



May 26, 2020

MEMORANDUM FOR: JOHN P. PALLASCH  
Assistant Secretary of Employment and Training  
Administration

*Elliot P. Lewis*

FROM: ELLIOT P. LEWIS  
Assistant Inspector General Office of Audit

SUBJECT: **Alert Memorandum:** The Pandemic  
Unemployment Assistance Program Needs  
Proactive Measures to Detect and Prevent  
Improper Payments and Fraud  
Report Number: 19-20-002-03-315

The purpose of this memorandum is to alert you to a concern we identified during our ongoing audit of the Department of Labor's (DOL) response to the Unemployment Insurance (UI) Program's expansion under the CARES Act.

The CARES Act's Pandemic Unemployment Assistance (PUA) program expanded UI eligibility to individuals who are not typically qualified to receive such benefits. To establish eligibility, the CARES Act requires individuals to self-certify that they have lost employment income due to a COVID-19 related reason specified within the statute. This self-certification renders the individual eligible to receive payments immediately.

Costs for PUA benefits are currently estimated to total nearly 110 billion<sup>1</sup> dollars. The associated risk of improper payments and fraud is significant, as the UI program historically experiences some of the highest improper payment rates within the federal government. The Office of Inspector General (OIG) believes state's reliance on self-certifications alone to ensure eligibility for PUA will lead to increased improper payments and fraud.

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<sup>1</sup> This includes an estimated \$61.5 billion for the Federal Pandemic Unemployment Compensation (FPUC) portion of the PUA program.

## **PUA Self-Certification**

The CARES Act (§ 2102(a)(3)) provides PUA coverage to individuals who are not normally eligible for UI benefits and who self-certify that they are able and available for work but are unemployed due to a COVID-19 related reason. This includes individuals who: have exhausted eligibility for regular UI benefits; are self-employed; are gig workers; are members of clergy; or were not previously covered by UI programs. Claimants must self-certify one of the criteria identified within § 2102 applies to be eligible for PUA benefits. Claimants generally self-certify by checking a box next to a qualifying criterion on the form submitted to state workforce agencies. The individual is also required to acknowledge a warning that intentional misrepresentation to obtain PUA benefits constitutes fraud.

The following are examples of COVID-19 related reasons that qualify individuals for PUA program benefits:

- place of employment is closed as a direct result of COVID-19;
- unable to reach place of employment due to COVID-19;
- was scheduled to commence employment but does not have a job as a direct result of COVID-19;
- was diagnosed with COVID-19 or has experienced symptoms and is seeking medical diagnosis;
- providing care for a family or household member who has been diagnosed with COVID-19; or
- a child or other household member for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed due to COVID-19.

Individuals who qualify for PUA per CARES Act § 2102 are eligible to receive weekly benefits equivalent to the state's regular unemployment compensation plus an additional \$600 weekly payment under CARES Act § 2104.

## **Disaster Unemployment Assistance Program Requirements Apply to PUA**

The CARES Act (§ 2102(h)) states that federal regulations<sup>2</sup> governing the Disaster Unemployment Assistance (DUA) program apply to the PUA program unless there is a conflict between the regulations and CARES Act § 2102, or an express provision in § 2102 applies. The DUA regulations at 20 C.F.R. § 625.6(e) require states to immediately determine eligibility upon an initial application based on the individual's statement of employment/self-employment. Furthermore, states are required to make an immediate determination of a

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<sup>2</sup> 20 C.F.R § 625.6

weekly benefit amount (WBA) based on documentation provided, at the time of initial application, or if not available, on any state agency records of employment or self-employment and related earnings; or on an individual's statement of employment or self-employment wages earned. DUA regulations at 20 C.F.R. § 625.6(e)(1) state that individuals receiving a benefit payment based solely on the claimant's statements are required to submit documentation to substantiate employment or self-employment wages within 21 days of the initial filing. Documentation accepted to validate DUA program eligibility include:

- pay stubs,
- business records,
- business licenses,
- tax returns, and
- letters or email from an employer acknowledging the individual was scheduled to commence employment.

