

2. Perform consultative services with respect to methods and procedures for the prevention and detection of fraud; and

3. Perform other services which are closely related to the above.

Although a State agency is expected to make a full-time assignment of responsibility to a unit or individual to carry on the functions described above, a small State agency might make these functions a part-time responsibility of one individual. In connection with the detection of overpayments, such a unit or individual might, for example:

(a) Investigate information on suspected benefit fraud received from any agency personnel, and from sources outside the agency, including anonymous complaints;

(b) Investigate information secured from comparisons of benefit payments with employment records to detect cases of concurrent working (whether in covered or non-covered work) and claiming of benefits (including benefit payments in which the agency acted as agent for another State).

The benefit fraud referred to herein may involve employers, agency employees, and witnesses, as well as claimants.

Comparisons of benefit payments with employment records are commonly made either by post-audit or by industry surveys. The so-called "post-audit" is a matching of central office wage-record files against benefit payments for the same period. "Industry surveys" or "mass audits" are done in some States by going directly to employers for pay-roll information to be checked against concurrent benefit lists. A plan

A. of investigation based on a sample post-audit will be considered as partial fulfillment of the investigation program; it would need to be supplemented by other methods capable of detecting overpayments to persons who have moved into noncovered occupations or are claiming interstate benefits.

B. *Are adequate records maintained by which the results of investigations may be evaluated?**

Explanation. To meet this criterion, the State agency will be expected to maintain records of all its activities in the detection of overpayments, showing whether attributable to error or willful misrepresentation, measuring the results obtained through various methods, and noting the remedial action taken in each case. The adequacy and effectiveness of various methods of checking for willful misrepresentation can be evaluated only if records are kept of the results obtained. Internal reports on fraudulent and erroneous overpayments are needed by State agencies for self-evaluation. Detailed records should be maintained in order that the State agency may determine, for example, which of several methods of checking currently used are the most productive. Such records

also will provide the basis for drawing a clear distinction between fraud and error.

C. *Does the agency take adequate action with respect to publicity concerning willful misrepresentation and its legal consequences to deter fraud by claimants?**

Explanation. To meet this criterion, the State agency must issue adequate material on claimant eligibility requirements and must take necessary action to obtain publicity on the legal consequences of willful misrepresentation or willful nondisclosure of facts.

Public announcements on convictions and resulting penalties for fraud are generally considered necessary as a deterrent to other persons, and to inform the public that the agency is carrying on an effective program to prevent fraud. This alone is not considered adequate publicity. It is important that information be circulated which will explain clearly and understandably the claimant's rights, and the obligations which he must fulfill to be eligible for benefits. Leaflets for distribution and posters placed in local offices are appropriate media for such information.

7515 *Evaluation of Alternative State Provisions with Respect to Erroneous and Illegal Payments.* If the methods of administration provided for by the State law do not conform to the suggested methods of meeting the requirements set forth in section 7511, but a State law does provide for alternative methods of administration designed to accomplish the same results, the Bureau of Employment Security, in collaboration with the State agency, will study the actual or anticipated effect of the alternative methods of administration. If the Bureau concludes that the alternative methods satisfy the criteria in section 7513, it will so notify the State agency. If the Bureau does not so conclude, it will submit to the Secretary the results of the study for his determination of whether the State's alternative methods of administration meet the criteria.*

PART 615—EXTENDED BENEFITS IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

Sec.

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*Revises section 7513 as issued 5/5/50.

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AUTHORITY: 26 U.S.C. 7805; 26 U.S.C. 1102; Secretary’s Order No. 6-10.

SOURCE: 53 FR 27937, July 25, 1988, unless otherwise noted.

EDITORIAL NOTE: Nomenclature changes to part 615 appear at 81 FR 57778, Aug. 24, 2016.

§ 615.1 Purpose.

This part implements the “Federal-State Extended Unemployment Compensation Act of 1970” (EUCA). Under the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(11), an approved State law must provide for the payment of extended compensation to eligible individuals who have exhausted all rights to regular compensation during specified periods of unemployment, as prescribed in EUCA and this part.

[81 FR 57778, Aug. 24, 2016]

§ 615.2 Definitions.

For the purposes of the EUCA and this part—

Additional compensation means compensation totally financed by a State and payable under a State 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.

And, as used in section 202(a)(3)(D)(ii), shall be interpreted to mean “or”.

Applicable benefit year means, with respect to an individual, the current benefit year if, at the time an initial claim for extended compensation is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual’s most recent benefit year. For this purpose, the most recent benefit year for an individual who has unexpired benefit years in more than one State when an initial claim for ex-

tended compensation is filed, 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. The individual’s most recent benefit year which expires in an extended benefit period, when either extended compensation or high unemployment extended compensation is payable, is the applicable benefit year if the individual cannot establish a second benefit year or is precluded from receiving regular compensation in a second benefit year solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)).

Applicable State means, with respect to an individual, the State with respect to which the individual is an “exhaustee” as defined in § 615.5, and in the case of a combined wage claim for regular compensation, the term means the “paying State” as defined in § 616.6(e) of this chapter.

Applicable State law means the law of the State which is the applicable State for an individual.

