

I MINA'TRENTAI SAIS NA LIHESLATURAN GUÅHAN
Informational Briefing/Hearing/ Oversight Hearing / Roundtable Hearing

STANDING COMMITTEE / SENATOR	HEARING	COMMITTEE REPORT	HEARING DATE	DATE COMMITTEE REPORT FILED	NOTES
Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning	Informational Hearing	Guam Department of Labor, updates on the Federal Pandemic Unemployment Assistance Program	2/1/21 1:00 p.m.	3/3/21 2:22 p.m.	



OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,
Procurement, and Statistics, Research, and Planning

I Mina'trentai Sais Na Liheslaturan Guåhan • 36th Guam Legislature

February 26, 2021

The Honorable Tina Rose Muña Barnes

Chairperson, Committee on Rules

I Mina'trentai Sais Na Liheslaturan Guåhan

163 Chalan Santo Papa

Hagåtña, Guam 96910

**RE: Committee Report on Informational Hearing on the Guam Department of Labor,
Updates on Federal Pandemic Unemployment Assistance Program**

Håfa adai Chairperson Muña Barnes,

Transmitted herewith is the Committee Report on the Informational Hearing on the Guam Department of Labor, Updates on Federal Pandemic Unemployment Assistance Program.

Si Yu'os ma'åse',

Sabina Flores Perez

Sabina Flores Perez

**COMMITTEE ON RULES
RECEIVED:**

February 26, 2021

3:29 P.M.



OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,
Procurement, and Statistics, Research, and Planning

I Mina'trentai Sais Na Liheslaturan Guåhan • 36th Guam Legislature

COMMITTEE REPORT

INFORMATIONAL HEARING on the

Guam Department of Labor, Updates on Federal Pandemic Unemployment Assistance Program

By: Senator Sabina Flores Perez



Charlene Flores <charlene@senatorperez.org>

1st Notice of Virtual Informational Hearing: Monday, February 1, 2021 at 1:00 p.m.

Office of Senator Sabina Perez <office@senatorperez.org> Mon, Jan 25, 2021 at 9:13 AM
To: eporters@kuam.com, Sabrina Salas Matanane <sabrina@kuam.com>, nestor@kuam.com, Chris Barnett <malafunkshun@kuam.com>, joan@kuam.com, mindy@postguam.com, editor@postguam.com, John O'Connor <john@postguam.com>, Nick Delgado <nick@postguam.com>, reporters@postguam.com, news@sorensenmediagroup.com, news@guampdn.com, news@k57.com, rlimtiaco@guampdn.com, haidee@postguam.com, kstokish@gmail.com, editor@pacificislandtimes.com, Maureen Maratita <publisher@glimpsesofguam.com>, reporter2@glimpsesofguam.com, Guam Progress <guamprogress@yahoo.com>, colinperez@gmail.com, Gabejereza@gmail.com, "Alexandra Elizabeth T. Benavente" <aebenavente@gdoe.net>, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, mar_vic_cagurangan@yahoo.com, Jason Salas <jason@kuam.com>, Sabrina Salas Matanane <newsdirector@kuam.com>, slimtiaco@guampdn.com, raygibsonshow@gmail.com, pattiontheradio@yahoo.com, news@kanditnews.com
Cc: phnotice@guamlegislature.org, ag@oagguam.org

January 25, 2021

MEMORANDUM

To: All Senators, Stakeholders and Media
Fr: Senator Sabina Flores Perez, *Chairperson*
Subject: **1st Notice of Virtual Informational Hearing: Monday, February 1, 2021 at 1:00 p.m.**

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistic, Research and Planning will be conducting an informational hearing on **Monday, February 1, 2021 at 1:00 p.m.** This virtual informational hearing will take place in via Zoom Video Conference Platform. The agenda is as follows:

9:00 a.m.**Guam Department of Labor**

- Updates on Federal Pandemic Unemployment Assistance Program

Testimony on this informational hearing should be addressed to Senator Sabina Flores Perez, Chairperson, and will be accepted via hand delivery to our office, our mailbox at the Guam Congress Building at **163 Chalan Santo Papa, Hagåtña, Guam 96910**, via email to office@senatorperez.org, no later than 4pm, February 5, 2021.

In compliance with the Americans with Disabilities Act, individuals requiring special accommodations or services should contact the Office of Senator Sabina Flores Perez at 989-2968.

Si Yu'os Ma'ase,

Evan San Nicolas
Office Manager

--

Office of Senator Sabina Flores Perez

Committee on the Environment, Revenue & Taxation, Labor, Procurement, and Statistics, Research, and Planning
I Mina'trentai Sais na Liheslaturan Guåhan

36th Guam Legislature

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M: Guam Congress Building, [163 Chalan Santo Papa, Hagåtña, Guam 96910](#)

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CORRECTION TO: 1st Notice of Virtual Informational Hearing: Monday, February 1, 2021 at 1:00 p.m.

1 message

Office of Senator Sabina Perez <office@senatorperez.org> Mon, Jan 25, 2021 at 11:45 AM
To: Sabrina Salas Matanane <sabrina@kuam.com>, nestor@kuam.com, Chris Barnett <malafunkshun@kuam.com>, joan@kuam.com, mindy@postguam.com, editor@postguam.com, John O'Connor <john@postguam.com>, Nick Delgado <nick@postguam.com>, reporters@postguam.com, news@sorensenmediagroup.com, news@guampdn.com, news@k57.com, rlimtiaco@guampdn.com, haidee@postguam.com, kstokish@gmail.com, editor@pacificislandtimes.com, Maureen Maratita <publisher@glimpsesofguam.com>, reporter2@glimpsesofguam.com, Guam Progress <guamprogress@yahoo.com>, colinperez@gmail.com, Gabejereza@gmail.com, "Alexandra Elizabeth T. Benavente" <aebenavente@gdoe.net>, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, mar_vic_cagurangan@yahoo.com, Jason Salas <jason@kuam.com>, Sabrina Salas Matanane <newsdirector@kuam.com>, slimtiaco@guampdn.com, raygibsonshow@gmail.com, pattiontheradio@yahoo.com, news@kanditnews.com, reporters@kuam.com
Cc: phnotice@guamlegislature.org, ag@oagguam.org, Tom Unsiog <sgtarms@guamlegislature.org>, Guam MIS <MIS@guamlegislature.org>

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Si Yu'os Ma'ase,

Evan San Nicolas
Office Manager

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Office of Senator Sabina Flores Perez

Committee on the Environment, Revenue & Taxation, Labor, Procurement, and Statistics, Research, and Planning

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Charlene Flores <charlene@senatorperez.org>

2nd Notice of Virtual Informational Hearing: Monday, February 1, 2021 at 1:00 p.m.

Evan San Nicolas <evan@senatorperez.org>

Sat, Jan 30, 2021 at 8:00 AM

To: Sabrina Salas Matanane <sabrina@kuam.com>, nestor@kuam.com, Chris Barnett <malafunkshun@kuam.com>, joan@kuam.com, mindy@postguam.com, editor@postguam.com, John O'Connor <john@postguam.com>, Nick Delgado <nick@postguam.com>, reporters@postguam.com, news@sorensenmediagroup.com, news@guampdn.com, news@k57.com, rlimtiaco@guampdn.com, haidee@postguam.com, kstokish@gmail.com, editor@pacificislandtimes.com, Maureen Maratita <publisher@glimpsesofofguam.com>, reporter2@glimpsesofofguam.com, Guam Progress <guamprogress@yahoo.com>, colinperez@gmail.com, Gabejereza@gmail.com, "Alexandra Elizabeth T. Benavente" <aebenavente@gdoe.net>, Mar-Vic Cagurangan <publisher@pacificislandtimes.com>, mar_vic_cagurangan@yahoo.com, Jason Salas <jason@kuam.com>, Sabrina Salas Matanane <newsdirector@kuam.com>, slimtiaco@guampdn.com, raygibsonshow@gmail.com, pattiontheradio@yahoo.com, news@kanditnews.com, reporters@kuam.com
Cc: phnotice@guamlegislature.org, ag@oagguam.org

January 30, 2021

MEMORANDUM

To: All Senators, Stakeholders and Media

Fr: Senator Sabina Flores Perez, *Chairperson*

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Si Yu'os Ma'åse'



Evan C. San Nicolas

Office Manager

Office of Senator Sabina Flores Perez

36th Guam Legislature • *I Mina'Trentai Seis na Liheslaturan Guåhan*

Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics,
Research, and Planning

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Website: www.senatorperez.org

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I Mina'trentai Sais Na Liheslaturan Guahan • 36th Guam Legislature

January 30, 2021

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AGENDA
VIRTUAL INFORMATIONAL HEARING
Monday, February 1, 2021
Zoom Video Conference

The agenda is as follows:

1:00 p.m.

Guam Department of Labor

- Updates on Federal Pandemic Unemployment Assistance Program



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I Mina'trentai Sais Na Liheslaturan Guåhan • 36th Guam Legislature

Informational Hearing

Monday, February 1, 2021, 1:00pm

Zoom Video Conference

Guam Department of Labor, Updates on Federal Pandemic Unemployment Assistance Program

NAME (please print)	AGENCY/ ORGANIZATION	ORAL TESTIMONY	WRITTEN TESTIMONY	IN FAVOR	NOT IN FAVOR	CONTACT INFORMATION
David Dell'Isola	Guam Department of Labor	✓				
Congressman Michael F.Q. San Nicolas	Guam Delegate, U.S House of Representatives	✓				

CONTINUED ASSISTANCE ACT PROVISIONS

Changes to the Pandemic
Unemployment Compensation Program
(FPUC) and the Pandemic
Unemployment Assistance (PUA)
programs



TODAY'S SPEAKERS

- Stephanie C. Garcia, Operations Manager, Office of Unemployment Insurance, U.S. Department of Labor (Garcia.Stephanie@dol.gov)
- Candace M. Edens, Supervisor, Federal Team, Division of Operations, Office of Unemployment Insurance, U.S. Department of Labor (Edens.Candace@dol.gov)

TODAY'S AGENDA

- Summary and background of FPUC and PUA Legislation
- Program Integrity
- Important Dates under the Continued Assistance Act (CAA)
- New Provisions of the CAA affecting FPUC and PUA
- Q&A

SUMMARY & BACKGROUND

- The Coronavirus Aid, Relief, and Economic Security (CARES) Act was signed into law on March 27, 2020 (Public Law 116-136).
 - Sections 2102 and 2104 created the FPUC and PUA programs.
- The Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act), set forth in Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021, was signed into law on December 27, 2020 (Public Law 116-260).
 - This law makes some changes to the FPUC and PUA programs.

SUMMARY & BACKGROUND CONT.

- The programs and provisions in the CARES Act, and the Continued Assistance Act operate in tandem with fundamental eligibility requirements of the Federal-State UI program.
- These requirements include that an individual file certifications with respect to each week of unemployment and that an individual be able to work and available for work except as specifically provided for in law.
- UIPL Nos. 23-20 and 28-20 discuss program integrity for the UI system, including for the temporary UI programs provided with this legislation.
- Territories/FAS are encouraged to use the tools, resources, and services of the UI Integrity Center, including the Integrity Data Hub (IDH), and within that, the Identity Verification (IDV) solution.

KEY DATES

Changes to the PUA and FPUC program made by the CAA

CONTINUED ASSISTANCE ACT			
CHANGES TO UNEMPLOYMENT PROVISIONS OF THE PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM			
DESCRIPTION	CARES ACT	CONTINUED ASSISTANCE ACT CHANGES	START DATE OF CHANGES
Extension of program.	Last payable week ending December 26, 2020. (UIPL 16-20 Section 4.c.)	Last payable week ending March 13, 2021. (UIPL 16-20, Change 4, Section 4.a.i.)	Resume paying with no gaps between week ending December 26, 2020 and January 2, 2021.
Phase out of program for those with entitlement at program end.	N/A	Individuals receiving PUA for week ending March 13, 2021 with remaining entitlement may continue to receive PUA through week ending April 10, 2021. (UIPL 16-20, Change 4, Section 4.a.ii.)	Must be ready to implement with week ending March 20, 2021.
Benefit duration.	Max of 39 weeks	Max of 50 weeks. Extra weeks payable starting with week ending January 2, 2021. (UIPL 16-20 Change 4, Section 4.a.iv.)	Begin paying with week ending January 2, 2021.
Documentation of employment/self-employment earnings.	N/A	Required for anyone receiving a PUA payment on or after December 27, 2021. Deadlines for submission vary by filing date. (UIPL 16-20, Change 4, Section 4.b i. & ii)	Affects all claimants receiving a payment on or after December 27, 2021.

KEY DATES

Changes to the PUA and FPUC program made by the CAA

CHANGES TO UNEMPLOYMENT PROVISIONS OF THE PANDEMIC UNEMPLOYMENT ASSISTANCE PROGRAM (CONT.)			
DESCRIPTION	CARES ACT	CONTINUED ASSISTANCE ACT CHANGES	START DATE OF CHANG
Waiver of overpayments.	N/A	States may waive repayment of certain no fault overpayments. (UIPL 16-20 Change 4, Section 4. D.)	Applies retroactively to the beginning of the program.
Weekly certification to include identification of specific COVID-19 related reason.	States instructed to require weekly self-certification. (UIPL 16-20, Change 1, Section G. 45.)	Requirement for weekly self-certification established in statute; provides some flexibility for weeks before week ending February 6, 2021 if state made "good faith" effort to implement PUA (details TBD). (UIPL 16-20 Change 4 Section 4.c.)	Affects all certifications starting with week ending February 6, 2021.
Appeals processes.	States instructed to follow state UC processes. (UIPL 16-20 Change 1, Attachment I, Section I.)	No change. (UIPL 16-20 Change 4, Section 4.h.)	N/A
CHANGES TO UNEMPLOYMENT PROVISIONS OF THE FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION (FPUC) PROGRAM			
DESCRIPTION	CARES ACT	CONTINUED ASSISTANCE ACT CHANGES	START DATE OF CHANGES
Program reauthorization.	Weeks ending April 4, 2020, to July 25, 2020. (UIPL 15-20 Section 4.b.)	Weeks ending January 2, 2021, to March 13, 2021. (UIPL 15-20 Change 3, Section 4.a.)	Resumes with week ending January 2, 2021.
Change in supplemental amount	\$600. (UIPL 15-20, Section 4.a.)	\$300. (UIPL 15-20 Change 3, Section 4.a.)	Begins week ending January 2, 2021.



CONTINUED ASSISTANCE ACT:
NEW PROVISIONS AFFECTING
FPUC AND PUA

FPUC CHANGES: SECTIONS 203 (A) AND (B) OF THE CONTINUED ASSISTANCE ACT

- Section 203(a) of the Continued Assistance Act reauthorizes FPUC extends FPUC through weeks of unemployment ending on or before March 14, 2021.
- Section 203(b) of the Continued Assistance Act changes the amount of FPUC payable from \$600 per week to \$300 per week.
- For the territories and the FAS FPUC can be paid beginning with the week ending January 2, 2021 and ending with the week ending March 13, 2021. (see UIPL 14-20 change 3)
- For Territories/FAS where weeks of unemployment end on a Saturday, the last week payable is the week ending March 13, 2021.
- There is a Gap in FPUC payments. No FPUC can be paid for weeks ending after July 31, 2020 and ending on or before December 26, 2020.
- FPUC cannot be paid during the PUA phaseout.

PUA CHANGES: EXTENSION OF PROGRAM- SECTION 201(A) OF THE CONTINUED ASSISTANCE ACT

- Section 201(a) of the Continued Assistance Act extends PUA through weeks of unemployment ending on or before March 14, 2021.
- For Territories/FAS where weeks of unemployment end on a Saturday, the last week payable is the week ending March 13, 2021 (see UIPL 16-20 change 4, attachment 1, section C.14, page I-18)

PUA PHASE-OUT PERIOD-SECTION 201(A)

- Individuals who receive PUA with the week ending March 13, 2021 may continue to collect any remaining entitlement through the week ending April 10, 2021, provided they are otherwise eligible.
- 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. (see UIPL 16-20 change 4, attachment 1, section C.5, page I-13)

PUA LIMITATIONS ON BACKDATING - SECTION 201(F)

- Initial PUA applications filed after December 27, 2020 may not be backdated earlier than December 1, 2020. (see UIPL 16-20 change 4, Attachment 1, section C.15, page I-18)
- Initial PUA claims filed on or before December 27, 2020 must have their claim backdated to the first week during the Pandemic Assistance Period (PAP) that the individual was unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason listed in Section 2102(a)(3)(A)(ii)(I) of the CARES Act. February 2, 2020 is the earliest a PUA claim can be backdated.
- The date filed, is the date the Territory/FAS received the PUA application.

PUA MODIFICATION OF BENEFIT DURATION - SECTION 201(B)

- Individuals filing claims after December 27, 2020 with backdating limitation to weeks after December 1, 2020, will have max PUA eligibility of 50 weeks. (see UIPL 16-20 change 4, Attachment 1, section C.17, page I-21)
- 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.
- Individuals who reached their maximum 39 weeks of PUA, are entitled to 11 additional weeks after December 27, 2020. These weeks can only be paid for weeks ending January 2, 2021 onward.

PUA MODIFICATION OF BENEFIT DURATION, CONT.

- Territories/FAS must re-determine existing PUA claims to reflect the additional weeks of potential eligibility; identify all individuals with a PUA claim on file and send written notices to these individuals that they are potentially eligible for additional PUA benefits, including instructions for reopening their PUA claims (if the individual has stopped collecting PUA).
- Territories/FAS may refer to Attachment III of UIPL 09-21 for sample language.
- The Territories/FAS must only pay PUA if the individual self-certifies that his or her 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) of the CARES Act.

DOCUMENTATION REQUIREMENTS - SECTION 241

Deadlines for submission of documentation

- 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 Territories/FAS, whichever is later. The deadline may be extended if the individual has shown good cause for failure to submit the documentation by the 21 day deadline.
- Individuals who have an ***existing*** PUA claim as of December 27, 2020, 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 individual has shown good cause for failure to submit the documentation by the 90 day deadline

Good Cause Under Hawaii Administrative Rules §12-5-81(j)

Good cause means:

- (1) Illness or disability of the individual;
- (2) Keeping an appointment for a job interview;
- (3) Attending a funeral of a family member; and
- (4) Any other reason which would prevent a reasonable person from complying as directed.

DOCUMENTATION REQUIREMENTS, CONT.

Acceptable Documentation

- Documentation of employment or self-employment (or the planned commencement of employment or self-employment) must demonstrate a recent attachment to the labor force (at some point between the start of the applicable taxable year and the date of filing).
- This documentation serves as an important tool against fraud by requiring the individual to submit documentation to prove eligibility
- 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.

DOCUMENTATION REQUIREMENTS, CONT.

Acceptable Documentation

- 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 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 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 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.

DOCUMENTATION REQUIREMENTS, CONT.

Failure to Comply-Section 241(b)(2) of the Continued Assistance Act

- Individuals who do not provide documentation substantiating employment/self-employment (or planned employment/self-employment) within the required timeframe are not eligible for PUA.
- If the individual fails to submit documentation, the Territories/FAS may only establish an overpayment for those weeks of unemployment ending on or after December 27, 2020.

DOCUMENTATION REQUIREMENTS, CONT.

Notification Requirements

- Territories/FAS 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, of the requirement to provide documentation to substantiate their employment or self-employment (or planned commencement of employment or self-employment).
- The notice must include:
 - the applicable deadline;
 - 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.

VERIFICATION OF IDENTITY-SECTION 242(A)

Requirements-Adequate System

- Section 242(a) of Continued Assistance Act modifies Section 2102(f)(1) of the CARES Act and requires that 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.

VERIFICATION OF IDENTITY, CONT.

Tools Available

- Territories/FAS are also strongly encouraged to explore implementation of complementary and rigorous forms of identity verification solutions.
- The Department will provide additional administrative funding to support costs to implement PUA identity verification processes and solutions.

CONTINUED ELIGIBILITY REQUIREMENTS - SECTION 263

PUA weeks beginning on or after January 26, 2021

- Individuals are required to self-certify that their unemployment, partial unemployment, or inability or unavailability to work is specifically attributable to one or more of the COVID-19 related reasons specified in Section 2102(a)(3)(A)(ii) of the CARES Act.
- Territories/FAS must ensure that their continued claim forms contain a self-certification process for PUA claimants to identify the specific COVID-19 related reason (aa) through (kk) for which they are unemployed, partially unemployed, or unable or unavailable to work.
- For Territories/FAS, this begins with ending February 6, 2021.

CONTINUED ELIGIBILITY REQUIREMENTS, CONT.

Good Faith Effort

- For continued claims filed with respect to weeks ending before January 26, 2021 (January 30, 2021, for Territories/FAS), if the Territory/FAS 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, Territories/FAS 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.
- 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).

CONTINUED ELIGIBILITY REQUIREMENTS, CONT.

Good Faith Effort

- Factors considered in determining good faith efforts may include, but are not limited to:
 - The extent to which the Territory/FAS 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 Territory/FAS paraphrased its description of the statute's COVID-related reasons (the (aa) through (kk) reasons, the extent to which the Territory/FAS' paraphrasing reasonably captured the intent of the reasons, and

CONTINUED ELIGIBILITY REQUIREMENTS, CONT.

