

TEMPORARY EXTENDED UNEMPLOYMENT
COMPENSATION ACT OF 2002

IMPLEMENTING AND OPERATING INSTRUCTIONS
FOR THE
TEUC PROGRAM

U.S. Department of Labor
Employment and Training Administration
Office of Workforce Security
Unemployment Insurance Operations
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Temporary Extended Unemployment Compensation Act of 2002

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Temporary Extended Unemployment Compensation Act of 2002

Introduction

Title II of Public Law 107-147 is short-titled the "Temporary Extended Unemployment Compensation Act of 2002" and is referenced throughout this publication as the "Act."

The Act creates a federally funded benefit extension, called Temporary Extended Unemployment Compensation (TEUC), which provides up to 26 weeks of benefits to exhaustees, as defined, who otherwise meet the requirements of the Act.

Throughout these instructions various references are made to state laws pertaining to the payment of regular benefits by using such phrases as "in accordance with" or "as required by" or similar phrasing. In all cases such phrasing means law provisions as they apply to the determination and payment of regular benefits.

These instructions reference sections of the Federal-State Extended Unemployment Compensation Act of 1970 by using such phrases as "in accordance with" or "as required by" or similar phrasing. In all cases such phrasing mean state law provisions that are "in accordance with" or "as required by" the specific provisions of the Federal-State Extended Unemployment Compensation Act of 1970, as implemented by 20 CFR Part 615.

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Section 201. SHORT TITLE.

This title may be cited as the "Temporary Extended Unemployment Compensation Act of 2002".

Section 202. FEDERAL-STATE AGREEMENTS.

(a) **IN GENERAL.**- Any State which desires to do so may enter into and participate in an agreement under this Act with the Secretary of Labor (in this title referred to as the "Secretary"). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) **PROVISIONS OF AGREEMENT.**- Any agreement under subsection (a) shall provide that the State agency of the State will make payments of temporary extended unemployment compensation to individuals who-

(1) have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before March 15, 2001);

(2) have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law;

(3) are not receiving compensation with respect to such week under the unemployment compensation law of Canada, and

(4) filed an initial claim for regular compensation on or after March 15, 2001.

(c) **EXHAUSTION OF BENEFITS.**- For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when -

(1) no payment of regular compensation can be made under such law because such individual has received all regular compensation available to such individual based on employment or wages during such individual's base period, or

(2) such individual's rights to such compensation have been terminated by reason of the expiration of the benefit year with respect to such rights existed.

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(d) WEEKLY BENEFIT AMOUNT, ETC.- For purposes of any agreement under this title-

(1) the amount of temporary extended unemployment compensation which shall be payable to any individual for any week of total unemployment shall be equal to the amount of the regular compensation (including dependents= allowances) payable to such individual during such individual=s benefit year under the State law for a week of total unemployment;

(2) the terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for temporary extended unemployment=ment compensation and the payment thereof, except-

(A) that an individual shall not be eligible for temporary extended unemployment compensation under this title unless, in the base period with respect to which the individual exhausted all rights to regular compensation under the State law, the individual had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note); and

(B) where otherwise inconsistent with the provisions of this title or with the regulations or operating instructions of the Secretary promulgated to carry out this title; and

(3) the maximum amount of temporary emergency unemployment compensation payable to any individual for whom a temporary emergency unemployment compensation account is established under section 203 shall not exceed the amount established in such account for such individual.

(e) ELECTION BY STATES. - Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of temporary extended unemployment compensation in lieu of extended compensation to individuals who otherwise meet the requirements of this section. Such an election shall not require a State to trigger off an extended benefit period.

Section 203. TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION ACCOUNT.

(a) IN GENERAL.- Any agreement under this title shall provide that a State will establish, for each eligible individual who files an application for temporary extended unemployment compensation, a temporary extended unemployment compensation account with respect to such individual=s benefit year.

(b) AMOUNT IN ACCOUNT.-

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(1) IN GENERAL.- The amount established in an account under subsection (a) shall be equal to the lesser of-

(A) 50 percent of the total amount of regular compensation (including dependents= allowances) payable to the individual during the individual=s benefit year under such law; or

(B) 13 times the individual=s average weekly benefit amount for the benefit year.

(2) WEEKLY BENEFIT AMOUNT.- For purposes of this subsection, an individual=s weekly benefit amount for any week is the amount of regular compensation (including dependents= allowances) under the State law payable to such individual for such week for total unemployment.

(c) SPECIAL RULE.-

(1) IN GENERAL.- Notwithstanding any other provision of this section, if, at the time that the individual=s account is exhausted, such individual=s State is in an extended benefit period (as determined under paragraph (2)), then, such account shall be augmented by an amount equal to the amount originally established in such account (as determined under subsection (b)(1)).

(2) EXTENDED BENEFIT PERIOD.- For purposes of paragraph (1), a State shall be considered to be in an extended benefit period if, at the time of exhaustion (as described in paragraph (1))-

(A) such a period is then in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970; or

(B) such a period would then be in effect for such State under such Act if section 203(d) of such Act were applied as if it had been amended by striking A5" each place it appears and inserting A4".

Section 204. PAYMENTS TO STATES HAVING AGREEMENTS FOR THE PAYMENT OF TEMPORARY EXTENDED UNEMPLOYMENT COMPENSATION.

(a) GENERAL RULE.- There shall be paid to each State which has entered into an agreement under this title an amount equal to 100 percent of the temporary extended unemployment compensation paid to individuals by the State pursuant to such agreement.

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(b) TREATMENT OF REIMBURSABLE COMPENSATION.- No payment shall be made to any State under this section in respect of any compensation to the extent the State is entitled to reimbursement in respect of such compensation under the provisions of any Federal law other than this title or chapter 85 of title 5, United State Code. A State shall not be entitled to any reimbursement under such chapter 85 in respect of any compensation to the extent the State is entitled to reimbursement under this title in respect of such compensation.

(c) DETERMINATION OF AMOUNT.- Sums payable to any State by reason of such State having an agreement under this title shall be payable, either in advance or by way of reimbursement (as may be determined by the Secretary), in such amounts as the Secretary estimates the State will be entitled to receive under this title for each calendar month, reduced or increased, as the case may be, by any amount by which the Secretary finds that the Secretary's estimates for any prior calendar month were greater or less than the amounts which should have been paid to the State. Such estimates may be made on the basis of such statistical, sampling, or other method as may be agreed upon by the Secretary and the State agency of the State involved.

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Section 205. FINANCING PROVISIONS.

(a) **IN GENERAL.**- Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act(42 U.S.C. 1104(a)) shall be used for the making of payments to States having agreements entered into under this title.

(b) **CERTIFICATION.**- The Secretary shall from time to time certify to the Secretary of the Treasury for payment to each State the sums payable to such State under this title. The Secretary of the Treasury prior to audit or settlement by the General Accounting Office, shall make payments to the State in accordance with such certification, by transfers from the extended unemployment compensation account (as so established) to the account of such State in the Unemployment Trust Fund (as so established).

(c) **ASSISTANCE TO STATES.**- There are appropriated out of the employment security administration account (as established by section 901(a) of the Social Security Act (42 U.S.C. 1101(a)) of the Unemployment Trust Fund, without fiscal year limitation, such funds as may be necessary for purposes of assisting States (as provided in title III of the Social Security Act (42 U.S.C. 501 et seq.)) in meeting the costs of administration of agreements under this title.

(d) **APPROPRIATIONS FOR CERTAIN PAYMENTS.**- There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as may be necessary for to make payments under this section in respect of-

(1) compensation payable under chapter 85 of title 5, United States Code, and

(2) compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies.

Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

SECTION 206. FRAUD AND OVERPAYMENTS.

(a) **IN GENERAL.**- If an individual 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 temporary extended unemployment compensation under this title to which he was not entitled, such individual-

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(1) shall be ineligible for further temporary extended unemployment compensation under this title in accordance with the provisions of the applicable State unemployment compensation law relating to fraud in connection with a claim for unemployment compensation; and

(2) shall be subject to prosecution under section 1001 of title 18, United States Code.

(b) REPAYMENT.- In the case of individuals who have received amounts of temporary extended unemployment compensation under this title to which they were not entitled, the State shall require such individuals to repay the amounts of such temporary extended unemployment compensation to the State agency, except that the State agency may waive such repayment if it determines that-

(1) the payment of such temporary extended unemployment benefits was without fault on the part of any such individual; and

(2) such repayment would be contrary to equity and good conscience.

(c) RECOVERY BY STATE AGENCY.-

(1) IN GENERAL.- The State agency may recover the amount to be repaid, or any part thereof, by deductions from any temporary extended unemployment compensation payable to such individual under this title or from any unemployment compensation payable to such individual under any Federal unemployment compensation law administered by the State agency or under any other Federal law administered by the State agency which provides for the payment of any assistance or allowance with respect to any week of unemployment during the 3-year period after the date such individuals received the payment of temporary extended unemployment benefits to which they were not entitled, except that no single deduction may exceed 50 percent of the weekly benefit amount from which such deduction is made.

(2) OPPORTUNITY FOR HEARING.- No repayment shall be required, and no deduction shall be made, until a determination has been made, notice thereof and an opportunity for a fair hearing has been given to the individual, and the determination has become final.

(d) REVIEW.- Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as determinations under the State unemployment compensation law, and only in that manner and to that extent.

SECTION 207. DEFINITIONS.

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In this title, the terms Acompensation@, Aregular compensation@, Aextended compensation@, Aadditional compensation@, Abenefit year@, Abase period@, AState@, AState agency@, AState law@, and Aweek@ have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

SECTION 208. APPLICABILITY.

An agreement entered into under this title shall apply to weeks of unemployment-

- (1) beginning after the date on which such agreement is entered into; and
- (2) ending before January 1, 2003.

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Section II - Definition of Terms Used Throughout this Document

This section contains the definitions of terms used throughout this document. To the extent possible, these definitions follow the EB regulations found at 20 C.F.R. 615.2 as required by Section 207 of the Act regarding these terms listed there. References to 5 U.S.C. Chapter 85 are to the UCFE/UCX law.

1. "Act" means the Temporary Unemployment Compensation Act of 2001, Title VII, Public Law 107-147.
2. "Additional Compensation" means compensation totally financed by a state under its law by reason of conditions of high unemployment or by reason of other special factors, and when so payable includes compensation payable pursuant to 5 U.S.C. Chapter 85.
3. "Agreement" means the agreement entered into pursuant to the Act between a state and the Department of Labor, under which the state agency makes payments of TEUC in accordance with the Act as interpreted by the Secretary or the Department of Labor as set forth in these instructions or other instructions issued by the Department.
4. "Applicable Benefit Year" means, the current benefit year, with respect to an individual with an unexpired benefit year only in the state in which an initial claim for TEUC is filed. In any other case, when the individual has unexpired or expired benefit year(s) in more than one state, the applicable benefit year is the individual's most recent benefit year ending during or after the week of March 15, 2001. The most recent benefit year, for an individual who has benefit years ending during or after the week of March 15, 2001, in more than one state, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed.
5. "Applicable State" means, with respect to an individual, the state with respect to which the individual is an exhaustee for TEUC purposes, and, in the case of a combined wage claim for regular compensation, the term means the "paying State" for such claim as defined in 20 C.F.R. 616.6(e).
6. "Applicable State Law" means the state law of the state which is the applicable state for an individual.
7. "Base Period" means, with respect to an individual, the base period as determined under the applicable state law for the individual's applicable benefit year.
8. "Benefit Year" means, with respect to an individual, the benefit year as defined in the applicable state law.