Average weekly benefit amount, for the purposes of section 202(a)(3)(D)(i), means the weekly benefit amount (including dependents’ allowances payable for a week of total unemployment and before any reduction because of earnings, pensions or other requirements) applicable to the week in which the individual failed to take an action which results in a disqualification as required by section 202(a)(3)(B) of the EUCA.

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.

Benefit structure as used in section 204(a)(2)(D), for the requirement to round down to the “nearest lower full dollar amount” for Federal reimbursement of sharable regular and sharable extended compensation means all of the following:

- (1) Amounts of regular weekly benefit payments,
- (2) Amounts of additional and extended weekly benefit payments,
- (3) The State maximum or minimum weekly benefit,

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(4) Partial and part-total benefit payments,

(5) Amounts payable after deduction for pensions, and

(6) Amounts payable after any other deduction required by State law.

Benefit year means, with respect to an individual, the benefit year as defined in the applicable State law.

Claim filed in any State under the interstate benefit payment plan, as used in section 202(c), means:

(1) Any interstate claim for a week of unemployment filed pursuant to the Interstate Benefit Payment Plan, but does not include—

(i) A claim filed in Canada,

(ii) A visiting claim filed by an individual who has received permission from his/her regular reporting office to report temporarily to a local office in another State and who has been furnished intrastate claim forms on which to file claims, or

(iii) A transient claim filed by an individual who is moving from place to place searching for work, or an intrastate claim for Extended Benefits filed by an individual who does not reside in a State that is in an Extended Benefit Period,

(2) *The first 2 weeks*, as used in section 202(c), means the first 2 weeks for which the individual files compensable claims for Extended Benefits under the Interstate Benefit Payment Plan in an agent State in which an Extended Benefit Period is not in effect during such weeks.

Compensation and unemployment compensation means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation and extended compensation as defined in this section.

Date of a disqualification, as used in section 202(a)(4), means the date the disqualification begins, as determined under the applicable State law.

Department means the United States Department of Labor, and shall include the Employment and Training Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the Secretary's au-

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thority under the EUCA in Secretary's Order No. 6-2010 (75 FR 66268) or any subsequent order.

Eligibility period means, for an individual, the period consisting of—

(1) The weeks in the individual's applicable benefit year which begin in an extended benefit period or high unemployment period, or for a single benefit year, the weeks in the benefit year which begin in more than one extended benefit period or high unemployment period, and

(2) If the applicable benefit year ends within an extended benefit period or high unemployment period, any weeks thereafter which begin in such extended benefit period or high unemployment period,

(3) An individual may not have more than one eligibility period for any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to extended compensation.

Employed, for the purposes of section 202(a)(3)(B)(ii) of the EUCA, and *employment*, for the purposes of section 202(a)(4) of the EUCA, mean service performed in an employer-employee relationship as defined in the State law; and that law also shall govern whether that service must be covered by it, must consist of consecutive weeks, and must consist of more weeks of work than are required under section 202(a)(3)(B) of the EUCA.

EUCA means the Federal-State Extended Unemployment Compensation Act of 1970, title II of Public Law 91-373, 84 Stat. 695, 708 (codified in note to 26 U.S.C. 3304), as amended.

Extended benefit period means the weeks during which extended compensation is payable in a State in accordance with §615.11.

Extended Benefits Program or *EB Program* means the entire program under which monetary payments are made to workers who have exhausted their regular compensation during periods of high unemployment.

Extended compensation or *extended benefits* means the funds payable to an individual for weeks of unemployment which begin in a regular EB period or high unemployment period (HUP), under those provisions of a State law which satisfy the requirements of

EUCA and this part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation.

Extended compensation account is the account established for each individual claimant for the payment of regular extended compensation or high unemployment extended compensation.

Extended unemployment compensation means:

(1) Regular extended compensation paid to an eligible individual under those provisions of a State law which are consistent with EUCA and this part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under §615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year; or

(2) High unemployment extended compensation paid to an eligible individual under an optional TUR indicator enacted under State law when the State is in a high unemployment period, in accordance with §615.11(e) of this part, and that does not exceed the smallest of the following:

(i) 80 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 20 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under §615.6(a); or

(iii) 46 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

Gross average weekly remuneration, for the purposes of section 202(a)(3)(D)(i), means the remuneration offered for a

week of work before any deductions for taxes or other purposes and, in case the offered pay may vary from week to week, it shall be determined on the basis of recent experience of workers performing work similar to the offered work for the employer who offered the work.

High unemployment extended compensation means the benefits payable to an individual for weeks of unemployment which begin in a high unemployment period, under those provisions of a State law which satisfy the requirements of EUCA and this part for the payment of high unemployment extended compensation. When so payable, high unemployment extended compensation includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended unemployment compensation, along with high unemployment extended compensation, are part of the program referred to in this part as Extended Benefits.

High unemployment period (or HUP) means a period where the Department determines that the Trigger Value in a State, which has enacted the alternative Total Unemployment Rate indicator in law, for the most recent 3 months for which data for all States is published, equals or exceeds 8 percent and such Trigger Value equals or exceeds 110 percent of such Trigger Value for either or both of the corresponding 3-month periods ending in the 2 preceding calendar years.

