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September 22, 2021

Mr. Jim Garner
Administrator, Office of Unemployment Insurance
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

Dear Mr. Garner,

I write to request your assistance in reconsideration of the Department's ("US-DOL's") interpretation of amended Section 1338 of Title 21 of the Vermont Statutes Annotated regarding certain benefits to unemployed Vermonters (in the amount of \$25). In its determination dated September 1, 2021 US-DOL views the "supplemental benefit" referred to in Vermont law as "additional compensation" as defined in Section 205(4) of the Federal-State Extended Unemployment Compensation Act of 1970. However, it is increasingly clear that the *legislative intent* of the law is essentially to provide a regular *adjusted* benefit to *all* qualified beneficiaries of the unemployment compensation program.

The US-DOL relied on interpretation of the new Vermont law by Vermont Department of Labor (VDOL) staff in making its determination. However, US-DOL should be guided by legislative intent rather than the VDOL's interpretation of this law. The job of the Executive branch is to faithfully execute the law; it is the job of the Courts to interpret the laws. We ask for your assistance in rendering a decision that will assist the VDOL in executing the law in a manner consistent with legislative intent and in conformity with federal law.

As your letter points out, federal law tells us that "additional" compensation means "compensation payable to exhaustees by reason of conditions of high unemployment or by reason of other special factors." And, in fact, US-DOL's determination turns on that definition. Not referenced, however, is Section 205(2) – or "regular compensation", which means "compensation *payable to an individual* under *any* State unemployment compensation law..."

Because the funds at issue here are payable to *any* qualified individual under the particular provision of the State's unemployment compensation law the more accurate contextual reading and meaning of the law may, in fact, be that lawmakers intended for this to be "regular" compensation to all qualified beneficiaries.

While the legislature used the term “supplemental” to describe its payment to all UC beneficiaries, the use of the term “supplemental” is incidental to the purpose of the funds which are to be essentially an adjusted rate payment available to all qualified beneficiaries. It is certainly within the power of the legislature to adjust regular benefit amounts to recipients at any time, so the use of the term “supplemental” is incidental. What lawmakers devised was simply an “adjusted regular compensation amount” – perhaps a term that might have been used to avoid the confusion that has apparently arisen over what should have been an uncontroversial provision designed to help Vermonters in need.

I understand there may be additional considerations US-DOL would be required to consider if the funds are deemed to be “regular compensation.” And, I do not propose to simply alleviate nonconformity in one area by creating potential nonconformity in another. The US-DOL no doubt has technical experts that could assist the State of Vermont in better understanding its options, preserving the integrity of the program, and helping Vermonters in need. If reconsideration in this light solves the problem, we welcome it. If, on the other hand, there are waivers or stays of administrative process that would allow the State to deploy the funds without risk of penalty while lawmakers work with the Vermont Department of Labor and US-DOL toward clarification and resolution we welcome your intervention and assistance in that regard.

I urge the Department to exercise its discretion and common sense and join Vermont in getting this benefit where it is intended to go as quickly as possible: to ordinary Vermonters suffering severe economic dislocation in the midst of an international pandemic.

In consideration of this unique circumstance, I invite you to meet with me at your convenience, and/or to respectfully reconsider US-DOL’s determination in hopes of an administrative remedy that works for both the State and our partners in the federal government.

I hope this is helpful and my team is at your service should you have any questions or concerns. Thank you for your time and consideration.

Sincerely,



Thomas J. Donovan, Jr.
Attorney General

cc: Sen. Patrick Leahy
Sen. Bernard Sanders
Rep. Peter Welch
Sen. Michael Sirotkin, Chair, Senate Economic Development, Housing and General Affairs Committee
Rep. Michael Marcotte, Chair, House Commerce Committee
Michael Harrington, Commissioner, Vermont Department of Labor