

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> Unemployment Insurance
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**ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 20-21, Change 1**

**TO:** STATE WORKFORCE AGENCIES

**FROM:** ANGELA HANKS /s/  
Acting Assistant Secretary

**SUBJECT:** Additional State Instructions for Processing Waivers of Recovery of Overpayments under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as Amended

1. **Purpose.** To provide additional instructions for circumstances under which a state may waive recovery of overpayments under the CARES Act Unemployment Compensation (UC) programs, including elaborating on the criteria for waiving recovery of overpayments where an individual is without fault on an individual, case-by-case basis and expanding the existing limited scenarios for permissible use of “blanket waivers,” and to remind states that recovery activities for fraudulent overpayments may never be waived. This Unemployment Insurance Program Letter (UIPL) also describes the required collection activities for overpayments under the CARES Act UC programs which are not eligible for a waiver of recovery.
2. **Action Requested.** The Department of Labor’s (Department) Employment and Training Administration (ETA) requests State Workforce Administrators provide the information contained in this UIPL to appropriate program and other staff in state workforce systems as they implement the unemployment insurance (UI)-related provisions that respond to the economic effects of the Coronavirus Disease 2019 (COVID-19) pandemic.
3. **Summary and Background.**
  - a. Summary – An overpayment occurs and must be established when a state determines that the individual received a payment, or a portion of a payment, to which they were not entitled. To consider a waiver of the recovery of an overpayment, states must first establish an overpayment. Once the overpayment is established, the state must then evaluate the overpayment against the criteria described in Section 4.c.i. of this UIPL, specifically to determine if the individual was without fault and if recovery would be contrary to equity and good conscience. Section 4.a. of this UIPL clarifies the applicable UC programs covered under the waiver provisions of the CARES Act, as amended, and explains that states may choose the CARES Act UC programs to which they will apply the waiver provisions. This supersedes guidance under Section 4.d.iv.A. of UIPL No. 20-21 providing that if a state exercises the waiver authority for one CARES Act UC program, it must do so for all CARES Act UC programs.

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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Section 4.b. of this UIPL refines prior definitions for eligibility fraud and identity (ID) fraud, reiterates that recovery activities for fraudulent overpayments may never be waived, and provides strategies states can use to mitigate negative consequences for victims of ID fraud.

Section 4.c. of this UIPL builds on Section 4.d. of UIPL No. 20-21 to provide examples of applying the waiver of recovery provisions contained within the CARES Act, as amended. When a waiver of recovery of an overpayment is granted, the overpayment is excluded from any required collection activities. Attachment III to this UIPL provides sample language for states to use when communicating the approval of waiving recovery of overpayments to individuals.

Under Section 4.c.ii. of this UIPL, the Department approves five additional scenarios (for a total of seven scenarios) for which states may process blanket waivers only within the context of CARES Act UC programs. These approved blanket waiver scenarios allow the state limited circumstances by which to process the waiver of recovery for individual overpayments when there is no need for additional fact-finding or submission of individual requests. This allows states to process the waiver of recovery for multiple overpayments simultaneously based on a single set of facts. Attachment I to this UIPL describes how each of these approved scenarios satisfies the requirement that the individual is without fault in the creation of the overpayment and that recovery would be contrary to equity and good conscience. The Department provides a process by which states may request approval of additional blanket waiver scenarios using the form provided in Attachment II to this UIPL. Further, states may use automated data processing when issuing blanket waivers of overpayments only under the CARES Act UC programs and only for the limited scenarios described.

Section 4.d. of this UIPL describes the required collection activities for overpayments under the CARES Act UC programs that are not eligible for a waiver of recovery. States are reminded, as previously described in Attachment I to UIPL No. 20-21, that they may only recover certain CARES Act overpayments with the use of benefit offsets for up to three years after the date the individual received the overpaid amount. This three-year limitation on benefit offsets applies to the Federal Pandemic Unemployment Compensation (FPUC), Mixed Earners Unemployment Compensation (MEUC), Pandemic Emergency Unemployment Compensation (PEUC), and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended; this same limitation does not apply to the Pandemic Unemployment Assistance (PUA) program. States are permitted to move weeks of unemployment between programs and may offset at 100 percent when doing so, resulting in a remaining overpayment balance equal to the difference in weekly benefit amount (WBA) for each applicable week. Additionally, states must use the Treasury Offset Program (TOP) for collecting specific types of overpayments. This UIPL also clarifies that the prohibition of applying “other collection costs” as described in Section 4.c. of UIPL No. 20-21 does not apply to TOP administrative fees.

- b. Background – On March 27, 2020, the CARES Act was enacted (Public Law (Pub. L.) 116-136). Among other provisions, the CARES Act provided for the creation of three new temporary UC programs: PUA, FPUC, and PEUC. Section 2105 of the CARES Act, as amended, also provided full federal funding for the first week of regular UC for states with no waiting week. The Department issued UIPL No. 14-20 on April 2, 2020, to provide a summary of the key UI provisions in the CARES Act.

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

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

In March 2020, each state signed the “Agreement Implementing the Relief for Workers Affected by Coronavirus Act” (Agreement) with the Department to administer PUA, PEUC, and FPUC, as well as to receive reimbursement for the first week of regular UC for states with no waiting week. The Agreement incorporated amendments to the CARES Act made by the Continued Assistance Act and ARPA. Most states also signed an addendum to administer the MEUC program in January 2021. Under these agreements, each state is required to operate the programs as required under the CARES Act and by any statutory amendments and the Department’s guidance.

**Importance of Equity and Program Integrity.** At the most fundamental level, equity within the UI program means that states are paying UC to eligible workers, regardless of background, in a timely and fair manner, with an application and certification process that is readily accessible to all workers. Equity and program integrity are interdependent concepts within the UI program, as states also play a fundamental role in ensuring the integrity of the UI program. Program integrity involves both ensuring that entitled workers are not underpaid nor overpaid, and preventing payments to those who are not entitled to benefits. During implementation and administration of the CARES Act UC programs, states were instructed 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, while ensuring

that legitimate claimants are able to swiftly access benefits during a critical time (*see* UIPL No. 23-20, issued May 11, 2020).

Ensuring access to UC is a longstanding priority of the Department. UIPL No. 02-16, issued on October 1, 2015, articulates the applicable requirements under federal law and provides guidance to states to assist in complying with these requirements. UIPL No. 02-16, Change 1, issued on May 11, 2020, highlighted state responsibilities specifically regarding access to UC for individuals with disabilities and individuals with limited English proficiency. Information and claims-filing systems that have the effect of limiting access for individuals with disabilities, persons with limited English proficiency, individuals who are older and/or members of other protected groups may violate Federal nondiscrimination laws. State UI agencies must take reasonable steps to ensure that, if technology or other issues interfere with claimants' access, they have established effective, alternative methods of access, such as telephonic and/or in-person options. On January 20, 2021, the President issued Executive Order (EO) 13985 on advancing racial equity and support for underserved communities. This EO articulates the importance of advancing equity for all, including people of color and others who have been historically underserved, marginalized, and adversely affected by persistent poverty and inequality. This includes addressing disparities in accessing government programs facing individuals and communities including, but not limited to, workers who are low paid, Black, Hispanic/Latinx, American Indians, Alaska Native, Asian Americans, Native Hawaiians, Pacific Islanders, Indigenous persons, other persons of color, individuals with disabilities, members of religious minorities, LGBTQI+ persons, individuals with limited English proficiency, women, formerly incarcerated workers, and individuals living in rural areas. The U.S. Government Accountability Office (GAO) shared preliminary information on June 17, 2021, suggesting potential racial and ethnic disparities in the receipt of UI benefits in some states during the COVID-19 pandemic.<sup>1</sup> Although this report did not determine causality, it provided context for the need to take action in evaluating and ensuring equitable access to the UI system.

**Impact of CARES Act UC Programs on the Economic Effects of the COVID-19 Pandemic.** Congress created the CARES Act UC programs specifically to provide additional benefits for workers beyond the regular UC eligibility requirements, providing benefits to a group which generally includes many who have been historically underserved. By focusing on workers affected by the pandemic, the CARES Act greatly increased reciprocity of UC beyond what state systems offered. States implemented these federal CARES Act UC programs quickly in order to best serve the country's workers and accomplish the purpose of the CARES Act.<sup>2</sup> Recognizing the enormous challenges

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<sup>1</sup> GAO-21-599R DOL Management Report, *Management Report: Preliminary Information on Potential Racial and Ethnic Disparities in the Receipt of Unemployment Insurance Benefits during the COVID-19 Pandemic*, issued June 17, 2021, <https://www.gao.gov/assets/gao-21-599r.pdf>.

<sup>2</sup> On average, states implemented the FPUC program within 25 days, the PUA program within 38 days, and the PEUC program within 50 days of enactment of the CARES Act. Reference Report Number 16-21-004-03-315, U.S. Department of Labor Office of Inspector General, *COVID-19: States Struggled to Implement CARES Act*

of implementing new federal programs while also handling a volume of unprecedented claims filed by the millions of workers affected by the pandemic, states generally paid out claims to the best of their ability. There was a significant number of state errors and inaccuracies due to these fast-changing circumstances. A recent report from the U.S. Census Bureau estimates that these expanded unemployment benefits kept 4.7 million people from being in poverty during 2020, decreasing poverty across all racial groups and all age groups.<sup>3</sup>

Workers who received UC under these temporary benefit programs and were later found ineligible, resulting in the establishment of non-fraud overpayments through no fault of their own, generally believed that they were entitled to the benefits and spent the money to support themselves, their families, and the economy. Seeking recovery of these CARES Act overpayments from individuals who did not commit fraud, especially in light of the economic effects of the pandemic, creates an extraordinary hardship on working families, including those who have historically been underserved.

