

Office of the Auditor General
Performance Audit Report

**Establishing Pandemic Unemployment
Assistance Eligibility Criteria**

Unemployment Insurance Agency
Department of Labor and Economic Opportunity

November 2021

The auditor general shall conduct post audits of financial transactions and accounts of the state and of all branches, departments, offices, boards, commissions, agencies, authorities and institutions of the state established by this constitution or by law, and performance post audits thereof.

The auditor general may make investigations pertinent to the conduct of audits.

Article IV, Section 53 of the Michigan Constitution



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Report Summary

*Performance Audit
Establishing Pandemic Unemployment
Assistance Eligibility Criteria
Unemployment Insurance Agency (UIA)
Department of Labor and Economic
Opportunity (LEO)*

**Report Number:
186-0319-21A**

**Released:
November 2021**

To slow the spread of COVID-19 after the first confirmed cases in Michigan in March 2020, Governor Whitmer issued a series of executive orders that declared a state of emergency and placed restrictions on public gatherings. These orders closed schools, businesses, and other employers resulting in the largest spike in unemployment in Michigan history. The federal Coronavirus Aid, Relief, and Economic Security (CARES) Act created new federal unemployment programs, including Pandemic Unemployment Assistance (PUA), Pandemic Unemployment Compensation (PUC), and others, that increased the weekly benefit amounts and expanded eligibility to claimants not otherwise eligible for unemployment benefits. From March 15, 2020 through September 27, 2021, UIA paid \$38.9 billion in unemployment insurance (UI) claims from 5.4 million claims (including, but not limited to, PUA claims) created for 3.41 million unique claimants.

This audit report is the first of a series of audit reports on UIA claims processing during the COVID-19 pandemic.

Audit Objective			Conclusion
Objective: To assess the effectiveness of UIA's actions to establish federally compliant claimant eligibility criteria for the PUA program.			Not effective
Findings Related to This Audit Objective	Material Condition	Reportable Condition	Agency Preliminary Response
A variety of actions and inaction by UIA's senior leadership during the COVID-19 pandemic contributed to a poor control environment (tone at the top). Those actions directly contributed to the creation of invalid PUA application and certification processes and UIA's failure to timely or appropriately address issues pointed out by the U.S. Department of Labor (USDOL) and UIA staff (Finding 1).	X		Agrees

Findings Related to This Audit Objective (Continued)	Material Condition	Reportable Condition	Agency Preliminary Response
UIA included 4 eligibility criteria on PUA claim applications and weekly benefit certifications not authorized in the CARES Act or other USDOL guidance. Also, it continued to make improper eligibility determinations and related overpayments 9 months after USDOL first notified Michigan of the deficiencies (<u>Finding 2</u>).	X		Agrees

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November 18, 2021

Ms. Susan R. Corbin, Director
Department of Labor and Economic Opportunity
300 North Washington Square
Lansing, Michigan
and
Ms. Julia Dale, Director
Unemployment Insurance Agency
Cadillac Place
Detroit, Michigan

Dear Ms. Corbin and Ms. Dale:

This is our performance audit report on the Unemployment Insurance Agency (UIA), Establishing Pandemic Unemployment Assistance Eligibility Criteria, Department of Labor and Economic Opportunity. This is the first issued report of a series of performance audits of UIA, including a series of performance audits of UIA's claims processing.

Your agency provided preliminary responses to the recommendations at the end of our fieldwork. The *Michigan Compiled Laws* and administrative procedures require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

Sincerely,

A handwritten signature in black ink that reads "Doug Ringler". The signature is written in a cursive, slightly slanted style.

Doug Ringler
Auditor General

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AUDIT OBJECTIVES, CONCLUSIONS, FINDINGS, AND OBSERVATIONS

PUA CLAIMANT ELIGIBILITY CRITERIA

BACKGROUND

To slow the spread of COVID-19* after the first confirmed cases in Michigan in March 2020, Governor Whitmer issued a series of executive orders that declared a state of emergency and placed restrictions on public gatherings. These orders closed schools, businesses, and other employers resulting in the largest spike in unemployment in Michigan history, which peaked at 23.6% in April 2020.

On March 27, 2020, the President signed the Coronavirus Aid, Relief, and Economic Security (CARES) Act. The Act created several new federally funded pandemic unemployment programs, including Pandemic Unemployment Assistance (PUA). PUA covered individuals who were self-employed, were seeking part-time employment, were working but did not have sufficient work history, or otherwise would not qualify for regular unemployment benefits. The CARES Act also made several changes to the regular unemployment insurance (UI) program and created the Pandemic Emergency Unemployment Compensation (PEUC) program for claimants who had exhausted regular UI benefits. In addition, the CARES Act created the Pandemic Unemployment Compensation* (PUC) program, which provided an additional compensation up to \$600 per week, for workers receiving unemployment compensation (UC) including those receiving PUA and PEUC program benefits.

PUC program benefits from the CARES Act expired for the weeks ended on or before July 31, 2020. For the weeks ended August 1, 2020 through September 5, 2020, claimants receiving UI compensation, including PUA and PEUC, received supplemental Lost Wages Assistance (LWA) program payments. The President authorized the Federal Emergency Management Agency (FEMA) to provide grants to states to make supplemental LWA program payments of \$300 per week to those receiving at least \$100 in weekly UI compensation, including PUA and PEUC.

Through the passage of the Consolidated Appropriations Act (CAA) and the American Rescue Plan Act (ARPA) signed by the President on December 27, 2020 and March 11, 2021, respectively, PUC program benefits resumed in the amount of \$300 per week for the weeks ended January 2, 2021 through September 6, 2021.

