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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 23-08, Change 3

TO: STATE WORKFORCE AGENCIES

FROM: BRENT R. ORRELL /s/
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SUBJECT: Emergency Unemployment Compensation, 2008 – Questions and Answers

1. Purpose. To respond to questions from states about the expansion of the Emergency Unemployment Compensation, 2008 (EUC08) program.
2. References. The Unemployment Compensation Extension Act, Public Law 110-449, enacted November 21, 2008; Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation, Public Law 110-252, enacted June 30, 2008; Unemployment Insurance Program Letter (UIPL) No. 23-08, and Change 1 and Change 2.
3. Background. Public Law 110-449 (the Extension Act) amends Public Law 110-252 (the EUC08 Act) to provide up to 20 weeks of 100 percent federally-funded unemployment compensation to eligible individuals in all states. It also expands the EUC08 program by providing a Second-Tier of 100 percent federally-funded benefits of up to 13 weeks for eligible individuals in those states with “high unemployment” as defined in the Extension Act.

These expanded EUC08 benefits are available only for weeks of unemployment beginning on or after the date of enactment, which is November 21, 2008. Although these amendments do not change the date for establishing initial eligibility for EUC08, they do extend the program’s termination date. Under the new termination date, no EUC08 payments may be made for any week of unemployment beginning after August 27, 2009. Attached is “Questions and Answers on the EUC08 Extension Act.”

4. Interpretation. The information in this document is issued to the states and cooperating state agencies as guidance provided by the Department of Labor in its role as the principal in the EUC08 program. As agents of the United States, the states and cooperating state agencies may not deviate from this guidance without the prior approval of the Department. To the extent that the guidance provided in UIPL No. 23-08; and Change 1 and Change 2 is inconsistent with this UIPL, such guidance is superseded.
5. Action Requested. Administrators are to provide this information and instructions to the appropriate staff.
6. Inquiries. Direct questions to the appropriate Regional Office.
7. Attachment. Questions and Answers on the EUC08 Extension Act

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Questions and Answers on the EUC08 Extension Act

A. Notification of Potential Eligibility for EUC08 and Recalculating Entitlement

1. **Question:** What are the minimum requirements concerning notification and recalculation of First-Tier EUC08?

Answer: States must: (1) notify both individuals who have exhausted their initial EUC08 entitlement (of up to 13 weeks) and those in a continued-claim filing status of the availability of expanded First-Tier EUC08 benefits; (2) recalculate First-Tier EUC08 entitlement when the individual next files a continued claim for EUC08; and (3) ensure public knowledge of the expansion of the EUC08 program, by notifying appropriate news media having coverage throughout the state.

2. **Question:** If states want to do more than the minimum requirements listed above, for example, recalculate all EUC08 claims at one time and notify all individuals of the new entitlement, is this allowable?

Answer: Yes.

B. First-Tier EUC08

1. **Question:** Are there instances when individuals may be paid expanded First-Tier EUC08 for weeks of unemployment prior to the effective date of the Extension Act?

Answer: No. EUC08 is payable only for weeks of unemployment beginning after the date of enactment of the Extension Act, which is November 21, 2008.

2. **Question:** A recalculated EUC08 entitlement results in an uneven dollar figure. How should these situations be handled?

Answer: When the calculation is not an even dollar figure, a state will round either up or down according to its law.

3. **Question:** A recalculated EUC08 entitlement results in a final payment less than the full average weekly benefit amount. How should these situations be handled?

Answer: When the available balance is less than the full weekly benefit amount (e.g., the available balance is \$200; the weekly benefit amount is \$275), the state will pay at most only the available balance (\$200), provided the state is not in a Second-Tier period (see Question #6 below under C. Second-Tier EUC08).

C. Second-Tier EUC08

1. **Question:** UIPL No. 23-08, Change 2, says that an individual qualifies for the “phase-out” only if the individual has an account balance as of March 31, 2009. The UIPL also provides that, if an individual exhausts First-Tier EUC08 on or before March 31, 2009, the individual may establish eligibility for Second-Tier EUC08 if the state enters a Second-Tier period after March 31, 2009. Please clarify.

