

## The CARES Act – Problems and Solutions with Regard to the Music Industry

The Coronavirus Aid, Relief, and Economic Security (“CARES”) Act and the subsequent “Paycheck Protection Program and Health Care Enhancement Act” were sincerely welcomed programs, particularly their essential coverage of independent contractors, sole proprietors, and other self-employed individuals who make up so much of the entertainment workforce.

For those in the creative field to survive – and recover – after this crisis, they must be able to access the full support intended by Congress. Below are a few ways that the CARES Act has fallen short in assisting those most in need, followed by some suggested solutions.

### Pandemic Unemployment Assistance (PUA)

#### Mixed Income

##### Problem

The Pandemic Unemployment Assistance (PUA) system operates in this way:

- Workers with just W-2 employee wages fall under the state Unemployment Insurance (UI) program and are ineligible for PUA.
- Workers with just 1099 independent contractor (or otherwise self-employed) income do not qualify for state UI coverage and are thus covered by PUA.

However:

- Many in the creative industries work from project to project and gig to gig, not only in multiple jobs but in various capacities. As a result, creators often find themselves working as both employees receiving W-2 wages and as independent contractors (or otherwise self-employed) receiving 1099 income.
- In almost all cases in every state, a minimum amount of W-2 income disqualifies a self-employed individual for PUA and significantly lowers the amount of assistance they receive. For example:

Type of worker	Historical W-2 wages	Historical 1099 income	Total	Eligibility	Benefit Amount
W-2 only	\$80,000	--	\$80,000	UI	\$450
1099 only	--	\$80,000	\$80,000	PUA	\$450
W-2/1099 hybrid	\$5,000	\$75,000	\$80,000	UI	\$52

Each of these three individuals earns \$80,000 annually, yet the hybrid worker receives significantly less in unemployment benefits.

##### Solution

- PUA must be updated to recognize these different income streams and allow individuals to aggregate W-2 wages and 1099 income for a full accounting of their annual income. At the very least, individuals should not be locked out of the PUA system due to a minority of income from W-2 wages.
- See a petition to address this issue at <https://www.change.org/p/unemployment-relief-for-independent-workers-with-mixed-income-types>.

## Multiple states

### Problem

Workers in the creative sector often travel for their work – including for performances, showings, presentations, readings, etc., resulting in income received in multiple states. There is a lack of clear federal guidance for workers who have earned freelance income across multiple states, resulting in conflicting policies (or no policies), denials, and confusion. In addition, in some cases, submission of out-of-state W-2s has led to outright rejection of claims.

### Solution

- The federal government must provide clear guidance on how workers receiving income in multiple states can file to include all income, as well as in which states the worker must file. The process should be simplified as much as possible, requiring filings in the fewest number of states, which means allowing out of state income to be included in filings.

## Documentation

### Problem

To apply for PUA, certain documentation is needed. This may prove to be a problem for workers who haven't earned enough for a 1099 (*e.g.*, performers doing one-night gigs on a multi-state tour) or who operate on a cash-income basis and may not have any tax documentation.

### Solution

- The federal government must recognize that music industry work is not always accompanied by the standard tax forms and must accommodate different ways to report income.

## Various sources of income

### Problem

Unemployment benefits provided under the CARES Act for self-employed songwriters and composers may not take into account the anticipated, significant decrease in performance royalties over the next several quarters.

### Solution

- PUA guidance must ensure that anticipated royalties are included in lost income for determination of assistance amount.

## Paycheck Protection Program (PPP)

### Documentation

#### Problem

The Paycheck Protection Program (PPP) requires a 2019 Schedule C to determine eligibility and loan size, even though the IRS delayed the 2019 tax year filing deadline to July 15, 2020. This puts a burden on smaller, independent creators who must now scramble to secure professional accounting services so they can supply a 2019 Schedule C.

#### Solution

- The SBA should allow the use of the 2018 Schedule C when a 2019 form is not readily available. 1099s-MISC should also be considered as primary documentation for calculating loans, since self-employed small businesses already have these tax forms in possession.

### **Net Income**

#### Problem

Per SBA guidelines, loan sizing for self-employed individuals are based solely on net business income as reflected on a Schedule C (versus the sum total of any compensation), which does not consider overhead costs such as health insurance premiums, mortgage, studio rental, equipment costs, etc.

#### Solution

- The SBA should calculate loans consistent with the intent of the CARES Act, which allows for consideration of any compensation to a sole proprietor or independent contractor, including health insurance benefits as an eligible “payroll cost.”

### **Economic Injury Disaster Loan (EIDL) Awards**

#### Problem

EIDL awards are available up to \$10,000. The SBA, however, has implemented the CARES Act Emergency EIDL loans so that they are awarded based on how many employees a small business has, at a rate of \$1000 per employee. This limitation does not reflect the business needs self-employed individuals without employees may have in terms of overhead and other costs, leaving them unfairly penalized.

#### Solutions

- No such limit was imposed in the CARES Act, and it is clear that funds from the EIDL advance were intended for many purposes other than payroll. Any future legislation should make clear that this limitation is contrary to the intent of providing meaningful relief to small businesses of all kinds.