

<b>EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Unemployment Insurance
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**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 20-21**

**TO:** STATE WORKFORCE AGENCIES

**FROM:** SUZAN G. LEVINE *SGL*  
Principal Deputy Assistant Secretary

**SUBJECT:** State Instructions for Assessing Fraud Penalties and Processing Overpayment Waivers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as Amended

1. **Purpose.** To advise states of appropriate circumstances for assessing a monetary fraud penalty and for assessing interest and other collection costs on benefit overpayments created under the CARES Act (Public Law (Pub. L.) 116-136), as amended; and to provide instructions for circumstances under which a state may waive recovery of overpayments, including limited circumstances for permissible use of “blanket waivers.”
2. **Action Requested.** The Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators provide the information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate program and other staff in state workforce systems as they implement the unemployment insurance (UI)-related provisions that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic.
3. **Summary and Background.**
  - a. Summary – This UIPL describes the requirements for establishing benefit overpayments for programs authorized by the CARES Act, as amended. Section 4.c. of this UIPL provides guidance to states regarding the assessment of fraud monetary penalties, reiterates guidance recently provided for the Pandemic Unemployment Assistance (PUA) program, and supersedes guidance previously provided regarding the Federal Pandemic Unemployment Compensation (FPUC), Mixed Earners Unemployment Compensation (MEUC), and Pandemic Emergency Unemployment Compensation (PEUC) programs. States are instructed to not assess interest and other collection costs for CARES Act programs. This UIPL also provides guidance to states regarding the assessment of fraud monetary penalties, interest, and other collection costs for the first week of regular unemployment compensation (UC) that is reimbursed in accordance with Section 2105 of the CARES Act.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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Section 4.d. of this UIPL describes the eligibility criteria for waiving recovery of an overpayment, including a federal definition of “equity and good conscience” that may be applied to overpayments under PUA, FPUC, MEUC, PEUC, and the first week of regular UC reimbursed in accordance with Section 2105 of the CARES Act. In Section 4.d.iii. of this UIPL, the Department provides limited circumstances under the CARES Act when a state may process “blanket waivers” of overpayments. Additionally, after a state determines that recovery of an overpayment is waived, it must refund any amounts that were collected towards the applicable overpayment prior to the determination of waiver eligibility. It may take some time (*e.g.*, up to a year) for states to process such refunds and states are encouraged to contact the Department for technical assistance.

Attachment I to this UIPL provides a quick reference that summarizes the guidelines regarding the establishment and recovery of overpayments across unemployment benefit programs.

- b. Background – On March 27, 2020, the CARES Act was enacted. Among other provisions, the CARES Act provided for the creation of three new UC programs: PUA; FPUC; and PEUC. Section 2105 of the CARES Act also provided full federal funding for the first week of regular UC for states with no waiting week. The Department issued UIPL No. 14-20 on April 2, 2020, to provide a summary of the key UI provisions in the CARES Act.

On December 27, 2020, the Continued Assistance for Unemployed Workers Act (Continued Assistance Act) was enacted under Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021 (Pub. L. 116-260). This Act extended to March 14, 2021, the PUA and PEUC programs, as well as federal funding for the first week of regular UC at a reduced amount of 50 percent, beyond their original expiration date of December 31, 2020. The FPUC program, which expired July 31, 2020, was reauthorized to resume at \$300 for weeks of unemployment beginning after December 26, 2020. The Continued Assistance Act also permits a state to waive repayment of a PUA overpayment under certain circumstances. Additionally, the Continued Assistance Act provided for the creation of a fourth new UC program, MEUC. The Department issued UIPL No. 09-21 on December 30, 2020, to provide a summary of the key UI provisions in the Continued Assistance Act.

On March 11, 2021, the American Rescue Plan Act (ARPA) was enacted (Pub. L. 117-2). This Act extended the PUA, PEUC, FPUC, and MEUC programs to weeks of unemployment ending on or before September 6, 2021, and restored full federal funding for the first week of regular UC. The Department issued UIPL No. 14-21 on March 15, 2021, to provide guidance to states regarding the UI provisions in ARPA.

In March 2020, states signed the “Agreement Implementing the Relief for Workers Affected by Coronavirus Act” (Agreement) with the Department to administer PUA, PEUC, and FPUC, as well as to receive reimbursement for the first week of regular UC for states with no waiting week. The Agreement incorporates amendments to the CARES Act made by the Continued Assistance Act and ARPA. Many states also signed an

addendum to administer the MEUC program in January 2021. Under these agreements, each state is required to operate the programs as required by any statutory amendments and the Department's guidance.

