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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 19-21

TO: STATE WORKFORCE AGENCIES

FROM: SUZAN G. LEVINE 
Principal Deputy Assistant Secretary

SUBJECT: Benefits Held by Banks and Financial Institutions as a Result of Suspicious and/or Potentially Fraudulent Activity and the Proportional Distribution Methodology Required for Recovering/Returning Federally Funded Unemployment Compensation (UC) Program Funds

1. **Purpose.** To provide guidance to states on the proportional distribution methodology for recovering federally funded UC benefits, which are held by banks and financial institutions as a result of suspicious and/or potentially fraudulent activity.
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests that State Administrators provide the information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate state staff working with banks and financial institutions to recover improperly paid UC funds.
3. **Summary and Background.**
 - a. Summary – With the tremendous increase in unemployment claims during the COVID-19 pandemic, the volume of UC deposits to banks and financial institutions initiated by states is in the hundreds of billions of dollars. A significant amount of this funding goes to direct deposit accounts. Importantly, a substantial number of fraudulent attacks have been perpetrated on UC programs. There are incidences of organized criminal operations that have used false and stolen identities to obtain UC benefits fraudulently. Banks and financial institutions are on alert, using their own fraud prevention data analytics to identify suspicious bank account activity. Banks and financial institutions have recently identified fraudulent claims filed in multiple states with respect to the same account, Social Security number, or Internet Protocol (IP) address. Upon identification of suspicious activity, banks and financial institutions are stopping payments and holding funds from such accounts. However, in many cases, some of the suspicious or potentially fraudulently obtained UC benefits that were held by the bank have been withdrawn, and there are not sufficient funds left for the bank to repay the states in full.

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ETA strongly encourages states to work proactively and collaboratively with banks and financial institutions to detect suspicious activity, ensure that accounts are not unduly suspended, and recover overpayments. Although there are various ways for the banks to distribute the funds back to the states, the Department has determined that funds should be returned to states in proportion to the amount each state paid into the account.

As described below, states must request banks and financial institutions to return held funds paid by multiple states into the same bank account, with respect to the federally funded UC programs listed below, in an amount proportionate to what the state contributed. States are also encouraged to make this request of banks with respect to state-funded UC programs. Receiving what remains of returned funds in an amount that is proportionate to what the state contributed ensures that states are treated equally with respect to these challenging circumstances.

States are also reminded that a bank or financial institution's decision to stop payment of UC benefits or return UC benefit payment(s) to the state is not sufficient, by itself, to determine that benefits have been overpaid or that fraudulent activity occurred. *See* UIPL Nos. 01-16 and 16-21 for additional details.

This guidance applies only to the programs discussed below in Section 4.a. of this UIPL. It does not apply to program funds from any other state or federally-funded government benefit programs, including but not limited to the Federal Emergency Management Agency (FEMA) Lost Wages Assistance (LWA) program, Small Business Administration (SBA) Economic Injury Disaster Loans (EIDL) program, or the SBA Paycheck Protection Program (PPP).

- b. Background – Addressing improper payments and fraud is a top priority for the Department and the entire unemployment insurance (UI) system. States play a fundamental role in ensuring the integrity of this system. Overpayment recovery is critical to protect both state and federal UI trust funds and must be given the same priority as overpayment prevention and detection. A number of guidance documents address this priority. For example, UIPL No. 05-13 advises states on overpayment recovery through offset as required by the Middle Class Tax Relief and Job Creation Act of 2012 (Public Law (Pub. L.) 112-96, February 22, 2012). UIPL No. 23-20 advises states that certain overpayment recovery activities required for the regular UI program are also required for particular Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020, (Pub. L. 116-136, March 27, 2020) programs (benefit offsets, Treasury Offset Program, cross program offsets, and interstate reciprocal recoveries), and recommends that additional overpayment activities be implemented where allowed by law. UIPL No. 28-20 reminds states of available integrity resources and describes funding available to states to prevent and detect fraud and identity theft and recover fraud overpayments in the CARES Act Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) programs. UIPL No. 28-20, Change 1, informs states about the availability of additional funding to states to support identity verification or validation of PUA claimants and to assist states with

efforts to prevent and detect fraud and to recover fraud overpayments in the PUA and PEUC programs.

4. **Guidance.**

a. Federally funded UC programs.