Hospitalized for treatment of an emergency or life-threatening condition, as used in section 202(a)(3)(A)(ii), has the following meaning: "Hospitalized for treatment" means an individual was admitted to a hospital as an inpatient for medical treatment. Treatment is for an "emergency or life threatening condition" if determined to be such by the hospital officials or attending physician that provide the treatment for a medical condition existing upon or arising after hospitalization. For purposes of this definition, the term "medical treatment" refers to the application of any remedies which have the objective of effecting a cure of the emergency or life-threatening condition. Once an "emergency condition"

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or a “life-threatening condition” has been determined to exist by the hospital officials or attending physician, the status of the individual as so determined shall remain unchanged until release from the hospital.

Individual’s capabilities, for the purposes of section 202(a)(3)(C), means work which the individual has the physical and mental capacity to perform and which meets the minimum requirements of section 202(a)(3)(D).

Insured Unemployment Rate means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in a State for weeks of unemployment in the most recent 13-consecutive-week period as determined by the State on the basis of State reports to the United States Secretary of Labor by the average monthly employment covered under State law for the first 4 of the most recent 6 completed calendar quarters before the end of such 13-week period.

Jury duty, for purposes of section 202(a)(3)(A)(ii), means the performance of service as a juror, during all periods of time an individual is engaged in such service, in any court of a State or the United States pursuant to the law of the State or the United States and the rules of the court in which the individual is engaged in the performance of such service.

Provisions of the applicable State law, as used in section 202(a)(3)(D)(iii) of EUCA, means that State law provisions must not be inconsistent with sections 202(a)(3)(C) and 202(a)(3)(E). Therefore, decisions based on State law provisions must not require an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual’s health, safety or morals. Such State law provisions must also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1986 and section 236(d) of the Trade Act of 1974.

Reasonably short period, for the purposes of section 202(a)(3)(C), means the number of weeks provided by the applicable State law.

Regular compensation means compensation payable to an individual

under a 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.

Regular extended compensation means the benefits 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 EUCA and this part for the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended compensation, along with high unemployment extended compensation, are part of the program referred to in this part as Extended Benefits.

Regular EB period means a period in which a state is “on” the EB Program because either the mandatory or optional IUR indicator satisfies the criteria to be “on” and the state is not in a 13-week mandatory “off” period; or the State is “on” the EB Program because the TUR indicator’s Trigger Value is at least 6.5 percent and it is at least 110 percent of the Trigger Value for the comparable 3 months in either of the prior 2 years.

Secretary means the Secretary of Labor of the United States.

Sharable compensation means:

(1) Extended compensation paid to an eligible individual under those provisions of a State law which are consistent with EUCA and this part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual’s weekly amount of extended compensation payable for a week of total unemployment, as determined under §615.6(a); or

(iii) 39 times the individual’s weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(2) Extended compensation paid to an eligible individual under an optional

TUR indicator enacted under State law when the State is in a high unemployment period, in accordance with § 615.12(f) of this part, and that does not exceed the smallest of the following:

- (i) 80 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or
- (ii) 20 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or
- (iii) 46 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(3) Regular compensation paid to an eligible individual for weeks of unemployment in the individual's eligibility period, but only to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to the individual for prior weeks of unemployment in the applicable benefit year, exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: Provided, that such regular compensation is paid under provisions of a State law which are consistent with EUCA and this part.

(4) Notwithstanding the preceding provisions of this paragraph, sharable compensation does not include any regular or extended compensation for which a State is not entitled to a payment under section 202(a)(6) or 204 of EUCA or § 615.14 of this part.

State means the States of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U. S. Virgin Islands.

State agency means the State unemployment compensation agency of a State which administers the State law.

State law means the unemployment compensation law of a State, approved by the Secretary under section 3304(a) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)).

A *systematic and sustained effort*, for the purposes of section 202(a)(3)(E), means—

(i) A high level of job search activity throughout the given week, compatible with the number of employers and employment opportunities in the labor market reasonably applicable to the individual,

(ii) A plan of search for work involving independent efforts on the part of each individual which results in contacts with persons who have the authority to hire or which follows whatever hiring procedure is required by a prospective employer in addition to any search offered by organized public and private agencies such as the State employment service or union or private placement offices or hiring halls,

(iii) Actions by the individual comparable to those actions by which jobs are being found by people in the community and labor market, but not restricted to a single manner of search for work such as registering with and reporting to the State employment service and union or private placement offices or hiring halls, in the same manner that such work is found by people in the community,

(iv) A search not limited to classes of work or rates of pay to which the individual is accustomed or which represent the individual's higher skills, and which includes all types of work within the individual's physical and mental capabilities, except that the individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable),

(v) A search by every claimant, without exception for individuals or classes of individuals other than those in approved training, as required under section 3304(a)(8) of the Internal Revenue Code of 1986 or section 236(e) of the Trade Act of 1974,

(vi) A search suspended only when severe weather conditions or other calamity forces suspension of such activities by most members of the community, except that

(vii) The individual, while classified by the State agency as provided in § 615.8(d) as having "good" job prospects, if such individual normally obtains customary work through a hiring

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hall, shall search for work that is suitable work under State law provisions which apply to claimants for regular compensation (which is not sharable).

