

# UNEMPLOYMENT INSURANCE REFORM TASK FORCE

## Minutes of the 3rd Meeting of the 2021 Interim

August 30, 2021

### Call to Order and Roll Call

The 3rd meeting of the Unemployment Insurance Reform Task Force was held on Monday, August 30, 2021, at 1:00 PM, in Room 131 of the Capitol Annex. Representative Russell Webber, Chair, called the meeting to order, and the secretary called the roll.

Present were:

Members: Senator Michael J. Nemes, Co-Chair; Representative Russell Webber, Co-Chair; Senators Ralph Alvarado, Brandon J. Storm, Mike Wilson, and David Yates; Representatives Josh Branscum, McKenzie Cantrell, Phillip Pratt, and Scott Sharp.

Guests: Mike Harmon, Kentucky Auditor of Public Accounts; Sara Beth Gregory, Chief of Staff, Office of the Auditor of Public Accounts; Jon Grate, General Counsel, Office of the Auditor of Public Accounts; and Joe Horvath, Senior Fellow, Foundation for Government Accountability.

LRC Staff: Andrew Manno, Drew Baldwin, Kirk Smith, Sasche Allen, and Helen McArthur.

### Approval of Minutes

A motion to approve the minutes of the July 27, 2021, meeting was made by Senator Alvarado, seconded by Senator Nemes, and approved by voice vote.

### Unemployment Insurance Audit

Per KRS 43.060, the Auditor of Public Accounts (APA) does an annual audit of the Commonwealth of Kentucky's Annual Comprehensive Financial Report (ACFR) in accordance with generally accepted accounting principles. In December 2020, the APA issued a Qualified Audit Opinion on the Unemployment Insurance Fund because of the internal control environment and an unknown amount owed to those who filed for unemployment insurance benefits during FY 2020. The APA conducts the Statewide Single Audit of Kentucky (SSWAK) to meet the Federal Single Audit Act requirement that applies to all state and local governments expending federal awards of \$750,000 or more. Volume I of the SSWAK, which was released in February 2021, reports the financial and internal control findings from the ACFR audit. Out of the 25 findings for FY 2020, more than half involved the Office of Unemployment Insurance and the Unemployment Insurance Fund. Volume II of the SSWAK, which was released in April 2021, reports on

compliance with federal requirements for federal awards. Out of 21 findings for FY 2020, eight of those involved the Office of Unemployment Insurance and the Unemployment Insurance Fund and identified \$670.7 million in questioned costs, including the \$655 million in unemployment insurance benefits paid during FY 2020.

The COVID-19 pandemic presented major challenges for unemployment insurance systems across the country. As a result three federal unemployment insurance programs were created by the CARES Act that included Pandemic Unemployment Assistance (PUA), Pandemic Emergency Unemployment Compensation (PEUC), and Federal Pandemic Unemployment Compensation (FPUC). PUA funded unemployment benefits for claimants who historically have not been eligible for traditional unemployment insurance. In order to pay claims as quickly as possible, the Office of Unemployment Insurance determined that anyone who applied for PUA benefits and was deemed eligible, would receive the minimum PUA benefit. In addition, PUA claims were automatically backdated by the Office of Unemployment Insurance to March 1, 2020, which resulted in claimants being paid benefits for weeks when they were potentially still employed. PEUC provided 13 weeks of additional unemployment benefits to eligible individuals whose traditional unemployment benefits had been exhausted. FPUC provided an additional \$600 of benefits per week to all eligible claimants receiving at least \$1 of traditional unemployment compensation, PUA, or PEUC.

The Office of Unemployment Insurance implemented an auto pay policy in an attempt to distribute benefit payments to unemployed individuals more quickly. According to Auditor Mike Harmon, this decision may have led to federal violations. The implementation of the auto pay feature eliminated the control requiring claimants report the weekly wage information needed to determine whether they were actually eligible for benefits. Long time employees of the Office of Unemployment Insurance and Commonwealth Office of Technology staff expressed concerns about the policy. Auto pay was in effect two weeks for traditional unemployment insurance and eight weeks for PUA. During this time, \$17.8 million was paid in traditional unemployment benefits, \$129.9 million was paid in PUA benefits, and \$507.7 million was paid in FPUC benefits. While not all of these payments were improper, they were all paid in an environment conducive to improper or fraudulent payments which may have led to some full-time state employees receiving unemployment insurance payments.

Auditors selected a sample of 37 full-time state employees who filed for and received unemployment insurance benefits. Of the 37 state employees, 16 were found to have been paid traditional unemployment insurance and FPUC for loss of part-time jobs despite still being employed full time by the state. There was a total net overpayment of \$116,978 in the sample. Auditors also found that 10 employees within the Office of Unemployment Insurance, accessed their own unemployment insurance claims within the system, which violated Office of Unemployment Insurance policies. It could not be determined whether the employees had lifted stops on their own accounts, but, given the

potential for wrongdoing, this finding was referred to the office of Attorney General and the Executive Branch Ethics Commission. The auditors also reviewed a random sample of 99 claim weeks and found that incorrect amounts were posted to employer accounts and benefits were not calculated correctly during 31 of the sampled claim weeks. These errors cumulatively amounted to \$17,830 in overpayments and \$1,926 in underpayments. In addition, \$18,867 was overpaid because the Office of Unemployment Insurance backdated PUA and FPUC claims to March 1, 2020.

