

**Implementing and Operating Instructions for the
Federal Pandemic Unemployment Compensation (FPUC) Program**

A. Introduction.

Section 2104 of the Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 provides for a temporary emergency increase in unemployment compensation (UC) benefits, referred to as the Federal Pandemic Unemployment Compensation (FPUC) program. This program provides an eligible individual with \$600 per week in addition to the weekly benefit amount he or she receives from certain other UC programs.

The cost of these additional \$600 payments to eligible individuals each week is 100% federally funded. States may not charge employers for any FPUC benefits paid so as to impact the employer's experience rating.

The FPUC program is administered through a voluntary agreement between the state and the Department. Implementation costs and ongoing administrative costs for this program are also 100% 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.

1. "Agreement" means the agreement between a state and the Department to administer FPUC. Under the agreement, the state agency makes payments of FPUC as the Department's agent. FPUC payments must be made in accordance with Section 2104 of the CARES Act as interpreted by the Department in these instructions and any other instructions issued by the Department.
2. "Applicable state" means, with respect to an individual, the state from which the individual is receiving compensation.
3. "Applicable state law" means the unemployment compensation law of the applicable state for an individual.
4. "Benefit year" means, with respect to an individual, the benefit year as defined in the applicable state law.
5. "Compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment. "Compensation" is also referred to as "Unemployment Compensation" or "UC."
6. "Department" means the U.S. Department of Labor.
7. "Extended compensation" means compensation (including additional compensation and compensation payable pursuant to 5 U.S.C. chapter 85) payable for weeks of unemployment beginning in an extended benefit period to an individual under those provisions of the state law which satisfy the requirements of EUCA. This is also referred to as "Extended Benefits" or "EB".

8. “Federal Pandemic Unemployment Compensation” means the compensation payable under Section 2104 of the CARES Act and is referred to as FPUC.
9. “Pandemic Unemployment Assistance” means the compensation payable under Section 2102 of the CARES Act and is referred to as PUA.
10. “Pandemic Emergency Unemployment Compensation” means compensation payable under Section 2107 of the CARES Act and is referred to as PEUC.
11. “Regular compensation” means compensation payable to an individual under any state UC laws (including compensation payable pursuant to 5 U.S.C. chapter 85), other than extended compensation and state additional compensation. Throughout this document this is referred to as “regular UC.”
12. “Secretary” means the Secretary of Labor of the United States.
13. “State” means the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.
14. “State Additional Benefits” 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. This is also referred to as “AB.”
15. “State agency” means the agency of the state which administers its UC law.
16. “State law” means the UC law of a state, approved by the Secretary under Section 3304 of the Federal Unemployment Tax Act (FUTA). (26 U.S.C. §3304(a)).
17. “Week” means a week as defined in the applicable state law.
18. “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 to the same extent to claims filed under the requirements of the CARES Act.

C. Operating Instructions.

1. Eligibility for FPUC. For an individual to receive FPUC, the applicable state must have a signed agreement with the Department.

FPUC is payable to individuals who are otherwise entitled under state or federal law to receive regular UC for weeks of unemployment (including Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX)). FPUC is also payable to individuals receiving the following unemployment compensation programs: PEUC, PUA, EB, Short-Time Compensation (STC), Trade Readjustment Allowances (TRA), Disaster Unemployment Assistance (DUA), and payments under the Self-Employment Assistance (SEA) program.

A number of state laws include provisions extending the potential duration of benefits during periods of high unemployment for individuals in approved training who exhaust benefits, or for a variety of other reasons.² Although some state laws call these programs “extended benefits,” the Department uses the term “additional benefits” (AB) to avoid confusion with the Federal-State EB program. FPUC is not payable to individuals receiving AB payments.

² Reference Table 4-4 of the *Comparison of State Unemployment Insurance Laws* found at <https://oui.doleta.gov/unemploy/statelaws.asp>.

2. FPUC Eligibility and Relation to Other Types of Benefit Payments. Individuals receive FPUC payments concurrently with payments under those programs identified above. Refer to UIPL 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, for additional information on how FPUC interacts with other programs authorized under the CARES Act.

States that are unable to immediately pay benefits the week following the execution of the agreement with the Department to operate the program must provide retroactive payments to individuals eligible for FPUC for the weeks they would have been entitled.