Tangible evidence of an active search for work, for the purposes of section 202(a)(3)(E), means a written record which can be verified, and which includes the actions taken, methods of applying for work, types of work sought, dates and places where work was sought, the name of the employer or person who was contacted and the outcome of the contact.

Total Unemployment Rate means the number of unemployed individuals in a State (seasonally adjusted) divided by the civilian labor force (seasonally adjusted) in the State for the same period.

Trigger Value or *average rate of total unemployment* means the ratio computed using 3 months of the level of seasonally adjusted unemployment in a State in the numerator and 3 months of the level of the seasonally adjusted civilian labor force in the State in the denominator. This rate is used for triggering States “on” and “off” the optional Total Unemployment Rate indicator as described in §615.12(e).

Week means:

(1) For purposes of eligibility for and payment of extended compensation, a week as defined in the applicable State law.

(2) For purposes of computation of extended compensation “on” and “off” and “no change” indicators and insured unemployment rates and the beginning and ending of an EB Period or a HUP, a calendar week.

Week of unemployment means:

(1) A week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to the Extended Benefit Program as if the individual filing a claim for Extended Benefits were filing a claim for regular compensation, except as provided in paragraph (2) of this definition.

(2) *Week of unemployment* in section 202(a)(3)(A) of the EUCA means a week of unemployment, as defined in paragraph (1) of this definition, for which

the individual claims Extended Benefits or sharable regular benefits.

[81 FR 57778, Aug. 24, 2016]

§615.3 Effective period of the program.

An Extended Benefit Program conforming with EUCA and this part shall be a requirement for a State law effective on and after January 1, 1972, pursuant to section 3304(a)(11) of the Internal Revenue Code of 1986, (26 U.S.C. 3304(a)(11)). Continuation of the program by a State in conformity and substantial compliance with EUCA and this part, throughout any 12-month period ending on October 31 of a year subsequent to 1972, shall be a condition of the certification of the State with respect to such 12-month period under section 3304(c) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(c)). Conformity with EUCA and this part in the payment of regular compensation, regular extended compensation, and high unemployment extended compensation (if State law so provides) to any individual is a continuing requirement, applicable to every week as a condition of a State’s entitlement to payment for any compensation as provided in EUCA and this part.

[53 FR 27937, July 25, 1988, as amended at 81 FR 57781, Aug. 24, 2016]

§615.4 Eligibility requirements for Extended Benefits.

(a) *General*. An individual is entitled to Extended Benefits for a week of unemployment which begins in the individual’s eligibility period if, with respect to such week, the individual is an exhaustee as defined in §615.5, files a timely claim for Extended Benefits, and satisfies the pertinent requirements of the applicable State law which are consistent with EUCA and this part.

(b) *Qualifying for Extended Benefits*. The State law shall specify whether an individual qualifies for Extended Benefits by earnings and employment in the base period for the individual’s applicable benefit year as required by section 202(a)(5) of EUCA, (and if it does not also apply this requirement to the payment of sharable regular benefits, the

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State will not be entitled to a payment under § 615.14), as follows:

(1) One and one-half times the high quarter wages; or

(2) Forty times the most recent weekly benefit amount, and if this alternative is adopted, it shall use the weekly benefit amount (including dependents' allowances) payable for a week of total unemployment (before any reduction because of earnings, pensions or other requirements) which applied to the most recent week of regular benefits; or

(3) Twenty weeks of full-time insured employment, and if this alternative is adopted, the term "full-time" shall have the meaning provided by the State law.

§ 615.5 Definition of "exhaustee."

(a)(1) "Exhaustee" means an individual who, with respect to any week of unemployment in the individual's eligibility period:

(i) Has received, prior to such week, all of the regular compensation that was payable under the applicable State law or any other State law (including regular compensation payable to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. chapter 85) for the applicable benefit year that includes such week; or

(ii) Has received, prior to such week, all of the regular compensation that was available under the applicable State law or any other State law (including regular compensation available to Federal civilian employees and Ex-Servicemembers under 5 U.S.C. chapter 85) in the benefit year that includes such week, after the cancellation of some or all of the individual's wage credits or the total or partial reduction of the individual's right to regular compensation; or

(iii) The applicable benefit year having expired prior to such week and the individual is precluded from establishing a second (new) benefit year, or the individual established a second benefit year but is suspended indefinitely from receiving regular compensation, solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)): *Provided*, that, an individual

shall not be entitled to Extended Benefits based on regular compensation in a second benefit year during which the individual is precluded from receiving regular compensation solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)); or

(iv) The applicable benefit year having expired prior to such week, the individual has insufficient wages or employment, or both, on the basis of which a new benefit year could be established in any State that would include such week; and

(v) Has no right to unemployment compensation for such week under the Railroad Unemployment Insurance Act or such other Federal laws as are specified by the Department pursuant to this paragraph; and

(vi) Has not received and is not seeking for such week unemployment compensation under the unemployment compensation law of Canada, unless the Canadian agency finally determines that the individual is not entitled to unemployment compensation under the Canadian law for such week.

(2) An individual who becomes an exhaustee as defined above shall cease to be an exhaustee commencing with the first week that the individual becomes eligible for regular compensation under any State law or 5 U.S.C. chapter 85, or has any right to unemployment compensation as provided in paragraph (a)(1)(v) of this section, or has received or is seeking unemployment compensation as provided in paragraph (a)(1)(vi) of this section. The individual's Extended Benefit Account shall be terminated upon the occurrence of any such week, and the individual shall have no further right to any balance in that Extended Benefit Account.

