

United States Senate

WASHINGTON, DC 20510

January 20, 2021

President Joseph R. Biden, Jr.
The White House
1600 Pennsylvania Avenue NW
Washington, DC 20500

Dear President Biden,

As your administration balances fighting the COVID-19 coronavirus with building our economy back better at the same time, we are reaching out on behalf of Nevadans and the millions of workers across America who have lost jobs as businesses slowed operations or closed to stop the spread of COVID-19. Infections are surging again to record highs, making it unsafe for many businesses to operate. Record unemployment in states like Nevada continues. As production capacity and supply chains may limit the widespread distribution of the vaccine well into the summer, the economic impact on workers in our state may persist for some time.

Over 10 million Americans remain out of work, and few industries are as hard hit as the travel, hospitality, and entertainment industries that are vital to our state's economy. Nationwide, 3.9 million leisure and hospitality jobs have disappeared since February of last year. Another 498,000 hospitality jobs were lost in the last month of 2020 alone. Unemployment is particularly acute for Black Americans at 9.9 percent, and it increased for Hispanic Americans in December to 9.3 percent.¹ To date, Nevada's unemployment rate stands at 10.1² percent, nearly twice the national rate and tied for second highest in the nation.³ The Las Vegas metro area is currently experiencing the highest unemployment rate of any metro area in the nation at 11.5 percent.⁴ Unemployment claims increased⁵ in December, with 142,000⁶ Nevadans exhausting their benefits before Congress extended federal unemployment assistance through March 14, 2021. As

¹ U.S. Department of Labor, Bureau of Labor Statistics, "the Employment Situation – December 2020," available at <https://www.bls.gov/news.release/pdf/empst.pdf>

² Nevada Department of Employment, Training, and Rehabilitation, "Nevada Labor Market Information," available at <http://nevadaworkforce.com/>

³ U.S. Department of Labor, Bureau of Labor Statistics, "Unemployment Rates for States," available at <https://www.bls.gov/web/laus/laumstrk.htm>

⁴ U.S. Department of Labor, Bureau of Labor Statistics, "Unemployment Rates for Large Metropolitan Areas," available at <https://www.bls.gov/web/metro/laulrgma.htm>

⁵ Department of Employment, Training, and Rehabilitation, "DETR update on extensions to unemployment programs – January 7, 2021," available at https://cms.detr.nv.gov/Content/Media/Ext_Fed_%20Prog_%20final%20pr.pdf

⁶ Nevada Office of the Governor, "12.13 Governor's Remarks", available at https://gov.nv.gov/uploadedFiles/govnewnv.gov/Content/News/PR/20_attachments/2020-12-13_GOV_REMARKS_final.pdf.

you stated on January 9, 2020, “the jobs report is a pandemic report,” underscoring the need for relief for working families and business to extend for the duration of this crisis.⁷

The CARES Act created a critical lifeline through expanded unemployment benefits and the creation of Pandemic Unemployment Assistance (PUA) to ensure that workers not eligible for traditional unemployment benefits could receive support. We joined our colleagues in voting to extend these crucial programs through March of 2021 because relief is vital for as long as the pandemic threatens working families’ health and economic well-being. However, simply extending benefits is not enough. As we look to provide additional relief, we have an opportunity to adopt systemic changes to ensure that state unemployment agencies can respond to the heightened demand for assistance and prepare for future economic downturns.

On August 6, 2020, Nevada Governor Steve Sisolak ordered⁸ the creation of a strike force led by former Speaker of the Nevada Assembly, Barbara Buckley, to oversee and assist Nevada’s Department of Employment, Training, and Rehabilitation (DETR) with the backlog of unemployment applications and appeals. Governor Sisolak also charged the strike force with identifying solutions to ensure timely response, assessment, coverage, and resolution of disputes.

After consultation with the Strike Force and DETR Director Elisa Cafferata, we submit the following recommendations to ensure efficient, timely, and streamlined access to unemployment insurance benefits and CARES Act programs:

1. **Extend unemployment benefits for as long as necessary.** We are pleased that the FDA approved multiple vaccines with promising results on an emergency basis to help defeat the COVID-19 coronavirus. It will take time, however, to distribute the vaccines to enough people to stop the spread of the virus and allow economies such as Nevada’s to return to full employment. While we proudly voted to extend unemployment assistance until March of 2021, it is vital that Congress extend, with your support, the CARES Act unemployment programs as long as necessary to cover workers in particularly hard-hit industries and states with relatively high record unemployment rates, like Nevada.
2. **Allow unemployed individuals with a hybrid income history that includes a combination of wage and self-employment income to claim PUA** rather than regular state unemployment compensation, if their self-employment income is greater and clearly the principal source of their overall income. Currently, if individuals have earned enough income from wages to qualify for regular unemployment benefits, they do not qualify for PUA even if their self-employment income is substantially more than what they earned as a wage employee. Increasingly, as the gig economy expanded, many individuals worked short-term or part-time wage jobs to supplement a substantial self-employment income. The program’s current design shortchanges these earners. Through August 2020, at least

