

JAN 07 2021

IN THE SUPREME COURT OF NEVADA

ELIZABETH A. BROWN
CLERK OF SUPREME COURT
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ISAIAH PAVIA-CRUZ, VICTORIA WAKED, CHARLES PLOSKI,
DARIUSH NAIMI, TABITHA ASARE, SCOTT HOWARD, RALPH WYNCOOP,
ELAINA ABING, and WILLIAM TURNELY, on behalf of themselves and all
others similarly situated,

Appellants/Cross-Respondents,

v.

STATE OF NEVADA *ex rel.* NEVADA DEPARTMENT OF EMPLOYMENT,
TRAINING, AND REHABILITATION (DETR), HEATHER KORBULIC, in her
official capacity only as Nevada Director of Employment, Training, and
Rehabilitation, DENNIS PEREA, in his official capacity only as Deputy Director of
DETR, and KIMBERLY GAA, in her official capacity only as the Administrator for
the Employment Security Division, and DOES 1-100, inclusive,

Respondents/Cross-Appellants.

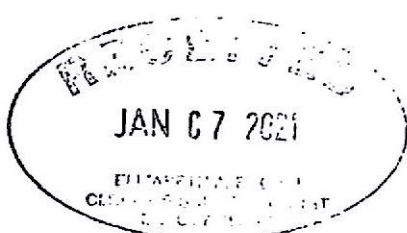
On Appeal from the Second Judicial District Court of
Washoe County, Nevada

BRIEF FOR THE UNITED STATES AS AMICUS CURIAE
FOR CROSS-APPELLANTS SUPPORTING VACATUR

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INTRODUCTION AND STATEMENT OF INTEREST

The United States respectfully submits this amicus brief pursuant to NRAP 29(a) to clarify the meaning of the Coronavirus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136, 134 Stat. 281 (2020) (CARES Act). The CARES Act established the Pandemic Unemployment Assistance (PUA) program to provide temporary unemployment benefits to certain people affected by the COVID-19 coronavirus pandemic. *See* 15 U.S.C. § 9021(b) (requiring the U.S. Department of Labor to pay PUA benefits to “covered individual[s]”). Although the program is federally funded and administered, benefits are initially paid by State unemployment agencies in accordance with agreements between the Department and each State agency. *Id.* § 9021(a)(4), (b), (f). The United States has a substantial interest in ensuring that the program is implemented correctly.

This cross-appeal involves a district court order that requires Nevada to pay PUA benefits in a manner inconsistent with federal law. The order appears to state that “payments are required” to anyone who meets the court’s invented definition of “covered individual.” That definition is contradicted by Congress’s highly reticulated definition of the same term. The order also forbids Nevada from halting benefit payments to existing PUA recipients except in certain limited circumstances. This prohibition likewise cannot be reconciled with the CARES Act’s detailed eligibility requirements. Because the district court’s order is incompatible with the CARES Act, the order should be vacated.

STATEMENT OF THE ISSUE

Whether the district court's order governing payment of PUA benefits is consistent with the CARES Act.¹

PERTINENT STATUTORY PROVISIONS

Pertinent statutory provisions are reproduced in the addendum to this brief.

STATEMENT OF THE CASE

A. Statutory Background

Congress created the Pandemic Unemployment Assistance program in Section 2102 of the CARES Act (codified at 15 U.S.C. § 9021). The PUA program provides temporary unemployment benefits to certain people affected by the COVID-19 pandemic. Specifically, the CARES Act states that the U.S. Department of Labor “shall provide” unemployment benefits to “covered individual[s]” while they are “unemployed, partially unemployed, or unable to work.” 15 U.S.C. § 9021(b).

1. Definition of “Covered Individual” Under the CARES Act

The CARES Act contains an exceptionally detailed definition of “covered individual.” To qualify, a person cannot be eligible to receive unemployment benefits from another source. 15 U.S.C. § 9021(a)(3)(A)(i). She must then self-certify that, despite being “otherwise able to work and available for work,” she has become

¹ The United States takes no position on the other issues presented in this appeal.

