

United States Senate

WASHINGTON, DC 20510

March 17, 2021

The Honorable Al Stewart
Acting Secretary
U.S. Department of Labor
200 Constitution Avenue, Northwest
Washington, D.C. 20210

Dear Acting Secretary Stewart:

As Acting Secretary of the Department of Labor, you oversee the unemployment insurance (UI) programs that the federal government administers in partnership with states; which are currently at the forefront as our nation continues to grapple with the coronavirus pandemic. However, we are concerned about the recent “Unemployment Insurance Program Letter No. 16-20” (“guidance”) DOL issued to state workforce agencies on February 25, 2021¹.

The guidance expands eligibility for the Pandemic Unemployment Assistance (PUA) program to allow individuals to be eligible for the PUA program using three new circumstances, including cases where individuals refuse a suitable offer to work or return to work because of certain health concerns. Specifically, the guidance allows individuals to self-certify for PUA eligibility if they believe the workplace is “not in compliance with local, state, or national health and safety standards directly related to COVID-19.”² Furthermore, the guidance directs state workforce agencies to extend this expanded eligibility retroactively to the establishment of the PUA program.³

Congress created the PUA program to ensure those not traditionally eligible for unemployment assistance (i.e. independent contractors, sole proprietors, and the self-employed) could obtain benefits. However, this program was never intended to provide benefits to those who traditionally qualify for unemployment benefits, as programs for those individuals already exist. We believe this guidance is misguided and not within DOL’s authority under the CARES Act. Therefore, a delay in implementation of this guidance is required.

Beyond this guidance being outside of the DOL’s statutory authority, without establishment of anti-fraud measures, flexibilities for states, and number of other clarifications, we fear that this guidance is deliberately setting states up for failure. In December 2020, Congress established provisions to improve integrity of the PUA program and ensure that individuals must substantiate their past employment rather than merely self-certify that they are eligible in response to a wave of reports of fraud within the PUA program⁴. These program integrity measures went into effect on January 31, 2021.

¹ [Unemployment Insurance Program Letter NO. 16-20, Change 5](#)

² Id.

³ PUA was established in March 2020 through the Coronavirus Aid, Relief, and Economic Security (CARES) Act (P.L. 116-136).

⁴ [DOL Office of Inspector General “COVID-19: States Cite Vulnerabilities in Detecting Fraud While Complying with the CARES Act UI Program Self-Certification Requirement](#)

Though the new measures will mitigate instances of PUA fraud, we fear that this questionable guidance will be counterproductive in reducing fraud within the program. Your guidance only requires individuals to self-attest that their workplace (or potential workplace) is unsafe and not in compliance with safety standards. State workforce agencies do not have the staffing capabilities to verify that allegations of unsafe workplaces are true, nor does the guidance require individuals to demonstrate that the workplace is unsafe or allow the employer to respond to these allegations. Your guidance is not implementable in any meaningful sense, and is, therefore, counterproductive.

We are also concerned that the retroactivity of these expanded PUA eligibility parameters will be unworkable for states, as it will be a significant departure from the current regime where states are allowed to enforce their own return-to-work requirements. The retroactivity required by your flawed guidance will create enormous administrative burdens on states already struggling to keep up with a host of fresh federal programs and rules. To be clear, any financial assistance that DOL is willing to provide to state workforce agencies to modify their programs will not make the implementation of this guidance any more workable given the timeline.

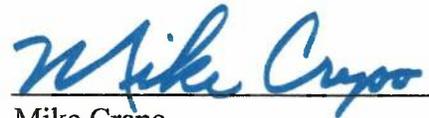
In light of these concerns, we ask that you rescind your recent guidance and provide a briefing to our staff and be willing to work toward mutually agreeable improvements to the integrity of the PUA program. Your guidance works against deserving unemployment-compensation claimants by serving to saddle state workforce agencies with unworkable obstacles.

Please respond to this inquiry by March 29, 2021, to set up an initial briefing.

Sincerely,



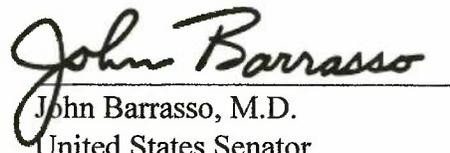
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Mike Crapo
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Tim Scott
United States Senator



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United States Senator



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