

U.S. Department of Labor

Office of Inspector General—Office of Audit

EMPLOYMENT AND TRAINING ADMINISTRATION



RECOVERY ACT: STATES HAVE AGGRESSIVELY IMPLEMENTED THE \$25 WEEKLY SUPPLEMENTAL UNEMPLOYMENT BENEFIT BUT SOME CHALLENGES REMAIN

This audit was performed by Foxx & Company, Certified Public Accountants, under contract to the Office of Inspector General, and by acceptance, it becomes a report of the Office of Inspector General.

A handwritten signature in blue ink that reads "Elliott P. Lewis".

Assistant Inspector General for Audit

Date: September 30, 2009

Report Number: 18-09-004-03-315

**U.S. Department of Labor
Office of Inspector General
Office of Audit**

BRIEFLY...

Highlights of Report Number: 18-09-004-03-315, to the Assistant Secretary for Employment and Training.

WHY READ THE REPORT

The President signed the American Recovery and Reinvestment Act of 2009 (Recovery Act) on February 17, 2009, to, among other things, provide additional assistance to unemployed workers. The Recovery Act authorized a new temporary Federal Additional Compensation (FAC) program that provides a \$25 supplement to the Weekly Benefit Allowance (WBA) paid by states to eligible unemployed recipients through December 31, 2009. The Department of Labor estimates that the FAC program will cost about \$8.7 billion.

WHY OIG CONDUCTED THE AUDIT

Foxx & Company, Certified Public Accountants, conducted the audit under contract with the Office of Inspector General. The audit objectives were to determine whether states (1) implemented the FAC program as authorized, (2) paid the \$25 weekly supplement in accordance with allowable methods identified in the Recovery Act, (3) had systems for implementing the FAC program that were adequately designed to address Federal requirements, and (4) separately accounted for and accurately reported financial and program data.

The scope of the audit was limited to evaluating the systems designed by 10 selected states to implement the FAC program. The states selected were California, Florida, Indiana, Minnesota, New Mexico, New York, Oklahoma, Ohio, Vermont, and Virginia.

READ THE FULL REPORT

To view the report, including the scope, methodology, and full agency response, go to:

<http://www.oig.dol.gov/public/reports/oa/2009/18-09-004-03-315.pdf>

September 2009

RECOVERY ACT: STATES HAVE AGGRESSIVELY IMPLEMENTED THE \$25 WEEKLY SUPPLEMENTAL UNEMPLOYMENT BENEFIT BUT SOME CHALLENGES REMAIN

WHAT OIG FOUND

All of the states aggressively implemented the program. As of June 30, 2009, the 10 states had paid about \$1.3 billion in benefits to FAC recipients. Overall, we assessed the risk level for compliance with Federal requirements as low for 9 of the 10 states. The State of New York's system was assessed as medium because of system weaknesses related to duplicate payments and the non-reporting of FAC overpayment information.

Challenges identified in implementing the FAC program involved the development of overpayment identifications, recovery capabilities, and the withholding of taxes. The audit also found non-compliance issues concerning states not reporting overpayment information to the Department's Employment and Training Administration (ETA) and not withholding taxes when requested by claimants. One state (Indiana) did not intend to recover overpayments from claimants. Overpayments by states during the period February 2009 through June 30, 2009, ranged from \$160,000 to \$2.5 million. These challenges and non-compliance issues were caused by the short timeframe the states had to implement the program and difficulties in reprogramming existing systems to meet the requirements of the program.

WHAT OIG RECOMMENDED

OIG recommended actions the Assistant Secretary for Employment and Training should take to ensure that the identified challenges are met and the non-compliance issues are resolved.

In response to the draft report, the Assistant Secretary for Employment and Training stated ETA will follow up with each of the applicable states to ensure that they complete the required programming for income tax withholding, and identify, recover, and report FAC overpayments. ETA will also issue guidance to all states to reaffirm FAC requirements.

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Foxx & Company
Certified Public Accountants

September 30, 2009

Ms. Jane Oates
Assistant Secretary for Employment and Training
U.S. Department of Labor
200 Constitution Avenue, N.W.
Washington, D.C. 20210

President Obama signed the American Recovery and Reinvestment Act into law on February 17, 2009. The Recovery Act provides \$787 billion in Federal funds for job preservation and creation, infrastructure investment, energy efficiency and science, assistance to the unemployed, and state and local fiscal stabilization. Division B, Title II, “Assistance for Unemployed Workers and Struggling Families,” Sections 2001-2006 contain several provisions related to the Unemployment Insurance (UI) program. One of the provisions includes a new temporary Federal Additional Compensation (FAC) program. The FAC program provides a supplement to the Weekly Benefit Allowance (WBA) paid to eligible unemployed recipients. This report presents the results of an audit, performed by Foxx & Company CPAs, Cincinnati, Ohio, under contract with the Department of Labor (DOL), Office of Inspector General (OIG), concerning the implementation of the FAC program.