Good Faith Effort (Cont.)

- The extent to which the Territory/FAS 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., territories/FAS' that failed to provide the option for item (kk) may require some retroactive action).

PUA OVERPAYMENT WAIVER AUTHORITY-SECTION 201(D)

Waiver Provisions-General

- Section 201(d) of the Continued Assistance Act amends Section 2102(d) of the CARES Act and allows the waiver of the repayment if the Territory/FAS determines that the payment of PUA was without fault on the part of the 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 Territory/FAS may choose not to waive the PUA overpayment.
- Territory/FAS's 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, Territories/FAS's 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.

PUA OVERPAYMENT WAIVER AUTHORITY, CONT.

Waiver Provisions–Fault Determination

Hawaii Administrative Rules Section 12-5-85 Recovery of benefits paid defines fault as

- (A) A material statement made by the individual which the individual knew or should have known to be incorrect; or
- (B) Failure to furnish information which the individual knew or should have known to be material; or
- (C) Acceptance of a payment which the individual either knew or reasonably could have been expected to know was incorrect.

PUA OVERPAYMENT WAIVER AUTHORITY, CONT.

Waiver Provisions–Equity and Good Conscience

Hawaii Administrative Rules Section 12-5-85 Recovery of benefits paid - outlines the criteria used for equity and good conscience

The factors which the department may consider include, but are not limited to:

- (A) Whether notice of a redetermination was given to the claimant as required by section 383-44(a), Hawaii Revised Statutes;
- (B) Hardship to the claimant that the repayment may impose; and
- (C) The effect, if any, that repayment will have upon the fulfillment of the objectives of the program. [Eff. 6/26/81] (Auth: HRS '383-92) (Imp: HRS '383-44(a))

FRAUD

Penalties

- UIPL 16-20, Change 4, Attachment I, pages I-24 and I-25 require states to impose a 15% penalty on PUA overpayments caused by fraud.
- DOL is currently researching whether or not this penalty is allowed to be imposed to fraud overpayments in the territories and the FAS.

FRAUD, CONT.

Identity Theft and Imposter Claims

- If the Territory/FAS determines that a PUA claim was filed by an imposter, the state must:
 - deny the entire PUA claim; and
 - not augment the PUA claim; and
 - not send any notification of potential entitlement with regard to such claim.

FRAUD, CONT.

Disqualification Periods

- 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).
 - 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 Territory/FAS determines the individual was fired for reasons not related to COVID-19), the individual would be disqualified for the entire PAP.
 - 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.

APPEALS - SECTION 201(C)

Establishing in Statute the Existing PUA Appeals Guidance

- 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.
- With respect to any appeal filed in Territory/FAS, the 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.

RESOURCES

- Attachment I: Pandemic Unemployment Assistance (PUA) Implementation and Operating Instructions;
- Attachment II: UI Report Handbook No. 401, ETA 902P – Pandemic Unemployment Assistance;
- Attachment III: Processing PUA Claims Based on the Claim Filing Date;
- Attachment IV: PUA Provisions under the Consolidated Appropriations Act, 2021. Division N, Title II, Subtitle A, Chapter I, Continued Assistance to Unemployed Workers Act of 2020.
- UI Community of Practice
- All things COVID-19.
 - https://ui.workforcegps.org/resources/2020/03/19/22/07/UI_and_COVID-19
- OUI Website
 - <https://oui.doleta.gov/unemploy/coronavirus/>

THANK YOU!

Email your questions to covid-19@dol.gov, with a CC to your Regional Office and POC

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

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

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

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

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

RESCISSIONS None	EXPIRATION DATE Continuing
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- iv. increasing the maximum number of PUA weeks available from 39 weeks to 50 weeks, subject to limitations on the dates in which these additional 11 weeks may be collected;
- v. adding a requirement for individuals to submit documentation of employment or self-employment;
- vi. establishing the self-certification process for continued claims in statute;
- vii. permitting states to waive PUA overpayments under certain conditions;
- viii. providing a hold harmless provision for individuals who are currently receiving PUA after having exhausted Pandemic Emergency Unemployment Compensation (PEUC), but who are now eligible to receive additional benefit amounts available on the PEUC claim;
- ix. establishing in statute the existing PUA appeals guidance; and
- x. adding a requirement for states to verify the identity of PUA applicants.

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

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

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

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

Importance of Program Integrity. Addressing improper payments and fraud is a top priority for the Department and the entire UI system. It is critical that states implement UI programs and provisions to ensure that payments are being made to eligible individuals and that states have aggressive strategies and tools in place to prevent, detect, and recover fraudulent payments, with a particular emphasis on imposter fraud by claimants using false identities.

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

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

Some states remain in the midst of managing extraordinary workloads due to the effects of the spread of COVID-19. During this time, there is a heightened need for states to maintain a steadfast focus on UI functions and activities that ensure program integrity and the prevention and detection of improper payments and fraud across all programs operated within the UI system.

UIPL No. 23-20, published on May 11, 2020, discusses program integrity for the UI system. UIPL No. 28-20, published on August 31, 2020, provides states with funding to assist with efforts to prevent and detect fraud and identity theft and recover fraud overpayments in the PUA and PEUC programs.

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

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

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

The Agreement Implementing the Relief for Workers Affected by Coronavirus Act that was signed by each state in March 2020, remains in effect along with the modifications and extensions required as a result of these updated provisions. When determining the appropriate course of action in administering the PUA program, states should first consult Section 2102 of the CARES Act, as amended by the Continued Assistance Act, and the subsequent operating instructions provided by the Department. Where the CARES Act, as amended, and the operating instructions are silent, states should refer to the Disaster Unemployment Assistance (DUA) regulations at 20 C.F.R. Part 625. All other PUA program

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

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

a. Changes to Program Dates and Benefit Duration.

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

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

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

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

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

5. **Fraud Penalties for PUA Overpayments.** Consistent with the requirements of Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Pub. L. 112-40 (2011), if a state determines that it made an erroneous PUA payment to an individual due to fraud committed by the individual, the state must apply a minimum 15 percent penalty on such individual. Refer to Section C.21 of Attachment I to this UIPL for additional detail.
6. **Changes to the PUA Activity Report, ETA 902P.** ETA has revised the ETA 902P report to include additional data items that will be used to assess state overpayment recovery efforts for the PUA program, inform policy makers about the program, determine the effectiveness of identity theft prevention efforts, and assess additional program integrity needs. Please refer to Section E of Attachment I to this UIPL for additional detail.
7. **Inquiries.** We encourage states to contact the Department for technical assistance. Please direct inquiries to covid-19@dol.gov, with a copy to the appropriate ETA Regional Office.
8. **References.**
 - Continued Assistance to Unemployed Workers Act of 2020 (Continued Assistance Act);
 - Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 (Pub. L. 116-136), Title II, Subtitle A;
 - Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Pub. L. 112-40;
 - Section 303(a)(1), (3), and (11) of the Social Security Act;
 - 5 C.F.R. Subpart C § 845.303 - Standards for Waiver of Overpayments;
 - 20 C.F.R. Part 625 -Disaster Unemployment Assistance;
 - UIPL No. 09-21, *Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) – Summary of Key Unemployment Insurance (UI) Provisions*, issued December 30, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3831;
 - UIPL 28-20, *Addressing Fraud in the Unemployment Insurance (UI) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, August 31, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8044;

- 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. 16-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions*, issued April 5, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628;
- 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, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020—Pandemic Unemployment Assistance (PUA) Program Additional Questions and Answers*, issued July 21, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479;
- UIPL No. 16-20, Change 3, *Eligibility of Individuals who are Caregivers for Pandemic Unemployment Assistance in the Context of Scholl Systems Reopening*, issued August 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3849; and
- UIPL 03-20, *Minimum Disaster Unemployment Assistance (DUA) Weekly Benefit Amount: January 1 - March 31, 2020* issued December 12, 2019, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3675.

9. Attachments.

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

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

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

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

A. Introduction (updated reference to Continued Assistance Act)

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

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

B. Definitions (updated as noted below)

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

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

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

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

C. Operating Instructions

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

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

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

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

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

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

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

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

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

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

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

- bb. A member of the individual's household has been diagnosed with COVID-19. For example:
- A member of the individual's household has been diagnosed as having COVID-19 by a qualified medical professional or a member of the individual's household has tested positive for COVID-19 and the individual is unable to work as a result.
- cc. The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19. For example:
- An individual is "providing care" for a family member or a member of the individual's household if the provision of care requires such ongoing and constant attention that the individual's ability to perform other work functions is severely limited. An individual who is assisting a family member who is able to adequately care for him or herself is not "providing care" under this category.
- dd. A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work. For example:
- An individual has "primary caregiving responsibility" for a child or other person in the household if he or she is required to remain at home to care for the child or other person.
 - This includes an individual whose job allows for telework, but for whom the provision of care to the child or other person with a closed school or other facility requires such ongoing and constant attention that it is not possible for the individual to perform work at home.
- ee. The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency. For example:
- An individual who is unable to reach his or her place of employment because doing so would require the violation of a state or municipal order restricting travel that was instituted to combat the spread of COVID-19.
- ff. The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19. For example:
- An individual who has been advised by a qualified medical professional that he or she may be infected with COVID-19 and that he or she therefore should self-quarantine. For example, an individual had direct contact with another person who has tested positive for COVID-19 or been diagnosed with COVID-19 by a

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

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

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

Examples include, but are not limited to:

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

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

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

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

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

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

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

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

To date, the Secretary has approved one additional criterion under item (kk): Self-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services, may self-certify under item (kk).

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

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

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

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

tools to combat fraud. While Condition #2 relies on self-certification to verify that an individual is covered under the PUA program, when investigating the potential for fraud and improper payments, the state has, and is encouraged to use, this authority to request supporting documentation about this COVID-19 related reason. 20 C.F.R. 625.14(h) refers to the Secretary's "Standard for Fraud and Overpayment Detection" found in Sections 7510 *et seq.* of the *Employment Security Manual* (20 C.F.R. Part 625 Appendix C). The authority to request supporting documentation for fraud prevention is separate from the documentation requirement outlined in Section 241 of the Continued Assistance Act as discussed in Condition #3 above. States may request supporting documentation at any point during an investigation for potential fraud or improper payments.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

c. *WBA payable (no change).*

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

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

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

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

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

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

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

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

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

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

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

g. *Appeal and Hearing.*

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

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

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

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

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

- a. Identity Theft and Imposter Claims (**new**). If the state determines that a PUA claim was filed by an individual who is not the owner of the Social Security number that was used to file the claim, the state must deny the entire PUA claim. Additionally, the state may not augment the PUA claim and may not send any notification of potential entitlement with regard to such claim.
- b. Fraud. An individual commits fraud if he or she knowingly has made or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of PUA to which such individual was not entitled.
 - *Disqualification Periods* (**updated**). The provisions set out in 20 C.F.R. 625.14 apply with respect to PUA overpayments to the same extent and in the same manner as in the case of DUA. 20 C.F.R. 625.14(i). This Section sets the disqualification period for PUA and requires that the disqualification be based on when the fraud occurs.
 1. If the fraud was in connection with the initial application (for example, the individual says he or she quit the job because of COVID-19 and the state determines the individual was fired for reasons not related to COVID-19), the individual would be disqualified for the entire PAP.
 2. If the fraud occurred during the continued claim series, the disqualification would apply to the week the fraud occurred, plus the next two compensable weeks for PUA that immediately follow that week. If the individual is not otherwise entitled to PUA following the week of fraud, then the disqualification would be assessed on the first two weeks in which the individual once again becomes eligible for PUA.
 - *Fraud Penalties* (**new/updated**). States must apply a 15 percent penalty to an individual's overpayment when the state determines that it made an erroneous PUA payment to an individual due to fraud the individual committed. See Section 251 of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA), Pub. L. 112-40 (2011). Section 251(a)(2) of the TAAEA requires assessing a 15 percent penalty in these circumstances to any "unemployment compensation program of the United States." "Unemployment compensation

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

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

- *Tools for Combatting Fraud (new)*. The state should use the crossmatches and tools described in Section 4.b. of UIPL No. 23-20 to monitor for suspicious activity on PUA claims, as it does for regular UC. States are required to share information with the Department’s Office of Inspector General (OIG), and the Department strongly encourages states to collaborate with the UI Integrity Center (Center). The Center, funded by the Department and operated by the National Association of State Workforce Agencies, provides states with the IDH which includes the IDV module, Suspicious Actor Repository (SAR), suspicious e-mail domains, Multi-State Cross-Match (MSCM), foreign internet protocol (IP) address detection, and the Fraud Alert system. The Center has provided states with new tools to support data mining to detect fraud. The Center also identifies, organizes, shares, and supports promising and innovative integrity practices and provides state-specific consulting, mentoring, and technical assistance.

If a state has reasonable suspicion of fraudulent activity on a claim, then the state may request supporting documentation to address the concern. Requests for supporting documentation and a state’s investigative and adjudicative practices should be done in alignment with the processes described in UIPL No. 01-16 to ensure due process is afforded to the individual.

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

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

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

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

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

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

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

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

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

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

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

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

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

- a. *Trade Readjustment Allowances (TRA).* PUA is payable only if the individual is not eligible for or has exhausted TRA (basic, additional, or completion). Eligibility for DUA (and accordingly PUA) requires that the individual NOT be eligible for “compensation” as defined at 20 C.F.R. 625.4(i). The definition of “compensation” at 20 C.F.R. 625.2(d) includes TRA. See UIPL No. 14-20, Change 1, Attachment I, Question 7. Therefore, to be eligible for PUA, an individual must have exhausted their entitlement to TRA.
- b. *Disaster Unemployment Assistance (DUA).* If an individual is eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended, (42 U.S.C. 5177), the individual is not eligible to receive PUA for that week. This is because eligibility for both PUA and DUA is based on the reason for an individual’s unemployment. If an individual’s unemployment is directly caused by a major disaster, then the individual’s unemployment is not due to a COVID-19 reason and the individual would not qualify for PUA.

Conversely, if the reason for the individual's unemployment is because of a listed COVID-19 related reason in Section 2102(a)(3)(A)(ii)(I) of the CARES Act, the individual's unemployment is not a direct result of a major disaster and the individual would not qualify for DUA. See UIPL No. 14-20, Change 1, Attachment I, Question 16.

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

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

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

28. Notifications (changes as noted below).

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

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

Additionally, if the state determines that a PUA claim was filed by an individual that did not own the identity, the state may not send any notification of potential entitlement to the individual. See C.21. above.

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

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

D. Financial Information and Instructions (updated):

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

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

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

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

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

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

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

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

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

E. Reporting Instructions

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

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

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

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

Section A, Application and Payment Activities

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE

Attachment II to UIPL No. 16-20 Change 4

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE ACTIVITIES
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A. Facsimile of Form

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE
ACTIVITIES

ETA 902P – PANDEMIC UNEMPLOYMENT ASSISTANCE ACTIVITIES (PUA)

STATE:	REGION:	REPORT FOR PERIOD ENDING:
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SECTION A. APPLICATION AND PAYMENT ACTIVITIES

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

SECTION B. DENIAL AND APPEALS ACTIVITY

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

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

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

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

Comments:

OMB No.: NA **OMB Expiration Date:** NA **OMB Burden Minutes:**
NA

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

B. Purpose

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

C. Scope and Duration of the Report

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

D. Due Date and Transmittal

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

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

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

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

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

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

E. General Reporting Instructions

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

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

F. Definitions

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

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

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

G. Item by Item Instructions

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

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3. Section A. Application and Payment Activities.
 - a. Column 1, Initial Applications. Enter the number of initial applications for PUA taken during the report period. This will equal the number of initial applications that were completed and/or number of applications entered into an automated system through an electronic/telephone claims taking system during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs.
 - b. Column 2, Number Determined Eligible. Enter the number of individuals determined eligible for PUA during the report period. Do not include individuals eligible for UC where it may have been necessary, due to the filing environment, to accept initial claims for both programs.
 - c. Column 3, First Payments. Enter the number of payments which represent, for any individual, the first week for which assistance is paid in the pandemic assistance period.
 - d. Column 4, Weeks Claimed. Enter the total number of weeks for which PUA is claimed during the report period whether or not PUA is actually paid. If claims are filed weekly, the number of weeks will equal the number of weekly received during the report period. If claims are filed other than weekly claims, the number of weeks will equal the number of weeks during the report period.
 - e. Column 5, Weeks Compensated. Enter the number of weeks of unemployment for which PUA was paid during the report period. A week of unemployment compensated is any week of unemployment for which PUA funds are paid, regardless of amount.
 - f. Column 6, Amount Compensated. Enter the amount of PUA funds represented by the weeks reported in column 5.
 - g. Column 18, Final Payments. Enter the number of final payments made to claimants for PUA. A final payment for PUA is defined as the last PUA payment a claimant receives during the pandemic assistance period because the claimant has exhausted their entitlement to the program. Excluded from the definition is the last payment to an individual if, but for the end of the pandemic assistance period, the individual would otherwise be entitled to further PUA benefits.
4. Section B. Denial and Appeals Activity.
 - a. Column 7, Weeks of PUA Denied. Enter the number of weeks of unemployment where a PUA payment was denied for which an individual,

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

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

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

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

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

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

H. Checking the Report

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

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201.

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

Processing PUA Claims Based on the Claim Filing Date

	SCENARIO 1 Claim filed on or before December 27, 2020	SCENARIO 2 Claim filed after December 27, 2020 and on or before December 31, 2020	SCENARIO 3 Claim filed on or after January 1, 2021 and before January 31, 2021	SCENARIO 4 Claim filed on or after January 31, 2021
Pandemic Assistance Period	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)	January 27, 2020 through April 10, 2021 (April 11, 2021 for states with a Sunday week ending date)
Last week payable for states with a Saturday week ending date	March 13, 2021 (unless individual qualifies for the phaseout period)	March 13, 2021 (unless individual qualifies for the phaseout period)	March 13, 2021 (unless individual qualifies for the phaseout period)	March 13, 2021 (unless individual qualifies for the phaseout period)
Earliest possible claim effective date¹	February 2, 2020	December 6, 2020	December 6, 2020	December 6, 2020
Wages considered for calculating the weekly benefit amount (WBA)	Calendar Year (CY) 2019	CY 2019	If claim is effective on or after January 1, 2021 (<i>i.e.</i> , claim effective January 3, 2021 or later for states with a Saturday week ending date), then CY 2020 If claim is effective before January 1, 2021, then CY 2019	If claim is effective on or after January 1, 2021 (<i>i.e.</i> , claim effective January 3, 2021 or later for states with a Saturday week ending date), then CY 2020 If claim is effective before January 1, 2021, then CY 2019

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

	SCENARIO 1 Claim filed on or before December 27, 2020	SCENARIO 2 Claim filed after December 27, 2020 and on or before December 31, 2020	SCENARIO 3 Claim filed on or after January 1, 2021 and before January 31, 2021	SCENARIO 4 Claim filed on or after January 31, 2021
Guidance for determining the state's minimum PUA WBA	UIPL No. 03-20	UIPL No. 03-20	UIPL No. 03-20	UIPL No. 03-20
Duration of benefits²	39 weeks + 11 weeks which may only be collected for weeks of unemployment ending on or after January 2, 2021	50 weeks	50 weeks	50 weeks
Requirement to submit documentation substantiating employment or self-employment	Yes, if the individual receives a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), documentation is due within 90 days of the application or when directed by the State Agency (whichever is later).	Yes, if the individual receives a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), documentation is due within 90 days of the application or when directed by the State Agency (whichever is later).	Yes, if the individual receives a payment of PUA on or after December 27, 2020 (regardless of which week ending date is being paid), documentation is due within 90 days of the application or when directed by the State Agency (whichever is later).	Yes, documentation is due within 21 days of the initial application or when directed by the State Agency (whichever is later).

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

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

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

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

Subchapter I-Extension of CARES Act Unemployment Provisions

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

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

(1) in paragraph (1)-

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

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

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

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

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

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

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

(c) APPEALS.-

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

"(5) APPEALS BY AN INDIVIDUAL.-

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SEC. 203. EXTENSION OF FEDERAL PANDEMIC UNEMPLOYMENT COMPENSATION.

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

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

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

(b) **AMOUNT.**-

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

(A) in paragraph (1)(B), by striking "of \$600" and inserting "equal to the amount specified in paragraph (3)"; and

(B) by adding at the end the following new paragraph:

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

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

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

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

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

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

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

(C) by adding at the end the following:

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

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

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

"(g) APPLICABILITY.-

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

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

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

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

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

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

(c) COORDINATION RULES.-

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

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

"(A) IN GENERAL.-If-

"(i) an individual has been determined to be entitled to pandemic emergency unemployment compensation with respect to a benefit year;

"(ii) that benefit year has expired;

"(iii) that individual has remaining entitlement to pandemic emergency unemployment compensation with respect to that benefit year; and

"(iv) that individual would qualify for a new benefit year in which the weekly benefit amount of regular compensation is at least \$25 less than the individual's weekly benefit amount in the benefit year referred to in clause (i), then the State shall determine eligibility for compensation as provided in subparagraph (B).