Answer: Paragraph (1) of Section 4007(b) of the amended EUC08 Act provides for the continued collection of an “unexhausted” EUC08 account after March 31, 2009. Thus, an individual having an account balance as of that date qualifies for the “phase-out” by being permitted to collect that balance after that date. Paragraph (2) of that Section extends paragraph (1) by further permitting an individual, who exhausted his/her EUC08 account on or before March 31, 2009, to receive a Second-Tier augmentation after that date.

2. **Question:** How is the individual’s EUC08 Second-Tier entitlement affected when the state triggers “off” an EUC08 Second-Tier period?

Answer: Triggering “off” does not affect the individual’s remaining Second Tier entitlement. The EUC08 Act, as amended, does not provide for reducing or terminating payment of the augmented amount because the state subsequently triggers “off.”

3. **Question:** Is it possible to trigger “on” an EUC08 Second-Tier period prior to the enactment of the Extension Act? If “yes,” what is the significance of this?

Answer: Yes, because the Extension Act provides that its amendments are to be treated “as if included in the enactment of” the original EUC08 Act. As a result, the “beginning” date of a Second-Tier period may be as early as the date the EUC08 program began. An EUC08 Second-Tier period must last at least 13 weeks. Thus, the date a Second-Tier period begins may affect the date it ends.

Note: Second-Tier EUC08 payments, however, shall not begin prior to enactment of the Extension Act, and the individual must have exhausted First-Tier EUC08 on the EUC08 account prior to augmentation.

4. **Question:** When does an individual qualify for EUC08 Second-Tier?

Answer: An individual will qualify for EUC08 Second Tier augmentation if the individual exhausts First-Tier EUC08 on or before March 31, 2009, and before or during an EUC08 Second-Tier period in the state.

An individual who exhausts First-Tier EUC08 following the end of an EUC08 Second-Tier period will not be eligible for Second-Tier EUC08 unless the state again triggers “on” an EUC08 Second-Tier period.

Note: See Section 2 under “*Operating Instructions*” of Attachment A of UIPL 23-08, Change 2.

5. **Question:** May a state augment an individual’s EUC08 account with Second-Tier benefits as soon as the state enters into an EUC08 Second-Tier period?

Answer: No. The state may only augment an individual’s EUC08 account with Second-Tier benefits after the individual exhausts First-Tier EUC08 benefits and only if that

exhaustion occurs during or before an EUC08 Second-Tier period and on or before March 31, 2009.

6. **Question:** When the amount remaining in an individual's First-Tier EUC08 account is less than the full weekly benefit amount and the state is in a Second-Tier period, is Second-Tier EUC08 payable for the same week?

Answer: Yes, Second-Tier EUC08 is payable for the same week, the week of exhaustion. Second-Tier EUC08 will augment the EUC08 account to allow for the payment of an amount equal to the original weekly benefit amount.

7. **Question:** What is the last date a claim may be augmented?

Answer: For most states, the week beginning August 23, 2009, would be the last week that a claim could be augmented. In such a state an individual's last week of potential eligibility would be the week ending August 29, 2009.

D. Multiple EUC08 Claims and Order of Payment

1. **Question:** An individual established two First-Tier EUC08 claims prior to the enactment of the Extension Act. Is the EUC08 account for each claim eligible to be increased to up to 20 weeks?

Answer: Yes.

2. **Question:** If there are two EUC08 claims, which one should be paid the enhanced First-Tier benefits first?

Answer: The oldest (first) EUC08 claim. (See Question and Answer D.7. in the Attachment to UIPL 23-08, Change 1.)

3. **Question:** Is it necessary to *immediately* recalculate the account of each EUC08 claim?

Answer: No. The state must immediately recalculate entitlement on the claim that will be paid first. Recalculation of the entitlement on any other EUC08 claim need not occur until *all* entitlement is exhausted on the EUC08 claim paid first, and the claimant files against the other claim.

4. **Question:** An individual has exhausted two First-Tier EUC08 claims. The state is subsequently in an EUC08 Second-Tier period and both accounts are eligible for augmentation. How is this situation handled?