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

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

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

- 4. Guidance.** The term “improper payment” refers to both an overpayment and an underpayment of UC. This guidance focuses on overpayments. An overpayment is created when a state determines that the individual received a payment, or a portion of a payment, to which the individual is not entitled.

Sections 2104(f) and 2107(e) of the CARES Act provide instructions for addressing fraud and overpayments in the FPUC and PEUC programs, respectively. MEUC was added to Section 2104 of the CARES Act with enactment of the Continued Assistance Act; as such, Section 2104(f) of the CARES Act also provides instructions for addressing fraud and overpayments in the MEUC program. Additionally, Section 2105 of the CARES Act temporarily provides full federal funding for the first week of regular UC in states with no waiting week, and Section 2105(f) of the CARES Act cross-references PEUC instructions found under Section 2107(e) of the CARES Act for addressing fraud and overpayments. These instructions include that, in the case of individuals who have received amounts to which they were not entitled, states must require repayment of these amounts except for limited circumstances (discussed further in Section 4.d. of this UIPL) under which such repayment would be waived.

Additionally, under the state UC program, when a state determines an overpayment was made to an individual due to fraud committed by such individual, the state must assess a penalty of at least 15 percent of the amount of the erroneous payment. *See* Section 251(a) of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Pub. L. 112-40), which created Section 303(a)(11) of the Social Security Act (SSA) (42 U.S.C. § 503(a)(11)). States must also assess and deposit penalties against individuals determined to be overpaid under federal UC 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. These federal UC programs include any federal temporary extension of UC and any federal program which increases the weekly amount of UC payable to individuals. *See* Section 251(b) of the TAAEA and Section 4 of UIPL No. 02-12.

- a. **Establishing Overpayments for CARES Act Programs.** States are reminded of the federal law requirements for identifying and establishing overpayments as described in UIPL No. 01-16. This includes: i) conducting an investigation, which includes promptly contacting the individual to whom the potential overpayment was made and providing the individual a reasonable amount of time to be heard before making an official determination that the payment is improper; ii) independently verifying information received from a computer cross-match with a federal database or other automatic processes or matches before suspending, terminating, reducing, or making a final denial of UC; and iii) gathering all relevant information and providing the individual an opportunity to be heard when information is received from a computer cross-match with any database, an outside “tip,” or other source. States must weigh the evidence, apply the applicable state and federal law, and issue a written determination that provides sufficient information to understand the basis for the determination and how/when an appeal must be filed. The written determination must also include the facts on which the determination is based, the reason for allowing or denying benefits, the legal basis for the determination, and potential penalties or consequences. Fraud determinations may not be made by an automated system.

As discussed in Section 4.d. of UIPL No. 01-16, states may not initiate recovery of an overpayment until an official determination of the overpayment has been made. Communications must be in plain language using methods that ensure the communication is most likely to be successful for all populations, including individuals with limited English proficiency. *See* UIPL Nos. 01-16; 02-16; and 02-16, Change 1.

- b. **Assessing Fraud Monetary Penalties for CARES Act Programs.**<sup>1</sup>

- i. *Application of a minimum 15 percent monetary penalty.* Within the context of the CARES Act, states must apply a minimum 15 percent monetary penalty to an individual’s overpayment when the state determines that such an overpayment was made to an individual due to fraud. Fraud includes instances where an individual knowingly has made, or caused to be made by another, a false statement or

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<sup>1</sup> Guidance will be provided separately to territories and Freely-Associated States that do not administer a regular UC program.

representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact. This fraud penalty is applicable to PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act.

Because the CARES Act provides instructions for addressing fraud and overpayments of FPUC, MEUC, PEUC, and reimbursement of the waiting week under Section 2105 of the CARES Act, the Department's previous guidance advised that states may not impose additional fraud penalties beyond the CARES Act to overpayments for these programs. However, upon further legal analysis, the Department has concluded that Section 251 of the TAAEA is applicable to these programs.