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Section II - Definition of Terms Used Throughout this Document

9. "Compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation, extended compensation and TEUC as defined in this section.
10. "Extended Compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of a state law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to as Extended Benefits or EB.
11. "Regular Compensation" means compensation payable to an individual under any state law, and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.
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 Virgin Islands.
14. "State Agency" means the Employment Security Agency (currently referred to as the State Workforce Agency) of a state which administers the state law.
15. "State Law" means the unemployment compensation law of a state approved by the Secretary under Section 3304(a) of the Internal Revenue Code of 1954 (26 U.S.C. 3304(a)).
16. "Temporary Extended Unemployment Compensation" means the extended compensation payable under the Act, and which is referred to as TEUC, TEUC first tier, TEUC second tier (TEUC-X).
17. "TEUC First Tier" means the amount of TEUC benefit payable to an individual based on a determination of entitlement under the requirements of Section 203(b)(1) of the Act.
18. "TEUC Second Tier" means the amount of TEUC benefit payable to an individual based on a determination of entitlement under the requirements of Section 203(c) of the Act and is synonymous with TEUC-X.
19. "Week" means, for purposes of eligibility for and benefit payments under this Act, a week as defined in the applicable state law.
20. "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 this Act.

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Section III - Implementing the Requirements of the Act

1. Beginning and Ending of the TEUC Program in a State. TEUC is payable in a state beginning with the first week which begins after the date an Agreement is signed between the state and the Department of Labor. The last week of TEUC payable is the last week ending prior to January 1, 2003.

States may terminate the TEUC agreement upon 30 days written notice. The TEUC period will end in a state 30 days from the date the state notifies the Secretary of its election to terminate the TEUC program. No TEUC will be payable for weeks which begin after the date the termination of the agreement is effective. However, TEUC is payable for weeks of unemployment up to such termination date. The agreement may also be terminated by the Secretary, as provided in the agreement.

2. Notifications.

a. Identification and Notification of Potentially Eligible Claimants. The state will identify individuals who are potentially eligible for TEUC, and provide each such individual with appropriate written notification of his/her potential entitlement to TEUC.

A potentially eligible claimant is any claimant who has a benefit year that ends during or after the week of March 15, 2001, and has received all regular compensation payable based on employment and/or wages during the applicable base period, or whose rights to regular compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed.

(1) Interstate Claims. TEUC is payable to individuals filing under the Interstate Benefit Payment Plan (IBPP) in the same manner and to the same extent that benefits are payable to intrastate claimants without regard to whether or not the claim is filed through an agent state or directly with the liable state.

The liable state is responsible for identifying and notifying all potentially eligible interstate claimants of their potential eligibility, including filing instructions.

b. Notification of Media. To assure public knowledge of the status of the TEUC program, the state shall notify all appropriate news media having coverage throughout the state of the beginning of the TEUC program.

3. Relation of EB to TEUC. Section 202(e) of the Act allows, if state law permits, the payment of TEUC in lieu of EB to a TEUC-eligible individual. If a state elects to pay TEUC in lieu of EB, the amount of individual's EB entitlement is not otherwise affected: EB is deferred, not

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reduced. As a result, if the state is in an EB period when the individual exhausts all TEUC first and second-tier eligibility (see section 6.b of this section of the operating instructions), any individual meeting the EB eligibility requirements may receive any remaining EB entitlement.

Under the Act, the receipt of EB does not reduce the amount of TEUC payable. A state is not required to trigger Aoff@EB if it elects to pay TEUC in lieu of EB.

4. Effect of Additional Benefit (AB) Eligibility in a State. Although Section 202(b) of the Act requires that an individual have no rights to regular compensation or EB in order to meet the eligibility requirements for TEUC, it requires the payment of TEUC regardless of AB eligibility. A state with an AB program in effect may pay AB following the payment of TEUC. AB does not affect the TEUC maximum benefit amount (MBA). Please note that Section 209(b) of the Act amends Section 903 of the Social Security Act by adding subsection (d)(3)(B)(i)(II) to allow the special \$8 billion Reed Act distribution to be used for the payment of AB to exhaustees of TEUC.

5. Eligibility for Temporary Extended Unemployment Compensation.

a. Basic Eligibility Requirements. To be eligible for a week of TEUC an individual, in addition to meeting other applicable State law provisions, must:

(1) have exhausted all rights to regular compensation under the applicable state law with respect to the applicable benefit year.

(2) have no rights to regular or extended compensation with respect to the week under such law or any other state or Federal unemployment compensation law.

(3) not be receiving compensation with respect to such week under the unemployment compensation law of Canada,

(4) have filed an initial claim, new or additional, effective during or after the week of March 15, 2001. Although the Act says Aon or after@ March 15, UI eligibility is determined on a weekly basis; therefore the Act is read to apply to the entire week. Please note that the period of time during which the filing of an initial claim that satisfies this requirement extends through the life of the TEUC program if the claimant had a benefit year on file as of the week of March 15, 2001.

b. Determining Exhaustees.

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(1) In General. For an individual to be deemed to have exhausted benefit rights to regular compensation with respect to an applicable benefit year for purposes of meeting the first TEUC eligibility criterion, the individual must have either:

- S the individual must have received all regular compensation payable based on employment and/or wages during the applicable base period; or
- S the individual's rights to regular compensation have been terminated by reason of the expiration of the benefit year with respect to which such rights existed;

(2) Special Rules for Determining an Exhaustee for TEUC Purposes. An individual shall be deemed to have received all regular benefits available during the applicable benefit year or payable according to the monetary determination, even though:

(A) as a result of an appeal concerning wages or employment or both which were not included in the original monetary determination, the individual may subsequently be determined to have entitlement to more or less compensation;

(B) the individual may be denied benefits under a state law seasonality provision, but who has entitlement to future weeks in the off season;

(C) after having established a benefit year during such year his/her wage credits were canceled or the right to regular or extended compensation was totally reduced as the result of a disqualification;

(D) the individual has not exhausted AB;

(E) the individual is precluded from establishing a subsequent benefit year or qualifying for benefits in a subsequent benefit year by reason of state law requalifying provisions that require earnings after the beginning of the first benefit year;

Note that an individual who has no rights to benefits in cases involving the failure to meet requalifying requirements ceases to be an exhaustee when the requalifying earnings requirement is met and regular compensation is payable in a new benefit year. When regular compensation becomes payable, the individual is no longer entitled to TEUC.

c. Applicability of State Law Provisions. Under Section 202(d)(2) of the Act, state law provisions of the applicable state that apply to the payment and continuing eligibility for regular

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compensation apply to the payment of TEUC except for the EB A20 weeks of work@ requirement discussed in paragraph d. below.

An individual is not entitled to receive TEUC for a week to which a disqualification would apply but for the fact that the individual has exhausted all rights to regular compensation.

For example, an individual is disqualified for voluntary leaving until the individual earns six times the WBA. The individual-s benefit year has ended and the individual has insufficient earnings to establish a new benefit year and, therefore, files a TEUC claim. Until this individual satisfies the requalification requirement imposed during the benefit year of the regular claim, the individual is not eligible to receive TEUC.

d. Applicability of EB Provisions. Section 202(d)(2)(A) of the Act requires an individual to have 20 weeks of full-time insured employment or the equivalent insured wages, as determined under Athe provisions of the state law implementing Section 202(a)(5)@ of the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970. The equivalent in insured wages under EUCA equals: 40 times the individual-s most recent weekly benefit amount, or 1 and 2 times the individual-s high quarter insured wages.

To determine which of these earnings requirements the state may use to determine if the claimant has a qualifying applicable benefit year for TEUC, the state must consult Athe provisions of state law implementing Section 202(a)(5).@ Thus, for example, if the state law authorizes the use of just one of the three requirements, the state may only use that single requirement for TEUC purposes. If the state law authorizes the use of two alternatives, then the state may use the two alternatives and if the state law authorizes the use of all three alternatives, then all three alternatives may be used.

The suitable work and work search requirements of Section 202(a)(3) of the EUCA of 1970 do not apply to the TEUC program. Neither do the subsequent employment provisions of Section 202(a)(4) of the EUCA of 1970.

e. Effect of Other UI-Related Programs on Eligibility for TEUC.

(1) Trade Readjustment Allowances (TRA). The maximum amount of TEUC payable to an individual who is also entitled to TRA shall not be reduced by reason of TRA entitlement. However, under Section 233(a)(1) of the Trade Act of 1974, the individual's entitlement to TEUC will reduce the individual's maximum amount of "basic" TRA payable if the TEUC is payable during the UI benefit period established by or in effect at the time of the individual's first TRA qualifying separation under the applicable trade adjustment assistance certification issued by this Department. (For the definition of "benefit period," see 20 CFR

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617.3(h.) If the TEUC entitlement occurs during a UI benefit period subsequent to the one in which the individual's first TRA qualifying separation occurred, the maximum amount of "basic" TRA payable will not be reduced by the amount of TEUC entitlement. In either case, however, the individual is not eligible for TRA until TEUC entitlement is exhausted.

The provisions of Section 233(d) of the Trade Act of 1974 (relating to reduction of EB entitlement because of the receipt of TRA in the most recent benefit year) are not applicable to determinations of entitlement to TEUC.

(2) Disaster Unemployment Assistance (DUA). An individual is not eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5177) if the individual is eligible to receive TEUC for that week.

6. Establishment of TEUC Account. Section 203 of the Act requires the state to establish a TEUC account for each eligible individual. There is no restriction on the total amount of TEUC and regular compensation that is payable. Each program stands alone.

a. TEUC Maximum Benefit Amount (MBA). The MBA in the individual's account will be equal to the lesser of 50 percent of the total amount of regular benefits (including dependents' allowances) or 13 times the average regular compensation WBA (including dependents' allowances) payable to the individual with respect to the "applicable benefit year" for TEUC purposes. In states with a regular duration in excess of 26 weeks, the individual will be entitled to an MBA equal to 13 times the average WBA, including dependents= allowance.

If a redetermination or an appeal decision results in a determination that an individual is entitled to more or less regular compensation, the individual's status as an exhaustee must be redetermined, as appropriate, and an appropriate change shall be made in the individual's TEUC account.

b. TEUC Second-Tier (TEUC-X). Individuals in some states may be eligible for a second tier of TEUC depending on when they exhaust their initial TEUC entitlement. Specifically, individuals who exhaust their initial TEUC entitlement in an EB period will qualify for TEUC-X in an amount equal to the original TEUC entitlement. The same terms and conditions applicable to the payment of the initial TEUC entitlement also apply to TEUC-X.

TEUC-X may also be payable in some states where EB has not triggered on. Section 203(d)(2)(B) of the Act provides that a state will be treated as being in an EB period if Section

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203(d) of the EUCA of 1970, which sets the 5 percent insured unemployment rate trigger, contained a 4 percent trigger. All requirements for an EB period using a 5 percent IUR must also be met under the 4 percent trigger, including the 120 percent “lookback” provision, the 13-week minimum “on” period, and the 13-week minimum “off” period if the state dips below the required trigger. The beginning date of a state’s 4 percent TEUC EB period will be based on when the state would have triggered an EB using such a trigger. For example, if a state would have triggered on EB for the week beginning March 3 using the 4 percent trigger, the state will remain on for a TEUC EB period for at least 13 weeks from that date.

The Department will provide regular notices to states of which states qualify for TEUC second tier, and the beginning and ending dates of the 4 percent TEUC EB period during which TEUC-X is payable. See the reporting instructions for the ETA 539 in Section VI of this document.