The programs at issue require the Secretary to fully reimburse the states for benefit payments either in advance or by way of reimbursement, as determined by the Secretary, in such amounts as the Secretary estimates the states will be entitled to receive. Because the Secretary has the same repayment obligation with respect to every state, the Department has determined that states must follow a uniform recovery methodology when funds are held due to suspicious or potentially fraudulent activity, but the bank is unable to return all of the funds paid by multiple states into the same bank account because some funds have already been withdrawn. Accordingly, states are required to ask banks/financial institutions to use the proportional distribution methodology described in Section 4.c. for returning benefit funds with respect to the following federally funded UC programs.

i. **Permanent federal programs:**

- *Unemployment Compensation for Federal Employees (UCFE)* (5 U.S.C. Chapter 85, subchapter I). *See* 5 U.S.C. 8505.
- *Unemployment Compensation for Ex-Servicemembers (UCX)* (5 U.S.C. Chapter 85, subchapter II). *See* 5 U.S.C. 8521(b), which applies the UCFE provisions to the UCX program, subject to modifications not relevant here.

ii. **Temporary programs created by the CARES Act¹:**

- *PUA* (Section 2102; 15 U.S.C. 9021). *See* 15 U.S.C. 9021(f); UIPL Nos. 16-20 and 16-20, Changes 1-5.
- *PEUC* (Section 2107; 15 U.S.C. 9025). *See* 15 U.S.C. 9025(c); UIPL Nos. 17-20 and 17-20, Changes 1-3.

¹ The CARES Act was amended on December 27, 2020, by the Consolidated Appropriations Act, 2021 (Pub. L. 116-260, Division N, Title II, Subtitle A (referred to as the “Continued Assistance Act”), December 27, 2020), and by the American Rescue Plan Act of 2021 (ARPA) (Pub. L. 117-2, March 11, 2021). The CARES Act provides states with administrative funding to operate the program through an agreement with the Department. This agreement, entitled “Agreement Implementing the Relief for Workers Affected by Coronavirus Act” (Agreement), was signed by each state in March 2020, remains in effect, and incorporates by reference the modifications and extensions required by the Continued Assistance Act and ARPA. Benefits under the listed program are payable to weeks of unemployment ending on or before September 6, 2021. *See* UIPL Nos. 14-20, 09-21, and 14-21.

- *Federal Pandemic Unemployment Compensation (FPUC)* (Section 2104; 15 U.S.C. 9023). *See* 15 U.S.C. 9023(d); UIPL Nos. 15-20 and 15-20, Changes 1-4.
- *Mixed Earners Unemployment Compensation (MEUC)* (Section 2104; 15 U.S.C. 9023).² *See* 15 U.S.C. 9023(d) and UIPL Nos. 15-20, Changes 3-4.

iii. **Programs temporarily funded by federal benefits under the CARES Act:**

- *First Waiting Week* (CARES Act Section 2105; 15 U.S.C. 9024). *See* 15 U.S.C. 9024(c) and UIPL No. 20-20. The CARES Act provides temporary 100 percent federal funding for the first week of compensable regular unemployment for states with no waiting week. This guidance applies to only first waiting week benefits that are fully federally funded.
- *Short-Time Compensation (STC)* (26 U.S.C 3306(v); CARES Act Section 2108; 15 U.S.C. 9026). *See* 15 U.S.C. 9026(a) and UIPL No. 21-20. STC programs are funded by states. However, Section 2108 of the CARES Act (15 U.S.C 9026) authorizes temporary full federal financing of STC payments in states with an existing STC program in state law through weeks of unemployment ending on or before September 6, 2021. This guidance applies to only STC benefits that are fully federally funded.

iv. **Program temporarily funded by federal benefits under the Families First Coronavirus Response Act, Division D (Emergency Unemployment Insurance Stabilization and Access Act (EUISAA) of 2020), (Pub. L. 116-127, March 18, 2020):**

- *Extended Benefits (EB)* (Federal-State Extended Unemployment Compensation Act of 1970) (EUCA) (26 U.S.C. 3304, note). *See* EUCA Section 204; UIPL Nos. 13-20 and 13-20, Change 1; UIPL Nos. 24-20 and 24-20, Changes 1-2. EB is 50 percent federally funded and 50 percent state-funded. However, EUISAA Section 4105(a) authorized temporary 100 percent federal funding of sharable EB costs for weeks of unemployment beginning after March 18, 2020, and before December 31, 2020. This was extended by ARPA Section 9022 to weeks of unemployment beginning before September 6, 2021. The proportional distribution requirement applies only to EB payments that are 100 percent federally funded.