- PUA: This UIPL affirms the guidance provided under Section 5 of UIPL No. 16-20, Change 4, which superseded Question 21 of Attachment I to UIPL No. 16-20, Change 2.
  - FPUC: This UIPL supersedes Section F.1. of Attachment I to UIPL No. 15-20, specifically as it relates to the imposition of fraud penalties.
  - MEUC: This UIPL supersedes Section 4.b. of UIPL No. 15-20, Change 3, specifically as it relates to the imposition of fraud penalties.
  - PEUC: This UIPL supersedes Section E.1. of Attachment I to UIPL No. 17-20, specifically as it relates to the imposition of fraud penalties, as well as Question E.7. of Attachment I to UIPL No. 17-20, Change 1.
- ii. *Action required from the state.* States must apply the fraud monetary penalty for PUA for all fraud overpayments established on or after January 8, 2021 (the publication date of UIPL No. 16-20, Change 4). Additionally, states must apply the fraud monetary penalty for FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act for all fraud overpayments established on or after the date of publication for this UIPL.

This instruction does not prevent a state from choosing to apply such monetary penalties retroactively to the beginning of the CARES Act programs under the authority provided by TAAEA.

**c. Assessing Interest and Other Collection Costs for CARES Act Programs.**

- i. *Application of interest or other collection costs.* Regarding the application of interest or other collection costs to PUA, Section 2102(h) of the CARES Act provides that the regulations for Disaster Unemployment Assistance (DUA) at 20 C.F.R. Part 625 apply unless Section 2102 provides otherwise or there is a conflict between Part 625 and Section 2102. Neither Section 2102 nor 20 C.F.R. Part 625 provide for the assessment of interest or collection costs. Therefore, states may not apply interest or other collection costs to PUA overpayments, whether such overpayments are considered fraudulent or non-fraudulent.

Additionally, States may not apply interest or other collection costs under state law to overpayments in the FPUC, MEUC, and PEUC programs – whether such overpayments are considered fraudulent or non-fraudulent. This is not permitted under the fraud and overpayment instruction sections found at Sections 2104(f) and 2107(e) of the CARES Act. Because states may not apply interest or other collection costs to overpayments in the PEUC program and Section 2105(f) of the CARES Act cross-references PEUC for instructions on addressing fraud and overpayments, states may also not apply interest or other collection costs to overpayments of the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act.

ii. *Action required from the state.* If a state previously assessed interest and other costs for PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, the state must reconsider these assessments and refund any money collected towards such payment of interest and other collection costs.

d. **Waiving Recovery of the Overpayment for CARES Act Programs.** Federal law sets out the authority to waive recovery of overpayments under certain circumstances for PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act.<sup>2</sup> It is a matter of state discretion whether to exercise this waiver authority. A state without such waiver provisions under state law may choose to waive recovery for these programs under this federal authority.

i. *Eligibility criteria for waiving recovery of an overpayment.* For PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, a state may only waive repayment of an overpayment if the state determines that: (1) the payment of such compensation was without fault on the part of any such individual; and (2) such repayment would be contrary to equity and good conscience. State law determines when an individual is considered to not be at fault for the overpayment.

State law may also determine if repayment would be contrary to equity and good conscience. If such a standard is not addressed in state law, or, if the state chooses to defer to federal authority in waiving the recovery of overpayments for the CARES Act programs, 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 for whom it is sought; or
- The recipient of the overpayment can show (regardless of their financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment either they have relinquished a valuable right or changed positions for the worse; or

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<sup>2</sup> Waiver language for PUA was added in the Continued Assistance Act and is found under Section 2102(d)(4) of the CARES Act as amended. Waiver language for FPUC and MEUC is found under Section 2104(f)(2) of the CARES Act, as amended. Waiver language for PEUC is found under Section 2107(e)(2) of the CARES Act.

- Recovery would be unconscionable under the circumstances.
- ii. *Processing requests for waiving recovery of an overpayment.* Except as provided in paragraph (iii), the Department has a long-standing interpretation that the methods of administration for evaluating a request to waive an overpayment must be done on an individual basis and not as a matter of course. As discussed in Section 5 of UIPL No. 23-80, the state may choose to either: (1) make a determination as to the applicability of the waiver provision a part of the determination process on every overpayment case; or (2) provide, as part of each overpayment determination, information about the waiver provision and provide that individuals may request consideration of a waiver and receive an appeal determination on the actions taken.

Additionally, a waiver of the underlying benefit overpayment does not automatically waive the overpayment for FPUC and MEUC. Waiver determinations must be made on the facts and circumstances for each individual program.

