

Attachment A to UIPL No. Implementing and Operating Instructions for the FAC Program

A. Introduction:

On February 17, 2009, the President signed Public Law 111-5, the American Recovery and Reinvestment Act of 2009. Section 2002 of Division B, Title II, Assistance for Unemployed Workers and Struggling Families Act, creates a new Federal program, the Federal Additional Compensation (FAC) program and provides funding to states for the administration of the program. The FAC program allows states that enter into an agreement with the Secretary of Labor to pay an additional \$25 each week to individuals who are otherwise eligible to receive unemployment compensation for the week. Both the costs of the new Federal benefit and of program administration are 100 percent Federally funded. This guidance explains the eligibility requirements and other administrative functions associated with the program.

B. Definitions:

This section contains the definitions of terms used throughout this document. Definitions of terms follow, to the extent possible, those found in regulations for the Federal-State Extended Unemployment Compensation Program at 20 CFR 615.2, as required by Section 2002(i) of the Act. References to 5 U.S.C. Chapter 85 relate to Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX).

1. “Act” means Section 2002—Increase in Unemployment Compensation Benefits of Title II— Assistance for Unemployed Workers and Struggling Families Act of the American Recovery and Reinvestment Act of 2009.
2. “Agreement” means the agreement between a state and the U.S. Department of Labor (the Department). Under the agreement, the state agency makes payments, as the Department’s agent, of FAC. FAC payments must be made in accordance with the Act as interpreted by the Department in these instructions or any other instructions issued by the Department.
3. “Applicable state” means with respect to an individual, the state from which the individual is receiving compensation.
4. “Applicable state law” means the state law of the state which is the applicable state for an individual.
5. “Benefit year” means, with respect to an individual, the benefit year as defined in the applicable state law.
6. “Compensation” means cash benefits (including dependents’ allowances) payable to individuals with respect to their unemployment but, for purposes of these operating instructions, does not include state additional compensation. “Compensation” is also referred to as “Unemployment Compensation.”
7. “Department” means the U.S. Department of Labor.
8. “Extended compensation” means extended unemployment compensation payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of state law which satisfy the requirements of the Federal-State Extended

Unemployment Compensation Act of 1970 (hereafter called the Federal-State EB law), and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or state additional compensation. Extended compensation is referred to as Extended Benefits or EB.

9. “Federal Additional Compensation” means the compensation payable under Title II, Division B, Section 2002 of the American Recovery and Reinvestment Act of 2009 (Public Law 111-5), and is referred to as FAC.
10. “Regular compensation” means compensation payable to an individual under a state law and, when so payable, includes compensation payable pursuant to 5 U.S.C. 85, but does not include extended compensation or state additional compensation.
11. “Secretary” means the Secretary of Labor of the United States.
12. “State” means the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.
13. “State Additional Compensation” means compensation totally financed by a state and payable under a state law by reason of conditions of high unemployment or by reason of other special factors.
14. “State agency” means the state unemployment compensation agency of a state which administers the state law.
15. “State law” means the unemployment compensation law of a state, approved by the Secretary under Section 3304 of the Internal Revenue Code of 1986 (26 USC 3304(a)).
16. “Week” means a week as defined in the applicable state law.
17. “Week of unemployment” means a week of total, part-total, or partial unemployment as defined in the applicable state law, which shall be applied in the same manner and to the same extent to claims payments issued under the requirements of the Act.

C. Operating Instructions:

1. Eligibility for FAC.

For an individual to be eligible for an FAC payment, the applicable state must have a signed FAC Agreement with the Department. FAC is payable to individuals who are otherwise entitled under state law to receive regular unemployment compensation (UC) for weeks of unemployment. FAC is also payable to individuals receiving the following Federal and other state unemployment benefit programs: Unemployment Compensation for Federal Employees (UCFE), Unemployment Compensation for Ex-Servicemembers (UCX), Emergency Unemployment Compensation, 2008 (EUC08), Extended Benefits (EB), Trade Readjustment Allowances (TRA), Disaster Unemployment Assistance (DUA), Short-Time Compensation (STC), and payments under the Self-Employment Assistance (SEA) programs. However, FAC is not payable as a supplement to state additional compensation.

FAC Eligibility and Relation to Other Types of Benefit Payments. FAC is payable to individuals who are eligible to receive UC under state or Federal law. Note: Individuals receiving State Additional Compensation are not eligible for the FAC. All FAC program requirements are the same for these programs as for regular compensation. FAC payments must not reduce either the weekly benefit amount or the maximum benefit amount for

individuals eligible for benefits under these programs (e.g., the \$25 FAC will not be treated as UC under Section 233(a)(1) of the Trade Act of 1974, as amended; therefore, FAC will not reduce the maximum entitlement of basic TRA).