7. TEUC Weekly Benefit Amount.

a. Total Unemployment. The WBA payable to an individual for a week of total unemployment is equal to the individual’s most recent regular WBA including dependents’ allowance for the “applicable benefit year.”

b. Partial and Part-Total Unemployment. To determine the amount payable for a week of partial or part-total unemployment, the state will calculate the payment amount in accordance with the state law applicable to such a week of unemployment.

8. Record Maintenance and Disposal of Records. The state will maintain TEUC claims and payment data (including data on eligibility, disqualification and appeals) as required by the Employment and Training Administration (ETA).

a. Record Maintenance. Each state will maintain records pertaining to the administration of the TEUC program, and will make all such records available for inspection, examination, and audit by such federal officials or employees as the Secretary of Labor or ETA may designate or as may be required by the law.

b. Disposal of Records. The electronic/paper records created in the administration of the TEUC program shall be maintained by the state for 3 years after final action (including appeals or court action) on the claim, or for less than the 3-year period if copied by micro photocopy or by an electronic imaging method. At the end of the 3 year period, the TEUC records are transferred to state accountability under the conditions for the disposal of records that apply to UCFE and UCX records as explained in Chapter XXII of ET Handbook No. 391 (1992 Edition) and Chapter I, Page I-15, of ET Handbook No. 384 (1984 Edition).

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9. Disclosure of Information. Information in records made and maintained by the state agency in administering the Act shall 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 compensation, and the entitlement of individuals thereto, may be disclosed under the applicable state law. This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to the requests for information or reports from U.S. Department of Labor, or to information, reports and studies with no individual identifiers, or where the result would be inconsistent with the Freedom of Information Act (5 U.S.C. 552), the Privacy Act of 1974 (5 U.S.C. 552a) or regulations of the U.S. Department of Labor promulgated thereunder.

10. Inviolate Rights to TEUC. Except as specifically provided in these instructions, the rights of individuals to TEUC shall be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable state law. Such measures must include protection of claimants for TEUC from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to TEUC. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for and receiving TEUC.

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1. Applicability of State Law Provisions. Under Section 202(d)(2) of the Act, except where inconsistent with the Act, the terms and conditions of the state unemployment compensation law which are applicable to claims for and payment of regular compensation, apply to claims for, and payment of, TEUC. The provisions of the applicable state law apply to claims for TEUC include but are not limited to:

- a. Claim Filing and Reporting;
- b. Information to individuals, as appropriate;
- c. Notices to individuals and employers, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to TEUC;
- d. Determinations, redeterminations, appeals, and hearings;
- e. Disqualification, including disqualifying income provisions;
- f. Ability to work and availability for work;
- g. The Interstate Benefit Payment Plan; and
- h. The Interstate Arrangement for Combining Employment and Wages.

2. Claims for TEUC.

a. Intrastate Initial Claims. An initial claim for TEUC shall be filed by an individual according to the applicable state's manual, remote or electronic filing procedures.

b. Interstate Initial Claims. Interstate TEUC claims are filed on the same forms and in the same manner as all other interstate initial claims against the liable state. Before accepting an initial TEUC claim, the agent or liable state, whichever is taking the claim, must review the individual's work history, examine potential entitlement and advise the individual of all filing options. If the individual has sufficient employment and wages to establish a new benefit year under any state or federal program, including the combined wage arrangement, no right to file under the TEUC program exists. When an initial TEUC claim is filed through the agent state, the state will:

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(1) Complete an Initial Interstate Claim, Form IB-1, check claim type “other” and identify as TEUC;

(2) Review the individual’s work history and advise the individual of all filing options;

(3) Transmit a TC-IB1 to the liable state.

c. Intrastate and Interstate Weeks Claimed. Claims for payments of TEUC for weeks of unemployment shall be filed at the same times and in the same manner as claims for regular compensation are filed under the applicable state law, and on forms or following electronic filing procedures as furnished to the individual by the state agency.

d. Combined Wage Claims. TEUC shall be payable to individuals filing under the Interstate Arrangement for Combining Employment and Wages (CWC) in the same manner and to the same extent that benefits are payable to other intrastate or interstate claimants.

Administrative, entitlement and eligibility requirements provided in this document also apply to claims filed under the CWC program, except where clearly inconsistent with combined wage (and interstate, when applicable) procedures, policies and rules.

When a TEUC determination or redetermination is issued on a CWC claim, no Report of Determination of Combined-Wage Claim, TC-IB5, will be issued to the transferring state. The paying state will not bill transferring states for TEUC. The paying state will charge all TEUC benefits paid on CWC claims directly to the EUCA account in accordance with the fiscal instructions provided in Section V.

3. Secretary’s Standard. The procedures for reporting and filing claims for TEUC shall be consistent with these instructions and the Secretary’s “Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services” (Employment Security Manual, Part V, sections 5000 et seq.).

4. Determination of Entitlement: Notices to Individual.

a. Determination of Initial Claim. The state agency shall promptly, upon the filing of an initial claim for TEUC, determine whether the individual is eligible and, if the individual is found to be eligible, the weekly and maximum amounts of TEUC payable to the individual. The individual must be issued an appealable determination.

b. Determination of Weekly Claims. The state agency shall promptly, upon the filing of a claim for a payment of TEUC for a week of unemployment, determine whether the individual is

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entitled to a payment of TEUC for such week, and, if entitled, the amount of TEUC to which the individual is entitled to and issue a prompt payment.

c. Redetermination. The provisions of the applicable state law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to regular compensation under the applicable state law shall apply to determinations pertaining to TEUC.

d. Notices to Individual. The state agency shall give notice in writing to the individual of any determination or redetermination of an initial claim and all weekly claims. Each notice shall include such information regarding the right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for regular compensation. The state agency must also provide the following notice to all claimants filing an initial claim for TEUC:

NOTICE

Under 18 U.S.C. ' 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal Offense, punishable by a fine of not more than \$10,000 or imprisonment for not more than five years, or both.

e. Promptness. Full payment of TEUC when due shall be made with the greatest promptness that is administratively feasible.

f. Secretary's Determination Standard. The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming TEUC shall be consistent with the Secretary's "Standard for Claim Determinations - Separation Information" (Employment Security Manual, Part V, sections 6010 et seq.)

5. Appeal and Hearing

a. Applicable State Law. The provisions of the applicable state law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to TEUC.

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b. Rights of Appeal and Fair Hearing. The provisions on right of appeal and opportunity for a fair hearing with respect to claims for TEUC shall be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

c. Promptness of Appeals Decisions.

(1) Decisions on appeals under the TEUC Program shall accord with the Secretary's "Standard for Appeals Promptness-Unemployment Compensation" in 20 CFR Part 650.

(2) Any provision of an applicable state law for advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, shall apply to proceedings involving entitlement to TEUC.

6. Fraud and Overpayment. The Act contains specific provisions with respect to fraud and overpayments of TEUC. Provisions of the state law applied to detection and prevention of fraudulent overpayments of TEUC will be, as a minimum, commensurate with those applied by the state with respect to regular compensation and which are consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (Employment Security Manual, Part V, Sections 7510 et seq.).

a. Fraudulent Claiming of TEUC. Section 206 of the Act provides that, if an individual 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 the individual has received an amount of TEUC to which the individual was not entitled, the individual:

(1) shall be ineligible for further TEUC in accordance with the provisions of the applicable state unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

(2) shall be subject to prosecution under Section 1001 of Title 18, U.S.C.

Provisions of state law relating to disqualification for fraudulently claiming or receiving a payment of compensation shall apply to claims for and payment of TEUC.

When a state has sufficient facts to make a prima facie case under 18 U.S.C. 1001, it will consider referral for criminal prosecution in accordance with the provisions of the Memorandum of Understanding (MOU) between the Department of Labor's Office of Inspector General (USDOL-OIG) and the Employment and Training

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Administration, which was transmitted as an attachment to UIPL No. 10-87 (also see UIPL No. 16-85 and UIPL No. 21-90).

States should pursue TEUC fraud cases in the same way all other state and federal claims are handled. At this time, states should refer only multi-state or multi-claimant cases to the USDOL-OIG for prosecution. If the state believes that federal prosecution is warranted, the state will refer the case to the appropriate Regional Office of the USDOL-OIG.

For those cases not referred to the OIG for investigation and prosecution or if the OIG does not accept the case for investigation, or if it is accepted, but is later returned because the U.S. Attorney declines prosecution, the state should refer the case for prosecution under state law provisions.

b. Overpayments. Under Section 206(b) of the Act each state shall require repayment from individuals who have received any payment of TEUC to which they are not entitled (whether fraudulent or non-fraudulent), unless the state, under the optional language of Section 206(b), elects to waive recovery. The option to waive recovery only applies to non-fraudulent overpayments.

(1) Application of State Waiver Provision. If the state has a state law waiver provision for regular compensation, the state provision may be applied to non-fraudulent TEUC overpayments if the provision requires the state to determine that -

- the payment of such TEUC was without fault on the part of the individual, and
- such repayment would be contrary to equity and good conscience.

In making these determinations, the state shall apply the same standards as are applied in making such determinations with respect to the waiver of overpayments of regular compensation.

(2) Optional TEUC Waiver. Any state that does not have a state waiver provision or does not have a state waiver provision that meets both the "fault" and "equity and good conscience" requirements stated in (1) above may adopt this optional TEUC waiver. If the state elects to implement the optional TEUC waiver, it may not do so until it has issued agency operating instructions for staff to follow.

(A) The state may waive recovery of a non-fraudulent TEUC overpayment if it determines that-

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- the payment of such TEUC was without fault on the part of the individual, and

- such repayment would be contrary to equity and good conscience.

(B) In determining whether fault exists, the following factors must be considered:

- whether a material statement or representation was made by the individual in connection with the application for TEUC that resulted in the overpayment, and whether the individual knew or should have known that the statement or representation was inaccurate.

- whether the individual failed or caused another to fail to disclose a material fact, in connection with an application for TEUC that resulted in the overpayment, and whether the individual knew or should have known that the fact was material.

- whether the individual knew or could have been expected to know that the individual was not entitled to the TEUC payment.

- whether, for any other reason, the overpayment resulted directly or indirectly, and partially or totally, from any act or omission of the individual or of which the individual had knowledge, and which was erroneous or inaccurate or otherwise wrong.

(C) In determining whether equity and good conscience exists, the following factors may be considered:

- whether the overpayment was the result of a decision on appeal;

- whether the state agency had given notice to the individual that the individual may be required to repay the benefit payment in the event of a reversal of the eligibility determination on appeal; or

- whether recovery of the overpayment will cause financial hardship to the individual.

(3) Recovery of Overpayments. Section 206(c)(2) of the Act specifically requires that no repayment of a TEUC overpayment may be required, and no deduction may be made, until a determination has been issued and an opportunity for a fair hearing thereon has been given

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to the individual concerned, and the determination has become final. When the determination requiring repayment is issued, the state shall restore the full amount of the recoverable overpayment to the individual's TEUC available account balance.

(A) Unless a TEUC overpayment is otherwise recovered, or is waived, the state shall, during the three-year period after the date the individual received the payment of TEUC to which the individual was not entitled, recover the overpayment by deductions from any sums payable to the individual under any federal unemployment compensation law administered by the state or any other federal law administered by the state which provides for the payment of any assistance or an allowance with respect to unemployment.

