defendant,  
andDepartment of Licensing & Regulatory Affairs/  
Unemployment Insurance Agency, Appellant.

Docket No. 315347.

|  
Aug. 14, 2014.

Ionia Circuit Court; LC No.2012–029501–AE.

Before: M.J. KELLY, P.J., and **SAWYER** and **HOEKSTRA**,  
JJ.**Opinion**

PER CURIAM.

\*1 Appellant Department of Licensing & Regulatory Affairs, Unemployment Insurance Agency (the Agency) appeals by leave granted a court order in which the circuit court reversed a decision by the Michigan Compensation Appellate Commission (MCAC) and ruled that claimant Michael T. **Ross** was eligible for unemployment benefits. Because, on the facts of this case, claimant's receipt of social security disability benefits (SSDI benefits) did not preclude him from asserting that he was willing and able to work for purposes of receiving unemployment benefits, we affirm.

Claimant worked as a sawyer at Hill's Crate Mill for about nine years until sometime in 2009. While working at Hill's, he mostly sawed logs, but also did “just about anything they asked [him] to do.” At some point in his employment history, claimant also delivered car parts for an automotive store and performed maintenance for a Grand Rapids hotel chain; however, it is unclear from the record when, or how long, he held those positions. In any event, Hill's eventually closed, at which time claimant became unemployed.

On September 22, 2009, claimant applied for SSDI benefits. His application for SSDI benefits and the details of those proceedings are not contained in the lower court record in this case. According to claimant's testimony related to the present proceedings, he applied for SSDI benefits because of a **head injury**, memory limitations, a back injury, and a **fractured hip**. He sustained his injuries in an automobile accident in 1988 and while working a previous job in 1993. As a result of his injuries, claimant experienced severe pain and depression. According to claimant, the effects of his injuries and depression were present while he worked at Hill's. On May 21, 2010, the Social Security Administration (SSA) denied claimant's application for social security benefits, finding that claimant's condition was not “severe enough” to keep him from working.

In the meantime, in addition to applying for SSDI benefits, in December 2009, claimant applied to the Agency for unemployment benefits, and he began to receive those benefits. In order to continue receiving unemployment benefits, claimant understood that he was required to certify that he was able to work, was available for employment, and was seeking employment. Consistent with these requirements, while receiving unemployment benefits, claimant called into the Michigan Automated Response Voice Interactive Network (MARVIN) regularly and stated that he was looking for work and was able to work. According to claimant's testimony, since losing his job at Hill's, he had applied for work at a gas station, a self-serve lumber store, a hardware store, a mini-mart, and a garden supply store. Claimant also looked in the newspaper for job openings, but saw no jobs that fit his limited qualifications insofar as he had only a 10th grade education and had difficulty reading. When asked if there were any jobs he could currently perform, claimant said that he could work in a self-serve lumber store or he could perform “cleaning type work.” Claimant also said that there was no reason that he could not work stocking shelves or at an auto parts store performing driving or delivery work.

\*2 Although initially claimant's application for SSDI benefits was denied, claimant successfully appealed that decision, and on September 21, 2011, the SSA found that “claimant has been under a disability as defined in the Social Security Act since February 1, 2010.” The SSA determined that “claimant has the residual functional capacity to perform a full range of work at all exertional levels with the following nonexertional limitations: an inability to relate to coworkers, deal with the public, use judgment, interact with supervisors,

deal with work stresses, function independently, maintain attention and concentration, behave in an emotionally stable manner, and relate predictably in social situations.” The SSA found that these limitations were caused by claimant’s “severe depression.” Because of these limitations, the SSA found that claimant was “unable to perform any past relevant work,” that his job skills did not “transfer to other occupations,” and that “[c]onsidering the claimant’s age, education, work experience, and residual functional capacity, there are no jobs that exist in significant numbers in the national economy that he can perform.” The SSA awarded claimant \$1,113 per month and a lump sum payment for past due benefits. A letter from the SSA dated October 3, 2011 informed claimant of the award.

On November 29, 2011, claimant informed the Agency that the SSA determined that he was disabled. As a result, on December 20, 2011, the Agency issued a determination informing claimant that he was not eligible for unemployment given his receipt of SSDI benefits. The Agency’s letter informed claimant that:


[Y]ou notified [the] Agency that you were awarded [SSDI] payments ... beginning 02/01/10. You claimed unemployment benefits for the same period and stated that you were able to work. The documentation from the SSDI proved otherwise, therefore, you do not meet the [statutory requirements for unemployment benefits].

The Agency demanded that claimant repay the unemployment benefits he had received during the time he was “disabled,” an amount totaling \$19,486.00, and the Agency imposed a fraud penalty in the amount of \$77,944.00, due to claimant’s representations to the Agency regarding his ability to work.

Claimant objected to the determination, and, in various letters to the Agency, claimant emphasized that his disability determination involved a finding of a residual functional capacity. He argued that the criteria used to determine a disability for purposes of SSDI differed from regulations for unemployment compensation, meaning, according to claimant, that “a person may be disabled according to the

regulations determining disability in Social Security while at the same time the person may be capable of other work.” In support, claimant relied on a memorandum from Chief Administrative Law Judge Frank A. Cristaudo, which indicated that the “[r]eciept of unemployment benefits does not preclude the receipt of Social Security disability benefits.”

\*3 Following an administrative hearing, in February 2012, an administrative law judge upheld the Agency’s denial of benefits and demand for repayment as well as the imposition of penalties, finding in relevant part that plaintiff “successfully petitioned for social security disability and offered no credible evidence as to how he remained capable of performing suitable full-time work for unemployment purposes.” Claimant thereafter appealed to the MCAC, and the MCAC affirmed the ALJ’s decision. Then, claimant appealed the MCAC’s decision to the circuit court, which reversed in an opinion and order dated February 28, 2013.

Relying on  *Cleveland v. Policy Mgt Sys Corp*, 526 U.S. 795; 119 S.Ct 1597; 143 L.Ed 2d 966 (1999), the circuit court found that “an individual can qualify for Social Security Disability while also being eligible for unemployment benefits.” The circuit court stated that it was “unable to find merit in the [MCAC’s] finding that the claimant’s application for social security disability was inconsistent with his testimony that he was ready and able to work in connection with his application for unemployment benefits.” The circuit court further noted:

Significant aspects of this case are that a doctor never determined that the Appellant was unable to work, he believed his disability did not rise to the level that he could not do some type of work and his disability was of a mental health condition of depression as opposed to a physical limitation.... [T]he fact that he was determined eligible for disability is entirely different from what appears to be a legitimate and sincere belief on the Appellant’s part that he could work when he certified he was available and able to work.




Thus, the circuit court overruled the MCAC's decision and held that claimant was eligible for benefits.<sup>1</sup> The Agency now appeals as on leave granted.

“This Court reviews a lower court's review of an administrative decision to determine whether the lower court applied correct legal principles and whether it misapprehended or misapplied the substantial evidence test to the agency's factual findings, which is essentially a clearly erroneous standard of review.” *Vanzandt v. State Employees Ret Sys*, 266 Mich.App 579, 585; 701 NW2d 214 (2005). “The circuit court's legal conclusions are reviewed de novo and its findings of fact are reviewed for clear error.” *Mericka v. Dep't of Community Health*, 283 Mich.App 29, 36; 770 NW2d 24 (2009). “Great deference is accorded to the circuit court's review of the [administrative] agency's factual findings; however, substantially less deference, if any, is accorded to the circuit court's determinations on matters of law.” *Id.* (quotations omitted) (alteration in original).