2. Beginning and Ending Dates of the FAC Program in a State.

Under Section 2002(e)(1) of the Act, FAC is payable in a state for weeks of unemployment beginning with the first week which begins after the date a FAC Agreement is signed between the state and the Department. Except as provided in the next paragraph, no FAC payment may be made on benefit years that begin on or after January 1, 2010. In most states (where the week begins on a Sunday), the last week that FAC entitlement may be established is the week beginning December 20, 2009.

The Act provides for a “phase-out” period for regular compensation and the Federally-funded benefits. For regular compensation, an individual who, as of January 1, 2010, has not yet exhausted all rights to that regular compensation (including SEA and STC) under the state law with respect to a benefit year that began before January 1, 2010 will continue to be paid FAC for any week of unemployment beginning on or after January 1, 2010, if otherwise eligible for regular compensation with respect to such benefit year.

For Federally-funded claims (TRA, EUC08, DUA, EB, UCFE, and UCX), individuals are potentially eligible for the FAC during the phase-out period if they have remaining entitlement on such claims on or before January 1, 2010. Further, individuals qualifying for TRA, EUC08, or EB on the basis of regular compensation on which FAC was paid before January 1, 2010, are potentially eligible for the FAC during the “phase-out” period.

For both regular compensation (including SEA and STC) and the Federally-funded benefits, FAC may not be paid for any week of unemployment beginning after June 30, 2010. In states where weeks of unemployment end on a Saturday, the last week of FAC payable is the week ending July 3, 2010.

3. Termination of FAC Agreement. The FAC Agreement may be terminated by either party upon thirty days written notice. In the case of termination, the FAC period will end 30 days from the date the state notifies the Secretary of its election to terminate the FAC program. No FAC will be payable for weeks which begin after the date the termination of the agreement is effective. However, FAC is payable for weeks of unemployment up to such termination date.

4. Nonreduction Rule. An Agreement will no longer apply and FAC will not be payable in a state upon a determination by the Department that the method governing the computation of regular compensation under the state law has been modified in a manner such that the average weekly benefit amount of regular compensation which will be payable (not including the \$25 supplemental FAC) during the period of the agreement will be less than the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law, as in effect on December 31, 2008.

5. Disregard of Additional Compensation for Purposes of Medicaid and State Children’s Health Insurance Program (SCHIP).

States must disregard the \$25 per week when providing the income information of an individual for any purposes under the Medicaid program under Title XIX of the Social Security Act and SCHIP under Title XXI of such Act.

6. Record Maintenance and Disposal of Records. The state must maintain FAC payment data as required by the Department.
 - a. Record Maintenance. Each state will maintain records on the administration of the FAC program and will make all such records available for inspection, examination, and audit by such Federal officials or employees as the Department may designate or as may be required by the law.
 - b. Disposal of Records. The electronic/paper records created in the administration of the FAC program must be maintained by the state for 3 years after final action (including appeals or court action) on the payments, or for less than the 3-year period if copied by micro photocopy or by an electronic imaging method. At the end of the 3-year period, the FAC records shall be transferred to state accountability under the conditions for the disposal of records that apply to UCFE and UCX records, as explained in Chapter XXII of ET Handbook No. 391 (1992 Edition) (OMB No. 1205-0179) and Chapter I, Page I-15, of ET Handbook No. 384 (1984 Edition) (OMB No. 1205-0176).
7. Disclosure of Information. Information in records made and maintained by the state agency in administering the Act must be kept confidential, and information in such records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation, and the entitlement of individuals thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 CFR part 603. As provided by that regulation, the confidentiality requirements do not apply, however, to information, reports and studies that do not permit the identification of individuals.
8. Inviolate Rights to FAC. The rights of individuals to FAC must be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable state law. Such measures must include protection of individuals from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment of their rights to FAC. In the same manner and to the same extent, individuals must be protected from discrimination and obstruction in regard to seeking, applying for, and receiving FAC.

D. Processing Payments for FAC:

1. Notification to Claimants. The state must notify potentially eligible individuals of their entitlement to FAC. Such notification should include both the beginning and ending dates for the FAC program.
2. Applicability of State Law Provisions. Except where inconsistent with the Act or with the operating instructions promulgated to carry out the Act, all terms and conditions of the state unemployment compensation law applicable to claims for and payment of UC apply to the payment of FAC. An individual is not entitled to receive FAC for a week in which the individual is ineligible for UC under the applicable state or Federal law.
3. Allowable Methods of Payment. FAC payments may be payable either:
 - as an increase of \$25 in the weekly benefit payment to the individual; or
 - as a separate \$25 supplemental payment made, on the same schedule as regular UC, to the individual.

In either case, full payment of FAC when due must be made with the greatest promptness that is administratively feasible by the state.

