

<b>EMPLOYMENT AND TRAINING ADMINISTRATION</b> <b>ADVISORY SYSTEM</b> <b>U.S. DEPARTMENT OF LABOR</b> <b>Washington, D.C. 20210</b>	<b>CLASSIFICATION</b> UI/EUC08
	<b>CORRESPONDENCE SYMBOL</b> OUI/DUIO
	<b>DATE</b> April 9, 2013

**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 13-13,  
Change 1

**TO:** STATE WORKFORCE AGENCIES

**FROM:** JANE OATES /s/  
Assistant Secretary

**SUBJECT:** Implementation of Sequestration under the Budget Control Act of 2011 for the Unemployment Insurance Programs for Fiscal Year 2013 - Questions and Answers: Emergency Unemployment Compensation

1. **Purpose.** To respond to questions from states about the impact of sequestration on Emergency Unemployment Compensation (EUC) for fiscal year (FY) 2013.

2. **References.**

- Balanced Budget and Emergency Deficit Control Act of 1985 (BBEDCA), as amended (2 USC 900 et seq.);
- Budget Control Act of 2011 (BCA) (Pub. L. 112-25);
- American Taxpayer Relief Act of 2012 (ATRA) (Pub. L. 112-240), Title V, Sections 501-503;
- Unemployment Insurance Program Letter (UIPL) No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation*, and UIPL No. 23-08, Changes 1, 2, 3, 4, 5, and 6;
- UIPL No. 04-10, *Extension of Temporary Provisions—Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and UIPL No. 04-10, Changes 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11; and
- UIPL No. 13-13, *Implementation of Sequestration under the Budget Control Act of 2011 for the Unemployment Insurance Programs for Fiscal Year 2013*.

3. **Background.** The BCA amended the BBEDCA to require reductions in budgetary authority, known as sequestration, beginning on January 2, 2013, unless Congress passed, and the President signed, a bill that reduced the deficit by at least \$1.2 trillion over 10 years. The ATRA amended the BBEDCA to delay the sequestration implementation date from January 2, 2013, to March 1, 2013. As required by the BBEDCA, the President issued a sequestration order on March 1, 2013. UIPL No. 13-13 outlined the sequestration reduction requirements as they applied to the Unemployment Insurance programs for FY 2013. This

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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UIPL contains questions and answers about the sequestration reductions for EUC that were outlined in UIPL No. 13-13.

4. **Action Requested.** State Administrators are requested to provide this guidance to appropriate staff.
5. **Inquiries.** Questions should be directed to the appropriate Regional Office.
6. **Attachment.** Questions and Answers: Emergency Unemployment Compensation (EUC)

**Questions and Answers:  
Emergency Unemployment Compensation (EUC)**

**A. General Questions**

1. **Question:** Is there a possibility that the EUC sequestration reductions for Fiscal Year (FY) 2013 will be reversed?

**Answer:** This depends upon Congressional action. The U.S. Department of Labor (Department) will issue guidance to states if there are any legislative changes impacting EUC paid in FY 2013.

2. **Question:** Will sequestration end on September 30, 2013 (i.e., the end of FY 2013) or will it continue into FY 2014?

**Answer:** The President's March 1, 2013, sequestration order applies only to FY 2013. Under current law, the President must issue a separate sequestration order for direct (or mandatory) spending programs for FY 2014. The order will be issued when the President's Budget is released, which is expected to be on April 10, and will take effect on October 1, 2013. However, at this time, the Department does not yet know what percentage reduction will be applicable for FY 2014. Guidance will be issued to states as soon as possible.

**B. EUC Reductions and Calculations**

1. **Question:** Unemployment Insurance Program Letter (UIPL) No. 13-13, section 5, *Calculation of EUC Benefit Reductions* advised states to apply their own rounding rules in calculating the sequestration reduction. In calculating this reduction, at what point will states apply the state rounding rules?

**Answer:** States will apply their rounding rules to the dollar amounts obtained after applying the specified percentage reduction to calculate the reduced weekly benefit amount (WBA) and maximum benefit amount (MBA) - or when the claimant is in the middle of a tier, the remaining entitlement in that EUC tier.

Note: Some states have reported that, after applying their rounding rules, the state's calculation of the number of weeks for any one tier may result in a partial payment for a week that exceeds the maximum number of weeks available for a EUC tier. States are reminded that, in implementing the sequester reductions, an individual's EUC entitlement continues to be the **lesser of** the (reduced) MBA or the maximum number of weeks available in the tier multiplied by the (reduced) WBA.