(B) To the extent permitted under state law, a TEUC overpayment may be recovered by offset, except that: 1) no single offset may exceed 50 percent of the amount otherwise payable to the individual for the week; and 2) offset of benefits payable is limited to the three-year period following the date that the claimant received the improper payment(s).

(C) At the end of the three-year period, the state may remove the overpayment from its accounting record. Although no further active collection efforts by the state are required, the state shall maintain an administrative record during the subsequent three-year period to provide for possible collection. After the subsequent three-year period (a total of six years from the date the claimant received the improper payment(s)), the state may dispose of the overpayment record.

(D) TEUC overpayment recovery shall be enforced by any action or proceeding which may be brought under state or federal law, unless recovery of the overpayment is waived or prohibited in accordance with the Act and the instructions in this section.

(E) Overpayments of TEUC recovered in any manner shall be deposited into the fund from which payment was made.

(F) If a state has an agreement in effect with the Secretary to implement the cross-program offset provisions of Section 303(g)(2) of the SSA, TEUC payments shall be used to offset state compensation overpayments, and state compensation payments shall be used to offset TEUC overpayments. If the state does not have an agreement with the Secretary under Section 303(g)(2), SSA, the state must not use TEUC to offset a state compensation overpayment, but may under Section 303(g)(1), SSA, offset state compensation payments to recover TEUC overpayments.

(G) If a state has the cross-program offset agreement and an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, TEUC payments may be used to offset state compensation overpayments for other states that also have both agreements in effect. If the other state does not have an

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agreement with the Secretary under Section 303(g)(2), SSA, TEUC benefits may only be used to offset overpayments of federal benefits for such state.

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Section V – Fiscal Instructions

1. Payment to States. Under Section 204 of the Act each state that has entered into an agreement to pay TEUC will be paid an amount equal to 100 percent of the amount of TEUC paid to individuals by the state under the agreement and in full accordance with the Act and these instructions.

a. Requesting TEUC Benefit Funds. States will request funds from the Extended Unemployment Compensation Account (EUCA) to pay all TEUC benefits attributable to all claim types (UI, UCFE, and UCX). Drawdown procedures are not changed --- all requests 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 (FEDWIRE or ACH to the state benefit payment account). See paragraph 3. in this section for specific instructions.

Benefits paid to former employees of state and local governments, “501(c)(3)” nonprofit organizations and federally recognized Indian tribes are funded from U.S. Treasury general revenues through the EUCA. This does not affect the process for requesting funds, but does affect the reporting of those benefits on the ETA 2112. States are to report all TEUC payments, including reimbursable, UCFE/X on line 39, column F. (Note that it does not matter whether these employers have elected reimbursement status.) See the reporting instructions in Section VI for details.

b. TEUC Administrative Funds. Section 205(c) of the Act appropriated funds from the Employment Security Administration Account (ESAA) in the Unemployment Trust Fund, to pay costs related to the administration of the TEUC agreement. Section 205(c) also authorizes the Secretary to determine each state’s share of the amount appropriated according to the factors described in section 302(a) of the Social Security Act (42 U.S.C. 501(a)). States will receive TEUC administrative funds through the contingency entitlement process. (See Section VI, Paragraph 2.h.)

2. TEUC Reporting Instructions.

a. Obligational Authority. The Grant Officer will assign a separate line on the UI program notices of obligational authority for TEUC grant funds, and a separate sub-account for TEUC will be set up in the Payment Management System for SWAs to draw down TEUC administrative funds.

b. Administrative Fund Accounting. Because of the separate appropriation for TEUC administrative funds and the availability of these funds until expended, SWAs must track and report TEUC administrative expenditures and obligations separately from the regular UI program. Therefore, SWAs should establish a separate fund ledger and must submit a separate SF 269 for

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the TEUC program. SWAs should include any TEUC administrative expenditures and obligations incurred in March 2002 in their June 30, 2002, TEUC SF 269 report.

c. Time Distribution. To ensure that regular UI and TEUC costs are tracked separately, SWAs should charge time used for all TEUC activities to the appropriate UI functional activity codes as outlined in Appendix E to ET Handbook No. 410) under the separate TEUC fund ledger; however, SWAs should combine regular and TEUC staff year usage data in Section A of the UI-3 worksheet.

d. Accounting for TEUC Payments (Benefits).

(1) TEUC advances to the states' UTF accounts, and disbursements for TEUC benefit payments will be reported on the monthly ETA 2112. Do not use a separate form for this report. (See Section VI, Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with OWS records; balances are subject to constant congressional and public inquiries.

(2) Since TEUC paid to UCFE and UCX will be funded out of General Revenues, the Federal Employees Compensation (FEC) Account will not be used to pay TEUC benefits. Therefore, federal agencies will not be required to reimburse the Unemployment Trust Fund for TEUC paid to federal employees. The ETA 191 report and UCFE/UCX detailed claimant data provided by states to Federal agencies must **exclude** TEUC.

3. Drawdown Instructions for TEUC. Beginning on March 15, 2002, there will be one or more new lines in the Automated Standard Application for Payments System (ASAP) for making drawdowns to pay TEUC benefits. The line(s) are clearly labeled TEUC and may be broken down by type of payment --- for former employees of contributory employers, UCFE/X, or reimbursable and special

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contributory employers. The Bureau of Public Debt, managers of the UTF, will immediately inform state users of the ASAP of any modifications to screens or drawdown instructions.

a. Processing Refunds. There are two scenarios for returning funds to these program lines. The most likely scenario will be when the state has funds in their state UI account and they need to return those funds. This should be completed as a negative amount posted to the appropriate line in ASAP. To accomplish this, the total draw for the day in ASAP must be greater than the negative balance posted to the appropriate line.

The second scenario is when a state actually has the funds in its federal UI account that are required to be returned to the appropriate program line. This should be accomplished by the state processing a book transfer transaction that accomplishes a transfer from its UI account to the appropriate program under the EUCA account.

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Section VI - Reporting Instructions

1. General. The TEUC program reports, ETA 207, ETA 218, ETA 227, ETA 5130 and ETA 5159 should be submitted electronically by utilizing separate TEUC entry screens that are available through the UI Required Reports electronic reporting system. These reports will mirror the reports required for the regular Federal-State Extended Benefits program. TEUC activity should also be reported on the ETA 2112, ETA 539 and UI-3 as specified below in section 2. Unless otherwise noted, definitions of items will follow definitions in the regular program as specified in ETA Handbook 401, 3rd Edition. Due dates will be the same as the regular versions of reports.

Reporting will begin with the first reporting period in which the effective date of the TEUC program falls. Reporting for all Reports except the ETA 2112 will continue for twelve full months or four full quarters after the last payable week of the TEUC program. For those reporting periods in this post-TEUC time frame, only reports, which have non-zero data, need be submitted. Reporting on the ETA 2112 should continue for as long as there is activity.

2. Data Items to be Reported.

a. ETA 207. Report column 1, Total Determinations and Redeterminations, for lines 101 through 106. Report also lines 201 and 202, columns 7 through 10; and lines 301 and 302, columns 11, 12, 14, and 17.

b. ETA 218. Report line 100, columns 1 through 3.

c. ETA 227. Report Section A, Overpayments Established, lines 101 and 103, for columns 2 through 5. Also report all of Section C, Recovery/Reconciliation, excluding lines 303-307, columns 11-14.

d. ETA 5130. Report all data elements.

e. ETA 5159. For Section A Claims Activities, report initial claims information for columns 2 through 5 and column 7 for lines 101 through 103. Report eligibility reviews and continued weeks claimed activity for columns 8 through 12 for lines 201 through 203. The claims information needed for column 11 for lines 201 through 203 will be identified as entitlement type "code 2" (Federal Benefit Extension) in field number 28 on the Interstate Liable-Agent Data Transactions (LADT). For Section B, Payment Activities, report columns 14, 15, 17, 18, and 19 for lines 301 through 302 and columns 21 and columns 24 through 28 for line 303.

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Section VI - Reporting Instructions

(1) First Payments. Report the first payment under TEUC program. Do not report the first payment after TEUC-X augmentation as a first payment.

(2) Final Payments. A final payment is to be reported when a payment is issued that exhausts the benefit entitlement in the individual's TEUC account. When the state is in an EB period or a TEUC EB period, only payments that exhaust a TEUC account that has been augmented with TEUC-X is reported as a final payment.

f. ETA 2112. Regular activity should be reported in the aggregate on the electronic regular ETA 2112 report as usual. Information reflecting TEUC activity should be reported as follows:

Line 15. Reed Act Distributions. Include all Reed Act distributions to the state account in the UTF.

Line 16. Intra-Account Transfer. Include in line 16F the amount of TEUC funds transferred from the UTF to the state benefit payment account.

Line 23. Federal Emergency Compensation. Enter in columns C and E the amount of Federal funds received as advances or reimbursement for TEUC.

Lines 33, 34, 35. Enter total benefits paid, attributable to state and local governments, "501(c)(3)" nonprofits, and Indian tribes, as appropriate, on the appropriate line for the type of employer, **excluding TEUC benefits**.

Line 36. FECA Net Federal Benefits - UCX. Enter in columns C and F the net Federal portion of unemployment compensation paid to former members of the armed services, **excluding TEUC**. The total payments should be adjusted for refunds deposited during the month, credits and recharges, and cancellations and reissuances.

Line 39. Federal Emergency Compensation. Enter in columns C and F the net amount for which the federal government is liable for TEUC, including Unemployment Compensation for Former Federal Civilian Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX) and federal emergency programs. Include residual activity (e.g., overpayment recoveries) from expired emergency programs (e.g., Emergency Unemployment Compensation (EUC), Federal Supplemental Compensation (FSC), Federal Supplemental Benefits (FSB)). Break out **all disbursements by program** in the "Comments" section as follows:

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Section VI - Reporting Instructions

(1) Regular - TEUC benefits paid to former employees of contributory employers.

(2) Reimbursable, Federal, and Special - TEUC benefits paid to former employees of the federal government (UCFE and UCX), state and local government (contributory or non contributory) Section 501(c)(3) employers (contributory or non contributory employers to which Section 3309(a)(1) of the Internal Revenue Code applies), and Indian Tribes (contributory or non contributory).

(3) Expired Program Transactions – any residual activity for expired federal benefit extension programs, e.g., recoveries of EUC overpayments.

Line 41. Reed Act Withdrawals. Enter all Reed Act funds withdrawn from the state account in the UTF.

Line 43. FECA Net Benefit Payments - UCFE. Enter in columns C and F the net Federal portion of unemployment compensation paid to former federal civilian (including postal) employees, **excluding TEUC**. The total payments should be adjusted for refunds deposited during the month, credits and recharges, and cancellations and reissuances.

Line 50. Withholding. States are to report gross benefits in column F regardless whether amounts of withholding transferred to the IRS goes through the state benefit payment account. See ETA Handbook 401, 3rd Edition, for specific instructions. **Line 16 F must equal Line 44E.**

g. ETA 539. Total weeks claimed for State, UCFE, and UCX under the TEUC program for the report period will be reported in the comments section and labeled as “TEUC” followed by the number. For example: “TEUC=239”. (The agent weeks claimed information needed for this report will be obtained from the LADT identified in field 28 as “code 2”, Federal Benefit Extension.)

h. UI-3 Worksheet. Report TEUC claims activity/workload activity electronically on the lines for third tier programs on the regular UI-3 report.

3. Notification of a TEUC EB Trigger. States with a TEUC agreement with the Secretary may already have triggered or may trigger a TEUC EB period under the requirements of Section 203(c) of the Act. A letter from the governor or appropriate state official declaring that the state has triggered either on or off the TEUC EB period based on the 4 percent IUR is required in the same manner as for an EB period under EUCA.