4. Payment Calculations for FAC.

- a. States will calculate the weekly benefit amount and make any adjustments in accordance with the applicable state law to account for any earnings, and any other deductions (e.g., severance, or retirement/pension payments).
- b. Section 2002(b)(1) of the Act requires FAC to be paid “with respect to any week for which the individual is ... otherwise entitled to” compensation. Therefore, if the individual is eligible to receive at least one dollar (\$1) of UC for the claimed week, the state will pay the claimant the \$25 FAC. However, if disqualifying income reduces an individual’s unemployment compensation payment to \$0, the individual is not entitled to the \$25 FAC.
- c. The \$25 FAC is added after all debts are offset from the individual’s unemployment compensation. Individuals whose UC payments are intercepted to pay debts (e.g., child support or overpayments) are eligible for the \$25 FAC, even if 100% of their weekly benefit amount is intercepted, because the individual is entitled to compensation for the week.
- d. There is no maximum benefit amount attached to the \$25 FAC—as long as the individual is eligible for unemployment compensation for the week, the individual also receives the \$25 FAC.

5. Fraud and Overpayment, Section 2002(f). Because the FAC is added to a compensation payment after all deductions are made, including offsets for overpayments, FAC may only be used to offset FAC overpayments. Further, section 2002(f) provides that “the provisions of section 4005 of the Supplemental Appropriations Act, 2008 (Public Law No. 110-252) shall apply” with respect to FAC overpayments and fraud and to the same extent and in the same manner as in the case of EUC08.

Since FAC is used only to offset FAC overpayments, the cross-program offset provisions of Section 303(g)(2) of the SSA (which govern recovery of overpayments through offset between state and Federal UC programs) may not be used to recover state UC overpayments from FAC. If, however, a state has a Section 303(g)(2) agreement with the Secretary, the state will use state UC to recover FAC overpayments in accordance with that Agreement. A state may also use other Federal UC to recover FAC overpayments made in that state, regardless of whether the state has a Section 303(g)(2) agreement. Further, if a state has an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, FAC may only be used to offset FAC overpayments for another state. However, a state may use state or other Federal UC paid in that state to recover FAC overpayments for other states. See UIPL No. 23-08, Attachment A, Item #6.

6. Taxable Income. The \$25 FAC is taxable. Therefore, states must include FAC when preparing 1099Gs, and must, consistent with section 3304(a)(18) of the Federal Unemployment Tax Act, withhold taxes from the weekly benefit amount, including the \$25 supplement, when an individual elects to have taxes withheld.

E. Financial Information:

1. Accessing FAC Benefit Funds. Under the Act, each state that has entered into an agreement to pay FAC will be provided a monthly allotment projected to equal 100 percent of the estimated amount of FAC to be paid to individuals by the state under the agreement and in full accordance with the Act and these instructions. States' drawdown of allotments will be monitored, and monthly amounts will be adjusted as needed. States will request funds from a general fund account established by the U.S. Treasury to pay all FAC benefits attributable to all claim types (UC, EB, UCFE, UCX, EUC08, and TRA). All requests will go through the Automated Standard Application for Payments (ASAP) system. Drawdown requests must adhere to the funding mechanism stipulated in the Treasury-State Agreement executed under the Cash Management Improvement Act of 1990. Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).
2. FAC Administrative Costs. A separate advisory will be issued to solicit from state agencies supplemental budget requests detailing the administrative costs incurred for the implementation of the FAC program. On-going FAC administrative costs will be reimbursed through the quarterly UI-3 report (OMB No. 1205-0132).

F. Reporting Instructions:

1. ETA 2112. (OMB No. 1205-0154). Transactions involving FAC benefits must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting FAC transactions must be reported as follows:
 - (1) **Line 23a.** Temporary Federal Compensation. Report on line 23a column F the amount of FAC funds transferred from the general fund account to the state benefit payment account.
 - (2) **Line 42a.** Temporary Federal Compensation. Report on line 42a column F the net amount of FAC paid.
2. ETA 5159. (OMB No. 1205-0010). Payment amounts reported by states on the ETA 5159 report, for any tier of benefits, should not include the supplemental FAC payments.
 - (1) **Line 302 on all ETA 5159 reports.** Amounts Paid. Report amounts of UC paid but do not include the supplemental FAC payments.
 - (2) **Line 402 on all ETA 5159 reports.** Amounts Paid. Report amounts of UC paid but do not include the supplemental FAC payments.
3. UI-3. (OMB No. 1205-0132). Include on line 26 (labeled "Other") any on-going FAC administrative costs. This amount must be identified in the UI-3 comments section as "FAC admin = \$\$\$."
4. ETA 227. (OMB No. 1205-0173). States will report FAC overpayments (established and recovered) in the comments section of the ETA 227 report as "FAC Est. = \$\$\$" and "FAC Coll. = \$\$\$."
5. OMB Approval. These instructions have been submitted to the Office of Management and Budget (OMB), but have not yet been approved. Therefore, they should be considered draft instructions of proposed data collections. ETA will notify states upon OMB approval and communicate any changes deemed necessary during the OMB approval process.