The CARES Act included both PUA eligibility criteria as follows:

- An individual who is not eligible (including those who have exhausted all rights) for regular compensation or extended benefits under state or federal law or PEUC.

* See glossary at end of report for definition.

- An individual who provides self-certification that the individual:
 - Is otherwise able and available for work, except the individual is unemployed or unavailable to work because of 1 or more of 10 authorized eligibility reasons explicitly stated in the CARES Act, or
 - Is self-employed, is seeking part-time employment, does not have sufficient work history, or otherwise would not qualify for regular unemployment or extended benefits under state or federal law or PEUC and meets one or more of the 10 authorized eligibility reasons explicitly stated in the CARES Act.

Put simply, to meet PUA eligibility criteria for a given week, a claimant must be both:

- Ineligible for other UI benefits.
- Unemployed, partially employed, or unable or unavailable to work due to one or more of the authorized eligibility reasons.

To provide states with guidance in administering the PUA program, the U.S. Department of Labor (USDOL) issued various Unemployment Insurance Program Letters (UIPLs) throughout the COVID-19 pandemic.

On April 5, 2020, the USDOL issued UIPL No. 16-20 which added one authorized eligibility criterion, and on February 25, 2021, USDOL issued UIPL No. 16-20, Change 5, that added 3 more authorized eligibility criteria (see Exhibit 2).

The Unemployment Insurance Agency (UIA) started processing PUA claim applications on April 20, 2020. Claimants could file for PUA online or over the phone. CAA extended PUA from its initial closeout date of December 31, 2020 to March 14, 2021. Subsequently, ARPA extended PUA to September 6, 2021. The CARES Act allowed for a maximum of 39 weeks of PUA. CAA and ARPA extended the maximum number of PUA weeks to 50 weeks and 79 weeks, respectively.

Because of the delays in obtaining data and information as described in Finding 1, we did not complete our analysis of PUA and other related overpayments by the end of our fieldwork. Because of the ongoing nature of the audit, we will attempt to perform this analysis and report our results in a subsequent audit.

AUDIT OBJECTIVE

To assess the effectiveness* of UIA's actions to establish federally compliant claimant eligibility criteria for the PUA program.

CONCLUSION

Not effective.

**FACTORS
IMPACTING
CONCLUSION**

- Material condition* related to UIA's internal control*, including its tone at the top (Finding 1).
- Material condition related to UIA's establishment of incorrect eligibility criteria for the PUA program and failure to take timely or appropriate corrective action when notified of deficiencies by USDOL (Finding 2).

* See glossary at end of report for definition.

FINDING 1

Improvements needed in UIA's internal control, including its tone at the top.

UIA did not have effective internal control to successfully administer the PUA program in accordance with the CARES Act and USDOL guidance.

A variety of actions and inaction by UIA's senior leadership during the COVID-19 pandemic contributed to a poor control environment, often referred to as tone at the top. Those actions directly contributed to the creation of invalid PUA application and certification processes, and on several occasions, UIA's failure to timely or appropriately address issues pointed out by USDOL and UIA staff (see Exhibit 1).

The State of Michigan's Financial Management Guide requires a focus on setting the tone at the top as a guiding principle for an effective control environment, meaning the department director, senior management, and management at all levels demonstrate (through their directives, actions, and behaviors) the importance of integrity and ethical values to support the functioning of internal control. In addition to a strong tone at the top, effective internal control includes control activities designed to sufficiently mitigate risks and capture relevant and useful information from internal and external sources to make informed decisions and achieve objectives.

In May 2020, USDOL communicated at least a few states had "seriously cut corners" in their implementation of PUA eligibility and noted significant issues with Michigan's eligibility documentation.

USDOL issued UIPL No. 16-20 on April 5, 2020, which promoted the importance of program integrity and states' fundamental roles in ensuring the integrity of the PUA program. This guidance also required states to ensure individuals only receive benefits in accordance with statutory provisions. In addition, USDOL's regional offices sent an e-mail to their states on May 12, 2020 indicating that at least a few states had "seriously cut corners" in their implementation of PUA eligibility to the extent that claimants were not meeting the statutory criteria. To determine basic eligibility, USDOL's regional offices requested all of their states' PUA application and certification eligibility criteria at that time. USDOL noted significant issues with Michigan's documents and began communicating with UIA directly in early June 2020 as noted in Finding 2.

UIA bypassed established procedures requiring approvals from key UIA personnel when it developed the PUA application and certification criteria.

UIA informed us that it bypassed established procedures requiring approvals from key UIA personnel when developing its PUA application and certification criteria due to the urgency to make the application available in response to the pandemic. However, UIA did not practice effective controls by documenting the process used. Therefore, it was unable to demonstrate who was involved with the decisions and any rationale to inappropriately expand PUA eligibility criteria and delay implementation of eligibility criteria for the weekly certifications (see Finding 2).

Based on our review of internal e-mails, the former UIA director discussed PUA eligibility criteria with UIA senior staff, Department of Labor and Economic Opportunity (LEO) senior leadership, and the Executive Office of the Governor (EOG) as early as April 2020. However, some senior UIA staff advised us that the former UIA director made decisions unilaterally before his departure in November 2020.