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

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

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

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

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

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

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

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

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

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

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

(ii) by adding at the end the following:

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

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

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

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

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

(d) EFFECTIVE DATE.-

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

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

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

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

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

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

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

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

(b) APPLICABILITY.—

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

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

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

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

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

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

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

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

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

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

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

(b) EFFECTIVE DATE; SPECIAL RULE.—

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

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

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE February 25, 2021

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20, Change 5

TO: STATE WORKFORCE AGENCIES

FROM: SUZAN G. LEVINE /s/
Principal Deputy Assistant Secretary

SUBJECT: Expanded Eligibility Provisions for the Pandemic Unemployment Assistance (PUA) Program

1. **Purpose.** To provide states with updated guidance for the PUA program, specifically regarding expanded eligibility provisions authorized under Section 2102(a)(3)(A)(ii)(I)(kk) of the Coronavirus Aid, Relief, and Economic Security (CARES) Act.
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) and the attachments to appropriate program and other staff in state workforce systems to implement these changes to the PUA program.
3. **Summary and Background.**
 - a. Summary –The Department expands PUA eligibility to include three COVID-19 related reasons under which an individual may self-certify. This expansion is made under the authority provided by Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act. These three reasons are added to the existing COVID-19 related reasons specified in items (aa)-(jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and the reason previously approved by the Secretary of Labor (Secretary) under Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act for individuals who are self-employed and experience a significant reduction of services because of COVID-19.

These additional reasons address circumstances when an individual is directly affected by the COVID-19 public health emergency. They are: (1) individuals who refuse to return to work that is unsafe or to accept an offer of new work that is unsafe; (2) certain individuals providing services to educational institutions or educational service agencies; and (3) individuals experiencing a reduction of hours or a temporary or permanent lay-off.

RESCISSIONS None	EXPIRATION DATE Continuing
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These additional eligibility provisions apply retroactively to the beginning of the PUA program, though individuals who did not file an initial PUA claim on or before December 27, 2020 are limited to weeks of unemployment beginning on or after December 6, 2020. This limitation on backdating of a PUA claim is discussed in more detail in Section 4.b. of this UIPL. States must determine PUA effective dates consistent with instructions provided in Section C.15. of Attachment I to UIPL No. 16-20, Change 4.

States may seek additional funding of up to \$100,000 to cover startup costs for implementing the expanded eligibility provisions, including an update to the self-certification declaration as part of their initial PUA application and continued claim forms. States must submit the required request for funding (SF-424) electronically to covid-19@dol.gov, with a copy to the appropriate ETA Regional Office by March 15, 2021. Acknowledging that states need time to modify their initial PUA claim application and PUA continued claim forms to include these additional COVID-19 related reasons as part of the self-certification declaration, the Department expects many states will need until the end of March or later to have the new COVID-19 related reasons in place.

Attachment I provides a sample self-certification declaration that includes the original and new COVID-19 related reasons. ETA recommends that states use this with their initial PUA claim application and PUA continued claim forms. Attachment III provides instructions for completing the SF-424.

- b. Background – On March 27, 2020, the CARES Act was enacted (Public Law (Pub. L.) 116-136), which includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2102 of the CARES Act created a new, temporary federal program called PUA and provided states with administrative funding to operate the program through an agreement with the Department.

PUA is a benefit of last resort and, in general, provides unemployment benefits to individuals who are: (1) not eligible for regular unemployment compensation (UC), Pandemic Emergency Unemployment Compensation (PEUC), or Extended Benefits (EB), including those who have exhausted all rights to such benefits, and those who are self-employed, seeking part-time employment, do not have sufficient wage history, or otherwise would not qualify for regular UC, PEUC, or EB; and (2) unemployed, partially unemployed, or unable or unavailable to work due to a specific COVID-19 related reason identified in Section 2102(a)(3)(A)(ii)(I)(aa)-(kk) of the CARES Act and Department guidance. Any weeks of benefits previously received under the regular UC or EB programs starting with week ending February 8, 2020 (February 9, 2020 for states with a Sunday week ending date) through week ending April 10, 2021 (April 11, 2021 for states with a Sunday week ending date) are deducted from the individual's PUA entitlement (*see* Section C.17. of Attachment I of UIPL No. 16-20, Change 4). States are reminded that PUA is 100 percent federally funded and states may not charge employers for these benefits.

The CARES Act authorized the Secretary to establish COVID-19 related reasons for which an individual may be eligible for PUA in addition to those specific COVID-19

related reasons specified in items (aa)-(jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act. To date, the Department has added one additional COVID-19 related reason under this authority found in Section 2102(a)(3)(A)(ii)(I)(kk). The Department most recently discussed this COVID-19 related reason in Section C.1.kk. of Attachment I to UIPL No. 16-20, Change 4, which provides that “[s]elf-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).” This COVID-19 related reason remains in effect.

On December 27, 2020, the Consolidated Appropriations Act, 2021 (Pub. L. 116-260), was enacted, which includes the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) set out in Division N, Title II, Subtitle A. The Continued Assistance Act extends the PUA program and enacts several program integrity measures, including a requirement that all individuals receiving a PUA payment after December 27, 2020, submit documentation substantiating employment, self-employment, or the planned commencement of employment or self-employment.

Where the CARES Act, as amended, and the operating instructions are silent, states should refer to the Disaster Unemployment Assistance (DUA) regulations at 20 C.F.R. Part 625.

The Department has published several UIPLs providing guidance to states regarding the PUA program.

- UIPL No. 16-20, published on April 5, 2020, provides implementation and operating instructions, instructions for obtaining administrative funding, and reporting instructions for the ETA 902-P report.
- UIPL No. 16-20, Change 1, published on April 27, 2020, includes several Questions and Answers, along with instructions for calculating an individual’s weekly benefit amount (WBA) and completing the ETA 9178-P Quarterly Narrative Progress Report.
- UIPL No. 16-20, Change 2, published on July 21, 2020, includes additional Questions and Answers.
- UIPL No. 16-20, Change 3, published on August 27, 2020, explains specific scenarios under which an individual who is a caregiver and affected by the reopening of school systems may be eligible for PUA.
- UIPL No. 16-20, Change 4, which the Department published on January 8, 2021, provides updated implementation and operating instructions, updates reporting instructions for the ETA 902-P report, and includes a summary table in Attachment III about how to process PUA claims based on the claim filing date.

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. It is critical that states implement processes that ensure payments are being made to eligible individuals and that states have aggressive strategies and tools in place to prevent, detect, and recover fraudulent payments, with a particular emphasis on imposter fraud by claimants using false 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, provides states with funding to assist with efforts to prevent and detect fraud and identity theft and recover fraud overpayments in the PUA and PEUC programs.

4. Guidance.

- a. **Expanded list of COVID-19 related reasons approved by the Department.** To be eligible for PUA, the state must verify that the individual is not eligible for regular UC (or PEUC or EB). The Department reminds states of other requirements for PUA:
- In general, an individual who has the ability to telework with pay, or who is receiving paid sick leave or other paid leave benefits is not eligible for PUA. *See* Section C.1. of Attachment I to UIPL No. 16-20, Change 4.
 - An individual must report any earnings from covered employment or income from self-employment each week. The individual's WBA must be reduced on account of such earnings and income as prescribed under state law. *See* the DUA regulations at 20 C.F.R. 625.6(f) for additional details regarding the effect earnings and income have on an individual's WBA. Question 15 of Attachment I to UIPL No. 16-20, Change 2, provides additional details regarding self-employment income.
 - An individual who continues to receive their full pay (*e.g.*, is not experiencing any reduction in pay) during the period they are not working is not considered to be "unemployed." *See* Section 4.a. of UIPL No. 10-20.

Individuals must also self-certify that they are unemployed, partially unemployed, or unable or unavailable to work for a COVID-19 related reason. Refer to Section 4.c. of

this UIPL for benefit payment control processes to address program integrity in the PUA program.

In addition to the current COVID-19 related reasons identified in items (aa)-(jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act and the one reason previously approved under the Secretary's authority provided in Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act (*see* Section 4.b. of UIPL No. 16-20, Change 2, and Section C.1.kk. of Attachment I to UIPL No. 16-20, Change 4), the Department hereby establishes additional COVID-19 related reasons under which an individual may self-certify to establish eligibility for PUA. These additional COVID-19 related reasons are described below.

- i. Individuals who refuse to return to work that is unsafe or accept an offer of new work that is unsafe. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“The individual has been denied continued unemployment benefits because the individual refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.”*

For purposes of this COVID-19 related reason, unemployment benefits include regular UC, Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemembers (UCX), PUA, PEUC, EB, Short-Time Compensation (STC), Trade Readjustment Allowances (TRA), Disaster Unemployment Assistance (DUA), and payments under the Self-Employment Assistance (SEA) program.

An individual is generally denied unemployment benefits if the state determines that the work is suitable and the individual did not have good cause for refusing such work. This new COVID-19 related reason applies only to individuals who had already been receiving unemployment benefits but were determined to be ineligible or disqualified under state law because they refused an offer of work at a worksite that was not in compliance with local, state, or national health and safety standards directly related to COVID-19. This is a separate COVID-19 related reason from item (ii) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which provides eligibility to an individual who quits their job as a direct result of COVID-19.

For example, an individual may self-certify under this new COVID-19 related reason who has previously been denied because the state law does not consider health and safety standards when assessing suitability or good cause, *or* who has previously been denied because the health and safety standards considered under state law are more restrictive than the local, state, or national COVID-19 health

standards. Below are a few non-exhaustive scenarios. See Section 4.b.iv. of this UIPL for additional details regarding PUA effective dates.

- An individual was laid off in June 2020 and began receiving regular UC. The individual was recalled to work in October 2020. However, because the worksite was not in compliance with the local mask mandate, the individual refused to return to work. The individual was disqualified from continued receipt of regular UC under state law. The individual is now eligible to apply for PUA under this new COVID-19 related reason.
- An individual was laid off in October 2020 and began receiving regular UC. The individual received a new job offer in January 2021, however, the new worksite was unsafe due to non-compliance with physical distancing measures under state law. The individual was disqualified from continued receipt of regular UC under state law. The individual is now eligible to apply for PUA under this new COVID-19 related reason.

An individual is not eligible for PUA if they are otherwise eligible for regular UC (or PEUC or EB). Many states have provisions in their state UC law that consider work that unreasonably exposes an individual to health and safety risks to be unsuitable work. The state may determine, if it is consistent with the state's law, that the work is not suitable. Or, the state may find the work is suitable but determine that the individual had good cause for refusing such work.¹ In these circumstances, the individual must continue to receive unemployment benefits, provided they are otherwise eligible. The individual is not eligible for PUA using this new COVID-19 related reason if the individual was determined eligible for continued unemployment benefits for refusal of work under state law. Moreover, an individual who is allowed continued unemployment benefits and subsequently exhausts such benefits is not eligible for PUA using this new COVID-19 related reason.

- ii. Certain individuals providing services to educational institutions or educational service agencies. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual provides services to an educational institution or educational service agency and the individual is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.”*

This new COVID-19 related reason addresses situations where an individual provides services to educational institutions or educational service agencies and is subject to significant volatility in the school schedule directly related to COVID-

¹ The Department reminds states that Section 4102(b) of the Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), set out at Division D of the Families First Coronavirus Response Act (Pub. L. 116-127), provides states with the authority to temporarily modify their good cause provisions as needed in response to the spread of COVID-19 (see Section 5.C. of UIPL No. 13-20).

19. Whether the individual is “between or within terms” and has a “contract” or “reasonable assurance” to return in the subsequent year or term will affect the individual’s ability to self-certify under this COVID-19 related reason, as described below.² Attachment II provides a graphical representation of the process for determining PUA eligibility.

- A. *Individual does not have a contract or reasonable assurance.* An individual who: (1) has provided services to an educational institution or educational service agency; (2) lacks a contract or reasonable assurance and, as a result, is not subject to the “between and within terms” denial provisions; and (3) is not otherwise eligible for regular UC (or PEUC or EB) may self-certify eligibility for PUA under this new COVID-19 related reason if they are subject to significant volatility in the school schedule.

If the individual does not have a contract or reasonable assurance to return **and** self-certifies eligibility under this new COVID-19 related reason (or another COVID-19 related reason that is applicable to their situation), the individual may use wages from the educational institution to potentially qualify for a WBA that is higher than the state’s minimum PUA WBA.

- B. *Individual has a contract or reasonable assurance.* An individual is generally not eligible for PUA if they: (1) have provided services to an educational institution or educational service agency; and (2) are filing for a week that is between or within terms and they have a contract or reasonable assurance to return in the subsequent year or term, and, as a result, they are denied regular UC (or PEUC or EB). However, the individual may be eligible for PUA if they have other non-educational employment from which they are able to self-certify that they are unemployed, partially unemployed, or unable or unavailable to work for a different COVID-19 related reason. As described in Section 4.e.i. of UIPL No. 10-20, Change 1, wages from the educational institution may not be used to calculate the individual’s PUA WBA.

If school schedules or planned school openings are disrupted and an individual is found to no longer have a contract or reasonable assurance to return in the subsequent year or term, then they can establish eligibility going forward as described in subparagraph (A) under this new COVID-19 related reason or another COVID-19 related reason that is applicable to their situation.

² UIPL No. 10-20, Change 1, provides additional information about the “between and within terms” denial provision within the context of COVID-19. UIPL No. 05-17 clarifies the Department’s interpretation of the terms “contract” and “reasonable assurance” and assists states in applying these terms consistent with federal law requirements.

Federal law allows retroactive payments of regular UC (or PEUC or EB) under certain circumstances for individuals in a nonprofessional capacity if they no longer have a contract or reasonable assurance. *See* Section 4.d.(4). of UIPL No. 05-17. When determining if such individuals may receive PUA for weeks previously denied under regular UC (or PEUC or EB) because the individual had a contract or reasonable assurance and the individual was later found not to have reasonable assurance, states must first determine if the individual qualifies for regular UC (or PEUC or EB) under the state’s backdating provisions. If the individual does not qualify for backdating for regular UC, then they may retroactively self-certify for PUA under this new COVID-19 related reason. States must determine PUA effective dates consistent with instructions provided in Section 4.b.iv. of this UIPL and Section C.15. of Attachment I to UIPL No. 16-20, Change 4.

The individual must report any earnings each week that they file for PUA. The individual’s WBA must be reduced on account of such earnings and income as prescribed under state law. Individuals who receive a full salary during periods of disruption are not considered to be “unemployed” and would not be eligible for PUA. *See* Section 4.a. of UIPL No. 10-20.

- iii. Individuals experiencing a reduction of hours or a temporary or permanent lay-off. The Department approves the following COVID-19 related reason for an individual to self-certify for PUA eligibility: *“An individual is an employee and their hours have been reduced or the individual was laid off as a direct result of the COVID-19 public health emergency.”*

This new COVID-19 related reason expands eligibility beyond the current provision of item (jj) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act, which is limited to situations where the individual’s place of employment is closed. Under this new COVID-19 related reason, if an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or the individual has experienced a reduction in hours, the individual may now self-certify eligibility.

Generally, individuals in covered employment who are laid off, are experiencing a reduction in hours, or are working part-time as a result of partial business closure would qualify for regular UC (or PEUC or EB) and therefore would not be eligible for PUA. However, such individuals may not be eligible for regular UC (or PEUC or EB) because, for example, they lack sufficient wages to qualify, have a previous disqualification, or have exhausted regular UC, PEUC, and EB. This expanded COVID-19 related reason establishes a circumstance under which they may self-certify eligibility for PUA.³

³ For examples of individuals who may qualify for PUA with previous disqualifications, refer to Questions 30, 31, and 33 of Attachment I to UIPL No. 16-20, Change 1, or Question 12 of Attachment I to UIPL No. 16-20, Change 2.

The individual must report any earnings from the reduced hours when filing continued claims and such amounts must be deducted from the PUA weekly benefit amount in accordance with the state law. *See* Section C.16.c. of Attachment I to UIPL No. 16-20, Change 4.

b. **Processing claims using the expanded list of COVID-19 related reasons.** This section describes the steps that each state must take to: (1) update the self-certification declarations to include the new COVID-19 related reasons; (2) notify individuals of the expanded list of COVID-19 related reasons; (3) establish eligibility, as appropriate, using the expanded list of COVID-19 related reasons; and (4) adhere to the backdating limitations for retroactive PUA claims as described below.

i. States must update the self-certification declarations to include the new COVID-19 related reasons. States must modify their initial PUA claim application and PUA continued claim forms to include these additional COVID-19 related reasons as part of the self-certification declaration. Such changes are retroactive to the beginning of the PUA program. States must determine PUA effective dates consistent with instructions provided in Section C.15. of Attachment I to UIPL No. 16-20, Change 4.

Acknowledging that states need time to modify their initial PUA claim application and PUA continued claim forms to include these additional COVID-19 related reasons as part of the self-certification declaration, the Department expects many states will need until the end of March or later to have the new COVID-19 related reasons in place.

Attachment I provides a sample self-certification declaration, which includes the original and new COVID-19 related reasons that ETA recommends states use with their initial PUA claim application and PUA continued claim forms. Additionally, states must comply with the following instructions when updating the self-certification declarations.

A. *Paraphrasing of the COVID-19 related reasons is not permissible.*

Acknowledging that eligibility under the PUA program is limited to specific COVID-19 related reasons, states must include the specific text for each item as provided in the CARES Act statute and Department guidance, including this UIPL. States may shorten the original COVID-19 related reason approved by the Secretary to read, “The individual is self-employed and experienced a significant reduction of services because of COVID-19.” However, **states may not paraphrase** the other COVID-19 related reasons except to personalize the responses (*e.g.*, instead of saying “The individual has been...” the state may write “I have been...”).

While states must include the specific text for each item, to help individuals understand the COVID-19 related reasons and to comply with the requirements outlined in UIPL No. 02-16, Change 1, states may translate the

text into the appropriate languages for their population and provide examples consistent with Section C.1. of Attachment I to UIPL No. 16-20, Change 4, and Section 4.a. of this UIPL as an additional resource.

- B. *Individuals must be permitted to select more than one COVID-19 related reason.* Acknowledging that an individual may have more than one COVID-19 related reason affecting their unemployment or inability to work in a given week, states must provide individuals with the ability to choose more than one COVID-19 related reason on each self-certification declaration for the initial application and continued claim forms.

For example, an individual may have quit their job because their child, for which they are the primary caregiver, is unable to attend school because the school is closed to in-person instruction as a direct result of the COVID-19 public health emergency. The individual continues to be unable to work because the child continues to be unable to attend school in-person. Under these circumstances, the individual may self-certify that they are unemployed under item (dd) and unavailable under item (ii) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

As another example, an individual may be unable to work because they are the primary caregiver of a child who is unable to attend school because the school is closed to in-person instruction as a direct result of the COVID-19 public health emergency. That same individual may also be immunocompromised and unable to reach their place of employment because they have been advised by a health care provider to self-quarantine. Under these circumstances, the individual may self-certify that they are unable or unavailable to work under both items (dd) and (ff) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

- C. *Individuals must be permitted to select different COVID-19 related reasons each week.* Acknowledging that an individual's circumstances may change over time, states must provide individuals with the ability to select different COVID-19 related reasons each week on the continued claim form, rather than automatically carrying over an individual's response from the initial claim application or prior week's certification.

To continue the examples in paragraph B., the school may reopen in a subsequent week to provide in-person instruction. With this change in circumstances, the first and second individuals may no longer self-certify under item (dd) of Section 2102(a)(3)(A)(ii)(I) of the CARES Act because the school is no longer closed. However, both individuals may continue to self-certify under the other COVID-19 related reasons that are applicable to their respective situations.

D. *Individuals must be permitted to file and select no COVID-19 related reasons.* Acknowledging that, along with an individual’s changing circumstances, an individual might continue to file after they are no longer unemployed, partially unemployed, or unable or unavailable to work because of a COVID-19 related reason, the initial claim application and continued claim forms must provide an option for the individual to self-certify that none of the COVID-19 related reasons apply. For example, the state could provide an option for the individual to select “None of the above.” However, if the individual self-certifies that none of the COVID-19 related reasons apply, the individual will be denied for the week in question because they no longer meet the eligibility requirements for PUA and the state must issue a written, appealable determination (*see* Section C.20. of Attachment I to UIPL No. 16-20, Change 4).

ii. Notification of the expanded list of COVID-19 related reasons.

A. *Notification to individuals.* States must notify **every** individual who had previously filed a PUA claim at any time while the PUA program was in effect, and was denied for **any** week because they were not unemployed, partially unemployed, or unable or unavailable to work for one of the COVID-19 related reasons available at the time. This notification must advise the individual of the opportunity to self-certify to the complete list of COVID-19 related reasons, including the new criteria provided in Section 4.a. of this UIPL. Such notification must occur individually as described in Section C.28. of Attachment I to UIPL No. 16-20, Change 4.

The Department reminds states that 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.

Because states should have notified all individuals of the opportunity to file for PUA at the time a regular UC, PEUC, or EB claim was denied of the opportunity to file for PUA, states need not individually notify such individuals who did not apply for PUA about the expanded eligibility provisions.