As provided in Section 4.d. of UIPL No. 01-16:

States may not initiate recovery of an overpayment until an official determination of the overpayment has been made, consistent with Federal law requirements. States should have clear written procedures that provide for appropriate factfinding and independent verification of information as needed in the official determination process. State law may prohibit recovery of an overpayment until the overpayment determination, including any appeal, has become final under state law.

In addition, if state law provides for a waiver of recovery of an overpayment, the notice of the overpayment determination must provide enough information to enable the individual to understand under what circumstances a waiver may be granted and how to request such a waiver. (See UIPL No. 23-80.) Until the period for a waiver request has elapsed, or, if an individual applies for a waiver, the waiver determination is made, states may not commence recovery of overpayments. State law may provide that if a request for a waiver is filed the state may not commence recovery of an overpayment until the decision on the waiver request, including any appeal, has become final under state law.

If an overpayment is waived, the state must not recover any of the waived amount. If an overpayment is not waived, then the offset provisions described in Departmental guidance (summarized by program in Attachment I to this UIPL) and other recovery provisions under state law apply.

- iii. *Limited circumstances under the CARES Act for which a state may process “blanket waivers” for waiving recovery of overpayments.* There are two specific circumstances under which a state may approve waiver of recovery for overpayments using a single set of facts (*i.e.*, approve a “blanket waiver”). Application of these circumstances does

not require the individual to submit a request for such a waiver. However, the state must include documentation of its waiver determination on the individual's claim.

Without the authority to process “blanket waivers” as described in this UIPL, states would instead be required to individually determine that many individuals are eligible for waiving the repayment based on the same set of facts – potentially the same number as would be affected by a “blanket waiver.” These individualized determinations could result in the same amount of overpayment being forgiven, but at a greater cost to the state because of the workload generated from processing individual waivers.

A. When an individual is eligible for payment under an unemployment benefit program for a given week, but through no fault of the individual, they were paid incorrectly under either the PUA or PEUC program at a higher weekly benefit amount (WBA).

States have experienced significant workload increases and quickly implemented four new unemployment benefit programs over the last year, each of which has a defined place in the program progression hierarchy (*see* Attachment I to UIPL No. 14-21 for the latest iteration). This program progression order was modified due to additional amounts provided under PEUC through enactment of the Continued Assistance Act on December 27, 2020, and again with the enactment of ARPA on March 11, 2021, resulting in certain individuals who were receiving PUA at the time to be switched to PEUC. Additionally, this program progression order has changed as states have triggered “on” and “off” Extended Benefit (EB) periods because of changing state unemployment rates. States have experienced challenges adapting their computer systems and customer service processes quickly to implement these changes. This has sometimes resulted in overpayments for large numbers of individuals who had to move back and forth through programs that had varying WBA calculations.

The defining aspect of this circumstance under which a state may process “blanket waivers” for overpayment recovery is that the individual is eligible for benefits for the week in question; the sole reason for the overpayment is because of a difference in WBA calculations across programs, and recovery would be unconscionable under the circumstances. These types of overpayments meet the criteria for a “blanket waiver” because:

- The individual is without fault: Overpayments under these circumstances occurred because a unique confluence of circumstances (*i.e.*, an avalanche of unemployment claims precipitated by a pandemic, implementation of multiple new programs, and antiquated computer systems) hindered the states' ability to properly switch individuals between the CARES Act programs. Therefore, if the state did not properly switch a number of individuals between programs and this failure to switch programs was not due to the fault of the individual, this condition would be met.
- Repayment would be contrary to equity and good conscience: The United States is entering its second year of a pandemic that has had severe

consequences on the economy and individuals' ability to find and maintain employment. Since the beginning of the pandemic, unemployment has ranged from 14.8 percent at its peak to its current 6.0 percent.<sup>3</sup> While unemployment has decreased from its peak at the beginning of the pandemic, 6.0 percent is still significantly higher, almost double, the unemployment rate for the three years prior to the pandemic. Additionally, the amendments to the CARES Act and the changes to guidance have required states to make significant changes to their administration of the programs. These changes in the statute and guidance made it challenging for states to properly administer the programs, resulting in the overpayments in the situations described above. As such, it would be extremely unfair to require individuals to repay overpayments which occurred as a result of the administration of the various programs and the CARES Act generally – and thus, recovery would be unconscionable under the circumstances.