LEO and UIA executives prepared a PowerPoint slide deck and shared it with EOG on April 6, 2020 that listed the pros and cons of "paying ASAP and establishing eligibility in parallel" versus "establishing eligibility and delaying payments until eligibility is verified." The slide deck also identified the risk of overpayment to workers who would not be eligible because they quit or were not previously working as reasons against paying as soon as possible (ASAP) noting, "Per DOL guidance, UIA must establish proof of eligibility for all PUA recipients." In addition, one slide indicated any federal benefit (\$600 PUC portion) UIA paid in error likely would not need to be reclaimed, as an advantage for paying ASAP. The slide deck also stated, "This means we have a choice between speed and overpayment risk" and identified the relevant population at 190,000 claimants at that time. Ultimately, UIA's application and weekly certification processes allowed individuals without any prior attachment to the workforce and who may have been unemployed for reasons unrelated to COVID-19 to be paid PUA and associated PUC and LWA program benefits improperly (see Finding 2).

UIA informed us there was confusion in the interpretation of the PUA qualification requirements based on USDOL guidance included in UIPL No. 16-20. UIA stated this guidance was related to additional categories of the types of individuals who could qualify for PUA and that UIA erroneously combined these categories with the PUA eligibility requirements. However, in the same general program overview, the guidance clearly stated the claimant must be unemployed, partially unemployed, or unable or unavailable to work due to one of the CARES Act COVID-19 related reasons. Despite UIA's professed confusion:

- UIA did not seek USDOL clarification on this issue.
- UIA could not explain its rationale for including eligibility criteria with no relationship to the CARES Act or other federal guidance at that time (see Finding 2).
- UIA provided no explanation regarding why it did not correct its improper eligibility criteria when USDOL first communicated issues directly to UIA in June 2020 (see Finding 2 and Exhibit 1).
- UIA posted a PUA Fact Sheet to its Internet in April 2020 that properly listed the statutory reasons from the CARES Act to describe who is eligible for PUA. This Fact Sheet correctly stated that self-employed, independent contractors, and part-time workers may qualify for PUA

UIA did not correct its improper eligibility criteria when USDOL first communicated issues directly to UIA in June 2020.

program benefits, and it listed the authorized reasons included in the CARES Act. UIA informed us that the application creation process and creation of the Fact Sheet happened independent of each other and did not explain why they did not match.

UIA stated publicly that ambiguity in the federal guidelines and more latitude in the interpretation of them existed, and as a result, it included 4 eligibility criteria that were ultimately not approved by USDOL. In addition, UIA's then acting director referred to the 4 unauthorized reasons as "now ineligible" several times while reading a prepared statement in a September 2021 legislative hearing, inferring that these criteria were at one time eligible and later USDOL deemed them ineligible. However, as noted in Finding 2, the 4 eligibility criteria were never authorized in the CARES Act or USDOL guidance.

In addition, UIA's process for negotiating the USDOL recommended data sharing agreement with our office caused excessive delays in UIA providing us with the necessary data to quantify the financial impact of the PUA eligibility issues (see Finding 2).

We consider this finding to be a material condition because of UIA's failure to take timely or appropriate corrective action in response to communications and guidance from USDOL which resulted in potentially significant PUA overpayments (see Finding 2) and the serious implications when a deficient control environment exists.

RECOMMENDATION

We recommend that UIA improve its internal control and maintain an effective tone at the top to support the proper administration of UI programs in accordance with federal laws and guidance.

AGENCY PRELIMINARY RESPONSE

LEO provided us with the following response:

We agree with the recommendation. UIA acknowledges that stronger controls were needed during the implementation of the PUA program. Although the agency, including the leadership team, worked tirelessly to expeditiously implement the CARES programs (PUA, PEUC, PUC) that were desperately needed to protect the health, safety, and welfare of Michigan citizens, some errors were made during the administration of the PUA program. UIA had to implement multiple new federal programs based on a hastily drafted law that allowed claimants to self-attest to their own eligibility, contend with historic levels of claims filed, and defend against new highly sophisticated criminal efforts to commit fraud - all while transitioning its entire workforce to remote work. UIA acknowledges it was challenged, and its capacity tested, by these circumstances.

During the past year, UIA has been pro-active in acquiring external expertise to support the management team, efficiently

addressing the work backlogs, and addressing the fraud issues associated with the PUA program. LEO and UIA are making improvements in documenting and maintaining records of key executive decisions to ensure better transparency and accountability. And lastly, UIA has been adding staff resources to its internal control functions.

UIA also acknowledges that there were some delays in the development of the data sharing agreement with the OAG; and that some data requiring IT resources were not processed timely. To ensure that OAG staff are expeditiously granted access to confidential and sensitive UIA data, we will maintain data sharing agreement (DSA) templates which can be customized for the specific audit. Going forward, if the OAG encounters an unnecessary delay or issue, it has a direct line to the UIA director.

FINDING 2

Improvements needed to ensure UIA establishes eligibility criteria in accordance with federal laws and guidance.

Based on the limited data analysis we have been able to perform, it appears UIA improperly paid \$3.9 billion to claimants now classified as ineligible.

UIA established eligibility criteria in its PUA applications and weekly benefit certifications not authorized in the CARES Act or other USDOL guidance. Consequently, UIA likely paid PUA and associated PUC and LWA program benefits to ineligible PUA claimants. Also, UIA continued to make improper eligibility determinations and related overpayments 9 months after USDOL first notified Michigan of deficiencies with its PUA applications and weekly certifications.

UIA will likely not recoup most of the overpayments because the improper payments were UIA's fault and not that of the claimants. As noted in Finding 1, UIA has not provided us with the data needed to fully quantify the overpayments.