B. *Notification to media.* To assure public knowledge of the status of the PUA program, consistent with Section C.28.c. of Attachment I to UIPL No. 16-20, Change 4, states must notify all appropriate news media having coverage throughout the state of the new eligibility provisions of the PUA program. States may also post general information about the expanded eligibility provisions on their websites and other social media.

iii. Establishing eligibility using the expanded list of COVID-19 related reasons. To establish eligibility for PUA based on one of the new COVID-19 related reasons, the individual must complete an initial PUA application (if they have not already

filed a PUA claim) and the state must verify that the individual is not eligible for regular UC (or PEUC or EB). Additionally, the state must provide the individual with a self-certification declaration including the expanded list of COVID-19 related reasons to assess initial eligibility for the PUA claim.

If the state determines that the individual is not eligible for PUA, the state must issue an appealable determination. *See* Section C.20. of Attachment I to UIPL No. 16-20, Change 4.

An individual who establishes retroactive initial eligibility for PUA must then be required to complete continued claim forms for each week (including the self-certification declaration that includes the original and expanded list of COVID-19 related reasons) to receive payment. States must process this additional information and make retroactive payment as appropriate. This includes paying FPUC at the appropriate amount for any weeks paid during the relevant time period (*i.e.*, FPUC payments at the \$600 amount for eligible weeks of unemployment between the weeks ending April 4, 2020 and July 25, 2020 (or between the weeks ending April 5, 2020 and July 26, 2020 for states with a Sunday week ending date) and FPUC at the \$300 dollar amount for weeks of unemployment between the weeks ending January 2, 2021 and March 13, 2021 (or between the weeks ending January 3, 2021 and March 14, 2021 for states with a Sunday week ending date). *See* UIPL Nos. 15-20 and 15-20, Change 3, for additional information regarding FPUC payments.

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 (*see* Section C.3. of Attachment I to UIPL No. 16-20, Change 4). The Department also strongly encourages states to validate the identity for reopened claims that have not previously been verified.

iv. Effective dates.

A. *Existing PUA claims.* For individuals with a PUA claim filed on or before December 27, 2020, the expanded COVID-19 related reasons provided in Section 4.a. of this UIPL are to be applied retroactively based on the effective date of an individual's existing PUA claim.

However, if the new COVID-19 related reason applied before the effective date of the individual's existing PUA claim, the claim must be backdated to the date that the new COVID-19 related reason applied. For example, an individual may have filed a new PUA claim before December 27, 2020 with an effective date in April 2020 based on the previous COVID-19 related reasons available. With the addition of the new COVID-19 related reason, the individual actually may have first been eligible in February 2020. Because this existing PUA claim was filed on or before December 27, 2020, the state must backdate the PUA claim from April 2020 to February 2020 – when the individual first met the applicable COVID-19 related reason.

B. *New PUA claims.* For individuals filing an initial PUA claim after December 27, 2020, states must determine PUA effective dates for new PUA claims consistent with instructions provided in Section C.15. of Attachment I to UIPL No. 16-20, Change 4. For example, if an individual files a new PUA claim after the publication of this UIPL because of circumstances occurring in July 2020, absent a PUA claim already being on file and consistent with the Continued Assistance Act, the claim effective date may not be any earlier than December 1, 2020 (weeks of unemployment beginning on or after December 6, 2020), and retroactive benefits may not be awarded prior to that date.

- c. **Benefit payment control processes.** Section 2102 of the CARES Act relies on self-certification to verify that an individual is unemployed, partially unemployed, or unable or unavailable to work because of a listed COVID-19 related reason. However, states have multiple tools to identify and address suspicion of fraud in the PUA program.

As described in Question 23 of Attachment I to UIPL No. 16-20, Change 2, states have authority to request supporting documentation when investigating the potential for fraud and improper payments. For example, the DUA regulation at 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). Requests for supporting documentation and a state's investigative and adjudicative practices must be done in alignment with the processes described in UIPL No. 01-16 to ensure individuals are afforded appropriate procedural protections.

States must use the required cross matches and tools, and should use the other cross matches and tools described in Section 4.b. of UIPL No. 23-20 to monitor for suspicious activity on PUA claims, as they do for regular UC. States must share PUA claim information with the Department's Office of Inspector General (OIG) for the purposes of investigating fraud. Moreover, the Department strongly recommends that states 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 Integrity Data Hub (IDH), which includes identity verification (IDV), the Suspicious Actor Repository (SAR), suspicious e-mail domains, Multi-State Cross Match (MSCM), foreign internet protocol (IP) address detection, and the Fraud Alert system.⁴ 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. There is also a range of other tools on the market that states should consider when combating fraud and ensuring program integrity.

Additionally, the Department strongly recommends as a best practice that states implement two new cross matches as part of the benefit payment control process for PUA to ensure integrity in applying the expanded COVID-19 related reasons provided in this

⁴ Note that the Integrity Data Hub is currently only available to the 50 states, plus the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

UIPL. These may be conducted only after the individual has established initial eligibility for PUA based on self-certification. States may choose to perform these cross matches before the first PUA payment is issued or later. Additionally, states may develop other cross matches not already discussed in this UIPL to strengthen program integrity in the PUA program.

- i. Cross match of state unemployment claim records with respect to individuals who self-certify that they refused work that is unsafe because of the COVID-19 public health emergency.

If the state identifies any discrepancies through this cross match (*e.g.*, the individual does not have a previous unemployment claim or the individual was disqualified for a reason other than refusing work because of health and safety standards at the worksite), the state must review information already on file and take any action necessary to address the discrepancies.

If the information on file with the state contradicts the individual's PUA self-certification (*e.g.*, previous adjudication of the issue determined that the worksite was in compliance with health and safety standards or previous adjudication of the issue determined that the individual refused work due to a reason that was not because of unsafe working conditions), then the state has reasonable suspicion of fraud and must open an investigation to conduct fact finding to determine if the individual's PUA eligibility is valid.

Because the PUA self-certification may be different from the state's provisions for suitable work and good cause (*e.g.*, the new COVID-19 related reason accounts for local, state, and national health and safety standards directly related to COVID-19), it is possible for an individual to be denied unemployment benefits under state law for health and safety standards and be eligible for PUA.

If the state does not identify any discrepancies through this cross match (*e.g.*, the individual has a previous unemployment claim, the individual refused work because the worksite was not in compliance with health and safety standards, the individual was denied continued benefits, and the state record does not contain information which contradicts this self-certification), the state does not have reasonable suspicion of fraud to open an investigation.

- ii. Cross match of state unemployment claim records and individuals who self-certify that they were providing services to educational institutions or educational service agencies and are unemployed or partially unemployed because of volatility in the work schedule caused by the COVID-19 public health emergency.

If the state identifies any discrepancies through this cross match (*e.g.*, the individual does not have a record of providing services to an educational institution or educational service agency), the state may have reasonable suspicion of fraud.

The state's follow-up investigation regarding these results may include whether the individual provided services to an educational institution or educational service agency prior to filing for PUA and, if so, whether the individual is subject to the "between and within terms" denial provision during the time that such individual was receiving PUA.

If the investigation finds that the individual (at the time of certifying under this COVID-19 related reason) is subject to the "between and within terms" denial provision because they have a contract or reasonable assurance to return at the subsequent year or term, then the PUA payment is improper – unless the individual meets the condition of having other non-educational employment and also self-certifies for a different COVID-19 related reason, as described in Section 4.a.iii.B. of this UIPL. An overpayment must be established and state law will determine whether or not such an overpayment is considered fraudulent.

- d. **Additional administrative costs for implementation.** Section 4.d. of UIPL No. 09-21 provides \$250,000 to cover startup costs for states implementing the PUA program. Additional funding of up to \$100,000 is available to states under this UIPL to cover costs for implementing these expanded eligibility provisions, including an update to the self-certification declaration as part of their initial PUA application and continued claim forms as described in this UIPL. States must submit a signed SF-424 form to request this funding.

Permissible implementation costs include:

- Computer programming and other technology costs;
- Implementation of necessary business processes required for program implementation;
- Training and travel;
- Notices to beneficiaries; and
- Overhead related only to the above.

States will receive funding to administer claims under these provisions as part of their usual submissions of workload counts to the Department. Such ongoing administrative costs must not be included in the request for implementation funding. *See* Attachment II of UIPL No. 16-20, Change 4, for updated instructions on the ETA 902P report.

States that need funding in addition to the \$100,000 offered under this UIPL to cover implementation costs must submit a Supplemental Budget Request (SBR) detailing such costs along with the required SF-424 form. The basis for these estimated costs must be included in the SBR application. Calculations for costs for state staff and contractors should be shown in accordance with the SBR instructions in ET Handbook No. 336, 18th Edition, Change 4, *Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines*.

States must submit the required request for funding electronically to covid-19@dol.gov, with a copy to the appropriate ETA Regional Office by March 15, 2021. For SBR application instructions, refer to UIPL No. 16-20, Attachment IV, Supplemental Budget Request (SBR) Application Template. For information on completing the SF-424, refer to Attachment III of this UIPL, Instructions for Completing the SF-424.

Additionally, please note that grantees that receive supplemental grant awards for implementing these program changes must submit a quarterly progress report using the form ETA 9178-P to the appropriate ETA Regional Office. The form ETA 9178-P requires the grantee to provide ETA with narrative updates on supplemental grant activities. Attachments III and IV to UIPL No. 16-20, Change 1 contain form ETA 9178-P and instructions for completing the form ETA 9178-P and timeline for the submission of these status reports.

5. **Inquiries.** Please direct inquiries to covid-19@dol.gov with a copy to the appropriate ETA Regional Office.

6. **References.**

- Consolidated Appropriations Act, 2021, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (Pub. L. 116-260) (Continued Assistance Act);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act;
- Families First Coronavirus Response Act (Pub. L. 116-127), including Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA);
- 20 C.F.R. Part 625, Disaster Unemployment Assistance;
- 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. 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. 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;
- 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. 10-20, Change 1, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19) – Interpretation of “Between and Within Terms” Denial Provisions in Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA)*, published May 15, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8879;
- UIPL No. 05-17, *Interpretation of “Contract” and “Reasonable Assurance” in Section 3304(a)(6)(A) of the Federal Unemployment Tax Act*, published December 22, 2016, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8999;
- UIPL No. 02-16, Change 1, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information*, published May 11, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5491; and
- ET Handbook No. 336, 18th Edition, Change 4, *Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines*.

7. Attachment(s).

- **Attachment I:** Sample Self-Certification Declaration for Individuals Claiming PUA.
- **Attachment II:** PUA Eligibility for Certain Individuals Providing Services to Educational Institutions or Educational Service Agencies.
- **Attachment III:** Instructions for Completing the SF-424.

Sample Self-Certification Declaration for Individuals Claiming PUA

To be eligible for PUA, the state must determine that the individual is not eligible for regular UC, PEUC, or EB (*see* Section C.12.b. of Attachment I to UIPL No. 16-20, Change 4). This includes an individual who is self-employed, seeking part-time employment, does not have sufficient work history, or would otherwise not qualify for regular UC (or PEUC or EB). The individual must also self-certify that they are otherwise able to work and available for work within the meaning of applicable state law, except that they are unemployed, partially unemployed, or unable or unavailable to work for a listed COVID-19 related reason(s). ETA recommends that states use this sample self-certification declaration as part of the initial claim application and continued claim form to meet the requirement to obtain self-certification that an individual meets the COVID-19 related reason(s) in Section 2102(a)(3)(A)(ii)(I) of the CARES Act.

A. SELF-CERTIFICATION DECLARATION

To qualify for PUA, you must be unemployed, partially unemployed, or unable or unavailable to work because of one or more of the COVID-19 reasons listed below. Please check all of the following categories that apply to you for the week you are claiming.

- I have been diagnosed with COVID-19 or am experiencing symptoms of COVID-19 and am seeking a medical diagnosis.
- A member of my household has been diagnosed with COVID-19.
- I am providing care for a family member or a member of my household who has been diagnosed with COVID-19.
- A child or other person in my household for which I am the primary caregiver 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 me to work.
- I am unable to reach my place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.
- I am unable to reach my place of employment because I have been advised by a health care provider to self-quarantine due to concerns related to COVID-19.
- I was scheduled to commence employment and do not have a job or am unable to reach the job as a direct result of the COVID-19 public health emergency.
- I have become the breadwinner or major support for my household because the head of the household has died as a direct result of COVID-19.
- I quit my job as a direct result of COVID-19.
- My place of employment is closed as a direct result of the COVID-19 public health emergency.
- I am self-employed (including an independent contractor and gig worker) and experienced a significant reduction of my customary or usual services because of the COVID-19 public health emergency.

- I was denied continued unemployment benefits because I refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.
- I provide services to an educational institution or educational service agency and am unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.
- I am an employee and my hours have been reduced or I was laid off as a direct result of the COVID-19 public health emergency.
- None of the above apply to me.

B. ACKNOWLEDGEMENT

CERTIFICATION: I certify that the information I have provided above, which will be used to determine my eligibility for Pandemic Unemployment Assistance, is correct to the best of my knowledge. **I understand that I am subject to administrative penalties, including the penalties for perjury, or legal action if it is determined that I withheld or provided false information to obtain assistance payments to which I am not entitled.**

SIGNATURE OF APPLICANT:

DATE (Month/
Day/Year):

PUA Eligibility for Certain Individuals Providing Services to Educational Institutions or Educational Service Agencies

As part of the state’s assessment on whether an individual providing services to an educational institution or educational service agency is eligible for regular UC (or PEUC or EB), the state will determine if the individual is claiming a week that occurs between or within terms and, if so, whether the individual has a contract or reasonable assurance to return in the subsequent year or term. See UIPL Nos. 10-20, Change 1, and 05-17 for more information. If the individual qualifies for regular UC (or PEUC or EB), they may not receive PUA. This includes individuals who are subject to the “between and within terms” denial provisions but are eligible for regular UC (or PEUC or EB) with the use of non-educational wages only.

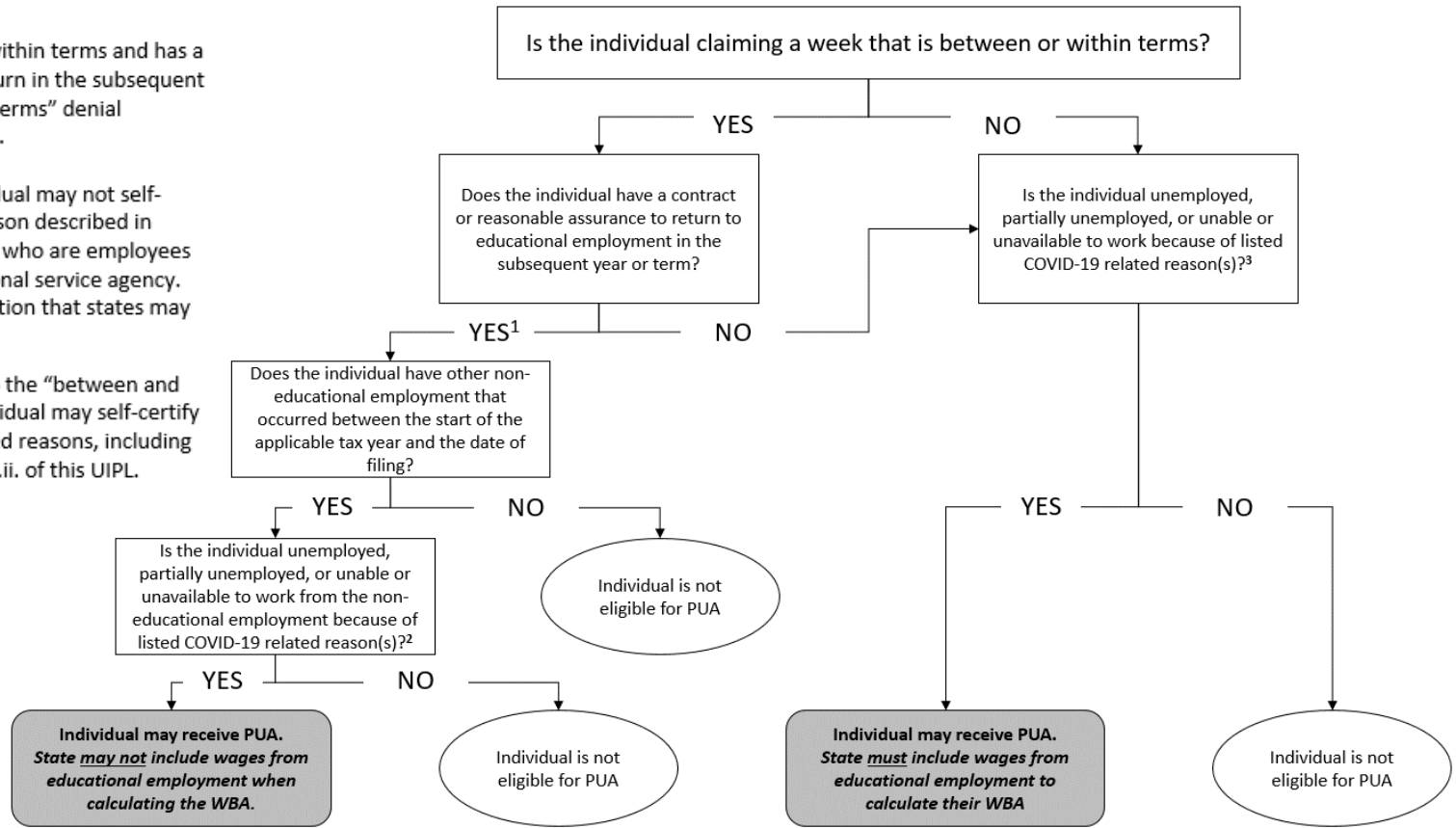
This chart describes an individual’s potential eligibility for PUA after the state has already determined that the individual is not eligible for regular UC (or PEUC or EB) or that the individual has exhausted such benefits.

Footnotes for Chart

¹ Because the individual is between or within terms and has a contract or reasonable assurance to return in the subsequent year or term, the “between and within terms” denial provision also applies to their PUA claim.

² Under these circumstances, the individual may not self-certify to the new COVID-19 related reason described in Section 4.a.ii. of this UIPL for individuals who are employees of an educational institution or educational service agency. Refer to Section 4.c.ii. of this UIPL for action that states may take to monitor program integrity.

³ Because the individual is not subject to the “between and within terms” denial provision, the individual may self-certify to any of the applicable COVID-19 related reasons, including the new reason described in Section 4.a.ii. of this UIPL.



Attachment III to UIPL No. 16-20, Change 5

Instructions for Completing the SF-424

Application for Federal Assistance (SF-424)

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

Section # 8, APPLICANT INFORMATION:

- Legal Name: The legal name must match the name submitted with the System for Award Management (SAM). Please refer to instructions at <https://www.sam.gov/SAM/>.
- Employer/Tax Identification Number (EIN/TIN): Input your correct 9-digit EIN and ensure that it is recorded within SAM.
- Organizational DUNS: All applicants for Federal grant and funding opportunities are required to have a 9-digit Data Universal Numbering System (D-U-N-S®) number, and must supply their D-U-N-S® number on the SF-424. Please ensure that your state is registered with the SAM. Instructions for registering with SAM can be found at <https://www.sam.gov>. Additionally, the state must maintain an active SAM registration with current information at all times during which it has an active Federal award or an application under consideration. To remain registered in the SAM database after the initial registration, there is a requirement to review and update the registration at least every 12 months from the date of initial registration or subsequently update the information in the SAM database to ensure it is current, accurate, and complete. Failure to register with SAM and maintain an active account will result in a rejection of your submission.
- Address: Input your complete address including Zipcode+4; Example: 20210-0001. For lookup, use link at <https://tools.usps.com/go/ZipLookupAction!input.action>.
- Organizational Unit: Input appropriate Department Name and Division Name, if applicable.
- Name and contact information of person to be contacted on matters involving this application: Provide complete and accurate contact information including telephone number and email address for the point of contact.

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

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

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

Section # 12, Funding Opportunity Number and Title:

For Pandemic Unemployment Assistance Funding Allotment:
Input “UIPL No. 16-20, Change 5, Pandemic Unemployment Assistance Implementation Grants”

Section # 13, Competition Identification Number: Leave Blank

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

Section # 15, Descriptive Title of Applicant’s Project:

For Pandemic Unemployment Assistance Funding Allotment:
Input “UIPL No. 16-20, Change 5, Pandemic Unemployment Assistance Implementation Grants”

Section # 16, Congressional Districts of:

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

Section # 17, Proposed Project

- a. Start Date: Input a valid start date for the project (earliest start date will be January 1, 2021)
- b. End Date: Input a valid end date for the project (June 30, 2022)

Section # 18, Estimated Funding (\$):

Each state is allotted up to \$100,000 in funding to cover implementation costs

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

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

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

Continued Assistance Act - Unemployment Overpayments

FAQ

Hagåtña, Guam – The Guam Department of Labor (GDOL) is administering the new Continued Assistance Act of 2020 (CAA) to Guam claimants. Signed into law by President Donald Trump on Dec. 27, 2020, the second relief package extends federal unemployment programs including Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC). While most paid claims were clean, there were some instances of overpayment.

Here are the answers to common questions about the overpayments as they pertain to Guam.

Q: What is an overpayment?