ETA issued UIPL No. 20-21 on May 5, 2021, which described the requirements for establishing benefit overpayments for programs authorized by the CARES Act, as amended. The UIPL provided guidance to states regarding the assessment of fraud monetary penalties, interest, and other collection costs and described the eligibility criteria for waiving recovery of an overpayment. The UIPL also provided two limited scenarios when a state may process “blanket waivers” for recovery of overpayments under the CARES Act UC programs. Additionally, states were instructed that after they determine that recovery of an overpayment may be waived, they must refund any amounts that were collected towards the applicable overpayment prior to the determination of waiver eligibility. ETA estimated that it may take states up to a year to process such refunds and encouraged states to process refunds expeditiously. Attachment I to UIPL No. 20-21 provided a quick reference to summarize the guidelines regarding the establishment and recovery of overpayments across UC programs.

#### **4. Guidance.**

- a. **Clarification of Terms.** UIPL No. 20-21 described the requirements for establishing benefit overpayments and waiving recovery of overpayments for programs authorized by the CARES Act, as amended. This section clarifies some key terms in response to questions the Department has received from states.

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*Unemployment Insurance Programs*, issued May 28, 2021, <https://www.oig.dol.gov/public/reports/oa/2021/19-21-004-03-315.pdf>.

<sup>3</sup> U.S. Census Bureau, *Expanded Unemployment Insurance Benefits During Pandemic Lowered Poverty Rates Across All Racial Groups*, issued September 14, 2021, [https://www.census.gov/library/stories/2021/09/did-unemployment-insurance-lower-official-poverty-rates-in-2020.html?utm\\_campaign=20210916msacos2ccstors&utm\\_medium=email&utm\\_source=govdelivery](https://www.census.gov/library/stories/2021/09/did-unemployment-insurance-lower-official-poverty-rates-in-2020.html?utm_campaign=20210916msacos2ccstors&utm_medium=email&utm_source=govdelivery).

- i. ***Applicable CARES Act UC programs.*** As described in Section 4 of UIPL No. 20-21, the CARES Act UC programs include: PUA, FPUC, MEUC, PEUC, and the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended. States are strongly encouraged to waive recovery of overpayments under the CARES Act programs, within the conditions described in Section 4.c. of this UIPL, to the fullest extent possible and including the use of approved blanket waivers.

States may choose whether to apply a waiver of recovery to some or all of the CARES Act UC programs. This supersedes the guidance provided under Section 4.d.iv.A. of UIPL No. 20-21 that required states which choose to exercise waiver authority for one program to do so for all CARES Act UC programs. The language authorizing states to waive recovery under certain circumstances is nearly identical across the PUA, FPUC, MEUC, and PEUC statutes. Further, the provision authorizing waiver of recoveries for overpayments on the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended, cross-references the PEUC statute.<sup>4</sup> Because each of the sections independently contains the provision providing states flexibility to waive recoveries, the Department will interpret the provisions to permit states to choose to apply the waiver authority for some or all of the programs.

States are reminded that the authority to waive recovery of overpayments for the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended, is subject to the parameters described in Section 4.c.i. of this UIPL. These criteria may be different than the criteria the state considers for waiving recovery of overpayments for other weeks of regular UC under state law.

If a state chooses to exercise its authority to waive the recovery of overpayments for a specific CARES Act UC program, it must apply such waiver consideration under the criteria described in Section 4.c.i. of this UIPL to all overpayments under that specific CARES Act UC program going back to the beginning of the CARES Act UC program.

- ii. ***Improper payment and overpayment.*** The term “improper payment” refers to both an overpayment and an underpayment of UC. An overpayment occurs, and must be established, when a state determines that the individual received a payment, or a portion of a payment, to which they were not entitled. States must include appeal rights as part of the determination establishing an overpayment. Further, to consider a waiver of the recovery of an overpayment, states must first establish an overpayment.

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<sup>4</sup> Section 201(d) of the Continued Assistance Act for PUA; Section 2104(f)(2) of the CARES Act, as amended, for FPUC and MEUC; Section 2107(e)(2) of the CARES Act, as amended, for PEUC; and Section 2105(f) of the CARES Act, as amended, for the first week of regular UC.

- b. **Fraudulent Overpayments.** When establishing an overpayment, the state must determine who is at fault for the overpayment (*i.e.*, individual, employer, state, or a combination thereof) and whether the overpayment is the result of claimant fraud; not all overpayments are fraudulent. If an overpayment is the result of claimant fraud, states **may not** waive recovery activities for the overpayment. Additionally, as discussed in Section 4.b. of UIPL No. 20-21, the state must apply a minimum 15 percent monetary penalty to an overpayment when the state determines, in accordance with their state UC law, that such a payment was made due to fraud. States must apply the same monetary penalty to CARES Act UC programs as it does to the regular UC program. See Section 251(a) of the Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Pub. L. 112-40), which created Section 303(a)(11) of the Social Security Act (SSA) (42 U.S.C. § 503(a)(11)).<sup>5</sup>
- i. **Types of fraud.** The Department recognizes the need to standardize nomenclature of the different types of fraud occurring within the UC programs. ETA provided a definition of eligibility and ID fraud as part of the grant opportunities provided for under UIPL Nos. 28-20, Change 2, and 22-21. These definitions are further refined below.
- A. Eligibility fraud occurs when benefits or services are acquired as a result of false information being provided with the intent to receive benefits for which an individual would not otherwise be eligible. State law determines the criteria for establishing a fraud determination within the UC programs.
- B. ID fraud occurs when one person or group of persons use(s) the identifying information of another person to illegally receive benefits. ID fraud also occurs when an individual's UI account is hacked or taken over by a person or group and the benefit payments are re-directed to another account by changing key user data after the claim has been established (*e.g.*, banking information). In addition to using stolen identities or misusing an individual's identity, synthetic ID fraud occurs when real and/or fake information is combined to create false identities, as discussed in UIPL No. 16-21.
- ii. **Recovery of fraudulent overpayments.** Under no circumstances may a state waive recovery activities for a fraudulent overpayment. States must make every possible effort to recover fraudulent overpayments using available resources. States must cooperate with the Department's Office of Inspector General (DOL-OIG) on fraud investigations (*see* UIPL No. 04-17, Change 1) and with the Department of Justice on forfeiture actions taken regarding the recovery of fraudulently-overpaid benefits. Refer to Section 4.d. of this UIPL for additional instructions on collections activity.

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<sup>5</sup> As described in Section 4.b.ii. of UIPL No. 20-21, the state must apply the fraud penalty for PUA to all fraud overpayments established on or after January 8, 2021. The state must apply the fraud penalty for all other CARES Act UC programs to all fraud overpayments established on or after May 5, 2021 (the publication date of UIPL No. 20-21). This instruction does not prevent a state from choosing to apply such monetary penalties retroactively to the beginning of the CARES Act UC programs under the authority provided by TAAEA.

- iii. ***Addressing fraudulent overpayments resulting from ID fraud to protect the rights of victims.*** As described in Section 5 of UIPL No. 16-21, states must provide individuals who suspect that their identity has been stolen with easily accessible options to report such theft or fraudulent activity. This may include dedicated phone options, email addresses, or an online portal by which individuals can notify the state agency. States may also provide links to other agencies that specialize in protecting consumers and their personal identifiable information, such as the Federal Trade Commission’s Consumer website at <https://www.consumer.ftc.gov/topics/identity-theft>. ETA strongly encourages states to align their website content and communications for victims of ID fraud with the content, resources, and reporting requirements outlined at <https://www.dol.gov/fraud>.

When a state determines that ID fraud has occurred, that is, the person filing the claim is not the actual owner of the name and/or SSN under which the claim was filed (*i.e.*, an imposter), as stated earlier, the state may not waive recovery of the overpayment. Documentation of claims activity related to the ID fraud must be preserved for future prosecution, recovery efforts, reporting purposes, and data analytics to strengthen fraud control efforts. Additionally, the state must take actions to protect the rights of the ID fraud victim.

Once the state issues a fraud determination, one option states can use to mitigate negative impacts on ID fraud victims is to establish a pseudo claim record and transfer all claim information regarding the imposter’s activity to the pseudo claim. This removes the fraudulent activity from the victim's SSN and/or UI account, should the victim need to file for unemployment benefits in the future. States that may not have the current administrative capability to move such activity to a pseudo claim may choose to temporarily mark the overpayment as “uncollectible.” This ensures that victims are not negatively impacted while the state develops a process to disassociate the fraudulent activity from the victim’s SSN. However, this temporary classification of “uncollectible” does not equate to waiving recovery of the overpayment.

States must refer allegations that are reasonably believed to constitute UC fraud, waste, abuse, mismanagement, or misconduct to DOL-OIG (*see* UIPL No. 04-17, Change 1). Below are other actions the state may take to mitigate the negative consequences for an ID fraud victim. Refer to UIPL No. 16-21 for additional information.

- Ensure that if a future claim is filed under the victim’s SSN, the claimant undergoes a secondary ID verification process (*e.g.*, include an in-person reporting requirement or other expanded ID verification alternatives). However, states should try to minimize the burden on the victim as much as possible when verifying identity.
- Ensure that the owner of the SSN is not held responsible for any overpayment and, whenever possible, is not issued a Form 1099G at the end of the year.



- Exclude the overpayment from TOP and suspend any Benefit Payment Control collection activity for the actual owner of the SSN.
  - Not initiate any legal actions against the actual owner of the SSN.
- c. **Waiving Recovery of Overpayments for CARES Act UC Programs.** Under the CARES Act, as amended, states must require an individual to repay the amount to which they were not entitled (*i.e.*, overpayment amount) except that the state may waive recovery under specific conditions. The state must still establish the overpayment by investigating each individual case and providing a written determination with appeal rights, and then make a determination to waive recovery of the established overpayment.

