

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION Unemployment Insurance
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 05-24

TO: STATE WORKFORCE AGENCIES

FROM: BRENT PARTON 
Principal Deputy Assistant Secretary

SUBJECT: Application of State Finality Laws Regarding Temporary Unemployment Compensation (UC) Programs under the Coronavirus Aid, Relief, and Economic Security (CARES) Act

1. **Purpose.** To announce the Department of Labor’s (Department’s) interpretation concerning the application of state finality laws to temporary UC programs created under the Coronavirus Aid, Relief, and Economic Security (CARES) Act, as amended.
2. **Action Requested.** The Department’s Employment and Training Administration (ETA) requests that State Workforce Agency Administrators provide information contained in this Unemployment Insurance Program Letter (UIPL) to appropriate staff.
3. **Summary and Background.**
 - a. Summary – Many states have finality provisions in their state UC laws that limit when the state may reconsider a prior decision or determination made on a UC claim. The Department defers to states to apply their finality laws to CARES Act UC claims.
 - b. Background – The CARES Act (Public Law (Pub. L.) 116-136), enacted on March 27, 2020, allows, among other things, states to enter into an agreement with the Secretary to administer the Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), and Pandemic Emergency Unemployment Compensation (PEUC) programs and to receive full federal funding for the first week of compensable regular unemployment for states with no waiting week. *See* UIPL No. 14-20. The Continued Assistance for Unemployed Workers Act of 2020 (Continued Assistance Act) (Pub. L. 116-260), set forth at Division N, Title II, Subtitle A of the Consolidated Appropriations Act, 2021, extended the dates for states to administer these programs and allowed states to also enter into an agreement with the Secretary to administer the Mixed Earners Unemployment Compensation (MEUC) program. *See* UIPL No. 09-21. The American Rescue Plan Act of 2021 (ARPA) (Pub. L. 117-2) further extended the dates for states to administer the PUA, FPUC, PEUC, and MEUC programs and to receive full federal funding for the first waiting week through September 6, 2021. *See* UIPL No. 14-21.

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All states voluntarily signed an “Agreement Implementing the Relief for Workers Affected by Coronavirus Act” (Agreement) with the Secretary in March 2020 to administer the PUA, FPUC, and PEUC programs. States without a waiting week also signed an addendum to receive full federal funding for the first week of compensable regular unemployment. The Agreement applied to the CARES Act and “any future amendments.” It also required states to use the CARES Act funds “for the purpose for which the money was paid to the state” and to “take such action as reasonably may be necessary to recover for the account of the United States all benefit amounts erroneously paid and restore any lost or misapplied funds paid to the state for benefits or the administration of [the] Agreement.” (Agreement, paragraphs I, VII, VIII). Nearly all states signed an addendum to the Agreement in January 2021 to also administer the MEUC program. The Agreement incorporates amendments to the CARES Act made by the Continued Assistance act and ARPA.

There are situations where states have not yet implemented certain CARES Act UC requirements or have implemented or operated the CARES Act UC programs out of alignment with federal law, regulation, or policy. Typically, this would require the state to retroactively implement the requirements or correct the errors. However, some states have indicated that they cannot take the required actions to resolve the findings due to finality provisions of their UC laws prohibiting them from reconsidering a prior determination after a specified period of time has elapsed.

The Department has consistently deferred to state finality laws with regard to the regular UC program. In this UIPL, we are providing updated guidance on the application of finality laws to the CARES Act programs.

4. **Guidance.**

- a. **Application of State Finality Provisions to CARES Act UC Programs.** The CARES Act UC programs are administered through voluntary agreements between states and the Department. With respect to the PUA program, the Department’s prior guidance has advised that where the CARES Act and the Department’s operating instructions are silent, states should refer to the Disaster Unemployment Assistance (DUA) regulations at 20 C.F.R. Part 625 to the extent required by CARES Act section 2102(h), and where DUA regulations are silent, states should follow applicable state law for administering the regular UC program. *See* UIPL No. 16-20, Change 1. The DUA regulation provides that “[t]he provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to regular compensation under the applicable State law shall apply to determinations pertaining to DUA.” 20 C.F.R. 625.9(c).

The laws creating FPUC, MEUC, PEUC, and federal funding for the first week of benefits for states without waiting weeks, specifically provide that “[a]ny determination by a State agency under this section shall be subject to review in the same manner and to

the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.” See CARES Act §§ 2104(f)(4) (regarding FPUC and MEUC), 2105(f) (regarding the federal funding of the waiting week), and 2107(e)(4) (regarding PEUC). PUA did not include a similar provision.