- **A:** Overpayment of unemployment benefits can occur when a claimant was paid more than what they were entitled to, or paid benefits that are later determined to be disqualified.

Q: What do I do if I receive an overpayment notice?

- **A:** The first thing to do is look through your application and weekly claims to try and figure out the cause of the overpayment. Check dates and reported income prior to contacting GDOL. See below for the most common reasons for overpayment. If the overpayment is determined to be accurate, the claimant must pay back the federal funds to GDOL. Payments can only be made in person at the main GDOL office located on the 4th floor of the GCIC building in Hagatna, Mon. Tues. and Wed. from 8:30 a.m. to 3 p.m.

Q: What are the most common reasons for overpayment?

- **A: Human error:** Examples include unintentionally inputting the wrong separation date or failing to report all income.
- **Paycheck Protection Program (PPP):** Some PUA claimants received PPP after they had filed for PUA and received benefits. If the PPP dates are the same as the PUA benefit dates, that is considered an overpayment. Pandemic displaced workers can only avail themselves of one federal program, and PPP takes precedence.
- If an individual got paid both, they are required to pay back the PUA amount that was received during the PPP pay period.

Mailing Address: P.O. Box 9970 • Tamuning, Guam 96931

Physical Address: 414 West Soledad Avenue • Suite 400, GCIC Building • Hagåtña, Guam 96910

Telephone: (671) 475-7044/7036 • **Facsimile:** (671) 475-6811

American Job Center: (671) 475-7000/1

Website: dol.guam.gov • hireguam.com



americanjobcenter
GUAM

- **Fraud:** A fraud overpayment occurs when a filer makes false statements, gives incorrect information or withholds information to receive benefits. Pending further guidance from USDOL, there may be possible penalties for overpayment caused by fraud.
 - **Examples of fraud include:**
 - Returning to work while collecting unemployment benefits and not reporting your work and earnings.
 - Working a part-time or temporary job and not reporting earnings.
 - Withholding information or giving false information when filing a claim or a weekly certification.
 - Failing to report earnings for the week in which you performed work.
 - Failing to report pay for training.
 - Failing to report severance and bonus pay.
- **System error:** Because the overpayment is an automated system, there is also a possibility of an incorrect overpayment notice. The system is automated due to the high volume of applications. The system works well but there is a chance an overpayment can be flagged incorrectly.

Q: If I receive a notice of overpayment, does that stop me from continuing my claim?

- **A:** An overpayment on an application does not hold applicants back from continuing their claims.

Q: How do I know if I got an overpayment?

- **A:** You will receive a notice of overpayment by certified mail, and an automated notice on your hireguam.com application dashboard detailing the amount that was overpaid and the payment due date. Upon logging in, you will also see a pop up window informing you that there is an overpayment on your account.

Please do not ignore overpayment notices. If you have received a notice of overpayment from GDOL, please follow the instructions on the notice and contact the Department right away.

Q: What do I do if I don't agree with the overpayment and want to appeal?

- **A:** If you don't agree with the determination, you have the right to appeal. Your appeal must be received within 10 days of the mailing date that is located near the top of your determination. When filing an appeal, you must state the reasons for your disagreement. Include your name and the last four digits of your social security number.
- If you choose to file an appeal, please choose ONE of the following:
 - **Email:** Complete the "I appeal" section on your letter, scan the page and email it to pua.appeals@dol.guam.gov. Make sure the subject line of the email says "APPEAL."

- **Postal Mail:** Complete the “I appeal” section on your letter, make a copy and mail it to:

Pandemic Unemployment Program

Attn: Office of Appeals

414 W. Soledad Ave., Suite 400

Hagatna, Guam 96910

Note: Allow adequate time for delivery of postal mail. Make sure your appeal is postmarked by the appeal deadline provided on your notice.

Q: How are overpayment waivers determined?

- **A:** An overpayment waiver has to be very carefully implemented. There are very strict federal rules. GDOL must execute fact finding by asking questions and investigating the situation and circumstances.
- A waiver of overpayments can be authorized on two conditions. First fraud or fault must be determined by statute. The overpayment must be devoid of all fraud and fault before it can be considered for equity and good conscience. The intent of unemployment is to help people who are unemployed. If requiring them to pay back an overpayment defeats that purpose of the program, then it goes against equity and good conscience. Whether or not repayment would cause extraordinary hardship must be examined.
- The process is very specific and there are no blanket waivers. All waivers will be determined on a case-by-case basis.

PSA: Beware of scams!

- GDOL reminds the public to be aware of possible scams when it comes to repaying an overpayment. If the Department declares a claimant was overpaid, we will contact the individual via email and certified mail.
- If you receive an email about overpayment, be careful and look at the address. All legitimate email addresses from GDOL end with @dol.guam.gov.
- Beware of any emails that offer discounts on the total amount to be repaid. Pandemic Unemployment Assistance and Federal Pandemic Unemployment Compensation funds are federal dollars and must be paid back in full.
- Payments can only be made in person at the main GDOL office located on the 4th floor of the GCIC building in Hagatna, Mon. Tues. and Wed. from 8:30 a.m. to 3 p.m.
- If you believe you may be a victim of a scam, email puia.investigations@dol.guam.gov and describe your situation. Remember to include your contact information — email address and phone number.

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OFFICE OF SENATOR SABINA FLORES PEREZ

Chairperson

Committee on Environment, Revenue and Taxation, Labor,
Procurement, and Statistics, Research, and Planning

I Mina'trentai Sais Na Liheslaturan Guåhan • 36th Guam Legislature

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue, N.W.
Washington, DC 20500

February 2, 2021

Håfa Adai President Biden:

Congratulations on your election to the office of President! I appreciate the swift actions you have taken thus far in leading the country into mitigating this global pandemic. I am sure with your experience and concern for the American people, the country is slated to move into a state of recovery, growth and sustainability.

As a U.S. Territory, we are grateful for all the assistance the federal government has provided to us. With the passage of the CARES Act, our Guam Department of Labor agency has been able build, implement, and facilitate a system that has distributed to date over \$500 million dollars in Pandemic Unemployment Assistance (PUA) and Federal Pandemic Unemployment Compensation (FPUC) to the people of Guam. With a small number of staff, this was a huge undertaking for our local Department of Labor to administer as this was the first ever unemployment assistance program provided to the residents of Guam.

We are grateful for the extension of assistance through the passage of the Continued Assistance to Unemployed Workers Act last December. Our economy is heavily reliant on tourism, and the road to recovery is slow and contingent on the confidence in our tourists to visit Guam.

New guidance was issued by the U.S. Department of Labor on January 8, 2021 titled "UIPL 16-20 Change 4" after the passage of the Continued Assistance to Unemployed Workers Act. The guidance specified the limitations of Section 2102(a)(3)(A)(ii)(I)(jj) of the CARES Act. This new interpretation of the guidance provided by the U.S. Department of Labor has resulted in the exclusion from PUA for thousands of unemployed Guamanians whose hours were reduced as a result of the pandemic.

The new guidance has placed a stumbling block on our path to recovery. I humbly ask for your assistance in clarifying the guidance to allow for workers on reduced hours to avail of PUA. Unlike the states, Guam does not have a state/territory unemployment program available for its residents. The PUA and FPUC assistance has been the only source of funds for a number of people in our community through this global pandemic. The funds have helped in feeding local families, keeping the lights on, and everyday living while the island is in an economically depressed state.

We are a proud people who value a strong work ethic and want to rebuild our economy. We are ready to move forward into the next phase of growth and sustainability. Any assistance you can provide to remedy this issue would be greatly appreciated. I stand with our *I Maga'hågan Guåhan* Lourdes Leon Guerrero, Congressional Delegate Michael San Nicolas, and the Guam Department of Labor Director David Dell'Isola in seeking a solution to assist our people.

Si Yu'os ma'åse,

Sabina Flores Perez

Senator Sabina Flores Perez
36th Guam Legislature

cc: Governor Lourdes Leon Guerrero, Governor of Guam
Congressional Delegate Michael San Nicolas, U.S. House of Representatives
Director David Dell'Isola, Guam Department of Labor



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COMMITTEE REPORT DIGEST

I. OVERVIEW

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research, and Planning convened an virtual Informational Hearing on the Guam Department of Labor, Updates on Federal Pandemic Unemployment Assistance Program on Monday, February 1, 2021 at 1:00 PM via Zoom Video Conference.

Public Notice Requirements

Public Hearing notices were disseminated via email to all Senators and all main media broadcasting outlets on January 25, 2021 and again on January 30, 2021, fulfilling the 5-Day Notice and 48 Hour Notice of the Open Government Law requirements respectively.

Senators Present

Senator Sabina Flores Perez

Committee Chairperson

Speaker Therese M. Terlaje

Committee Vice Chairperson

Senator Telo T. Taitague

Committee Member

Senator Amanda L. Shelton

Legislative Member

Senator Joanne Brown

Legislative Member

Senator V. Anthony Ada

Legislative Member

Senator Christopher M. Duenas

Legislative Member

II. SUMMARY OF TESTIMONY AND DISCUSSION

The informational hearing was Called-to-Order at 1:00PM.

Chairperson Perez: Thank you for joining me here today. The purpose of this informational hearing is to discuss the Guam Department of Labor's updates on the federal pandemic unemployment assistance programs. I'd like to welcome the Director and support staff of the Guam Department of Labor and I thank them for their time in participating and preparing for this hearing. Again, the purpose of today's informational hearing is to obtain status updates regarding the previous unemployment program of 2020, the extended unemployment program which was passed into law in December, its implementation and the US Department of Labor guidance. Additionally, I would like to cover any outstanding issues Guam Department of Labor is facing and any solutions to resolving application and appeals. I hope this hearing will give our community some much needed answers. It's urgent that we find ways to assist those in our community who no longer qualify for PUA. Its priority at this informational hearing to determine what the gaps are and who will be working to address them, and our office is committing to advocate for those that may be left out. I'd like to now give the floor to Director David Dell'Isola. He has a presentation to provide an overview. We did provide questions in advance, and it includes everything, this presentation includes much of the questions that were asked. After that point, we would then open up the floor



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for any questions. Thank you, Director, for your time and we'll have the presentation up shortly or if you would like provide any introductory remarks.

David Dell'Isola, *Director, Guam Department of Labor*: I'd like to welcome the 36th Guam Legislature. This is the first time I've got a chance to see some old faces and some new faces and I hope that you enjoyed this presentation. I wanted to of course, my new Chair Senator Sabina Perez, just want to say thank you for inviting me and that I hope that I'm able to present some clarity on this program. Before I begin, I would be remiss if I didn't thank my hard-working staff here at Guam Department of Labor. They've been working since March, tirelessly and we continue to work hard and of course the Governor and Lieutenant Governor, they've always treated this program with high priority and allowed and supported me to ensure that I just kept the money going and no matter when or how I had any problems, they were always there to ensure that the path was clear for us to keep getting the money out. Last, I wanted to thank DOA, putting out \$520 million every week, to every other week is a lot of checks and deposits along with what they normally do, and they've always stepped up and you'd be surprised how much work it is to... We have hundreds of returns from deposits, checks, returns, addresses, reconciliations and they've always been there to help us. I wanted to thank DOA.

I just thought I'd give a quick summary. There's basically, what we consider tier one PUA and tier two PUA. The tier one PUA is the original program which was implemented on the 27th of January to the 26th or the 27th of December and that was pretty straightforward. On the 27th of March, President Trump signed the CARES Act. The 28th of April, we put in a budget request for \$924 million which subsequently got approved, then on May 23rd, we got \$276 million transferred to the payment management system for us to drawdown. At the end of May, we started and implemented the PUA program on Hire Guam. There's a lot of things that were involved and a lot of things that we did but I'd like to just tell you that at the year-end on the 26th, we were authorized to pay \$554 for drawing down and we managed to put out \$520 million for the year 2020. Out of that, about 42, almost 43 million were on taxes. I just wanted to kind of say the last batch for the program, for the year was December 29th. We put out 4.8 million and just in December alone, when we were on that aggressive payment, we put out \$60 million worth of PUA and total we have about 30,000 claimants in our system, paid claimants, not total claimants because that's excluding 93,000 fraud DQs that were hit, that hit us and with an estimated over billion dollars' worth of fraud claims. We've been aggressively putting in and trying so many different fraud measures. We have about, really a half a dozen really strong ones that have allowed us to basically keep them at bay, enough for us to be aggressive in the payouts.

In 2021, in the PUA 2 program, so far, the 19th was our last batch and that was 20, almost 21 million dollars. I'd like to announce that this Tuesday, tomorrow, we're going to batch and will be the first time that we're gonna batch all filed claims, no dates. If you got a filed clean claim in, you're gonna be batched all the way up until the time that they batch the file. That is a huge feat for us, and we've been really aggressive in trying to keep the fraud out and the clean claims in. I also want to say thank you to my staff who worked over the weekend, that we got 30,000 1099



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folded and put in envelopes and mailed out on time by the deadline. It's also available on each of the claimant's dashboard, so they choose to download and print out, instead of waiting for the mail.

Just a quick outline on some of the new changes with the PUA 2. President Trump signed it December 27th and it basically extended the program from the 27th through the 10th of April, between the 27th and the 14th, is the regular period for the new FPUC, which basically is an 11-week program. If you expired with 39 weeks, you were given 50 weeks, additional and if you add that up, that'll take you to the 13th of March. The FPUC was put back on, but it was reduced from \$600 down to \$300. Now with the \$375 weekly benefit amount, \$345 weekly benefit amount, the \$300 added on makes it \$645, for the maximum amount of payment assistance that you can get for the week. The new law, like I said, extended the cap from 39-week program to 50 weeks and claimants that were expired or maxed out on the 39 weeks previous, before the end of the PUA program were allowed to start filing their 40th week after, which was basically January 2nd, the first work week on the new program. Some of the changes is if you are new to filing a claim before the 27th, you were able to file as far back as the date that you were affected by COVID. As far as employment meaning, as far back as the 27th of January but after the 27th of December, if you file a new claim you're only allowed to go back to December 1. We went live after the 27th, when Trump signed it, we went live with our program. 100% live on January 15th. A couple days later we went half-live, meaning, you were still able to go in and if you were eligible and file the claims, we weren't just paying for it. We went 100% live at midnight the 15th of January. Also, some of the new stuff that will be coming out is...

Chairperson Perez: Director, I do appreciate it, but I was wondering if you can maybe start on the presentation. I think some of the visuals might help reinforce.

Mr. Dell'Isola: That's not my presentation. Let me go back and explain. That was a USDOL. I've had a half a dozen technical assistant meetings with USDOL and last Friday, was the last one. I think was at four o'clock in the morning somewhere. I just gave you the packet of all the PowerPoint, just so you get an idea of what we go through on a typical TA meeting and it's got a lot of good information, some of the stuff, like what I'm covering is very similar but that's not my presentation. I just wanted to give it to the Senators, so that they can see, know what I do at four o'clock in the morning, when we have those technical assistants and some of the information that they provide for us and they expect us to implement and follow.

Chairperson Perez: Just to clarify, can we just go back and clarify the PUA from the FPUC, as far as this the new legislation. If you can just go back and discuss that a little bit more because I think it might have went by really quickly. As far as PUA is concerned versus FPUC, can you make that distinction with this new legislation?

Mr. Dell'Isola: The WBA, the weekly benefit amount, is \$345 and basically this new program continued it. Everything's the same as far as with PUA, as far as the weekly benefit amount and



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instead of it being a 39-week program, it changed it to a 50-week program and which the regular period, like I said, was the 27th of December through March 13th, which will give it an additional 11 weeks to those who had 39 weeks. Where the little bit, a little caveat is after the 13th, USDOL calls, there's a phase-out period, which if you're one of those claimants who haven't reached their 50th week by the 13 of March, then you can continue to file just the PUA. The FPUC ends on the 13th of March. The new \$300 FPUC, so the 27th of December to March 13th, is the new FPUC period and the regular PUA period but then they allow for a phase-out period, is what they call it up to April 10th for those people who haven't reached their 50th week. You can continue to file and get just the PUA up until April 10 and then it shuts down completely, 100%.

Chairperson Perez: Just to clarify for the public, FPUC ends at March 13th, it doesn't, there's no phase-out period?

Mr. Dell'Isola: There's no phase-out period just like the last FPUC. They had a definite period of time and that period ends March 13th. There's no question about that.

Chairperson Perez: If you qualify you can get basically \$645, up until March 13th. In that case if you have additional weeks left, they can phase it out and at that point you'll be receiving \$345 versus the \$645 weekly, if you do qualify. I think maybe we should focus a little bit more on the eligibility. The latest program letter was dated January 8th, is that correct?

Mr. Dell'Isola: That was the latest guide that that was released, 1620 Change Four.

Chairperson Perez: Right, that's for the PUA?

Mr. Dell'Isola: Yes.

Chairperson Perez: In that, there was under eligibility. So all of this language was taken from the CARES Act and because of the guidance that was released, there was some change in eligibility, can you explain that? What was the change in this latest guidance and is it derived from law or is it just because it was through the Department of Labor's changes?

Mr. Dell'Isola: I'll do the best I can. Included in the information I sent you, I sent to all the Senators, these are the 11 eligible reasons that you can collect PUA. Everybody that is eligible for PUA has to fit in one of these 11 categories. This was from the CARES Act one, the initial, they're basically a spin-off, a lot of it is a spin off from the DUA, but these are the guiding eligible requirements that you must meet. No matter what you, if you qualify for PUA, you have to follow one of these 11 criteria. I sent it to you. Now the confusion that was presented not only by us, by about 15 to 20 other states, is when they first were giving us guidance and information, remember we don't have a UI program, regular unemployment. They were talking about the WBA and that was \$345 and for us, that's for PUA but for the rest of the nation, there's what's called a WBI for UI and for all the other stuff. When they were talking about reduced hours or partial pay, partial



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unemployment, they were talking about the WBA and how it's treated as a whole and giving us the earning disregard. They never differentiated, oh this is just for the PUA, this is the WBA for the whole program, for everybody nationwide, including PUA, including unemployment insurance and PEUC and all the other programs that the states get. We don't have UI, so we don't get a lot of the normal, regular employees, who normally would be in reduced hours or regular employment. They would, most of them would fall under your basic UI program. The PUA was designed for everybody that was self-employed, gig workers and maybe those few that don't fall in the UI, fall under PUA and that's how they covered the whole gamut, the whole pie for the states.

Now we only get that one slice PUA, so they say well since you don't have UI everybody must fit in the PUA program. That's where we talked about the reduced hours, this and that, they never differentiated it. I never caught it. We just went assumed and that we went on. As with a lot of other states, so with the new program that came out, USDOL surprised us and said that and made emphasis that they're working with several states to correct this and that under the jj, if you read jj and your eligible, it says the individual's place of employment is closed as a direct result of COVID-19, public emergency. They're saying that there is no mention about reduced hours or allows it and that's when I said well it was implied and that was Congress's intention. I agree with the Congressman that why would anybody not allow it. They said well unfortunately, Guam, you only got the PUA. In the states they got the UI. They got everything else. It's very clear. Your place of employment must be closed, and so you can't, if you hire somebody and somebody's working for you, your place of employment isn't closed, let alone reduced hours. That's the long and short of it. Then I asked, I go, well then why do you give us a earning disregard? Why do you even give us reduced hours, if it's not allowed? They said, well, there are some circumstances when it would be allowed under the PUA program and, of course, I said well what is that and if you look under dd, delta delta, it talks about a child or person in the household caregiving or if your kids are out of school, because of the pandemic, you need to watch the kids, so a person or a husband and wife may work part-time and have to take care of the kids part-time, so then they qualify. If that's your case, then you would claim your income at the reduced level and you would use the, dd reason, as why it is allowable.

I hit him with about three or four other questions of possible eligibilities, and they're looking into it. I kind of caught them by surprise, but that's the gist of the whole reduced hours and why they're saying it didn't change. Dave, you just didn't catch it alone, but we understand that many states, you, CNMI, didn't catch it. You need to show good faith correction, and get it fixed, moving forward. This would have been all moot, if we didn't have a PUA program, a second PUA program. The first PUA program would have been expired, it would have just been moot but moving forward any new claimants... I can't change the past and I'm not going to go there, so if you were reduced hours, you got those payments, but moving forward they made it quite clear, in multiple technical assistant meetings, that moving forward, if you show good faith effort into changing it, then everything will be okay. That's what I'm doing.



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Chairperson Perez: Thank you for lobbying on that regard, but for the audience, I wanted to point out “jj”. In the CARES Act, they provided a list of different examples of eligibility and so the infamous “jj”, basically is the individual’s place of employment is closed as a direct result of COVID-19, public health emergency. In one of the examples, they write 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 COVID, even if the brewery continues to operate, the individual who was employed in the restaurant may be eligible for PUA. It then goes on to say in this particular guidance, which controversial and hopefully we can change, an individual who’s working reduced hours while his or her place of employment continues to operate does not satisfy the conditions to self-certify under item “jj”.