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Section VI - Reporting Instructions

States with a 4 percent IUR as of enactment of the TEUC Act should immediately declare a TEUC EB period indicating a beginning date in accordance with the requirements of 20 CFR 615.12. Send letter to:

Ms. Grace Kilbane
Office of Workforce Security
200 Constitution Avenue, N.W.
Room S-4231
Washington, D.C. 20210

Any paper reports should be faxed to 202-693-3229 instead of mailing. The cover sheet should indicate delivery to UI Required Reports.

4. OMB Approval. The information collection effort described in these reporting instructions has been approved by the Office of Management and Budget (OMB) under OMB Approval No. 1205-0433, expiration date – 11/30/2002. However, as indicated in Section VI.1, OMB approval is being sought for extension through 12/31/2003. ETA will notify states upon OMB approval of action.

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Section VII - Questions and Answers

1. Administrative

a. Question: When is the agreement between the state and the Department of Labor effective? Is it effective with the date the state authorizing official signs the document or are both signatures required?

Answer: The agreement takes effect after enactment and both parties have signed. TEUC is payable beginning the following week.

b. Question: What is the first week payable for TEUC?

Answer: The first week payable is the first week which begins after the state enters into a TEUC agreement.

c. Question: What is the official name of the federal extension?

Answer: Temporary Extended Unemployment Compensation (TEUC).

d. Question: How will states know which states are in a TEUC EB period under the 4 percent trigger?

Answer: The Office of Workforce Security will issue a separate TEUC trigger notice identifying the states where second-tier (TEUC-X) is payable.

e. Question: Does a state have to do anything special to declare that TEUC-X is payable under the state law based on the four (4) percent trigger?

Answer: Yes. As is the case with the EB program, the state must send a letter advising the department that it is triggering Aon@ or Aoff@ a second-tier period. The information currently provided by the states on the ETA 539 report will be used to issue the TEUC trigger notices.

f. Question: When a TEUC EB period AOFF@ indicator occurs, does the state discontinue payment of TEUC to individuals who have been determined eligible for TEUC-X benefits?

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Answer: No. The ending of a TEUC EB period does not affect the payment of TEUC-X to individuals who established eligibility during the TEUC EB period. Section 203(c) provides that an individual's TEUC account shall be augmented by an amount equal to the original TEUC account if a TEUC EB period is in effect at the time of the original TEUC account exhaustion. It doesn't provide for termination of payments if the period triggers off. The ending of the TEUC EB period only affects determinations of entitlement to TEUC-X for new exhaustees. Individuals who exhaust benefits with a week of unemployment that ended after the TEUC EB period ended are not eligible for TEUC-X.

g. Question: For those states that currently have an insured unemployment rate of 4 percent or above, what is the beginning date of the TEUC EB period?

Answer: The beginning and ending of the TEUC EB Period is determined in the same manner as a regular EB period using a 4 percent insured unemployment rate (IUR) in place of 5 percent. Therefore, the TEUC EB Period begins with the third week that begins after the "ON" indicator and ends with the ending of the third week ending after the AOFF@ indicator.

h. Question: If the state's IUR would cause the TEUC EB Period beginning date to precede the effective date of the TEUC agreement in a state, does the mandatory 13-week "ON" period begin with the earlier date or with the first week that begins after the agreement is in effect?

Answer: The mandatory 13-week "ON" period begins with the earlier date, because Section 203(c) of the Act does not affect the normal calculation of when the period begins and ends.

i. Question: If state law requires a request for redetermination before appeal of a monetary determination, is state law followed for TEUC monetary appeals?

Answer: Yes. Section IV, 5.c. provide that the provisions of state law apply to determinations pertaining to TEUC.

j. Question: May an individual in continued claim status at the time of exhaustion be automatically switched to a TEUC claim without filing a TEUC initial claim?

Answer: No. A TEUC initial claim must be filed that meets the state's requirements for claims filing.

k. Question: May individuals be paid TEUC for weeks of unemployment prior to the effective date of the legislation?

Answer: No. TEUC is payable only for weeks of unemployment beginning after enactment of the TEUCA and the state's execution of a TEUC agreement with the Secretary of Labor.

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1. Question: My state is in an EB period and has a TEUC agreement with the Secretary of Labor. If my state chooses to pay EB before TEUC, are we required to pay TEUC effective March 10, 2001, to individuals who have an applicable benefit year for TEUC, but not for EB?

Answer: Yes. The agreement requires the state to implement the TEUC program effective with the first week beginning after the agreement was executed for individuals who meet the requirements of Section 202(b) of the TEUCA.

m. Question: My state is in an EB period and has a TEUC agreement with the Secretary of Labor. If my state chooses not to pay TEUC in lieu of EB, is my state prohibited from paying TEUC to an individual prior to the exhaustion of EB?

Answer: Yes. If the state does not exercise its option under Section 202(e) of the TEUCA to pay TEUC in lieu of EB, the individual does not meet the requirements of Section 202(b)(2) of the TEUCA until EB is exhausted.

2. Claimants Potentially Eligible for TEUC

a. Question: What is the universe of claimants who are potentially eligible for TEUC?

Answer: In addition to meeting state law eligibility requirements that are not inconsistent with the Act or operating instructions, any individual with a benefit year ending during the week of March 15, 2001 and thereafter who-

(1) has exhausted all rights to regular compensation;

(2) has no rights to regular or extended compensation under any state or Federal law;

(3) is not receiving compensation under the Canadian law; and who

(4) filed an initial claim (new or additional, including transitionals) for compensation during the week of or after March 15, 2001. (This condition may be met with the filing of an initial claim at any time up until the TEUC program ends.)

Example: The individual exhausted benefits with the week ending January 6, 2001, and his/her benefit year ended Saturday, June 2, 2001. The individual did not file an additional claim on that claim during or after the week that included March 15, 2001. If the individual files a new claim for regular compensation between the week of March 15, 2001 and the end of the TEUC program and is determined monetarily ineligible, he/she is potentially eligible for TEUC.

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b. Question: Are individuals who filed a new claim and established a benefit year or filed an additional claim on an existing benefit year, during or after the week of March 15, 2001, but received no payments before the benefit year ended potentially eligible for TEUC?

Answer: Yes, because the ending of the benefit year prevents the individual from receiving the regular benefit balance that was available. Therefore, the claimant is an exhaustee for TEUC purposes.

c. Question: For purposes of Section 202(b)(4), TEUCA, are transitional claims considered initial claims?

Answer: Yes. See Section VII.2.a.(4) above.

d. Question: My state law provides that during an EB period, regular benefits in excess of 26 times the WBA (sharable regular) will be denied if the individual failed to purge a disqualifying separation through subsequent employment. Is this individual an exhaustee for TEUC purposes?

Answer: No. This individual is not an exhaustee because the individual has not "received all regular compensation payable" with respect to the benefit year and does not fall within the special rules for determining exhaustees. The fact that regular benefits in excess of 26 times the WBA are subject to EB eligibility requirements does not change the fact that they are regular benefits. However, when the benefit year ends, if the individual is not entitled to regular benefits on a new benefit year, the individual is an exhaustee. Additionally, since state law does not require that the separation disqualification be purged through subsequent work in order for the individual to qualify for regular benefits in a subsequent benefit year, it does not carry over to the TEUC claim.

e. Question: My state law provides that during an EB period, an individual must meet the EB work search requirements to qualify for regular benefits in excess of 26 times the WBA (sharable regular) and imposes the EB disqualification requiring subsequent employment to purge a disqualification. Is an individual who is held ineligible under the EB work search provision an exhaustee for TEUC purposes?

Answer: No. This individual is not an exhaustee for the same reasons described in question and answer 2.b. above. However, this individual is an exhaustee after the end of the benefit year, if there is no entitlement to regular benefits on a new benefit year. The disqualification does not carry over to TEUC, if the state is paying TEUC in lieu of EB, because the EB work search requirement only applies to regular benefits in excess of 26 times the WBA and EB in accordance with 20 CFR 615.9(a).

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f. Question: To be considered an “exhaustee,” must a person have received all regular benefits, i.e., must benefits actually have been paid on the parent claim?

Answer: No. See Section III.5(b).

g. Question: When an individual has only a monetarily ineligible claim on file showing a benefit year ending date during or after the week of March 15, 2001, and there is no record of an appeal, is this individual potentially eligible for TEUC?

Answer: No. Because the individual did not have sufficient employment and/or wages to establish monetary entitlement, there is no applicable benefit year with respect to which the individual exhausted all rights to regular compensation, as required by Section 202(b)(1), TEUCA.

3. Applicable Benefit Year for TEUC Purposes

a. Question: Does an individual with a qualifying benefit year who is eligible for regular benefits on a subsequent benefit year have the option to receive TEUC based on the first benefit year?

Answer: No. An individual with existing entitlement to regular compensation is not an exhaustee for TEUC qualifying purposes.

b. Question: If an individual has two qualifying benefit years on file and has exhausted the subsequent benefit year, does the individual have the option to receive TEUC based on the first benefit year?

Answer: No. The most recently exhausted benefit year is the applicable benefit year for TEUC purposes under the definitions published in Section II.

c. Question: Does TEUC entitlement exist for an individual who received some TEUC before the end of his/her benefit year and who fails to qualify on a new benefit year because he/she has not earned requalifying wages?

Answer: Yes. Individuals who are unable to qualify for benefits on a subsequent benefit year because of a failure to meet the requalifying wage requirements and who otherwise meet the TEUC requirements will be eligible for TEUC. If the requalifying requirements are met, the individual will no longer meet the requirements for TEUC eligibility because he/she would no longer be an exhaustee.

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d. Question: When an individual who otherwise meets the eligibility requirements for TEUC has established a second benefit year and has had his/her wage credits canceled or the right to regular compensation totally reduced as the result of a disqualification, is the individual entitled to TEUC based on the prior benefit year?

Answer: No. The “applicable benefit year” for TEUC is the current benefit year where the disqualification has been imposed. The TEUC monetary is determined based on the regular benefit monetary determination prior to wage cancellation. However, any requalifying requirement imposed by the disqualification applies to TEUC eligibility.

e. Question: In some cases, due to the receipt of severance pay, an individual’s eligibility for regular compensation may be postponed or reduced. This may result in no regular compensation being paid during the benefit year. Even though no benefits were ever actually paid, are these individuals considered to be “exhaustees?”

Answer: Yes. Section III.5(b).

4. Monetary Eligibility

a. Question: Is there a uniform 13-week duration for TEUC regardless of the regular claim maximum benefit amount (MBA)?

Answer: No. The TEUC MBA is computed as the lesser of 50 percent of the regular MBA, including dependents’ allowance, or 13 times the average weekly benefit amount (WBA). Fifty percent of the regular MBA may result in less than 13 weeks of benefits.

b. Question: If there has been a recent increase in the state’s WBA that applies to all benefit years on file with a balance, what impact does it have on the TEUC WBA and MBA?

Answer: The individual’s TEUC WBA will be the most recent regular WBA payable applicable to the individual. The individual’s MBA will represent the lesser of 50 percent of the total regular benefit MBA or 13 times the average of both WBAs paid during the benefit year.

c. Question: If an individual receives a monetary penalty on his/her regular claim, is the TEUC claim figured on the regular amount before or after the penalty (e.g., wage cancellation or reduction of the MBA)?