The FAC program added a taxable \$25 supplement to the WBA each week from the initiation of the program in February 28, 2009, through December 31, 2009, for individuals receiving regular Unemployment Compensation, Unemployment Compensation for Federal Employees, Unemployment Compensation for Ex-Services Members, Emergency Unemployment Compensation 2008, Extended Benefits, Trade Readjustment Allowances, Disaster Unemployment Assistance, Short-Time Compensation, and Payments Under the Self-Employment Assistance Program. DOL reported that it executed the required agreements with each state on or before February 21, 2009, to provide the supplemental FAC payments. States began issuing the supplemental FAC payments the week of March 1, 2009. DOL estimated that the FAC program will cost about \$8.7 billion. The Secretary of Labor oversees the UI program through the Employment Training Administration (ETA).

The objectives of the audit were to determine whether states have systems in place to ensure that the FAC program meets the requirements of the Recovery Act, Office of Management and Budget (OMB), and DOL

guidance, and to assess the level of risk inherent in the states' systems. Specifically, the audit was to determine whether states (1) implemented the FAC program as authorized, (2) paid the \$25 weekly supplement in accordance with allowable methods identified in the Recovery Act, (3) had systems for implementing the FAC program that were adequately designed to address Federal requirements, and (4) separately accounted for and accurately reported financial and program data.

The scope of the audit was limited to evaluating the systems designed by 10 selected states to implement the FAC program. The audit involved examining a minimal number of individual payments or transactions to assist in obtaining an understanding of the systems and procedures. The objective of the audit was not to determine whether FAC payments were properly made. Consequently, the audit did not involve extensive testing of individual FAC payments or transactions. The 10 states were selected by the DOL/OIG using stratified random sampling. The states selected by DOL/OIG officials were California, Florida, Indiana, Minnesota, New Mexico, New York, Oklahoma, Ohio, Vermont, and Virginia. The timeframe for the audit was from June 3, 2009, to September 3, 2009.

This audit was conducted in accordance with generally accepted government auditing standards for performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives. The objectives, scope, methodology, and criteria for the audit are detailed in Exhibit 3 to the report.

RESULTS IN BRIEF

The selected states implemented the FAC program shortly after signing the Agreement with DOL. As of June 30, 2009, the 10 states had paid about \$1.3 billion in benefits to FAC recipients. All of the states aggressively implemented the program. Overall, we assessed the risk level for compliance with Federal requirements as **LOW** for 9 of the 10 states. The State of New York's system was assessed as **MEDIUM** because of system weaknesses as demonstrated by duplicate payments that had been made and the non-reporting of FAC overpayments information.

We observed that challenges and some non-compliance issues exist with respect to the implementation of the FAC program. The challenges involve the development of overpayment identifications, recovery capabilities, and the withholding of taxes. The non-compliance issues concern states not reporting overpayment information to ETA and not

withholding taxes when requested by claimants. One state did not intend to recover overpayments from claimants. Overpayments during the period February 2009 through June 30, 2009, ranged from \$160,000 to \$2.5 million. These challenges and non-compliance issues were caused by the short timeframe the states had to implement the program and difficulties in reprogramming existing systems to meet the requirements of the program.

Accordingly, we recommended actions the Assistant Secretary for Employment and Training should take to ensure that the identified challenges are met and the non-compliance issues are resolved.

In response to the draft report, the Assistant Secretary for Employment and Training concurred with the findings in the draft report and said that ETA will proceed to immediately address the recommendations. ETA will follow up with each of the applicable states to ensure that they complete the required programming for income tax withholding, and identify, recover, and report FAC overpayments. ETA will also issue guidance to all states to reaffirm the FAC requirements. The response from the Assistant Secretary for Employment and Training is included in its entirety as Exhibit 5.

RESULTS AND FINDINGS

As of June 30, 2009, the 10 states included in the scope of the audit had paid about \$1.3 billion in FAC benefits to eligible unemployed claimants. All of the states aggressively implemented the program. Overall, we assessed the risk level for compliance with Federal requirements as **LOW** for 9 of the 10 states. The State of New York's system was assessed as **MEDIUM** because of system weaknesses as demonstrated by duplicate payments that had been made and the non-reporting of FAC overpayment information.

Overall, the implementation of the FAC program has gone well. However, the audit observed that some challenges and non-compliance issues continue to exist concerning the implementation of the FAC program. The challenges involve the development of (1) tax withholding and (2) overpayment tracking and recovery capabilities. The non-compliance issues concern states not withholding taxes when requested by claimants, not intending to recover overpayments from claimants, and not reporting overpayment information to ETA as required.