“unemployed, partially unemployed, or unable or unavailable to work” for at least one of ten reasons specifically enumerated by the statute. *Id.* § 9021(a)(3)(A)(ii)(I)(aa)-(jj). Examples include being diagnosed with COVID-19, *id.* § 9021(a)(3)(A)(ii)(I)(aa); being unable to reach her place of employment due to a quarantine imposed as a direct result of the pandemic, *id.* § 9021(a)(3)(A)(ii)(I)(ee); and being forced to quit her job as a direct result of the pandemic, *id.* § 9021(a)(3)(A)(ii)(I)(ii).

The self-certification requirement can also be satisfied if the claimant meets any “additional criteria established by the Secretary [of Labor] for unemployment assistance” under the PUA program. 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(kk). One criterion covers self-employed individuals with reportable income, such as drivers for rideshare services. *See* U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Attach. I, at 6 (2020), <https://go.usa.gov/xAjNZ> (April 5 Guidance); U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change 2, at 2 (2020), <https://go.usa.gov/xA5US> (July 21 Guidance) (updating April 5 Guidance). These individuals can self-certify that they are eligible for PUA benefits if their “ability to continue performing . . . customary work activities [has been] severely limited” by the pandemic. July 21 Guidance at 2. For example, rideshare drivers who have experienced a “significant diminution of work as a result of COVID-19” can self-certify their PUA eligibility under this criterion. U.S. Dep’t of Labor, Unemployment Insurance Program Letter No. 16-20, Change I, Attach. I, ¶ 42 (2020), <https://go.usa.gov/xATea> (April 27 Guidance).

Finally, the CARES Act prohibits certain people from receiving any PUA benefits whatsoever. The definition of “covered individual” excludes anyone “who has the ability to telework with pay.” 15 U.S.C. § 9021(a)(3)(B)(i). The definition also excludes anyone who is receiving any “paid leave benefits.” *Id.* § 9021(a)(3)(B)(ii).

2. Implementation of the Pandemic Unemployment Assistance Program

PUA benefits are available for weeks of unemployment from January 27, 2020 up to March 14, 2021, for no more than 50 weeks. 15 U.S.C. § 9021(c)(1)(A), (c)(2); *see* Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong., div. N, tit. II, subtit. A, ch. 1, subch. I, § 201(a)(1), (b) (2020) (2021 CAA).² Benefits are payable only to the extent that “the covered individual’s unemployment . . . caused by COVID-19 continues.” 15 U.S.C. § 9021(c)(1)(B). Thus, even after a claimant’s initial application for PUA benefits is approved, she must continue to submit weekly self-certifications for each week of PUA benefits that she claims. *See* April 27 Guidance ¶¶ 44-45.

The PUA program is federally funded in its entirety. 15 U.S.C. § 9021(f)(2). But PUA benefits are initially distributed to claimants by State unemployment agencies, *see id.* § 9021(d)(3), in accordance with voluntary agreements between the U.S. Department of Labor and each State agency, *id.* § 9021(f). These agreements

² The 2021 CAA further extends the program through April 5, 2021, for individuals who meet certain requirements. 2021 CAA, div. N, tit. II, subtit. A, ch. 1, subch. I, § 201(a)(3).

require State agencies to pay benefits “in accordance with the provisions” of the CARES Act and of “all guidance . . . issued by the Department.” Excerpts of Record (ER) 464, 466. The agreements further specify that, when administering the PUA program, the Department “will apply the methods of administration required by . . . 42 U.S.C. § 503(a)(1).” ER 466. That statute forbids the Department from certifying payment to defray a State’s unemployment-related expenses “unless [the Department] finds that the law of such State . . . includes provision for . . . [s]uch methods of administration as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due.” 42 U.S.C. § 503(a).