2. **Question:** Must states apply the sequestration reduction to EUC claims that are in inactive status at the time the state implements the sequestration reductions?

**Answer:** No, not as long as these EUC claims remain in an inactive status. However, during FY 2013, states must apply the sequestration reductions if and when the claimant(s) either reopens the claim (i.e., after a break in filing for various reasons) or files an additional claim after intervening employment.

3. **Question:** In our state, dependent allowances are a percentage of the WBA. Should the dependent's allowance be based on the reduced EUC WBA or the original EUC WBA for weeks paid after the state implements the sequestration reductions?

**Answer:** The calculation of the dependent allowances must be based on the reduced EUC WBA, in order to effectuate the sequestration reduction.

4. **Question:** When claimants report work and earnings for any week that they file for benefits, our state will disregard a percentage of the earnings reported before deducting the earnings from their benefit payment. Should this "earnings disregard" be based on the original EUC WBA or the reduced EUC WBA?

**Answer:** The state must base the "earnings disregard" on the reduced EUC WBA (see UIPL No. 13-13, section 5, *Deductions from EUC WBAs*).

5. **Question:** If the EUC WBA is already at the state's minimum WBA, must the state still reduce the WBA?

**Answer:** Yes. The EUC WBA must be reduced, even if the reduction takes the WBA below the state's minimum WBA in order to effectuate the sequestration reduction.

6. **Question:** Our state law does not allow us to pay Unemployment Insurance (UI) benefits below the state's minimum WBA. Is our state still required to reduce the EUC WBA if the reduction would take the WBA below our state minimum?

**Answer:** Yes. Since EUC is a Federal program, and the sequestration reductions apply to the program, the state must follow Federal guidelines on the sequestration reduction, even if it is inconsistent with state law governing regular compensation.

### **C. Notifications to the Claimant**

1. **Question:** Must the state provide notification of the EUC sequestration reductions to all EUC claimants or only to EUC claimants in active claim status?

**Answer:** States must individually notify all claimants in active EUC claim status of the EUC sequestration reductions as soon as possible, but no later than 15 days before the implementation of the reductions.

When any claimant, who had an inactive EUC claim with remaining balance at the point of sequestration, reopens his/her claim after a break in filing, the state must notify the claimant as soon as possible about the sequestration reductions that will apply to his/her claim (refer to UIPL No. 13-13, section 5, *Notifications to EUC Recipients*, for sample language for the claimant notification).

#### **D. Monetary Determinations**

1. **Question:** When the sequestration reduction rules are applied, must the state send the claimant a new monetary determination?

**Answer:** Yes. The state must send a notification to claimants of the changes made to their EUC WBA and/or MBA or remaining entitlement, as a result of the implementation of sequestration reductions.

2. **Question:** Which WBA/MBA must be included on the monetary determination?

**Answer:** The reduced EUC WBA and MBA, and/or the reduced remaining entitlement, must be included on the new monetary determination. States may also include the original EUC WBA and MBA, and/or the original remaining entitlement.

#### **E. Adjustments of EUC Payments**

1. **Question:** How are upward adjustments to benefit payments handled when the adjustment involves weeks of unemployment that were originally paid before the state implemented the sequestration reductions (for example, when a monetary redetermination is made to add base period wages to a claim and it increases the UI WBA, and thus, the original EUC WBA)?

**Answer:** Section 5 of UIPL No. 13-13 explains that, “the sequester will apply prospectively to weeks of unemployment beginning on or after” the date on which the state implements the sequester. Accordingly, EUC adjustments involving weeks of unemployment ending **before** the state implemented the reductions are payable at the original WBA.

EUC adjustments involving weeks of unemployment beginning **on or after** the state implemented the reductions required by sequestration must be reduced to comply with sequestration requirements.

##### ***Backdated Claims***

2. **Question:** If the state accepts backdated initial claims, or late filing of a continued claim(s) for weeks of unemployment that ended before the state implemented the sequestration reductions, are these weeks paid at the original EUC WBA or the reduced EUC WBA?

**Answer:** If a state accepts backdated claims for weeks of unemployment that ended before the state implements the sequestration reductions, these weeks must be paid at the original WBA.

#### **F. EUC Option/Deferral of UI**

- 1. Question:** Which EUC WBA must states use to determine whether a claimant qualifies to remain on EUC when s/he has new entitlement to regular compensation in a subsequent benefit year?

**Answer:** As provided in UIPL No. 13-13, section 5, *EUC Option*, states will continue to use the original EUC WBA to determine whether the claimant is still eligible to receive EUC, and appropriate sequestration reductions must be applied in accordance with the Department's guidance.