This section of the UIPL reiterates the eligibility criteria for waiving recovery of an overpayment within the context of the CARES Act UC programs, describes states' options to exercise the authority to waive recovery of such overpayments, and provides circumstances where the Department has approved the use of blanket waivers.

States may continue to consider waiving recovery of an overpayment when it does not fall within the approved scenarios for a blanket waiver or when the state is unable to identify if the overpayment falls within the parameters of an approved scenario by evaluating the overpayment on an individual, case-by-case basis as described in Section 5 of UIPL No. 23-80 and in accordance with the criteria described in Section 4.c.i. of this UIPL.

- i. ***Eligibility criteria for waiving recovery of an overpayment under the CARES Act UC programs.*** As described in Section 4.d.i. of UIPL No. 20-21, a state may only waive recovery of an overpayment under the CARES Act UC programs if the state determines that both of the following conditions are satisfied. With regards to the approved blanket waiver scenarios described in Section 4.c.ii. of this UIPL, the Department has already found that overpayments occurring within these scenarios meet the two conditions described below (*see* Section 4.c.ii. of this UIPL and Attachment I for additional details). Under no circumstances may a state waive recovery activities for a fraudulent overpayment.

- A. Payment of such compensation was without fault on the part of any such individual. As noted earlier, when establishing an overpayment, the state must determine who is at fault for the overpayment (*i.e.*, individual, employer, state, or a combination thereof) and whether the overpayment is the result of claimant fraud. To waive recovery of the resulting overpayment, in addition to repayment being contrary to equity and good conscience, the payment must have been made without fault of the individual.

Without fault means the state has determined the individual had no fault with respect to a given week of unemployment which is determined to be overpaid. Generally, an individual is considered to be without fault when the individual provided all information correctly as requested by the state, but the state failed to

take appropriate action with that information or took delayed action when determining eligibility.

When looking at eligibility to waive recovery on an individual, case-by-case basis, the state may also find that an individual is without fault if the individual provided incorrect information due to conflicting, changing, or confusing information or instructions from the state; the individual was unable to reach the state despite their best efforts to inquire or clarify what information the individual needed to provide; or other similar difficulties (*e.g.*, education, literacy, and/or language barriers) in understanding what information the state needed from the individual to properly determine eligibility for the CARES Act UC programs. In determining if the individual is without fault under these circumstances, some examples of what states might review include verbal or written statements from the individual explaining the confusion they experienced or screenshots of the application questions at the time the individual submitted their original information. Finding an individual to be without fault under these circumstances is fact-specific and must be done on a case-by-case basis.

While many non-fraud overpayments scenarios may be categorized as without fault, states may not categorically equate non-fraud overpayments as being made without fault on the part of an individual. Not all non-fraud overpayments are without fault on the part of the individual.

- B. Such repayment would be contrary to equity and good conscience. To waive recovery of the resulting overpayment, in addition to the payment having been made without fault of the individual, the state must also determine that repayment would be contrary to equity and good conscience. The state may defer to state law in defining what it means for repayment to be contrary to equity and good conscience.

Alternatively, where state law does not provide a definition of equity and good conscience, or where the state chooses to defer to federal authority for waiving recovery of an overpayment under the CARES Act UC programs, the state may use the standard provided in Section 4.d.i. of UIPL No. 20-21. This standard provides that recovery would be contrary to equity and good conscience when at least one of three circumstances exists: (1) recovery would cause financial hardship to the person from whom it is sought; (2) the recipient of the overpayment can show (regardless of their financial situation) that due to the notice that such payment would be made or because of the incorrect payment, either they have relinquished a valuable right or changed positions for the worse; or (3) recovery would be unconscionable under the circumstances. The following table provides some examples for each of these circumstances.

Figure 1: Federal Definition for Recovery Being Against Equity and Good Conscience

	<b>Definition of recovery being against equity and good conscience</b>	<b>Examples (non-exhaustive)</b>
1	It would cause financial hardship to the person for whom it is sought; or	<ul style="list-style-type: none"> <li>A review of the individual’s income and debts (including copies of pay records and bills) reflects the hardship caused by having to repay an overpayment because the individual needs much of their current income and liquid assets (including the CARES Act benefits received) to meet ordinary and necessary living expenses and liabilities.</li> </ul> <p>Examples of debts may include items such as utility bills, child care expenses, student loans, medical bills, etc.</p>
2	The recipient of the overpayment can show (regardless of their financial circumstances) that due to the notice that such payment would be made or because of the incorrect payment, either they have relinquished a valuable right or changed positions for the worse; or	<ul style="list-style-type: none"> <li>The individual incurred a financial obligation by signing a more expensive apartment lease based on benefit payments that they received. The individual is now in a worse financial position than if they had not received the benefits.</li> <li>The individual relied on the benefit payment and took out a loan to start a new business, in which they have already invested the benefit payment they received. Repayment of their overpayment may cause them to default on the loan, resulting in criminal or civil actions.</li> <li>The individual passed up state assistance because they received CARES Act UC benefit payments and thought they would not need additional financial assistance from the state.</li> </ul>
3	Recovery would be unconscionable under the circumstances	<ul style="list-style-type: none"> <li>It would be extremely unfair to require repayment when the individual was not at fault for receiving the overpayment. Requiring repayment now would undermine many individuals’ financial stability and the purposes for which the benefits were paid.</li> <li>See Attachment I to this UIPL for additional examples of scenarios approved for blanket waiver where recovery would be unconscionable under the circumstances.</li> </ul>

ii. ***Scenarios under which states may waive recovery using a blanket waiver process for overpayments under the CARES Act UC programs.*** The Department has identified a total of seven scenarios as permissible scenarios for states to apply and use blanket waivers, two of which were previously approved under Section 4.d.iii. of UIPL No. 20-21. As described below, states may request that additional scenarios be considered for approval.

These approved blanket waiver scenarios permit the state, under the limited authorized circumstances, to process the waiver of recovery for individual overpayments that do not require additional fact-finding or submission of individual requests. These scenarios also permit the state to process the waiver of recovery for multiple overpayments meeting one of the approved scenarios simultaneously based on a single set of facts. States may process waiving recovery for overpayments under these approved scenarios without requiring individuals to submit requests. Where feasible, the state should proactively identify individuals eligible for a blanket waiver.

If a state is unable to identify whether an overpayment falls within the parameters of an approved scenario, the state may not use the blanket waiver process. Instead, the state may consider waiving recovery of the overpayment on an individual, case-by-

case basis as described in Section 5 of UIPL No. 23-80 and in accordance with the criteria described in Section 4.c.i. of this UIPL.

Additionally, as discussed earlier, states may not waive recovery activities for fraudulent overpayments. States must take care to ensure that overpayments resulting from cases of known ID fraud are not included in processing blanket waivers.

- A. Approved seven scenarios for states to use blanket waivers. Attachment I to this UIPL provides examples and an explanation as to how the affected individuals within these scenarios are determined to be without fault in the creation of these overpayments and how recovery would be contrary to equity and good conscience based on a single set of facts.

*Group 1: Scenario(s) applicable to the PUA, FPUC, MEUC, and PEUC programs, as well as the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended.*

1. The individual answered “no” to being able to work and available for work and the state paid PUA or PEUC without adjudicating the eligibility issue. Upon requesting additional information from the individual, the individual either did not respond or the individual confirmed that they were not able to work nor available for work for the week in question, resulting in an overpayment for that week.

*Group 2: Scenario(s) applicable to the PUA, MEUC (where applicable), and PEUC programs.* Because the individual was still eligible for unemployment benefits for a given week, these scenarios do not involve overpayments under the FPUC program. Because MEUC is not payable under the PUA program, there may be claims involving overpayments under the MEUC program.

2. When an individual is eligible for payment under an unemployment benefit program for a given week, but through no fault of the individual, they were instead incorrectly paid under either the PUA or PEUC program at a higher WBA. (This scenario was previously approved in Section 4.d.iii.A. of UIPL No. 20-21).
3. The state paid the wrong amount of dependents’ allowance (DA) on a PUA or PEUC claim because the state, through no fault of the individual, used the wrong amount when calculating the DA, resulting in an overpayment equal to a minimal difference in DA for each paid week.

*Group 3: Scenario(s) applicable to the PUA and FPUC (where applicable) programs.*

4. The individual answered “no” to being unemployed, partially unemployed, or unable or unavailable to work because of the approved COVID-19 related reasons and the state paid PUA anyway. Upon requesting a new self-certification, the individual either did not respond or the individual confirmed that none of the approved COVID-19 related reasons were applicable, and the state’s payment resulted in an overpayment for that week.

*Group 4: Scenario(s) applicable to the PUA program.* Because the individual was still eligible for unemployment benefits for a given week, these scenarios do not involve overpayments under the FPUC program.

5. Through no fault of the individual, the state paid the individual a minimum PUA WBA based on Disaster Unemployment Assistance (DUA) guidance that was higher than the state’s minimum PUA WBA provided in UIPL No. 03-20, which resulted in an overpayment. (This scenario was previously approved in Section 4.d.iii.A. of UIPL No. 20-21).
6. The individual complied with instructions from the state to submit proof of earnings to be used in calculating their PUA WBA. However, through no fault of the individual, the state’s instructions were either inadequate or the state incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher PUA WBA. The state establishes an overpayment for the difference in PUA WBA.

*Group 5: Scenario(s) applicable to the MEUC program*

7. The individual complied with instructions from the state to submit proof of self-employment earnings to be used in establishing eligibility for MEUC. However, through no fault of the individual, the state’s instructions were either inadequate or the state incorrectly processed this calculation using the incorrect self-employment income or based on documents from an inapplicable tax year, resulting in the individual incorrectly being determined eligible for MEUC. The state establishes an overpayment for any weeks of MEUC that were paid.