Each agreement will “immediately terminate . . . and no further [PUA] benefits will be payable” if the Department determines that a State agency is not complying with the CARES Act or with the Department’s guidance. ER 464. For example, the Department can terminate an agreement if it finds that a State has failed to take reasonable steps to ensure that PUA benefits are paid only to people who are actually eligible for them.

Ensuring that benefits are not paid to ineligible claimants is critically important to the administration of the PUA program, which relies on self-certification and has therefore proven vulnerable to fraud. *See generally* U.S. Dep’t of Labor, Office of Inspector Gen., *COVID-19: States Cite Vulnerabilities in Detecting Fraud While Complying with the CARES Act UI Program Self-Certification Requirement* (2020), <https://go.usa.gov/xA5c6>. Indeed, the U.S. Attorney’s Office for the District of

Nevada has received funding “to hire a dedicated prosecutor to combat CARES Act unemployment insurance fraud.” U.S. Dep’t of Justice, U.S. Attorney’s Office, Dist. of Nev., *U.S. Attorney’s Office Announces: (1) Funding to Hire Prosecutor to Combat Unemployment Insurance Fraud and (2) Charges Against Man for Unemployment Insurance Fraud* (Dec. 23, 2020), <https://go.usa.gov/xA5gW>.

B. Factual Background

This appeal involves Nevada’s implementation of the PUA program. Nevada agreed to participate in the program on March 28, 2020. ER 467. Nevada has been hit especially hard by the pandemic. In April 2020, Nevada’s unemployment rate reached 30.1%—the highest rate ever recorded for any State during any month, including during the Great Depression. ER 860. Before Nevada temporarily closed nonessential businesses statewide, it averaged about 10,000 claims for unemployment benefits each month. ER 865. By contrast, in the first week after the temporary closure took effect, Nevada’s unemployment agency processed nearly 20,000 claims each day. *Id.* Nevada has received over \$886 million dollars from the federal government to pay PUA benefits. U.S. Dep’t of Labor, *Families First Coronavirus Response Act and Coronavirus Aid, Relief, and Economic Security (CARES) Act Funding to States through January 2, 2021*, <https://go.usa.gov/xA5gu> (last accessed January 5, 2021).

Plaintiffs are several gig-economy workers seeking to represent an uncertified putative class of “self-employed individuals, independent contractors[,] and/or the

owners of sole proprietorships located within . . . Nevada who do not pay their own wages as a W-2 employee.” ER 20 (quotation marks omitted). Plaintiffs sued Nevada in district court, alleging that Nevada’s unemployment agency was administering the PUA program unlawfully. Plaintiffs sought a writ of mandamus compelling Nevada “to make immediate payments” to all class members eligible for PUA benefits but whom Nevada had not yet paid. ER 21.

C. Prior Proceedings

The district court granted plaintiffs’ mandamus petition in part and denied the petition in part. In an opinion largely devoid of reasoning, the court rejected all but one of plaintiffs’ arguments: that Nevada was unlawfully terminating the benefits of PUA recipients. ER 26. The court entered an order providing that,

once [PUA] payments have started, payments cannot be withheld and must be restarted UNLESS: (a) the applicant did not file a weekly claim; or (b) the applicant has earnings in excess of that which would otherwise qualify the applicant for benefits; or (c) there is clear and convincing evidence of fraud by the applicant; or (d) until such time as the applicant is afforded an opportunity to be heard.

ER 26-27.

The court separately declared that a “covered individual” for purposes of the PUA program “includes an individual with reportable income, and is either unemployed, partially employed, or unable or unavailable to work because the [pandemic] has severely limited his or her ability to continue performing work activities and has therefore caused substantial interference with his or her work

activities.” ER 27. The court’s order appears to state that, if an individual satisfies this definition, “payments are required.” *Id.*

Plaintiffs appealed the court’s partial denial to this Court. Nevada cross-appealed the court’s order partially granting the writ.