The authority for states to apply this “blanket waiver” is limited to overpayments made under the PUA, PEUC, and MEUC programs. Such overpayments might occur in moving weeks of unemployment from PUA or PEUC to regular UC as a result of a quarter change or the individual's original benefit year ending, or moving weeks of unemployment from PEUC to PUA. Because the individual is still eligible for benefits for the week in question, there is no overpayment under the FPUC programs. In the case of moving a week of unemployment from PEUC to PUA, there may be an overpayment under the MEUC program that may also be waived under these circumstances.

For example, if the individual, through no fault of their own, is paid PUA for a week when they otherwise would have been eligible for a lesser WBA with regular UC, the state must stop the PUA claim, establish an overpayment on the PUA claim, and the individual may then file weeks against the regular UC claim. Such an overpayment might occur because, when calculating the WBA, the PUA program considers wages earned in the last taxable year and regular UC generally considers wages earned in the first four of the last five completed calendar quarters. An individual filing in March 2021 may have wages from the calendar year 2020 considered for calculation of the PUA WBA and wages from October 2019-September 2020 considered for calculation of the regular UC WBA. In this situation, the state may waive recovery of the resulting PUA overpayment because the individual is not at fault in its creation and recovery would be unconscionable under the circumstances.

B. Specific to PUA, when, through no fault of the individual, the state paid the individual a minimum WBA based on DUA guidance other than UIPL No. 03-20.

Some states experienced confusion in implementing PUA, which is a new unemployment benefit program that is structured differently from any other existing

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<sup>3</sup> See Bureau of Labor Statistics Civilian Unemployment Rate available online at: <https://www.bls.gov/charts/employment-situation/civilian-unemployment-rate.htm>. (Accessed April 5, 2021).

unemployment benefit program. While PUA, in many cases, refers to the DUA regulations, the assistance period is different. The disaster assistance period under DUA typically lasts 26 weeks; the pandemic assistance period under PUA extends across nearly two full calendar years based on a single public health emergency. To facilitate administration of the PUA program, the Department instructed states that the minimum WBA for the PUA program is the amount in UIPL No. 03-20. Some states incorrectly used minimum DUA WBAs published for later quarters instead of using the minimum WBA set out in UIPL No. 03-20 as the Department instructed.

The defining aspect of this circumstance under which a state may process “blanket waivers” for overpayment recovery is that the individual is eligible for benefits for the week in question; the sole reason for the overpayment is because the state did not implement the correct minimum WBA for the PUA program and recovery would be unconscionable under the circumstances. These types of overpayments meet the criteria for a “blanket waiver” because:

- Individual is without fault: Under this circumstance, it is clear that individual recipients of payments were not at fault for the overpayments as state confusion caused the overpayment.
- Repayment would be contrary to equity and good conscience: These overpayments are relatively small and states would have to invest a significant amount of resources to establish and recover relatively small overpayment amounts. Additionally, many individuals collecting PUA do not work in employment covered by the regular UC program which means it is unlikely that these individuals will receive unemployment benefits (outside the scope of PUA) from which future benefits may be offset. To recover these overpayments, states would need to use other collection methods, such as wage garnishments, which may prove challenging for self-employed individuals. Requiring states to expend significant resources to recover these overpayments could reduce the resources states have to properly and efficiently process initial and continued claims during this period of unprecedented need. It would be extremely unfair to require states to expend the resources to establish and collect these overpayments to the detriment of timely processing and payment of claims – and thus, recovery would be unconscionable under the circumstances.

The authority for states to apply this “blanket waiver” is limited only to overpayments under the PUA program. PEUC does not carry the same risk for state confusion as it relies on calculating the WBA under existing state UC law. Further, because the individual is still eligible for benefits for the week in question, there is no overpayment under the FPUC or MEUC programs.

iv. *Action required from the state.* A state must choose one of the following options.

- **Option #1:** Not exercise the waiver authority for these CARES Act programs.
- **Option #2:** Exercise the waiver authority described in paragraph (i) in accordance with paragraph (ii), and not process “blanket waivers” for the two circumstances described in paragraph (iii).
- **Option #3:** Exercise the waiver authority described in paragraph (i) in accordance with paragraph (ii) (as described in Option #2) and process “blanket waivers” for the two circumstances described in paragraph (iii).