In this appeal, we are asked to resolve whether claimant may receive both unemployment benefits and SSDI benefits. Specifically, relying on the SSA's determination of claimant's disability for purposes of SSDI benefits, the Agency argues that claimant cannot be both disabled and able to work, and therefore he could not be eligible for unemployment benefits and must make restitution for those benefits previously paid. The Agency argues that claimant was estopped from asserting that he was willing and able to work for unemployment purposes based on prior assertions to, and findings by, the SSA that claimant was “disabled.”

\*4 Although the Agency's discussion of estoppel is somewhat cursory, it appears to be the Agency's underlying contention that judicial estoppel should apply to bar claimant's receipt of both benefits. Under the doctrine of judicial estoppel, “a party who has successfully and unequivocally asserted a position in a prior proceeding is estopped from asserting an inconsistent position in a subsequent proceeding.” *Paschke v. Retool Indus*, 445 Mich. 502, 509; 519 NW2d 441 (1994). For this doctrine to apply, the claims must be “wholly inconsistent.” *Id.* at 510. Further, “the mere assertion of inconsistent positions is not sufficient to invoke estoppel; rather, there must be some indication that the court in the earlier proceeding accepted that party's position as true.” *Id.*

We are not aware of any Michigan caselaw to consider the interaction of our state unemployment benefit legislation and federal statutes regarding the receipt of SSDI benefits, or, more specifically, to consider whether a finding of disability for purposes of SSDI benefits operates to judicially estop an individual from also receiving unemployment benefits. However, in view of discussions in analogous contexts, it appears that there are two broad considerations relevant to determining whether judicial estoppel should prevent an individual from bringing claims under two statutory schemes when there is a potential that the claims involved may be inconsistent. First, courts consider whether there is an inherent conflict between the statutory schemes, such that a negative presumption should apply against the possibility of an individual pursuing both types of claims.


See  *Cleveland*, 526 U.S. at 802–803 (finding no inherent conflict between receipt of SSDI benefits and a claim under the Americans with Disabilities Act, and rejecting application of a negative presumption). Second, courts consider whether a claimant's purely factual assertions in the respective contexts genuinely conflict with one another, and whether an individual can explain any apparent contradiction.  *Id.* at 805–806. See also *Kerns v. Dura Mech Components, Inc (On Remand)*, 242 Mich.App 1, 7, 11; 618 NW2d 56 (2000) (recognizing receipt of SSDI benefits for disability did not automatically preclude claim of discrimination under Persons with Disabilities Civil Rights Act, but holding that the claimant could not succeed on his discrimination claim because of the previous facts and statements involved with his SSDI claim). It is the claimant's burden to explain any apparent contradictions between his claims in order to justify receipt of both types of benefits. See  *Cleveland*, 526 U.S. at 806.

In the present case, the Agency concedes that there is no per se disqualification for unemployment benefits on the basis of an individual's receipt of SSDI benefits. That is, the Agency apparently recognizes that there is not an inherent conflict between the statutory schemes such that a finding of disability for purposes of SSDI necessarily precludes the possibility of also receiving unemployment. Specifically, in its appellate brief, the Agency states: “Applying for and receiving Social Security disability benefits do[es] not necessarily mean that a claimant is unable to work, thereby making a claimant ineligible for unemployment benefits.”<sup>2</sup>

\*5 Given the Agency's recognition that there is no brightline prohibition on the receipt of both types of benefits, it appears



that the Agency believes that in claimant's specific case there is a purely factual contradiction between his receipt of SSDI benefits and his claim for unemployment benefits. However, apart from the general fact that claimant applied for and received SSDI benefits, which the Agency concedes does not necessarily preclude an award of unemployment benefits, the Agency points to nothing in claimant's specific factual assertions in each arena which can be considered wholly inconsistent. Indeed, although the SSA decision awarding benefits is in the record, the claimant's SSA application is not, and the record does not contain transcripts of the proceedings before the SSA, meaning it is not entirely clear to us what specific factual assertions claimant advanced in support of his application for SSDI.

Rather than focus on claimant's factual assertions before the SSA, the Agency asks this Court to invoke judicial estoppel on the basis of the SSA's finding that claimant is "disabled." Specifically, the Agency maintains that the "practical effect" of the SSA's finding of disability is that there are no jobs claimant could perform because the SSA determined that claimant cannot perform any "past relevant work" and there are not a "significant number" of jobs in the national marketplace for claimant. It is the Agency's position that, as a result of the SSA's findings, claimant cannot claim unemployment benefits pursuant to  MCL 421.28(1)(c), which conditions eligibility for employment benefits on the requirement that an individual be "able ... to perform suitable full-time work of a character which the individual is qualified to perform by past experience or training, which is of a character generally similar to work for which the individual has previously received wages...."


In advancing this argument, the Agency ignores significant portions of the SSA's findings which make plain that the circuit court did not clearly err in finding that claimant in this case has an ability to work, despite the SSA's finding of "disability." Specifically, the SSA expressly acknowledged that claimant possessed a "residual functional capacity," pursuant to which claimant could "perform a full range of work at all exertional levels" subject to several "nonexertional limitations," including an inability to relate to coworkers, deal with the public, use judgment, interact with supervisors, deal with work stresses, function independently, maintain attention and concentration, behave in an emotionally stable manner, and relate predictably in social situations. In other words, the SSA determined that claimant has the physical capabilities to work full-time and, though there are not a "significant number" of jobs he could obtain given his mental and emotional difficulties, he can work and there remains some unspecified number of suitable jobs for him.<sup>3</sup> Given that there apparently remains work claimant can perform and he has expressed his willingness to do so, the circuit court did not clearly err in finding claimant able to work for purposes of unemployment benefits. Thus, we find nothing clearly erroneous in the circuit court's determination that the SSA's findings and claimant's receipt of unemployment benefits were not wholly inconsistent.<sup>4</sup> Because the circuit court applied correct legal principles, and there is no clear error in its factual findings, the Agency is not entitled to relief. See *Mericka*, 283 Mich.App at 35–36.

\*6 Affirmed.


#### All Citations

Not Reported in N.W.2d, 2014 WL 3973380

#### Footnotes

- 1 The circuit court also concluded that the Agency had not presented clear and convincing evidence of fraud so as to merit the imposition of penalties. The Agency does not contest this determination on appeal.
- 2 Because the parties are in agreement on the conclusion that receipt of SSDI benefits does not necessarily preclude receipt of unemployment issues, we need not consider the issue. See generally  *Thomas M. Cooley Law Sch v. Doe 1*, 300 Mich.App 245, 254; 833 NW2d 331 (2013) ("Michigan courts exist to decide actual cases and controversies."). We also decline to address the argument raised by amicus curiae that allowing the Agency to deny unemployment benefits based on the SSA finding that an individual is disabled would violate the Americans with Disabilities Act (ADA). Neither claimant nor the Agency raised this issue,

and thus the issue is not properly before this Court. See [In re MU](#), 264 Mich.App 270, 277 n. 3; 690 NW2d 495 (2004), citing MCR 7.212(H)(2) ( “The [amicus] brief is limited to the issues raised by the parties.”).

- 3 Insofar as the Agency argues there is no suitable full-time work for claimant because the SSA found claimant could not perform “past relevant work,” the Agency ignores that “past relevant work” has a specific definition in the context of SSDI. “Past relevant work” must be work done within the 15 years prior to the date of disability, it must have been of such duration that the claimant learned to do the job, and it must have constituted “substantial gainful activity,” meaning significant physical or mental activity of the type usually performed for pay or profit. See 20 CFR 404.1560(b)(1); 20 CFR 404.1572. In claimant's case, the details of his work history have not been presented, meaning there could well be work he performed longer than 15 years ago, or for a short duration, for which he received wages and for which he is now qualified. Such work may not qualify as “past relevant work” before the SSA, but it would constitute suitable work he could now perform. Again, absent more information regarding the SSA proceedings and claimant's factual assertions, there is nothing wholly inconsistent apparent on the record before us and nothing clearly erroneous in the circuit court's conclusions.
- 4 To the extent the Agency condemns the potential “double-dipping” of SSDI benefits and unemployment benefits, the Agency's concerns relate to policy decisions properly left to the Legislature, with which this Court will not interfere. See generally  [Devillers v. Auto Club Ins Ass'n](#), 473 Mich. 562, 589; 702 NW2d 539 (2005).

