May 21, 2020

The Honorable Eugene Scalia
Secretary of Labor
U.S. Department of Labor
200 Constitution Ave. NW
Washington, DC 20210

RE: Request to Amend DOL Unemployment Insurance Program Letter (UIPL) No. 18-20

Dear Secretary Scalia:

The undersigned charitable nonprofit organizations write to share concerns regarding Unemployment Insurance Program Letter (UIPL) No. 18-20, which provides instructions to states as they provide unemployment insurance (UI) relief to certain nonprofit organizations. Because this guidance disrupts the charitable nonprofit sector's ability to provide critical services to those in greatest need during the COVID-19 pandemic, we urge the Department to withdraw this guidance, and to issue clarifying guidance that encourages state unemployment systems to exercise flexibility in relation to payments from self-insured organizations, particularly by providing self-insured nonprofits a credit for the 50 percent federal unemployment relief as opposed to a reimbursement.

Anticipating both the short- and long-term effect of the COVID-19 crisis on the American workforce, Congress included provisions in the CARES Act to reduce the burden of an unprecedented number of UI claims on employers. Specifically, the CARES Act waives many restrictions, extends and expands benefits, and holds many employers harmless – all because Congress recognized that no individuals or employers should be penalized for suffering the economic effects of COVID-19. Congress explicitly recognized in Section 2103 of the CARES Act the important role that many charitable nonprofit organizations are playing as frontline responders during the COVID-19 pandemic, and that self-insured nonprofit employers are experiencing the same economic impact faced by other industries during this time.

One month following enactment of the CARES Act, DOL issued UIPL No. 18-20, which directs nonprofit entities entitled to a UI reimbursement equal to one-half of the amount of compensation paid by the state to their employees, to immediately cover 100 percent of the cost of COVID-19 related unemployment benefits while waiting for the federal reimbursement to come through the Federal Unemployment Account. As a result of the guidance, self-insured nonprofits must pay hundreds of thousands of dollars upfront at a time when financial resources are constrained due to declines in charitable giving, delays in contract payments, cancelations of fundraising events, closures of businesses, and decreases in other sources of revenue.

This guidance denies the flexibility that states and nonprofits need and imposes an undue burden and hardship on self-insured nonprofits. For nonprofits already suffering financial distress due to this economic crisis, the cost caused by this guidance may be too much to bear and could even contribute to bankruptcies. During an unprecedented time when more people are relying on nonprofits for basic needs and services, nonprofits themselves are facing a skyrocketing number of unforeseen unemployment claims. Essentially, the DOL guidance asks self-insured entities to choose between funding current operations or covering one hundred percent of UI payments for every employee furloughed or laid off due to COVID-19.

This is not what Congress intended. Indeed, in CARES Act Section 2103(a), Congress instructed the Labor Department to "issue clarifying guidance to allow States to interpret their State unemployment compensation laws in a manner that would provide ***maximum flexibility to reimbursing employers*** as it relates to timely payment and assessment of penalties and interest pursuant to such State laws." (emphasis added) The guidance is the opposite of congressionally instructed flexibility.

The House-passed HEROES Act includes a technical correction to the CARES Act that corrects this issue and essentially reverses the substance of UIPL No. 18-20. While this specific provision reportedly has broad, bipartisan support, it will likely be several weeks or even months before both chambers reach agreement and pass legislation, of which this is only one part. Yet states are sending bills to nonprofits based on the DOL guidance and payments are due now.

The undersigned nonprofit organizations ask the Department to withdraw UIPL No. 18-20 and replace it with guidance that provides that: (a) states shall receive the federal funding provided in Section 2103 of the CARES Act when they reduce by 50 percent the amounts owed to state unemployment trust funds by reimbursing nonprofits or governmental entities for the costs of COVID-19 related unemployment claims; and (b) states may receive funding under Section 2103 of the CARES Act to cover 50 percent of the costs of COVID-19 related unemployment claims that have been waived or not charged to the accounts of reimbursing nonprofits or governmental agencies pursuant to state legislative or executive action. This will allow nonprofits to devote the funds they have to fulfilling their missions and providing other critical services in this period of extreme crisis.

Thank you for considering our request.

ACCSES
Alliance for Strong Families and Communities
American Cancer Society Cancer Action Network
American Alliance of Museums
American Heart Association
Americans for the Arts
APSE
American Red Cross
Boys & Girls Clubs of America
Catholic Charities USA
Council on Foundations
Easterseals
Habitat for Humanity International
Girl Scouts of the USA
Girls Inc.
Goodwill Industries International, Inc.
Jewish Federations of North America
Leadership 18
League of American Orchestras
Leukemia & Lymphoma Society
Lutheran Services in America
Mental Health America
National Community Action Partnership
National Council of Nonprofits
National Human Services Assembly
The Arc
United Way Worldwide
Volunteers of America
YMCA of the USA
Youth Advocate Programs (YAP), Inc.
YWCA USA

Cc: Assistant Secretary John Pallasch
Administrator Gay Gilbert