(b) *Special Rules.* For the purposes of paragraphs (a)(1)(i) and (a)(1)(ii) of this section, an individual shall be deemed to have received in the applicable benefit year all of the regular compensation payable according to the monetary determination, or available to the individual, as the case may be, even though—

(1) As a result of a pending appeal with respect to wages or employment

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or both that were not included in the original monetary determination with respect to such benefit year, the individual may subsequently be determined to be entitled to more or less regular compensation, or

(2) By reason of a provision in the State law that establishes the weeks of the year in which regular compensation may be paid to the individual on the basis of wages in seasonal employment—

(i) The individual may be entitled to regular compensation with respect to future weeks of unemployment in the next season or off season, as the case may be, but such compensation is not payable with respect to the week of unemployment for which Extended Benefits are claimed, and

(ii) The individual is otherwise an exhaustee within the meaning of this section with respect to rights to regular compensation during the season or off season in which that week of unemployment occurs, or

(3) Having established a benefit year, no regular compensation is payable during such year because wage credits were cancelled or the right to regular compensation was totally reduced as the result of the application of a disqualification.

(c) *Adjustment of week.* If it is subsequently determined as the result of a redetermination or appeal that an individual is an exhaustee as of a different week than was previously determined, the individual's rights to Extended Benefits shall be adjusted so as to accord with such redetermination or decision.

[53 FR 27937, July 25, 1988, as amended at 71 FR 35514, June 21, 2006]

§615.6 Extended Benefits; weekly amount.

(a) *Total unemployment.* (1) The weekly amount of Extended Benefits payable to an individual for a week of total unemployment in the individual's eligibility period shall be the amount of regular compensation payable to the individual for a week of total unemployment during the applicable benefit year. If the individual had more than one weekly amount of regular compensation for total unemployment during such benefit year, the weekly

amount of extended compensation for total unemployment shall be one of the following which applies as specified in the applicable State law:

(i) The average of such weekly amounts of regular compensation,

(ii) The last weekly benefit amount of regular compensation in such benefit year, or

(iii) An amount that is reasonably representative of the weekly amounts of regular compensation payable during such benefit year.

(2) If the method in paragraph (a)(1)(iii) of this section is adopted by a State, the State law shall specify how such amount is to be computed. If the method in paragraph (a)(1)(i) of this section is adopted by a State, and the amount computed is not an even dollar amount, the amount shall be raised or lowered to an even dollar amount as provided by the applicable State law for regular compensation.

(b) *Partial and part-total unemployment.* The weekly amount of Extended Benefits payable for a week of partial or part-total unemployment shall be determined under the provisions of the applicable State law which apply to regular compensation, computed on the basis of the weekly amount of Extended Benefits payable for a week of total unemployment as determined pursuant to paragraph (a) of this section.

§615.7 Extended Benefits; maximum amount.

(a) *Individual account.* An Extended Benefit Account shall be established for each individual determined to be eligible for Extended Benefits, in the sum of the maximum amount potentially payable to the individual as computed in accordance with paragraph (b) of this section.

(b) *Computation of amount in individual account.* (1) The amount established in the Extended Benefit Account of an individual, as the maximum amount potentially payable to the individual during the individual's eligibility period, shall be equal to the lesser of—

(i) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the

individual during the individual's applicable benefit year; or

(ii) 13 times the individual's weekly amount of Extended Benefits payable for a week of total unemployment, as determined pursuant to § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount referred to in (ii), reduced by the regular compensation paid (or deemed paid) to the individual during the individual's applicable benefit year.

(2) If the State law so provides, the amount in the individual's Extended Benefit Account shall be reduced by the aggregate amount of additional compensation paid (or deemed paid) to the individual under such law for prior weeks of unemployment in such benefit year which did not begin in an Extended Benefit Period.

(3) If State law provides, in accordance with § 615.12(e), for a high unemployment period for weeks of unemployment beginning after March 6, 1993, the provisions of paragraph (b)(1) of this section are applied by substituting:

(i) 80 percent for 50 percent in (b)(1)(i),

(ii) 20 for 13 in (b)(1)(ii), and

(iii) 46 for 39 in (b)(1)(iii).

NOTE TO PARAGRAPH (b)(3). *Provided*, that if an individual's extended compensation account is determined in accordance with the provisions of paragraphs (b)(3)(i) through (b)(3)(iii) (for a "high unemployment period" as defined in § 615.2) during the individual's eligibility period, upon termination of the high unemployment period, such individual's account must be reduced by the amount in the account that is more than the maximum amount of extended compensation or high extended compensation payable to the individual. *Provided further*, if the account balance is equal to or less than the maximum amount of extended compensation or high unemployment extended compensation payable, there will be no reduction in the account balance upon termination of a high unemployment period. In no case will the individual receive more regular extended compensation or high unemployment extended compensation than the amount determined in accordance with paragraphs (b)(1)(i) through (iii) of this section, nor more extended compensation or high unemployment extended compensation than as provided in paragraphs (b)(2)(i) through (iii) of this section.

