EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
	CORRESPONDENCE SYMBOL DUIO
	DATE May 9, 2020

ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 15-20 Change 1**

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Reporting Instructions and Questions and Answers

1. **Purpose.** As states have gained experience administering the FPUC program under the CARES Act, they have identified questions about aspects of the program's operation. The purpose of this UIPL is to address those questions and provide further guidance about the FPUC program authorized by Section 2104 of the CARES Act, Public Law (Pub. L.) 116-136, and provide instructions for completing Form ETA 9178-P, Quarterly Narrative Progress Report – Employment and Training Supplemental Budget Request Activities.

2. **Action Requested.** The U.S. Department of Labor's (Department) Employment and Training Administration (ETA) requests that state administrators provide the information contained in this Unemployment Insurance Program Letter (UIPL) and its attachment to appropriate staff.

3. **Summary and Background.**

   a. Summary – On March 27, 2020, the President signed into law the CARES Act, which includes the Relief for Workers Affected by Coronavirus Act set out in Title II, Subtitle A. Section 2104 of the CARES Act creates a new temporary federal program called Federal Pandemic Unemployment Compensation (FPUC), which provides an eligible individual with $600 per week in addition to the weekly benefit amount he or she receives from designated unemployment compensation (UC) programs, provided he or she is otherwise eligible.

   b. Background – The CARES Act was designed to mitigate the economic effects of the COVID-19 pandemic in a variety of ways. The coordination of programs within the CARES Act is discussed in UIPL No. 14-20. On April 4, 2020, the Department issued UIPL No. 15-20, which focuses on Section 2104 of the CARES Act authorizing the temporary FPUC program. FPUC provides eligible individuals $600 per week in addition to the weekly benefit amount they receive from the UC programs noted in Section 2104.

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4. **Questions and Answers.** The Department hosted a webinar with states on April 9, 2020, to discuss UIPL No. 15-20, which contained key provisions and operating instructions for the FPUC program. A recording of this webinar is available under the "Events" section on the Unemployment Insurance Community of Practice on the WorkforceGPS website (https://ui.workforcegps.org/). The Attachment to this UIPL contains answers to certain questions received during the webinar and through the Department's designated e-mail address on all COVID-19 related inquiries (covid-19@dol.gov).

   Additionally, the Department is revising form ETA 227 (OMB 1205-0173), which is the form states must use to report FPUC overpayments. More information about this can be found in Attachment I of UIPL No. 15-20, Section H. Reporting Instructions.

5. **Supplemental Budget Request Project Status Tracking.** ETA will use form ETA 9178-P as a monitoring instrument to track a grantee's progress towards completing project activities for implementation of the FPUC program which are funded under the supplemental budget requests. Instructions for submitting supplemental budget requests are located in section 4(c) of UIPL No. 15-20.

   As part of the monitoring process, grantees that receive supplemental grant awards must submit a Quarterly Progress Report (QPR) using the form ETA 9178-P. The form ETA 9178-P requires the grantee to provide ETA with narrative updates on supplemental grant activities and helps ensure that the grantee achieves the goals described in the supplemental grant applications. States that received supplemental grant awards to implement the FPUC program will need to submit reports as instructed. Attachments II and III in UIPL No. 16-20, Change 1, provide the ETA 9178-P report, the instructions for completing the report, and the timeline for the submission of the report.

6. **Inquiries.** States should direct inquiries to covid-19@dol.gov and copy the appropriate Regional Office.

7. **References.**

   - Coronavirus Aid, Relief, and Economic Security (CARES) Act (Pub. L. 116-136), including Title II Subtitle A Relief for Workers Affected by Coronavirus Act;
   - 5 U.S.C. Chapter 85;
   - Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. § 3304 note);
   - Trade Act of 1974 (19 U.S.C. § 2291 et seq.);
   - Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. § 5121 et seq.);
   - Sections 3304 and 3306(v) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. §§ 3304 and 3306(v));
   - Section 303 of the Social Security Act (42 U.S.C. § 503);
   - 20 C.F.R. Part 603;
   - ET Handbook No. 336 (18th Edition), *Unemployment Insurance State Quality Service Plan Planning and Reporting Guidelines*, https://wdr.doleta.gov/directives/attach/ETAHandbook/ET_Handbook_No.336_18th_Edition_Change_4_acc.pdf;

- ET Handbook No. 384, *Unemployment Compensation for Ex-servicemembers*, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=465;
- ET Handbook No. 391, *UCFE Handbook for State Agencies*, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2233;
- ET Handbook No. 401, *UI Report Handbook*, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=7774;
- UIPL No. 05-13, *Work Search and Overpayment Offset Provisions Added to Permanent Federal Unemployment Compensation Law by Title II, Subtitle A of the Middle Class Tax Relief and Job Creation Act of 2012*, issued January 10, 2013, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3698;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Temporary Emergency State Staffing Flexibility*, issued on April 2, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390;
- UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 –*
- *Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued on April 4, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?docn=9297; and
- UIPL No. 16-20, Change 1, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Reporting Instructions and Questions and Answers*, issued on April 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5899.