The observations from the audit are discussed below within the framework of the four objectives of the audit. The matrix in Exhibit 1 identifies the respective states with regard to the results of the audit. The

conclusions from the individual state risk assessments are included in Exhibit 2.

Objective 1 – Did the states implement the FAC program as authorized?

States successfully implemented the FAC program and made timely payments to claimants.

The 10 states implemented the FAC program following the execution of the required Agreement with the DOL. DOL's Assistant Secretary for Employment and Training signed the Agreements on February 17, 2009. The state approvals were as shown in the following table:

State	State	
	Date Signed	State Official
California	2/19/2009	Governor
Florida	2/20/2009	Governor
Indiana	2/19/2009	Governor
Minnesota	2/18/2009	Governor
New Mexico	2/19/2009	Governor
New York	2/18/2009	Commissioner of Labor
Ohio	2/19/2009	Governor
Oklahoma	2/18/2009	Governor
Vermont	2/19/2009	Governor
Virginia	2/18/2009	Governor

According to the Recovery Act, the first week of eligibility was the week ending February 28, 2009. Because of system reprogramming requirements, some of the states were delayed in making the first payment. However, the 10 state systems were designed to ensure that FAC payments were made to all persons eligible to receive the \$25 additional compensation for each week eligible starting the week ending February 28, 2009.

Objective 2 – Did the states pay the weekly supplement in accordance with allowable methods identified in the Recovery Act?

States either increased the weekly benefit allowance by \$25 or made a separate \$25 payment to claimants – both of which were allowable payment methods.

Under the Recovery Act, FAC payments may be paid either (1) as an increase of \$25 in their weekly benefit allowance to an individual, or (2) as a separate \$25 supplemental payment made to the individual on the

same schedule as regular unemployment compensation. As shown in the table below and in Exhibit 1, four of the states elected to include the payment of the \$25 as part of the state’s unemployment insurance payment to eligible recipients. The other six states elected to make separate \$25 payments. Regardless of how the payment was made, all 10 states had to reprogram their automated systems or develop new systems to ensure compliance with the FAC program requirements.

\$25 Added to Regular Unemployment Payment	Separate \$25 Payment
<ul style="list-style-type: none">• California• New Mexico• Vermont• Virginia	<ul style="list-style-type: none">• Florida• Indiana• Minnesota• New York• Ohio• Oklahoma

Objective 3 – Were the states’ systems for implementing the FAC program adequately designed to address Federal requirements?

States’ systems were adequately designed to meet most Federal requirements, but some states encountered difficulties related to withholding taxes and identifying and tracking overpayments.

The systems used by the states to make FAC payments were designed and implemented to address most of program requirements included in the Recovery Act, as well as applicable OMB and DOL guidance. Although reprogramming was required for all states, some states were able to quickly adapt their systems. Other states had difficulty and reprogramming is continuing in order to obtain the capabilities necessary to meet FAC program requirements.

DOL’s primary instructions for implementing the FAC program are contained in Unemployment Insurance Program Letter No. 11-09 dated February 23, 2009. Attachment A to Letter No. 11-09 presents requirements for determining FAC eligibility, establishing the beginning and ending dates of the program in a state, terminating the FAC agreement, maintaining and disposing of records, processing FAC payments, accessing FAC funds, and reporting on FAC transactions.

The requirements in the Recovery Act and the guidance issued by OMB and DOL include the following:

- Payments are to be made only to individuals entitled to receive unemployment compensation under nine programs cited in the Recovery Act.
- Payments are to be made after all debts are offset from the other unemployment compensation programs.
- Payments are not to be offset for overpayments other than FAC.
- Funds are not to be used to supplement State Additional Compensation.
- The State must meet the non-reduction rule in Section 2002(c) of the Recovery Act.
- Payments are to be made promptly when due.
- Payments must not start earlier than the first week after the date the state signed the FAC agreement with DOL.
- No payments are to be made on benefit years that begin on or after January 1, 2010, except for a phase-out period for regular compensation and the federally funded benefits.
- Payments are to be terminated if the agreement between the State and DOL is terminated.
- Funds received must be included on the Internal Revenue Service Form 1099-G and taxes are to be withheld when an individual elects to have taxes withheld.

Challenges and some non-compliance issues exist with respect to the implementation of the FAC program. The challenges involve the development of overpayment tracking and recovery capabilities, and the development of tax withholding. The non-compliance issues concern not intending to recover overpayments from claimants unless directed to by ETA (Indiana) and states not withholding taxes from FAC payments when requested by claimants.

The following itemization summarizes the status of program implementation for the 10 states included in the scope of the audit. Exhibit 1 provides a state-by-state summary of the status as of August 31, 2009, when our audit fieldwork was completed.