3. Beginning and Ending Dates of the FPUC Program in a State. Under Section 2104(e) of the CARES Act, FPUC is payable in a state for weeks of unemployment beginning after the date on which the state enters into an agreement with the Department and ending with weeks of unemployment ending on or before July 31, 2020.

Accordingly, in states where the week of unemployment ends on a Saturday, the last week that FPUC is payable is the week ending July 25, 2020. For states where the week of unemployment ends on a Sunday, the last week that FPUC is payable is the week ending July 26, 2020.

4. Termination of FPUC Agreement. Either party, upon 30-days written notice, may terminate the FPUC agreement. In the case of termination, the FPUC period will end 30 days from the date the state notifies the Secretary of its election to terminate the FPUC program. No FPUC will be payable for weeks which begin after the date the termination of the agreement is effective. However, FPUC is payable to individuals receiving the benefits under section C.1. for any weeks that end prior to the termination.
5. Nonreduction Rule. An agreement will no longer apply and FPUC will not be payable in a state upon the Department’s determination that the state’s method governing the computation of regular UC has been modified in a manner such that the number of weeks (the maximum benefit entitlement), or the average weekly benefit amount of regular UC, which will be payable during the period of the agreement (determined by disregarding any FPUC amount) will be less than the number of weeks, or the average weekly benefit amount, of regular UC which would otherwise have been payable during such period under the state law in effect on January 1, 2020. “Maximum benefit entitlement” means the amount of regular UC payable to an individual with respect to the individual’s benefit year.
6. Disregard of FPUC for Purposes of Medicaid and State Children's Health Insurance Program (SCHIP). Under Section 2104(h) of the CARES Act, the monthly equivalent of any FPUC amount paid to an individual must be disregarded when determining income for any purpose under programs established under Titles XIX and Title XXI of the Social Security Act (SSA) (42 U.S.C. §1396 et seq., §1397aa et seq.).

7. Record Maintenance and Disposal of Records.
 - a. Record Maintenance. Each state must maintain records during the administration of the FPUC program and will make all such records available for inspection, examination, and audit by such federal officials, employees as the Department may designate, or as may be required by the law. Reference ET Handbook No. 401, *UI Report Handbook* for details.
 - b. Disposal of Records. Each state must maintain records created during the administration of the FPUC program for three years after final action (including appeals or court action) on the payments, or for less than the three-year period if copied by microphotocopy or by an electronic imaging method. At the end of the three-year period, the FPUC 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 X of ET Handbook No. 391 (1994 Edition) (OMB No. 1205-0179) and Chapter I of ET Handbook No. 384 (1994 Edition) (OMB No. 1205-0176).
8. Disclosure of Information. Information in records made and maintained by the state agency while administering the CARES 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 UC. This information may be disclosed under provisions of the applicable state law meeting the requirements of 20 C.F.R. Part 603. As provided under 20 C.F.R. Part 603.4(b), the confidentiality requirements do not apply when such information is being provided in the aggregate, provided it cannot be combined with other publicly-available information to reveal any such identifying particulars about an individual or the individual's past or present employer.
9. Inviolate Rights to FPUC. Individuals' rights to FPUC must be protected in the same manner and to the same extent as the individuals' rights to regular UC are protected under the applicable state law. Such measures must include protection of individuals' rights to FPUC from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment. 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 FPUC.

D. Processing Payments for FPUC.

1. Notification to Claimants. The state must notify a potentially eligible individual of his or her entitlement to FPUC. Such notification should include both the beginning and ending dates for the FPUC program. As noted above, in states where the week of unemployment ends on a Saturday, the last week that FPUC is payable is the week ending July 25, 2020. For states where the week of unemployment ends on a Sunday, the last week that FPUC is payable is the week ending July 26, 2020. States have flexibility in the method of providing this notification. States will decide eligibility for FPUC based on eligibility for the underlying program eligibility; individuals do not have to separately apply for FPUC.

2. Applicability of State Law and Underlying Eligibility Requirements. Except where inconsistent with the CARES Act or with the operating instructions promulgated to carry out the CARES Act, all terms and conditions of the state UC law or any federal law (related to the programs listed below) applicable to claims for and payment of regular UC or any of the underlying benefits listed below apply to the payment of FPUC. An individual is not entitled to receive FPUC for a week in which the individual is ineligible for regular UC or the underlying benefit from another federal program. Applicable federal law is cited below.