Answer: Before the penalty. Although Section 203(b)(1) of the Act requires that the amount in the TEUC account equal the lesser of 50 percent of the regular benefits payable or 13 times the average WBA, the Department has consistently held that the determination of the monetary award for federally-financed extensions should be based on the award prior to the application of the

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penalty because to base entitlement on the lesser redetermined amount would be tantamount to imposing a second penalty for the same disqualifying act. (Refer to 20 CFR 615.5(a)(1)(i) and (b)(3)).

d. Question: When a state is in a TEUC EB period, what individuals qualify for the TEUC-X monetary determination?

Answer: Under section 203(c)(1) of the Act, only those individuals who exhaust the first-tier TEUC during the TEUC EB period.

e. Question: Does an individual who exhausts tier-one TEUC prior to the TEUC EB period “on” indicator qualify for the second tier of TEUC?

Answer: No. A claimant who exhausts TEUC during an “off” indicator is not eligible for TEUC-X.

f. Question: May individuals who have their base period wage credits canceled or who have had their regular maximum benefit amount reduced to one week establish a TEUC claim? If “yes,” what is the TEUC monetary based on?

Answer: Yes. The individual’s TEUC account is based on the original monetary determination before wage cancellation or benefit reduction. See Section III.5(b)(2)(C). The rationale for this position is that the individual’s loss of regular compensation is the penalty. To base TEUC entitlement on a lesser redetermined amount (such as one week) would be tantamount to imposing a second penalty for the same disqualifying act. Whether or not the individual is immediately eligible for TEUC depends on the requalifying requirements imposed by state law.

g. Question: If the calculation of the individual’s TEUC monetary entitlement at 50 percent of regular monetary entitlement results in an amount (dollars and cents) requiring rounding, are state law rounding provisions followed?

Answer: Yes. States are to round up or down in accordance with their laws.

h. Question: My state’s formula for determining the maximum benefit amount (MBA) for regular compensation is the lesser of 26 times the weekly benefit amount (WBA) or one-third of the base period wages credits. When an individual is unemployed due to a plant closing, my state pays up to 13 additional weeks of benefits by calculating the MBA payable for regular compensation plus the additional compensation as the lesser of 39 times the WBA or one-half of the base period wage credits. State law does not specifically define these benefits as additional compensation. Are the plant closing benefits considered additional compensation for TEUC purposes?

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Answer: Yes. These benefits meet the definition of “additional compensation” (commonly called additional benefits) as defined at 20 CFR 615.2(f) as benefits paid “... by reason of other special factors....” As such, these benefits are excluded from use in the calculation of TEUC monetary entitlement and TEUC may be paid prior to these benefits. Section 202(b)(2), TEUCA, does not require, as a condition of TEUC eligibility, exhaustion of additional benefits.

5. Base Period Employment Requirement

a. Question: Section 202(d)(2)(A) of the Act requires that the claimant have 20 weeks of full-time insured work or the equivalent in insured wages in order to qualify for TEUC (and TEUC-X, since it is based on TEUC). Is this the same as is required for EB?

Answer: Yes. State law which satisfies the requirements of 202(a)(5) of the Federal-State Extended Unemployment Compensation Act (EUCA) of 1970 satisfies this requirement.

b. Question: The individual’s base period employment and wages meet the requirement of 20 weeks of full-time work or its equivalent. The state’s formula for calculating the weekly benefit amount allows weeks with low earnings to be excluded in the determination of the individual’s weekly benefit amount. Does this individual’s base period employment and earnings meet the requirements of Section 202(d)(2)(A), TEUCA?

Answer: Yes. Section 202(d)(2)(A), TEUCA requires the application of Section 202(a)(5), EUCA, to the determination of TEUC entitlement. Section 202(a)(5), EUCA, requires an individual to have base period employment of 20 weeks of full-time work or its equivalent, as defined by state law, to qualify. It does not require all of the employment and wages to have been used in the determination of monetary entitlement of the applicable benefit year.

c. Question: The individual has covered employment and wages in more than one state. The individual has established a benefit year based on wages from state A only because the base period wages from state B do not increase the weekly or maximum benefit amount. Therefore, no combined wage claim was established and state A returned the wages to state B. May state A use the information from the TC-IB4 wage transfer, that it received from state B, as evidence of sufficient employment and wages in the base period of its claim to satisfy the 20-weeks-of-full-time-work requirement or its equivalent for TEUC entitlement?

Answer: Yes. Section 202(a)(5) of EUCA requires an individual to have a specified amount of base period employment and wages to qualify. It does not require all of the employment and wages to have been used in the determination of monetary entitlement of the applicable benefit year.

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d. Question: The individual has existing benefit years ending during or after the week of March 15, 2001, in more than one state. The applicable benefit year for TEUC is in state B. The employment and wages used in the monetary determination of the claim in state A meet the 20-weeks-of-work or equivalent requirement. The employment and wages used in the monetary determination of the TEUC “applicable benefit year” in state B do not meet the base period work requirement. May state B use information from state A, obtained via the Interstate Inquiry (IBIQ) or the combined wage program TC-IB4, to verify that the individual had sufficient out-of-state covered employment and wages in the base period of the claim in state B to satisfy the 20-weeks-of-work or equivalent requirement?

Answer: Yes. Section 202(a)(5) of EUCA requires an individual to have a specified amount of base period employment and wages to qualify. It does not require all of the employment and wages to have been used in the determination of monetary entitlement of the applicable benefit year.

6. Seasonal Provisions/Between Terms Denial

a. Question: Are employees of educational institutions who are denied regular benefits because of the between-and-within terms denial provisions eligible for TEUC?

Answer: No. Section 3304(a)(6)(A) of the Federal Unemployment Tax Act requires, as a condition of participation in the Federal-State Unemployment Compensation program, that state law prohibit, under specified circumstances, the payment of benefits based on professional services performed for educational institutions during such periods. Under section 202(d)(2) of the Act, the terms and conditions of the State law, except where inconsistent with the Act or operating instructions, apply to claims for TEUC. Therefore, the same between and within terms denial provisions of state law apply to TEUC claims.

b. Question: Under my state’s seasonality provisions, all wage credits in the base period are used to determine monetary eligibility. However, for a seasonal worker, benefits based on seasonal wages may be paid only during the normal seasonal period. Is a seasonal worker, with a combination of seasonal and non-seasonal base period employment, who has exhausted all non-seasonal benefits and is currently ineligible for benefits based on seasonal employment considered an “exhaustee” for TEUC purposes?

Answer: Yes. See Section III.5(b)(2)(B).

c. Question: Under my state’s seasonality provisions, benefits based on seasonal wages may be paid only during the normal seasonal period for which the seasonal wage credits were earned. Is a seasonal worker, whose monetary determination is based solely on seasonal wages and who is ineligible because of the seasonality provisions, considered an “exhaustee” for TEUC purposes?

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Answer: Yes. Section III.5.(b)(2)(B)

7. TEUC EB Period Trigger

a. Question: Section 203(c)(2)(B) of the TEUC Act provides for using a modified Section 203(d) of the EUCA to determine a state's TEUC EB period. Does Section 203(f) of EUCA pertaining to the alternative total unemployment rate also apply and provide a higher TEUC MBA (i.e., 20 times WBA) during periods of a "High Unemployment Period"?

Answer: No. If a state is in a TEUC EB period when a claimant exhausts his/her first TEUC award, the claimant will receive another TEUC award equal to the first amount. Under TEUC, a claimant can potentially receive 26 weeks of benefits which is greater than the 20 week MBA payable during a "High Unemployment Period." Additionally, TEUC does not reduce EB entitlement. Therefore, if, a claimant has exhausted all TEUC or TEUC-X, and a state is in an EB period triggered under the provisions of Section 202(d) of the Act, unmodified, or Section 202(f) of EUCA, the claimant may qualify for EB.

b. Question: How are the TEUC-X EB period "on" and "off" dates determined?

Answer: The TEUC EB period triggers "on" and "off" in the same manner as an EB period under EUCA. The TEUC EB period begins with the third week beginning after the week for which there is an "on" indicator and it ends with the ending of the second week that begins after the week of the "off" indicator.

The TEUC Trigger notice shows all states that are in a TEUC EB period, which includes those in a regular EB period and those using the 4 percent trigger. The 13-week minimum duration of the TEUC EB period began for some states based on the 4 percent trigger prior to the enactment of the TEUC Act because of the way the trigger functions. If a state's insured unemployment rate falls below 4 percent, the TEUC EB period will end consistent with the beginning date shown.

c. Question: Does the ending of the TEUC EB period result in the ending of TEUC-X payments in a state?

Answer: No. Once an individual has been determined entitled to TEUC-X, the benefits are available through the end of the TEUC program. Whether a state is in a TEUC-EB period only affects whether the individual is entitled to an account augmentation of TEUC-X.

d. Question: When an individual exhausts initial TEUC entitlement, what determines whether the balance in the individual's account is augmented by an amount equal to the amount of the initial TEUC maximum benefit amount?

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Answer: If a TEUC-X EB period is in effect during the week of unemployment for which the final payment of initial TEUC entitlement is made, the individual's TEUC account is augmented by an amount equal to the amount of the initial TEUC MBA. When a state is not in a TEUC-X EB period during such week, the individual is not entitled to TEUC-X.

e. Question: When the balance in the individual's original TEUC account is less than the WBA and the individual qualifies for TEUC-X, is TEUC-X payable for that same week?

Answer: Yes. Section 203(c)(1), TEUCA, provides that, "if, at the time the individual's account is exhausted, such individual's state is in an extended benefit period..., then, such account shall be augmented by an amount equal to the original amount." [Emphasis added.] This provision provides for automatic replenishment of the TEUC account upon exhaustion. As a result, TEUC-X is payable for the week of exhaustion. If the state can accomplish augmentation of the account after payment authorization, that reduces the TEUC balance to zero and before check writing, the TEUC payment and the TEUC-X adjustment may be issued in a single check.

8. Work Search/Job Service Registration Requirements

a. Question: Do the EB work search requirements apply to TEUC?

Answer: No. The work search requirements of the state law apply.

b. Question: Do state law provisions regarding able, available and actively seeking work apply to TEUC?

Answer: Yes. Under Section 203(a)(2), TEUCA, "the terms and conditions of the state law which apply to claims for regular compensation and the payment thereof" apply to TEUC.

c. Question: For TEUC claims, my state plans to electronically reactivate prior work registrations and require the same number of job contacts as on the parent claim. Are these procedures inconsistent with any federal requirements?

Answer: No. State law work search and employment service registration requirements apply to TEUC eligibility.

9. Adjudication of Issues Arising Subsequent to Exhaustion

a. Question: If an exhaustee with an existing benefit year was separated from employment after exhaustion and before the effective date of the TEUC program, is the state required to adjudicate the separation issue?

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Answer: Yes.

b. Question: My state adjudicates all separations from the beginning of the base period to the time a claim is filed. Does this provision of state law apply to TEUC claims?

Answer: Yes. The state is expected to adjudicate all potentially disqualifying separations preceding and during the TEUC claim in accordance with state law applicable to claims for regular compensation.

10. TEUC Benefit Intercept

a. Question: Are TEUC payments subject to child support intercept and similar levies and attachments?

Answer: Yes. TEUC is an unemployment compensation program. As stated in 6.a. above, the terms and conditions of state law apply to TEUC, including intercepts and offsets, except where inconsistent with the Act or operating instructions.

b. Question: What is the order of priority for deductions of pension, overpayment offset, child support and income taxes?