UIA sent letters in June 2021 to 648,100 claimants asking them to recertify their PUA eligibility, and it appears at least 347,437 of those claimants previously deemed eligible by UIA are now classified as ineligible. UIA provided data showing overpayments to the ineligible claimants totaled approximately \$3.9 billion in PUA and associated PUC and LWA program benefits.

Also, overpayments likely exist for some of the claimants receiving the June 2021 recertification letters who remained classified as eligible. As of October 14, 2021, UIA stated it was still working on the PUA requalification overpayment total.

When UIA began administering the PUA program in April 2020, it:

- Inappropriately included 4 criteria not authorized in the CARES Act or UIPL No. 16-20.
- Did not require the PUA claimants to self-certify the reason for their unemployment, partial unemployment, or inability or unavailability to work within its weekly benefit certification form.
- Allowed claimants to select any of the 4 unauthorized criteria listed as follows, without also requiring them to select one of the authorized criteria in the CARES Act. This allowed individuals not qualifying for regular UI benefits to truthfully self-attest to one or more of the eligibility criteria regardless of whether they had a prior attachment to the workforce or had intentions to become employed.

Four Unauthorized Criteria UIA Included on its PUA Application Between April 20, 2020 and January 30, 2021 and its PUA Certification Between July 4, 2020 and March 6, 2021 (see Exhibit 2):

1. You are seeking part-time employment and affected by COVID-19.
2. You have insufficient work history to qualify for regular unemployment compensation and are affected by COVID-19.
3. You are unemployed or working less than your regular hours as a result of COVID-19 and were denied benefits on another claim.
4. Your hours have been reduced as a direct result of COVID-19**.

***USDOL added a similar criterion in its UIPL No. 16-20, Change 5, on February 25, 2021.*

On April 27, 2020, USDOL issued UIPL No. 16-20, Change 1, clarifying PUA claimants had to self-certify they met at least 1 of the 11 eligibility criteria (at that time) supported under the CARES Act and UIPL No. 16-20 when they initially applied for PUA program benefits. Thereafter, claimants needed to certify each week for continued benefits. On May 12, 2020, USDOL sent an e-mail to states requesting information and documentation related to their PUA implementation. USDOL requested a copy of the state's self-certification form in the initial PUA application and the weekly benefit certification, noting that both require the claimants to self-certify that their unemployment or reduced employment is due to one of the COVID-19 related reasons in the statute and in UIPL No. 16-20. Contrary to the April and May guidance, UIA continued to include the 4 unauthorized criteria in its PUA application without requiring applicants to select one of the authorized criteria and left its PUA weekly benefit certification unchanged from its traditional UI benefit certification. As noted below and in Exhibit 1, UIA's PUA certification did not include any COVID-19 related reasons for the claimant to self-certify as the reason for unemployment or partial unemployment until the July 4, 2020 certifications.

In early June 2020, USDOL notified UIA of "urgent" and "critical" issues related to UIA's PUA weekly benefit certification.

In early June 2020, upon review of UIA's initial PUA implementation, USDOL notified UIA of "urgent" and "critical" issues related to UIA not requiring PUA claimants to self-certify the reason for their unemployment, partial unemployment, or inability or unavailability to work within its weekly benefit certification form. USDOL also notified UIA of other issues related to the unauthorized criteria in UIA's PUA claim application and proposed weekly benefit certification forms. Although USDOL

advised UIA that it must list the statutory eligibility reasons verbatim from the CARES Act in its June communication, which UIA acknowledged, UIA continued to include the 4 unauthorized eligibility criteria on its forms and sent conflicting documentation to USDOL. On July 1, 2020, UIA indicated it removed the unauthorized eligibility criteria, and on July 16, 2020, UIA indicated it had not.

USDOL's guidance from UIPL No. 16-20, Change 1, allowed for flexibility with how states implemented the self-certification form. Because of UIA's inclusion of unauthorized eligibility reasons in its PUA application and weekly benefit certification, in order to have complied with the USDOL guidance at that time, UIA would have needed to further evaluate each PUA claim selecting an unauthorized reason or require applicants that had selected an unauthorized reason to also select one of the authorized eligibility criteria provided for in the CARES Act. However, UIA did neither. Although USDOL approved UIA's claim application and weekly benefit certifications that included the unauthorized criteria on July 17, 2020, USDOL informed us it did this under the impression that UIA was reviewing the non-COVID-19 reasons for eligibility.

UIA reviewed its PUA eligibility criteria and suggested removing the 4 unauthorized eligibility criteria in September and October 2020. However, UIA did not follow through at that time.

On September 21, 2020, USDOL notified states of necessary steps to correct issues with PUA eligibility criteria in their initial applications and weekly benefit certifications and process retroactive certifications as needed. On the same day, internal e-mails show that UIA's then Chief of Staff acknowledged the need to remove some of the unauthorized COVID-19 related reasons. Internal e-mails also show that UIA's Internal Controls Division proposed removing the 4 unauthorized reasons from the weekly benefit certifications as early as September 23, 2020. On October 9, 2020, it appeared UIA began its formal system change process to remove the 4 unauthorized COVID-19 related reasons. However, UIA continued to include the 4 unauthorized COVID-19 related reasons on PUA claim applications and weekly benefit certifications, and UIA could not explain why the system change request to remove the unauthorized reasons did not get completed until months later as noted below. Also, UIA did not take necessary steps to begin processing retroactive certifications at this time (see Exhibit 1).

After correcting its PUA application in January 2021, UIA delayed corrective action on the certification process, allowing for an additional 5 weeks of improper claim certifications and payments.

