



STATE OF WASHINGTON

November 20, 2020

The Hon. Patty Murray, Senator
The Hon. Suzan DelBene, Representative
The Hon. Jaime Herrera Beutler, Representative
The Hon. Cathy McMorris Rodgers, Representative
The Hon. Pramila Jayapal, Representative
The Hon. Adam Smith, Representative
United States Capitol
Washington, D.C. 20510

The Hon. Maria Cantwell, Senator
The Hon. Rick Larsen, Representative
The Hon. Dan Newhouse, Representative
The Hon. Derek Kilmer, Representative
The Hon. Kim Schrier, Representative
The Hon. Denny Heck, Representative
United States Capitol
Washington, D.C. 20510

Dear Members of the Washington State Congressional Delegation:

On behalf of the state of Washington and Employment Security Department (ESD), we write to express our appreciation for your ongoing commitment to meeting the needs of Washingtonians during the COVID-19 crisis, including providing critical economic support to Washington workers and businesses through enhanced unemployment benefits.

Since the beginning of the crisis, ESD has paid out more than \$12 billion in benefits to over 1 million Washingtonians. These benefits, including those provided through federal programs authorized by the CARES Act, are providing vital financial support to workers and their families and are helping to bolster the state's economy. ESD remains committed to helping eligible Washingtonians get unemployment benefits as quickly as possible and supporting both workers and employers as they navigate the changing workforce landscape.

While ultimately enhanced assistance and long-term reforms are needed, with expiration of critical unemployment measures pending at the end of the year, we request that you support and prioritize action in the following key areas during the remainder of the 116th Congress:

Supporting Washington Workers

Extend Federal Programs

Since the beginning of the crisis, Washington has paid out over \$5.8 billion in Federal Pandemic Unemployment Compensation (FPUC) benefits, over \$1.1 billion in Pandemic Unemployment Assistance (PUA) benefits and roughly \$410 million in Pandemic Emergency Unemployment Compensation (PEUC) benefits with this federal support, along with state unemployment aid, flowing to over 1 million Washingtonians (the latest amounts can be found at <https://esd.wa.gov/dashboard>). The FPUC program expired at the end of July, and the PUA and PEUC programs are set to expire at the end of the year.

Along with the loss of much needed benefits for Washington workers and support for the state's economy (see chart below), we are concerned that any lapse and then reinstatement in the PUA and PEUC programs will create numerous operational challenges for the state.

This table details the October benefits that were paid by these federal programs. Should they expire, claimants would no longer have access to benefits and business costs would shift to the state UI trust fund or the business itself.

<i>Program:</i>	<i>Claimants</i>	<i>Dollars (in millions)</i>
PUA	112,000	\$113
PEUC	101,000	\$121
<i>Program:</i>	<i>Businesses</i>	<i>Dollars (in millions)</i>
SharedWork	99	\$11
Reimbursables	1,300	*\$16
Waiting Week	NA	\$22
Benefits Extensions	NA	\$6

*estimated monthly cost based on Aug-Oct total cost of \$49 million

Moreover, whether by reinstating FPUC or making other program changes that may require large-scale reprogramming of technology systems, we continue to emphasize that state workforce agencies must be given ample time and sufficient resources to implement any changes so as not to interrupt the flow of benefits to unemployment recipients.

Accordingly, we support extensions of PUA and PEUC without any lapse along with transition periods to implement any changes to these programs or reinstatement of FPUC.

Waive PUA Overpayments

Under Washington State law, ESD may waive an Unemployment Insurance (UI) overpayment if it finds that the recovery would be against “equity and good conscience.” States do not have the same authority to waive PUA overpayments.

It would be unfair to claimants to make them repay overpayments when the cause of the overpayment is inadvertent state error or the byproduct of building a new benefit program during an unprecedented economic crisis with rapidly evolving federal guidance. Moreover, many individuals claiming PUA are new to claiming unemployment benefits and are prone to making innocent mistakes due to lack of familiarity with the unemployment claims process. Finally, since it is challenging to collect overpayments from claimants who are unable to pay, the state would have to spend more resources on collections with increasingly smaller chances of success.

States need flexibility to afford these good-faith claimants some grace by waiving overpayments under an “equity and good conscience” standard.

Accordingly, we support federal action which ensures in situations where workers received PUA overpayments through no fault of their own and are unable to repay them without severe hardship, states may waive the overpayments. We likewise encourage similar flexibility to waive overpayments related to FEMA’s Lost Wages Assistance (LWA) program, which provided unemployment claimants \$300 per week over a 6-week period in August and September.