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# **EXHIBIT I**

## **STATE OF MINNESOTA IN COURT OF APPEALS A20-1330**

In the Matter of: Hayat Muse.

**Filed February 22, 2021  
Reversed  
Segal, Chief Judge**

Department of Employment and Economic Development  
File No. 39175517-6

Gregory R. Merz, Lathrop GPM LLP, Minneapolis, Minnesota (for relator Hayat Muse)

Keri A. Phillips, Katrina Gulstad, Anne B. Froelich, Minnesota Department of Employment and Economic Development, St. Paul, Minnesota (for respondent Minnesota Department of Employment and Economic Development)

Keith Ellison, Attorney General, Liz Kramer, Solicitor General, Bradley Simon, Ed Stockmeyer, Assistant Attorneys General, St. Paul, Minnesota (for amicus curiae State of Minnesota)

Considered and decided by Segal, Chief Judge; Hooten, Judge; and Smith, Tracy M., Judge.

### **SYLLABUS**

Minnesota high school students are not categorically ineligible to receive Pandemic Unemployment Assistance under the federal Coronavirus Aid, Relief, and Economic Security Act, Pub. L. 116-136, 134 Stat. 281 (2020) (CARES Act).

### **OPINION**

**SEGAL**, Chief Judge

In this certiorari appeal, relator Hayat Muse challenges a determination by an unemployment-law judge (ULJ) that relator is ineligible for Pandemic Unemployment

Assistance (PUA) under the CARES Act because she is a high school student. PUA is one of the federal financial assistance programs enacted to provide added unemployment benefits to help mitigate the financial hardships caused by the COVID-19 pandemic. The ULJ in this case denied PUA benefits to relator because, under the state unemployment statute, high school students are not eligible for regular unemployment benefits. Minn. Stat. § 268.085, subd. 2(3) (2020). Relator contends that this decision is in conflict with the unambiguous terms of the CARES Act. We agree and, accordingly, reverse the decision of the ULJ.

## **FACTS**

Relator Hayat Muse is a high school student who was separated from her part-time employment at a coffee shop because of the COVID-19 pandemic. Muse applied for unemployment benefits through respondent Minnesota Department of Employment and Economic Development (DEED) in March 2020, identifying herself as a high school student in her application. Muse received PUA benefits for only five weeks.

In May 2020, DEED issued an initial determination of ineligibility stating that Muse was not eligible for PUA benefits because she is a high school student. Muse filed an administrative appeal. Following an evidentiary hearing, a ULJ issued a decision determining Muse ineligible for PUA benefits because of the ineligibility of high school students for regular unemployment-compensation benefits under state law. As a consequence, Muse received no additional payments and was ordered to pay back the \$1,170 she had received in PUA benefits. A second ULJ affirmed the decision after Muse sought reconsideration.

Muse filed this certiorari appeal and a motion, jointly filed with DEED, to expedite the court's consideration of the appeal. In the joint motion, DEED represented that it will apply this court's decision, both retrospectively and prospectively, with regard to the eligibility of Minnesota high school students for PUA benefits.<sup>1</sup> We granted the joint motion and a subsequent motion by the Minnesota Attorney General to file an amicus brief in support of Muse's position. Following expedited briefing and oral argument, we issued a December 1, 2020 order reversing the ULJ's decision, with an opinion to follow. This opinion sets forth our analysis in support of that order.

### **ISSUE**

Are Minnesota high school students categorically ineligible for PUA benefits?

### **ANALYSIS**

This appeal is limited to the narrow but impactful issue of whether Minnesota high school students are disqualified from receiving PUA benefits because high school students are not eligible for regular unemployment benefits under state law. We apply a de novo standard of review to administrative agencies' interpretations of federal statutes such as the CARES Act. *In re Gillette Children's Specialty Healthcare*, 883 N.W.2d 778, 784 (Minn. 2016).

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<sup>1</sup> DEED's agreement stemmed from a settlement agreement in federal litigation. Relator was a plaintiff in a now-dismissed federal lawsuit challenging DEED's denial of PUA benefits to high school students. *See Youthprise v. Minn. Dep't of Emp't & Econ. Dev.*, No. 20-CV-02087 (D. Minn.). The federal lawsuit was dismissed in October 2020 pursuant to a stipulation that included DEED's agreement to seek expedited consideration of this appeal and to apply this court's decision retrospectively and prospectively.

The CARES Act, signed into law on March 27, 2020, “creates a new temporary federal program called Pandemic Unemployment Assistance (PUA) that in general provides up to 39 weeks of unemployment benefits, and provides funding to states for the administration of the program.” U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20 (April 5, 2020) (UIPL 16-20), at 1. Under the Act, the Secretary of Labor “shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially employed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other employment compensation . . . or waiting period credit.” CARES Act § 2102(b).

A “covered individual” eligible to collect PUA benefits is an individual who (1) “is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation,”<sup>2</sup> and (2) self-certifies that she is “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 11 reasons related to the COVID-19 pandemic.<sup>3</sup> CARES Act § 2102(a)(3)(A). The PUA program extended economic assistance to people who lost work due to the pandemic but would not be eligible for regular unemployment-

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<sup>2</sup> Pandemic emergency unemployment compensation (PEUC) is available to individuals who have received all regular unemployment benefits available to them for a particular benefit year. *See generally* CARES Act § 2107. Because Minnesota high school students are not eligible for regular unemployment benefits, they cannot exhaust them and qualify for PEUC.

<sup>3</sup> The definition of “covered individual” contains several additional inclusions and exclusions, none of which are relevant here. *See* CARES Act § 2102(a)(3)(A)(ii)(II), (a)(3)(B).

compensation benefits, such as “gig economy” workers who are ineligible for regular unemployment benefits because they are classified as independent contractors and not employees. UIPL 16-20 Attachment 1, at I-6; UIPL 16-20 Change 1 (April 27, 2020), at I-8. As the U.S. Department of Labor (USDOL) has explained, “PUA is a benefit of last resort for anyone who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act.” UIPL 16-20 Change 1, at I-8.

The USDOL issued guidance on how to administer the PUA program in UIPL 16-20 and four subsequent UIPLs referred to as Changes 1 - 4 to UIPL 16-20. Relevant to this appeal, Change 1 to UIPL 16-20 provided an answer to the question of whether a full-time student who is laid off from part-time employment due to the pandemic (and the part-time income is not her primary source of income) can be eligible for PUA benefits:

Answer: Yes. Provided a full-time student who worked part-time is unemployed, partially unemployed, or unable or unavailable to work because of one of the COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I) of the CARES Act, then he or she may be eligible for PUA.

The requirement that the employment be the “principal source of income” . . . does not apply to eligibility for PUA.