⁷ President-Elect Joe Biden, “The Jobs Report is a Pandemic Report,” Associated Press, available at <https://www.nytimes.com/video/us/politics/100000007542794/biden-economy-pandemic.html>

⁸ Nevada Office of the Governor, “Gov. Sisolak signs unemployment insurance legislation, announces concerted efforts to address backlog of claims”, available at https://gov.nv.gov/News/Press/2020/Gov__Sisolak_signs_unemployment_insurance_legislation,_announces_concerted_efforts_to_address_backlog_of_claims/.

42,886⁹ applicants for PUA in Nevada also had unemployment eligibility that made them ineligible for PUA. Congress intended PUA to replace income for workers who cannot work through no fault of their own and who ordinarily are *not* eligible for traditional unemployment insurance. Congress did not intend to leave a gap that denies income-replacing benefits to a category of workers only *barely* eligible for traditional unemployment insurance. The most recent COVID relief package signed into law in December 2020 added an additional \$100 benefit for these workers. While we supported the minor fix, it would be more equitable and administratively feasible to give state unemployment agencies discretion to allow applicants to select a temporary unemployment program.

3. **Eliminate quarterly change determination requirement for eligibility.** Currently, states must determine at the beginning of each quarter if an individual receiving PUA qualifies for traditional unemployment insurance. If individuals can establish a new benefit, they are no longer eligible for PUA. Additionally, if a state uses an alternate base period, that must be used for PUA determinations. This change creates chaos, additional work, and further delay in benefits. In Nevada, if a claimant is ineligible under the standard base period (the first four of the last five quarters), the alternate base period¹⁰ allows wages paid in the most recently completed calendar quarter to be the basis for determining the entitlement amount. Again, this shortchanges workers who lost work in the last year due to COVID. Eligibility for traditional unemployment benefits in 2021 will be determined using base periods beginning after widespread shutdowns took effect last year, which means that workers who need aid the most will become ineligible or suffer a reduced benefit. This makes little sense for a temporary program intended to help independent contractors, and it penalizes workers and businesses who made responsible decisions. This requirement should be eliminated for PUA benefits.
4. **Waive requirements under certain circumstances for individuals who received overpayments of benefits.** Many states overpaid individuals in error and then required those workers to repay the state unemployment agency or see future unemployment benefits reduced. Unexpected repayments or reduced benefits worsen the financial burden on the unemployed. State agencies previously had no discretion to waive recovery of overpayments under PUA. We believe that under certain circumstances states should have the discretion to waive overpayments for temporary CARES Act unemployment programs, when in their judgment the overpayment was solely the result of agency error and not fraud or misrepresentation by the recipient. While Congress included a fix in recent bipartisan legislation, this targeted waiver must continue throughout any future extensions related to the pandemic. We hope the Biden-Harris administration will support this policy.

⁹ Barbara Buckley, Chair of Unemployment Rapid Response Strike Force, December 16, 2020.

¹⁰ Department of Employment, Training, and Rehabilitation, “What’s New in UI Tax”, available at http://ui.nv.gov/ESSHTML/whats_new.htm#:~:text=Alternate%20Base%20Period%3A&text=A%20standard%20base%20period%20for,last%20five%20completed%20calendar%20quarters.

5. **Extend interest payment waivers on federal advances to states to pay unemployment benefits.** States need an extension of Section 4103 of the Families First Coronavirus Act, which provided interest-free loans to help pay unemployment insurance benefits. Given the continued economic stress and demands on states, Congress extended the moratorium in the most recent COVID package signed into law on December 27, 2020. We hope your Administration will support additional extensions as necessary until the economic crisis acutely affecting our state is resolved.
6. **Extend full federal funding of extended benefits throughout the crisis.** The Administration should work with Congress to extend full federal financing for extended unemployment benefits through the end of this crisis. While Congress extended full federal funding through March 2021, particularly hard hit states like Nevada likely will need the additional support for some time.

We urge you to support these policies to provide desperately needed relief to individuals and families affected most by the economic fallout of this pandemic, as well as provide state unemployment agencies the means and resources to meet the unprecedented need. It is vital to extend temporary unemployment benefits so that working families can weather this pandemic and the country can emerge stronger and more resilient. We hope that the federal government adopts extensions and other policies swiftly to allow state agencies time to implement changes and prevent further delays. We look forward to working with the incoming Administration to get Americans the relief they need to provide for their families and ensure a swift and safe recovery.

Sincerely,



Catherine Cortez Masto
United States Senator



Jacky Rosen
United States Senator