Prevent Retroactive COVID-19 PUA Eligibility Certification Requirements

The U.S. Department of Labor (USDOL) is instructing states to retroactively contact individuals who filed for PUA and have them complete a weekly certification of the COVID-19 related reason for weeks going back to the beginning of the PUA program. States are being instructed that a weekly certification must be done now even though neither the CARES Act nor previous USDOL guidance requires such weekly certifications.

If the retroactive contact requirement is enforced, millions of recipients will need to be contacted and required to act to retroactively certify PUA eligibility. In many cases it will be difficult to obtain a response – as people move or choose not to reply because of new employment or other reasons – which will result in the creation of unjustified overpayments. In addition, already overburdened call centers will be inundated with customers seeking clarity on their claims.

Accordingly, we support federal action to remove the requirement to retroactively certify weekly COVID-19 reasons for PUA claims and ensure that individuals who are still otherwise eligible for PUA are not at risk of having their benefits terminated.

Supporting Washington Businesses

With roughly \$4.7 billion in the state trust fund, Washington entered the pandemic with one of the strongest and best-financed trust funds in the nation. While roughly two-thirds of benefits paid are federally financed, the state has since paid an historic amount of traditional unemployment benefits out of the state trust fund due to the COVID-19 economic crisis. Measures to bolster the state trust fund and maintain federal financing for benefits otherwise paid out of the fund ultimately ease the burden on Washington employers that finance the trust fund through state UI taxes.

Based on the September 2020 economic forecast released by the state Economic and Revenue Forecast Council (ERFC), we currently project our state’s trust fund will be able to pay traditional unemployment benefits through 2021. Those are, however, merely projections based on an economy that remains extremely volatile, and the state could ultimately need to consider requesting a federal loan through USDOL in order to maintain the trust fund reserves needed to make benefit payments uninterrupted. We continue to encourage Congress to take steps to directly bolster state trust funds given the extraordinary impact of the pandemic on state unemployment systems nationwide, so that states are not forced to increase taxes on employers to address the solvency of trust funds.

Most immediately, we support extending the period in which states may take out interest free Title XII loans, which expires at the end of the year, through 2021.

Moreover, we support additional extensions to ease the burden on state trust funds and the employers that finance them, namely full federal financing of the Short-Time Compensation (Shared Work) program, benefits paid during the one-week waiting period, Extended Benefits (EB) providing additional weeks of benefits, and half the cost of unemployment benefits for “reimbursable employers.

Providing Sufficient Unemployment Program Administration Funding

The UI program was created as a federal-state partnership, with the federal government paying states to administer state UI programs if they meet federal requirements. While federal requirements and the complexity of the UI program have increased over the years, federal funding has decreased. Year after year, the amount of money the federal government gives states to administer UI programs is less than what is needed.

Years of chronic underfunding, and a retroactive funding model that looks back instead of preparing for potential economic shocks ahead, is a major contributing factor to the challenges faced in Washington and other states during the COVID-19 pandemic. We cannot be prepared for recessions and be ready to quickly scale up for increased workloads and new programs if we continue to face inadequate funding year-after-year that looks backward instead of forward.

Moreover, amid an unprecedented need for benefits and unprecedented stresses on UI programs, Washington and other states are not being reimbursed for the actual cost of administering the PUA program as required by the CARES Act. Instead, USDOL uses the same resource justification model for PUA as it uses for UI —despite there being significant increased costs to stand up and administer the PUA program including operational, technology and training costs, intensive manual work to verify claimant earnings, complicated eligibility determinations, and anti-fraud measures to defend the program from sophisticated attacks by criminal enterprises. In short, managing braided benefits programs such as we have today is dramatically more complex and costly than before and is not calculable based solely on initial claims.

While long-term reforms are badly needed so that states have adequate and stable funding to administer UI programs throughout the economic cycle, there is an immediate need for emergency funding to states for activities related to processing and paying UI claims. The Families First Coronavirus Response Act provided \$1 billion in UI administrative emergency grants to states, of which Washington received \$23.7 million.

Another round of at least \$1 billion is needed for state staffing, technology, anti-fraud and other costs associated with processing claims for both state and federal programs.

We greatly appreciate your consideration of our requests. If you have any questions or need additional information, please contact ESD's Public Affairs Director, Nick Demerice, at NDemerice@esd.wa.gov.

Sincerely,



Suzan G. LeVine
Commissioner



Senator Karen Keiser
Chair, Labor and Commerce



Representative Mike Sells
Chair, Labor and Workplace Safety



Senator Curtis King
Ranking Member, Labor and Commerce



Representative Gina Mosbrucker
Ranking Member, Labor and Workplace Safety

cc: Nick Demerice, Public Affairs Director, Employment Security Department
Casey Katims, D.C. Office Director, Governor Jay Inslee