Federally mandated and state required monthly system security checks were not performed, and the unemployment insurance mainframe performed various tasks that were undocumented. System updates and software changes were pushed through with improper and missing documentation, lack of testing, and implementation in contravention of the Office of Unemployment Insurance's policies. The agency also failed to report data breaches as required by Kentucky Revised Statutes. Treasury Offset Program (TOP) collections were also improperly suspended on April 6, 2020, and had not resumed as of February 17, 2021. States are required to use TOP to collect unemployment compensation debts that remain uncollected one year after becoming due. In May 2020 and February 2021, the U.S. Department of Labor notified the Office of Unemployment Insurance that TOP collections could not be suspended. The Office of Unemployment Insurance also failed to provide ACFR estimates for accounts payable in a timely manner. Ultimately, those estimates ranged from \$88.9 million to \$2.08 billion. Auditors also noted issues with the Office of Unemployment Insurance's backlog of unemployment insurance claims and an excessive amount of unread emails from claimants.

The APA issued an adverse opinion on Kentucky's compliance with federal unemployment insurance program requirements based on the findings detailed in SSWAK, Volume II. An adverse opinion is the worst opinion that can be issued following an audit. The Office of Unemployment Insurance findings were significant enough to indicate the Commonwealth did not materially comply with the federal requirements for the unemployment insurance program. All SSWAK findings are uploaded to a clearinghouse that reports the information to federal oversight agencies. The FY 2021 ended on June 30, 2021 and the APA will release SSWAK reports for FY 2021 in early 2022.

Answering questions from Representative Webber, Auditor Harmon reiterated that long time Office of Unemployment Insurance employees and Commonwealth Office of Technology staff advised leadership within the Office of Unemployment Insurance at the time not to use the auto pay function that eliminated the control requiring claimants to report the weekly wage information needed to determine whether they were actually eligible for benefits. Also, employees accessed their own accounts even though staff are trained not to do so. If stops were removed from those accounts, there was no way for the APA to determine who lifted those stops.

Replying to Senator Nemes, Sara Beth Gregory, Chief of Staff for the Office of the Auditor of Public Accounts, stated the APA's audit did not determine whether specific codes, only available to leadership within the Office of Unemployment Insurance, were needed to lift stops in the unemployment insurance system.

Addressing a question from Representative Pratt, Auditor Harmon said that some issues could have been avoided if federal regulations and the Office of Unemployment Insurance's policies had been followed

Responding to questions from Representative Sharp, Ms. Gregory confirmed that the auditors found that stops had been removed in the unemployment system but could not view who actually lifted those stops. In response to a follow up question, Auditor Harmon said he could not confirm if warnings concerning the auto pay feature were given by nonpolitically appointed staff to politically appointed staff of the Office of Unemployment Insurance.

Answering questions from Representative Cantrell, Ms. Gregory explained that it is alarming if you extrapolate the potential for miscalculation to the full scope of how many claims were processed considering the auditors found issues with 31 out of the 99 claim weeks that were sampled for analysis. The goal of the APA was to identify issues with processing within the Office of Unemployment Insurance, and not to determine the total of any miscalculations.

Responding to Senator Alvarado, Auditor Harmon indicated he was aware of two data breaches that were not reported in a timely manner. Ms. Gregory added that the Office of Unemployment Insurance was under the Education and Workforce Development Cabinet in FY 2020, when data breaches occurred.

### **Constituent Testimony**

Representative Sharp and one of his constituents, Jeremy Boyles, testified regarding Mr. Boyles's difficulties receiving unemployment insurance benefits and obtaining an in-person appointment with the Office of Unemployment Insurance that is in close proximity to his residence. Mr. Boyles has not received any benefits since initially filing an unemployment insurance claim in January 2021, and traveling to Ashland for an in person appointment.

Senator Nemes informed Representative Sharp and Mr. Boyles that the Office of Unemployment Insurance is now offering a telephone appointment option for unemployment insurance claimants who are unable to travel to locations that have available in person appointments.

### **Issues Related to Unemployment Insurance Reform**

According to Joe Horvath, a Senior Fellow with the Foundation for Government Accountability (FGA), unemployment insurance is intended to be assistance for laid off workers, intentionally temporary and limited, modeled after insurance, and paid for by payroll taxes on employers. Unemployment insurance is not a long term full wage replacement, workforce development, a form of disability, or paid for by employees. FGA has compared the Commonwealth to Florida, North Carolina, and Georgia when considering necessary changes to the unemployment insurance system. Those states recreated their unemployment insurance systems to be more competitive after the Recession of 2008. Mr. Horvath discussed several policies that have been successful in these states, including indexing. An indexing policy would tie the maximum number of unemployment insurance benefit weeks to the state unemployment rate. Florida passed legislation in 2012 implementing an indexing policy which cut the maximum number of benefit weeks to 9.2, decreased program costs from \$333 million to \$80 million, reduced employer unemployment insurance taxes to \$1.50 per \$1000, and increased the state's trust fund solvency from -\$1.7 billion to \$3.9 billion. According to FGA's projections, Kentucky could increase its unemployment insurance trust fund by \$567 million over three years and decrease the average unemployment insurance tax by 17.3 percent over five years if indexing legislation were to be adopted. Other policies that could possibly help repair the Commonwealth's unemployment insurance system that have been enacted in other states include more rigorous work search requirements and a job referral program.

Responding to remarks made by Representative Pratt, Mr. Horvath explained that once aid such as CARES Act and American Rescue Plan Act funds are removed, appropriate policies should be put in place and proper incentives should be aligned to prioritize reemployment of individuals instead of only providing temporary monetary measures.

Answering a question from Representative Webber, Mr. Horvath stated the business community strongly supported the indexing policy in Florida but was uncertain whether it was part of larger bipartisan reform.

There being no further business before the committee, the meeting adjourned at 2:31 p.m.