

Attachment I to UIPL No. 27-20, Change 1

Questions and Answers about the Lost Wages Assistance (LWA) Program

Contents

Defining “Eligible Claimants” 2

Self-Certification 2

Receiving at least \$100 3

Important Program Dates 4

Payment of Benefits 5

Benefit Costs 5

State Match 6

Administrative Costs 7

Reporting Requirements 8

Interplay with FPUC Extension if Enacted 9

Defining “Eligible Claimants”

1. Question: Is the state required to notify individuals who may be eligible for Lost Wages Assistance (LWA)? If so, is there a required mechanism to make that notification?

Answer: Yes. The state must contact an individual who is potentially eligible for LWA to allow him or her to submit a self-certification if his or her unemployment or partial unemployment is due to disruptions caused by COVID-19. This includes all individuals who meet the \$100 eligibility provision for weeks of unemployment ending on or after August 1, 2020.

Additionally, an individual who was previously unemployed or partially unemployed as a result of COVID-19 after August 1, 2020, but now is employed and no longer filing or receiving unemployment benefits, may still be eligible for the period after August 1, 2020 until he or she regains employment. As such individuals are no longer filing for unemployment benefits, the state must reach out to the individuals about his or her potential eligibility. The state must use administrative costs awarded for implementing LWA for this outreach.

There is no required mechanism to notify potentially eligible individuals. States, however, are strongly encouraged to provide easy-to-understand information regarding LWA, including:

- 1) The steps individuals must take to satisfy the self-certification requirement, and
 - 2) That it is important for individuals to respond immediately.
2. Question: What appeal rights does an individual have if the state denies payment of LWA benefits because he or she does not meet the requirement to be unemployed or partially unemployed due to COVID-19 or he or she does not meet the \$100 threshold?

Answer: Section 4(d) of the Presidential Memo defines “eligible claimants” as individuals who receive, for the week LWA is sought, at least \$100 per week in eligible unemployment compensation. The state is responsible for determining if an individual satisfies the definition of being an “eligible claimant.” Individuals who do not satisfy the “eligible claimant” definition and are not eligible for the supplemental LWA payment do not have any appeal rights outside of the state’s standard Unemployment Insurance appeals process. The state must identify its appeal process in its State Administrative Plan.

Self-Certification

3. Question: How frequently must an individual self-certify that he or she is unemployed or partially unemployed due to COVID-19?

Answer: An individual does not need to certify each week that he or she is “unemployed or partially unemployed due to disruptions caused by COVID-19.” The individual instead must certify once per claim:

- If the individual qualifies for Pandemic Unemployment Assistance (PUA), he or she is presumed to have met the self-certification requirements.
- For individuals with new or reopened/additional unemployment claims, the self-certification can generally be done at the time of the claim filing. States with existing questions as part of their initial application that ask claimants if their separation is due to COVID-19 will meet this requirement.
- For individuals with an existing unemployment claim, the state will need to provide a one-time special certification as of the LWA program start date.

4. Question: Is there a documentation requirement related to individuals self-certifying that their unemployment or partial unemployment is due to disruptions caused by COVID-19?

Answer: Under this program, no documentation is presently required.

5. Question: PUA allows an otherwise eligible individual to be covered if he or she is unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason in the CARES Act. For LWA, must the individual's job separation be directly related to COVID-19?

Answer: No, the most recent job separation does not need to be directly related to COVID-19. At the time of self-certification for the program, the individual must be unemployed or partially unemployed due to disruptions caused by COVID-19.

6. Question: For individuals receiving benefits under the Short Time Compensation (STC) program or as part of mass claims, what is the recommended process for a state to get self-certifications that unemployment is due to a disruption from COVID-19? In these cases, the employer provides the eligibility information. Can the state accept a certification from the employer for these claims?

Answer: In these circumstances, if the employer is able to certify that the individual's lay-off or reduction in hours is due to the disruption from COVID-19, then an employer certification on behalf of the claimant is appropriate. If the employer is unable to do so, then the individual must be contacted directly to self-certify.

Receiving at least \$100

7. Question: How does a state determine if an individual meets the eligibility requirement under the Presidential Memo that he or she must receive at least \$100 in benefits for the underlying unemployment benefit program?

Answer: This eligibility provision is determined at the individual level based on the individual's weekly benefit amount (WBA). An individual is determined to have received at least \$100 per week for purposes of being an "eligible claimant" if the individual's WBA as provided on the monetary determination is at least \$100 (including

any dependents' allowance). In addition, the week in question must be considered compensable.

8. Question: My state is concerned that people who have benefit amounts of less than \$100 are excluded from LWA. Can a state use money from the Coronavirus Relief Funds under Title V of the CARES Act (CRF) or local funds to supplement the WBA for these individuals to raise them up to \$100 so they qualify for LWA pursuant to the Presidential Memo?