Mr. Dell’Isola: That basically just gave you clarity that they understand, one, a business may not just be one operating entity. You could have another example, a bar and a restaurant or a bar and whatever, there’s two, so if there are divisions that are closed and those people only work for that division, they don’t cross back and forth then you could, those affected staff of that closed division, closed, would qualify for PUA but not the part that is still open. They’re just basically giving you an example of how, if you have a multiple business corporation that has different divisions and some of them were closed down, but one part of that business is open, then you don’t, not everybody falls in that umbrella. They did say though, if you have employees that are crossing back and forth then you don’t have a distinct separation, they wouldn’t qualify.

Chairperson Perez: Thanks for that. Maybe you’re not willing to share with us but there are other ways to address this as far as closing the gap in this particular case.

Mr. Dell’Isola: Those are certainly something that, until I get all the feedback from the questions that I asked from USDOL that could be, because there could be more changes. There could be more interpretations and not everything could have been... There could be other things going on. I posed some questions that could still have a few more ramifications to our island. We’re kind of waiting for that. Unfortunately, sometimes you get attorneys involved. It takes longer than when you just get opinions. That’s if you want me to jump in and that’s where I reached out to the Congressman and to the Governor, as far as possible solutions from my perspective that could be wrecked, that could remedy it. One possibility, of course, if you look at “kk”, in the, I don’t know if everybody has it, all the other Senators but if you look at “kk”, it reads this is in the additional reason for eligibility, the individual meets any additional criteria established by the Secretary, that’s the Secretary of Labor, for unemployment assistance under this section, approved criteria clarified. The Secretary of Labor approved, one additional criterion, that wasn’t and normally would be covered in the “aa” through “jj” and that was the gig workers and the self-employed, if they open up and they’re trying to do business but they have a severe reduction of income, as they are open, then they could still qualify and use the “kk” reason. They would just claim whatever small income that they had from trying to open up. You can see that is a pretty big help for our



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island too, those, all those who are self-employed or gig workers, now they can try to get some business. They can try to open up. They can try to see if they can survive, and if they're not or they're slowly building up, they still can qualify.

The other reason that I feel is a possible solution, came from an amendment from Senator Schumer, when the Senate had their version of the new CARES Act and the Democrats had their version, and I'm arm-chairing it so I could be killing the explanation but don't kill the messenger. I'm just trying to give it. He came up with his own version, which was bill 477, and in there he gave, section 303, clarification of access to pandemic unemployment assistance for the workers at businesses that have staff, reduced staff due to the pandemic. If you take that amendment, so you're making this jump here, right now the "jj" would basically, which reads now, the individual place of employment is closed, if you add his amendment to it then it says, the individual, the new reading for "jj" and if you listen to it, you tell me if it satisfies it... the individual's place of employment is closed or its operations are otherwise curtailed including by reduced hours of operation, staffing levels, occupancy or other changes that are recommended or required as a direct result of the COVID-19 public emergency. That covers everything. I know the Congressman can say or give more light, why it didn't get passed, but I will tell you and USDOL did affirm it to me, if that was in the new CARES Act 2020, then we wouldn't be having this conversation right now. That would basically cover every single thing that could go... that businesses can close, open, reduce, occupancy, staff, everything would be covered and still allow that as a "jj" reason, instead of your business is closed.

Chairperson Perez: We have two options, the administrative fix and the legislative fix, congressional fix.

Mr. Dell'Isola: That is what from my research, what I was able to come up with. I'm sure the Congressman may have other alternatives, or the Governor may have some other ones, but those two I vetted through USDOL and they agreed, either one could be used. They didn't say anything about the chances of either one being done, that I can't speak of but all I can tell you is I was trying to figure out what I could think of were possible solutions. I wrote the letters. I forwarded to the Governor and we will continue to work with the Congressman and the Governor and myself, wherever I can and figure out what is the quickest and easiest solution. I know the Congressman wrote to President Biden and the administration to remedy this, that is a great idea, and we should all join them. If you're going to turn to me and say Dave what is it that we can do, from my arm chairing and like I said for my pay grade, draft resolutions, letters of support to go with the Congressman and with the Governor's letters, to show that we are one island and we all agree, with me, that this is catastrophic to our island, and we need it to be remedied and if we can collectively show support from everywhere, then hopefully they'll hear our voice and something can be changed.

Chairperson Perez: Maybe now is a good time to open the floor to Congressman San Nicolas, in regard to his efforts to try to close the gaps.



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Congressman San Nicolas: Thank you, Senator. Thank you, Dave, for all of your hard work and to the agency. I'd like to of course recognize our Speaker. Thank you, Madam Speaker also, of course, you being here is a normal course of business but having the leadership participate in the hearing is always a plus.

Several items, I want to clarify, first and foremost with respect to the legislation that was introduced by the Senate, the reason why that legislation didn't move forward was because it was determined that language was not necessary to continue paying reduced hours workers. In fact, the opposite actually would become a concern in that, if that legislation was entertained and it passed then the argument could be made that all previous reduced hours cases that were entertained and funded, were outside of statute. I think all of my fellow lawmakers can understand that when you introduce clarifying language on something going forward, you're basically saying that was not the case going backwards. The reason why that legislation was not entertained, and it didn't get included in the extension and I want to underscore that, the extension of the CARES Act, is because doing so would have highlighted the fact that there shouldn't have been payments to begin with and that is absolutely not the case. When you read the CARES Act legislation it was broadly written, and it was done so very specifically. My office actually coordinated very closely with the committee to make sure it was drafted this way and it basically reads that any person who does not qualify for unemployment compensation will qualify for pandemic unemployment assistance. That would include reduced hours workers. That's why reduced hours workers were paid all the way up until December 27th on the first phase of the CARES Act and that's why we contend that they should continue to be paid now.

One of the different avenues that we've taken is we've absolutely reached out to the Biden administration. We've gotten a letter signed by Congress, members of Congress from across the country, states like California, Ohio, Pennsylvania, Florida, all to try and create this stop gap, so to speak, but the reality is that the language in the omnibus bill that we passed in December did not alter the eligibility qualifications for those who are receiving PUA. That was never changed in December and so anyone who was extended, and I do want to highlight that, the language in the omnibus that was passed in December extended the eligibility period from 39 weeks to 50 weeks. If the eligibility period is extended and no change in eligibility is mandated then everyone who was able to qualify before should continue to qualify and that's basically the position that we're taking, that's the position that we've confirmed with our committees of jurisdiction, here in the Congress and that's the clarification that we're seeking from the Biden administration effective January 8th. To clarify as an update on that, we have communicated with our liaisons. We've communicated with the White House Office and Legislative Affairs. They are aware of it. The political appointments by the Biden administration to the Department of Labor are still in process. They're still staffing up in the Department of Labor and so there are no political appointees to be able to step in from my end and make these clarifications, but what I was hoping we could get some clarification on is whether or not this turn of events has been protested by the Department of Labor and taking up the chain in the agency, so we can get in writing not only from the individual



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who is currently passing through this new guidance but from that individual's boss and that boss's boss and that boss's boss, all the way up the chain so that we can have as much of a paper trail as possible to clearly indicate that this is an interpretation that is prevalent throughout the agency and it's not just an interpretation that's coming from a more narrow segment of the agency.

To further add on the clarifications of interpretation, when it comes to closing, whether business is closed or open, when we have Executive Orders that are reducing operational capacities to 50% to 25% or to 75%, you are in effect closing the business. You're closing down portions of the business and so when you have portions of the business that are closed, I would proffer and I would protest very strongly the Department of Labor, that just because people are working in those businesses doesn't necessarily mean those businesses are entirely open for operation. A business should not have to bifurcate its in-room dining from its dining out, for example. If people are still working to facilitate the dining out operation of a business that under normal circumstances would be having people eating in the restaurant and technically the dining in component of the business is closed and those workers who are impacted by that, to include those who are working reduced hours only in the takeout section of the business, should be eligible for reduced hours compensation. I mean these are all different scenarios that I think are not only legitimate, but they've actually been the case over the past year. We need to make sure that we're not acquiescing to what Department of Labor is saying and that we are very strongly protesting what I've clarified are very wrong interpretations of the statute and really hammering the point home that the law for eligibility has not changed and that those who are eligible all the way up to December 27th and had their timelines extended with the second phase of the PUA, should continue to have access to whatever they were accessing prior to December 27th.

Those are the communications. This is nothing new that I'm sharing with the Director, but these set of circumstances that we're currently under at this point in time are not to the norm and for a variety of reasons, I can attest that. First of all, we have clarified by visiting the agency websites throughout the country, in various states, they're still accepting reduced hours, PUA applications from what we've seen and also in order to qualify for FPUC, the additional 300, you need to be receiving at least \$1 of PUA. If there was a across the nation cut off of PUA for reduced hours workers, there would also be an across the nation cut off of FPUC and the public outcry out here will be deafening but we're not seeing any of that. As a matter of fact, we're trying to circulate our letter for support. We got feedback from many offices saying, hey you know my member wouldn't have a problem signing on to this but they're just not seeing this as a problem in their district. We need to really make sure that what is being applied to us on Guam is actually being applied across the country and we need to make sure that there is not only equity in the policy but that the various states are either being held the same standards that we can get greater consensus from other members out here, that this is something that needs to be addressed or we need to push back on the agency and take it up the chain and say hey you know this isn't happening in these other places, why is it happening here. I'm hoping that this can provide at least some clarity on my end as to why we're having some challenges in terms of getting this addressed but my feedback that I have gotten from our liaisons and from white house legislative affairs, is that this is absolutely not



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something the Biden administration supports and if we need to wait for the political solution, when the political staffing takes effect for the agency, we can do that but I'm hoping that we're building the necessary paper trails to illustrate that we've taken this up the chain on the agency side. I'm open to any questions Madam Chair.

Chairperson Perez: Thank you, Congressman. I apologize I would like to recognize the Speaker Therese Terlaje and Senator Telo Taitague. They were here earlier but I just needed to recognize them. Maybe we can reserve, maybe just a couple questions for the Congressman, if there's any questions regarding the status. I know there's a short timeline here. We're talking about March 14, and timeliness is probably going to be an issue here. Of course, anything that we can do on our end to help support your efforts, please let us know. Maybe if we can continue with the hearing, so having said that Director Dave Dell'Isola before we figure this out, before the guidance changes, what type of notifications are you sending out to potential claimants because I know part of your responsibility is to provide that information. What does a notification look like on your end?

Mr. Dell'Isola: Thank you and thank you, Congressman for giving an update. To the notifications, as far as which ones? There's multiple notifications that will be going out and have been going out. You have to be specific, or I'm not sure I understand the question.

Chairperson Perez: The point I'm trying to make is given the guidance that we have in regard to part-timers not being able to avail of the extended PUA at this time, what kind of guidance or notifications are you sending out to potential claimants?

Mr. Dell'Isola: When they log into their claims, there is a disclaimer that's going to be... That's the first thing they're going to see and that's probably one of the strongest and, of course, there will be ad's, if they haven't gone out yet, stating that reduced hours is... The only reason why we haven't pushed it all out yet because I'm trying to get a sense of are some instances where reduced hours is allowable and it would be confusing for me to say reduced hours aren't allowed without stating when they are allowed and unfortunately some of the ones that I'd like to put in there, I haven't gotten 100% thumbs up from USDOL. They're asking the question too. I was ready to put out a disclaimer about reduced hours on the ads and in the radios and the newspapers but I'm holding it off. I think there's been a lot of discussion through the newspapers and you know me I'm not shy with the radio either and explaining what I mean by reduced hours and that I don't like it as much as everybody else.

The one thing me and the Congressman definitely agree, even though we might have some slight differences on what the solutions are or perspective, he's coming at it from the Congress end, which is what we need and I'm coming at it from the USDOL, running their program and they give us the money. If they tell me that this is not allowed, then I have to implement it and he's right, I have protested. We have written letters. I have given them a lot of the questions. That I agree with the Congressman. There has not been any change in... closed business has been forced to partially close and partially open. All those things have been addressed to me clearly by USDOL



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and they keep pointing to the “jj”, your business is closed. If you hire anybody, it doesn't matter part-time, full-time, security, your business can't be closed if it's done. They agreed, there has been no change in the policy, that there is no reduced hours that was ever allowed with PUA, under “jj”, that's the very beginning of the program. I disagree and I also agree with the Congressman on that, but this is what USDOL tells me. I have protested. I know the Governor is putting together a letter and which we're writing, so we're even writing a letter to Al Stewart, the acting or a Director of Labor, Secretary of Labor. I had all his contacts and information. We're writing letters to him.

As far as the amendment and I understand because that was brought up that if an amendment like that came in what do you do? The amendment had the second part of it, which basically said that the passage... that this amendment doesn't go into effect until the passage of this amendment or it doesn't take effect upon passage, so it doesn't go back to the beginning. It goes back to when it passes. If we were to go, starting with the PUA 2 program, we're not looking at what happened in the PUA 1, moving forward we're in recovery now. We're not in a shutdown, and we need this, and everybody can agree with us. I agree with the Congressman that we need to get... this is stifling our recovery and we are protesting, and letters and you haven't heard me in any of these calls. There are notices that are going out, until I get concrete on what is allowed. I know one bit was allowed under the “jj” that I brought up to them, that they didn't, they're saying yes. If you, like a lot of our hotel workers, they were like or a lot of workers, they were working full-time or their main job and then they had a part-time job. I said, well okay so your main job is closed, so now you're qualified but you still have a part-time job, and they came back to me in a couple hours and said yes, I think you're right, that part-time job you claim is income because your place, your main place of employment is closed. That's your qualifying event and then there are some nuances. I'm throwing boomerangs out left and right to try to figure out how we can take care of some of these things. While we wait an administrative or whatever kind of fix is out there. I do want to say that the Congressman's right. We are protesting this vigorously and we are singing one voice with the Congressman. I understand what he's saying as far as that amendment, but if that amendment was part of the CARES Act and it went into effect at the start of the CARES 2, there is no other way of reading it, that this would not be an issue today.

Congressman San Nicolas: May I make quick suggestion on what could also possibly be a local remedy. I mean if it really needs to get into these kinds of technicalities, if I may. If the situation is that USDOL is not accepting a reduced hours worker because their business is still open, then perhaps the local government can just do a quick batching and reissuance of business licenses to all existing businesses and have them issued a second business license as a pandemic business. For example, if your King's restaurant, issue them a pandemic King's restaurant business license and then all the employees who are working on reduced hours are hired under that separate business license and technically King's restaurant proper is still closed. We can create a whole paperwork issue and say that all those employees were no longer working at King's restaurant because King's restaurant is closed but pandemic King's is open and they're working reduced hours and so they'll qualify for PUA because King's is closed but pandemic King's is open, you know I mean. We can



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do that, that's something that can be done as a paperwork issue if DOL really, USDOL really wants to create those kinds of bureaucratic headaches. That would allow everybody who is not working in King's and working in pandemic King's to continue working reduced hours under the pandemic King's business license, while they're technically unemployed at King's. I mean that can be done but then that would just very clearly illustrate to USDOL how outrageous the notion is that this partial shutdown and these reduced hours are inapplicable because the business is technically not closed. Locally that's if we want to try and figure out how to fit something into this outrageous interpretation from USDOL, we can but I think that illustrating something as plain as that to them can also make it very clear that this is a very outrageous interpretation. If they want us to go that route, locally we can and everyone just has to get reissued a second business license to fit under these pandemic circumstances, rather than the executive orders doing it or another option would be for it to be done by executive order. By executive order all businesses are hereby recognized as having two business licenses, one as their standard business license and another as a pandemic business license and all employees working under these emergency circumstances are considered pandemic employees, until such time they are rehired under their normal business license and then technically they'll all be considered unemployed in their normal business license. Those are two local solutions that can be implemented. I think the executive order angle could be done in a 48-hour period and then all those people can just start reapplying as technically being unemployed with King's. I don't know what that would do to the DOL Hire Guam website, but I mean that's another angle as well if we're trying to just figure out how to find ways around this very ridiculous set of circumstances that the island is facing right now.

Chairperson Perez: Thank you, Congressman. I do think that it doesn't follow the spirit of the law. The CARES Act was there to support those that are unemployed and being that Guam doesn't have an unemployment program, it doesn't make sense. We do appreciate your efforts. I want to move the conversation over to overpayments, so waiving of overpayments. Director can you give us a little background on the... there's a section in the guidance that talks about the potential to waive overpayments?

Mr. Dell'Isola: Overpayments, so initially when we implemented the PUA program and bought this package, we didn't have the overpayment module included in it because who could foresee the difficulties of this and having so much overpayments, but we did get an add on the overpayment module and it came into effect several weeks ago. When it came into effect, the requirement for notification of all claimants, who exhibit overpayment kicked in and that's why a large group of claimants were all of a sudden notified, all through automation, that an overpayment was found in their claim. That is something that is, was always going to be an area of contention because there are so many reasons for why there's overpayments and as soon as you notify people of all overpayments... I just want to let you know, it's a very sticky subject to get into. A lot of the overpayments were done by the PPP program, when employers went back and paid employees for weeks, past weeks and they filed for PUA, so they got paid double for the same day. Some people went ahead and filed for PUA even though they got the PPP. Some people filed for PUA when they got, they were on leave, meaning the business closed but they still chose to pay their



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employees. There are so many reasons for overpayment, of course some fraud, some not. That's why each claim needs to be looked at individually. Then we get into, now that they see an overpayment notice, they need to go in and look why did they get it. One other very frequent reason is they incorrectly applied their income to their weekly benefit amount. Maybe they put the whole amount, one day and they didn't spread it out, some forgot to put in some of the income that they put in and when we audit it. We noticed that they had other income, so they needed to put it in and therefore there's an overpayment. Some forced the system into approving things by incorrectly asking questions and that received overpayment.

There is a broad reason for overpayment and each one needs to be looked at, but I've noticed a lot of the claimants that make the most noise tend to be the ones that created human errors with their overpayment. Now comes into something new that was just passed with this tier two and that is the overpayment waiver. It was kind of upsetting to see the media put out there, that says overpayments can be waived and kind of left it that, oh everybody that has overpayments you can get it waived now and our calls are flooding for everybody wanting to get a waiver on the overpayments, when clearly there are strict criteria that needs to be followed for overpayments. Not to get into it too deeply, but Hawaii, we always have to resort to Hawaii's UI laws since we have no UI guidance's or laws. Their overpayment waivers are even stricter than the one that was moved forward by a USDOL. Basically, the first thing of course you need to do before you do a waiver, was their fraud and that was there, any evil intent. There are some people that were fired, never worked, where a number of other reasons, that didn't have nothing to do with the COVID and they still filed, and they still got overpayment. Automatically they would not be considered. Then there's fault that has to be looked to and fault is not necessarily intentional but also implies negligence, error in judgment or inadvertence due to careless, meaning you didn't check into it, you didn't bother to look, or fault is so broad that I'm still reading it all, the legalese verbiage so that I make sure that I apply it fairly and correctly. First fault, fraud then fault and then comes in, okay if it's no fault from the claimant, and there's no fraud, now comes the equity and good conscience. There are steps to what is good equity and good conscience. It's not just something that I can say oh *tan* Maria, I'll wave you, or Joe Cruz, I'll wave you or I'll wave this, I'll wave that. It has to be done case by case and it has to be well documented with the reasons and then fairly applied to each individual and cannot be done blanket. Therefore, I'm putting together an implementation of how we're going to do it, and stuff, but it is something that, of course, I want to do to those who aren't at fault, who owe \$15,000 and could not in good conscience pay it, when they thought, honestly thought, that they were eligible, and they applied with no fault of their own. Of course, I will use it, to the best of my ability because it would only help our people, but I have to be careful that I don't overuse it or what USDOL says abuse it. That kind of gives you where we're at with the waiver.

Chairperson Perez: Let's say I'm unemployed and I'm interested in filing a claim and I'm unsure whether I qualify, what sort of recommendation can you give to the public being that the implementation protocol is still in the works?



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Mr. Dell'Isola: I tell everybody that's out there, be careful because if you have small overpayments and it was just decided and it was fair... if it was a PPP and you got PUA at the same time, I'm not gonna waive somebody who got paid twice for the same day. I'm just saying everybody has a right to file for a waiver but when you file for a waiver, you also welcome us to look into your claim and when we look into claims a lot of times, we find problems with the claims and you could have more problems than you asked for. You need to do some due diligence before you ask and make sure that you look at the reasons behind the overpayment and if it was legitimately that you had income and you needed to spread it out through the week. It's not just a one-day occurrence when you got the check. Then look at it and if it's reasonable then you need to overpay then you need to pay it back and see us about getting under a payment plan or to pay but if they understand the reasons how I can waive it then by all means request for a waiver, when you get the overpayment.

Chairperson Perez: In regard to the extended PUA, what recommendation would you give to the public in regard to filing a claim, so to prevent overpayments?

Mr. Dell'Isola: That's a good question. Some of these overpayments are also... a lot of it are done by human error and that's why you kind of go right into another section about understaffing or are answering our phones. There are so many people on this island that are not computer literate and not only they're not computer literate but none of them have ever seen a federal application process like PUA. We remember at the beginning of the PUA program, we had 70- 80 people at GCC helping everybody file claims. We had the Consulate office at FSM helping them file for the Micronesians, the FA citizens. All these people filed, a lot of them got their 39 weeks and now they have to reopen, what's called reopen their expired claim. That means they have to go back in and ask the personal information... all there but they're going to ask you a lot of those questions. Are you still unemployed? Are you still this? Have you ever been working? A lot of them need to be handheld again. When you just turn on a program that was signed on the 27th and you turn it on, on the 15th that doesn't give everybody... if the floodgate opens and everybody needs assistance, everybody needs help. When we were starting, we thought that we were winding down a program and it takes a month to train somebody decent enough to handle a PUA claim and so you can just imagine that the problems. I know I took a long way to answer your question.