Note: States must continue to determine whether such claimants meet all four criteria outlined in UIPL No. 04-10, Change 3, section 4, *Modification of EUC08 Requirements Regarding Subsequent Regular Compensation Entitlement*. That is, the claimant: 1) is entitled to EUC with respect to a benefit year; 2) has a benefit year expired after July 22, 2010; 3) has remaining entitlement to EUC benefits with respect to the benefit year; and 4) would qualify for regular compensation in a subsequent (new) benefit year and the WBA on the new benefit year would be at least either \$100 or 25 percent less than the WBA payable on the individual's EUC claim.

#### **G. Requalification Requirements to Satisfy Disqualifications**

- 1. Question:** When states determine the amount of earnings required to purge or to satisfy a disqualification (for example, where the individual is disqualified based on his/her reason for separation and must return to work and earn five times his/her WBA to purge such disqualification), must states use the reduced EUC WBA or the original WBA?

**Answer:** Sequestration only affects the amount of the EUC payment itself. Thus, since the amount of work and/or earnings required to satisfy a disqualification is based on state law, the state will continue to determine the amount of work/earnings required to satisfy a disqualification in accordance with the state law. States may use either the reduced EUC WBA or the original EUC WBA for this purpose since a uniform federal rule is not needed in order to effectuate the sequestration reduction.

#### **H. Trade Readjustment Allowances (TRA) Monetary Determinations**

- 1. Question:** Although most states do not create monetary determinations for TRA until a claimant has exhausted all UI entitlement, our state does create a TRA monetary determination that is held pending the claimant's exhaustion of all other UI entitlement (including EUC). Is our state required to adjust the TRA monetary determination based on the sequestration reductions?

**Answer:** Yes. Existing TRA rules apply: The MBA for TRA is 52 times the TRA WBA minus the total sum of all UI, including EUC. (20 CFR 617.14(a).) States must take into account the reduced EUC entitlement; thus, if the total amount of EUC is reduced due to sequestration, the TRA MBA will increase. Refer also to the Attachment to UIPL No. 23-08, Change 1, Question O.2.

## **I. Overpayments**

- 1. Question:** If an EUC balance is zero on or after the date on which the state implements the sequestration reductions, but the state later restores the balance due to an EUC overpayment recovery for a week(s) of unemployment ending after the implementation date, must the state reduce the balance after this restoration occurs?

**Answer:** Yes, since the balance will be paid for a week(s) of unemployment beginning **on or after** the date on which the state implements the sequestration reductions.

- 2. Question:** May states waive overpayments that result from adjustments and delayed implementation of the sequestration requirement?

**Answer:** States must continue to follow the Department's guidance in UIPL No. 23-08, Attachment A, and UIPL No. 04-10, Change 9, regarding the recovery of overpayments including waiver provisions.

## **J. Appeals**

- 1. Question:** How must states process appeal reversals that include payment(s) for weeks of unemployment that end before the date on which the state implements the sequestration reductions?

**Answer:** Weeks of unemployment ending **before** the state implemented the sequestration reductions must be paid at the original EUC WBA.

- 2. Question:** How should states handle a restoration of funds to the EUC MBA when an appeal finds that an individual was not overpaid for weeks of unemployment ending before the date the state implements the sequestration reductions? Should states apply the sequester reduction to the restored funds?

**Answer:** Yes. See question I.1 above. Funds that are restored to an EUC account balance to be paid for weeks of unemployment ending **on or after** the date on which the state implements the sequestration reductions are subject to the reduction.

- 3. Question:** What authority may the state cite when denying an appeal to a monetary determination due to sequestration?

**Answer:** States may cite the guidance in UIPL No. 13-13, the guidance in this UIPL, the Balanced Budget and Emergency Deficit Control Act of 1985, as amended, and the

Budget Control Act of 2011. The monetary reduction itself, as required by sequestration, is not an issue on which a state's UI appellate authority has any discretion since it is set by Federal law.

**K. EUC Work Search Audits**

- 1. Question:** Must states continue conducting audits of EUC claims at the same levels even though administrative funds are reduced under sequestration?

**Answer:** No. UIPL No. 04-10, Change 10, Section 5, stated that states should sample 0.5 percent of the EUC claims each week for audit and provided a link to software to assist states in drawing the sample. Because sequestration reduces the EUC administrative funding, the source of funds to conduct the audits, the Department is reducing the sample size from 0.5 percent to 0.25 percent, with a minimum sample size of 50 claims.