UIPL 16-20 Change 1, at I-7 (Question 28). The guidance also makes clear that there is not a minimum age to be eligible to receive PUA benefits. UIPL 16-20 Change 2 (July 21, 2020), at I-3 - I-4 (Question 6). The USDOL noted that federal or state laws relating to the employment of minors could impact eligibility, but concluded that “[i]f federal and state

laws . . . 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.”<sup>4</sup> *Id.*

The USDOL guidance further provides that, in the event of questions concerning coverage or administration of the federal benefits that are not answered in the CARES Act or corresponding UIPLs, states should consult the regulations governing Disaster Unemployment Assistance (DUA), 20 C.F.R. Part 625. UIPL 16-20 Change 1, at 2. DUA is a preexisting, ongoing federal program that provides unemployment assistance to eligible persons impacted by a major disaster. 42 U.S.C. § 5177; 20 C.F.R. § 625.1(a). Congress provided that the regulations governing DUA apply to the PUA program “[e]xcept as otherwise provided in [section 2102 of the CARES Act] or to the extent there is a conflict between [section 2102] and [part] 625.” CARES Act § 2102(h). Finally, only after applying the provisions of the CARES Act, the UIPLs and the DUA regulations (to the extent not inconsistent with the Act or the UIPLs) are states to look at their own unemployment laws in interpreting eligibility for PUA benefits. UIPL 16-20 Change 1, at 2.

With this as background, we turn to the question of whether the ULJ correctly interpreted the CARES Act in disqualifying Muse from receiving PUA benefits. When interpreting a federal statute, this court must “give effect to the will of Congress.” *Goodman v. Best Buy, Inc.*, 777 N.W.2d 755, 758 (Minn. 2010) (quoting *Griffin v. Oceanic*

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<sup>4</sup> In connection with this guidance, we note that DEED submitted a question to the USDOL regarding the high-school eligibility issue, but did not receive a direct response and the USDOL did not select that specific question for inclusion in the UIPLs.



*Contractors, Inc.*, 458 U.S. 564, 570, 102 S. Ct. 3245, 3250 (1982)). If the language of the statute is clear, we will not look beyond it. *Id.* “We must ‘presume that [the] legislature says in a statute what it means and means in a statute what it says there.’” *Id.* (quoting *Conn. Nat’l Bank v. Germain*, 503 U.S. 249, 253-54, 112 S. Ct. 1146, 1149 (1992)).

The CARES Act sets out two requirements for PUA eligibility: (1) an individual must be ineligible for regular unemployment benefits or PEUC benefits and (2) an individual must self-certify that they are available to work but unable to do so because of one of 11 reasons related to the COVID-19 pandemic. CARES Act § 2102(a)(3)(A). There is no dispute that Minnesota high school students meet the first requirement because, under the Minnesota Unemployment Insurance Law, high school students are categorically ineligible to collect unemployment benefits. Minn. Stat. § 268.085, subd. 2(3) (providing that an applicant is ineligible for benefits during any week “that occurs in a period when the applicant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms”). The second requirement can also be met by high school students. All it requires is that the student be available for work, but not be able to work because of one of the listed COVID-19-related reasons. DEED does not dispute that Muse is ineligible for benefits under state law and lost her part-time employment because of the pandemic. Muse thus satisfies the two prerequisites and is thereby eligible for PUA benefits under the plain language of the CARES Act.

DEED, however, urges this court to defer to its interpretation of the CARES Act as the “only reasonable position that accounts for all of the relevant authorities.” Deference, however, is only appropriate if the provision being interpreted is ambiguous. *In re Cities*

*of Annandale & Maple Lake NPDES/SDS Permit Issuance*, 731 N.W.2d 502, 516 (Minn. 2007); *see also Abdi v. Dep't of Emp't & Econ. Dev.*, 749 N.W.2d 812, 815 (Minn. App. 2008) (“[I]f we conclude that the Act and regulations are clear and unambiguous with respect to the issue before us, DEED’s interpretation is entitled to no deference.”). For a provision to be ambiguous, the provision must be capable of two or more reasonable interpretations. *Cities of Annandale*, 731 N.W.2d at 516. For the reasons set out below, we conclude that DEED’s proposed interpretation is not reasonable and is, therefore, not entitled to deference.

DEED’s interpretation is based on language in an attachment to the USDOL guidance that relates to the processing of PUA claims. UIPL 16-20 Attachment 1, at I-9. The language relied on by DEED states that “[t]he provisions of the applicable state law that apply to claims for PUA include . . . [d]isqualification, including disqualifying income provisions.” *Id.* DEED argues that “disqualification” is equivalent to “ineligibility,” and that, because high school students are ineligible for regular unemployment benefits under Minnesota law, they are also ineligible for PUA benefits. DEED’s reasoning is flawed for several reasons.

First, DEED’s argument ignores the beginning of the above-quoted section, which provides that state law applies “consistent with 20 C.F.R. 625.11” of the DUA regulations. *Id.* Section 625.11 of the DUA regulations expressly limits the applicability of state law to only those provisions “as specifically set forth” in that part of the regulations. 20 C.F.R. § 625.11. The section of the DUA regulations that relates to disqualification provides, in relevant part:

(b) *Disqualification.*

(1) An individual shall not be entitled to DUA for any week after the week in which the individual is reemployed in a suitable position.

(2) An individual who refuses without good cause to accept a bona fide offer of reemployment in a position suitable to the individual . . . shall not be entitled to DUA [benefits] . . . . For the purposes of this paragraph, a position shall not be deemed to be suitable for an individual if . . . acceptance for the position would . . . be inconsistent with any labor standard . . . of the Federal Unemployment Tax Act, . . . *or the comparable provisions of the applicable State law.*

20 C.F.R. § 625.13(b) (emphasis added). There is nothing in these subsections that would allow disqualification on the basis of the high school restriction in our state law. To the contrary, the regulations appear to narrowly restrict the applicability of state law provisions to questions relating to whether the benefit applicant has turned down a “suitable position” without “good cause.” We thus conclude that DEED erred by relying on this one item in the guidance, without reading it together with the DUA regulations as the guidance requires.

Moreover, the interpretation urged by DEED is inconsistent with the language and purpose of the CARES Act and is illogical. Eligibility for PUA benefits requires a showing that the person is not eligible for regular unemployment-compensation benefits. If the very thing that makes the person eligible for PUA benefits is treated as a disqualification, no one would be eligible for PUA benefits.<sup>5</sup>

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<sup>5</sup> We note that DEED does not assert that all individuals who are ineligible for regular unemployment compensation are ineligible for PUA benefits. Rather, DEED argues that “[t]here is a legal distinction between individuals who are not eligible for regular

DEED’s interpretation also ignores the USDOL guidance related to students. That guidance expressly states that full-time students may be eligible for PUA benefits, even though their work was only part-time and was not a “primary source of income.” UIPL 16-20 Change 1, at I-7. The guidance further provides that there is not a minimum age requirement for PUA eligibility. UIPL 16-20 Change 2, at I-3. This undermines DEED’s contention that our state law disqualification of high school students from regular unemployment-compensation benefits should be applied to determine PUA eligibility.

Another factor that weighs against DEED’s interpretation is the fact that the CARES Act offers “coverage for individuals who are not eligible for regular [unemployment compensation],” including “certain gig economy workers, clergy and those working for religious organizations who are not covered by regular [unemployment compensation], and *other workers who may not be covered by the regular [unemployment-compensation] program under some state laws.*” UIPL 16-20, at 1-2 (emphasis added); *see also* UIPL 16-20 Change 1, at I-8 (“PUA is a benefit of last resort for *anyone* who does not qualify for other [unemployment-compensation] programs and who would be able and available to work but for one or more of the COVID-19 related reasons listed in section 2102 of the CARES Act.” (emphasis added)). Our state unemployment law bars “gig economy workers” from eligibility for regular unemployment benefits because they are classified as

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unemployment insurance benefits due to reasons that prevent them from establishing an unemployment benefit account, and those who are ineligible due to application of state law disqualification/ineligibility provisions.” Here again, however, we can discern no language in the CARES Act or the USDOL guidance to support such a distinction and it ignores section 625.11 of the DUA regulations that limits the applicability of state law provisions.

independent contractors pursuant to Minn. Stat. § 268.035, subd. 15(a)(1) (2020), but the guidance makes clear that they are not categorically disqualified from eligibility for PUA benefits. *See* UIPL 16-20 Attachment 1, at I-6; UIPL 16-20 Change 1, at I-8.