- The reprogramming in six of the states (Florida, New York, Ohio, Oklahoma, Vermont, and Virginia) resulted in the state being able

to withhold taxes when requested by the claimant. The other four states (California, Indiana, Minnesota, and New Mexico) were not withholding Federal taxes from the FAC payment when requested by the claimant.

- Two of the states (California and New Mexico) not withholding taxes from individual FAC payments were working on obtaining this capability with their automated system,
 - Two states (Indiana and Minnesota) do not plan to withhold taxes from individual payments.
- All 10 states will report the total FAC payments on the IRS Form 1099-G as required.
 - Three of the 10 states (California, Minnesota, and New Mexico) did not have the capability within their automated system to identify and track the recovery of overpayments. With the exception of Indiana, the states will begin recovery of FAC overpayments when the reprogramming of their automated systems is complete. The range of overpayments that we identified was from about \$160,000 (Vermont) to about \$2.5 million (California). Indiana tracks but does not plan to recover FAC overpayments unless directed to by ETA. Indiana estimated its overpayments as about \$547,000 as of August 2009.
 - Six states (California, Indiana, Minnesota, New Mexico, New York, and Vermont) provided target dates for the completion of their system reprogramming actions. Reprogramming was completed in the other four states (Florida, Ohio, Oklahoma, and Virginia).

Several causes were identified for the conditions listed above. The causes included the following:

- An extremely short timeframe was available for the states to implement the program. The payments to eligible claimants were to begin the week ending February 28, 2009. The program was not authorized until the Recovery Act was passed and signed by the President on February 17, 2009.
- The systems used by the states to pay benefits under the regular unemployment programs had to be reprogrammed or replaced in order for the requirements of the FAC program to be incorporated. The age and available capacity within some of the automated systems complicated and delayed the reprogramming process.

- Indiana and Minnesota officials said they were not going to withhold taxes from individual payments because of the cost, complexity, and timeframe for implementing the program. These states did not believe it was cost-beneficial to withhold taxes from every payment.

Objective 4 – Did the states separately account for and report financial and program data?

FAC funds were separately accounted for, but six states were unable to report overpayment information.

DOL requires that FAC program funds be separately accounted for and that information on transactions involving FAC benefits be included in the following three reports:

	Information Reported
• ETA 2112	Unemployment Insurance Financial Transactions Summary
• UI-3	Administrative expenses
• ETA 227	Overpayments

The risks in reporting FAC information include omitting information from reports or reporting inaccurate information. We verified that FAC funds are separately accounted for in the accounting systems for each of the 10 states. We also verified that the states reconcile the amounts in the reports to the accounting system prior to submitting the reports to DOL. However, we noted that six of the 10 states (California, Indiana, Minnesota, New Mexico, New York, and Vermont) did not have the capability to accumulate and report overpayment information as required. Until the required reprogramming is completed, 5 of 6 states will continue to be in non-compliance with the Federal reporting requirements. The sixth state (Indiana) will continue to be in non-compliance unless ETA requires the State to report FAC overpayments.

The contributing causes for the inability to accumulate and report overpayment information related to the age and available capacity within some of the automated systems. The age and capacity limitations complicated and delayed the reprogramming process. With respect to the State of Indiana, the State officials decided that it was not cost efficient to recover overpayments of FAC funds.

RECOMMENDATIONS

We recommend that the Assistant Secretary for Employment and Training:

1. Follow up with the applicable states to ensure that the required reprogramming for withholding taxes and identifying and recovering overpayments is completed as projected by the states.
2. Require Indiana to recover and report FAC overpayments.
3. Reaffirm Federal requirements that
 - a. taxes are to be withheld if requested by the claimant,
 - b. overpayments are to be recovered, and
 - c. FAC overpayment information is to be included on the quarterly ETA 227 report.



Partner
Foxx & Company, Certified Public Accountants

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Exhibits

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Exhibit 1

**U.S. Department of Labor
FAC Program Audit Results
August 31, 2009**

State	As of 06-30-09 (Millions)	Payment		Reprogramming Completion	Tax Withholding		Overpayments		
		In UI check	Separate		Withholding When Requested	Will Include on 1099-G	Track	Recover	Report on ETA227
California	\$471	X		Projected December 2009	No	Yes	No	No	No
Florida	232		X	Completed	Yes	Yes	Yes	Yes	Yes
Indiana	92		X	Projected for new system November 2009	No	Yes	Yes	No	No
Minnesota	67		X	Projected October 2009	No	Yes	No	No	No
New Mexico	15	X		Projected September 2009	No	Yes	No	No	No
New York	223		X	Projected September 2009	Yes	Yes	Yes	Yes	No
Ohio	141		X	Completed	Yes	Yes	Yes	Yes	Yes
Oklahoma	22		X	Completed	Yes	Yes	Yes	Yes	Yes
Vermont	9	X		Projected September 2009	Yes	Yes	Yes	Yes	No
Virginia	41	X		Completed	Yes	Yes	Yes	Yes	Yes
Total	\$1,313								