From October through December 2020, USDOL conducted an enhanced desk monitoring review (EDMR) of UIA. At a January 6, 2021 exit meeting, USDOL shared Finding 7 from that review. It stated, "The reviewers identified that the state's initial and continued PUA applications list 4 additional reasons not supported under the CARES Act." As corrective action, USDOL required UIA to reevaluate eligibility for affected claimants.

UIA removed the 4 unauthorized COVID-19 related reasons from only the PUA claim applications three weeks after the meeting. Yet, UIA did not correct its weekly benefit certifications until two months later. According to data from USDOL, during January and February 2021, continued (ongoing) claims made up

approximately 98% of the active PUA claims and only 2% of claims were for new applicants. Because PUA claimants certify for eligibility on continued claims utilizing the weekly benefit certification rather than the PUA claim application, continuing to delay corrective action on the certification process allowed for an additional 5 weeks of improper claim certifications and payments (see Exhibit 1).

As noted in Finding 1, UIA informed us there was confusion with the PUA eligibility requirements included in the CARES Act, and it relied on general program overview guidance included in UIPL No. 16-20 to establish its eligibility criteria. However, it did not seek USDOL clarification, could not explain its rationale for including unauthorized eligibility criteria, and had no explanation for why it did not take timely or appropriate corrective action to address issues USDOL communicated as early as June 2020 or why it sent USDOL conflicting documentation related to its corrective action in July 2020.

We consider this finding to be a material condition because of the potentially significant number of improper eligibility determinations and related claims paid; UIA's inability to recoup most, if not all, of the associated overpayments; and UIA's failure to take timely or appropriate corrective action in response to communications and guidance from USDOL regarding its PUA eligibility criteria.

RECOMMENDATION

We recommend going forward that UIA ensure eligibility criteria for UI benefits applications and certifications align with federal eligibility criteria.

AGENCY PRELIMINARY RESPONSE

LEO provided us with the following response:

We agree that all eligibility criteria for unemployment insurance benefits applications and certifications need to align with federal eligibility criteria. UIA has implemented corrective action and resolved eight of the 11 findings identified in the January 2021 USDOL Enhanced Desk Monitoring Report. UIA has implemented fraud notice acknowledgements, ran queries to identify claimants with various outstanding issues, conducted wage crossmatches, added automated notes in the Michigan Integrated Data Automated System (MiDAS) as required, and corrected claims cases based on COVID eligible conditions. Additionally, UIA is currently working on the remaining three findings, and these will be resolved in 2022. Finally, UIA acknowledges that weekly benefit certifications were not updated in a timely manner due to resource constraints of standing up the ARPA program at the same time, and with the same resources.*

* See glossary at end of report for definition.

SUPPLEMENTAL INFORMATION

Exhibit 1

Establishing PUA Eligibility Criteria
 Unemployment Insurance Agency (UIA)
 Department of Labor and Economic Opportunity (LEO)

Time Line of Communications and Actions Concerning UIA's PUA Eligibility Criteria
From May 12, 2020 Through September 30, 2021

	Time Line Reference	Date	Description of Event
USDOL PUA Implementation Review and UIA Actions	a	May 12, 2020	In order to ensure the integrity of UI programs, the USDOL Region 5 UI Division Chief requested states to provide information and documentation related to their PUA program implementation. USDOL requested a copy of Michigan's self-certification form in the initial PUA application and the weekly benefit certification, which both require the individual to self-certify that their unemployment or reduced employment is due to one of the COVID-19 related reasons in the statute and in UIPL No. 16-20.
	b	May 19, 2020	UIA responded to USDOL's request by providing its PUA application and stating that Michigan is "in the midst of adding" the self-certification that the individual's unemployment or reduced employment is due to one of the COVID-19 related reasons in the statute and in UIPL No. 16-20.
	c	June 4, 2020	USDOL informed UIA that it needed to update its PUA weekly benefit certification form to require claimants to certify that they met one or more of the eligibility criteria included in the CARES Act and UIPL No. 16-20.
	d	June 14, 2020	USDOL notified UIA that the weekly benefit certification issue it raised on June 4, 2020 was critical and required corrective action within seven days.
	e	June 18, 2020	UIA acknowledged the need to ensure claimants self-attested to one or more of the statutory COVID-19 related reasons. UIA provided 14 COVID-19 related reasons to USDOL, including the 4 unauthorized reasons, it planned to include on weekly benefit certifications.
	f	June 25, 2020	USDOL notified UIA that language in some COVID-19 related reasons on UIA's weekly benefit certification form changed the meaning of the statutory reasons. USDOL noted UIA must list the statutory reasons verbatim from the CARES Act.
	g	July 1, 2020	In response to additional issues from USDOL's June 4, 2020 initial review, UIA submitted documents including the PUA continued claims weekly certification form to USDOL with only the 10 COVID-19 related reasons from the CARES Act based on USDOL's June 25, 2020 comments. This version did not include the 11th authorized reason provided in UIPL No. 16-20.
	h	July 4, 2020	UIA updated PUA weekly benefit certification forms but included 14 COVID-19 related reasons, including the 4 unauthorized reasons, and language inconsistent with USDOL's notifications and UIA's July 1, 2020 response to USDOL.
	i	July 17, 2020	USDOL approved UIA's PUA claim application and weekly benefit certifications with the 14 COVID-19 related reasons. USDOL informed us that it did this under the impression that UIA was reviewing the non-COVID-19 reasons for eligibility. However, UIA was not.
USDOL Notice of Retroactive Certifications	j	September 21, 2020	USDOL notified states with guidance outlining the need for retroactive certifications for PUA if claim applications or weekly benefit certifications did not follow the CARES Act COVID-19 related reasons or if states included additional reasons that were not supported under the CARES Act.
	k	September 21, 2020	UIA internal e-mails indicated acknowledgment of the need to remove at least 2 of the 4 additional COVID-19 related reasons from the PUA claim application.
	l	September 23, 2020	UIA's internal e-mails show that UIA's Internal Controls Division proposed removing the 4 unauthorized reasons from the weekly benefit certifications.
	m	October 9, 2020	UIA began its formal system change process to update the PUA certification questions to remove the 4 unauthorized reasons. However, the 4 unauthorized reasons were not removed from the PUA certification until March 2021 as noted in references n through s.

