



THE COMMONWEALTH OF MASSACHUSETTS
EXECUTIVE OFFICE OF LABOR AND WORKFORCE DEVELOPMENT

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The Honorable Martin J. Walsh
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

February 23, 2022

RE: Blanket Waivers for Non-Fraud CARES Act Overpayments

Dear Secretary Walsh:

I am writing to respectfully request your assistance in alleviating the burden on Massachusetts unemployment claimants who incurred non-fault overpayments during the pandemic. I appreciate the additional blanket waivers that were described in the UIPL released on Monday, February 7, 2022, but unfortunately the categories included did little to alleviate our continuing issues with overpayments in Massachusetts.

I ask that the U.S. Department of Labor (USDOL) provide relief in the form of a blanket waiver for all non-fraudulent unemployment compensation overpayments for the following federal programs: Pandemic Unemployment Assistance (PUA), Federal Pandemic Unemployment Compensation (FPUC), Pandemic Emergency Unemployment Compensation (PEUC), and Mixed Earner Unemployment Compensation (MEUC).

Massachusetts applied for a narrower blanket waiver of all PUA overpayments related to employment substantiation issues on February 17th, as is permitted under the newly released guidance. The primary driver of the overpayment issue in Massachusetts is attributable to changes in USDOL guidance on employment substantiation for PUA, which has resulted in overpayment determinations for more than \$1 billion in already paid claims. These mid-program changes had a particularly dramatic consequence on Massachusetts claimants because the state rolled out PUA quickly in spring 2020.

The Commonwealth implemented and administered the PUA program based on USDOL guidance. Midway through the program, USDOL's rules changed to require that claimants provide documented substantiation of employment or be ruled retroactively ineligible for benefits. While this measure was meant to address the problems with fraud

that had developed in the PUA program, one unintended result was that legitimate claimants were automatically determined to be overpaid.

The Department of Unemployment Assistance (DUA) team continues to work to help claimants apply for waivers or appeal overpayments as permitted by law. Without a blanket waiver option, however, the agency must evaluate on a case-by-case basis potentially more than 300,000 waiver applications. That process is laborious for the agency and can be frustrating for the claimant. Further, requiring claimants to apply for waivers may present obstacles to underserved communities who were particularly hard hit during the pandemic.

Claimants who received PUA, PEUC, MEUC, along with additional FPUC, spent these funds months ago to help preserve their own economic stability. Meanwhile, we know from historical experience that even with a significant investment of agency time and effort, the recovery rate for overpaid funds is relatively low in view of all the attendant challenges and the limited financial resources of most claimants.

Additionally, I am requesting an extension of state staffing flexibility as it is critical for the continued operation of state and federal unemployment programs. States relied on non-merit staffing to hire temporary staff and rehire retirees and former employees on a non-competitive basis to process the unprecedented number of claims over the past two years. While the CARES Act programs expired on September 4, 2021, states are still adjudicating claims, conducting appeals, and reviewing waiver requests, which requires additional staffing resources. Therefore, I am requesting an extension of state staffing flexibility, as allowed by Section 2106 of the CARES Act. I am requesting the ability to use PUA administrative funding for the regular unemployment insurance program to help fund continued staffing needs.

For all these reasons, I respectfully request that you consider all possible measures to allow the states to waive all non-fraudulent PUA, PEUC, MEUC, and FPUC overpayments, an extension of state staffing flexibility, and the ability to use PUA administrative funding for the regular unemployment insurance program.

Sincerely,



Rosalin Acosta
Secretary, Executive Office of Labor and Workforce Development