- B. Requesting additional scenarios to be considered for blanket waivers. This UIPL provides five scenarios in addition to the two previously approved in Section 4.d.iii. of UIPL No. 20-21. Outside of these approved scenarios, the Department has a long-standing interpretation that Sections 303(a)(1) and (a)(5), SSA, require individualized determinations of an individual’s eligibility for a waiver of

recovery and do not permit waivers of recovery to be granted on a blanket basis. Blanket waivers are not permitted for the regular UC program, except where noted for the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended.

States that wish to propose additional scenarios within the context of the CARES Act UC programs to be considered for blanket waivers may do so by submitting the form contained in Attachment II to this UIPL to [covid-19@dol.gov](mailto:covid-19@dol.gov) with a copy to the appropriate ETA Regional Office.<sup>6</sup> The Department will strive to provide a response of approval or disapproval within 14 days of receipt. If circumstances prohibit the Department from meeting this deadline, the Department will inform the state of its progress in reviewing the request. Additional scenarios may not be implemented unless and until approved by ETA.

- C. Use of automated data processing when issuing blanket waivers for CARES Act UC programs. When processing blanket waivers for CARES Act UC programs within the limited parameters involving these seven approved scenarios outlined in Section 4.c.ii. of this UIPL, states may automate the determinations on the waivers of recovery. Individual fact-finding is not required (*see* Option #1 under Section 4.c.iii.A. of this UIPL for notification requirements).
- iii. ***Exercising the authority to waive recovery of overpayments for the CARES Act UC programs.*** As described in Section 4.d. of UIPL No. 20-21, federal law sets out the authority to waive recovery of overpayments under the CARES Act UC programs. It is a matter of state discretion whether to exercise this waiver authority.
- A. Action required from the state. Section 4.d.iv. of UIPL No. 20-21 provided the following three options for states. This UIPL rennumbers these options and further expands on these options. States may choose both Options #1 and #2, which would provide for waiving recovery on an individual, case-by-case basis and for blanket waivers.
- **Option #1:** Under limited circumstances, the state may choose to process blanket waivers for the specific scenarios approved by the Department in Section 4.c.ii. of this UIPL.
- Options for the process used in evaluating blanket waiver eligibility.* States may only waive recovery using a blanket waiver process under the scenarios approved by the Department, as described in Section 4.c.ii. of this UIPL.

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<sup>6</sup> Section 2116(a) of the CARE Act, as amended, provides that “Chapter 35 of Title 44, United States Code, (commonly referred to as the ‘Paperwork Reduction Act of 1995’), shall not apply to the provisions of, and the amendments made by, this subtitle.” As the Office of Management and Budget (OMB) approval process is waived for these reporting instructions, these instructions are considered final and states must provide the information requested in this form.

The Department recognizes that not all blanket waiver scenarios will apply to every state. A state may choose to exercise blanket waiver authority for some approved scenarios and not for others.

For states implementing Option #1: If an individual has a non-fault overpayment and does not fit within one of the approved blanket waiver scenarios, the state must address their eligibility for a waiver individually as described in Option #2.

*Notification requirements when the state determines through the blanket waiver process that an overpayment is **eligible** for a waiver of recovery.* As stated earlier, the state must first establish the overpayment by investigating each individual case and providing a written determination with appeal rights. When a state approves the waiver for recovering an overpayment under one of the approved blanket waiver scenarios, the state must also notify each individual that a waiver of recovery has been granted.

Although this notification that an overpayment is eligible for a waiver of recovery need not include formal appeal rights, the state must provide instructions to the individual on how to request a reconsideration of the approved waiver if the individual does not wish to have recovery of the overpayment waived. Because the overpayment itself is established and even though recovery is waived, there may be peripheral considerations that warrant the individual choosing not to have recovery waived.

Attachment III to this UIPL provides sample language for states to use in communicating approval of a waiver with individuals.

Further, a state may identify an individual who is eligible for a waiver of recovery under the approved blanket waiver scenarios at the same time the overpayment is being established. The state may choose to provide a single notice to the individual that both establishes the overpayment and waives recovery. When drafting a combined notice, the state may include an introductory explanation as to why notice is being sent when payment is not required. An example of this explanation includes: “*You are receiving this notice because you received unemployment benefits to which you are not entitled and federal law requires that you be notified of an overpayment. However, you do not need to repay these benefits because these payments were issued incorrectly through no fault of your own, and repayment would be contrary to equity and good conscience.*”

Within that single notice, the state must include the required information for written determinations, including appeal rights to protest the establishment of the overpayment (*see* Section 4.a. of UIPL No. 01-16), in addition to an explanation that recovery of this overpayment is waived and

providing instructions to the individual on how to request a reconsideration if they do not wish to have recovery of the overpayment waived (*see* Sample Letter in Attachment III to this UIPL).

- **Option #2:** Exercise the authority to waive recovery of certain overpayments for the CARES Act UC programs on an individual, case-by-case basis, as described in Section 4.d.ii. of UIPL No. 20-21.

*Determining if an overpayment meets the criteria for waiving recovery.*

Under this option, a state may choose to use the definitions provided in its state UC law to waive recovery of the overpayment, provided its state UC law, at a minimum, adheres to the minimum federal requirements of the CARES Act. Specifically, to waive recovery, the individual must be without fault in the creation of the overpayment and recovery must be contrary to equity and good conscience. Alternatively, a state may choose to use the federal standards provided in Section 4.c.i. of this UIPL, regardless of whether its state UC law provides authority to waive recovery of overpayments.

*Options for the process used in evaluating waiver eligibility.*

In determining whether an overpayment satisfies the waiver criteria, the state must review the overpayment on an individual, case-by-case basis. As described in Section 5 of UIPL No. 23-80, the state may conduct this review by either: (1) making a determination as to the applicability of the waiver provision as part of the determination process on every overpayment case (without requiring an individual to request such a waiver); or (2) providing, as part of each overpayment determination, information about the waiver provision and provide that individuals may request consideration of a waiver and receive an appealable determination on the actions taken. Many states chose to evaluate eligibility for a waiver of recovery according to (2), based on an individual's request for consideration.

*Notification requirements when the state provides for individual waiver requests.*

As described in Section 4.d.iv.A. of UIPL No. 20-21, if the state chooses to exercise Option #2 as described in (2) in the above paragraph (*i.e.*, by requiring individuals to submit a request for waiver consideration), the state must notify all individuals with a non-fault overpayment of their ability to request a waiver. Appeal rights must be included as part of the determination establishing the overpayment, though instructions on how to request a waiver may be done as a separate notice. Where feasible, the Department encourages states to combine communications and provide instructions in plain language. This reduces confusion for individuals and may mitigate unnecessary appeals.



If the state requires individuals to submit a request for waiver consideration, upon receipt of the waiver request, the state must pause further collections until a determination of waiver eligibility is made.

*Notification requirements when the state determines, on an individual case-by-case basis, if an individual is eligible for a waiver of recovery.* When a state determines whether the individual is eligible for the requested waiver, the state must notify each individual in writing of the outcome.

- Individual **is not eligible** for a waiver of recovery: As described in Section 6, of UIPL No. 23-80, “[a] decision not to waive recovery of the overpaid benefits...constitutes a denial of a claim for [UC] within the meaning of Section 303(a)(3)[, SSA]. In such circumstances, the claimant must have the right to appeal such a decision and to have [their] contention for waiver considered and decided by the appellate tribunal on its merits in accordance with any evidence which bears upon the issue.”
- Individual **is eligible** for a waiver of recovery: When a state chooses to exercise Option #2 as described in (1) in the above paragraph on *Options for the process used in evaluating waiver eligibility (i.e., by making a determination on the applicability of the waiver provision for every overpayment determination) and approves the waiver of recovery without a request from the individual, the state must provide instructions to the individual on how to request a reconsideration of the approved waiver if the individual does not wish to have recovery of the overpayment waived.*

If the individual requested the waiver of recovery and is approved, written notice is required though the state does not need to provide instructions on how to request a reconsideration of the approved waiver.

Attachment III to this UIPL provides sample language for states to use in communicating approval of a waiver with individuals.

- **Option #3:** Not exercise the authority to waive recovery of certain overpayments for these CARES Act UC programs.

As noted earlier in this UIPL, seeking recovery of these overpayments from individuals who did not commit fraud and were without fault in receiving the overpayment, especially in light of the economic effects of the pandemic, creates an extraordinary hardship on working families. The Department strongly encourages states to exercise the waiver authority provided in the CARES Act, as amended, in qualifying cases.

- B. Requirements for states exercising CARES Act waiver authority. As described in Section 4.a.i. of this UIPL, the state may choose to apply this provision to some or all of the CARES Act UC programs. A state choosing to exercise the waiver authority under Options #1 and #2 must apply this practice to all overpayments created since the beginning of the CARES Act UC program(s). For example, if a state decides to implement Option #2 with regards to PUA claims in January 2022 as they resolve workload items pending for weeks of unemployment ending prior to the end of the PUA program, the state must also retroactively identify and notify individuals with previously-established PUA overpayments of their potential waiver eligibility, consistent with Section 4.d.iv.A. of UIPL No. 20-21.

Additionally, as described in Section 4.d.iv.B. of UIPL No. 20-21, if recovery of an overpayment is waived, the state must refund any amounts that were collected prior to the determination of the waiver for the applicable overpayment. There is one exception to this refund requirement: specifically, that the state may not issue a refund for any benefits that were restored and then subsequently paid to the individual. For example, a state may have assessed an overpayment for particular weeks of unemployment and, upon collecting that overpayment amount from the individual, restored a balance to the individual's claim. This restored balance allowed the individual to collect additional weeks of unemployment benefits that covered the amount of the collected overpayment. In such cases, the state may not issue a refund.