Pursuant to the Department’s authority under the CARES Act (and amendments) and the Agreement, States were instructed to retroactively implement new CARES Act requirements and correct implementation errors. *See, e.g.*, UIPL 16-20, Changes 5 and 6. States were also advised that a state’s jurisdictional limitation cannot prevent the Department from taking action if a state is found to be out of compliance with the requirements of the CARES Act Agreement. UIPL 16-20, Change 6, § 4.a.ii. *See International Union, United Auto., Aerospace and Agric. Implement Workers of America International Union v. Brock*, 477 U.S. 274, 292 (1986). The Department made funding available to the states to recover CARES Act overpayments. *See, e.g.*, UIPL 28-20, Changes 2 and 4. The CARES Act benefits programs ended on September 6, 2021, and the Department has been working with States to implement modernization efforts under ARPA.

The Department is now updating its guidance to defer to states to apply their finality laws to the CARES Act UC programs. This means the Department will no longer exercise its authority to require retroactive actions for CARES Act UC programs where a State’s finality law applies.¹ Deference to state finality laws is both consistent with the CARES Act language referenced above and important to enabling states to concentrate their energies on adjudicating current claims and be forward-looking, focusing more of their energies and resources on engaging in the Department’s modernization and fraud prevention efforts to ensure that States will be well-prepared in the event of a future economic downturn.

- b. Effect of Application of Finality on Outstanding CARES Act Matters that may be Subject to Retroactive Action.** Applying state finality laws to the CARES Act UC programs means that, in many instances, the state will not need to take retroactive action to resolve monitoring findings. However, application of state finality laws will not resolve all monitoring findings. For example, if a state’s law provides a three-year limitation on reconsidering prior determinations, the state must retroactively address applicable determinations that have not passed the three-year mark. If a state is relying on its finality law in administering the CARES Act UC programs, it should evaluate its outstanding monitoring findings and, if the state finality law limits the extent of retroactive action necessary, the state should provide an explanation to the appropriate ETA Regional Office.

¹ There are two commonly understood types of finality. The first limits the ability of the state agency to redetermine or reconsider one of its prior determinations or decisions. The second limits the ability of a claimant or employer to seek redetermination or reconsideration of a decision or to file an appeal from a determination or decision outside of the specific timelines set out in state law. This UIPL applies to the first type of finality—state laws limiting the state agency’s authority to reconsider or redetermine prior determinations or decisions, not those related to appeals.

The application of state finality provisions will not prevent law enforcement agencies from investigating and prosecuting fraud under CARES Act programs, or from seeking appropriate sentences, including monetary penalties and restitution. States should continue efforts to collaborate with law enforcement agencies and refer potential CARES Act UC fraud cases for investigation and prosecution. *See* TEN No. 12-23.

5. **Inquiries.** Please direct inquiries 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 Act (CARES Act), including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act (Pub. L. 116-136);
- Title III, Social Security Act of 1935 (42 U.S.C. § 503 et seq.);
- 20 C.F.R. Part 625, Disaster Unemployment Assistance;
- UIPL No. 14-21, *American Rescue Plan Act of 2021(ARPA) – Key Unemployment Insurance (UI) provisions*, issued March 15, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-14-21>;
- 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://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-09-21>;
- UIPL No. 28-20, Change 4, *Support for States to Resolve Outstanding Items from the Expired Coronavirus Aid, Relief, and Economic Security (CARES) Act Unemployment Compensation (UC) Programs, Including Additional Funding to Assist States with Reporting and Detection and Recovery of Overpayments*, issued July 22, 2022, <https://www.dol.gov/agencies/eta/advisories/uipl-no-28-20-change-4>;
- 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://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-28-20-change-2>;
- UIPL No. 16-20, Change 6, *Pandemic Unemployment Assistance (PUA) Program: Updated Operating Instructions and Reporting Changes*, issued September 3, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20-change-6>;

- UIPL No. 16-20, Change 5, *Expanded Eligibility Provisions for the Pandemic Unemployment Assistance (PUA) Program*, issued February 25, 2021, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20-change-5>;
- UIPL No. 16-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 - Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers*, issued April 27, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-16-20-change-1>;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, <https://www.dol.gov/agencies/eta/advisories/unemployment-insurance-program-letter-no-14-20>;
- TEN No. 12-23, *Reminder on Federal Statute of Limitations on Criminal Prosecutions of Unemployment Insurance (UI) Fraud*, issued December 1, 2023, <https://www.dol.gov/agencies/eta/advisories/ten-12-23>; and
- *International Union, United Auto., Aerospace, and Agric. Implement Workers of America v. Brock*, 477 U.S. 274 (1986).

7. **Attachment(s)**. None.