Answer: The state will follow the same procedures that apply to regular compensation. The state will first determine the amount of UC that the individual is entitled to for a week. This means that receipt of deductible income, including retirement pay, will be taken into account in determining the amount payable for the week. Next, the state must determine how much of the amount payable is to be deducted and withheld to satisfy overpayments, intercept child support, withholding of income taxes or other permissible purpose. The Department's position on the priority of withholding is stated in UIPL 17-95, Change 1:

. . . amounts required to be withheld under state law must be withheld prior to any voluntary withholding requested by the claimants. The Department continues to leave to the state the matter of priorities among amounts that are required to be withheld.

As a result, any overpayments or child support required to be withheld must be withheld prior to any withholding of income taxes.

c. Question: May the state intercept and apply TEUC benefits to an established UI tax delinquency?

Answer: No. Refer to UIPL Nos. 25-89 and 45-89.

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11. Overpayments

a. Question: Is the waiver of overpayment for equity and good conscience voluntary on the state's part or must the state have a program to consider equity and good conscience?

Answer: The waiver provision is voluntary on the part of the state.

b. Question: Does Section 206(c)(2) of the Act prohibit the recovery of TEUC overpayments until the determination is final under state law?

Answer: Yes.

c. Question: May TEUC benefits be offset to recover state UI overpayments?

Answer: Yes, if the state has a Cross-program Overpayment Offset Agreement with the Secretary, TEUC may be offset to recover state UI overpayments.

d. Question: Must all offsets be 50 percent even if state law requires a 100% offset of benefits?

Answer: No. The Act provides that the 50% limit applies only to offsets to recover TEUC. It does not apply to offsets of TEUC to recover State UI overpayments. Section 303(g) of the Social Security Act (cross-program offsets) has no 50% limit.

e. Question: When state law does not contain an overpayment waiver provision, states may elect to waive non-fraudulent TEUC overpayments. Section IV.6.b.(2) lists the following three factors that must be considered in determining whether equity and good conscience exists. Whether: 1) the overpayment was the result of a decision on appeal; 2) the state gave notice that the individual may be required to repay the overpayment in the event of a reversal of the eligibility decision on appeal; and 3) whether recovery of the overpayment will cause financial hardship to the individual. Does this mean that a waiver may only be granted if all three conditions are met?

Answer: No, but each factor should be considered.

f. Question: During the Emergency Unemployment compensation program during the early 1990s, states were advised to refer fraud cases to the USDOL Office of Inspector General (OIG) for prosecution under Section 1001 of Title 18 USC. Those cases referred were not prosecuted under the federal statute and resulted in cases that could have been prosecuted under state law not being prosecuted because the statute of limitations expired before the state was notified that federal

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prosecutions would not be pursued. How is USDOL going to handle prosecution of TEUC fraud overpayment?

Answer: States should pursue TEUC fraud cases consistent with the way all other state and federal claims are handled. At this time, states should not refer individual cases to the USDOL-OIG. However, should the state suspect any multi-state or multi-claimant cases, these should be referred to the OIG.

g. Question: If an individual has been overpaid TEUC and the amount of the overpayment exceeds the amount remaining in the TEUC account, may the offset percentage exceed 50 percent?

Answer: No. The TEUCA provides that “no single deduction” to recover a TEUC overpayment “may exceed 50 percent of the weekly benefit amount from which the deduction is made.”

h. Question: Section 206(b), TEUCA, allows a state to waive certain TEUC overpayments if it determines that the payment of TEUC was without fault on the part of the individual and repayment would be contrary to equity and good conscience. Section IV. 6.b.(1) states that, if the state law contains waiver provisions for regular compensation, the state provisions may be applied to TEUC. The instructions do not require that the waiver criteria of the

state provisions must conform to the waiver criteria set forth in Section 6.b.(2). Additionally, Questions and Answers, 11.a. references the “equity and good conscience” criteria in stating that applying a waiver is voluntary on the part of the state. Does this mean that the state is precluded from applying its state law waiver provision unless it conforms to the “equity and good conscience” requirements of Section 206(b), TEUCA, and may only elect to apply the TEUC waiver criteria as provided Section IV.6.b (2)?

Answer: No. A state is not precluded from applying its state law waiver provisions if they are, at a minimum, consistent with the requirements of Section 206(b), TEUCA.

i. Question: Are states required to use only benefit offsets to recover TEUC overpayments?

Answer: No. A state is to use the full range of recovery tools applicable to regular compensation. See Section IV.6.b.(3).

j. Question: When an individual has been overpaid TEUC, is the amount of the overpayment restored to the individual’s TEUC account at the time the overpayment determination is issued or is it restored as it is recovered?

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Answer: The full amount of the recoverable overpayment is restored to the individual's account at the time the determination is issued. As a result, an individual may have an outstanding TEUC overpayment and still be eligible for a weekly payment, subject to the offset to recover the overpayment, as appropriate.

k. Question: My state is considering adopting an administrative rule for waivers of TEUC overpayments. Section IV.6.b.(2)(C) sets out three factors which "shall be considered" by states in determining whether equity and good conscience exists. The first of these is "whether the overpayment was the result of a decision on appeal." Does this mean that if an overpayment is the result of a decision on appeal, that fact alone may be grounds for granting a waiver?

Answer: Yes. Even though the state should consider all of the factors, if the individual's situation meets only one, it may constitute grounds for waiver.

12. Short-Time Compensation Program

a. Question: May TEUC be paid to individuals participating in a short-time compensation (STC or worksharing) program?

Answer: Yes. Nothing in the Act prohibits such payments. If an individual participating in an STC program is an exhaustee for TEUC purposes and is otherwise eligible, TEUC can be paid to the individual. It should be noted that the payment of TEUC to STC participants is unlikely to occur since (1) STC exhaustions do not occur with a high frequency and (2) an individual participating in an STC program whose benefit year has ended will have wages that must be used to establish, if possible, a new benefit year before any TEUC is payable.

b. Question: Since my state limits an individual's participation in a STC program to 26 weeks, the individual could (1) continue to work the reduced work week under the STC plan, (2) be ineligible for STC, and (3) have a balance remaining on the regular claim. Is this person an exhaustee for TEUC purposes? If so, do we determine the amount payable each week using STC criteria or regular criteria? How is the individual's TEUC MBA calculated?

Answer: This individual is an exhaustee for TEUC purposes because, even though a balance may remain on the claim, the individual has no rights to regular compensation. If the individual continues to work a reduced work week as provided under the STC plan, then TEUC is to be paid under the state law's terms and conditions pertaining to STC. However, if the individual no longer works the reduced work week under the STC plan, then the state's STC requirements will no longer be applicable and eligibility requirements for regular compensation apply. As a result, if a balance remains on the regular claim, the individual is no longer an exhaustee for TEUC purposes. The TEUC MBA is based on the MBA of regular compensation payable to the individual during the

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benefit year, even if the STC plan limits the amount payable during the STC plan, since the claimant could be laid off and be entitled to the total balance.

c. Question: When regular benefits are paid to individuals participating in a “work-sharing program,” the criteria for earnings deductions is based on a percentage of the earnings instead of deducting earnings on a dollar-for-dollar basis as we do with regular claims. Does the STC deduction criteria apply to TEUC? If “yes,” does the state law provision that limits the number of weeks payable also apply to TEUC work-sharing benefits?

Answer: Yes, to both questions. As stated in b. above, TEUC is to be paid under the state law’s terms and conditions pertaining to STC.

13. Extensions for Approved Training

a. Question: If a state has a special extension for individuals who exhaust regular compensation and are participating in approved training, may TEUC be paid to these individuals?

Answer: Yes. For purposes of TEUC, these extended programs are considered additional benefits. Under the Act, TEUC is payable prior to any such additional benefits, because, under section 202(b)(2) of the Act, exhaustion of additional benefits is not required to qualify for TEUC.

14. Self-Employment Assistance

a. Question: May TEUC be paid to individuals participating in a self-employment assistance (SEA) program?

Answer: No. SEA is payable to individuals “in lieu of” regular UC (Section 3306(t)(1) of the Federal Unemployment Tax Act), which means they have not, in effect, exhausted regular compensation. As explained in UIPL 14-94,

individuals who have exhausted regular UC are ineligible for SEA allowances. Individuals may not receive SEA allowances in lieu of Federal-State extended benefits (EB), additional benefits (AB) entirely financed by the state, any wholly funded Federal extension of UC, or other types of compensation not meeting the definition of regular UC.

However, if the individual has been terminated from or voluntarily left the SEA program, and if otherwise eligible, the individual may be paid TEUC since the individual is an exhaustee for TEUC qualifying purposes.

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b. Question: The response to question 14.a. states that an individual may not receive SEA allowance in lieu of any unemployment compensation except regular compensation. It also states that if an individual is terminated or voluntarily left the SEA program the individual may qualify for TEUC as an exhaustee. Does this mean that an individual may qualify for TEUC if the state officially terminates an individual's participation in the SEA program or an individual withdraws solely for purposes of removing a barrier to qualifying for TEUC?

Answer: Section 3306(t)(6), FUTA, provides that a state SEA program must meet such "requirements as the Secretary of Labor determines to be appropriate." Further, the purpose of the SEA program is to "help speed the transition" of workers "back into the work force." (H. R. Rep. No. 361, Part 1, 103rd Cong. 1st Sess. 94 (1993), quoted in UIPL No. 14-94.) Therefore, consistent with the FUTA requirements, the state may, on its own motion, terminate an individual from its SEA program if the individual's efforts to establish himself/herself in self-employment have failed. However, it may not terminate an individual simply to qualify that individual for TEUC.

With respect to an individual withdrawing from a SEA program solely to qualify for TEUC: The same terms and conditions that apply to regular compensation apply to the payment of TEUC. Therefore, if an individual leaves the SEA program by abandoning self-employment, the state, to determine TEUC eligibility, will need to determine whether the individual meets state law eligibility requirements for regular compensation. Under state law it may be, for example, that the leaving of the self-employment (especially if the only reason given is to collect TEUC) itself is cause for ineligibility.

c. Question: Do individuals who apply for admittance into the SEA program for the first time need to be notified that their participation will cause them to be ineligible for TEUC?

Answer: No. The goal of the SEA program is that an individual will successfully develop the ability to work in self-employment. It is not necessary to advise new entrants that TEUC (or EB or any other benefit extensions) would not be available if this goal is successfully attained. If the goal of self-employment is not realized and the individual would otherwise be eligible under state law, the individual may be eligible for TEUC.

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15. TEUC Effect on Trade Readjustment Assistance (TRA)

- a. Question: How does entitlement to TEUC affect the payment of basic TRA?

Answer: During the first benefit period (See 20 C.F.R. 20 617.3(h)) following the qualifying separation, a claimant is potentially entitled to 52 weeks of basic TRA minus regular, additional and extended compensation (including federally financed extensions). Therefore, entitlement to TEUC will reduce the basic TRA entitlement. In most cases, the application of this requirement will result in a worker receiving 26 weeks of regular benefits, followed by 13 weeks of TEUC, followed by 13 weeks of basic TRA for a total of 52 weeks of benefits. However, if the state is in an EB period, including one based on the substitution of "4" for "5" provided for in section 203(d)(1)(B) of EUCA, the claimant's basic TRA may be further reduced by the second tier of TEUC.

b. Question: This state has a large number of claimants covered by TRA petitions. Some of the claimants have exhausted their regular benefits and are currently receiving TRA payments. Does the state have to set up TRA overpayments and go back and start these persons in TEUC and exhaust that prior to going to TRA?