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Exhibit 2

**SUMMARIES OF
RISK ASSESSMENTS FOR
10 STATES INCLUDED IN THE AUDIT**

The primary objective of the audit was to assess the level of risk inherent in the systems adopted by each of 10 states to implement the FAC program in accordance with Federal requirements. Eligibility determinations, payments to individuals, and the reporting of program activities were considered the three most important risk-associated aspects of the program’s implementation. Of these three, the most critical risk involved FAC program eligibility determinations. Eligibility determinations rely on (1) data input into the system based on information from unemployment compensation claimants and (2) computerized analyses of that data against eligibility requirements. The inherent risk involved in determining eligibility is high, requiring many internal control activities to mitigate the risk. A summary of the risk assessments for each of the 10 states is provided below.

SCHEDULE OF RISK LEVELS BY STATE

State	Eligibility Determination	Payments	Reporting	Overall System Risk
California	Low	Medium	Low	Low
Florida	Low	Low	Low	Low
Indiana	Low	Low	Low	Low
Minnesota	Low	Low	Medium	Low
New Mexico	Low	Medium	Low	Low
New York	Low	Medium	Medium	Medium
Ohio	Low	Low	Low	Low
Oklahoma	Low	Low	Low	Low
Vermont	Low	Low	Medium	Low
Virginia	Low	Low	Low	Low

California

The State of California had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. California officials recognize the risks associated with eligibility determinations. Officials established extensive and intensive internal controls and activities designed to mitigate the overall risk that ineligible individuals would receive FAC program funds. Accordingly, we rated the level of risk for the State’s compliance with the Federal requirements as **LOW** with the exception of identifying and recovering FAC overpayments.

In regard to the identification and reporting of FAC overpayments, we consider the State's FAC identification of overpayments and tax withholding to be a MEDIUM-level risk because the State's current system must be reprogrammed and the reprogramming was not projected to be completed until December 2009. However, the risk has been downgraded from HIGH to MEDIUM in our view because the majority of the FAC payments will not result in overpayments. The MEDIUM risk assessment also extends to the State's reporting on the ETA 227 report. However, we assessed the overall level of risk for reporting as LOW.

A draft of the Statement of Facts concerning the State's implementation program was provided to the State officials for review and comment. In addition, the Statement of Facts was discussed with the State officials during an exit conference on August 10, 2009, following the transmission of the draft to the State. The State officials concurred with the Statement of Facts during the exit conference and did not send written comments.

Florida

The State of Florida had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. Florida officials recognize the risks associated with determining eligibility. As a result, they have established extensive and intensive internal controls and activities designed to mitigate the eligibility risk to a LOW level. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **LOW**.

Other, less critical, risks are involved in the FAC payment process and the reporting process. However, these risks warranted mitigating internal controls, which we found that Florida had installed in the system. As a result, we also view these risks as LOW.

A draft of the Statement of Facts concerning the State's implementation program was provided to the State officials for review and comment. In addition, the Statement of Facts was discussed with State officials during an exit conference on August 6, 2009, following the transmission of the draft to the State. In a letter dated August 7, 2009, the Director of Florida's Agency for Workforce Innovation agreed with the description of the State's process as presented in the Statement of Facts. The Director also agreed with the overall **LOW** risk rating for the Agency.

Indiana

Based on our audit, we assessed the State of Indiana's level of risk for implementing the FAC program in compliance with Federal requirements as **LOW**. The State had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance, *except for*

the requirements for pursuing overpayments of FAC to ineligible individuals and withholding taxes from FAC payments as requested by recipients.

Indiana officials recognize the risks associated with eligibility determinations. As a result, they have established intensive internal controls and activities designed to mitigate the overall risk to a LOW level. Parts of the risk-mitigating activities are post-payment checks and controls to identify overpayments and set up recovery actions, including offsetting future unemployment benefits. Although identified overpayments of regular unemployment compensation are set up for recovery actions, Indiana made a management decision not to pursue recovery of FAC overpayments because it would be too costly. FAC overpayments may occur right along with overpayments of regular unemployment compensation.

Given Indiana's decision not to pursue recovery of FAC overpayments, the risk of ineligible individuals receiving and keeping FAC payments is HIGH. Similarly, the risk of not withholding taxes from FAC when the recipient opts for such withholding is HIGH. Because of the minimal amounts of withholding and the reporting of FAC payments on IRS Form 1099, we have reduced the risk for withholding to LOW.