This exhibit continued on next page.

	Time Line Reference	Date	Description of Event
USDOL EDMR and UIA Actions	n	January 6, 2021	USDOL EDMR exit meeting notified UIA of issues with its administration of the PUA program, including four additional COVID-19 related reasons, incorrect language on two COVID-19 related reasons, and one missing COVID-19 related reason on PUA claim applications and weekly benefit certifications. This finding was similar to the issues noted by USDOL in June 2020, noted in reference d, and could have been avoided if UIA listed the COVID-19 related reasons verbatim from the CARES Act as informed by USDOL on June 25, 2020. In addition, USDOL guidance from September 2020, noted in reference j, clearly stated that additional items not supported by the CARES Act could not be included in the state's weekly benefit certification.
	o	January 30, 2021	UIA updated PUA claim applications to remove the four unauthorized COVID-19 related reasons.
	p	March 6, 2021	Five weeks after updating the PUA claim application, UIA updated PUA weekly benefit certifications with COVID-19 related reasons verbatim from UIPL No. 16-20, Change 5, removing the 4 unauthorized COVID-19 related reasons and added the 3 new COVID-19 related reasons from UIPL No. 16-20, Change 5.
	q	March 13, 2021	UIA updated the PUA claim application with COVID-19 related reasons verbatim from UIPL No. 16-20, Change 5, including the 3 newly added COVID-19 related reasons.
	r	June 28, 2021	UIA began taking necessary steps to process retroactive certifications by sending letters to 648,100 claimants on or around June 28, 2021 that instructed the claimants to provide a new self-attestation of PUA eligibility using only the authorized federal criteria to reevaluate their PUA eligibility.
	s	July 2021 Through September 30, 2021	UIA began processing waivers on the bulk of the overpayments. UIA began by processing overpayment waivers to those claimants who did not respond to UIA's request to requalify or recertify their PUA eligibility.

Source: The OAG created this exhibit based on review of various supporting documentation.

Establishing PUA Eligibility Criteria
 Unemployment Insurance Agency (UIA)
 Department of Labor and Economic Opportunity (LEO)

CARES Act and USDOL Guidance for PUA Eligibility Criteria Compared With UIA's PUA Eligibility Criteria

Authorized COVID-19 Related PUA Eligibility Criteria	Applicable Act or UIPL
The individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis.	CARES Act, Section 2102(a)(3)(A)(ii)(I)(aa-jj)
A member of the individual's household has been diagnosed with COVID-19.	
The individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19.	
A child or other person in the household for which the individual has primary caregiving responsibility is unable to attend school or another facility that is closed as a direct result of the COVID-19 public health emergency and such school or facility care is required for the individual to work.	
The individual is unable to reach the place of employment because of a quarantine imposed as a direct result of the COVID-19 public health emergency.	
The individual is unable to reach the place of employment because the individual has been advised by a health care provider to self-quarantine due to concerns related to COVID-19.	
The individual was scheduled to commence employment and does not have a job or is unable to reach the job as a direct result of the COVID-19 public health emergency.	
The individual has become the breadwinner or major support for a household because the head of the household has died as a direct result of COVID-19.	
The individual has to quit his or her job as a direct result of COVID-19.	
The individual's place of employment is closed as a direct result of the COVID-19 public health emergency.	
Self-employed individuals (including independent contractors and gig workers) who experienced a significant diminution of their customary or usual services because of the COVID-19 public health emergency, even absent a suspension of services.	Original Language: UIPL No. 16-20, Issued April 5, 2020 Updated Language: UIPL No. 16-20, Change 4, Issued January 8, 2021
The individual was denied continued unemployment benefits because he or she refused to return to work or accept an offer of work at a worksite that, in either instance, is not in compliance with local, state, or national health and safety standards directly related to COVID-19. This includes, but is not limited to, those related to facial mask wearing, physical distancing measures, or the provision of personal protective equipment consistent with public health guidelines.	UIPL No. 16-20, Change 5, Issued February 25, 2021
The individual provides services to an educational institution or educational service agency and is unemployed or partially unemployed because of volatility in the work schedule that is directly caused by the COVID-19 public health emergency. This includes, but is not limited to, changes in schedules and partial closures.	
The individual is an employee whose hours were reduced or who was laid off as a direct result of the COVID-19 public health emergency.	

This exhibit continued on next page.