Answer: No. However, starting with the first week which begins after the state has a TEUC agreement, the state must suspend the payment of TRA until TEUC is exhausted and TEUC is deductible from TRA entitlement, as explained in 15.a. Further, the receipt of TRA will not reduce the TEUC MBA, because section 233(d) of the Trade Act (relating to the reduction of EB entitlement because of the receipt of TRA) does not apply to TEUC.

c. Question: An individual exhausted regular benefits and has received 5 weeks of TRA. The individual meets the eligibility requirements for TEUC and the current week claimed began after the state's TEUC agreement became effective. Should this claimant continue to be paid TRA until exhaustion before being paid TEUC?

Answer: No. Entitlement to TEUC requires that TRA be suspended. Upon exhaustion of TEUC the claimant may be entitled to resume TRA. For example, in this case, the claimant has received 26 weeks of regular benefits and 5 weeks of basic TRA. If the claimant is only eligible for 13 weeks of TEUC, upon exhaustion he/she may resume receiving the remaining basic TRA payable, in this case 8 weeks. The total basic TRA payable is 52 weeks minus regular and extended benefits, including federally financed extensions.

d. Question: The claimant has exhausted 26 weeks of regular benefits plus 26 weeks of basic TRA for a total of 52 weeks of basic TRA minus 26 weeks of regular benefits. The claimant otherwise meets the eligibility requirements for TEUC. Is this individual eligible for TEUC?

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Answer: Yes, if the individual meets all the TEUC eligibility requirements. See operating instructions. TRA reduces EB entitlement but not TEUC entitlement.

e. Question: The claimant exhausted 26 weeks of regular benefits on a first claim and received 10 weeks of TRA. The claimant qualified for a second benefit year, therefore, the payment of TRA was suspended. The claimant has now exhausted all benefits available on the second claim and meets the requirements for TEUC. After exhaustion of TEUC, are TRA benefits payable?

f. Answer: Yes, if the claimant meets all the TRA eligibility requirements. The claimant will have a TRA balance of 16 weeks. The TRA entitlement is not reduced by the amount of TEUC because the TEUC is not attributable to the first benefit period.

g. Question: If TEUC is payable before TRA, will the length of the basic TRA eligibility period or the additional TRA eligibility period be lengthened?

Answer: No. TEUC entitlement has no effect on the determination of the period of eligibility for TRA established under Section 233(a)(2) of the Trade Act.

h. Question: If a state mistakenly pays TRA instead of TEUC, may the state make a bookkeeping adjustment to correct the funding source instead of establishing a TRA overpayment, paying the individual TEUC for the same week(s), and recovering the TRA overpayment at 50 percent of the TEUC weekly benefit?

Answer: Yes; the benefits paid were mischaracterized.

i. Question: If an individual with an applicable benefit year for TEUC purposes is in training and is receiving up to 26 weeks of "additional" TRA, must TEUC be paid before additional TRA?

Answer: Yes. Entitlement to TEUC requires suspension of additional TRA the same as regular TRA. After exhaustion of TEUC, the individual may resume eligibility for additional weeks of TRA, provided the fixed 26-consecutive weeks period for additional TRA has not elapsed. Additional TRA may not be paid beyond the fixed 26-consecutive weeks period.

j. Question: An individual has received 26 weeks of regular benefits and 22 weeks of basic TRA prior to March 10, 2002. TRA payments are suspended and the individual receives 13 weeks of TEUC. Does a TRA overpayment exist because the combination of regular, TRA and TEUC exceed 52 weeks of benefits?

Answer: No. Receipt of TEUC does not reduce the individual's TRA entitlement that was payable prior to the weeks of unemployment for which TEUC was payable. In this case,

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the individual was entitled to 52 weeks of TRA less any unemployment compensation received. At the time of the TEUC application, the individual had received a total of 48 weeks (26 UI and 22 out of 26 TRA). TRA was suspended and the individual received 13 weeks of TEUC. The remaining balance of four weeks of basic TRA is reduced to zero by the TEUC payment made for the weeks of unemployment for which TRA would have been payable in the absence of TEUC.

Additionally, TRA does not reduce TEUC entitlement as section 233(d) of the Trade Act only relates to a reduction of Federal-State Extended Benefits (EB) entitlement, not TEUC.

k. Question: Section III.5.(e)(1) states that TEUC will reduce the "maximum amount of basic TRA payable..."; does this mean that states will have to issue a monetary redetermination of the basic TRA entitlement, or is there a special required notice to current TRA individuals when TRA is reduced by receipt of TEUC?

Answer: TRA claimants must be provided with an appeal-able determination that reduces or eliminates the balance of basic TRA payable by an amount equal to TEUC paid or payable for weeks of unemployment prior to the exhaustion of basic TRA entitlement.

l. Question: If an individual has received 26 weeks of UI and 26 weeks of basic TRA, is the individual entitled to TEUC, if otherwise eligible?

Answer: Yes. TRA is not deductible from TEUC. Therefore, TEUC is payable to the individual if all other eligibility requirements are met. TEUC does not retroactively cause the overpayment of basic TRA paid for weeks prior to weeks for which TEUC is payable.

m. Question: If an individual that has been in training for the past year has received 26 weeks of regular benefits, 26 weeks of basic TRA and 13 weeks of TEUC, is the individual entitled to 26 weeks of Additional TRA?

Answer: No. Although TEUC is not deductible from Additional TRA, the fixed 26 consecutive week period for which Additional TRA is payable began upon the exhaustion of basic TRA. Therefore, the individual is only entitled to Additional TRA for the weeks remaining in the fixed 26 consecutive week eligibility period.

n. Question: When an individual starts training after receiving 26 weeks of regular benefits, 26 weeks of basic TRA and 13 weeks of TEUC, is the individual entitled to 26 weeks of Additional TRA?

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Answer: Yes. TEUC is not deductible from Additional TRA and the fixed 26 consecutive week period for which Additional TRA is payable begins with the week that the training begins.

16. Reporting Requirements

a. Question: How will TEUC claims and benefit activity be reported?

Answer: See the reporting instructions in Section VI.

b. Question: Does the reference to entitlement type “code 2” for reporting on the ETA 5159 relate to the identification and reporting of nonmonetary determinations.

Answer: No. This code identifies TEUC data, in field 28 as federal benefit extension, on the Liable-Agent Data Transactions (LADT) which is the record for the weekly interstate data exchange.

c. Question: Do TEUC and TEUC-X benefit activity have to be reported separately?

Answer: No. There is a single TEUC program.

d. Question: When an individual exhausts TEUC first tier and qualifies for TEUC second tier, is the exhaustion of the first tier reported on the TEUC ETA 5159?

Answer: No. Exhaustion of the initial TEUC monetary award is not a reportable exhaustion if the individual meets the requirements to receive TEUC-X. Therefore, when the state is in a TEUC-X period, only final payments that exhaust TEUC-X are reportable.

e. Question: Is a separate SF-269 required for reporting TEUC administrative costs? If yes, when is the first report due?

Answer: Yes. However, no SF-269 report will be required for the quarter ending March 31, 2002. The first report for TEUC is due after the end of the June 30, 2002, quarter. That report will cover the period March 9, 2002, through June 30, 2002.

f. Question: How will states be reimbursed for administrative costs for the quarter ending March 31, 2002?

Answer: Administrative costs for the quarter ending March 31, 2002, will be reimbursed after receipt of a modified UI-3 (Quarterly UI Contingency Report). Because of the large increase in

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workload, advances for TEUC administration for the June 2002 quarter are available. Instructions will be issued soon.

g. Question: Are the ETA-2112 reporting requirements in UIPL No. 17-02, Implementation and Operating Instructions, Section VI being changed? If yes, what are the revised requirements?

Answer: Yes, the reporting requirements are being changed. All TEUC benefits will be reported on Line 39 of the ETA 2112. TEUC payments to former employees of reimbursable employers will not be reported on Lines 33, 34 and 35. TEUC UCFE and UCX payments will not be reported on Lines 36 and 43. In the "comments" section, the amount reported on Line 39 should be broken out on three lines as follows:

(1) Regular - TEUC benefits paid to former employees of contributory employers.

(2) Reimbursable, Federal, _____ and _____ Special - TEUC benefits paid to former employees of the federal government (UCFE and UCX), state and local government (contributory or non contributory) Section 501(c)(3) employers (contributory or non contributory employers to which Section 3309(a)(1) of the Internal Revenue Code applies), and Indian Tribes (contributory or non contributory).

(3) Expired Program Transactions – any residual activity for expired federal benefit extension programs, e.g., recoveries of EUC overpayments.

17. Interstate Benefits/Combined Wage/ICON Applications

a. Question: For combined wage claims, are paying states required to prepare and transmit a Report on Determination of Combined-Wage Claim, TC-IB5 and a Statement of Benefits Paid to Combined-Wage Individuals, TC-IB6, to transferring states on TEUC claims?

Answer: No. Paying states are to charge all TEUC payments to the EUCA account. No TC-IB5s or TC-IB6s are to be sent to the transferring states.

b. Question: Under interstate and combined wage procedures, when an individual is indefinitely disqualified under state A's law and has sufficient employment and wages to qualify under state B's law, the individual is allowed to file against state B. When an individual has existing benefit years ending during or after the weeks of March 15, 2001, in state A and state B and is indefinitely disqualified in state B, does the individual have the option of filing TEUC using the claim in state A?

Answer: No. Only the claim in state B meets the definition of an "applicable benefit year" for TEUC purposes. (See Section II, Item 4.)

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c. Question: Under EB rules, when the liable state is in an EB period, an individual residing in an agent state that is not in an EB period is eligible for only two weeks of EB payments. When the liable state elects to pay EB before TEUC, are the individuals filing from agent states that are not in an EB period or Canada considered exhaustees for TEUC purposes after the two weeks of EB have been paid?

Answer: The two-week limitation found in Section 202(c), EUCA, does not apply to claims filed from Canada. If the state has elected to pay EB before TEUC, EB is payable to individuals filing from Canada if they are otherwise eligible. When an individual filing from Canada becomes an exhaustee, the individual will qualify for TEUC if all other qualifying requirements are satisfied.

With respect to an individual filing from an agent state that is not in a regular EB period, that individual is an exhaustee for TEUC purposes after the two weeks of EB are paid. If the individual relocates to a state (agent or liable) that is in a regular EB period and EB is again payable, the individual ceases to be an exhaustee for TEUC purposes.

18. Claims Filed by Aliens

a. Question: If an alien was eligible for UI on a regular claim, is the alien automatically eligible for TEUC?

Answer: No. To qualify for TEUC, the individual must be a citizen, a non-citizen national, or a "qualified alien." "Qualified alien" status must be verified through procedures of the state agency as applied to other federal unemployment compensation programs.

19. Application of Worker Profiling and Reemployment Services (WPRS) to TEUC Individuals

a. Question: Are individuals filing for TEUC subject to selection and/or services under the Worker Profiling and Reemployment Services (WPRS) program?

Answer: No. TEUC individuals do not have to be profiled; only individuals filing new claims for regular compensation must be profiled.

20. TEUC Eligibility for Individual Filing From Canada

a. Question: May individuals filing from Canada qualify for TEUC?

Answer: Yes. (See Q & A 17.c. above.)

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21. TEUC and Benefit Accuracy Measurement (BAM) Sampling

- a. Question: Are TEUC claims included in the BAM survey population?

Answer: No. TEUC weeks claimed or paid are not included in the BAM paid claims or denied claims samples. Refer to BAM State Operations Handbook, ET Handbook No. 395, Chapter III, pp. 12-15.