Other, less critical, risks are involved in the FAC payment and the reporting processes. However, these risks warrant mitigating internal controls, which we found in place in the Indiana system. As a result, we view these risks as LOW.

A draft Statement of Facts concerning the State's implementation program was provided to the State officials for review and comment. In addition, the Statement of Facts was discussed with the State officials during an exit conference on August 17, 2009, following the transmission of the draft Statement of Facts to the State. The State also provided written comments on August 19, 2009, addressing the draft Statement of Facts. State officials concurred with the Statement of Facts but changed their estimate of the amount of FAC overpayments from about \$1 million to about \$547,000.

Minnesota

For the State of Minnesota, the most critical risk in the system involves FAC eligibility for payment determinations. These payment determinations rely on the accuracy of information provided by claimants and an automated system developed by the State. The system determines eligibility based on the information provided and various requirements to obtain unemployment insurance (UI) benefits. The State has developed and extensively tested its automated system to ensure that payment determinations are made correctly. The State also has a system of cross-checks with other data sources to ensure accuracy of payment determinations and the UI program is audited annually by the Minnesota Legislative Auditor. The Auditor has not reported any findings dealing with UI program individual eligibility in the most recent Single

Audit report. These activities mitigate the inherent risk associated with making incorrect payment determinations that result in improper UI and FAC payments. As a result, we consider the risk that the State will process FAC payments to ineligible individuals to be LOW.

With the exceptions of identifying and recouping FAC overpayments and withholding taxes from FAC benefit payments, we believe the State of Minnesota had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. Accordingly, we rated the overall level of risk for the State's compliance with the Federal requirements as **LOW**. The State is examining three possible processes to identify and recoup FAC overpayments and expects to have a system in place by October 2009. While the State is not withholding taxes from the \$25 FAC weekly benefits it is withholding taxes from other benefits if the applicant chooses to do so. It will report FAC benefits to the Internal Revenue Service at the end of the year to be included in applicants IRS Form 1099-Gs.

With the exception of Minnesota not yet having a system to identify overpayments from the automated system, and the State not withholding taxes from FAC payments if the applicant elects to have taxes withheld, we consider the risk-level for the State's payment process to be LOW. The State was making timely and proper payments. The State does not plan to implement a system to withhold taxes because of the complexity and timeframe of developing such a system.

The risk associated with the FAC ETA reporting process is MEDIUM in our view because (1) there is potential for errors in reporting FAC information to DOL since it is not reconciled with the UI system and (2) the State does not have a system for identifying and reporting FAC overpayments.

A draft of the Statement of Facts was provided to the State officials for review and comment. In addition, the draft Statement of Facts was discussed with the State officials during an exit conference on August 10, 2009, following the transmission of the draft to the State. The State's written comments were received on August 11, 2009. The State's comments have appropriately been incorporated into the Statement of Facts. The State officials concurred with the Statement of Facts.

New Mexico

The State of New Mexico had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. New Mexico officials recognize the risks associated with eligibility determinations. As a result, they have established extensive internal controls and activities designed to mitigate the overall risk to a LOW level. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **LOW** with the exception of identifying and recovering FAC overpayments.

In regard to identifying and reporting FAC overpayments, we consider the State's FAC identification of overpayments and tax withholding to be a MEDIUM-level risk because of how long it will have taken the State to complete its reprogramming of the current system. The risk has been downgraded from HIGH to MEDIUM in our view because the majority of the FAC payments will not result in overpayments.

Except for the State's lack of reporting overpayments on the ETA 227, we have assessed the risk for reporting as a LOW level. The State had a reconciliation system that ensured that the FAC expenditures reported agreed with the State's accounting system. However, the State's system did not have the ability to establish and recover overpayments related to the FAC program. Until the system reprogramming is completed, we consider the ETA 227 reporting risk to be MEDIUM. In their comments on the draft Statement of Facts, the State officials expressed their view that the MEDIUM risks discussed above should be reduced to a LOW risk because they intend to have the fixes of their systems in place by the end of September 2009.

A draft of the Statement of Facts was provided to the State officials for review and comment. In addition, the draft Statement of Facts was discussed with the State officials during an exit conference on August 24, 2009, following the transmission of the draft to the State. The State's comments were received on August 26, 2009. The State's comments have appropriately been incorporated into the Statement of Facts. The State officials concurred with the Statement of Facts.

New York

The State of New York had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. However, the system controls have weaknesses as demonstrated by duplicate payments that have been made and the non-reporting of FAC overpayments. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **MEDIUM**.