- d. **Collection of Overpayments for CARES Act UC Programs.** When an overpayment does not meet the criteria for recovery to be waived or the state does not exercise the authority to waive certain overpayments, the state must require the individual to repay the amount to which they were not entitled (*i.e.*, the overpayment).<sup>7</sup>

As described in Section 4.c. of UIPL No. 20-21, states may not apply interest or other collection costs to overpayments in the CARES Act UC programs, regardless of whether such overpayments are considered fraudulent or non-fraudulent. If a state previously assessed interest and other collection costs under the CARES Act UC programs, the state must reconsider these assessments and refund any money collected towards such payment of interest and other collection costs. Section 4.d.i.B. of this UIPL explicitly addresses overpayments, penalties, and administrative fees under TOP.

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<sup>7</sup> Instructions for the ETA 227 report, found in ET Handbook 401, define a *waived amount* as “a non-fraud overpayment for which the state agency, in accordance with state law, officially relinquishes the obligations of the claimant to repay. Usually, this is authorized when the overpayment was not the fault of the claimant and requiring repayment would be against equity and good conscience or would otherwise defeat the purpose of the UI law.” Separately, a *written-off amount* is defined as “an amount of overpayment not subject to further recovery because of a state law provision authorizing cancellation of the overpayment. Usually write-offs are applied after the statute of limitations expires, bankruptcy has been approved by a court, or the claimant has died.” For purposes of the CARES Act UC programs, a state may only waive recovery under the narrow parameters provided in the CARES Act, as amended – specifically, if the individual was without fault and repayment would be against equity and good conscience. Additionally, the state must apply the write-off of an overpayment under the CARES Act UC programs consistent with how it applies the write-off of an overpayment under the regular UC program.

- i. ***Required collection activities.*** As described in Section 4.b. of UIPL No. 23-20, states must complete the same recovery activities for the CARES Act UC programs as required for the regular UC program: benefit offsets (including cross-program offsets under the Cross Program Offset Recovery Agreement (CPORA) and interstate reciprocal offsets under the Interstate Reciprocal Offset Recovery Arrangement (IRORA)) and participation in the TOP.

A. Benefit offsets within the context of the CARES Act UC programs.

1. *Recovering overpayments via benefit offset in general.* States must offset regular UC and other state and federal UC programs to recover overpayments under the CARES Act UC programs, as described in Question 16 in Attachment I to UIPL No. 13-20, Change 1, and further clarified in Section 5 of UIPL No. 13-20, Change 2. States have significant flexibility in the way that they implement the benefit offset requirement, such as limiting the amount to be deducted from each payment. See Section 4.b. of UIPL No. 05-13.

Conversely, states must offset benefits paid under the CARES Act UC programs to recover overpayments for other UC programs. However, as referenced in Attachment I to UIPL No. 20-21 and except as described in clause (2) below, states may not deduct more than 50 percent of the CARES Act benefit to recover such overpayments.

Additionally, specific to overpayments under the FPUC, MEUC, PEUC programs, as well as the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended, such offsets are limited to “the 3-year period after the date such individuals received the payment.”<sup>8</sup> The state must collect in accordance with the same procedures as apply to the recovery of overpayments of regular UC – except that states do not have the authority to conduct benefit offsets after this three-year period expires. This same three-year limitation does not apply to overpayments under the PUA program.

2. *Recovering overpayments when switching individuals between programs.* States vary in how they establish the overpayment when an individual is eligible for payment under an unemployment benefit program for a given week, but they were incorrectly paid under a different program. Some states may transfer the weeks from the incorrect program to the correct program and establish an overpayment amount equal to the difference in WBA for each applicable week (if the original program paid a higher WBA than the correct program).

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<sup>8</sup> Sections 2104(f)(3)(A), 2105(f), and 2107(e)(3)(A) of the CARES Act, as amended.

Other states may create an overpayment for the entire amount paid on the incorrect program and then use an “offset workaround” when processing weeks under the correct program to recover the amount overpaid. In this “offset workaround,” the state is not bound to the 50 percent limitation referenced in clause (1) above. Under the authority of the CARES Act, as amended, the state may operationally use an “offset workaround” to withhold 100 percent of the benefit due for each week under the correct program to recover the overpayment established on the incorrect program, leaving a remaining overpayment balance equal to the difference in WBA (if any) for each applicable week. The state may subsequently waive recovery of this overpayment balance under the approved blanket waiver scenarios (*see* Section 4.c.ii.A.2. of this UIPL).

Further, if FPUC was issued for the week of unemployment paid under the incorrect program, states should not pay FPUC a second time for the same week of unemployment under the correct program. As described in Section C.3. of UIPL No. 15-20, states have some flexibility in how they issued the FPUC payment: states could either provide FPUC as an amount paid at the same time and in the same manner as the underlying benefit amount or as a separate payment for the same week of unemployment as the underlying benefit amount. Operationally, it is also permissible for states to use an “offset workaround” to transfer FPUC payments correctly.

- B. TOP within the context of the CARES Act UC programs. The state must use TOP recovery for any overpayment that meets the requirement of a “covered UC debt,” as described in Questions 17 and 18 of Attachment I to UIPL No. 13-20, Change 1. This includes any overpayment that is determined to be fraudulent or that is the result of a person’s failure to report earnings, as well as any penalties.<sup>9</sup> No other type of overpayment under the CARES Act UC programs may be submitted to TOP. Although federal law does not specify the frequency of submission of covered UC debt to TOP, the state is expected to submit the required debts at some time during each calendar year.

*TOP administrative fees.* Administrative fees are deducted from the amounts collected through TOP, as described in Section 6 of UIPL No. 02-09. States are instructed to examine their laws to determine if they may assess administrative fees and add them to the covered UC debt. The result would be that 100 percent of the covered UC debt is returned to the state, and the individual would pay any additional processing costs through a further reduction to any tax refund. Otherwise, amounts to pay administrative fees may be withheld from the debts themselves. Since nothing in federal law explicitly addresses this situation, it is a matter of state law. TOP administrative fees are not considered “other collection

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<sup>9</sup> Covered UC debt includes both penalties and interest associated with fraudulent overpayments and overpayments resulting from the individual’s failure to report earnings. However, only penalties are applicable to the CARES Act programs, since states may not assess interest (*see* Section 4.c. of UIPL No. 20-21).

costs” as described in Section 4.c. of UIPL No. 20-21. The state’s process for handling TOP administrative fees for the regular UC program must also be applied to the CARES Act programs.

- ii. ***Additional collection activities.*** As described in Section 4.b. of UIPL No. 23-20, the Department strongly encourages states to use additional recovery activities, where allowed by state law, both during and after the three-year period described above. This includes negotiating repayment plans with individuals, accepting repayments through various methods, and other activities such as state income tax offset, wage garnishment, civil actions, property liens, and collection agency referrals.

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

6. **References.**

- American Rescue Plan Act of 2021 (ARPA), including Title IX, Subtitle A, Crisis Support for Unemployed Workers (Pub. L. 117-2);
- Consolidated Appropriations Act, 2021, including Division N, Title II, Subtitle A, the Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) (Pub. L. 116-260);
- Coronavirus Aid, Relief, and Economic Security (CARES) Act, including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act (Pub. L. 116-136);
- Trade Adjustment Assistance Extension Act of 2011 (TAAEA) (Pub. L. 112-40);
- Section 303 of the Social Security Act (SSA) (42 U.S.C. §503);
- 20 C.F.R. Part 625;
- UIPL No. 23-21, *Grant Opportunity for Promoting Equitable Access to Unemployment Compensation (UC) Programs*, issued August 17, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7400](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7400);
- UIPL No. 22-21, *Grant Opportunity to Support States with Fraud Detection and Prevention, Including Identity Verification and Overpayment Recovery Activities, in All Unemployment Compensation (UC) Programs*, issued August 11, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=4240](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=4240);
- UIPL No. 20-21, *State Instructions for Assessing Fraud Penalties and Processing Overpayment Waivers under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as Amended*, issued May 5, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6830](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6830);
- UIPL No. 16-21, *Identity Verification for Unemployment Insurance (UI) Claims*, issued April 13, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9141](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9141);
- UIPL No. 14-21, Change 1, *State Responsibilities After the Temporary Unemployment Benefit Programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as amended, End Due to State Termination of Administration or When the Programs Expire*, issued July 12, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9502](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9502);

- UIPL No. 14-21, *American Rescue Plan Act of 2021 (ARPA) – Key Unemployment Insurance (UI) Provisions*, issued March 15, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5669](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5669);
- UIPL No. 09-21, *Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) - Summary of Key Unemployment Insurance (UI) Provisions*, issued December 30, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3831](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3831);
- UIPL No. 28-20, Change 2, *Additional Funding to Assist with Strengthening Fraud Detection and Prevention Efforts and the Recovery of Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs, as well as Guidance on Processes for Combatting Identity Fraud*, issued August 11, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7207](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7207);
- UIPL No. 28-20, Change 1, *Additional Funding for Identity Verification or Verification of Pandemic Unemployment Assistance (PUA) Claimants and Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft as well as Recover Fraud Overpayments in the PUA and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued January 15, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9897](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9897);
- UIPL No. 28-20, *Addressing Fraud in the Unemployment Insurance (UI) System and Providing States with Funding to Assist with Efforts to Prevent and Detect Fraud and Identity Theft and Recover Fraud Overpayments in the Pandemic Unemployment Assistance (PUA) and Pandemic Emergency Unemployment Compensation (PEUC) Programs*, issued August 31, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8044](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8044);
- UIPL No. 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](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4621);
- UIPL No. 20-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Operating, Financial, and Reporting Instructions for Section 2105: Temporary Full Federal Funding of the First Week of Compensable Regular Unemployment for States with No Waiting Week*, issued April 30, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=6324](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=6324);
- UIPL No. 17-20, Change 3, *American Rescue Plan Act of 2021 (ARPA) – Pandemic Emergency Unemployment Compensation (PEUC) Program: Extension, Elimination of Transition Rule, Increase in Total Benefits, and Extension of Coordination Rule*, issued March 26, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9169](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9169);
- UIPL No. 17-20, Change 2, *Continued Assistance for Unemployed Workers Act of 2020 – Pandemic Emergency Unemployment Compensation (PEUC) Program: Extension, Transition Rule, Increase in Total Benefits, and Coordination Rules*, issued December 31, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=9291](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9291);
- UIPL No 17-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020-Pandemic Emergency Unemployment Compensation (PEUC) Program:*