(c) *Changes in accounts.* (1) If an individual is entitled to more or less Extended Benefits as a result of a redetermination or an appeal which awarded more or less regular compensation or Extended Benefits, an appropriate change shall be made in the individual's Extended Benefit Account pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(2) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to more regular compensation with respect to such week as the result of a redetermination or an appeal, the Extended Benefits paid shall be treated as if they were regular compensation up to the greater amount to which the individual has been determined to be entitled, and the State agency shall make appropriate adjustments between the regular and extended accounts. If the individual is entitled to more Extended Benefits as a result of being entitled to more regular compensation, an amended determination shall be made of the individual's entitlement to Extended Benefits. If the greater amount of regular compensation results in an increased duration of regular compensation, the individual's status as an exhaustee shall be redetermined as of the new date of exhaustion of regular compensation.

(3) If an individual who has received Extended Benefits for a week of unemployment is determined to be entitled to less regular compensation as the result of a redetermination or an appeal, and as a consequence is entitled to less Extended Benefits, any Extended Benefits paid in excess of the amount to which the individual is determined to be entitled after the redetermination or decision on appeal shall be considered an overpayment which the individual shall have to repay on the same basis and in the same manner that excess payments of regular compensation are required to be repaid under the applicable State law. If such decision reduces the duration of regular compensation payable to the individual, the claim for Extended Benefits shall

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be backdated to the earliest date, subsequent to the date when the redetermined regular compensation was exhausted and within the individual's eligibility period, that the individual was eligible to file a claim for Extended Benefits. Any such changes shall be made pursuant to an amended determination of the individual's entitlement to Extended Benefits.

(d) *Reduction because of trade readjustment allowances.* Section 233(c) of the Trade Act of 1974 (and section 204(a)(2)(C) of EUCA), requiring a reduction of extended compensation because of the receipt of trade readjustment allowances, must be applied as follows:

(1) The reduction of Extended Benefits shall apply only to an individual who has not exhausted his/her Extended Benefits at the end of the benefit year;

(2) The amount to be deducted is the product of the weekly benefit amount for Extended Benefits multiplied by the number of weeks for which trade readjustment allowances were paid (regardless of the amount paid for any such week) up to the close of the last week that begins in the benefit year; and

(3) The amount to be deducted shall be deducted from the balance of Extended Benefits not used as of the close of the last week which begins in the benefit year.

[53 FR 27937, July 25, 1988, as amended at 81 FR 57781, Aug. 24, 2016]

§615.8 Provisions of State law applicable to claims.

(a) *Particular provisions applicable.* Except where the result would be inconsistent with the provisions of EUCA or this part, the terms and conditions of the applicable State law which apply to claims for, and the payment of, regular compensation shall apply to claims for, and the payment of, Extended Benefits. The provisions of the applicable State law which shall apply to claims for, and the payment of, Extended Benefits include, but are not limited to:

(1) Claim filing and reporting;

(2) Information to individuals, as appropriate;

(3) Notices to individuals and employers, as appropriate;

(4) Determinations, redeterminations, and appeal and review;

(5) Ability to work and availability for work, except as provided otherwise in this section;

(6) Disqualifications, including disqualifying income provisions, except as provided by paragraph (c) of this section;

(7) Overpayments, and the recovery thereof;

(8) Administrative and criminal penalties;

(9) The Interstate Benefit Payment Plan;

(10) The Interstate Arrangement for Combining Employment and Wages, in accordance with part 616 of this chapter.

(b) *Provisions not to be applicable.* The State law and regulations shall specify those of its terms and conditions which shall not be applicable to claims for, or payment of, Extended Benefits. Among such terms and conditions shall be at least those relating to—

(1) Any waiting period;

(2) Monetary or other qualifying requirements, except as provided in §615.4(b); and

(3) Computation of weekly and total regular compensation.

(c) *Terminating disqualifications.* A disqualification in a State law, as to any individual who voluntarily left work, was suspended or discharged for misconduct, gross misconduct or the commission or conviction of a crime, or refused an offer of or a referral to work, as provided in sections 202(a) (4) and (6) of EUCA—

(1) As applied to regular benefits which are not sharable, is not subject to any limitation in sections 202(a) (4) and (6);

(2) As applied to eligibility for Extended Benefits, shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated, even though it may have been terminated on other grounds for regular benefits which are not sharable; and if the State law does not also apply this provision to the payment of what would otherwise be sharable regular benefits, the State will not be entitled to a payment under EUCA and §615.14 in regard to such regular compensation; and

(3) Will not apply in regard to eligibility for Extended Benefits in a subsequent eligibility period.

(d) *Classification and determination of job prospects.* (1) As to each individual who files an initial claim for Extended Benefits (or sharable regular compensation), the State agency shall classify the individual's prospects for obtaining work in his/her customary occupation within a reasonably short period, as "good" or "not good," and shall promptly (not later than the end of the week in which the initial claim is filed) notify the individual in writing of such classification and of the requirements applicable to the individual under the provisions of the applicable State law corresponding to section 202(a)(3) of EUCA and this part. Such requirements shall be applicable beginning with the week following the week in which the individual is furnished such written notice.

