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.**

   <u>The individual is without fault</u>: 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.

   <u>Repayment would be contrary to equity and good conscience</u>: 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.**

   <u>The individual is without fault</u>: 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.

   <u>Repayment would be contrary to equity and good conscience</u>: 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.**

   <u>The individual is without fault</u>: 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.

<u>Repayment would be contrary to equity and good conscience</u>: 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.