SUMMARY OF ARGUMENT

The district court’s order should be vacated because it conflicts with the CARES Act in two respects.

First, the order appears to require Nevada to pay PUA benefits to anyone who meets the court’s definition of “covered individual.” That definition, which lacks any basis in the text of the CARES Act, contradicts the highly reticulated definition of “covered individual” that Congress enacted.

Second, the order forbids Nevada from halting benefit payments except in four limited circumstances. That prohibition likewise contradicts the CARES Act, which requires claimants to satisfy every statutory eligibility requirement for each week in which they seek to collect PUA benefits. Yet the order requires Nevada to continue to pay benefits even to claimants who no longer satisfy those requirements. The only circumstance in which Nevada may terminate benefits to such ineligible claimants is by affording them a pre-termination hearing. But that alleged requirement appears nowhere in the CARES Act and is not compelled by Nevada’s agreement to implement the CARES Act in accordance with 42 U.S.C. § 503(a)(1).

ARGUMENT

THE DISTRICT COURT'S ORDER SHOULD BE VACATED BECAUSE IT CONFLICTS WITH THE CARES ACT

A. The Order's Definition Of "Covered Individual" Contradicts The Statutory Definition Adopted By Congress

The district court's order declares that, for purposes of the PUA program, the term "covered individual" includes anyone

with reportable income, and is either unemployed, partially employed, or unable or unavailable to work because the COVID-19 public health emergency has severely limited his or her ability to continue performing work activities and has therefore caused substantial interference with his or her work activities.

ER 27. The order then appears to state that, if a person satisfies these conditions, PUA "payments are required." *Id.* The court gave no reason for defining "covered individual" in this manner. And its invented definition contradicts the CARES Act's exceptionally detailed definition of the term.

The text of the CARES Act contains several important restrictions on obtaining "covered individual" status. Specifically, a covered individual:

- must be "otherwise able to work and available for work within the meaning of applicable State law," 15 U.S.C. § 9021(a)(3)(A)(ii)(I);
- cannot be eligible for other forms of unemployment benefits, *id.* § 9021(a)(3)(A)(i);
- cannot have "the ability to telework with pay," *id.* § 9021(a)(3)(B)(i); and
- cannot be receiving "paid leave benefits," *id.* § 9021(a)(3)(B)(ii).

The court's order contains none of these restrictions.

The CARES Act additionally requires that, to qualify as a “covered individual,” a claimant must “provide[] self-certification.” 15 U.S.C. § 9021(a)(3)(A)(ii). In particular, the claimant must self-certify either that her unemployment was caused by the pandemic in at least one of ten specific ways, *id.* § 9021(a)(3)(A)(ii)(I)(aa)-(jj); *see id.* § 9021(a)(3)(A)(ii)(II), or that she meets the additional eligibility criteria that the U.S. Department of Labor has established, *id.* § 9021(a)(3)(A)(ii)(I)(kk). The court’s order contains no self-certification requirement. It confers “covered individual” status on anyone whose unemployment is generally attributable to the pandemic. And it does not refer to Department-established eligibility criteria at all.

The court’s order is not merely inconsistent with the CARES Act’s definition of “covered individual.” It is also inconsistent with the CARES Act’s 50-week cap on the “total number of weeks for which a covered individual may receive [PUA] assistance.” 15 U.S.C. § 9021(c)(2); *see* 2021 CAA § 201(b) (extending PUA program). Significantly, the order contains no analogous limitation. Indeed, the order’s definition is more restrictive than the CARES Act in one respect. Under the order, a “covered individual” must have “reportable income” of some sort. ER 27. But as the Department of Labor has explained, a claimant does not become categorically ineligible for PUA benefits simply because she lacks extant wage records. April 27 Guidance ¶ 13; *accord* 15 U.S.C. § 9021(a)(1)(A)(ii)(II) (defining “covered individual” to include someone who “does not have sufficient work history”). These anomalies

further underscore the extent to which the order's definition is unmoored from the CARES Act's text.

