

# Understanding the Unemployment Provisions of the Families First Coronavirus Response Act

*The Act provides \$1 billion in state funding to help fairly process and expand unemployment benefits*

The Families First Coronavirus Response Act, which takes effect on April 3, 2020, provides a down payment of \$1 billion in federal funding to help the states meet the unprecedented challenge of processing huge numbers of unemployment insurance (UI) claims resulting from the economic downturn precipitated by COVID-19.<sup>1</sup> The emergency administrative funding is divided into two \$500 million tranches, which are intended to help fill a major gap in federal support that has long plagued the UI system.

Significantly, the federal funding is conditioned on compliance with a few basic standards intended to ensure that the benefits are fairly administered and that certain minimum steps are taken by the states to expand access to benefits. These are critically important provisions designed to guarantee that all who are eligible to collect UI in this time of special need can readily access the benefits. For reasons largely related to restrictions adopted by numerous states over the past two decades limiting access to UI benefits, the share of unemployed workers collecting unemployment benefits has fallen off dramatically.

The precarious situation that many people are finding themselves in today reflects a broader trend of misguided policy choices favoring business interests over the well-being of workers and families. Their plight exposes the potentially catastrophic effects that decades of undermining our social insurance programs will surely have if we do not act quickly to bolster these programs and marshal our resources to provide aid and protection to those most in need.

What follows is a summary of the law and the federal implementing [guidance](#),<sup>2</sup> which highlights some of the key next steps and a number of positive state reforms recommended by the U.S. Department of Labor for worker advocates and state policymakers to prioritize. While these are helpful as an initial step, the COVID-19 crisis necessitates that federal and state policymakers also prioritize more robust and structural reforms to the UI program.

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<sup>1</sup> Families First Coronavirus Response Act, Pub. L. 116-127, Division D, the Emergency Unemployment Insurance Stabilization and Access Act of 2020.

<sup>2</sup> U.S. Department of Labor, Employment and Training Administration (ETA), “Unemployment Insurance Program Letter (UIPL) No. 13-20, “Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020” (March 22, 2020), available at [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_13-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_13-20.pdf) ETA provided previously provided guidance explaining the flexibility under current federal law for the states to expand UI benefits in response to COVID-19. UIPL No. 10-20 (March 12, 2020), available at [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_10-20.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_10-20.pdf).

## The Basics

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The UI program is a federal-state system funded by a federal payroll tax on employers that pays for the administration of the state UI programs. The federal government plays a major role in state UI programs, especially with regard to policies that ensure fair and timely access to benefits as well as other core state UI protections.

The new legislation advanced a high emergency priority—administrative funding for state UI agencies to staff up to process the massive increase in workload. States are at historic low levels of administrative funding. On an inflation-adjusted basis, federal grants for the administration of unemployment insurance have declined by 30 percent from 1999 to 2019. Administrative grants are tied to the amount of unemployment insurance claims paid out by the state; they have fallen as the economy has improved and as the share of jobless workers receiving UI has declined. Such grants are barely enough for states to manage the basic staff they need to operate the program, leaving little for the upgrade and maintenance of unemployment insurance technology.

The legislation authorizes \$1 billion in additional state administrative funding (by comparison, last year the states received a total of roughly \$2 billion in administrative funding). The new law sets out the requirements for these emergency grants to the states, while also temporarily waiving the interest on federal loans taken out by the states to pay out benefits and making some improvements to the federal Extended Benefits (EB) program.

## Key Features of Emergency Grants

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### The State Allotments

A federal funding formula for the grants is based on the taxes collected, and it determines each state's share of the \$1 billion distribution, which ranges from a high of \$118 million for California to a low of \$1.77 million for Wyoming. (See **Appendix A**). Notably, the federal law does not require action by state legislatures to activate the funding.

### Phase I

The first phase of the law requires the release of \$500 million in administrative funding within 60 days based on a showing that certain basic UI processing and notification procedures are in place. Most states, but not all, have already adopted these procedures in some form. However, the grant process provides an opportunity for the states to ensure that the required notices and other procedural protections are improved upon, where necessary, with input from legal services advocates and other community partners.