DEED’s final argument in support of its interpretation of the CARES Act is that, if high school students are deemed eligible to obtain PUA benefits, it will throw open the doors of eligibility so wide that even incarcerated individuals and individuals not actually unemployed may be eligible for benefits. This is not accurate. As we have explained, applicants for PUA benefits must demonstrate, among other things, that they are “otherwise . . . available for work.” CARES Act § 2102(a)(3)(A). Incarcerated individuals cannot be eligible for PUA benefits because they are not “otherwise able to work and available for work within the meaning of applicable State law.” *Id.* (a)(3)(A)(i).<sup>6</sup> And individuals who are not actually unemployed cannot be eligible for PUA benefits because the definition of “covered individual” is limited to those who self-certify that they are “unemployed, partially unemployed, or unable or unavailable to work because” of one of the enumerated COVID-19-related reasons. *Id.* (a)(3)(A)(ii)(I).

We therefore reject DEED’s contention that its interpretation is reasonable and discern no ambiguity in the applicable provisions of the CARES Act. Under the plain language of the Act, we conclude that our state law barring high school students from

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<sup>6</sup> The USDOL guidance confirms this in answering a question about the eligibility of “an incarcerated individual who is no longer participating in the work release program because the jail closed this program due to COVID-19.” UIPL 16-20 Change 2, at I-4 (Question 9). The USDOL explains that “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.” *Id.*

receiving regular unemployment-compensation benefits does not render high school students categorically ineligible for PUA benefits.

### **DECISION**

The ULJ erred by concluding that Minn. Stat. § 268.085, subd. 2(3), applies to render Minnesota high school students ineligible for PUA benefits under the CARES Act. For this reason, and because DEED does not dispute that Muse has met the second requirement for PUA eligibility, we reverse the decision of the ULJ.

**Reversed.**

## EXHIBIT J



KeyCite Yellow Flag - Negative Treatment

Unconstitutional or Preempted Prior Version Limited on Preemption Grounds by [Huston v. Commissioner of Employment and Economic Development](#), Minn.App., Dec. 23, 2003



KeyCite Yellow Flag - Negative Treatment

Proposed Legislation

[Minnesota Statutes Annotated](#)  
[Employment and Economic Development \(Ch. 268-269\)](#)  
[Chapter 268. Unemployment Insurance](#)

### M.S.A. § 268.085

#### 268.085. Eligibility requirements; payments that affect benefits

Effective: October 1, 2019

[Currentness](#)

**Subdivision 1. Eligibility conditions.** An applicant may be eligible to receive unemployment benefits for any week if:

- (1) the applicant has filed a continued request for unemployment benefits for that week under [section 268.0865](#);
- (2) the week for which unemployment benefits are requested is in the applicant's benefit year;
- (3) the applicant was unemployed as defined in [section 268.035, subdivision 26](#);
- (4) the applicant was available for suitable employment as defined in subdivision 15. The applicant's weekly unemployment benefit amount is reduced one-fifth for each day the applicant is unavailable for suitable employment. This clause does not apply to an applicant who is in reemployment assistance training, or each day the applicant is on jury duty or serving as an election judge;
- (5) the applicant was actively seeking suitable employment as defined in subdivision 16. This clause does not apply to an applicant who is in reemployment assistance training or who was on jury duty throughout the week;
- (6) the applicant has served a nonpayable period of one week that the applicant is otherwise eligible for some amount of unemployment benefits. This clause does not apply if the applicant would have been eligible for federal disaster unemployment assistance because of a disaster in Minnesota, but for the applicant's establishment of a benefit account under [section 268.07](#); and
- (7) the applicant has been participating in reemployment assistance services, such as development of, and adherence to, a work search plan, if the applicant has been directed to participate by the commissioner. This clause does not apply if the applicant has good cause for failing to participate. "Good cause" is a reason that would have prevented a reasonable person acting with due diligence from participating.

**Subd. 2. Not eligible.** An applicant is ineligible for unemployment benefits for any week:

- (1) that occurs before the effective date of a benefit account;
- (2) that the applicant, at any time during the week, has an outstanding misrepresentation overpayment balance under [section 268.18, subdivision 2](#), including any penalties and interest;
- (3) that occurs in a period when the applicant is a student in attendance at, or on vacation from a secondary school including the period between academic years or terms;
- (4) that the applicant is incarcerated or performing court-ordered community service. The applicant's weekly unemployment benefit amount is reduced by one-fifth for each day the applicant is incarcerated or performing court-ordered community service;
- (5) that the applicant fails or refuses to provide information on an issue of ineligibility required under [section 268.101](#);
- (6) that the applicant is performing services 32 hours or more, in employment, covered employment, noncovered employment, volunteer work, or self-employment regardless of the amount of any earnings; or
- (7) with respect to which the applicant has filed an application for unemployment benefits under any federal law or the law of any other state. If the appropriate agency finally determines that the applicant is not entitled to establish a benefit account under federal law or the law of any other state, this clause does not apply.

**Subd. 3. Vacation and sick payments that delay unemployment benefits.** (a) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive vacation pay, sick pay, or personal time off pay, also known as “PTO.”

This paragraph does not apply:

- (1) upon a permanent separation from employment; or
  - (2) to payments from a vacation fund administered by a union or a third party not under the control of the employer.
- (b) Payments under this subdivision are applied to the period immediately following the later of the date of separation from employment or the date the applicant first becomes aware that the employer will be making a payment. The date the payment is actually made or received, or that an applicant must agree to a release of claims, does not affect the application of this subdivision.
- (c) This subdivision applies to all the weeks of payment. The number of weeks of payment is determined as follows:



(1) if the payments are made periodically, the total of the payments to be received is divided by the applicant's last level of regular weekly pay from the employer; or

(2) if the payment is made in a lump sum, that sum is divided by the applicant's last level of regular weekly pay from the employer.

The “last level of regular weekly pay” includes commissions, bonuses, and overtime pay if that is part of the applicant's ongoing regular compensation.

(d) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly unemployment benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's weekly unemployment benefit amount, unemployment benefits are reduced by the amount of the payment.

**Subd. 3a. Workers' compensation and disability insurance offset.** (a) An applicant is not eligible to receive unemployment benefits for any week in which the applicant is receiving or has received compensation for loss of wages equal to or in excess of the applicant's weekly unemployment benefit amount under:

(1) the workers' compensation law of this state;

(2) the workers' compensation law of any other state or similar federal law; or

(3) any insurance or trust fund paid in whole or in part by an employer.

(b) This subdivision does not apply to an applicant who has a claim pending for loss of wages under paragraph (a); however, before unemployment benefits may be paid when a claim is pending, the issue of the applicant being available for suitable employment, as required under subdivision 1, clause (4), must be determined under [section 268.101, subdivision 2](#). If the applicant later receives compensation as a result of the pending claim, the applicant is subject to paragraph (a) and the unemployment benefits paid are overpaid unemployment benefits under [section 268.18, subdivision 1](#).

(c) If the amount of compensation described under paragraph (a) for any week is less than the applicant's weekly unemployment benefit amount, unemployment benefits requested for that week are reduced by the amount of that compensation payment.

**Subd. 3b. Separation, severance, or bonus payments that delay unemployment benefits.** (a) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, or will receive separation pay, severance pay, bonus pay, or any other payments paid by an employer because of, upon, or after separation from employment. This subdivision applies if the payment is:

(1) considered wages under [section 268.035, subdivision 29](#); or

(2) subject to the Federal Insurance Contributions Act (FICA) tax imposed to fund Social Security and Medicare.