B. The Order Improperly Restricts The Grounds For Halting Benefit Payments

The district court's order also prohibits Nevada from withholding PUA benefits to anyone who has previously received PUA benefits unless one of four circumstances is met: (1) the person has failed to file a weekly claim for PUA benefits; (2) the person's earnings are too high to qualify for benefits; (3) there is "clear and convincing evidence of fraud"; or (4) the person has been "afforded an opportunity to" challenge the withholding of benefits. ER 26-27. This prohibition is likewise incompatible with the CARES Act.

As explained above, the CARES Act contains several important eligibility requirements for PUA benefits. To qualify as a "covered individual," a person must—among other things—be ineligible to receive unemployment benefits from another source, 15 U.S.C. § 9021(a)(3)(A)(i); must self-certify that, despite being able and available to work, the person cannot do so for one of the pandemic-related reasons specified by the statute, *id.* § 9021(a)(3)(A)(ii)(I)(aa)-(kk); must not be able to telework with pay, *id.* § 9021(a)(3)(B)(i); and must not be receiving paid leave benefits, *id.* § 9021(a)(3)(B)(ii).

A claimant's eligibility for PUA benefits is determined on a weekly basis. April 27 Guidance ¶¶ 44-45. Moreover, "many of the qualifying circumstances" for PUA

benefits “are likely to be of short term duration.” April 5 Guidance at 7. For example, someone who is eligible for PUA benefits because she has been advised to self-quarantine, *see* 15 U.S.C. § 9021(a)(3)(A)(ii)(I)(ff), can “return to [work] within two weeks of [her] exposure” to COVID-19, April 5 Guidance at 7. Such a person would no longer be a “covered individual,” and would cease to be eligible for PUA benefits until she can make another self-certification as specified in § 9021(a)(3)(A)(ii). April 5 Guidance at 7. But under the district court’s order, Nevada must still pay benefits to that person as long as she continues to file weekly claims; her earnings remain below some unspecified threshold; and there is no clear and convincing evidence that she has committed fraud. The order thus prevents Nevada from halting PUA payments even to some people who are no longer “covered individuals” as defined by the CARES Act.³

That the order allows Nevada to terminate benefits after a pre-termination hearing does not resolve the inconsistency. This supposed requirement appears nowhere in the text of the CARES Act. Nor is it compelled—as the district court apparently believed, ER 26—by Nevada’s contractual agreement with the Department

³ When Congress extended the PUA program, it also amended the program’s definition of “covered individual” to require claimants to supply supporting documentation. 2021 CAA, div. N, tit. II, subtit. A, ch. 1, subch. IV, § 241(a). To the extent the district court’s order applies to individuals subject to this new requirement, *see id.* § 241(b) (setting forth applicability dates), the order appears to prevent Nevada from terminating benefit payments even when a claimant has indisputably failed to provide the requisite documentation.

of Labor to disburse benefits in accordance with 42 U.S.C. § 503(a)(1). The Department has long applied § 503(a)(1) in a manner designed to ensure that payments are only disbursed when they are actually due. U.S. Dep't of Labor, Unemployment Insurance Program Letter No. 04-01, § 4 (Oct. 27, 2000), <https://go.usa.gov/xATHs> (October 2000 Guidance). If the information available to a State unemployment agency “discloses no essential disagreement [on eligibility] and provides a sufficient basis for a fair determination,” no pre-termination hearing is required. 20 C.F.R. pt. 614, app. B, § 6013(A)(1). “When a question concerning [a claimant’s] continued eligibility for benefits for a given week arises,” the agency must simply “conduct[] an investigation of the facts and make[] a determination of eligibility or ineligibility.” October 2000 Guidance, § 5. But “[w]hile such a determination is pending, the State agency need not issue payment for the week in question until it issues a determination regarding eligibility” in a timely fashion. *Id.*

The U.S. Supreme Court’s decision in *California Department of Human Resources Development v. Java*, 402 U.S. 121 (1971), is not to the contrary. The Court merely held that, under § 503(a)(1), a State unemployment agency must pay unemployment benefits when “payments are first administratively allowed as a result of a hearing of which both parties have notice and are permitted to present their respective positions.” *Id.* at 133. The Court did not address the separate question whether § 503(a)(1) requires any form of pre-termination process.