A. Instructions for states choosing Option #2 or Option #3. If the state chooses Option #2 to exercise its waiver authority, the state must: (A) exercise such authority for all of the CARES Act programs, including PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act; (B) as described in prior guidance, apply this practice to all overpayments created since the beginning of the CARES Act programs; and (C) as described in prior guidance, if it has not already done so, notify all individuals with a non-fault overpayment of their ability to request a waiver. The notification must include how to request the waiver.

If the state chooses Option #3 to exercise the waiver authority described in this subsection and processes “blanket waivers” for the two circumstances described in paragraph (iii), in addition to the instructions provided for Option #2, the state must assess all overpayments created since the beginning of the CARES Act programs against the two circumstances described in paragraph (iii). In addition and separate to processing the “blanket waivers,” the state, if it has not already done so, must notify all remaining individuals with a non-fault overpayment of their ability to request a waiver. The notification must include how to request the waiver.

For states choosing Option #2 or Option #3, when processing individual waiver requests under paragraph (i) in accordance with paragraph (ii), states must, upon receipt of the waiver request, pause further collections until a determination of waiver eligibility is made. This applies only to individual requests for waiver and not the state’s assessment under “blanket waivers”. Such a practice helps to mitigate instances requiring refunds described in sub-paragraph (B).

B. Addressing overpayment amounts collected prior to approving waivers under Option #2 and Option #3. If an individual is determined eligible for a waiver of overpayment recovery under PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act under an individual waiver request or a “blanket waiver”, the state must refund any amounts that were collected towards the applicable overpayment prior to the determination of waiver eligibility.

Some states may have assessed an overpayment for particular weeks of unemployment and, upon collecting that overpayment amount from the individual,

restored a balance to the individual's claim that then allowed the individual to collect additional weeks of unemployment benefits based on the restored balance. In such cases, it may not be appropriate to issue a refund. The state may not issue a refund for any benefits that were restored and then subsequently paid to the individual.

Given the many demands on state agencies, it may take some time (*e.g.*, up to a year) for states to program their computer systems and notify individuals before they process such refunds. States are encouraged to contact the Department for technical assistance, including to request support in drafting notification language.

5. **Inquiries.** Please direct inquiries to [covid-19@dol.gov](mailto:covid-19@dol.gov) with a copy to the appropriate ETA Regional Office.

6. **References.**

- American Rescue Plan Act of 2021 (ARPA), including Title IX, Subtitle A, Crisis Support for Unemployed Workers (Pub. L. 117-2);
- Consolidated Appropriations Act, 2021, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) (Pub. L. 116-260);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act, including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act (Pub. L. 116-136);
- Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Pub. L. 112-40);
- Section 303 of the Social Security Act (SSA) (42 U.S.C. §503);
- 20 C.F.R. Part 625;
- 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](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](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](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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8044);
- 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](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=6324);

- UIPL No 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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8689);
- UIPL No. 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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8452);
- UIPL No. 16-20, Change 4, *Continued Assistance to Unemployed Workers Act of 2020-Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued January 8, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6973](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6973);
- 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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479);
- 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 January 5, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6122](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6122);
- 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 April 4, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9297](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297);
- 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 2, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3390](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390);
- UIPL No. 03-20, *Minimum Disaster Unemployment Assistance (DUA) Weekly Benefit Amount: January 1 - March 31, 2020*, issued December 12, 2019, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3675](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3675);
- UIPL No. 02-16, Change 1, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information*, issued May 11, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5491](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5491);
- UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits*, issued October 1, 2015, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4233](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4233);
- UIPL No. 01-16, *Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures*, issued October 1, 2015, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5763](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5763);
- UIPL No. 02-12, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)*, issued December 20, 2011, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6707](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6707); and

- UIPL No. 23-80, *Implementation of Wavier of Overpayment Provisions in State UI Laws*, issued March 11, 1980, [https://oui.doleta.gov/dmstree/uipl/uipl180/uipl\\_2380.htm](https://oui.doleta.gov/dmstree/uipl/uipl180/uipl_2380.htm).<sup>4</sup>

7. **Attachment(s)**.

- **Attachment I:** Overpayment Recovery across Unemployment Compensation (UC) Programs.

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<sup>4</sup> We note that the link to this document shows an expiration date of February 28, 1981. However, per Training and Employment Notice No. 15-20, issued January 14, 2021, this remains an active UIPL.