The State has checks built into the system to identify errors or incomplete information. Because of the extensive age of the system, officials are aware of its limitations and have taken actions to address the limitations. The system has eligibility controls in place, and various cross-checks are performed. Although ineligible individuals received benefits as demonstrated by incarcerated individuals receiving UI benefit payments prior to the initiation of the FAC program, the State installed compensating controls to prevent this problem. Therefore, we believe the risk level for eligibility determinations is LOW.

The State had not developed a system to identify and report overpayments, and duplicate payments had been made to individuals; therefore, we consider the risk in the payment process to be at a MEDIUM level. In August 2009, the State implemented an automated method to prevent duplicate payments. State officials said they had

identified 238 cases of duplicate payments. In addition, State officials were not aware that they should report FAC overpayments on the ETA 227 report. Because of the non-reporting of overpayments and the fact that the State officials were not aware that this reporting was required, we consider the reporting process to be at a MEDIUM level risk.

A draft Statement of Facts was provided to the State officials for review and comment on August 23, 2009. The draft Statement of Facts was discussed with the State officials during an exit conference on August 26, 2009. During the exit conference, the New York Director of the Unemployment Insurance Division stated that the Statement of Facts and its conclusions accurately summarized the State's implementation of the FAC program. He stated that the State's UI automated system is antiquated and has limitations. However, State officials took corrective actions when deficiencies were identified. A written response to the Statement of Facts was not needed according to the Director.

Ohio

The State of Ohio had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. Ohio officials recognize the risks associated with eligibility determinations. As a result, they have established extensive and intensive internal controls and activities designed to mitigate the overall risk to a LOW level. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **LOW**.

Other, less critical, risks are involved in the FAC payment process and the reporting process. We view these risks as LOW. However, these risks warrant mitigating internal controls, which we found that Ohio had put in place in the system.

A draft Statement of Facts concerning the State's implementation of the program was provided to the State officials for review and comment. In addition, the Statement of Facts was discussed with the State officials during an exit conference on July 28, 2009, following the transmission of the draft to the State. During the exit conference, State officials agreed with the description of the State's process as present in the Statement of Facts. Written comments were not received from the State.

Oklahoma

The State of Oklahoma had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and Department of Labor guidance. Oklahoma officials recognize the risks associated with eligibility determinations. As a result, they have established internal controls and activities designed to mitigate the overall risk to a LOW level. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **LOW**.

Other less critical risks are involved in the FAC payment process and the reporting process. We view these risks as LOW. However, these risks warrant mitigating internal controls, which we found Oklahoma had put in place in the system.

A draft of the Statement of Facts was provided to State officials for review and comment. In addition, the Statement of Facts was discussed with State officials during an exit conference on August 21, 2009, following the transmission of the draft to the State. The State's comments were received on August 26, 2009. The State's comments have appropriately been incorporated into the Statement of Facts. The State officials concurred with the Statement of Facts.

Vermont

The State of Vermont had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget, and DOL guidance. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **LOW** with the exception of the reporting process, which we considered to be a MEDIUM risk. The MEDIUM reporting risk is based on the State's lack of reporting overpayments on the ETA 227 and the need for the State to program its automated system so the system can report individual FAC benefits on IRS Form 1099-G.

Vermont Department of Labor officials recognize the risks associated with eligibility determinations and have established the necessary internal controls and activities designed to mitigate the overall risk to a LOW level. As a result, we believe the vast majority of the FAC payments will not result in overpayments because of the internal controls built into the State's automated system.

State officials are also aware of the need to complete programming of the automated system to stop FAC payments when the program ends. If programming is not completed the risk of improper payments would increase. However, the State officials were committed to completing the required programming in a timely manner and we consider the risk in the payment process to be LOW.

A draft Statement of Facts concerning the State's implementation of the program was provided to Vermont officials for review and comment. In addition, the Statement of Facts was discussed with State officials during an exit conference on August 31, 2009,

following the transmission of the draft to them. State officials provided comments during the exit conference. The officials also provide written comments dated August 28, 2009. We have included those comments as appropriate. They agreed with the description of the State's process as presented in the Statement of Facts with their comments included. State officials also agreed with the overall **LOW**-risk rating.

Virginia

The Commonwealth of Virginia had a system in place to ensure that the FAC program met the requirements of the Recovery Act, Office of Management and Budget and Department of Labor guidance. Virginia officials recognize the risks associated with eligibility determinations. As a result, they established extensive and intensive internal controls and activities designed to mitigate the overall risk to a LOW level. Accordingly, we rated the level of risk for the State's compliance with the Federal requirements as **LOW**.

In regard to the identification and reporting of FAC overpayments, we consider the State's FAC identification of overpayments and tax withholding to be a LOW-level risk because Virginia completed its reprogramming of the current automated system. The majority of the FAC payments will not result in overpayments. The LOW risk rating assessment extends to the State reporting of data with the exception of the ETA 227 report, which is a MEDIUM risk.