Answer: No. The Presidential Memo explicitly provides that individuals must receive at least \$100 from one of the listed unemployment benefit programs. Using other funds to pay an amount in addition to the unemployment benefit is not sufficient to qualify an individual to receive the \$100 eligibility provision pursuant to the Presidential Memo.

Important Program Dates

9. Question: What does FEMA consider the “period of assistance” for LWA?

Answer: The Period of Assistance is August 1, 2020 to December 27, 2020 or termination of the program, whichever is sooner. Assistance from FEMA for providing supplemental payment for lost wages may terminate earlier if:

- (1) FEMA expends \$44 billion from the Disaster Relief Fund (DRF) for the Lost Wages Assistance program (LWA); or
- (2) The total, unobligated balance of the DRF account decreases to \$25 billion; or
- (3) Legislation is enacted that provides, due to the COVID-19 outbreak, supplemental federal pandemic unemployment compensation or similar compensation for unemployed or partially unemployed individuals.

10. Question: Will individuals who have already been provided their underlying benefits for weeks ending August 1 or after receive LWA retroactively?

Answer: Yes. LWA is payable retroactively to eligible claimants beginning with the week ending August 1, 2020. However, if an individual becomes unemployed after the week ending August 1, 2020, he or she may only receive LWA for weeks in which the individual qualifies for an underlying unemployment benefit and meets the eligibility requirements for LWA.

11. Question: If a determination of eligibility for a prior week of unemployment is not made until after the LWA program is terminated, will LWA be paid for that week?

Answer: The LWA program will terminate once one of the four termination provisions is met; no further LWA will be payable at that point. An individual whose eligibility status is determined after this end date is not entitled to LWA for weeks of unemployment occurring before the end date.

Payment of Benefits

12. **Question:** May payment of LWA be combined with the underlying unemployment benefit payments when issued?

Answer: Yes. The state has discretion as to whether it issues a combined payment or separate payment for LWA. But the state must be able to account for LWA separately from the underlying benefit. Whether paid together or separately, the LWA payments must be paid at the same time as the underlying benefit (either weekly or bi-weekly).

13. **Question:** Are LWA payments subject to federal income tax?

Answer: Yes. LWA is subject to federal income tax. Providing individuals with the option to have federal income tax withholding is a determination for the state to make. The state must communicate to individuals that such payments are taxable. The state should encourage individuals to contact the IRS for specific guidance on the tax treatment of unemployment compensation (*see* <https://www.irs.gov/taxtopics/tc418>).

14. **Question:** What are the offset rules for LWA? Is a state required or able to offset LWA payments for past debt of unemployment benefits (overpayments) and child support?

Answer: Offsets of LWA payments other than for tax withholding are not permitted. States may not offset LWA payments for child support debts. See information on overpayment recovery below.

Benefit Costs

15. **Question:** If a state has previously deposited its CRF into its unemployment account, may those funds be used for the \$100 add-on to provide a \$400 LWA payment?

Answer: No. Once the CRF is deposited into the state's unemployment account, the funds become subject to the withdrawal standard set forth in Section 3304(a)(4) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(4)) and Section 503(a)(5) of the Social Security Act (SSA) (42 U.S.C. 503(a)(5)). The state cannot use these funds to pay the additional \$100 benefit on top of the \$300 Federal LWA payment.

16. **Question:** Are grant dollars pre-funded or reimbursed? Is it first come, first served with a hard cut off based on estimated expenditures?

Answer: Once a grant is approved and a state is prepared to implement the program, the state will draw down these funds from Treasury as required (as frequently as weekly). The funds will provide for the state to retroactively pay eligible claimants from August 1, 2020. Each additional week will be separately funded as they are required by the state for claims paid. This is similar to the mechanism used for states to draw down the FPUC program.

17. Question: Will the funds to pay LWA flow into the state unemployment account in the Unemployment Trust Fund (UTF)?

Answer: No. States may not use the funds in their state unemployment account in the UTF to process funding for LWA payments. A state must establish a separate account to receive the funding to pay LWA. The state must be able to account for the funds separately from its state unemployment accounts. The state is reminded that it may only use its state unemployment account, including the benefit payment accounts (which are considered part of the state's trust fund) to pay regular unemployment compensation or for other statutorily authorized purposes, such as those authorized under the Reed Act or other special distributions that flow into the state's trust fund.

18. Question: If a state is using other money to provide individuals with an amount higher than \$300, is there something that limits the state to only contributing \$100 or may the state provide additional money?

Answer: The Presidential Memo authorized up to \$400 through the LWA program, including a \$300 federal contribution. If the state chooses to provide an amount beyond this using non-UI funds, it is considered a separate state program which would be subject to authorization under state law. The administrative costs associated with this additional payment must be tracked separately from UI administration and LWA administration costs and allocated appropriately.

State Match

19. Question: What state funds may be used to cover the state's 25 percent match for LWA?

Answer: If a state wants to default to having individuals receive a \$300 additional LWA payment, states may use the total benefits paid with state unemployment funds to eligible claimants (individuals who meet both the self-certification and \$100 eligibility provision) beginning with the week ending August 1, 2020 and moving forward to the end of the program. This total amount is used to cover the state match for LWA paid on both regular UC and all federally-funded programs.