CONCLUSION

For these reasons, the district court's order should be vacated.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I hereby certify that this brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirements of NRAP 32(a)(5), and the type-style requirements of NRAP 32(a)(6) because the brief was prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Garamond.

I hereby certify that this brief complies with the type-volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is proportionally spaced, has a typeface of 14 points or more, and contains 3,071 words.

I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose.

I hereby certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to sanctions in the event that the accompanying brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

Dated this 6th day of January, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that on January 6, 2021, I filed the foregoing brief with the Clerk of the Court for the Supreme Court of Nevada using FedEx. The brief was served by electronic transmission to the following e-mail accounts:

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ADDENDUM

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15 U.S.C. § 9021

§ 9021. Pandemic unemployment assistance.

(a) Definitions

In this section:

* * * *

(3) Covered individual

The term “covered individual”—

(A) means an individual who—

(i) is not eligible for regular compensation or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title, including an individual who has exhausted all rights to regular unemployment or extended benefits under State or Federal law or pandemic emergency unemployment compensation under section 9025 of this title; and

(ii) provides self-certification that the individual—

(I) is otherwise able to work and available for work within the meaning of applicable State law, except the individual is unemployed, partially unemployed, or unable or unavailable to work because—

(aa) the individual has been diagnosed with COVID-19 or is experiencing symptoms of COVID-19 and seeking a medical diagnosis;

(bb) a member of the individual's household has been diagnosed with COVID-19;

(cc) the individual is providing care for a family member or a member of the individual's household who has been diagnosed with COVID-19;

(dd) 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;

(ee) 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;

(ff) 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;

(gg) 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;

(hh) 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;

(ii) the individual has to quit his or her job as a direct result of COVID-19;

(jj) the individual's place of employment is closed as a direct result of the COVID-19 public health emergency; or

(kk) the individual meets any additional criteria established by the Secretary for unemployment assistance under this section; or

(II) 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 pandemic emergency unemployment compensation under section 9025 of this title, and meets the requirements of subclause (I); and

(B) does not include—

(i) an individual who has the ability to telework with pay; or

(ii) an individual who is receiving paid sick leave or other paid leave benefits, regardless of whether the individual meets a qualification described in items (aa) through (kk) of subparagraph (A)(i)(I).

(4) Secretary

The term “Secretary” means the Secretary of Labor.

* * * *

(b) Assistance for unemployment as a result of COVID-19

Subject to subsection (c), the Secretary shall provide to any covered individual unemployment benefit assistance while such individual is unemployed, partially unemployed, or unable to work for the weeks of such unemployment with respect to which the individual is not entitled to any other unemployment compensation (as that term is defined in section 85(b) of Title 26) or waiting period credit.

(c) Applicability

(1) In general

Except as provided in paragraph (2), the assistance authorized under subsection (b) shall be available to a covered individual—

(A) for weeks of unemployment, partial unemployment, or inability to work caused by COVID-19—

(i) beginning on or after January 27, 2020; and

(ii) ending on or before December 31, 2020; and

(B) subject to subparagraph (A)(ii), as long as the covered individual's unemployment, partial unemployment, or inability to work caused by COVID-19 continues.

(2) Limitation on duration of assistance

The total number of weeks for which a covered individual may receive assistance under this section shall not exceed 39 weeks and such total shall include any week for which the covered individual received regular compensation or extended benefits under any Federal or State law, except that if after March 27, 2020, the duration of extended benefits is extended, the 39-week period described in this paragraph shall be extended by the number of weeks that is equal to the number of weeks by which the extended benefits were extended.