A draft of the Statement of Facts was provided to Virginia officials for review and comment. In addition, the Statement of Facts was discussed with State officials during an exit conference on August 27, 2009, following the transmission of the draft to them. The State's Chief of Benefits provided comments during the exit conference and we have included those comments as appropriate. The Chief of Benefits agreed with the description of the State's process as presented in the Statement of Facts. The Chief of Benefits also agreed with the overall **LOW**-risk rating. The officials did not submit written comments.

Exhibit 3

Objectives

The objectives of the audit were to determine whether states have systems in place to ensure that the FAC program meets the requirements of the Recovery Act, Office of Management and Budget and DOL guidance, and to assess the level of risk inherent in the states' systems. Specifically, the audit was to determine whether states (1) implemented the FAC program as authorized, (2) paid the \$25 weekly supplement in accordance with allowable methods identified in the Recovery Act, (3) had systems for implementing the FAC program that were adequately designed to address Federal requirements, and (4) separately accounted for and accurately reported financial and program data.

Scope and Methodology

The scope of the audit was limited to evaluating the systems designed by 10 selected states to implement the FAC program. The 10 states were selected by DOL/OIG using stratified random sampling. The sampling frame was stratified into five separate strata and a random sample of two states was selected from each strata. Stratification was designed using a risk-based approach. Six risk factors were used: (1) Estimated total benefits; (2) Estimated total beneficiaries; (3) Unemployment rate as of January 2009; (4) Annual change in unemployment rate from January 2008, through January 2009; (5) Total number unemployed; and (6) States making FAC payments as of March 25, 2009. The states selected were:

- California
- Florida
- Indiana
- Minnesota
- New Mexico
- New York
- Oklahoma
- Ohio
- Vermont
- Virginia

The audit involved examining a minimal number of individual payments or transactions to assist in obtaining an understanding of the systems and procedures. The objective of the audit was not to determine whether the FAC payments were properly made. Consequently, the audit did not involve extensive testing of individual FAC payments or transactions.

The timeframe for the audit was from June 3, 2009, to September 3, 2009.

Following initial work at DOL/ETA headquarters in Washington D.C., the audit team visited each selected state to discuss and obtain documentation concerning the state's system for implementing the FAC program. The visits were critical to the identification of weaknesses in the state's internal controls and to assessing the level of risk that the

state's system would ensure that the program was implemented in accordance with the requirements of the Recovery Act, and the OMB and DOL guidance.

This audit was conducted in accordance with generally accepted government auditing standards for performance audits. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on the audit objectives. We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on the audit objectives.

Exhibit 4

Acronyms

CPA	Certified Public Accountant
DOL	Department of Labor
ETA	Employment and Training Administration
FAC	Federal Additional Compensation
IRS	Internal Revenue Service
GAO	Government Accountability Office
OIG	Office of Inspector General
OMB	Office of Management and Budget
UI	Unemployment Insurance
WBA	Weekly Benefit Allowance

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Exhibit 5

U.S. Department of Labor

Assistant Secretary for
Employment and Training
Washington, D.C. 20210



SEP 28 2009

MEMORANDUM FOR: ELLIOT P. LEWIS

FROM: JANE OATES *Jane Oates*
Assistant Secretary

SUBJECT: Recovery Act: States Have Aggressively
Implemented the \$25 Weekly Supplemental
Unemployment Benefit but Some Challenges Remain
Draft Audit Report Number: 18-09-004-03-315

Thank you for the opportunity to respond to the subject OIG draft report. The Employment and Training Administration (ETA) shares your view that, overall, the states did a good job in implementing the temporary Federal Additional Compensation (FAC) program. However, we acknowledge states have faced some challenges implementing the program.

ETA concurs with the findings in the draft report and we are proceeding to immediately address the recommendations. We will follow-up with each of the applicable states to ensure that they complete the required programming for income tax withholding, and identify, recover, and report FAC overpayments. We will also issue guidance to all the states to reaffirm these FAC requirements.

As noted in the report, ETA provided states with formal guidance to implement the FAC program through Unemployment Insurance Program Letter No. 11-09. Additionally, as part of its oversight responsibilities, ETA has been conducting on-site program reviews since June 2009. During these site visits, the state's implementation of FAC is reviewed and appropriate technical assistance and guidance is provided.

A review was conducted in Indiana during August 24 - 28, 2009, and ETA staff found that the state had not programmed its system to withhold income taxes and it was not recovering and reporting FAC overpayments. ETA immediately began working with Indiana to address and resolve these issues, and we will continue to monitor the state's progress.

We believe ETA has provided strong leadership to the states to facilitate implementation of the FAC program in accordance with the program requirements. We plan to issue additional guidance to all states in the near future and will continue on-site reviews and technical assistance as needed.