UIA's COVID-19 Related PUA Eligibility Criteria	Dates Included in UIA's PUA Application	Dates Included in UIA's PUA Weekly Benefit Certification ¹
You have been diagnosed with COVID-19 or with COVID-19 symptoms and are seeking diagnosis.	Weeks of April 20, 2020 Through January 30, 2021 ³	Weeks of July 4, 2020 Through March 6, 2021 ⁴
A member of your household has been diagnosed with COVID-19.		
You are providing care for a family member or household member diagnosed with COVID-19.		
You are the primary caregiver for a child unable to attend school or other facility closed due to COVID-19.		
You were unable to reach your place of employment due to an imposed quarantine or because you have been advised by a medical practitioner to self-quarantine due to COVID-19.		
You are scheduled to commence new employment and cannot reach the workplace as a direct result of COVID-19.		
You became the breadwinner because the head of the household died from COVID-19.		
You quit your job as a direct result of COVID-19.		
Your place of employment was closed as a direct result of COVID-19.		
Your work hours were reduced as a direct result of COVID-19. ²		
You were self-employed, an independent contractor, 1099 filer, or farmer and have been affected by COVID-19.		
You are seeking part-time employment and affected by COVID-19. ²		
You have insufficient work history to qualify for regular unemployment compensation and are affected by COVID-19. ²		
You are unemployed or working less than your regular hours as a result of COVID-19 and were denied benefits on another claim. ²		

¹Wording from the PUA weekly benefit certification varied slightly from the wording in the table, which is from the PUA application.

²Unauthorized COVID-19 related reason, as noted in Finding 2.

³UIA updated its PUA application on January 30, 2021 to remove the four unauthorized reasons and again on March 13, 2021 to read verbatim to the authorized reasons noted on the previous page, including the February 25, 2021 updates according to UIPL No. 16-20, Change 5.

⁴UIA updated its PUA weekly benefit certification for the week of March 6, 2021 to read verbatim to the authorized reasons noted on the previous page, including the February 25, 2021 updates according to UIPL No. 16-20, Change 5.

Source: The OAG created this exhibit based on review of the CARES Act, USDOL UIPLs, and UIA PUA applications and PUA weekly benefit certifications.

AGENCY DESCRIPTION

The federal Social Security Act of 1935 created the UI program as a joint federal-state partnership, with each state responsible for designing its own program within broad federal guidelines. In response to this Act, UIA was originally created as the Michigan Employment Security Commission by the Michigan Employment Security Act of 1936, being Sections 421.1 - 421.75 of the *Michigan Compiled Laws*. Under Executive Order No. 2014-12, UIA was transferred from the Department of Licensing and Regulatory Affairs to the Talent Investment Agency, Department of Talent and Economic Development. Under Executive Order No. 2019-13, the Department of Talent and Economic Development was renamed the Department of Labor and Economic Opportunity.

UIA operates Michigan's UI program, which collects unemployment taxes from employers and provides temporary income for workers who are unemployed through no fault of their own. UIA's mission is to lighten the burden of involuntary unemployment on the worker and his or her family. UIA strives to provide timely benefits to every eligible unemployed worker. To slow the spread of COVID-19 after the first confirmed cases in Michigan in March 2020, Governor Whitmer issued a series of executive orders that declared a state of emergency and placed restrictions on public gatherings. These orders closed schools, businesses, and other employers resulting in the largest spike in unemployment in Michigan history.

According to data on UIA's public Web site, from March 15, 2020 through September 27, 2021, UIA paid \$38.9 billion in UI claims from 5.4 million claims (including, but not limited to, PUA claims) created for 3.41 million unique claimants. This includes \$5.9 billion paid for PUA claims and a portion of \$21.8 billion in PUC which would be associated with the PUA claims, as shown below:

Category	Paid Out (in billions)
State Unemployment	\$ 5.9
PUC	\$21.8
PUA	\$ 5.9
PEUC	\$ 2.9
Extended Benefits	\$ 0.4
LWA	\$ 1.7
Work Share	\$ 0.1
Other	\$ 0.3
Mixed Earners Unemployment Compensation	Less Than \$0.1

Claimant Type	Claimants (in millions)
Unique Claimants	3.41
Ineligible/Denied/Not Certifying Claimants	0.98
Potentially Eligible, Certifying Claimants	2.43
Paid Claimants	2.42
Unpaid Claimants	0.01

Claim Type	Claims Created (in millions)
Regular UI Claim	2.2
PUA	1.9
Extensions	1.1
Work Share	0.2
Others	0.0

AUDIT SCOPE, METHODOLOGY, AND OTHER INFORMATION

AUDIT SCOPE

To examine UIA's efforts to establish PUA eligibility criteria during the COVID-19 pandemic. We conducted this performance audit* in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objectives.

Generally accepted government auditing standards require us to report significant constraints imposed upon the audit approach. We encountered delays in obtaining requested data from UIA that precluded us from calculating overpayments that necessitate reporting as summarized in Finding 1.

As part of the audit, we considered the five components of internal control (control environment, risk assessment, control activities, information and communication, and monitoring activities) relative to the audit objectives and determined that all components were significant.

PERIOD

Our audit procedures, which included a preliminary survey, audit fieldwork, report preparation, analysis of agency responses, and quality assurance, generally covered January 1, 2020 through September 30, 2021.

METHODOLOGY

We conducted a preliminary survey to gain an understanding of UIA's processes and controls related to the PUA program. During our preliminary survey, we:

- Reviewed unemployment provisions of the CARES Act.
- Reviewed the CAA and ARPA related to changes for PUA.
- Reviewed applicable USDOL guidance in UIPL No. 16-20 and UIPL No. 16-20, Change 1.
- Interviewed UIA senior staff and executive leadership.
- Conducted meetings with UIA staff regarding various business processes.
- Conducted meetings with UIA consulting contractors.
- Reviewed Deloitte's November 2020 Chronology of Key Fraud Risk Management Events Report.