In addition, within one year, each state receiving this federal administrative funding must submit to the U.S. Department of Labor and Congress “an analysis of the reciprocity rate for unemployment compensation in the State as such rate has changed over time,” as well as a “description of the steps the State intends to take to increase such reciprocity rate.” This provision was intended to address the serious decline in the share of unemployed workers receiving unemployment benefits (i.e., the “reciprocity rate”) and create a constructive process (if properly implemented with community input) to identify and address the major gaps in each state's UI programs. The Labor Department will provide additional guidance to help the states implement this key provision.

**Employer Notification.** The law requires the states to have in place a requirement that the employer notify the individual of the availability of UI benefits. The notice should reference the availability of UI in response to COVID-19 and any guidance the state has developed to explain the state's policies. **Appendix B** provides sample language NELP developed, which is based on the notice recommended by the Labor Department. Where a state does not already have this requirement in place, the Labor Department recommends that it issue emergency regulations or enact emergency legislation to do so within the required 60-day period.

**Alternative Filing Options.** Next, the state must ensure that applications for benefits and assistance with the application process are accessible in at least two of the following mediums: in-person, phone, or online. With the major shift to online filing of UI benefits in most states, some states have limited access to the phones claims systems, and most no longer provide in-person filing options. Thus, this provision is key to ensuring that workers, no matter their computer literacy level, English proficiency, or disability, can readily access their benefits.

Indeed, the U.S. Department of Labor’s guidance emphasizes two recent policy announcements that address the limitations of online filing systems. In 2015, the Department issued guidance to the states indicating that, “[f]or persons unable to access or use a web-based system, the state must offer an alternative option for accessing information and benefits, such as by telephone and/or in person, in a manner that ensures equal access. Further, states must broadly and conspicuously disseminate information about alternative access options in ways that ensure that individuals who may need to use such options are aware of the options.”<sup>3</sup> In 2018, the Labor Department also directed the states to provide in-person services in “one-stops” and other Department-funded programs to provide the “direct linkages” to help workers file for UI.<sup>4</sup>

We urge advocates and state policymakers to closely scrutinize their procedures to ensure that this basic level of access is fully realized with the help of the funding provided by the new law. For example, if the state only provides online filing for benefits but refers individuals to a separate phone number for assistance with online filing, that should not meet the federal standard required by the law.

**State Notification.** The state must notify workers filing for UI benefits when an application is received and is being processed. If for some reason a determination is made that an application cannot be processed, the state must provide the worker with information describing why the claim was not processed and what steps can be taken to speed up the processing of the claim.

There are several situations where a UI claim is often held up, that would trigger the requirement that the state provide more detailed follow-up information to the worker. For example, when workers are misclassified as independent contractors, their wages will often not show up in the state’s wage records system. Thus, they may be required to produce additional proof of wages, which often delays the claims substantially. With COVID-19-related claims, many of these workers may have trouble tracking down the necessary information from the employers, who may no longer be in business or are otherwise unavailable.

Similarly, some states processing COVID-19-related claims may require an individual to provide proof that they are caring for a dependent whose school is closed, which could be difficult for many families to produce if records must be generated by the school. Thus, it is incumbent on the states to streamline their processes and limit the additional proof necessary to process COVID-19 claims. This approach is consistent with the Labor Department’s “reasonable attempt” rule,<sup>5</sup> which allows the states to process the claim without delay if the worker produces credible information that the employer fails to verify after the agency attempted to contact the company.

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<sup>3</sup> UIPL No. 02-16, *State Responsibilities for Ensuring Access to Unemployment Insurance Benefits* (October 1, 2015), available at <https://wdr.doleta.gov/directives/attach/UIPL/UIPL30-11.pdf>.

<sup>4</sup> UIPL 14-18, “Unemployment Insurance and the Workforce Innovation and Opportunity Act” (August 20, 2018), available at [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_14-18.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_14-18.pdf).

<sup>5</sup> U.S. Department of Labor, Employment and Training Administration, “ETA Handbook 301” available at [https://wdr.doleta.gov/directives/attach/UIPL/UIPL\\_1-13.pdf](https://wdr.doleta.gov/directives/attach/UIPL/UIPL_1-13.pdf).

Finally, the state notification should fully comply with the civil rights protections of Title VI of the Civil Rights Act of 1964, ensuring that workers who are limited-English-proficient (LEP) are provided with translated notices of “vital” documents and other multi-lingual services.<sup>6</sup>

## **Phase II**

The second phase of emergency administrative funding triggers after a state’s unemployment rate has increased by at least 10 percent (the rates will be posted on the Labor Department’s website).