If a state wants individuals to receive a \$400 additional LWA payment, the state must identify other state funds, which may include CRF, general revenue, or other state fund sources, to cover the \$100 state contribution in addition to the \$300 federal contribution.

20. Question: Is the calculation for the state's 25 percent match calculated at the aggregate level or the individual level?

Answer: The requirement is to meet the state's 25 percent match at an aggregate level.

21. Question: What happens if a state falls short of meeting the 25 percent match?

Answer: If a state falls short of meeting the 25 percent match, it will be liable for paying FEMA the difference.

22. Question: What are other circumstances under which the state must reimburse FEMA?

Answer: The state is responsible for refunding to FEMA any unobligated balances that FEMA paid that are not authorized to be retained per 2 C.F.R. 200.343(d).

Additionally, the state is also responsible for recovering assistance awards from claimants obtained fraudulently, expenses for unauthorized items or services, expenses for items for which assistance is received from other means, and awards made in error. (44 C.F.R. 206.120(f) (4 and 5)). Section III.E of the State Administrative Plan template provides additional guidance on the Recovery of Funds necessary procedures.

23. Question: Can a state use benefit payments for fully federally-funded unemployment benefit programs (UCFE, UCX, PUA, PEUC, and EB) to meet the state's 25 percent match requirement to receive the \$300 federal share for LWA?

Answer: No. State funds must be used to meet this match requirement.

24. Question: May a dependent's allowance be used towards meeting the state's 25 percent match in underlying state-funded benefits to provide the \$300 LWA payment to individuals?

Answer: Yes. Insofar as the dependent's allowance is paid using state funds to an eligible claimant, it is included in the aggregate calculation of state-funded benefits for purposes of meeting the state's 25 percent match to provide the \$300 LWA payment.

Administrative Costs

25. Question: May a state use funding from its state grant to administer the regular UI program from the Department or funding provided under the Reed Act, section 4102 of the Families First Coronavirus Response Act, or for administration of CARES Act programs to pay for administration of the LWA program?

Answer: Generally no. If a state uses UI resources that are currently used to support administration of the UI programs (such as the UI IT systems, staff, call-centers, and building costs) to support administration of the LWA program, then the state must develop a cost allocation plan. This is necessary to ensure that funding from USDOL-funded UI programs only supports those programs and FEMA funding for the LWA program only supports administration of the LWA program.

26. Question: May FEMA administrative funds provided to states to administer the LWA program be used to cover all staff costs?

Answer: UI employees are federally funded by the Department. The Department's funding may not be used to administer the LWA.

As such, the state may utilize the funding provided by FEMA for administrative costs under the LWA grant for employees' regular and overtime hours to deliver LWA. Example: 40 hours per week is normally paid with 100 percent UI funding. The employee is now spending 50 percent of her time on LWA. So long as the state does not charge 50 percent of the employee's cost to the UI administrative grant for the period of time that the employee is supporting LWA, the state can use FEMA funding for administrative costs to pay the employee's costs for administering LWA.

States must account for the time charges and demonstrate a proportional allocation of staff costs to facilitate the delivery of the program so as to avoid any improper duplication of charging. As a general rule, the state may submit charges to administer LWA for all employee overtime and any portion of the employee's regular time costs not also paid for with other federal funds.

27. Question: May states receive upfront LWA administrative funding to support implementation and start-up costs for the LWA program?

Answer: States should identify what their reasonable costs are and can then draw that amount down (to a certain point) immediately upon implementation. That amount will be included in the grant award letter.

Reporting Requirements

28. Question: What are the reporting requirements for the LWA program including financial and programmatic performance reporting?

Answer: States are required to submit various financial and programmatic reports as required by 2 C.F.R. Part 200 and 44 C.F.R. 206.120(f)(2).

Programmatic performance reports must include:

- (1) the number and dollar amount of applications approved weekly;
- (2) the number of individuals eligible to receive assistance under this award, broken down by the programs identified in Section 4(d)(i) of the August 8, 2020 Presidential Memorandum;
- (3) the amount of assistance disbursed weekly; and
- (4) the number of appeals received. In addition, states must comply with federal financial reporting requirements and closeout reporting requirements within 90 days after the end of the period of performance.

The grant award letter and State Administrative Plan outlines specific financial and programmatic reporting requirements.

Interplay with FPUC Extension if Enacted

29. Question: If another stimulus package is approved and it includes a new retroactive FPUC-type payment, resulting in termination of this program, do all funds distributed through this Presidential Memorandum need to be recollected to reimburse FEMA?

Answer: The LWA program must terminate immediately if legislation providing supplementary unemployment benefits (*e.g.*, an extension to the FPUC program) is enacted. The question of establishing LWA overpayments or otherwise addressing weeks of possible overlap cannot be answered without knowing what the new legislation includes.