Under the DUA regulations at 20 C.F.R. § 625.6(e)(2), an individual who fails to submit documentation to substantiate their statements regarding employment or self-employment wages is determined ineligible for the payment of benefits for any week of unemployment covered by the disaster declaration.

The DUA and PUA programs are similar in that they both allow self-certification of employment/self-employment and associated wages. However, the CARES Act is silent on what should occur if an individual fails to submit documentation to support the claimant's WBA. The OIG believes the provisions under DUA regulation 20 C.F.R. § 625.6(e)(1) apply and do not conflict with the PUA requirement that eligible claimants receive payments without a waiting period. Rather, OIG believes the aforementioned DUA regulation works in conjunction with the state agency requirements to justify the continuation of program benefits and the WBA.

#### **Authority to Apply Wage Determination Requirements of 20 C.F.R. § 625.6(e)(2)**

Employment and Training Administration (ETA) guidance<sup>3</sup> interpreting the CARES Act provides that the Act's self-certification provision is sufficient in and of itself to establish entitlement to payment of initial benefits and the WBA. ETA maintains it lacks the authority to add additional criteria regulating the payment of the WBA. Consistent with this position, ETA issued guidance in April 2020 that

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<sup>3</sup>UIPL 16-20 Change 1, entitled Coronavirus Aid, Relief, and Economic Security (CARES Act) of 2020 –Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers

specifically informed states that the DUA regulations<sup>4</sup> requiring employment documentation (including earnings) do not apply to the PUA program<sup>5</sup>.

As ETA's implementation of the PUA program currently stands, any individual may initially self-certify without evidence of wages earned and be approved for payment in accordance with the state's UI regulations. If the individual fails to provide documentation within 21 days, they are not rendered ineligible for PUA benefits.<sup>6</sup> Consequently, an individual could continue to receive an average of \$775 per week based solely on an initial undocumented self-certification statement that one of the COVID-19 related reasons were met; and by acknowledging any intentional misrepresentation to obtain PUA benefits constitutes fraud.

OIG is issuing this Alert Memorandum because states need to implement measures, such as requiring claimants to document earnings to substantiate the initial WBA determination, to establish and maintain integrity in the PUA program. We believe that reliance solely on claimant self-certifications without evidence of eligibility and wages renders the PUA program highly vulnerable to improper payments and fraud. Without additional tools such as those that already exist under the DUA regulations cited in this alert, the PUA program presents substantial risks of the likelihood of loss of millions of taxpayer dollars. Recognizing that ETA and the DOL Office of the Solicitor disagree with our assessment based upon their interpretation of the Act and underlying regulations – and given the UI program's previously reported vulnerability to improper payments and the high risk of fraud – we suggest ETA seek additional guidance or clarification from Congress concerning whether a claimant is entitled to establish and continue to receive PUA payments without providing documentation at any point to support a WBA determination. Alternatively, we recommend ETA consider tools already available under the CARES Act such as those cited in § 2102(a)(3)(A)(i)(I)(kk) or § 2104(f)<sup>7</sup> and change its guidance; or request legislative action to curtail improper or fraudulent PUA payments.

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<sup>4</sup> 20 C.F.R. § 625

<sup>5</sup> See footnote 3

<sup>6</sup> Claimants will continue to receive payments at the minimum weekly benefit amount. This amount currently averages \$175 plus the additional Federal Pandemic Unemployment Compensation (FPUC) amount of \$600.

<sup>7</sup> § 2102(a)(3)(i)(I)(kk) states a covered individual means an individual who provides self-certification that the individual is able to work and available to work within the meaning of applicable state law, except the individual is unemployed because the individual meets additional criteria established by the Secretary for unemployment assistance under this section. § 2104 states if an individual has knowingly made a false statement or material fact and as a result the individual receives FPUC then the individual is ineligible for further FPUC.

We would appreciate your written response addressing this alert memorandum and its recommendation by June 2, 2020. If you have any questions, please contact Dwight Gates, Audit Director, at (678) 637-4659.

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