Answer: The state will augment the oldest (first) EUC08 claim. After this augmented amount on the claim is exhausted, the state will augment and pay EUC08 on the other claim, if the claimant continues to have compensable unemployment and meets all other eligibility conditions, such as being able and available.

5. **Question:** An individual exhausts a First-Tier EUC08 claim during an EUC08 Second-Tier period. The individual has First-Tier entitlement on another claim. How is this situation handled?

Answer: The state will augment the oldest (first) EUC08 claim with Second-Tier benefits. After this augmented amount is exhausted, the state will pay any remaining

First-Tier entitlement, including any enhanced First-Tier entitlement, on the other claim, if the claimant is otherwise eligible. If, when this remaining First-Tier entitlement is exhausted, or anytime thereafter within the statutory timeframe, the state is in an EUC08 Second-Tier period, the state will augment the account and pay benefits on this claim, if the claimant is otherwise eligible.

E. Interstate Claims for EUC08

1. **Question:** Under the permanent Federal-State Extended Benefit (EB) program an individual who files an interstate claim from a state that is not triggered “on” EB is limited to two weeks of EB. Does this same limitation apply to Second-Tier EUC08?

Answer: No. The “two-week” limitation of the permanent EB program does not apply to EUC08. Eligible individuals filing against a state that triggered “on” an EUC08 Second-Tier period may receive up to 13 weeks of Second-Tier EUC08.

Note: An individual who resides in a state that is triggered “on” but who is filing against a state that is not triggered “on” is not entitled to Second-Tier EUC08. This is because the individual’s entitlement is determined under the applicable state law, that is, the law of the state with respect to which the individual is an exhaustee for EUC08 purposes.

F. Reporting Requirements for EUC08

1. **Question:** Are all Second-Tier augmentations counted as "monetary redeterminations?"

Answer: Yes. All augmentations are counted as monetary redeterminations.

Activities related to the recalculation of First-Tier EUC08 and augmentation of Second-Tier EUC08, do not meet the definition under ET Handbook No. 401 for an initial, additional or a transitional claim. States will receive credit for monetary redetermination activity on the UI-3.

Note: An additional claim should be taken in connection with recalculation of EUC08 entitlement if the individual had intervening employment since filing his/her last claim.

2. **Question:** Must states track three different EUC08 activities: EUC08 (first 13 weeks), expanded First Tier EUC08, and Second-Tier EUC08?

Answer: States are required to report only First-Tier and Second-Tier EUC08 activities. In addition, states must revise previous reports of final payments, once redeterminations have been made, for prior EUC08 exhaustees on the EUC08-specific ETA 5159. States will resubmit Section B of the EUC08-specific ETA 5159 for claimants who were reported as exhaustees and who are no longer exhaustees because their First-Tier EUC08 accounts are recalculated. All First-Tier EUC08 activities are aggregate. For those states reporting Second-Tier EUC08 activity, they will report payment activities, first pays and final pays in the new Section C of the EUC08-specific ETA 5159.

Note: See Item 2.a. under *Reporting Instructions* in Attachment A of UIPL 23-08,

Change 2.

3. **Question:** Are there separate time charges required for First-Tier and Second-Tier EUC08?

Answer: No, separate time charges are not required. The administrative funding and reporting of financial data will be for the entire EUC08 program.

4. **Question:** Is there a date by which states are required to revise the ETA 5159 to back out the final payment numbers for EUC08 claims that are recalculated to redetermine the First Tier balance?

Answer: States are expected to revise their prior reports and submit them with their December 2008 ETA 5159 Report. Additional revisions to these reports are to be made on an ongoing basis, as needed. Many states may be able to simply re-run reports for prior quarters after the redeterminations are made. Other states may need to count transactions and back them out from pre-existing totals.

5. **Question:** How should states report Second-Tier EUC08 on the Liable Agent Data Transfer (LADT)?

Answer: The expanded reporting (Section C) on the ETA 5159 does not include any data elements that break out reporting for Interstate Claims or for First and Second-Tier EUC08. States should report aggregate interstate claims activity for both First and Second-Tier EUC08 in the same manner as states have been reporting for the LADT and unemployment insurance required reports.