(2) If an individual is thus classified as having good prospects, but those prospects are not realized by the close of the period the State law specifies as a reasonably short period, the individual's prospects will be automatically reclassified as "not good" or classified as "good" or "not good" depending on the individual's job prospects as of that date.

(3) Whenever, as part of a determination of an individual's eligibility for benefits, an issue arises concerning the individual's failure to apply for or accept an offer of work (sections 202(a)(3)(A)(i) and (F) of EUCA and paragraphs (e) and (f) of this section), or to actively engage in seeking work (sections 202(a)(3)(A)(ii) and (E) of EUCA and paragraph (g) of this section), a written appealable determination shall be made which includes a finding as to the individual's job prospects at the time the issue arose. The reasons for allowing or denying benefits in the written notice of determination shall explain how the individual's job prospects relate to the decision to allow or deny benefits.

(4) If an individual's job prospects are determined in accordance with the preceding paragraph (3) to be "good," the suitability of work will be determined under the standard State law provisions applicable to claimants for reg-

ular compensation which is not sharable; and if determined to be "not good," the suitability of work will be determined under the definition of suitable work in the State law provisions corresponding to sections 202(a)(3) (C) and (D) of EUCA and this part. Any determination or classification of an individual's job prospects is mutually exclusive, and only one suitable work definition shall be applied to a claimant as to any failure to accept or apply for work or seek work with respect to any week.

(e) *Requirement of referral to work.* (1) The State law shall provide, as required by section 202(a)(3)(F) of EUCA and this part, that the State Workforce Agency shall refer every claimant for Extended Benefits to work which is "suitable work" as provided in paragraph (d)(4) of this section, beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section.

(2) To make such referrals, the State Workforce Agency shall assure that each Extended Benefit claimant is registered for work and continues to be considered for referral to job openings as long as he/she continues to claim benefits.

(3) In referring claimants to available job openings, the State Workforce Agency shall apply to Extended Benefit claimants the same priorities, policies, and judgments as it does to other applicants, except that it shall not restrict referrals only to work at higher skill levels, prior rates of pay, customary work, or preferences as to work or pay for individuals whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not good."

(4) For referral purposes, any work which does not exceed the individual's capabilities shall be considered suitable work for an Extended Benefit claimant whose job prospects have been classified as or determined to be "not good", except as modified by this paragraph (e).

(5) For Extended Benefit claimants whose prospects of obtaining work in their customary occupations have been classified as or determined to be "not

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good”, work shall not be suitable, and referral to a job shall not be made, if—

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual’s weekly benefit amount plus any supplemental unemployment benefits (SUB) (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) The work is not offered in writing or is not listed with the State employment service,

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, or any applicable State or local minimum wage, without regard to any exemption elsewhere in those laws, or

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in §615.2(o)(7).

(6) In addition, if the State Workforce Agency classifies or determines that an individual’s prospects for obtaining work in his/her customary occupation within a reasonably short period are “good,” referral shall not be made to a job if such referral would not be made under the State law provisions applicable to claimants for regular benefits which are not sharable, and such referrals shall be limited to work which the individual is required to make a “systematic and sustained effort” to search for as defined in §615.2(o)(8).

(7) For the purposes of the foregoing paragraphs of this paragraph (e), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(8) If the State law does not also apply this paragraph (e) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under EUCA and §615.14 in regard to such regular compensation.

(f) *Refusal of work.* (1) The State law shall provide, as required by section 202(a)(3)(A)(i) of EUCA and this part, that if an individual who claims Extended Benefits fails to accept an offer of work or fails to apply for work to

which he/she was referred by the State Workforce Agency—

(i) If the individual’s prospects for obtaining work in his/her customary occupation within a reasonably short period are determined to be “good,” the State agency shall determine whether the work is suitable under the standard State law provisions which apply to claimants for regular compensation which is not sharable, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual’s weekly benefit amount, as provided by the applicable State law; or

(ii) If the individual’s prospects for obtaining work in his/her customary occupation are determined to be “not good,” the State agency shall determine whether the work is suitable under the applicable State law provisions corresponding to sections 202(a)(3) (C) and (D) of EUCA and paragraphs (e)(5) and (f)(2) of this section, and if determined to be suitable the individual shall be ineligible for Extended Benefits for the week in which the individual fails to apply for or accept an offer of suitable work and thereafter until the individual is employed in at least four weeks with wages from such employment totalling not less than four times the individual’s weekly benefit amount, as provided by the applicable State law.

(2) For an individual whose prospects of obtaining work in his/her customary occupation within the period specified by State law are classified or determined to be “not good,” the term “suitable work” shall mean any work which is within the individual’s capabilities, except that work shall not be suitable if—

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual’s weekly benefit amount plus any

supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) The work is not offered in writing or is not listed with the State employment service,

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, or any applicable State or local minimum wage, without regard to any exemption elsewhere in those laws, or

(iv) Failure to accept or apply for the work would not result in a denial of compensation under the provisions of the applicable State law as defined in § 615.2(o)(7).

(3) For the purposes of the foregoing paragraphs of this paragraph (f), State law applies regarding whether members of labor organizations shall be referred to nonunion work in their customary occupations.

(4) If the State law does not also apply this paragraph (f) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under EUCA and § 615.14 in regard to such regular compensation.