(3) Assistance for unemployment before March 27, 2020

The Secretary shall establish a process for making assistance under this section available for weeks beginning on or after January 27, 2020, and before March 27, 2020.

(d) Amount of assistance

(1) In general

The assistance authorized under subsection (b) for a week of unemployment, partial unemployment, or inability to work shall be—

(A)

(i) the weekly benefit amount authorized under the unemployment compensation law of the State where the covered individual was employed, except that the amount may not be less than the minimum weekly benefit amount described in section 625.6 of title 20, Code of Federal Regulations, or any successor thereto; and

(ii) the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title; and

(B) in the case of an increase of the weekly benefit amount after March 27, 2020, increased in an amount equal to such increase.

(2) Calculations of amounts for certain covered individuals

In the case of a covered individual who is self-employed, who lives in a territory described in subsection (c) or (d) of section 625.6 of title 20, Code of Federal Regulations, or who would not otherwise qualify for unemployment compensation under State law, the assistance authorized under subsection (b) for a week of unemployment shall be calculated in accordance with section 625.6 of title 20, Code of Federal Regulations, or any successor thereto, and shall be increased by the amount of Federal Pandemic Unemployment Compensation under section 9023 of this title.

(3) Allowable methods of payment

Any assistance provided for in accordance with paragraph (1)(A)(ii) shall be payable either—

(A) as an amount which is paid at the same time and in the same manner as the assistance provided for in paragraph (1)(A)(i) is payable for the week involved; or

(B) at the option of the State, by payments which are made separately from, but on the same weekly basis as, any assistance provided for in paragraph (1)(A)(i).

* * * *

(f) Agreements with States

(1) In general

The Secretary shall provide the assistance authorized under subsection (b) through agreements with States which, in the judgment of the Secretary, have an adequate system for administering such assistance through existing State agencies.

(2) Payments to States

There shall be paid to each State which has entered into an agreement under this subsection an amount equal to 100 percent of—

(A) the total amount of assistance provided by the State pursuant to such agreement; and

(B) any additional administrative expenses incurred by the State by reason of such agreement (as determined by the Secretary), including any administrative expenses necessary to facilitate processing of applications for assistance under this section online or by telephone rather than in-person.

(3) Terms of payments

Sums payable to any State by reason of such State's having an agreement under this subsection shall be payable, either in advance or by way of reimbursement (as determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this subsection for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that his estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

(g) Funding

(1) Assistance

(A) In general

Funds in the extended unemployment compensation account (as established by section 1105(a) of Title 42) of the Unemployment Trust Fund (as established by section 1104(a) of Title 42) shall be used to make payments to States pursuant to subsection (f)(2)(A).

(B) Transfer of funds

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the extended unemployment compensation account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(2) Administrative expenses

(A) In general

Funds in the employment security administration account (as established by section 1101(a) of Title 42) of the Unemployment Trust Fund (as

established by section 1104(a) of Title 42) shall be used to make payments to States pursuant to subsection (f)(2)(B).

(B) Transfer of funds

Notwithstanding any other provision of law, the Secretary of the Treasury shall transfer from the general fund of the Treasury (from funds not otherwise appropriated) to the employment security administration account such sums as the Secretary of Labor estimates to be necessary to make payments described in subparagraph (A). There are appropriated from the general fund of the Treasury, without fiscal year limitation, the sums referred to in the preceding sentence and such sums shall not be required to be repaid.

(3) Certifications

The Secretary of Labor shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under paragraphs (1) and (2).

* * * *

Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong., div. N, tit. II, subtit. A, ch. 1, subch. I, § 201 (2020)

§ 201. Extension and Benefit Phaseout Rule for Pandemic Unemployment Assistance.