(b) Payments under this subdivision are applied to the period immediately following the later of the date of separation from employment or the date the applicant first becomes aware that the employer will be making a payment. The date the payment is actually made or received, or that an applicant must agree to a release of claims, does not affect the application of this paragraph.

(c) This subdivision does not apply to earnings under subdivision 5, back pay under subdivision 6, or vacation pay, sick pay, or personal time off pay under subdivision 3.

(d) This subdivision applies to all the weeks of payment. The number of weeks of payment is determined in accordance with subdivision 3, paragraph (c).

(e) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly unemployment benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's weekly unemployment benefit amount, unemployment benefits are reduced by the amount of the payment.

**Subd. 3c. Pension or retirement payment offset.** (a) An applicant is not eligible to receive unemployment benefits for any week the applicant is receiving, has received, will receive, or has applied for pension, retirement, or annuity payments from any plan contributed to by a base period employer including the United States government. The base period employer is considered to have contributed to the plan if the contribution is excluded from the definition of wages under [section 268.035, subdivision 29](#).

(b) If the pension, retirement, or annuity payment is paid in a lump sum, an applicant is not considered to have received a payment if:

(1) the applicant immediately deposits that payment in a qualified pension plan or account; or

(2) that payment is an early distribution for which the applicant paid an early distribution penalty under the Internal Revenue Code, [United States Code, title 26, section 72\(t\)\(1\)](#).

(c) This subdivision does not apply to Social Security benefits under subdivision 4 or 4a.

(d) This subdivision applies to all the weeks of payment.

If the payment is made in a lump sum, that sum is divided by the applicant's last level of regular weekly pay from the employer to determine the weeks of payment.

The "last level of regular weekly pay" includes commissions, bonuses, and overtime pay if that is part of the applicant's ongoing regular compensation.

(e) Under this subdivision, if the payment with respect to a week is equal to or more than the applicant's weekly unemployment benefit amount, the applicant is ineligible for benefits for that week. If the payment with respect to a week is less than the applicant's weekly unemployment benefit amount, unemployment benefits are reduced by the amount of the payment.

**Subd. 4. Social Security old age insurance benefits.** (a) If all of the applicant's wage credits were earned while the applicant was claiming Social Security old age benefits, there is no deduction of the Social Security benefits from the applicant's weekly unemployment benefit amount.

(b) Unless paragraph (a) applies, 50 percent of the weekly equivalent of the primary Social Security old age benefit the applicant has received, has filed for, or intends to file for, with respect to that week must be deducted from an applicant's weekly unemployment benefit amount.

(c) Any applicant aged 62 or over is required to state when filing an application for unemployment benefits and when filing continued requests for unemployment benefits if the applicant is receiving, has filed for, or intends to file for, primary Social Security old age benefits.

(d) Information from the Social Security Administration is conclusive, absent specific evidence showing that the information was erroneous.

(e) This subdivision does not apply to Social Security survivor benefits.

**Subd. 4a. Social Security disability benefits.** (a) An applicant who is receiving, has received, or has filed for primary Social Security disability benefits for any week is ineligible for unemployment benefits for that week, unless:

(1) the Social Security Administration approved the collecting of primary Social Security disability benefits each month the applicant was employed during the base period; or

(2) the applicant provides a statement from an appropriate health care professional who is aware of the applicant's Social Security disability claim and the basis for that claim, certifying that the applicant is available for suitable employment.

(b) If an applicant meets the requirements of paragraph (a), clause (1), there is no deduction from the applicant's weekly benefit amount for any Social Security disability benefits.

(c) If an applicant meets the requirements of paragraph (a), clause (2), there must be deducted from the applicant's weekly unemployment benefit amount 50 percent of the weekly equivalent of the primary Social Security disability benefits the applicant is receiving, has received, or has filed for, with respect to that week.

If the Social Security Administration determines that the applicant is not entitled to receive primary Social Security disability benefits for any week the applicant has applied for those benefits, then this paragraph does not apply to that week.

(d) Information from the Social Security Administration is conclusive, absent specific evidence showing that the information was erroneous.

(e) This subdivision does not apply to Social Security survivor benefits.

**Subd. 5. Deductible earnings.** (a) If the applicant has earnings, including holiday pay, with respect to any week, from employment, covered employment, noncovered employment, self-employment, or volunteer work, equal to or in excess of the applicant's weekly unemployment benefit amount, the applicant is ineligible for unemployment benefits for that week.

(b) If the applicant has earnings, including holiday pay, with respect to any week, that is less than the applicant's weekly unemployment benefit amount, from employment, covered employment, noncovered employment, self-employment, or volunteer work, 50 percent of the earnings are deducted from the weekly unemployment benefit amount.

(c) No deduction is made from an applicant's weekly unemployment benefit amount for earnings from service in the National Guard or a United States military reserve unit or from direct service as a volunteer firefighter or volunteer ambulance service personnel. This exception to paragraphs (a) and (b) does not apply to on-call or standby pay provided to a volunteer firefighter or volunteer ambulance service personnel. No deduction is made for jury duty pay or for pay as an election judge.

(d) The applicant may report deductible earnings on continued requests for unemployment benefits at the next lower whole dollar amount.

(e) Deductible earnings does not include any money that is a deductible payment under subdivision 3.

**Subd. 6. Receipt of back pay.** (a) Back pay received by an applicant within 24 months of the establishment of the benefit account with respect to any week must be deducted from unemployment benefits paid for that week, and the applicant is overpaid the unemployment benefits under [section 268.18, subdivision 1](#).

If the back pay is not paid with respect to a specific period, the back pay must be applied to the period immediately following the last day of employment.

(b) If the back pay is reduced by the amount of unemployment benefits that have been paid, the amount of back pay withheld and not paid the applicant must be:

(1) paid by the taxpaying or reimbursing employer to the trust fund within 30 calendar days and is subject to the same collection procedures that apply to past due taxes and reimbursements; and

(2) when received by the trust fund:

(i) an overpayment of unemployment benefits must be created which, under [section 268.047, subdivision 2](#), clause (8), clears the employer's tax or reimbursable account of any effect; and

(ii) the back pay must then be applied to the unemployment benefit overpayment, eliminating any effect on the applicant.

(c) The following must result when applying paragraph (b):

- (1) an employer neither overpays nor underpays the employer's proper portion of the unemployment benefit costs; and
- (2) the applicant is placed in the same position as never having been paid the unemployment benefits.
- (d) This subdivision applies to payments labeled front pay, settlement pay, and other terms describing or dealing with wage loss.

**Subd. 7. School employees; between terms denial.** (a) Wage credits from employment with an educational institution or institutions may not be used for unemployment benefit purposes for any week during the period between two successive academic years or terms if:

- (1) the applicant had employment for an educational institution or institutions in the prior academic year or term; and
- (2) there is a reasonable assurance that the applicant will have employment for an educational institution or institutions in the following academic year or term.

This paragraph applies to a vacation period or holiday recess if the applicant was employed immediately before the vacation period or holiday recess, and there is a reasonable assurance that the applicant will be employed immediately following the vacation period or holiday recess. This paragraph also applies to the period between two regular but not successive terms if there is an agreement for that schedule between the applicant and the educational institution.

This paragraph does not apply if the subsequent employment is substantially less favorable than the employment of the prior academic year or term, or the employment prior to the vacation period or holiday recess.

(b) Paragraph (a) does not apply to an applicant who, at the end of the prior academic year or term, had an agreement for a definite period of employment between academic years or terms in other than an instructional, research, or principal administrative capacity and the educational institution or institutions failed to provide that employment.