- a. UCFE: 5 U.S. Code CHAPTER 85;
- b. UCX: 5 U.S. Code CHAPTER 85;
- c. PEUC: Section 2107 of the CARES Act;
- d. PUA: Section 2102 of the CARES Act;
- e. EB: Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. §3304 note);
- f. STC: Section 3306(v), FUTA (26 U.S.C. §3306(v));
- g. TRA: Trade Act of 1974 (19 U.S.C. §2291 et seq.);
- h. DUA: Robert T. Stafford Disaster Relief and Emergency Act (42 U.S.C. §5121 et seq.); or
- i. SEA: Section 3306(t), FUTA (26 U.S.C. §3306(t)).

3. Allowable Methods of Payment. States must issue payments of FPUC as soon as administratively feasible. States have some flexibility in how they issue FPUC payments; states may pay the additional \$600 either:

- a. as an amount which is paid at the same time and in the same manner as any regular UC otherwise payable for the week involved; or
- b. at the option of the state, by payments which are made separately from, but on the same weekly basis as, any regular UC otherwise payable.

4. Payment Calculations for FPUC.

Section 2104(b)(1) of the CARES Act requires the additional \$600 FPUC to be paid to individuals “in amounts and to the extent that they would be determined if the State law of the State were applied with respect to any week for which the individual is . . . otherwise entitled under the State law to receive regular compensation.” This includes regular UC, PEUC, PUA, EB, STC, TRA, DUA, and SEA.

a. Determining entitlement to FPUC.

- i. States will calculate the weekly benefit amount, for the programs outlined above.
- ii. If the individual is eligible to receive at least one dollar (\$1) of underlying benefits for the claimed week, the claimant will receive the full \$600 FPUC.

- iii. Note: Individuals whose underlying benefit payments are intercepted to pay debts (*e.g.*, overpayments) are eligible for the \$600 FPUC, even if 100% of their weekly benefit amount is intercepted. Benefits intercepted to pay debts are considered to be compensation for the week.
5. Child support. Child support obligations must be deducted from FPUC payments in the same manner and to the same extent as these obligations are deducted from regular UC.
6. Taxable Income. The \$600 FPUC is taxable. Therefore, states must include FPUC when preparing 1099Gs, and must, consistent with Section 3304(a)(18), FUTA (26 U.S.C. §3304(a)(18)), withhold taxes from the weekly benefit amount and from the \$600 FPUC, when an individual elects to have taxes withheld.

E. Appeals and Hearings.

Section 2104(f)(4) of the CARES Act requires that FPUC determinations are subject to review in the same manner and to the same extent as determinations under the state UC law, and only in that manner and to that extent.

Individuals are automatically eligible for FPUC if they are eligible for the underlying benefit. Therefore, the only grounds to deny FPUC to an individual is the individual's ineligibility for one of these benefits. If an individual files an appeal on the state's determination to deny an individual FPUC, all documents relevant to the denial of the underlying benefit determination must be transmitted to the appeals division, in addition to the determination documentation for the state's decision to deny FPUC. The appeals division must consider the merits of the state's denial of the underlying benefit when determining eligibility for FPUC payments.

F. Fraud and Overpayments.

1. Fraud. Under Section 2104(f)(1) of the CARES Act, an individual commits fraud if he or she knowingly has made or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such nondisclosure such individual has received an amount of FPUC to which such individual was not entitled.

An individual who has committed fraud and was subsequently disqualified for a week that included a payment of FPUC is therefore ineligible for additional FPUC in accordance with the provisions of the applicable state UC law relating to fraud in connection with a claim for UC and is subject to prosecution under 18 U.S.C. §1001.

Section 2104(f) only provides for an individual being ineligible for future benefits in accordance with the applicable provisions of state UC law, it does not permit the establishment of a penalty on FPUC that was fraudulently obtained, so states may not impose fraud penalty provisions on FPUC payments.

2. Overpayments. An FPUC overpayment occurs when an individual has received an FPUC payment to which he or she is not entitled. If an individual is deemed ineligible for regular compensation in a week and the denial creates an overpayment for the entire weekly benefit amount, the FPUC payment for the week will also be denied. And the FPUC overpayment must also be created.