- b. **Banks and Financial Institutions Returning UC Funds.** States are encouraged to work closely with their Originating Depository Financial Institution (ODFI) with respect to the return of UC funds. The ODFI is the state UI agency's partner bank. State UI agencies initiate the payment of unemployment benefits when they send a payment transaction file

² The MEUC program was created by the Continued Assistance Act.

to their ODFI. The ODFI sends payment entries into the ACH Network³ on behalf of the state UI agency. Only banks can initiate ACH transactions. The ODFI sends ACH transactions to a Receiving Depository Financial Institution (RDFI). The RDFI is the bank of the claimant receiving the UC benefit payment(s). The RDFI is responsible for posting the ACH transaction to the claimant's bank account. In a situation where the recipient of the UC benefit payment(s) has a bank account at the state UI agency's partner bank, the ODFI and RDFI are the same.

Banks and financial institutions have fraud prevention data analytics to identify suspicious account activity, and both ODFIs and RDFIs have been stopping payments and holding UC funds they have identified as potentially fraudulent. It is critical that state UI programs are in regular communication with their ODFI and the RDFIs that are attempting to return funds to ensure an efficient and expeditious recovery/return of any UC funds when appropriate. The proportional distribution method applies to recovery of funds from both ODFIs and RDFIs.

The Department reminds states that a bank or financial institution's decision to suspend, restrict, stop, or return UC benefit payments is not sufficient, by itself, to stop UC benefit payments, make a determination of fraud, or establish an overpayment. The state must follow the adjudication standards outlined in Sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and (3)) and the Standard for Claim Determination (CD) (20 C.F.R. Part 614, Appendix B). *See* UIPL Nos. 01-16 and 16-21 for additional details.

- c. **Required instructions to banks for returning funds.** States must request banks and financial institutions to return funds paid with respect to any of the above-listed federal UC programs into a single account by multiple states in an amount proportional to what the state contributed if the bank is holding an amount that is insufficient to allow full reimbursements to all states.

For example, consider a situation where a bank holds \$20,000 in total deposits from three different states (States A, B, and C) in a single account. State A had deposited \$10,000, and States B and C had each deposited \$5,000. Fraudsters withdraw \$10,000 from the account. States A, B, and C would request the bank to distribute the \$10,000 of benefits remaining in the bank account proportionally to what each state paid. This means that 50 percent, or \$5,000 of the remaining \$10,000, would be returned to State A, and 25 percent of the remaining \$10,000, or \$2,500, would be returned to both State B and State C.

³ The ACH Network is the national automated clearing house for electronic funds transfers. It processes electronic financial transactions, such as direct deposit and direct payments, for consumers, businesses, and federal, state, and local governments.

State	Total Benefits Paid into Account	Percent of Total	Amount Returned by Bank
State A	\$10,000	50%	\$5,000
State B	\$5,000	25%	\$2,500
State C	\$5,000	25%	\$2,500
Total	\$20,000	100%	\$10,000

d. **Regular UC Programs.** The Department defers to state law regarding the method of distribution for any regular, state-funded UC programs (including payments made under the Self-Employed Assistance (SEA) program). States should work with banks and financial institutions to differentiate between payments from the regular UC programs and payments from federally funded UC programs. However, to simplify the recovery/return process, the Department strongly encourages states to apply the same proportionate distribution methodology to the recovery of regular UC funds. The Department also encourages states to work in partnership with each other and with banks and financial institutions to facilitate the expeditious recovery/return of UC funds identified by the financial institutions as potentially fraudulent.

5. **Inquiries.** States should direct inquiries to covid-19@dol.gov and copy the appropriate ETA Regional Office.

6. **References.**

- American Rescue Plan Act of 2021 (ARPA), Pub. L. 117-2, Title IX, Subtitle A, Crisis Support for Unemployed Workers (March 11, 2021);
- Consolidated Appropriations Act, 2021, Pub. L. 116-260, Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (December 27, 2020);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act, Pub. L. 116-136, Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act;
- Families First Coronavirus Response Act, Pub. L. 116-127, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) (March 18, 2020);
- Section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. §3304 note);
- Section 303 of the Social Security Act (SSA) (42 U.S.C. §503);
- Claim Determination (CD) Standards set forth at 20 C.F.R. 614 Appendix B;
- Administrative Procedure Act, 5 U.S.C. §553;
- 5 U.S.C §8505;
- 5 U.S.C §8521;
- 19 U.S.C. §2291;
- 42 U.S.C. §5177(a);
- UIPL No. 16-21, *Identity Verification for Unemployment Insurance (UI) Claims*, issued April 13, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9141;