- Questions and Answers, and Revised Reporting Instructions for the PEUC ETA 227, issued May 13, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8689](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8689);*
- UIPL No. 17-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020- Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions*, issued April 10, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=8452](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8452);
  - UIPL No. 16-20, Change 6, *Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued September 3, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4801](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4801);
  - UIPL No. 16-20, Change 4, *Continued Assistance to Unemployed Workers Act of 2020- Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued January 8, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6973](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6973);
  - UIPL No. 16-20, Change 2, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Pandemic Unemployment Assistance (PUA) Additional Questions and Answers*, issued July 21, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5479](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5479);
  - UIPL No. 15-20, Change 4, *American Rescue Plan Act of 2021 (ARPA) – Extensions to the Federal Pandemic Unemployment Compensation (FPUC) Program and Mixed Earners Unemployment Compensation (MEUC) Program*, issued March 26, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=3728](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=3728);
  - UIPL No. 15-20, Change 3, *Continued Assistance for Unemployed Workers (Continued Assistance) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC) Program Reauthorization and Modification and Mixed Earners Unemployment Compensation (MEUC) Program Operating, Reporting, and Financial Instructions*, issued January 5, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6122](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6122);
  - UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued April 4, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=9297](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297);
  - UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3390](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390);
  - UIPL No. 13-20, Change 2, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) – Review of State Compliance for Receipt of Emergency Administrative Grants and Clarification on Benefit Offset Requirements*, issued June 3, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?docn=8645](https://wdr.doleta.gov/directives/corr_doc.cfm?docn=8645);
  - UIPL No. 13-20, Change 1, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) – Reporting Instructions, Modifications to Emergency Administrative Grants Application Requirement, and Questions and Answers*, issued May 4, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5374](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5374);



- UIPL No. 03-20, *Minimum Disaster Unemployment Assistance (DUA) Weekly Benefit Amount: January 1 - March 31, 2020*, issued December 12, 2019, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3675](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3675);
- UIPL No. 04-17, Change 1, *Requirement for States to Refer Allegations of Unemployment Compensation (UC) Fraud, Waste, Abuse, Mismanagement, or Misconduct to the Department of Labor's (Department) Office of Inspector General's (DOL-OIG) and to Disclose Information Related to the Coronavirus Aid, Relief, and Economic Security (CARES) Act to DOL-OIG for Purposes of UC Fraud Investigations and Audits*, issued August 3, 2021, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5817](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5817);
- UIPL No. 04-17, *Disclosure of Confidential Unemployment Compensation (UC) Information to the Department of Labor's Office of Inspector General (OIG)*, issued December 16, 2016, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=7523](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7523);
- UIPL No. 02-16, Change 1, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits, Services, and Information*, issued May 11, 2020, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5491](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5491);
- UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits*, issued October 1, 2015, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=4233](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4233);
- UIPL No. 01-16, *Federal Requirements to Protect Individual Rights in State Unemployment Compensation Overpayment Prevention and Recovery Procedures*, issued October 1, 2015, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=5763](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5763);
- UIPL No. 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 2011*, issued January 10, 2013, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=3698](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3698);
- UIPL No. 02-12, *Unemployment Compensation (UC) Program Integrity – Amendments made by the Trade Adjustment Assistance Extension Act of 2011 (TAAEA)*, issued December 20, 2011, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=6707](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=6707);
- UIPL No. 02-09, *Recovery of Unemployment Compensation Debts Due to Fraud from Federal Income Tax Refunds*, issued November 28, 2008, [https://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2687](https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2687); and
- UIPL No. 23-80, *Implementation of Waiver of Overpayment Provisions in State UI Laws*, issued March 11, 1980, [https://oui.doleta.gov/dmstree/uipl/uipl80/uipl\\_2380.htm](https://oui.doleta.gov/dmstree/uipl/uipl80/uipl_2380.htm).<sup>10</sup>

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<sup>10</sup> We note that the link to this document shows an expiration date of February 28, 1981. However, per Training and Employment Notice No. 15-20, issued January 14, 2021, this remains an active UIPL.



7. **Attachment(s).**

- **Attachment I:** Evaluation of Eligibility for Approved Blanket Waiver Scenarios.
- **Attachment II:** Requesting Additional Blanket Waiver Circumstances under the CARES Act UC Programs.
- **Attachment III:** Sample Communication to Claimants for Approved Blanket Waiver Circumstances.
- **Attachment IV:** Sample Language for State Websites.

### Evaluation of Eligibility for Approved Blanket Waiver Scenarios

As described in Section 4.c.ii. of this UIPL, the Department has approved the following seven scenarios as permissible scenarios for states to apply and use the blanket waiver process to waive recovery of an established overpayment (two of which were previously approved under Section 4.d.iii. of UIPL No. 20-21). This attachment provides an explanation as to how the affected individuals are considered without fault in the creation of these overpayments and how recovery would be contrary to equity and good conscience for all individuals based on a single set of facts.

States may only waive recovery using a blanket waiver process under these approved scenarios. States may continue to consider waiving recovery of overpayments that do not fall within the approved scenarios or when the state is unable to identify if the claim falls within the parameters of an approved scenario by evaluating on an individual, case-by-case basis as described in Section 5 of UIPL No. 23-80 and in accordance with the criteria described in Section 4.c.i. of this UIPL.

*Group 1: Scenario(s) applicable to the PUA, FPUC, MEUC, and PEUC programs, as well as the first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended.*

1. **The individual answered “no” to being able to work and available for work and the state paid PUA or PEUC without adjudicating the eligibility issue. Upon requesting additional information, the individual either did not respond or confirmed that they were not able to work nor available for work for the week in question, and the state continued to pay, resulting in an overpayment for that week.**

The individual is without fault: In this scenario, the individual is without fault as they provided accurate information at the outset which the state did not consider prior to paying the individual. If the individual did not respond to a request for confirmation, or confirmed that they were not able to work or available for work, payments after the confirmation or failure to confirm are still without fault on the part of the individual because the state continued to pay benefits rather than ceasing benefit payments. Therefore, the state’s action caused the overpayment. Overpayments under these circumstances occurred because a unique confluence of circumstances (i.e., an avalanche of unemployment claims precipitated by a pandemic, implementation of multiple new programs, and public and political pressure to implement new programs rapidly) hindered the states’ ability to process claims timely and to the extent they would have under normal circumstances.

Repayment would be contrary to equity and good conscience: Repayment is contrary to equity and good conscience when it would be extremely unfair to require repayment. It would be extremely unfair to require repayment when the individual was not at fault for receiving the overpayment and the state would be requiring repayment of benefits that were designed to support individuals during the pandemic, which created financial

uncertainty for much of the country at that time. Individuals generally relied on these payments for their livelihoods and made purchases and entered into financial commitments based on these payments. Requiring repayment now would undermine many individuals' financial stability and undermine the purposes for which the benefits were paid.

*Group 2: Scenario(s) applicable to the PUA, MEUC (where applicable), and PEUC programs.* Because the individual was still eligible for unemployment benefits for a given week, these scenarios do not involve overpayments under the FPUC program. Because MEUC is not payable under the PUA program, there may be claims involving overpayments under the MEUC program.

- 2. When an individual is eligible for payment under an unemployment benefit program for a given week, but through no fault of the individual, they were instead incorrectly paid under either the PUA or PEUC program at a higher weekly benefit amount (WBA).** This approved scenario is described in more detail under Section 4.d.iii.A. of UIPL No. 20-21.

This refers to the overpayment created by a difference in WBAs across programs, not the entirety of the overpayment on one claim (*see* Section 4.d.i.A.2. of this UIPL). For example, an individual received five weeks of PUA at a \$300 WBA (total = \$1,500) for weeks where they were actually eligible for regular UC at a \$200 WBA (total = \$1,000). The \$500 difference because of a lower WBA is eligible for a blanket waiver (*i.e.*, the additional amount paid to the individual under PUA instead of regular UC). The remaining \$1,000 from the original PUA claim should be resolved when the state transitions such weeks from PUA to regular UC.

- 3. The state paid the wrong amount of dependents' allowance (DA) on a PUA or PEUC claim because the state, through no fault of the individual, used the wrong amount when calculating the DA, resulting in an overpayment equal to a minimal difference in DA for each paid week.**

The individual is without fault: Overpayments under these circumstances occurred because a unique confluence of circumstances (*i.e.*, an avalanche of unemployment claims precipitated by a pandemic, implementation of multiple new programs, new PUA standalone systems, and antiquated computer systems) hindered the states' ability to adequately update or test all PUA and PEUC system scenarios and distribute payments properly. Under this circumstance, individual recipients of payments were without fault for the overpayments as state system/technology issues caused the overpayment.

Repayment would be contrary to equity and good conscience: Repayment is contrary to equity and good conscience when it would be extremely unfair to require repayment. It would be extremely unfair to require repayment when the individual was not at fault for receiving the overpayment and the state would be requiring repayment of benefits that were designed to support individuals during the pandemic, which created financial uncertainty for much of the country at that time. Individuals generally relied on these

payments for their livelihoods and made purchases and entered into financial commitments based on these payments. Requiring repayment now would undermine many individuals' financial stability and undermine the purposes for which the benefits were paid. Additionally, recovering overpayments in this scenario could be extremely unfair because it could impact an individuals' ability to support their dependents.