The questions make sure that you answer them accurately and if you have reduced hours then hold off until we get a resolution or you're just going to have to stop filing one or the other because I don't want you to file and then if it comes back that there's no way reduced hours are going to be eligible then you have overpayments. When I told everybody not to file, you can't come back to me and say please waive it. You know what I mean, please just make sure that you do the best you can and everybody... I mean, I got a text today that said thank you Director, I don't know how she got my number. I was able to get through it wasn't that hard to get through, I was helped, they're so nice. I get that from the public all, everywhere I go. You can get through to the numbers. I understand. You can get through. You may have to be diligent. We will help you but because we help everybody and handheld everybody, we're on the call for 30 minutes to 40 minutes. We only



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have so many people, so many calls we can handle. We handle 200 people a day up at *Dededo* and when *Yona* is open, we handle up to 200 there. We are cranking through this. We are paying \$520 million worth of claims. We're working and it is successful, but you always have that 5%, 10% that need that extra help, Unfortunately 5%, 10% is 3,000 people. No way we're gonna set up for a short program to handle 3,000 people knocking on our door. We just work six days a week and do the best that we can.

Chairperson Perez: You don't see a satellite type of outreach at this point?

Mr. Dell'Isola: We do have the *Dededo* place open, and we're going to reopen *Yona* soon again. It was closed to do the 1099s. We had to all hands-on deck to get 30,000 of those things mailed out and we will eventually start doing walk-ins there too. Once we take care of the appointment demands first, like we were doing previously in November. We had both places open and that we were doing walk-ins, everything was going smoothly. We were handling it because we were winding down on the program, so now that it started back up again without warning you have so many people that are needing help. Yes, we will open more satellites, but we are constantly filling our pipeline of hiring and training new people.

Chairperson Perez: I noticed in some of the documents they said that there's appropriations that are given to the agencies to assist or to administer the program. Is there an opportunity to request more funding for that?

Mr. Dell'Isola: We do get funding for hiring, but we don't get of course detailed appointments and that's how we kicked off, remember with GCC, when all of Gov Guam was closed, basically most of it. We had like 30, 40 detail appointments to us from key people from the different agencies. Most of those agencies are, of course, back to open and those key people, who are key people to those agencies are back to work. I think we only have one or two people that are still detailed to us from those existing. We'll get through this and we will handle it as best we can and can get through. It's only to March so to bring a lot of people and get them trained and then the program closes again, economically doesn't make sense. We're just trying to do the best we can and bringing on handfuls, so that we can train and work at the same time because we bring large cohorts. You have to pull resources to train them and that's what we can't afford to do. We're working on it and it's an evolution.

Chairperson Perez: Thank you for your hard work. Going back to back dating claims, can you provide information on the back dating of the tier one PUA, the first PUA, and now the new PUA?

Mr. Dell'Isola: Simply if you're a new claimant and you're filing after the 27th of December. Then by the new program you can only go back to December 1st or whenever the date is that you were laid off or affected by, your employment was affected by the COVID. If you missed out, which, of course, when you reach any expiration date there's a panic of people trying to file that



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put it off, and if they missed it then, they missed it. You can't go back before December 1st. Moving forward, back dating only to December 1st is what's allowed.

Chairperson Perez: For the previous PUA program, is it still available to back date, if you haven't completed your 39 weeks?

Mr. Dell'Isola: Yes, so if you... let me put it this way. This answers your question. If you filed your claim but had problems and you couldn't successfully get it completed and get paid and we need to go in and help you finish it. If you're still in that tier one, then you can still go back. We will still back date all your weeks. Get you fixed and pay you for all that period, but that you have to have a claim entered or in before the 27th and that's why you have automation. You can't make it up or try to go in now and change it.

Chairperson Perez: The 27th of December, you're referring to right?

Mr. Dell'Isola: Yes, when the new tier two PUA program kicked in and the old one expired.

Chairperson Perez: Does that also encompass appeals? There are certain cases that are being appealed. That would cover that should the determination...

Mr. Dell'Isola: Yes, appeals or anything like that, that we are handling now. We're getting through them fairly well, quickly. A lot of them are even adjudicated before they even reach the appeals, because as we educate them on why they have an overpayment or why they were DQ'd, they either produce extra documents to prove their point and we approve them, or we explain it to them so that they understand why they were DQ'd or overpaid and then they withdraw their appeals. 40% of the appeals that come in are, not even saying 40%, maybe 30%, are dropped before they even get a date set because of re-educating or re-examining, re-determining because, of course, if there's any way possible that we can approve you we will.

Chairperson Perez: What is the timeline for these appeals for them to be finalized?

Mr. Dell'Isola: The best scenario I can give you is kind of like a court case. It depends on the how complicated the appeal is or how straightforward and easy it is. Some appeals that we get, when the people don't agree because they got PPP and they got PUA at the same time, they still want to fight it. Those run fairly quickly because there's no way you can get two federal funded program assistance for the same day. Those are fairly quick and easy. Then, of course, the more complicated ones might take it but when you're giving a notice of an overpayment or you see that you're DQ'd, you're notified through your email for your claim and then you have 10 days to check the box that you want to appeal. That's the time where it might take a few, might take some time but you will be notified by us that you will be given an appeal date. Once you're given the appeal date. That's when you say half of them drop or 40% drop off but when you're given that date usually within two weeks after your hearing, whether it's formal or informal determination, usually within two



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weeks you're given a decision. We run fairly quickly, fairly quickly, the longest time is for when you send your 10-day, you send your request in. We have a couple hundred appeals, so we get to them you know oldest to newest and we work our way down.

Chairperson Perez: The average time would be roughly around a month, roughly a month is that correct?

Mr. Dell'Isola: I can't say there's an average because there's some that might be waiting longer or not. Some that are a lot faster but once you hear from us about your appeal was received and your scheduling, it's typically less than 30 days before you'll get a decision.

Chairperson Perez: Okay so after the hearing though less than 30 days...

Mr. Dell'Isola: After you are called in to get scheduled.

Chairperson Perez: What is normally the timeline from... so the scheduling how long will it take for scheduling to occur?

Mr. Dell'Isola: You have to understand that if we would have expired the program then all those staff that answer calls and are helping. They were all going to shift towards appeals and overpayments and we would have concentrated on that. That was the whole, that's the plan I had laid out nicely. December 27th done, then all that staff would shift over. They're all very well trained. It could be up to a month. It depends. We're hitting it pretty good. I think we're, it's just that we are scrambling to try to get this new PUA program up and all the notifications out and get the waiver implementation in place and meet all that. Just look at this guidance and you'll get... and if you look at that you'll see some of the things that we need to put together and get together and work. That is not what you see in the front, but it happens in the back but yeah, I'd say a month, I'm starting to feel comfortable.

Chairperson Perez: I believe you requested a recess is that correct? Did you want a recess?

Mr. Dell'Isola: I'll take a recess. I didn't request it.

Chairperson Perez: I'm getting something in my chat that there was a request from Department of Labor.

Mr. Dell'Isola: We're not almost done?

Chairperson Perez: Yeah, we have less than okay... might as well just go through. I just got a notice from my staff that there was a request for recess but are you okay to keep going?



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Mr. Dell'Isola: I'm okay if your fellow colleagues are okay. We'll just keep muscling through this. I'll try to keep my answers shorter, no promises.

Chairperson Perez: I kind of veered away from the initial questions that I sent you but...

Mr. Dell'Isola: I had a nice speech all laid, now we're doing...

Chairperson Perez: I wanted to get to the heart because I know you only have like a couple... a short time to spend today, a wanted to get...

Mr. Dell'Isola: I'm here to speak with whatever you guys like to speak about.

Chairperson Perez: Is there anything in the new program... so other than the eligibility change that we discussed, the overpayments, are there other terms that you would like to share regarding the new PUA program?

Mr. Dell'Isola: I'll just speak off the top of my head. You will start seeing more notifications going out and one of those hit last week and that was the refusal to work notification that is required under the second PUA, tier 2 program. We gave an email address refusaltowork@dol.guam.gov and those... that email address is for employers, so when they, if they call back their employees and they don't want to come back because they want to and I'll just be simplifying it because they want to continue the PUA or they refuse to come back to work, then the employer can choose to basically email us with their names, and we will start taking action. Once you or let me put it this way, once you're an employer and you decide that you want to do that, on our website is a form to fill out because we have to ensure that not only the employer, but we still have to ensure the employees' rights are given and observed. We're not going to just take the employer's word as gospel, so if you report that *tan* Marie didn't want to come into work because she didn't want to when you asked her to then there's a... This is what is being in the newspapers and in the media, if you haven't seen it already but basically, we will inform the employee of their rights and we will check why is it that you don't want to come back to work and if they have a valid reason such as, I caught COVID, I couldn't go back to work but my employer was mad and he fired me, then we wouldn't stop their PUA, but if it was because I want to keep getting the PUA, I don't make enough, I make more PUA than I do at work, then I'm going to say sorry that is not a legitimate reason that, you know, it's assistance not a job. We will turn around and then cancel it.

That is one of the notifications. Another notification is something that the states were remiss of doing but we are, is that you need to have documentation. It is now a requirement to all initial claimants and they're getting a lot more stringent in the dual verification of your identification. The states were giving and approving everybody left and right and that's why you have states like California giving out 11 billion dollars in fraud and, being a small island, we wanted those separation letters. We want to see a clear ID of who you are and anything additional. You cannot even submit a claim unless you have those in place and those notifications will go out, even though



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it's something that we already did. The reduced hours, they're just clamping down that the 11 criteria for the PUA are followed. They are clamping down on all those states and those places who did not follow it. I asked them, I said, am I the only idiot that's following this. They said no, Dave, you're not. We are making sure every state is in compliance. How well that is being done that was their answer to me. I'm not gonna research, which state is, which one's not, who's trying to get away with it, who's not. I need to comply once guidance is given to me in order to ensure that I have a good program.

As far as the second program, a lot of the stuff is behind closed doors, things that we need to do. As far as the public is concerned, just make sure if you're laid off or you have any changes in your employment that you give those supporting documents. You may need to, we might need to request for additional identification, if that is something that we're trying to get research and make sure that we get down but other than that, just keep filing your weekly claims and we'll keep helping people. You'd be surprised how many people need help and handheld, just to file their weekly claims. We take care of them today and then three weeks later they call us back up and say I have three weeks still that I need to file, and we have to do it again for them. As much as we try to teach them, it's just the way it is here on the island and that's why in the states you don't get that help. You're pretty much on your own to figure out how to do things online and we are different here. We hand-held you, hold you. We will walk you through it. We'll try to explain it. If *tan Marie* comes to us, who doesn't even own a computer, doesn't even know what a wi-fi is and is affected then we will hand hold her and complete her claim and make sure that we handle them and we do that, we do them in groups. We have groups of people come in that are in that kind of a situation and we handle them all at one time.

Chairperson Perez: Thank you so much for your hard work. We'll be looking forward to when your satellite locations are going to be opening up, additional satellites. When will they be operating? When do you think that will be?

Mr. Dell'Isola: The *Dededo* one and the *Yona* was just closed down. It was operating Monday through Friday, nine to five. Appointments are given right now and they're coming in but as those appointments demands decrease, then we open it up for walk-ins. We're trying to limit the lines, as you can imagine, and the appointments are the best way to do it. If you call in and you get through, which you can, set an appointment, if you really need to have individualized assistance. You'll get an appointment, and we will help you, that way you don't tie up my phone lines so much.

Chairperson Perez: At this moment I know we only have like half hour left, so I want to open the floor to my colleagues for questions. I would like to recognize Senator Duenas, you had your hand up earlier, and I want to recognize you. Thank you for your patience.

Senator Duenas: Thank you, Madam Chair. I just have two questions. I think it's important Madam Chair and thank you Congressman and thank you Director Dell'Isola that we be extremely



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clear here because I once again... I heard two different positions on the PUA with regard to reduced work hours. I just wanted to get it straight from the Congressman. Congressman do you continue to maintain that those payments are eligible and should be paid?

Congressman San Nicolas: Yes, I do continue to maintain that. I believe that the guidance that's been provided by the US Department of Labor is inconsistent with statute. We have confirmed that and that any qualifying requirements prior to December 27th should continue to be qualifying requirements after December 27th.

Senator Duenas: Congressman, I was wondering in your discussion with other jurisdictions, is one of the purposes, perhaps, on allowing for that, is to kind of smooth out the ability of recovery for those who will have, still employment opportunities but of course with reduced hours and then that payment under PUA kind of backs that up as we move into economic recovery.

Congressman San Nicolas: That is absolutely correct, Senator. The purpose of PUA was never to force businesses to either choose to open up 100% or close down 100%. It was intended in the spirit of the law and in the language that the PUA funding would be available in order to support economic activity and to allow for those who are in any way adversely affected by the pandemic to not have their economic circumstances further exacerbate the pandemic consequences that we're suffering from. Yes, it was intended to absolutely smooth out, not only the closure of businesses but as businesses intended to continue to reopen. That's why this interpretation that we're facing on the island is entirely inconsistent with the whole reason why PUA was established to begin with.

Senator Duenas: I think we're going to have to, Madam Chair, continue to wrestle with this. Thank you for your thoughts Congressman. Director Dell'Isola, I don't remember, off the top of my head, in the last reading of the CRER, as you know, we are in the planning stages for the upcoming budget. Is it separate, in terms of the current income tax and whatever remittances under the current program up with this assistance on how much is being paid to Rev and Tax or is it sort of co-mingled as and do you have a dollar amount at this time in terms of what's been remitted in terms of taxes?

Mr. Dell'Isola: I think I've mentioned it at the very beginning of the... that there was like 42 million that was collected. How much of that will be, will stay in it, meaning a lot of them will file and then since there is no other income, a lot of them, some of it will stay because it's only 10%. I figure about 2,500 or 2,400 out of that, of each individual claim. It's hard for me to say but I think majority of that will stay, will stay with us because they collect a total of about almost 24,000 and that means they only had 2,400 withheld, and then you multiply that and that's where you get your 42 million. I think that's, I leave that to the tax people, how much is that's going to stay and what's not going to stay, that's how much was recorded from our system.



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Senator Duenas: I think that for us, as Director, you know going into this next round of having to determine, how, what we're going to be looking at for this budget and especially since the discussion of PUA 2 and all the programs, I mean, we're going to have to consider or what we anticipate. I know it's gonna, change based on filing returns and everything else, but I didn't catch that number from the beginning. Thanks for that and I appreciate your responses. Thank you, Madam Chair.

Chairperson Perez: Thank you, Senator Duenas. Clarifying the question about part-timers, Senator, was that clear to you as far as what, who can apply for this new round?

Senator Duenas: I really think we're going to have to... Madam Chair, I really encourage that we have this discussion with the Governor, with the Director. I mean I'm having a little bit of difficulty when we say the position of the Congressman is Congress and the executive position is the executive position based on guidance from USDOL. I mean I'm just wrestling with that because of the fact that we have our people out there that are uncertain. I don't know maybe the Congressman's recommendation for a remedy, if we continue to believe that that is the application of the of the program. Maybe we have to go down that road because we really, you know, it really is the benefit, the individual receiving the benefit on this program. I mean that needs the clarity and we need the clarity to who is eligible because those are the folks that are that are trying to survive during this bridge to getting back to work. I'm just really continuing to be concerned that our people will continue to be confused as to their eligibility, if we can't nail this down. I really think that I don't know Director Dell'Isola, whether you just look at it right now as we just agree to disagree whether you're also looking for a fix maybe something along the lines of what the Congressman discussed because our people out there are the ones who are going to be end up being confused over this Madam Chair. I think that we need more clarity.

Mr. Dell'Isola: I agree with him on a lot of what he said. I don't disagree with a lot of what the Congressman is saying. We might have different perspectives on what the solution may be, but we're one in, one voice as far as we need this to be fixed. We need this to fix as immediately as possible. Healthy debates are what this, we're all about. I'm not expecting anybody to agree with my two solutions nor would the Congressman expect everybody to agree with every one of his solutions, but we need to have different perspectives. We need to make sure we're looking at all options and we need to debate them and hope that one of those solutions whether it is going to be implemented and saved but the one thing. We are in one voice with the Congressman, myself and the Governor, is that this needs to be fixed or taken care of and how everybody does it is up to them. Anything I could do to support the Congressman and what he can do, whether it's my solution or his, I will do nothing but give him every support that I can to make sure that he champions it and that's all I care about, champion.

Senator Duenas: I agree, and I agree David. I mean I would sign that that resolution today. The thing is that was what I wanted, to make sure that those that are watching this hearing and those beneficiaries that are considering what they're going to do, they're going to get that notification



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when they go to the USDOL or the DOL website saying that are you eligible, are you not eligible, if you are currently partially employed the official position from Department of Labor is you are not eligible for PUA at this point?

Mr. Dell'Isola: That's on there.

Senator Duenas: Okay then that's the clear from the definitive position from USDOL so that our people are not confused. I continue to be intrigued as to, I think the Congressman's position is we should still continue to exercise the program and pay it. I'm gonna be on board with a solution but it's the lines that are clear here, in my opinion and I think that the people of Guam need to know that. thank you.

Chairperson Perez: Yes, thank you, Senator. I think we should wait until some stopgap measure is fully defined. I think... basically what it says in the latest program guidance is that an individual who's working reduced hours does not satisfy the requirements for eligibility, so that was pretty clearly written in the latest guidance. Until the Director Dave Dell'Isola and Congressman have a fix, a stopgap measure in place, I would perhaps wait otherwise risks the possibility of having to pay back any money that comes out. I think that's the safe bet but again if you have a unique situation, Department of Labor is having these satellite locations at *Dededo* and, soon, *Yona* is going to be opening up. They're willing to work with you, to work with the public, so to make sure that you're filing a claim properly and that you meet the eligibility requirements. I hope that makes some sense. Okay. I'd like to recognize Senator Telo Taitague, you have the floor, if you have any questions.

Senator Taitague: *Si Yu'os ma'åse'*, Madam Chair, for the opportunity and good afternoon Congressman and Director Dell'Isola. This is such a surprise having the Congressman up. Thank you so much for taking the time, and I hope to see you on many more Zoom meetings that we're having here moving forward, especially dealing with anything that has to do with the federal government. I greatly appreciate you being here and providing your insight especially what was mentioned by my colleague, Senator Duenas, I think we need to get to the bottom of this and find out exactly and not confuse them. Congressman, is there any indication from the Biden Administration on possibly extending both programs beyond the current termination dates?

Congressman San Nicolas: That discussion is ongoing even in the Congress. I know that there's been some news about a new relief package. Those details have not at all been really carved out, yet and there are a lot of differing views in the Congress on how to pursue a phase three so to speak, but, yes, there is a discussion about something beyond the ending dates that we've originally discussed, I believe that's the 27th of March. There are discussions on it.

Senator Taitague: Thank you so much, Congressman. I believe I provided, Madam Chair, all my questions to you prior to this public hearing and I greatly appreciate some of those that were being addressed many of them were addressed, however my concern here, one of them was of course



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the... what you brought up Director Dell'Isola, refusing to work. Is there a number that, I mean is this provided to all employers or how is this number or this email being distributed, an outreach to all these companies?

Mr. Dell'Isola: I'm sorry I didn't quite catch that full. How is it going out that information?

Senator Taitague: Right how are you getting this...

Mr. Dell'Isola: There's an ad in all the newspaper, and there's also ads in the radio that will be running. That's what I was just kind of showing here. There's a copy of the ad that's going out and we're making audio versions.

Senator Taitague: If there's any possibility, I'm sure when you receive these applications, they indicate the place of employment for all these applications coming in, so it might be even more helpful to these employers to know directly and receiving something from the Department of Labor since you already have the name of the businesses that are there. I'm pretty sure you have their emails as well, so a lot of times people call my office because they don't know how to get a hold of them. I always take them to your website, but it goes a little bit further, a step further to inform the public, so as simple as just sending an email to all those businesses. It was mentioned earlier with regards to the mistake that was made from Department of Labor and regardless it was made from other jurisdictions, the mistake was made. I just hope to goodness that these people do not have to pay back any of the... this insurance funding or this assistance that they've been receiving from that and moving forward. I'm pretty sure everyone's going to take a little bit more caution and read the fine line the next time, going forward on how to, especially if there is an extension that's planning in the... it's unfortunate. Other than that, I think, Madam Chair, I appreciate you incorporating a lot of my questions onto your, provided to the Department of Labor for their instance. Madam Chair, there was one, I didn't know if it was mentioned but at this time how many individuals were impacted by the misinterpretation of the policy as it as of the end of 2020?

Mr. Dell'Isola: I tried to get that information out. They ran a program. I mean you got to remember the system doesn't break that out as a separate item. I did ask that question from our programmers and they try to run a quick program that try to pull who has income in there but unfortunately when they... when that number came out all the fraud that gets thrown into the system and is also added to that number and basically made it unusable.