8. Attachment.

- Questions and Answers: Federal Pandemic Unemployment Compensation (FPUC) Program

Attachment to UIPL No. 15-20, Change 1

Questions and Answers:
Federal Pandemic Unemployment Compensation (FPUC) Program

A. Issuing Payments

1. Question: Is the state required to make FPUC payments weekly?

   Answer: The state must make FPUC payments on the same schedule as the state's regular UC payments. If the state pays regular UC on a bi-weekly basis, it can maintain that same schedule for FPUC.

2. Question: If an individual's UC benefits are reduced to zero because of a benefit offset, is the individual eligible for FPUC for the week?

   Answer: Yes. Benefit offsets are considered "payments" as the payment is still being made to the individual, but part of the payment is offset and used to repay the previous overpayment. Therefore, the individual is deemed to have received UC for the week and is eligible to receive FPUC for the week. The FPUC payments must also be reduced to recover state and federal UC overpayments; refer to questions B2 and B3 below.

3. Question: If an individual is ineligible to receive his/her weekly benefit amount (WBA) for a particular week (for example, because of a disqualification or deductible income), is the individual eligible for the FPUC payment?

   Answer: No. The individual must be eligible to receive at least one dollar ($1) of underlying benefits for the claimed week to be eligible to receive the FPUC payment for that week.

4. Question: Is an individual who is working part-time, or has gone back to work part-time, and is collecting partial UC benefits for a week eligible for FPUC?

   Answer: Yes. An individual working part-time who otherwise meets state eligibility requirements for the underlying benefit is eligible to receive the FPUC payment.

5. Question: Does the additional FPUC payment affect how much a person could earn while working part time before a deduction is made from the weekly underlying benefit payment?

   Answer: No. All earnings are deducted from the underlying UC benefit payment. If an individual's earnings reduce the week's underlying benefit payment to zero, the individual would not be eligible for FPUC for that week.

6. Question: Are FPUC benefits subject to federal income tax withholding?

   Answer: Yes. Both the underlying benefit payment and the FPUC benefit payment are subject to federal income tax withholding. Individuals may elect to have federal withholding deducted from their FPUC payments separately from the withholding for the underlying benefit payments.

7. Question: Is the state required to notify individuals when they receive a final FPUC payment?

   Answer: If the state law requires notification of the final UC payment, then states must notify an individual when the individual is receiving the final FPUC payment in the same manner as the state notifies individuals receiving the final UC payment.

B. Overpayments and Recovery

1. Question: When is an FPUC payment considered to be overpaid?

   Answer: An FPUC payment is an overpayment any time an individual receives an FPUC payment for which the individual was not eligible. For example, if an individual is paid FPUC and the underlying UC benefit payment is subsequently denied and determined to be overpaid, then the FPUC payment is also overpaid. However, if an individual is eligible receive at least one dollar ($1) of underlying benefits for the claimed week, the individual is eligible to receive the FPUC payment for that week.

2. Question: Must FPUC payments be used to offset intrastate state or federal UC overpayments?

   Answer: Yes. FPUC payments must be reduced to recover state and federal UC overpayments if the state has a cross-program offset agreement in place with the Secretary under Section 303(g)(2), SSA (42 U.S.C. § 503(g)(2)). However, a state may not offset more than 50 percent from the FPUC payment to recover overpayments for these unemployment benefit programs.

3. Question: Must FPUC payments be offset to recover UC overpayments for other states?

   Answer: Yes. FPUC payments must be reduced to recover UC overpayments for other states if the state has signed the Interstate Reciprocal Overpayment Recovery Arrangement (IRORA) agreement. However, a state may not offset more than 50 percent from the FPUC payment to recover overpayments for other states.

4. Question: Must the state offset both the underlying benefit payment and the FPUC payment to recover state or federal UC overpayments?