*Group 3: Scenario(s) applicable to the PUA and FPUC (where applicable) programs.*

4. **The individual answered “no” to being unemployed, partially unemployed, or unable or unavailable to work because of the approved COVID-19 related reasons and the state paid PUA anyway. Upon requesting a new self-certification, the individual either did not respond or confirmed that none of the approved COVID-19 related reasons were applicable, and the state’s payment resulted in an overpayment for that week.** See Attachment I to UIPL No. 16-20, Change 6, for a full list of the approved COVID-19 related reasons.

The individual is without fault: In this scenario, the individual was without fault for the overpayment as they provided accurate information on their initial application which the state did not consider prior to paying the individual which created the overpayment. In addition, once information was requested and the individual failed to respond or confirmed the information, the state continued to pay benefits. Overpayments under these circumstances occurred because a unique confluence of circumstances (i.e., an avalanche of unemployment claims precipitated by a pandemic, implementation of multiple new programs, and public and political pressure to implement new programs rapidly) hindered the states' ability to process claims timely and to the extent they would have under normal circumstances.

Repayment would be contrary to equity and good conscience: Repayment is contrary to equity and good conscience when it would be extremely unfair to require repayment. It would be extremely unfair to require repayment when the individual was not at fault for receiving the overpayment and the state would be requiring repayment of benefits that were designed to support individuals during the pandemic, which created financial uncertainty for much of the country at that time. Individuals generally relied on these payments for their livelihoods and made purchases and entered into financial commitments based on these payments. Requiring repayment now would undermine many individuals' financial stability and undermine the purposes for which the benefits were paid.

*Group 4: Scenario(s) applicable to the PUA program.* Because the individual was still eligible for unemployment benefits for a given week, these scenarios do not involve overpayments under the FPUC program.

5. **Through no fault of the individual, the state paid the individual a minimum PUA WBA based on Disaster Unemployment Assistance (DUA) guidance that was higher than the state’s minimum PUA WBA provided in UIPL No. 03-20, which resulted in**

**an overpayment.** This approved scenario is described in more detail under Section 4.d.iii.B. of UIPL No. 20-21.

- 6. The individual complied with instructions from the state to submit proof of earnings to be used in calculating their PUA WBA. However, the state's instructions were either inadequate or the state incorrectly processed this calculation using self-employment gross income instead of net income or documents from an inapplicable tax year, resulting in an incorrect higher PUA WBA. The state establishes an overpayment for the difference in PUA WBA.**

The individual is without fault: Under this circumstance, states were serving a new population of unemployed workers (contractors, self-employed, gig economy) who were unfamiliar with the unemployment program, new monetary eligibility requirements, and UI systems. The states provided either no guidance or inadequate guidance for providing the correct income information. States struggled at the outset to clearly articulate income requirements to this new population, and continuously worked to change and improve their documents and forms to try to better convey this requirement through the CARES Act period. Individual recipients of payments were without fault for the overpayments as they complied with states' instructions (which did not adequately convey the requirement) on providing income information. Because the states failed to adequately inform claimants about the requirement, individuals are without fault for overpayments created using gross income instead of net income.

Repayment would be contrary to equity and good conscience: Repayment is contrary to equity and good conscience when it would be extremely unfair to require repayment. It would be extremely unfair to require repayment when the individual was not at fault for receiving the overpayment and the state would be requiring repayment of benefits that were designed to support individuals during the pandemic, which created financial uncertainty for much of the country at that time. Individuals generally relied on these payments for their livelihoods and made purchases and entered into financial commitments based on these payments. Requiring repayment now would undermine many individuals' financial stability and undermine the purposes for which the benefits were paid.

*Group 5: Scenario(s) applicable to the MEUC program.*

- 7. The individual complied with instructions from the state to submit proof of self-employment earnings to be used in establishing eligibility for MEUC. However, the state's instructions were either inadequate or the state incorrectly processed this calculation using the incorrect self-employment income or based on documents from an inapplicable tax year, resulting in the individual incorrectly being determined eligible for MEUC. The state establishes an overpayment for any weeks of MEUC that were paid.**

The individual is without fault: The state failed to provide clear instructions on how to report income or which tax year to use for reporting the earnings. As a result, claimants

did not provide the correct information. Overpayments under these circumstances occurred because a unique confluence of circumstances hindered the states' ability to adequately provide proper guidance. Consequently, staff were unable to identify correct or applicable self-employment income documentation when determining eligibility for MEUC. Because these problems were created by the state, recipients of MEUC payments were without fault for these overpayments.

Repayment would be contrary to equity and good conscience: Repayment is contrary to equity and good conscience when it would be extremely unfair to require repayment. It would be extremely unfair to require repayment when the individual was not at fault for receiving the overpayment and the state would be requiring repayment of benefits that were designed to support individuals during the pandemic, which created financial uncertainty for much of the country at that time. Individuals generally relied on these payments for their livelihoods and made purchases and entered into financial commitments based on these payments. Requiring repayment now would undermine many individuals' financial stability and undermine the purposes for which the benefits were paid.

**Attachment II to UIPL No. 20-21, Change 1**

**Requesting Additional Blanket Waiver Scenarios under the  
CARES Act UC Programs\***

**Instructions:** States that wish to propose additional scenarios within the context of the CARES Act UC programs to be considered for blanket waivers may do so by submitting this form to [covid-19@dol.gov](mailto:covid-19@dol.gov) with a copy to the appropriate ETA Regional Office. States are requested to use the Subject Line: “Additional Scenario for Blanket Waiver Approval.”

States must complete a separate form for each blanket waiver scenario for which the state is requesting approval.

<b>Unemployment Insurance Scenario for Blanket Waiver Approval Request</b>
<b>1. State Name:</b>
<b>2. Contact Information of the State Agency Administrator</b> Name: Title: Email Address: Telephone Number:
<b>3. CARES Act Program Lead Information</b> Name: Title: Email Address: Telephone Number:

\* Division A, Title II, Section 2116(a) 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 provisions of, and the amendments made by, this subtitle.” As such, the PRA does not apply to this request.

<b>4. Description of the Scenario Proposed for Blanket Waiver</b>
<b>5. Explain why the individuals affected by the scenario above are without fault in the creation of the overpayment (see examples provided under approved scenarios in Attachment I to this UIPL).</b>
<b>6. Explain why repayment of the overpayments indicated in the scenario above would be contrary to equity and good conscience (see examples provided under approved scenarios in Attachment I to this UIPL).</b>
<b>7. Description of how the state will apply the blanket waiver scenario (if approved) and ensure that fraudulent overpayments are not included in its application of the scenario.</b>
<b>8. What is the number of individuals (known or estimated) who would receive a blanket waiver under this process, if approved? Provide an explanation of the methodology used in calculating this number.</b>
<b>9. What is the total dollar amount (known or estimated) that would be waived if the blanket waiver is approved and the breakdown of amount by CARES Act UC program? Provide an explanation of the methodology used in calculating this amount.</b>
<b>10. What is the average processing time spent (or would be spent) (known or estimated) by state staff addressing this scenario if done on an individual, case-by-case basis? Provide an explanation of the methodology used in calculating this time.</b>
<b>11. List the CARES Act UC programs that would be subject to this blanket waiver (PEUC, PUA, FPUC, MEUC, first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended).</b>



## Instructions for Completing Questions 4-11 of the Form

**4. Description of the scenario proposed for blanket waiver:** Briefly describe the reason the state is requesting the blanket waiver. Include the circumstances under which the overpayments occurred.

**5. Explain why the individuals affected by the scenario above are without fault:** Describe why the individuals in this scenario are without fault for the creation of the overpayment. States are encouraged to reference UIPL No. 20-21 and Attachment I to this UIPL for supporting language.

**6. Explain why repayment would be contrary to equity and good conscience:** Describe why repayment would:

- a. Cause financial hardship to the group of persons for whom it is sought; or
- b. Cause the recipient of the overpayment (regardless of their financial circumstances) to have relinquished a valuable right or changed positions for the worse; or
- c. Be unconscionable under the circumstances.

States are encouraged to reference UIPL No. 20-21 and this UIPL for supporting language.

**7. Description of how the state will apply the blanket waiver scenario (if approved) and ensure that fraudulent overpayments are not included in its application of the scenario.** Explain how the state plans to apply the blanket waiver scenario (*e.g.*, will the state run a query against its computer system, will the state apply the blanket waiver as it identifies such scenarios in working individual backlog cases). Additionally, explain how the state will ensure that when the state is applying this proposed blanket waiver scenario, it will not waive recovery activities for fraudulent overpayment.

**8. What is the number of individuals (known or estimated) who would receive a blanket waiver under this process, if approved?:** Provide the estimated (or known total) number of individuals for whom the state expects to waive overpayments under this proposed blanket waiver request. Provide an explanation of the methodology used in calculating this number or estimate.

**9. What is the total dollar amount (known or estimated) that would be waived?:** Provide the estimated (or known total) dollar amount that the state expects to waive (per CARES Act program) from this blanket waiver if approved. For example, PUA \$1.2M, PEUC \$2.1M, FPUC \$3.5M. Provide an explanation of the methodology used in calculating this amount or estimate.

**10. What is the average processing time spent (or would be spent) (known or estimated) by state staff addressing this scenario if done on an individual basis?:** Provide the average amount of time that state staff would normally spend to individually process each waiver if the blanket waiver is not approved (*e.g.*, estimated 15 minutes per individual waiver). If known or estimated, include how long would it take to process all individual waivers in this scenario (*e.g.*, 6 months for all waivers in this scenario). Provide an explanation of the methodology used in calculating these times or estimates.