To then qualify, the state must “express its commitment to maintain and strengthen access to the unemployment compensation system,” thus basically pledging at the executive level to improve the state’s reciprocity rate. In addition, the state is required to demonstrate specific steps it has taken or will take to “ease eligibility requirements and access” to UI. The list of specific steps includes the following measures: (1) waiving work-search requirements for COVID-19-related claims; (2) waiving the waiting week (which about 20 states have enacted over the past two weeks), and (3) relieving employers from being “charged” for COVID-19 claims, which would increase their UI tax rate.

Here too, the law’s required reforms should be broadly interpreted to ensure not just that the state’s UI system is prepared to respond to COVID-19-related claims, but also that it is prepared for the major surge in claims and the economic downturn that will inevitably follow in the coming weeks and months. For example, the states should waive the waiting week for all UI claims (which is the law in seven states) and non-charge all UI claims, not just those claims that are specifically related to COVID-19 or similar disasters. In addition, some states have narrowly limited the waiver of their work-search rules to situations where the individual is returning to work for the same employer within a limited period of time. Instead, the requirement should be waived to include all workers who are now confined due to emergency “stay in place” orders or otherwise substantially limited in their ability to search for work given the conspicuous lack of suitable work opportunities.

## **Full Federal Funding of Extended Benefits**

The law also incentivizes states to access both phases of the emergency administrative funding by addressing a gap in the federal Extended Benefits (EB) program, which is intended to provide additional weeks of benefits to high unemployment states. If the state qualifies to receive both allotments under the law and meets the thresholds to trigger onto the program before the end of the year, the federal government will pay 100 percent of the costs of EB, thus eliminating the requirement that the state cover half the costs. In addition, any state that temporarily suspends the waiting week requirement for UI claims will be temporarily provided with federal matching of the first week of EB through 2020. There are other serious flaws with the EB program that should be addressed comprehensively in federal legislation.

## **The Grant Application Process**

The Labor Department’s guidance authorizes the states to submit separate applications for the two distinct phases of emergency administrative funding, and has provided a form for the states to facilitate the process.

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<sup>6</sup> UIPL 30-11, “State Responsibilities Regarding Limited English Proficient Individuals” (September 16, 2011), available at <https://wdr.doleta.gov/directives/attach/UIPL/UIPL30-11.pdf>.

## State Flexibility to Expand UI Laws

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The new law provides considerable flexibility on a temporary basis to the states where needed to adopt a number of UI reforms. Based on this provision, the Labor Department is encouraging the states to expand their work search, waiting week, good cause, and non-charging policies. These provisions should be adopted by the states without delay, along with other recession-preparedness reforms to bolster the economic stimulus effect of the UI program.

### Work Search

The Labor Department's guidance expressly encourages the states to extend the work-search protections to all UI claimants, not just to those whose claims are directly related to COVID-19. According to the Department, "States may consider applying this emergency temporary flexibility to all individuals collecting UC and not just those recently separated. This allows individuals to more effectively comply with the social distancing recommendations of federal, state, and local government officials to mitigate the spread of COVID-19."

### Waiting Week

In addition, the Labor Department urges the states to also waive the waiting week for all UI claimants ("In light of the emergent need to cover individuals impacted by COVID-19 and to allow the UI program to act as an economic stimulus, states should consider temporarily suspending requirements to serve a non-compensable waiting week.").

### Good Cause Exceptions

Of special note, the Labor Department's guidance also encourages the states to expand the range of "good cause" exceptions that apply to reasons for leaving work, refusing suitable work, missing reporting deadlines, and a number of other common scenarios. For example, states that do not recognize "good cause" for leaving work to include caring for a child, parent, or spouse/partner should seriously consider taking advantage of the new flexibility provided under the federal law.

### Employer Experience Rating

The Labor Department's guidance also reinforces that non-charging of benefits is permitted, and clarifies that non-charging is also permitted in connection with claims filed by "reimbursing" employers, which includes most state and local government entities, hospitals, and non-profit organizations that self-finance the full cost of the claims filed by their employees rather than contribute UI taxes to the state UI trust fund. Specifically, "states are reminded that if they opt to provide noncharging relief to reimbursable employers, then the same noncharging relief must also be provided to contributory employers."