(a) IN GENERAL.—Section 2102(c) of the CARES Act (15 U.S.C. 9021(c)) is amended—

(1) in paragraph (1)—

(A) by striking “paragraph (2)” and inserting “paragraphs (2) and (3)”; and

(B) in subparagraph (A)(ii), by striking “December 31, 2020” and inserting “March 14, 2021”; and

(2) by redesignating paragraph (3) as paragraph (4); and

(3) by inserting after paragraph (2) the following:

“(3) **TRANSITION RULE FOR INDIVIDUALS REMAINING ENTITLED TO PANDEMIC UNEMPLOYMENT ASSISTANCE AS OF MARCH 14, 2021.**—

“(A) **IN GENERAL.**—Subject to subparagraph (B), in the case of any individual who, as of the date specified in paragraph (1)(A)(ii), is receiving pandemic unemployment assistance but has not yet exhausted all rights to such assistance under this section, pandemic unemployment assistance shall continue to be payable to such individual for any week beginning on or after such date for which the individual is otherwise eligible for pandemic unemployment assistance.

“(B) **TERMINATION.**—Notwithstanding any other provision of this subsection, no pandemic unemployment assistance shall be payable for any week beginning after April 5, 2021.”.

(b) INCREASE IN NUMBER OF WEEKS.—Section 2102(c)(2) of the CARES Act (15 U.S.C. 9021(c)(2)) is amended—

(1) by striking “39 weeks” and inserting “50 weeks”; and

(2) by striking “39-week period” and inserting “50-week period”.

* * * *

(f) LIMITATION.—In the case of a covered individual whose first application for pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) is filed after the date of enactment of this Act, subsection (c)(1)(A)(i) of such section 2102 shall be applied by substituting “December 1, 2020” for “January 27, 2020”.

(g) EFFECTIVE DATE.—The amendments made by subsections (a), (b), (c), and (d) shall apply as if included in the enactment of the CARES Act (Public Law 116–136), except that no amount shall be payable by virtue of such amendments with respect to any week of unemployment commencing before the date of the enactment of this Act.

Consolidated Appropriations Act, 2021, H.R. 133, 116th Cong., div. N, tit. II, subtit. A, ch. 1, subch. IV, § 241 (2020)

§ 241. Requirement to Substantiate Employment or Self-Employment and Wages Earned or Paid To Confirm Eligibility for Pandemic Unemployment Assistance.

(a) IN GENERAL.—Section 2102(a)(3)(A) of the CARES Act (15 U.S.C. 9021(a)(3)(A)) is amended—

(1) in clause (i), by striking “and” at the end;

(2) by inserting after clause (ii) the following:

“(iii) provides documentation to substantiate employment or self-employment or the planned commencement of employment or self-employment not later than 21 days after the later of the date on which the individual submits an application for pandemic unemployment assistance under this section or the date on which an individual is directed by the State Agency to submit such documentation in accordance with section 625.6(e) of title 20, Code of Federal Regulations, or any successor thereto, except that such deadline may be extended if the individual has shown good cause under applicable State law for failing to submit such documentation; and”.

(b) APPLICABILITY.—

(1) IN GENERAL.—Subject to paragraphs (2) and (3), the amendments made by subsection (a) shall apply to any individual who files a new application for pandemic unemployment assistance or claims pandemic unemployment assistance for any week of unemployment under section 2102 of the CARES Act (15 U.S.C. 9021) on or after January 31, 2021.

(2) SPECIAL RULE.—An individual who received pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) for any week ending before the date of enactment of this Act shall not be considered ineligible for such assistance for such week solely by reason of failure to submit documentation described in clause (iii) of subsection (a)(3)(A) of such section 2102, as added by subsection (a).

(3) PRIOR APPLICANTS.—With respect to an individual who applied for pandemic unemployment assistance under section 2102 of the CARES Act (15 U.S.C. 9021) before January 31, 2021, and receives such assistance on or after the date of enactment of this Act, clause (iii) of subsection (a)(3)(A) of such section shall be applied by substituting “90 days” for “21 days”.