Section 2104(f)(2) of the CARES Act requires individuals who have received FPUC overpayments to repay these amounts to the state agency, except as provided in the Waiver of Overpayments section below.

3. Opportunity for a Hearing. Under 2104(f)(3)(B) of the CARES Act, a state may not require repayment of an FPUC overpayment until it determines that the payment was an overpayment, the individual was provided notice of the determination, the individual had an opportunity for a fair hearing, and the determination is final.
4. Waiver of Overpayments. The state has authority to waive repayments of FPUC if the payment was without fault on the part of the individual and such repayment would be contrary to equity and good conscience.
5. Recovery Provisions. If the overpayment amount is not subject to waiver, the state agency must recover the amount of FPUC to which an individual was not entitled in accordance with the same procedures as apply to recovery of overpayments of regular UC paid by the state.

FPUC benefits may only be offset from other state and federal UC for three years after the date such individual received the FPUC payment to which he or she was not entitled. After three years, a state may continue to recover FPUC overpayments through means other than benefit offsets, according to state law.

6. Benefit Offsets. Consistent with section 2104(f)(3), a state must recover FPUC overpayments from any additional FPUC payments to which the individual is entitled and from any other UC payments under state or federal law (including PEUC and PUA from the CARES Act).

Additionally, FPUC payments must be reduced to recover overpayments from any other state and federal unemployment benefit programs, if the state has a cross-program offset agreement in place under Section 303(g)(2), SSA (42 U.S.C. §503(g)(2)). A state may not offset more than 50% from the FPUC payment to recover overpayments from other state and federal unemployment benefit programs.

A states has significant flexibility in the way they implement the offset requirement. While a state must attempt to recover the full amount of the overpayment, a state may limit the amount that will be deducted from each payment as noted on page 4 of 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.*

G. Financial Information.

1. **Accessing FPUC Benefit Funds.** Under the CARES Act, each state that has entered into an agreement to pay FPUC will be provided a monthly allotment projected to equal 100% of the estimated amount of FPUC to be paid to individuals by the state under the agreement. A state's drawdown of allotments will be monitored, and monthly amounts will be adjusted as needed. A state will request funds from a general fund account established by the U.S. Treasury to pay all FPUC amounts attributable to all applicable claim types. 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 (Credit Gateway FEDWIRE or ACH to the state benefit payment account).
2. **FPUC Administrative Costs.** On-going FPUC administrative costs will be reimbursed through the quarterly UI-3 report (OMB No. 1205-0132).

H. Reporting Instructions.

1. **ETA 2112.** (OMB No. 1205-0154). Transactions involving FPUC must be reported in the aggregate on the electronic ETA 2112 report. Information reflecting FPUC transactions must be reported as follows:
 - (1) **Line 23b.** Federal Pandemic Unemployment Compensation. Report on line 23b column F the amount of FPUC funds transferred from the general fund account to the state benefit payment account.
 - (2) **Line 42b.** Federal Pandemic Unemployment Compensation. Report on line 42b column F the net amount of FPUC paid.

Transactions should not be reported in column E, Unemployment Trust Fund Account.
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 FPUC payments.
 - (1) **Line 302 on all ETA 5159 reports.** Amounts Paid. Report amounts of UC paid but do not include the supplemental FPUC payments.
 - (2) **Line 402 on all ETA 5159 reports.** Amounts Paid. Report amounts of UC paid but do not include the supplemental FPUC payments.
3. **UI-3.** (OMB No. 1205-0132). Include on line 26 (labeled "Other") any on-going FPUC administrative costs. This amount must be identified in the UI-3 comments section as "FPUC admin = \$\$\$."

4. ETA 227. (OMB No. 1205-0173). States will report FPUC overpayments (established and recovered) in the comments section of the ETA 227 report as “FPUC Est. = \$\$\$” and “FPUC Coll. = \$\$\$.”

Office of Management and Budget (OMB) Approval. Section 2116(a), Division B of Title II of the CARES Act provides that “Chapter 35 of Title 44, United States Codes, (commonly referred to as the “Paperwork Reduction Act of 1995”), shall not apply to the provisions of, and the amendments made by, this subtitle.” As the OMB approval process is waived for these reporting instructions, these instructions are considered final.