NATIONAL GOVERNORS ASSOCIATION

M E M O R A N D U M

June 1, 2020

To: Governors' Offices
From: National Governors Association
Re: Information and Guidance on Supporting On-demand Workers through the COVID-19 Crisis

This memo provides governors and state officials with an overview of the key issues related to on-demand workers during the COVID-19 crisis. For the purposes of this memo, "on-demand workers" is a broad term meant to include those workers who do not receive a W-2 tax form for some or all of their compensated work, like entrepreneurs and the self-employed. Research compiled by NGA estimates that approximately **three-in-ten** Americans engage in some way with on-demand work, and around **one-in-ten** Americans engage in on-demand work as a primary source of income.[1]

On-demand workers are uniquely vulnerable. They are among those most likely to be exposed to the novel coronavirus, as well as be adversely impacted by the longer-term economic impacts of this crisis. Many on-demand workers are employed in industries at the frontline of the crisis, such as grocery stores, cleaning services, delivery services, and childcare.[2] They also are concentrated in industry sectors that have already seen significant job losses, including professional and business services, education and health services, leisure and hospitality, and construction. These on-demand workers are more likely to be low wage and lack health insurance, among other risk factors. Generally, on-demand workers do not have access to the protections available to many workers with formal employment agreements under federal law.[3]

We expect this crisis to accelerate growth in on-demand work. First, many laid-off workers will turn towards on-demand and less-formal modes of work to make up for lost wages. Many currently engage in on-demand work as a means of 'income-smoothing' and even a means to make ends meet. It is reasonable to expect numbers and proportion of on-demand workers will increase, especially once social distancing restrictions are lifted but businesses forced to shut down during the crisis remain closed.[4] Second, the unique nature of this health crisis has put an increased reliance on virtual services, delivery services, and other roles that are more likely to be held by on-demand workers. Finally, as businesses face economic uncertainty and instability, they may be more likely to fill gaps in their workforce with contract workers rather than hiring new employees to minimize costs and liability.

There are several areas that governors and state officials can consider as they work to respond to COVID-19 and support the on-demand workforce, including:

1. New Federal programs that can support on-demand workers impacted by COVID-19;
2. Implementation of income reporting under Pandemic Unemployment Assistance (PUA); and

[1] For further research, please see https://www.mckinsey.com/featured-insights/employment-and-growth/independent-work-choice-necessity-and-the-gig-economy; https://www.nber.org/papers/w24950; and https://www.bls.gov/news.release/conemp.toc.htm
[2] See Bureau of Labor Statistics data on current job losses, and data on alternative and contingent workers.
[3] Examples of such federal statutes include the Fair Labor Standards Act of 1938, the Civil Rights Act of 1964, the Age Discrimination in Employment Act of 1967, and the Occupational Safety and Health Act of 1970.
[4] See https://institute.jpmorganchase.com/content/dam/jpmc/jpmorgan-chase-and-co/institute/pdf/institute-ope-2018.pdf for an analysis of the financial status of online platform workers, a subset of on-demand workers.

3. Documenting experiences with PUA, and identifying longer-term opportunities to support on-demand workers.

Key Considerations for Governors, State Workforce Agency Leaders, and UI System Administrators

1. New Federal programs that can support on-demand workers whose work is negatively impacted by COVID-19.

Emergency federal legislation in response to COVID-19 is providing temporary benefits to on-demand workers who are not traditionally able to access such benefits, such as unemployment insurance and paid sick and family leave. As states implement these new provisions, it will be important to explore the benefits, costs, and shortcomings of these programs and to examine whether similar, permanent programs might be designed to support on-demand workers in the long-term.

