



April 14, 2020

Request for an Amendment to the CARES Act to Clarify Application of PUA to Freelance Workers and Independent Contractors

The Authors Guild and the organizations below applaud Congress for recognizing the urgent need for financial assistance of independent contractors and freelancers under the CARES ACT provisions for **Pandemic Unemployment Assistance (PUA)**. As you know general unemployment insurance is not available to self-employed workers, but they have been hit as hard as other workers by the pandemic, and the PUA insurance is potentially a great relief for those workers. However, the PUA eligibility criteria in the CARES Act appear to exclude many freelancers, including writers, visual artists, songwriters, and other creative workers, who normally work from home or in the field, even though their incomes have been decimated due to lack of work resulting from COVID-19's impact on their employers and clients.

Defining the Problem

To be eligible for PUA under Section 2102 of the CARES Act, an individual must self-certify either that (i) the individual is prohibited from working because of one or more of the "COVID-19-related" reasons listed in Section 2102(a)(3)(A)(ii)(I);¹ **or** (ii) the individual is self-employed,

¹ Section 2102(a)(3)(A)(ii)(I) lists the following COVID-19 factors that an individual can rely on to be eligible for PUA:

(aa) [T]he 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

an independent contractor, or otherwise ineligible to receive regulation unemployment compensation **and** the individual lacks the ability to telework with pay. Neither provision clearly applies to freelance writers, songwriters, composers, lyricists, graphic artists, illustrators, and photographers and other freelance creators who can theoretically telework and who may not be able to show that they have been affected by one of the eleven statutory COVID-19 reasons, including inability to reach their place of employment, but who are nonetheless experiencing hardship and reduced income due to the economic impact on their clients and fewer opportunities being available. In other words, the problem isn't that these freelance writers, graphic artists, photographers and songwriters cannot telework or get to their "place" of employment or that their places of employment are closed: the problem is that the previously available work isn't there. Writers, songwriters and graphic artists generally work from home or in the field and photographers and visual journalists work in the field.

Many publications, for instance, are no longer hiring many freelance writers, illustrators, editorial cartoonists and photographers either because they are closed, have furloughed or laid off their own staff, or they are limiting their coverage mainly to COVID-19 related matters. Because so many aspects of normal life are shut down now, the subjects that many freelancers write, photograph, illustrate and record are not being currently covered. For instance, there are no sporting, performing or visual arts events being held to cover, and restaurants have closed in many areas of the country. Sports writers and photographers, along with theater, art, and restaurant critics are highly under-employed right now.

This comes on the heels of a dramatic decline in news media revenue over the last decade that caused many publications to lay off staff writers, graphic artists and photographers and use freelancers instead. As a result, many journalists, including high-profile figures, no longer work at the publications' offices, but work from home or in the field, and do not have the protections of employment. As a result of the COVID-19 crisis, many are not receiving enough work to sustain their livelihoods. According to a recent New York Times article, since the start of the COVID-19 crisis, journalism has been hit hard by a drastic decrease in ad revenue, and as a result as many as "28,000 workers at news companies in the United States have been laid off, been furloughed, or had their pay reduced" with many publications that rely on advertising revenues going out of business.

PUA insurance does not clearly cover workers in this situation – unless they meet the statute's other criteria. Section 2102(a)(3)(A)(ii)(I)(kk) of the CARES Act permits the Secretary for unemployment assistance in each state to establish additional criteria, but it is not clear that the states can, nor are they required to, provide assistance to freelancers who normally work from home or in the field but have lost work due to COVID-19.

Proposed Solution – Clarifying language in Phase 4 COVID-19 bill

The Authors Guild, together with other organizations listed below representing hundreds of thousands of workers, recommend that Congress include in the Phase 4 bill language that

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

expressly applies to freelance workers who cannot find work as a result of COVID-19 because their clients are no longer providing them work. This would apply to freelance writers, songwriters, composers, lyricists, graphic artists, illustrators, photographers and other 1099 workers who work from home, out in the field or other various locations, outside of the employers' place of business. The worker would, of course, have to certify that the loss of work is due to COVID-19.

This clarification could be achieved by amending Section 2102(a)(3)(A)(ii)(I) of the CARES Act, listing the "COVID-19-related" reasons, by changing Section 2102(a)(3)(A)(ii)(I)(kk) to (ll) and replacing it with reason (kk) as follows:

"The individual has a history of verifiable income as a freelancer or independent contractor prior to COVID-19 and has lost verifiable income from such work as a result of COVID-19."

In the alternative, we ask that you request the Secretary of Labor to create guidelines that clearly make these workers eligible for PUA if they have lost income due to the crisis.

Yours truly,

The Authors Guild

The Dramatists Guild of America

American Photographic Artists

American Society of Journalists and Authors

American Society of Media Photographers

Association of Health Care Journalists

Garden Communicators International

Graphic Artists Guild

Horror Writers Association

National Association of Science Writers

National Press Photographers Association

National Writers Union

North American Nature Photography Association

Novelists, Inc.

Professional Photographers of America

Science Fiction and Fantasy Writers of America

Society of American Travel Writers

Society of Composers & Lyricists
Songwriters Guild of America