Senator Taitague: For data purposes, do you plan on just separating those two so that we can get the correct number?

Mr. Dell'Isola: I'd like to... what we're gonna have to do is try to pull the fraud out and get that separated out. This Thursday I have my meeting with the programmers so that we can discuss because it's easier to do that when you have like 10 different technical programmers on a call with



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us so that we can work through how to best get that information and pull it if it's possible. We're working on that. Thank you, Senator.

Senator Taitague: Is there a timeline Director Dell'Isola?

Mr. Dell'Isola: This Thursday I'm going to talk to them and see and I'll get a... I'm not a programmer. I have no idea what they'll say to me back, but they did get it to me before last Friday but that number like I said was so skewed with fraud that it made it unusable. We need to circle around again and talk to them and see what they have to say and what kind of timeline exactly because it's going to require programming.

Senator Taitague: Well, at least we know by Thursday. Could let the oversight chair know on some kind of timeline, we can get that information. I thank you so much for your time, both you and of course the Congressman for being here again. Appreciate it. Thank you, Madam Chair.

Chairperson Perez: Thank you, Senator Taitague. Senator Tony Ada.

Senator Ada: Thank you, Madam Chair. Good evening, Congressman. Good afternoon, Dave. How you doing? Good. Director Dell'Isola, I just wanted to know of those, all those who have applied and being qualified have has everyone already received their benefits for the past several months that PUA has been in effect?

Mr. Dell'Isola: As I said at the beginning, tomorrow we're going to batch another round of payments and there is no date on that batch. That means anybody that put in, successfully filed the claim and put in their weeks, up to current will be paid. We're running current on our, as it stands for this week, if we can continue to run that current, a lot of that has to be based on if there... our fraud countermeasures are being hold in place and they don't get breached. When you get initially you have 1,000 claims and 900 of them are fraud, you can see the time involved to go through each of those claims and get them DQ'd to get to the 100 but it's probably, maybe out of 300, 150 or half are fraud, and the other half are clean so that's how we're able to move so quickly and clean so quickly.

Senator Ada: That's good to hear so that in this next round of payments going out, moving forward being that you guys have been in been doing this now for several months you see claims being paid out faster to the individuals, or do you see still a certain timeline as to when people can expect their payments?

Mr. Dell'Isola: Ever since the middle of November, we've been fast tracking payments. We paid 60 million just in December. We went from being like two to three months behind in November to being only a week behind in end of December. We were able because fraud measures were... we implemented some really good, strong fraud measures that finally knocked them and they haven't been able to thwart it yet, in enough numbers that slowed us down. We're slamming it.



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We're paying it and we're up to date and we've been on the aggressive path since the middle of November and to the point where we're caught up.

Senator Ada: Thank you for that and I'm glad to hear that. I'm pretty sure that the people out there are appreciative and thank you guys for all your hard work and ensuring that these payments go out. I have no further questions, Madam Chairperson. Thank you.

Chairperson Perez: Thank you, Senator Ada. Senator Joanne Brown.

Senator Brown: Thank you very much, Madam Chair and certainly to everyone that's participating and most especially to Director Dell'Isola from Department of Labor, he certainly had a lot of responsibilities on his shoulders since his whole pandemic started and certainly appreciate the Congressman San Nicolas, also taking the time from his schedule in Washington to participate. I just wanted to follow up on the question by Senator Duenas because I think for everyone out there that is dependent on receiving these types of benefits, I think the two different interpretations kind of leave us all challenged with the no timeline or awareness of when we're going to be able to get a single determination on how those that are working part-time, can participate and be compensated. I just want to know moving forward, I know that Director Dell'Isola you mentioned for Department of Labor what your positions are and the guidelines and information that you're following. I certainly appreciate the position provided by our Congressman in trying to clarify this issue from his perspective in Congress and what he's seeing happening in other jurisdictions but how does that help our average person on the ground that really through this pandemic is challenged and their income to take care of their families and their obligations has been adversely affected. Where does that put them well while the powers that be are wrestling to determine which perspective and position is going to be the one moving forward and will we have any idea of when we can get clarification for them, because I can imagine those that are afraid if they didn't file properly, if they owe money back. I'm sure that causes a lot of stress and duress and, as you mentioned, there are people at different levels of capability with the technology to file a computer or dependent upon assistance from your personnel to go over this. I'm sure because it's new groundwork for everybody involved to this extent and this massive and this large, there's a lot of apprehension there for people certainly that want to be able to get this funds but can we get an idea at some point. I know you're looking Director Dell'Isola and trying to get clarification from your end but why is there such a despairing position with regards to a compensation that can be applied under PUA for part-time employees?

Mr. Dell'Isola: I can't speak to the Congressman. All I can tell you is that I went straight to the root of the problem with USDOL. I got the clear understanding and I got clear guidance. I proffered two possible solutions. USDOL agreed to those solutions. Now are there other solutions like what the Congressman is saying which is basically administratively and that is the same one that I put in the first place or that is the Secretary of Labor fixing the problem. That certainly is in line with the Congressman's solution, going to Biden, writing the letter and of course asking him to fix something that wasn't fixed, that wasn't broken and that can definitely go through the Secretary



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of Labor avenue, whether it's a "kk" amendment or whether he straightens the USDOL out and say yes the Congressman's right you need to follow his perspective. That was the intent of Congress or do you follow the guidelines of the reasons for the eligibility for PUA, that was in the original CARES Act? Those are all solutions and there's no... sometimes there's not one solution to a problem and we have to go at them all as vigorously as we can because at least we're all-in agreement that this is a major problem that needs to be fixed. I can only tell you, USDOL, who gives me the money, who tells me how to run the program and gives us the guidelines on how to run it. As you as a former Director, I have to follow with the person that gives you the money, the federal agency that gives you the money, and if they say that you have to do this then I have to do that and to stay in good standing or I risk losing or paying back the grant, whether it's you as the Legislature or the Governor or the Congress or whatever says anything different. I have to follow with who gives me the money and who gives me the guidelines to administer program. I think you can understand the position that I'm in and I can know that everything that the Congressman says I have no problems with and his view of what needs to be fixed, I have no problems with. I will continue to help him, support him and our Governor is going with the two solutions that I gave her and she's considering those, and we'll talk, the three of us will talk and whatever they want to move forward with the solution. All I know is that when USDOL tells me that it's allowable then I can do it, if they say it's not allowable then and if I don't do it, then I run the risk for the whole program. I ran this all the way up to DC. This is not just region. I had UI administrators and experts on the line, and they agree with us about how devastating and how much of an effect it has on us but they by their attorneys are told this is what needs to be done. This is what needs to be followed, and they can't go against their attorneys and they're just implementing it to me. I'm still just trying to get this fix in there and remember there's a transition going on. You got a whole new administration coming in and then you got a new program started. Getting quick fixes is a little difficult when there's a whole change over going on and if there was their original administration and original things maybe we could do it quicker but there's a total change out. I think you can appreciate, somebody experienced as yourself that getting quick things done real quickly for our small island when there's a whole change of administration and things, you sometimes have to wait for that dust to settle. I know that was a long answer.

Senator Brown: I just want to do a follow-up. So as far as US Department of Labor is implementing the same standard throughout all jurisdictions including the US, it's not just Guam because I'm sure you have circumstances of other part-time workers in other jurisdictions, so as far as you're aware that's the standard nationwide that's being implemented at this point?

Mr. Dell'Isola: As I said earlier, yes for the PUA. You have, remember, the states have UI which is unemployment insurance or compensation. All those employees are in the UI. They qualify for reduced hours. They could, that whole program is designed for unemployment. The PUA was really designed for the self-employed, the gig workers and those exceptional few that don't fit in UI. We're trying to fit a reduced hour UI in a program that wasn't designed for it and you can from that perspective, you can understand where I'm coming from. The states have a whole pie, we only have a slice, and we have to still do what we need to do. Again, I'm following what USDOL told



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me and here on moving forward and I hope that the Congressman can champion his perspective. I agree with it that the Biden administration is all for it and he supports it. They can certainly implement it fairly quickly. He's in a position to do that and support of our Governor because she's also in support of that and also not putting the eggs all in one basket. We will continue to do the best we can to fight this and get the solution. I will support the Congressman in everything that he's trying to do.

Senator Brown: Thank you very much, Director Dell'Isola. I appreciate your explanation. I understand where you're coming from, I just hope that at some point soon, at least collectively among the Guam leadership to include our Congressmen, that we get some sense of direction because I'm sure those that are most impacted by it are the ones most worried but thank you for all your efforts. I know you've probably, out of all department and agencies have taken on one of the largest responsibilities in being able to address, assisting our community and getting these payouts to the people that need it the most so. Thank you very much, I appreciate you responding to my question. Thank you very much, Madam Chair.

Chairperson Perez: Thank you, Senator Brown. Senator Taitague.

Senator Taitague: Thank you, Madam Chair. I have to ask the Congressman because he was shaking his head, and I definitely want to hear what he has to say and if you can because after Director Dell'Isola was talking there was something he said that you didn't agree with and I really like to hear what you have to say on that.

Congressman San Nicolas: Thank you, Senator. Madam Chair, I hope also after this I'd be able to close because I do have some additional detail that I like to provide to the committee. With respect to what I was disagreeing with, unemployment insurance in the states and PUA are two entirely separate programs. PUA was not intended in any way to be impacted in any fashion by unemployment insurance anywhere. The reason that's important to clarify is because UI programs throughout the 50 states are different but one thing that is pretty similar in most of their programs is that they have a seasoning requirement. In other words, you need to be working for like six months in order to qualify for unemployment insurance. If PUA was subject to UI and UI was the dominating factor and PUA eligibility was secondary, then every employee throughout the country who didn't season into UI would have zero support. They wouldn't be receiving any PUA, but they are receiving PUA even if they do have existing unemployment insurance programs. It's important to not over define how PUA was intending to support the pandemic because its entire purpose was to support any unemployment circumstances regardless of what the UI specificities were. Other examples of how UI and PUA are supposed to work together and not actually work against each other is for a business that for example had closed because of the pandemic and laid off all of its employees due to that closure and then ended up reopening a month later because they got a PPP loan. They were able to rehire their employees back, that rehiring process or even the hiring of new employees to replace those that they've lost during the closure because they might have moved, they might have gone back home to live a parent or what have you. Those new hires



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by the PPP loan would have not seasoned into the existing unemployment insurance programs. Those new hires would also be depending on PUA to subsidize them. We really should not be reinforcing those kinds of interpretations because those are the very same misinterpretations by USDOL that are causing us to have these hardships in having PUA apply across the board locally. The USDOL may be taking a perspective that it wasn't intended to entirely supplant the existence of a UI but the reason why we wrote the law so broadly was because that wasn't supposed to be prerequisite to begin with, UI and PUA are entirely separate programs and the eligibility for one or the presence of one should not discount the other.

Senator Taitague: Thank you Congressman for that. I greatly appreciate you explaining. It does make sense. I appreciate it thank you, Madam Chair.

Chairperson Perez: Thank you Senator and thank you Congressman. We have to close shortly, I believe the Director has to go very fairly soon. Just to be clear, Director Dave Dell'Isola, can you please let the public know what should they expect when they're filing a claim considering that reduced hours? Reduced hour workers are not eligible under this latest program guidance?

Mr. Dell'Isola: I'm sorry what was the question about reduced hours, what did people expect... can they expect...

Chairperson Perez: What recommendations can you give the public being that the latest guidance that was given basically, clearly states that reduced our workers are not eligible.

Mr. Dell'Isola: Unfortunately, hold off filing, because if they file and apply with the reduced hours and it comes back that reaffirmed that it's not eligible then they would be subject to overpayment. If they hold off and it is corrected or fixed or whatever you want to say, whatever perspective it is, it would be going back to the beginning of the December 27th and then they could just file for all those weeks moving forward and they would get their payments regardless of the time period. Whatever champion or whatever it is, I just wanted to make sure that, I don't want to debate the Congressman but there you cannot get UI and PUA at the same time. It was designed to be there for those who do not qualify for UI, those self-employed, those gig workers, those uber drivers, all those people do not qualify for UI. They designed the PUA program to go in and work together with it. A lot of the requirements as far as identification, social security, all those criteria's, they meshed into the UI so that you have those verifications already built in the save program which is an alien allowed to work and would qualify is already built in. A lot of those stuff work together with UI and that's why they designed the PUA is because there was a segment of the working population that did not qualify for UI and have no assistance, so they put together the PUA program. I just wanted to make sure that is clear.

Chairperson Perez: I think you both are almost saying the same thing I feel that. Guam doesn't have a UI program and PUA was a substitute but that needs to be made clear to the policy makers. Just to clarify for the public, so maybe holding off for now because reduced hour workers are not



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eligible until we can get these stopgap measures, until we get further guidance from US Department of Labor because they can always back date their claim. They can back date their claim as far as December 1, 2020, for this new extension of the PUA. Is that the recommendation, is that correct, Director?

Mr. Dell'Isola: That is correct and make sure that you put in all your identification, your employee separation letters and any other supporting documents whether it's check stubs, depending on your situation. Maybe, please upload it. It is required, and we will process you and pay you very quickly.

Chairperson Perez: As far as employers, so in addition to the notification that you just mentioned about returning to work, what other recommendations can you provide employers regarding this new round of PUA?

Mr. Dell'Isola: Stay tuned for announcements. We will be letting out, as we learn it but the best thing, I can say for employers is please give those supporting documents to the employees, sometimes that is the only thing that's holding them up. I need to see that they're tied to an employer and sometimes they're having a hard time getting a letter and those are the kind of things. When these people are hurting, and they can't get the employer to give them a letter. I'm calling out to them, you need to give these people a letter. You need to make sure that they're taken care of so that they can apply for the program. Other than that, I keep you guys notified practically as it happens and stay tuned to the media. I will continue to put out all the announcements and notifications as needed.

Chairperson Perez: Thank you so much, Director. Congressman I know you requested some last final form.

Congressman San Nicolas: Thank you, Madam Chair. I took the liberty over the course of the call to do a quick draft of an executive order. I do have a meeting with the Governor tomorrow. I'll share this language with her and I wanted to just read it into the record for the hearing and for the Senators to also be aware, for the committee to be aware. Please just bear with me we kind of have a little crazy, a little crazy write up here but I'll go for a point by point. This will be an option that we can possibly do as an executive order level to just completely get around all of this, if we really are going to be running into too many roadblocks and then just begins to take longer than our people are able to handle.

- Effective December 27th, all businesses on Guam are considered technically closed during such time that a pandemic emergency is declared for the purposes of complying with pandemic unemployment assistance.
- All employees of closed businesses pursuant to this executive order are considered unemployed from said businesses for the purposes of complying with pandemic unemployment assistance eligibility.



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- All businesses close pursuant to this executive order are duly licensed to do business as a new pandemic business and continue operations of all local regulatory approvals in place prior to December, prior to December 27th.
- All employees working for a closed business after December 27th shall be considered hired under a new pandemic business with all businesses, with all benefits intact if such closed business continues operating as a new pandemic business pursuant to this executive order.
- Upon conclusion of a pandemic emergency declaration, all businesses shall be considered reopened under their prior licensure in force before December 27th and any such business that operated as a pandemic business pursuant to this executive order shall have their business operations considered as operations of their original licensure prior to December 27.
- For the purposes of employment continuity consideration any employees of any businesses closed pursuant to this executive order and considered hired under a new pandemic business pursuant to this executive order shall be considered as continually employed.

This language will basically say that the business was closed. They're not working anymore. They're working under a new business license and everything will just fluidly carry over and by executive order it's all-in force on paper. Those employees at that point can just go back in and reapply to Department of Labor having been considered technically unemployed from a technically closed business with their new hourly wages from the new pandemic business being factored mathematically the way it would be factored as if they were a reduced hours employee as opposed as a reduced hours employee that would have originally qualified prior to any of these hold ups. This is something that we can do locally, if we really aren't going to move forward with just receiving the applications now. I would advise Department of Labor to run this by USDOL and say hey if we did this would this solve the problem and then also ask the question why do we even need to do this to begin with if it's really technically the same thing because really that it's just a completely ridiculous interpretation. That's just going to create a new hurdle that we can work around if we have to, but we really shouldn't have to. Thank you, Madam Chair.

Chairperson Perez: Thank you Congressman, thank you Director David Dell'Isola. I think it definitely is going to take a collective effort and multi-prong approach to get this through. I have a lot of faith in all of you to try to come to the solution and create this stop gap. I want to thank all my colleagues that have joined me here today. Thank you so much for your hard work to everybody at the Department of Labor for taking the time to carry out this program so efficiently and effectively for our people. \$500 million, that's a large task, in continuing to commit yourself to carrying out this for the betterment of our people. *Si Yu'os ma'åse'* to all of those at the Department of Labor. This concludes our informational hearing.

Chairperson Perez adjourn the information hearing at 3:13 p.m.

Supplemental Handouts:



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- “Continued Assistance Act Provisions: Changes to the Pandemic Unemployment Compensation Program (FPUC) and the Pandemic Unemployment Assistance (PUA) programs” Powerpoint presentation
- Unemployment Insurance Program Letter No. 16-20 Change 4, January 8, 2021
- Unemployment Insurance Program Letter No. 16-20 Change 5, February 25, 2021
- Continued Assistance Act--Unemployment Overpayments FAQ
- Senator Perez’s Letter to President Biden

III. FINDINGS AND RECOMMENDATIONS

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning finds the following based on testimony and discussion at the public hearing:

- PUA tier 2 (Continued Assistance Act) program adds an additional 11 weeks to PUA tier 1 (CARES Act) for a maximum benefit from the initial 39 to 50 weeks.
 - If claimants exhausted their 39 weeks for tier 1, the additional 11 weeks of benefits for a total of 50 weeks may be approved through the week ending March 13, 2021.
 - There is phase-out period for PUA up to April 10, 2021 for those claimants who have not reached their 50th week by March 13, 2021.
 - FPUC was reauthorized for weeks ending January 2, 2021 to March 13, 2021 with no phase out period. The amount was reduced from \$600 to \$300.
 - Waiving repayments of certain no-fault overpayment is under the discretion by the Director upon further investigation into the claimant’s situation.
 - Waivers must rule out fault and fraud before a determination is made based on equity and good conscience.
 - Waivers based on equity and good conscience may be made if repayment would cause financial hardship from the person it is sought.
 - Weekly self-certification is required to include identification of specific COVID-19 related reason.
 - Proper Identification will be required this round.
 - GDOL has a satellite location in *Dededo*, and the *Yona* satellite will be opening soon. Appointments are required.
 - Backdating criteria are as follows:
 - If a claim is filed on or before December 27, 2020, it can be backdated to the start of the 39 weeks for COVID-19 related reasons.
 - If a claim is filed after December 27, 2020, it may not be backdated earlier than December 1, 2020.
 - Employers can email GDOL refusaltowork@dol.guam.gov if they’ve offered their employees to go back to work and they refused. This ensures the integrity of the assistance program.



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- GDOL will ensure due process to determine the validity of refusal to work and verification of accuracy of employee information.
- GDOL is also seeking guidance and clarification from USDOL regarding whether or not workers with reduced hours qualify for pandemic unemployment assistance.
 - Congressman San Nicolas is creating a paper trail to clearly indicate that this is an interpretation that is prevalent throughout the agency and it's not just an interpretation that's coming from a narrower segment of the agency.
 - The Congressman also gave a recommendation to issue pandemic business licenses as a potential solution.
 - GDOL claimants will see the disclaimer on GDOL website when they try to login, along with the GDOL outreach campaign.

The Committee on Environment, Revenue and Taxation, Labor, Procurement, and Statistics, Research and Planning updates as of February 26, 2021:

- Chairperson Perez has sent a letter to President Biden, seeking clarification on the qualification of reduced hours.
- Director Dell'Isola clarified in Pacific daily news article, dates February 18, 2021:
 - For part time jobs – “If you were laid off from your main place of employment, and if you had part-time job, or if you go out and later on get a part-time job, you can still qualify for PUA,” Dell'Isola said Thursday. “You just have to claim that income.” “Only if you lose your main place of employment,” he emphasized, adding that some people work two jobs, but “most of the time one of them is a main place, and the other is a part-time. So if you have that part-time, you would just claim the income, and you would still qualify.”
 - For Caregivers - In addition, those who work reduced hours at their place of employment while caring for someone at home — a child, senior or other dependent — can qualify for Pandemic Unemployment Assistance. “The only time reduced hours is allowed is if you're taking care of a family member or kids from school,” he said. “If you're caregiving, or because the schools are not fully open, and therefore your kids are at home a lot and you need to make sure someone is home taking care of the kids, that is an eligible criteria.”
- USDOL has released UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 16-20, Change 5 on February 25, 2021. This guidance further clarifies individuals experiencing a reduction of hours or a temporary or permanent lay-off, which states:
 - Under this new COVID-19 related reason, if an individual is laid off because the place of employment is partially closed (either permanently or temporarily) or the individual has experienced a reduction in hours, the individual may now self-certify eligibility.
 - The individual must report any earnings from the reduced hours when filing continued claims and such amounts must be deducted from the PUA weekly benefit amount in accordance with the state law.