## Temporary Assistance With State Trust Fund Advances

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The federal law anticipates that due to the volume of COVID-19-related claims, the economic downturn, and the poor condition of most state UI trust funds, most if not all states will be forced to borrow from the federal government to cover the costs of their UI benefits, as many did during the Great Recession. As an initial response, the law provides that no interest will accrue on the federal loans made to the states from March 18, 2020 through December 31, 2020.

## Appendix A

### State Share of FY 2020 Emergency Administrative Grants

STATE	Emergency Transfers	
	Distribution	50% share
Alaska	2,090,135	1,045,067.50
Alabama	12,731,537	6,365,768.50
Arkansas	8,012,866	4,006,433.00
Arizona	19,144,750	9,572,375.00
California	117,972,306	58,986,153.00
Colorado	20,228,385	10,114,192.50
Connecticut	11,908,187	5,954,093.50
Dist. of Columbia	4,325,949	2,162,974.50
Delaware	3,061,041	1,530,520.50
Florida	59,434,879	29,717,439.50
Georgia	31,964,147	15,982,073.50
Hawaii	3,939,342	1,969,671.00
Iowa	10,053,959	5,026,979.50
Idaho	4,389,811	2,194,905.50
Illinois	41,979,368	20,989,684.00
Indiana	20,538,609	10,269,304.50
Kansas	9,531,044	4,765,522.00
Kentucky	12,568,702	6,284,351.00
Louisiana	12,708,754	6,354,377.00
Massachusetts	25,754,698	12,877,349.00
Maryland	16,784,142	8,392,071.00
Maine	3,835,381	1,917,690.50
Michigan	29,109,491	14,554,745.50
Minnesota	19,626,869	9,813,434.50
Missouri	18,388,111	9,194,055.50
Mississippi	7,142,769	3,571,384.50
Montana	2,678,938	1,339,469.00
North Carolina	30,371,420	15,185,710.00
North Dakota	2,411,008	1,205,504.00
Nebraska	6,072,645	3,036,322.50
New Hampshire	4,472,551	2,236,275.50
New Jersey	29,506,949	14,753,474.50
New Mexico	5,263,473	2,631,736.50
Nevada	10,684,454	5,342,227.00
New York	64,751,714	32,375,857.00
Ohio	35,125,882	17,562,941.00
Oklahoma	10,963,616	5,481,808.00
Oregon	12,676,291	6,338,145.50
Pennsylvania	37,864,557	18,932,278.50
Puerto Rico	4,397,537	2,198,768.50
Rhode Island	3,276,983	1,638,491.50
South Carolina	14,338,105	7,169,052.50
South Dakota	2,536,508	1,268,254.00
Tennessee	19,661,844	9,830,922.00
Texas	88,287,797	44,143,898.50
Utah	9,809,925	4,904,962.50
Virginia	26,809,573	13,404,786.50
Virgin Islands	174,810	87,405.00
Vermont	1,837,515	918,757.50
Washington	23,720,074	11,860,037.00
Wisconsin	18,914,772	9,457,386.00
West Virginia	4,391,023	2,195,511.50
Wyoming	1,774,804	887,402.00
US Total	1,000,000,000	500,000,000

## Appendix B

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### U.S. Labor Department's Model Employment Notification Language, Amended to Include References to COVID-19

#### Model Language for Employer Notification to Employees of the Availability of Unemployment Compensation [in response to COVID-19]

Unemployment Insurance (UI) benefits are available to workers who are unemployed and who meet the requirements of state UI eligibility laws [including for reasons related to the loss of work or reduced hours in response to COVID-19]. You may file a UI claim in the first week that employment stops or work hours are reduced.

For assistance or more information about filing a UI claim, call 1-800-xxx-xxxx or visit [www.xxx.gov](http://www.xxx.gov) [The state UI agency should insert the options available for filing initial UI claims].

You will need to provide the state UI agency with the following information in order for the state to process your claim:

1. Your full legal name;
2. Your Social Security Number; and
3. Your authorization to work (if you are not a US Citizen or resident).

To file a UI claim by phone call:

To file a UI claim online, visit:

If you have questions about the status of your UI claim, you can call the state UI agency at 1-800-xxx-xxxx or e-mail [www.xxx.gov](mailto:www.xxx.gov).

[If you have questions about filing a UI claim related to the loss of a job or a reduction in hours related to COVID-19, visit [xxx \(website\)](#)].