- **Paid Sick & Family Leave:** Under the Family First Coronavirus Response Act (FFCRA) some self-employed workers are eligible for paid sick and family leave via a refundable tax credit equivalent to the leave amount based on their average daily income.
- **Pandemic Unemployment Assistance (PUA):** The Coronavirus, Aid, Relief, and Economic Security (CARES) Act provides 39 weeks of federally-funded benefits that cover individuals not eligible for regular unemployment insurance (UI), including the self-employed, but whose jobs are affected by COVID-19. Individuals must first be found ineligible for regular UI before applying for PUA. PUA is payable in a state beginning on or after January 27 through December 31, 2020. States may also apply for one-time assistance to administer the program. For U.S. DOL operating, financial, and reporting instructions, please see Unemployment Insurance Program Letter No. 16-20 and Change 1 which answers several common state questions.
- **Self-Employment Assistance Program:** the Self-Employment Assistance Program (SEA) is a voluntary program that a few states (Delaware, New Hampshire, New York, and Oregon) have opted into which allows those who are eligible for unemployment insurance to use those funds to establish a business and maintain eligibility through the process. Beneficiaries of this program are eligible for the additional $600 per week provided under federal pandemic unemployment compensation if they became unemployed due to the coronavirus.

2. Implementing income reporting under Pandemic Unemployment Assistance (PUA).

As states work to implement the provisions of the CARES Act, one opportunity to support on-demand workers is utilization of PUA. Several states are already making payments under this provision. As states look for new methods to verify income of this new class of workers, they may consider requesting claimants submit their 2019 IRS 1040 Schedule C, F or SE. State departments of labor may also consider partnering with their state's department of revenue, to access state tax returns for income verification purposes as well, as is the case in Rhode Island. At least one state (New York) requires that certain companies with many independent workers submit wage data to their unemployment system, which can enable quicker integration of PUA. It will be critical for states to communicate information about these new benefits clearly and frequently. Workers newly covered by PUA may not have experience with state unemployment systems and processes and, as many states have already found, may not be aware of their eligibility.[5]

In the longer term, states may also consider tax simplification measures for on-demand workers. While most on-demand workers receive a 1099-MISC, those working for certain online platforms paid through a third party receive a 1099-K only if they have income exceeding $20,000. Independent workers whose work

[5] For further information, please see a recording of the April 24 2020 NGA call on PUA.

for any one platform falls below this level will not generally receive any IRS documentation of their income. To reduce tax under-reporting, several states have worked to reduce the reporting threshold to $600, in line with payments reported under a 1099-MISC. Several states have made these or similar changes, which would provide further documentation of income for on-demand workers seeking PUA.[6]

3. Documenting experiences with PUA and identifying longer-term opportunities to support on-demand workers.

Gathering reliable information on on-demand workers has long been a challenge. States have the opportunity to consider whether and how they collect data on who is in the on-demand labor force as they administer PUA. Gathering such data will support states' ability to deliver services to this workforce in the future, either routinely or on an emergency basis, such as in the current COVID-19 response, and will support ongoing learning about this segment of the workforce. As we find from the implementation of PUA, what constitutes "unemployment" is problematic for on-demand workers. States can leverage their experiences with PUA to identify new ways to structure programs. For example, enterprising states could link existing state tax income data with demographic information from the U.S Census to paint a more comprehensive picture of on-demand workers. States will need to make a case for collecting and storing such data, as well as address any concerns about privacy which may vary based on the circumstances.

In the longer term, there is an opportunity to leverage the experiences of delivering PUA to on-demand workers in considering the design of safety net services and benefits for this segment of the labor force. Governors and state workforce officials have long been aware of the on-demand workforce, but the pandemic has brought fresh attention to their needs and to gaps in services that are assumed for workers who receive paychecks. While many such vulnerabilities have long been known, some less-visible vulnerabilities are coming to light, such as poor personal creditworthiness, access to broadband, inadequate food and nutrition, housing insecurity, and lack of access to job training that supports continued employment for on-demand workers and entrepreneurs.

For questions or concerns related to the contents of this memo, please contact NGA staff:

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[6] Vermont, Massachusetts, Illinois, and New Jersey have lowered thresholds.