(c) If unemployment benefits are denied to any applicant under paragraph (a) who was employed in the prior academic year or term in other than an instructional, research, or principal administrative capacity and who was not offered an opportunity to perform the employment in the following academic year or term, the applicant is entitled to retroactive unemployment benefits for each week during the period between academic years or terms that the applicant filed a timely continued request for unemployment benefits, but unemployment benefits were denied solely because of paragraph (a).

(d) This subdivision applies to employment with an educational service agency if the applicant performed the services at an educational institution or institutions. "Educational service agency" means a governmental entity established and operated for the purpose of providing services to one or more educational institutions.

(e) This subdivision applies to employment with Minnesota, a political subdivision, or a nonprofit organization, if the services are provided to or on behalf of an educational institution or institutions.

(f) Paragraph (a) applies beginning the Sunday of the week that there is a reasonable assurance of employment.

(g) Employment and a reasonable assurance with multiple education institutions must be aggregated for purposes of application of this subdivision.

(h) If all of the applicant's employment with any educational institution or institutions during the prior academic year or term consisted of on-call employment, and the applicant has a reasonable assurance of any on-call employment with any educational institution or institutions for the following academic year or term, it is not considered substantially less favorable employment.

(i) A "reasonable assurance" may be written, oral, implied, or established by custom or practice.

(j) An "educational institution" is a school, college, university, or other educational entity operated by Minnesota, a political subdivision or instrumentality thereof, or a nonprofit organization.

(k) An "instructional, research, or principal administrative capacity" does not include an educational assistant.

**Subd. 8. Services for school contractors.** (a) Wage credits from an employer are subject to subdivision 7, if:

(1) the employment was provided under a contract between the employer and an elementary or secondary school; and

(2) the contract was for services that the elementary or secondary school could have had performed by its employees.

(b) Wage credits from an employer are not subject to subdivision 7 if:

(1) those wage credits were earned by an employee of a private employer performing work under a contract between the employer and an elementary or secondary school; and

(2) the employment was related to food services provided to the school by the employer.

**Subd. 9. Business owners.** (a) Wage credits from an employer may not be used for unemployment benefit purposes by any applicant who:

(1) individually, jointly, or in combination with the applicant's spouse, parent, or child owns or controls directly or indirectly 25 percent or more interest in the employer; or

(2) is the spouse, parent, or minor child of any individual who owns or controls directly or indirectly 25 percent or more interest in the employer.

This subdivision is effective when the applicant has been paid five times the applicant's weekly unemployment benefit amount in the current benefit year. This subdivision does not apply if the applicant had wages paid in covered employment of \$7,500 or

more from the employer covered by this subdivision in each of the 16 calendar quarters prior to the effective date of the benefit account and all taxes due on those wages have been paid.

(b) An officer of a taxpaying employer referred to in [section 268.046, subdivision 1](#), is subject to the limitations of this subdivision.

Subd. 10. Repealed by [Laws 2007, c. 128, art. 1, § 23, par. \(b\)](#), eff. Sept. 30, 2007.

**Subd. 11. Athletes and coaches.** (a) Unemployment benefits must not be paid to an applicant on the basis of any wage credits from employment that consists of coaching or participating in sports or athletic events or training or preparing to participate for any week during the period between two successive sport seasons, or similar periods, if:

- (1) the applicant was so employed in the prior season or similar period, and
- (2) there is a reasonable assurance that the applicant will be so employed in the following season or similar period.

(b) This subdivision applies to a coach employed by an educational institution whose only employment with the educational institution is as a coach. Subdivision 7 applies to a coach who has other employment with an educational institution in addition to coaching at the educational institution. Employment with multiple educational institutions, or employment coaching multiple sports, must be aggregated for purposes of application of this subdivision.

**Subd. 12. Aliens.** (a) An alien is ineligible for unemployment benefits for any week the alien is not authorized to work in the United States under federal law. Information from the Bureau of Citizenship and Immigration Services is conclusive, absent specific evidence that the information was erroneous. Under the existing agreement between the United States and Canada, this paragraph does not apply to an applicant who is a Canadian citizen and has returned to and is living in Canada each week unemployment benefits are requested.

(b) An alien's wage credits may not be used for unemployment benefit purposes unless the alien was:

- (1) lawfully admitted for permanent residence at the time of the employment;
- (2) lawfully present for the purposes of the employment; or
- (3) permanently residing in the United States under color of law at the time of the employment.

(c) Information required of applicants applying for unemployment benefits to determine eligibility because of their alien status must be required of all applicants.

**Subd. 13. Suspension from employment.** (a) An applicant who has been suspended from employment without pay for 30 calendar days or less, as a result of employment misconduct or aggravated employment misconduct as defined under [section](#)

[268.095](#), is ineligible for unemployment benefits beginning the Sunday of the week that the applicant was suspended and continuing for the duration of the suspension.

(b) A suspension from employment without pay that is of indefinite duration or is for more than 30 calendar days is considered, at the time the suspension begins, a discharge from employment subject to [section 268.095](#).

(c) A suspension from employment with pay, regardless of duration, is not a separation from employment and the applicant is ineligible for unemployment benefits for the duration of the suspension with pay.

**Subd. 13a. Leave of absence.** (a) An applicant on a voluntary leave of absence is ineligible for unemployment benefits for the duration of the leave of absence. An applicant on an involuntary leave of absence is not ineligible under this subdivision.

A leave of absence is voluntary when work that the applicant can then perform is available with the applicant's employer but the applicant chooses not to work. A medical leave of absence is not presumed to be voluntary.

(b) A period of vacation requested by the applicant, paid or unpaid, is a voluntary leave of absence. A vacation period assigned by an employer under: (1) a uniform vacation shutdown; (2) a collective bargaining agreement; or (3) an established employer policy, is an involuntary leave of absence.

(c) A leave of absence is a temporary stopping of work that has been approved by the employer. A leave of absence is not a quit or a discharge from employment. [Section 268.095](#) does not apply to a leave of absence.

(d) An applicant who is on a paid leave of absence, whether the leave of absence is voluntary or involuntary, is ineligible for unemployment benefits for the duration of the leave.

(e) This subdivision applies to a leave of absence from a base period employer, an employer during the period between the end of the base period and the effective date of the benefit account, or an employer during the benefit year.

**Subd. 13b. Labor dispute.** (a) An applicant who has stopped working because of a labor dispute at the establishment where the applicant is employed is ineligible for unemployment benefits:

(1) until the end of the calendar week that the labor dispute was in active progress if the applicant is participating in or directly interested in the labor dispute; or

(2) until the end of the calendar week that the labor dispute began if the applicant is not participating in or directly interested in the labor dispute.

Participation includes any failure or refusal by an applicant, voluntarily or involuntarily, to accept and perform available and customary work at the establishment.



(b) An applicant who has stopped working because of a jurisdictional controversy between two or more labor organizations at the establishment where the applicant is employed is ineligible for unemployment benefits until the end of the calendar week that the jurisdictional controversy was in progress.

(c) An applicant is not ineligible for unemployment benefits under this subdivision if:

(1) the applicant stops working because of an employer's intentional failure to observe the terms of the safety and health section of a union contract or failure to comply with an official citation for a violation of federal or state laws involving occupational safety and health;

(2) the applicant stops working because of a lockout; or

(3) the applicant is discharged before the beginning of a labor dispute.

(d) A quit from employment by the applicant during the time that the labor dispute is in active progress at the establishment does not terminate the applicant's participation in or direct interest in the labor dispute for purposes of this subdivision.

(e) For the purpose of this subdivision, the term "labor dispute" has the same definition as provided in [section 179.01, subdivision 7](#).