**11. List the programs that would be subject to this blanket waiver:** Indicate the CARES Act UC program overpayments the state will address with this waiver (PEUC, PUA, FPUC, MEUC,

first week of regular UC that is reimbursed in accordance with Section 2105 of the CARES Act, as amended). Note that regular UC overpayments are not available for blanket waiver consideration (see Section 5 of UIPL No. 23-80 for reviewing waiver eligibility on an individual, case-by-case basis).

**Sample Communication to Claimants when Recovery of Overpayment is Waived**

This Attachment includes a sample communication that states may use when approving the waiver of recovery for an overpayment. This can be used both when processing individual waiver requests in accordance with Section 4.c.i. of this UIPL and blanket waivers in accordance with Section 4.c.ii. of this UIPL. It is written with the assumption that a state has previously sent a determination establishing the overpayment. Option #1 under Section 4.c.iii.A. of this UIPL provides instructions for states who wish to provide a combined notice that both establishes the overpayment and waives recovery.

States that choose to create their own notification should consider the following:

- We recommend including reference to the applicable determination that established the overpayment and the date such determination was mailed on the notice. If the state uses a case number or letter IDs for the underlying eligibility and qualification determinations, the state can also use that information to connect the overpayment determinations to this notice.
- We recommend that the state include clear language that the waiver of recovery for the overpayment does not change the underlying ineligibility of benefits.
- As described in Section 4.c.iii.A. of this UIPL, when approving a waiver of recovery, the state must provide instructions on how to request a reconsideration of the approved waiver if the individual does not wish to have recovery of the overpayment waived.
- In addition to providing instructions on how an individual may ask specific questions related to their claim, the state may consider providing for a pre-recorded message or a statement on its website to refer individuals for general information about the waiver.
- States may also refer to the plain language guidelines provided at <https://www.plainlanguage.gov/guidelines/>.

**Sample Letter when Claimant Already Received Determination Establishing Overpayment**

[Claimant contact information]

[Applicable CARES Act programs]

Overpayment Amount: [\$XX]

Recovered Amount: [\$XX]

Current Balance: [\$XX]

Recovery Waived for this Amount: [\$XX – should equal Overpayment Amount]

**Total Due: \$0**

Refund Due: [\$XX – should equal Recovered Amount]

**Notice that You Do NOT Need to Repay Benefits Received**

[State’s greeting CLAIMANT’S NAME:]

We, [Agency name], are writing to let you know that you **DO NOT** owe the overpayment related to the determination(s) issued on [date of determination(s) finding ineligibility/disqualification]. During the pandemic, we sent you payments in error. But you are not responsible for this error and do not need to return any money. You do not need to do anything. Please keep this Notice for your records.

**What Happened?**

We, [Agency name], determined that you were not entitled to [a portion of/all] the benefits you received for week(s) ending [list weeks]. You received payments before knowing you were not entitled to those benefits. This decision created a debt (called an overpayment) of [\$XX] on your [enter CARES Act program here] claim.

But you are not required to repay this overpayment. You were without fault in creating this overpayment and the agency has determined that recovery would be contrary to equity and good conscience. Therefore, the Agency is waiving recovery of this overpayment. This waiver means you are not required to pay back the overpayment related to this determination.

**What’s Next?**

***[Consider this paragraph when no collection activity has occurred]***

There is nothing more for you to do to get this waiver. Please keep this Notice for your records. We are working to update your overpayment status on your unemployment insurance claim records to reflect that there is no need to repay benefits received. If needed, you may give a copy of this Notice to others such as debt collectors, credit bureaus or other legal entities to let them know that we are waiving recovery of your overpayment.

***[Consider this paragraph when collection activity has occurred and state will process a refund]***

There is nothing more for you to do to get this waiver. You do not need to send any additional payments related to this overpayment caused by determination. You will receive a [\$XX] refund [enter repayment type] for the money you have already paid back towards this overpayment. [If the state will issue refunds via direct deposit, consider including a reminder to have the individual log into their account to confirm their banking information. Alternatively, the state may wish to remind the individual to confirm their mailing address].

#### Additional Questions?

If you do not want a waiver of the overpayment, please contact your state agency by [deadline] by [insert contact instructions].

This Notice only applies to the overpayment issued on [date of determination(s) finding ineligibility/disqualification] for the week(s) ending [list weeks] and does not apply to any other overpayment.

For more details on waiving recovery of an overpayment, please check the Agency website at [agency website], or call [agency number]. You may also look up the state's policy allowing this waiver at [agency website].

If you have additional questions about this notice, please contact: [Address, telephone, website, etc.]

If you believe this notice has been issued due to fraud or you have been a victim of identity theft, please contact [agency website, telephone].

### Sample Language for State Websites

This Attachment includes sample language for state websites regarding the waiver of recovery provisions under the CARES Act UC programs. ETA recognizes that state laws and practices may vary. States are encouraged to use this language as a starting point for their communication. States are encouraged to reference this link in their determinations when an overpayment is established and in their written notices when a waiver of recovery is approved.

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#### **Important Information for those who Receive[d] “Overpayment” Notices PLEASE READ AS YOU MAY NOT HAVE TO PAY THEM BACK**

##### **Temporary Unemployment Benefits under the CARES Act Programs Information on Overpayments**

You may have received a notice from [STATE AGENCY] that you were paid unemployment benefits under the CARES Act programs that you were not entitled to, this is called an overpayment. You may also have received a notice from [STATE AGENCY] that you do not have to pay this money back. This page explains what may be happening depending on your specific circumstances.

#### **Why do I have an overpayment?**

The CARES Act created new temporary pandemic-related unemployment compensation programs. We have identified some people that were paid money that they were not entitled to. We have reviewed our records and, as needed, [are reaching out/have reached out] to these people. If it [is/was] determined that they were not eligible for this money, we [will establish/have established] an overpayment. In normal circumstances, someone with an overpayment is responsible for paying the money back, but we recognize that the pandemic was not a normal circumstance.

#### **In what instances am I not responsible for repaying an overpayment?**

If the overpayment was not your fault and we determine that it would be unfair to ask you to pay it back (in other words, it would be against equity and good conscience to recover the money from you), we are **not** going to require you to pay back the money. This is called a waiver of recovery.

#### **What we are doing [For states that are processing blanket waivers]**

The U.S. Department of Labor has identified several scenarios where we can automatically waive recovery of an overpayment. You can find these at [insert state-specific link that references what scenarios the state may be applying from Section

4.c.ii.A. of UIPL No. 20-21, Change 1]. We are currently reviewing overpayments to determine if they are eligible for recovery to be waived. [States may, if applicable to how they are applying the blanket waiver scenarios, consider adding a sentence that says: *You do not need to submit an individual request to be considered under one of these scenarios.*] Any overpayments resulting from fraud are not eligible for waiver.

If you are eligible for a waiver, we will send you a written notice. Additionally, any money that was collected on this overpayment will be refunded to you. Additional information regarding any refund you may be owed will be included in this written notice. Please note that this process may take [insert state estimated timeframe].

**What you can do [For states that allow for individual waiver requests, rather than evaluating every overpayment created (see Section 5 of UIPL No. 23-80)]**

[For states processing blanket waivers, consider this intro sentence: *If you do not get a waiver but think you should,*] you have two options. If you disagree with the overpayment and believe that you were entitled to receive unemployment benefits for the week(s) in question, you may file an appeal. If you do not wish to file an appeal but do not think you are at fault for the overpayment, you may request consideration for a waiver of recovery.

- **File an appeal.** If you do not believe you got an overpayment (meaning you believe that you were entitled to receive unemployment benefits for the weeks in question), you may file an appeal. Please review your determinations to see which one(s) found you disqualified or ineligible and follow the appeals instructions listed on the determination(s). [If applicable under state law, consider adding the sentence: *If it is past the deadline to file an appeal, you will need to show good cause for why you missed the deadline.* State may consider including some examples of what constitutes good cause.]

You can find the determinations and the process to file an appeal on your claimant portal by [insert language about the state's particular online portal].

[Consider for the online webpage – *add a screen shot of where to find the determination(s) and the appeal link on the claimant's portal.* States are permitted and encouraged to add any help buttons or other explanations consistent with this language to guide claimants.]

If you are successful in your appeal, there is no need to request a waiver because you will no longer be considered overpaid.

- **Request a waiver so you do not have to pay back the overpaid amount.** There are two requirements to qualify for a waiver of recovery:

(1) you were not at fault for the receipt of the benefits; and

(2) it would be unfair to collect money – that is, it would be “contrary to equity and good conscience.”

If you believe these two requirements apply to you, you may request a waiver by [insert state-specific instructions].

If your request for a waiver is granted, we will send you a written notice. In that case, you will not be responsible for repaying the money. Additionally, any money that was collected on this overpayment will be refunded to you.

### **I received a written notice that I do not need to repay benefits received**

If you received written notice that you do not need to repay benefits received, this means that we have reviewed the overpayment and determined that you do not have to repay this money. You do not need to return any money. You do not need to do anything for this overpayment.

Importantly, while you do not have to pay back the overpayment listed on the notice we sent you, this waiver of recovery does not apply to any other overpayment you may have on your account.

### **I received a written notice that I do not qualify for a waiver. What are my options?**

If you received a written notice that you do not qualify for a waiver but think that you should have received it, please follow the appeals instructions listed on the determination saying that you did not qualify for a waiver. [If applicable under state law, consider adding the sentence: *If it is past the deadline to file an appeal, you will need to show good cause for why you missed the deadline.* State may consider including some examples of what constitutes good cause.]

If you do not file an appeal, we encourage you to contact us and make payment arrangements as soon as possible. To make payment arrangements, please contact [insert state-specific instructions]. For more information on our collections process, please visit [insert link to state’s website explaining the collections process].