

## 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.