Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION Federal Additional Compensation (FAC)
	CORRESPONDENCE SYMBOL DL
	DATE May 26, 2010

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER No. 24-10

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES *[signature: Jane Oates]*
Assistant Secretary

SUBJECT: Federal Additional Compensation – Application of the Nonreduction Rule

1. <u>Purpose</u>. To provide additional guidance on the "Nonreduction Rule" under the Federal Additional Compensation (FAC) program.

2. <u>References</u>. Section 2002 (the FAC law) of Division B, Title II (Assistance for Unemployed Workers and Struggling Families Act), of the American Recovery and Reinvestment Act of 2009, Public Law No. 111-5 (hereafter the FAC law); and Unemployment Insurance Program Letter (UIPL) Nos. 11-09 and 14-09.

3. <u>Background</u>. The FAC program provides a $25 supplement to the weekly payment of all forms of unemployment compensation (UC), except state additional compensation. FAC is paid from Federal general revenues and is administered by the states under agreement between the states and the U.S. Department of Labor.

   The FAC law contains a "Nonreduction Rule" under which a state's agreement will be terminated if the Department determines that the "method governing the computation of regular compensation" under the state's UC law has been modified so that—

   > (1) the average weekly benefit amount of regular compensation
   > which will be payable during the period of the agreement
   > (determined disregarding any additional amounts attributable to
   > the modification described in subsection (b)(1) [that is, the $25
   > FAC supplement]) will be less than

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> (2) 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.

See Section 2002(c) of the FAC law for the full text of the Nonreduction Rule. Although UIPL No. 11-09 provided a general statement regarding this Nonreduction Rule, it did not provide any guidance regarding its specific applications. Since that UIPL was issued, the Department has received inquiries regarding specific applications. This UIPL, using a Question and Answer (Q&A) format, responds to these inquiries.

4. <u>Action</u>. State administrators should distribute this advisory to appropriate staff.

5. <u>Inquiries</u>. Questions should be addressed to your Regional Office.

6. <u>Attachment</u>. FAC Nonreduction Rule – Questions and Answers

**FAC Nonreduction Rule
Questions and Answers**

Method of Computing the Weekly Benefit Amount

1. Question: The Nonreduction Rule applies to the "method governing the computation of regular compensation" under the state's UC law. What does this mean?

Answer: This language refers only to the state's mathematical formula for computing an individual's weekly benefit amount (WBA), including any dependent's allowance. The language precludes states from substituting the federally-funded FAC for state-financed benefits by, for example, applying an across-the-board reduction in WBAs for regular compensation by an amount equal to the FAC.

The Nonreduction Rule does *not* apply to provisions of state UC law addressing—

- The base period, including wages needed to qualify for UC and alternative base periods (ABPs). Base period provisions determine whether an individual has sufficient labor force attachment to qualify for UC in the first place, an event that precedes the computation of the WBA. As a result, a state may, under UIPL No. 14-09, add an ABP to qualify for a UC modernization incentive payment, without triggering application of the Nonreduction Rule.

- The number of weeks of UC payable with respect to a benefit year. These provisions affect the duration of UC, not the computation of the WBA.

- Nonmonetary eligibility provisions such as able and available requirements, voluntary quits, discharges for misconduct, or refusals of suitable work. As the term "nonmonetary eligibility" suggests, these eligibility matters are unrelated to the "method of computing" the WBA.

- Waiting periods. These provisions address how long an individual must wait before becoming eligible to receive UC, not the method of computing the WBA.

- Reductions in UC due to earnings, retirement pay, severance pay, wages in lieu of notice, or other payments. These reductions are made after the state has applied its "method" for computing the individual's WBA.

- Permissible intercepts from UC, such as recoveries of overpayments or intercepts of child support. These intercepts are made after the state has applied its "method" for computing the individual's WBA.

- Penalties for fraud claims, including reduction in benefit rights and additional assessments such as interest, fines and penalty amounts. These provisions impose penalties and are not part of the "method of computing" the WBA.

2. Question: Since the FAC program was created, the balance in my state's unemployment fund has dropped. If my state wants to amend its UC law to reduce the weekly benefits payable to improve its solvency, does the Nonreduction Rule still apply?

Answer: Yes. The Nonreduction Rule does not contain an exception for actions related to state solvency concerns.

3. Question. My state's law, as in effect on December 31, 2008, provides that the WBA will be adjusted each year based on the state-wide average weekly wage. Since this adjustment will result in increasing the WBA, my state is considering temporarily suspending this adjustment. Would such a suspension violate the Nonreduction Rule?

Answer: Yes. The Nonreduction Rule applies to the average WBA "which would otherwise have been *payable during such period* under the State law, *as in effect on December 31, 2008."* (Emphasis added.) Thus, the suspension of a requirement for adjusting the WBA that was in effect on December 31, 2008, violates the Nonreduction Rule.

Modification of WBA

4. Question: Does *any* reduction resulting from a change in the method of computing the WBA of regular compensation mean the FAC agreement will be terminated?

Answer: No. The FAC law precludes only a modification resulting in an *average* WBA payable during the period of the agreement that is less than the *average* WBA which would otherwise have been payable under the State law as in effect on December 31, 2008. This means the FAC law permits a change in the method that reduces the WBA but simultaneously is offset by a different change in the method that increases the WBA.

Thus, for example, a state could change its method of computing the WBA to reduce the maximum WBA while also changing its method of computing dependents' allowances to result in an increase. If this situation occurs, the Department will be required to determine if a decrease in the average WBA has occurred. A state may not obtain this offset by using a law change unrelated to the method of computing the WBA. For example, a change liberalizing nonmonetary eligibility could not be used for this offset as it does not relate to the "method of computing" the WBA.

Period of Applicability of Nonreduction Rule

5. Question. After what date may my state change the method of computing the WBA to reduce the average WBA without violating the Nonreduction Rule?

Answer. The FAC law provides that a state may not reduce the average WBA "payable during the period of the [FAC] agreement. . . ." While the FAC Agreements will continue in effect to govern such matters as overpayments, Section 2002(e)(3) of the FAC law provides that FAC ceases to be payable for weeks of unemployment beginning after December 7, 2010. Thus, the Department interprets the Nonreduction Rule as applying to weeks of unemployment beginning on or before December 7, 2010. As a result, to avoid issues under the Nonreduction Rule, any change to state law resulting in a reduction of the average WBA must be made effective after this date.

Note that, if the FAC law is amended to extend FAC to a new date beyond December 7, 2010, the Nonreduction Rule also will be extended to the same new date.