* See glossary at end of report for definition.

- Reviewed USDOL's February 2021 EDMR report of UIA's administration of the PUA program and UIA's responses to findings from that report.

OBJECTIVE

To assess the effectiveness of UIA's actions to establish federally compliant claimant eligibility criteria for the PUA program.

To accomplish this objective, we:

- Reviewed UIA's PUA claim application and weekly benefit certification forms and changes to them over the duration of the PUA program.
- Requested multiple datasets related to PUA payments, PUA overpayments, and PUA waivers from UIA not fulfilled as of October 15, 2021.
- Selected a random sample of 25 PUA claimants out of 347,437 who were sent recertification letters and were denied as of October 6, 2021 to compare overpayments established in MiDAS with the total PUA, PUC, and LWA program payments made to these denied claimants because of UIA's inclusion of the 4 additional, unauthorized criteria. Our random sample was selected to eliminate bias and enable us to project the results to the respective population.
- Selected a random sample of 25 PUA claimants out of 278,550 who were sent recertification letters, and remained classified as eligible as of October 6, 2021, to estimate the number of claimants and dollar amounts of overpayments to these claimants because of UIA's inclusion of the 4 additional, unauthorized criteria. Our random sample was selected to eliminate bias and enable us to project the results to the respective population.
- Reviewed UIA's policies regarding reviews and approvals of PUA claim and weekly benefit certification forms.
- Reviewed e-mail correspondence of former UIA and LEO leadership, including former directors, related to the PUA program, USDOL guidance, and internal UIA conversations regarding the purpose of PUA.
- Reviewed e-mail correspondence between UIA and USDOL related to the PUA program, including correspondence related to USDOL's initial review of PUA program implementation in June and July 2020.
- Requested explanations for decisions and actions made by UIA related to its implementation of the PUA program and PUA eligibility criteria.

- Reviewed USDOL guidance in UIPL No. 16-20, Change 4, and UIPL No. 16-20, Change 5.

CONCLUSIONS

We base our conclusions on our audit efforts and any resulting material conditions or reportable conditions*.

**AGENCY
RESPONSES**

Our audit report contains 2 findings and 2 corresponding recommendations. LEO's preliminary response indicated UIA agrees with both recommendations.

The agency preliminary response that follows each recommendation in our report was taken from the agency's written comments and oral discussion at the end of our fieldwork. Section 18.1462 of the *Michigan Compiled Laws* and the State of Michigan Financial Management Guide (Part VII, Chapter 4, Section 100) require an audited agency to develop a plan to comply with the recommendations and to submit it to the State Budget Office upon completion of an audit. Within 30 days of receipt, the Office of Internal Audit Services, State Budget Office, is required to review the plan and either accept the plan as final or contact the agency to take additional steps to finalize the plan.

**SUPPLEMENTAL
INFORMATION**

Our audit report includes supplemental information presented as Exhibits 1 and 2. The information presented in Exhibits 1 and 2 was used to support our findings and conclusion on our objective.

* See glossary at end of report for definition.

GLOSSARY OF ABBREVIATIONS AND TERMS

ARPA	American Rescue Plan Act.
ASAP	as soon as possible.
CAA	Consolidated Appropriations Act.
CARES	Coronavirus Aid, Relief, and Economic Security.
COVID-19	The disease caused by a new coronavirus called SARS-CoV-2. The World Health Organization first learned of the new virus in December 2019.
EDMR	enhanced desk monitoring review.
effectiveness	Success in achieving mission and goals.
EOG	Executive Office of the Governor.
FEMA	Federal Emergency Management Agency.
internal control	The plan, policies, methods, and procedures adopted by management to meet its mission, goals, and objectives. Internal control includes the processes for planning, organizing, directing, and controlling program operations. It also includes the systems for measuring, reporting, and monitoring program performance. Internal control serves as a defense in safeguarding assets and in preventing and detecting errors; fraud; violations of laws, regulations, and provisions of contracts and grant agreements; or abuse.
LEO	Department of Labor and Economic Opportunity.
LWA	Lost Wages Assistance.
material condition	A matter that, in the auditor's judgment, is more severe than a reportable condition and could impair the ability of management to operate a program in an effective and efficient manner and/or could adversely affect the judgment of an interested person concerning the effectiveness and efficiency of the program. Our assessment of materiality is in relation to the respective audit objective.

Michigan Integrated Data Automated System (MiDAS)	UIA's computer system used for processing and servicing all UI tax and benefit functions.
Pandemic Unemployment Compensation (PUC)	Officially named Federal Pandemic Unemployment Compensation, which provided additional benefits up to \$600 each week a claimant was eligible for other unemployment programs.
performance audit	An audit that provides findings or conclusions based on an evaluation of sufficient, appropriate evidence against criteria. Performance audits provide objective analysis to assist management and those charged with governance and oversight in using the information to improve program performance and operations, reduce costs, facilitate decision-making by parties with responsibility to oversee or initiate corrective action, and contribute to public accountability.
PEUC	Pandemic Emergency Unemployment Compensation.
PUA	Pandemic Unemployment Assistance.
reportable condition	A matter that, in the auditor's judgment, is less severe than a material condition and falls within any of the following categories: a deficiency in internal control; noncompliance with provisions of laws, regulations, contracts, or grant agreements; opportunities to improve programs and operations; or fraud.
UC	unemployment compensation.
UI	unemployment insurance.
UIA	Unemployment Insurance Agency.
UIPL	Unemployment Insurance Program Letter.
USDOL	U.S. Department of Labor.



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