## Quick Reference for Overpayments across Unemployment Compensation (UC) Programs

	Regular UC <sup>5</sup>	EB <sup>6</sup>	PUA <sup>7</sup>	FPUC <sup>8</sup>	MEUC <sup>9</sup>	PEUC <sup>10</sup>	First Week of Regular UC <sup>11</sup>
<b>FRAUD</b>							
Subject to minimum 15% monetary penalty?	Required	Required	Required	Required	Required	Required	Required
Disqualification period	State law	State law	See 20 C.F.R. 625.14	State law	State law	State law	State law
<b>BENEFIT OFFSETS</b>							
Offsets limited to no more than 50%	State law	State law	Yes	Yes	Yes	Yes	State law
Offsets limited to 3-years	State law	State law	No	Yes	Yes	Yes	Yes

<sup>5</sup> **Regular Unemployment Compensation (UC)** Reference: State law

<sup>6</sup> **Extended Benefits (EB)** Reference: State law

<sup>7</sup> **Pandemic Unemployment Assistance (PUA)** Reference: Section C.13.h. of Attachment I to UIPL No. 16-20; Section H of Attachment I to UIPL No. 16-20, Change 1; Questions 20-23 of Attachment I to UIPL No. 16-20, Change 2; and Section C.21. of Attachment I to UIPL No. 16-20, Change 4.

<sup>8</sup> **Federal Pandemic Unemployment Compensation (FPUC)** Reference: Section F. of Attachment I to UIPL No. 15-20 and Section B of Attachment I to UIPL No. 15-20, Change 1.

<sup>9</sup> **Mixed Earners Unemployment Compensation (MEUC)** Reference: Same as FPUC.

<sup>10</sup> **Pandemic Emergency Unemployment Compensation (PEUC)** Reference: Section E of Attachment I to UIPL No. 17-20 and Section F of Attachment I to UIPL No. 17-20, Change 1.

<sup>11</sup> **First Week of Regular UC for States with No Waiting Week:** This refers to weeks that are reimbursed in accordance with Section 2105 of the CARES Act. Reference is the same as PEUC.

	<b>Regular UC<sup>5</sup></b>	<b>EB<sup>6</sup></b>	<b>PUA<sup>7</sup></b>	<b>FPUC<sup>8</sup></b>	<b>MEUC<sup>9</sup></b>	<b>PEUC<sup>10</sup></b>	<b>First Week of Regular UC<sup>11</sup></b>
Subject to Cross-Program Benefit Offsets <sup>12</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
Subject to Interstate Benefit Offsets <sup>13</sup>	Yes	Yes	Yes	Yes	Yes	Yes	Yes
<b>CONSIDERATION TO WAIVE RECOVERY</b>							
Eligible for Waiver Consideration	State law	State law	Yes, at state's choice				
Criteria	State law	State law	(A) Individual is not at fault; and (B) repayment would be contrary to equity and good conscience	(A) Individual is not at fault; and (B) repayment would be contrary to equity and good conscience	(A) Individual is not at fault; and (B) repayment would be contrary to equity and good conscience	(A) Individual is not at fault; and (B) repayment would be contrary to equity and good conscience	(A) Individual is not at fault; and (B) repayment would be contrary to equity and good conscience
Determining "non-fault" status	State law	State law	State law	State law	State law	State law	State law

<sup>12</sup>Applies to states that have signed the Cross-Program Offset Recovery Agreement (CPORA).

<sup>13</sup>Applies to states that have signed the Interstate Recovery Offset Agreement (IRORA).

	<b>Regular UC<sup>5</sup></b>	<b>EB<sup>6</sup></b>	<b>PUA<sup>7</sup></b>	<b>FPUC<sup>8</sup></b>	<b>MEUC<sup>9</sup></b>	<b>PEUC<sup>10</sup></b>	<b>First Week of Regular UC<sup>11</sup></b>
Assessing “equity and good conscience”	State law	State law	State law or Section 4.d. of this UIPL	State law or Section 4.d. of this UIPL	State law or Section 4.d. of this UIPL	State law or Section 4.d. of this UIPL	State law or Section 4.d. of this UIPL
<b>RESOURCES</b>							
Reporting Requirements	ETA 227	ETA 227	ETA 902P Attachment II to UIPL No. 16-20, Change 4	ETA 227 (FPUC) Attachment I to UIPL No. 15-20, Change 2	ETA 227 (MEUC) Attachment II to UIPL No. 15-20, Change 3	ETA 227 (PEUC) Section G of Attachment I to UIPL No. 17-20 and Section 4.b. of UIPL No. 17-20, Change 1	ETA 227