**Subd. 13c. Offers of suitable employment.** (a) An applicant is ineligible for all unemployment benefits for eight calendar weeks if the applicant, without good cause:

(1) failed to apply for available, suitable employment of which the applicant was advised by the commissioner or an employer;

(2) failed to accept suitable employment when offered; or

(3) avoided an offer of suitable employment.

(b) "Good cause" is a reason that would cause a reasonable individual who wants suitable employment to fail to apply for, accept, or avoid suitable employment. Good cause includes:

(1) the applicant is employed in other suitable employment;

(2) the applicant is in reemployment assistance training;

(3) the applicant formerly worked for the employer and the loss of employment occurred prior to the commencement of a labor dispute, was permanent or for an indefinite period, and the applicant failed to apply for or accept the employment because a labor dispute was in progress at the establishment; or

(4) the applicant formerly worked for the employer and quit that employment because of a good reason caused by the employer.

(c) This subdivision only applies to offers of suitable employment with a new or a former employer and does not apply to any type of job transfers, position reassignments, or changes in job duties or responsibilities during the course of employment with an employer.

(d) The period of ineligibility under this subdivision begins the Sunday of the week the applicant failed to apply for, failed to accept, or avoided suitable employment without good cause.

(e) This subdivision applies to offers of suitable employment that occur before the effective date of the benefit account and that occur during the benefit year.

(f) This subdivision only applies to offers of suitable employment that are covered employment under [section 268.035, subdivision 12](#).

Subd. 14. Repealed by [Laws 2009, c. 78, art. 4, § 51, eff. July 1, 2009](#).

**Subd. 15. Available for suitable employment defined.** (a) “Available for suitable employment” means an applicant is ready, willing, and able to accept suitable employment. The attachment to the work force must be genuine. An applicant may restrict availability to suitable employment, but there must be no other restrictions, either self-imposed or created by circumstances, temporary or permanent, that prevent accepting suitable employment.

(b) Unless the applicant is in reemployment assistance training, to be “available for suitable employment,” a student who has regularly scheduled classes must be willing to discontinue classes to accept suitable employment when:

(1) class attendance restricts the applicant from accepting suitable employment; and

(2) the applicant is unable to change the scheduled class or make other arrangements that excuse the applicant from attending class.

(c) An applicant who is absent from the labor market area for personal reasons, other than to search for work, is not “available for suitable employment.”

(d) An applicant who has restrictions on the hours of the day or days of the week that the applicant can or will work, that are not normal for the applicant's usual occupation or other suitable employment, is not “available for suitable employment.” An

applicant must be available for daytime employment, if suitable employment is performed during the daytime, even though the applicant previously worked the night shift.

**Subd. 16. Actively seeking suitable employment defined.** (a) “Actively seeking suitable employment” means those reasonable, diligent efforts an individual in similar circumstances would make if genuinely interested in obtaining suitable employment under the existing conditions in the labor market area. Limiting the search to positions that are not available or are above the applicant's training, experience, and qualifications is not “actively seeking suitable employment.”

(b) To be “actively seeking suitable employment” an applicant must, when reasonable, contact those employers from whom the applicant was laid off because of lack of work and request suitable employment.

(c) If reasonable prospects of suitable employment in the applicant's usual or customary occupation do not exist, the applicant must actively seek other suitable employment to be “actively seeking suitable employment.” This applies to an applicant who is seasonally unemployed.

(d) Actively seeking a suitable job assignment or other employment with a staffing service is actively seeking suitable employment.

(e) An applicant who is seeking employment only through a union is actively seeking suitable employment if the applicant is in an occupation where hiring in that locality is done through the union. If the applicant is a union member who is restricted to obtaining employment among signatory contractors in the construction industry, seeking employment only with those signatory contractors is actively seeking employment. The applicant must be a union member in good standing, registered with the union for employment, and in compliance with other union rules to be “actively seeking suitable employment.”

### Credits

Amended by [Laws 1999, c. 107, §§ 42, 66](#); [Laws 2000, c. 343, § 4, eff. April 7, 2000](#); [Laws 2000, c. 488, art. 2, § 17](#); [Laws 2001, c. 175, §§ 27 to 31](#); [Laws 2001, c. 175, § 32, eff. May 26, 2001](#); [Laws 2001, c. 175, §§ 33 to 35, 52](#); [Laws 2003, 1st Sp., c. 3, art. 1, § 8](#); [Laws 2003, 1st Sp., c. 3, art. 2, § 20](#); [Laws 2004, c. 183, §§ 53 to 61](#); [Laws 2005, c. 112, art. 2, §§ 17 to 21, eff. July 1, 2005](#); [Laws 2005, c. 115, § 1](#); [Laws 2007, c. 128, art. 1, §§ 13 to 15, eff. Sept. 30, 2007](#); [Laws 2007, c. 128, art. 2, § 7](#); [Laws 2007, c. 128, art. 3, §§ 13 to 15, eff. Sept. 30, 2007](#); [Laws 2007, c. 128, art. 3, § 24, par. \(c\), eff. Sept. 30, 2007](#); [Laws 2007, c. 128, art. 6, §§ 52 to 61, eff. Sept. 30, 2007](#); [Laws 2008, c. 300, § 12, eff. May 13, 2008](#); [Laws 2008, c. 300, § 13, eff. July 6, 2008](#); [Laws 2008, c. 300, § 14, eff. May 13, 2008](#); [Laws 2009, c. 15, § 7, eff. April 9, 2009](#); [Laws 2009, c. 78, art. 3, § 7, eff. Dec. 1, 2008](#); [Laws 2009, c. 78, art. 3, §§ 8, 9, eff. Aug. 2, 2009](#); [Laws 2009, c. 78, art. 4, §§ 23 to 27, eff. Aug. 2, 2009](#); [Laws 2010, c. 347, art. 2, §§ 12 to 14, eff. July 1, 2010](#); [Laws 2011, c. 6, § 1, eff. July 1, 2010](#); [Laws 2011, c. 84, art. 1, § 8, eff. Aug. 7, 2011](#); [Laws 2012, c. 201, art. 2, § 4, eff. July 1, 2013](#); [Laws 2012, c. 201, art. 3, §§ 7, 8, eff. July 1, 2012](#); [Laws 2014, c. 251, art. 1, § 4, eff. June 8, 2014](#); [Laws 2014, c. 251, art. 2, § 9](#); [Laws 2014, c. 251, art. 2, §§ 10, 11, 24\(a\)\(7\), eff. June 8, 2014](#); [Laws 2015, 1st Sp., c. 1, art. 6, §§ 8, 9, eff. Aug. 2, 2015](#); [Laws 2016, c. 189, art. 9, § 3, eff. July 31, 2016](#); [Laws 2016, c. 189, art. 10, §§ 5 to 7, eff. July 31, 2016](#); [Laws 2017, c. 35, art. 1, § 3, eff. Aug. 1, 2017](#); [Laws 2017, c. 35, art. 2, §§ 5, 6, eff. Aug. 1, 2017](#); [Laws 2017, c. 35, art. 3, §§ 9 to 11, 23, eff. Aug. 1, 2017](#); [Laws 2018, c. 182, art. 1, § 65, eff. July 1, 2018](#); [Laws 2019, 1st Sp., c. 7, art. 7, §§ 4 to 8, eff. Oct. 1, 2019](#).

### [Notes of Decisions \(240\)](#)

M. S. A. § 268.085, MN ST § 268.085

Current with legislation effective through Feb. 13, 2021 from the 2021 Regular Session. Some statute sections may be more current, see credits for details. The statutes are subject to change as determined by the Minnesota Revisor of Statutes. (These changes will be incorporated later this year.)

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