   Answer: Yes. Even though a state may pay both benefits at the same time, the FPUC payment is considered a separate benefit from the underlying benefit payment. Therefore, it is also subject to offsets of no more than 50 percent to repay overpayments.

5. Question: Does the state have to offset the same percentage from the underlying benefits payment as the FPUC payment? For example, may the state reduce its offset to 25 percent for the underlying benefit and still offset the 50 percent from FPUC?

   Answer: As mentioned before, the FPUC payment is a separate benefit and is also separately subject to offsets to repay overpayments. Therefore, a state can offset the underlying benefit payment based on its own law and then offset the FPUC benefit separately. This means a state can reduce its offset to 25 percent for the underlying benefit and still offset the 50 percent from FPUC. While states may not offset more than 50 percent of the FPUC, a state can choose to offset less than 50 percent from FPUC.

6. Question: May the state suspend benefit offsets to provide relief to unemployed individuals?

   Answer: No. The state may not suspend benefit offsets. The Middle Class Tax Relief and Job Creation Act of 2012 changed the benefit offset provision from "may" to "shall" under both Section 3304(a)(4)(D), FUTA, and Section 303(g)(1), SSA, so federal UI law requires states to offset benefits.

7. Question: May the state apply its own state law waiver provisions to FPUC overpayments?

   Answer: Section 2104(f)(2) of the CARES Act permits the state to waive the repayment if the state determines that the payment of FPUC was without fault on the part of the individual and such repayment would be contrary to equity and good conscience. If the state law minimum requirements for the waiver of overpayments already require that these conditions be met, then the state can use its own provisions for waiver. The state is reminded that waiver determinations must be made on the facts and circumstance of each individual claim, blanket waivers are not permissible. For example, states cannot waive overpayment due to administrative error for a group of individuals before first assessing and documenting why each individual meets the state's waiver requirements. Additionally, the state does not have to waive the FPUC overpayment if its law prohibits the waiver of overpayments.

   Failure to establish an individual's eligibility for the regular UI programs and the Extended Benefit program is a conformity and substantial compliance issue and failure to establish eligibility for PUA or PEUC is contrary to the state's agreement to administer the program and could result in termination of the agreement. States may not waive overpayments under the CARES Act if the state has not properly established, on an individual basis, that the statutory requirements for such waiver have been met.

8. Question: How should states handle prosecutions of FPUC fraud overpayments?

   Answer: Individuals who fraudulently obtain FPUC benefits are subject to prosecution under 18 U.S.C. § 1001, among other federal criminal statutes. States must pursue FPUC fraud cases in the same manner as all other federal UC fraud cases. For referrals of fraud cases to the U.S. Department of Labor's Office of Inspector General (OIG), states should follow the guidance provided in UIPL No. 29-05.

C. Financial Information and Reporting

1. Question: Will FPUC benefit disbursements need to be reported on a program specific basis?

   Answer: Yes. Due to the magnitude of the FPUC program, there will be significant interest in how the FPUC benefits were spent. As such, the state must report program specific FPUC disbursements in the "comments" section of the ETA 2112 report as follows: UI $$$, UCFE $$$, UCX $$$, PEUC $$$, EB $$$, PUA $$$, Other $$$. The total must reconcile to amounts reported on line 42b, column F.

2. Question: Will the funding for FPUC be included in the regular administration grant?

   Answer: No. The grant awards to states for programs under the CARES Act will be issued under a separate grant.

3. Question: Will states need to provide quarterly status reporting regarding supplemental budget requests (SBRs) received for FPUC implementation?

   Answer: Yes. States must submit an ETA 9178-P form for SBRs received to cover administrative costs for FPUC implementation (See the third paragraph of Section 4 (c) of UIPL No. 15-20). ETA has created the ETA 9178-P report for SBR status reporting specifically for programs under the CARES Act. Grantees must submit form ETA 9178-P to their respective Federal Project Officer (FPO) within 45 days of each calendar quarter end date. If the due date of the report falls on a Saturday, Sunday, or holiday, the report is due the previous business day. The table below provides the due dates for each reporting quarter:

Reporting Quarters	Due Dates
January 1st – March 31st	May 15th
April 1st – June 30th	August 14th
July 1ST – September 30th	November 14th
October 1st – December 31st	February 14th

   Attachments II and III in UIPL No. 16-20, Change 1, provide the ETA 9178-P report, the instructions for completing the report, and the timeline for the submission of the report.