



## KENTUCKY LABOR CABINET

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October 23, 2020

Hon. Eugene Scalia  
Secretary  
United States Department of Labor  
200 Constitution Ave NW  
Washington, DC 20210

*Via-Regular U.S. Mail and Electronic Mail*

Re: Waiver of Non-Fraud PUA, PEUC, and FPUC Overpayments

Dear Secretary Scalia:

I am writing on behalf of the Commonwealth of Kentucky, Labor Cabinet (“the Cabinet”) to request the United States Department of Labor (“the Department”) to reconsider its current interpretation of the CARES Act, which prohibits Kentucky from waiving any non-fraud Pandemic Unemployment Assistance (“PUA”) overpayment, and further prohibits Kentucky from batch or group waiving non-fraud Pandemic Emergency Unemployment Compensation (“PEUC”) or Federal Pandemic Unemployment Compensation (“FPUC”) overpayments. The Department’s overly-restrictive interpretation of the CARES Act prevents the Cabinet from providing relief to thousands of Kentuckians who have been overpaid through no fault of their own, and will impose increased strain on strapped state resources during a once in a hundred year global pandemic.

As you know, COVID-19-related closures led to significant increases in unemployment, disproportionately in industries delivering in-person services. Indeed, since the onset of the COVID-19 pandemic the unemployment rate for every state and the District of Columbia surpassed levels seen during the Great Recession of 2008.

To address the effects of COVID-19, on March 27, 2020, the 116th Congress passed the Coronavirus Aid, Relief, and Economic Security (“CARES”) Act, (P.L. 116-136), to provide assistance and relief to the American people, including unemployment insurance relief. Through the CARES Act, Congress provided expanded benefit eligibility under Pandemic Unemployment Assistance (“PUA”), additional weeks of benefits under Pandemic Emergency Unemployment Compensation (“PEUC,”) and additional, federally-financed benefits under the Federal Pandemic Unemployment Compensation (“FPUC”).



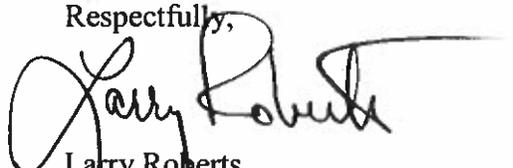
As you are aware, millions of Americans and hundreds of thousands of Kentuckians became unemployed as a result of the pandemic. Many lost their jobs because they self-quarantined due to their own underlying health conditions or to reduce exposure for loved ones at higher risk. Many of these individuals made PUA or PEUC unemployment insurance claims, were paid, but were later deemed ineligible. Others, too, were overpaid through no fault of their own, including overpayments under the FPUC program.

In passing the CARES Act, Congress gave States express authority to waive these non-fraud overpayments for PEUC and FPUC overpayments, where requiring repayment would be contrary to equity and good conscience. *See* 15 U.S.C. § 9023(f)(2) and § 9025(e)(2); Div. A, Title II, § 2104 and 2107, CARES Act (P.L. 116-136). The Department of Labor has recognized this authorization, but in May narrowly construed it to prohibit State agencies from issuing blanket waivers, even where non-fraud PEUC and FPUC overpayments may have resulted from similar or identical circumstances. *See* UIPL 15-20 Change 1 (5/7/2020) and UIPL 17-20, Change 1 (5/13/2020). We believe that by broadening its interpretation the Department's guidance would more closely align with the text and intent of the CARES Act, particularly for claims paid prior to the issuance of the above-cited UIPLs in early-to-mid May. As a result, we request the Department amend its current guidance, which places additional administrative burdens on strained state agencies and adds an additional administrative barrier between Kentuckians and the relief they seek, and allow blanket waivers of overpayments for claimants paid prior to May 7, where those overpayments resulted as the result of no fault on the part of the claimants. We believe these limited waivers would be sufficiently individualized to meet the requirements of § 2104(f)(2) and § 2107(e)(2) of the CARES Act.

Further still, with respect to PUA claims, the Department of Labor prohibits States from waiving any non-fraud overpayment, regardless of cause. *See* UIPL 16-20, Change 2 (7/21/2020); *see also* 20 C.F.R. § 625.14. We believe this is contrary to the text of the CARES Act, which does not expressly prohibit such waivers, and is antithetical to the intent of the Act, which is to provide “[r]elief for [w]orkers [a]ffected by Coronavirus.” *See* Title II, Subtitle A, CARES Act. Therefore, we request that you revisit this interpretation, which forces Kentucky to seek repayment of non-fraud PUA overpayments from Kentuckians at a time – during a global pandemic and recession – when doing so would be neither equitable nor in good conscience. At the very least, the Cabinet requests the ability to allow waivers for claimants who in good faith self-quarantined due to their own underlying health conditions or to reduce exposure for loved ones at higher risk prior to the issuance of UIPL 16-20 Change 1 (4/20/2020), which clarified the standard required to qualify under the PUA program when seeking benefits for self-quarantine.

In summary, by taking these steps, and allowing the Commonwealth of Kentucky Labor Cabinet flexibility regarding the waiver of PEUC, FPUC, and PUA non-fraud overpayments, the United States Department of Labor would reduce demand on resource-strapped state programs, bring its own interpretation in line with statutory text and intent of the CARES Act, and, most importantly, provide significant relief to thousands of Kentuckians.

Respectfully,



Larry Roberts,  
Secretary, Kentucky Labor Cabinet

Cc: Senator Mitch McConnell  
Majority Leader  
United States Senate

Senator Rand Paul  
United States Senate

Rep. James Comer  
1st Congressional District

Rep. Brett Guthrie  
2nd Congressional District

Rep. John Yarmuth  
3rd Congressional District

Rep. Thomas Massie  
4th Congressional District

Rep. Hal Rogers  
5th Congressional District

Rep. Andy Barr  
6th Congressional District

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