- UIPL No. 14-21, *American Rescue Plan Act of 2021 (ARPA) - Key Unemployment Insurance (UI) Provisions*, issued March 15, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=5669;
- UIPL No. 09-21, *Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) - Summary of Key Unemployment Insurance (UI) Provisions*, issued December 30, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3831;
- UIPL No. 28-20, Change 1, *Additional Funding for Identity Verification or Verification of Pandemic Unemployment Assistance (PUA) Claimants and Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft as well as Recover Fraud Overpayments in the PUA and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued January 15, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9897;
- UIPL No. 28-20, *Addressing Fraud in the Unemployment Insurance (UI) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued August 31, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8044;
- UIPL No. 24-20, Change 2, *American Rescue Plan Act of 2021 (ARPA) - Provisions Affecting the Federal-State Extended Benefits (EB) Program*, issued April 07, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7443;
- UIPL No. 24-20, Change 1, *Continued Assistance for Unemployed Workers Act (Continued Assistance Act) of 2020 - Provisions Affecting the Federal-State Extended Benefits Program*, issued December 31, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7779;
- UIPL No. 24-20, *Temporary Changes to the Federal-State Extended Benefits (EB) Program in Response to the Economic Impacts of the Coronavirus Disease 2019 (COVID-19) Pandemic Emergency*, issued May 14, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7132;
- UIPL No. 23-20, *Program Integrity for the Unemployment Insurance (UI) Program and the UI Programs Authorized by the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC), Pandemic Unemployment Assistance (PUA), and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued May 11, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4621;
- UIPL No. 21-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Short-Time Compensation (STC) Program Provisions and Guidance Regarding 100 Percent Federal Reimbursement of Certain State STC Payments*, issued May 3, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9622;
- UIPL No. 20-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Operating, Financial, and Reporting Instructions for Section 2105: Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week*, issued April 30, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6324;

- UIPL 17-20, Change 3, *American Rescue Plan Act of 2021 (ARPA) - Pandemic Emergency Unemployment Compensation (PEUC) Program: Extension, Elimination of Transition Rule, Increase in Total Benefits, and Extension of Coordination Rule*, issued March 26, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9169;
- UIPL 17-20, Change 2, *Continued Assistance for Unemployed Workers Act of 2020- Pandemic Emergency Unemployment Compensation (PEUC) Program: Extension, Transition Rule, Increase in Total Benefits, and Coordination Rules*, issued December 31, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9291;
- UIPL 17-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020-Pandemic Emergency Unemployment Compensation (PEUC) Program: Questions and Answers, and Revised Reporting Instructions for the PEUC ETA 227*, issued May 13, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8689;
- UIPL 17-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020- Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions*, issued April 10, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8452;
- UIPL 16-20, Change 5, *Expanded Eligibility Provisions for the Pandemic Unemployment Assistance (PUA) Program*, issued February 25, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3202;
- UIPL No. 16-20, Change 4, *Continued Assistance to Unemployed Workers Act of 2020 – Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued January 08, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6973;
- UIPL No. 16-20, Change 3, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Eligibility of Individuals who are Caregivers for Pandemic Unemployment Assistance (PUA) in the Context of School Systems Reopening*, issued August 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3849;
- UIPL No. 16-20, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Additional Questions and Answers*, issued July 21, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479;
- UIPL No. 16-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers*, issued April 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5899;
- UIPL No. 16-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions*, issued April 05, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628;
- UIPL No. 15-20, Change 4, *American Rescue Plan Act of 2021 (ARPA) - Extensions to the Federal Pandemic Unemployment Compensation (FPUC) Program and Mixed Earners Unemployment Compensation (MEUC) Program*, issued March 26, 2021, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3728;
- UIPL No. 15-20, Change 3, *Continued Assistance for Unemployed Workers (Continued Assistance) Act of 2020 — Federal Pandemic Unemployment Compensation (FPUC) Program Reauthorization and Modification and Mixed Earners Unemployment*

Compensation (MEUC) Program Operating, Reporting, and Financial Instructions, issued on January 05, 2021,

https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6122;

- UIPL No. 15-20, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—New Data Collection Instrument and Revised Reporting Instructions for Federal Pandemic Unemployment Compensation (FPUC)*, issued on June 15, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7785;
- UIPL No. 15-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Reporting Instructions and Questions and Answers*, issued on May 09, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3946;
- UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued on April 04, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297;
- UIPL No. 14-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Questions and Answers*, issued August 12, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3791;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 02, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390;
- UIPL No. 13-20, Change 1, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) - Reporting Instructions, Modification to Emergency Administrative Grants Application Requirement, and Questions and Answers*, issued May 04, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5374;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634; and
- 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*, issued January 10, 2013, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3698.