(g) *Actively seeking work.* (1) The State law shall provide, as required by sections 202(a)(3) (A)(ii) and (E) of EUCA and this part, that an individual who claims Extended Benefits shall be required to make a systematic and sustained effort (as defined in § 615.2(o)(8)) to search for work which is "suitable work" as provided in paragraph (d)(4) of this section, throughout each week beginning with the week following the week in which the individual is furnished a written notice of classification of job prospects as required by paragraphs (d)(1) and (h) of this section, and to furnish to the State agency with each claim tangible evidence of such efforts.

(2) If the individual fails to thus search for work, or to furnish tangible evidence of such efforts, he/she shall be ineligible for Extended Benefits for the week in which the failure occurred and thereafter until the individual is employed in at least four weeks with wages from such employment totalling

not less than four times the individual's weekly benefit amount, as provided by the applicable State law.

(3)(i) A State law may provide that eligibility for Extended Benefits be determined under the applicable provisions of State law for regular compensation which is not sharable, without regard to the active search provisions otherwise applicable in paragraph (g)(1) of this section, for any individual who fails to engage in a systematic and sustained search for work throughout any week because such individual is—

(A) Serving on jury duty, or

(B) Hospitalized for treatment of an emergency or life-threatening condition.

(ii) The conditions in (i) (A) and (B) must be applied to individuals filing claims for Extended Benefits in the same manner as applied to individuals filing claims for regular compensation which is not sharable compensation.

(4) For the purposes of the foregoing paragraphs of this paragraph (g), State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations.

(5) If the State law does not also apply this paragraph (g) to individuals who claim what would otherwise be sharable regular compensation, the State will not be entitled to payment under EUCA and § 615.14 in regard to such regular compensation.

(h) *Information to claimants.* The State agency or State Workforce Agency, as applicable, shall assure that each Extended Benefit claimant (and claimant for sharable regular compensation) is informed in writing—

(1) Of the State agency's classification of his/her prospects for finding work in his/her customary occupation within the time set out in paragraph (d) as "good" or "not good,"

(2) What kind of jobs he/she may be referred to, depending on the classification of his/her job prospects,

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits. In addition, the State must inform the claimant that

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he/she is required to apply for and accept suitable work, and

(4) The resulting disqualification if he/she fails to apply for work to which referred, or fails to accept work offered, or fails to actively engage in seeking work or to furnish tangible evidence of such search for each week for which extended compensation or sharable regular benefits is claimed, beginning with the week following the week in which such information shall be furnished in writing to the individual.

[53 FR 27937, July 25, 1988, as amended at 71 FR 35514, June 21, 2006; 81 FR 57781, Aug. 24, 2016]

§615.9 Restrictions on entitlement.

(a) *Disqualifications.* If the week of unemployment for which an individual claims Extended Benefits is a week to which a disqualification for regular compensation applies, including a reduction because of the receipt of disqualifying income, or would apply but for the fact that the individual has exhausted all rights to such compensation, the individual shall be disqualified in the same degree from receipt of Extended Benefits for that week.

(b) *Additional compensation.* No individual shall be paid additional compensation and Extended Benefits with respect to the same week. If both are payable by a State with respect to the same week, the State law may provide for the payment of Extended Benefits instead of additional compensation with respect to the week. If Extended Benefits are payable to an individual by one State and additional compensation is payable to the individual for the same week by another State, the individual may elect which of the two types of compensation to claim.

(c) *Interstate claims.* An individual who files claims for Extended Benefits under the Interstate Benefit Payment Plan, in a State which is not in an Extended Benefit Period for the week(s) for which Extended Benefits are claimed, shall not be paid more than the first two weeks for which he/she files such claims.

(d) *Other restrictions.* The restrictions on entitlement specified in this section are in addition to other restrictions in

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EUCA and this part on eligibility for and entitlement to Extended Benefits.

§615.10 Special provisions for employers.

(a) *Charging contributing employers.* (1) Section 3303(a)(1) of the Internal Revenue Code of 1986 (26 U.S.C. 3303(a)(1)) does not require that Extended Benefits paid to an individual be charged to the experience rating accounts of employers.

(2) A State law may, however, consistently with section 3303(a)(1), require the charging of Extended Benefits paid to an individual; and if it does, it may provide for charging all or any portion of such compensation paid.

(3) Sharable regular compensation must be charged as all other regular compensation is charged under the State law.

(b) *Payments by reimbursing employers.* If an employer is reimbursing the State unemployment fund in lieu of paying contributions pursuant to the requirements of State law conforming with sections 3304(a)(6)(B) and 3309(a)(2) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(6)(B) and 3309(a)(2)), the State law shall require the employer to reimburse the State unemployment fund for not less than 50 percent of any sharable compensation that is attributable under the State law to service with such employer; and as to any compensation which is not sharable compensation under §615.14, the State law shall require the employer to reimburse the State unemployment fund for 100 percent, instead of 50 percent, of any such compensation paid.

§615.11 Extended Benefit Periods.

(a) *Beginning date.* Except as provided in paragraph (d) of this section, an extended benefit period or high unemployment period begins in a State on the first day of the third calendar week after a week for which there is a State “on” indicator in that State under either §615.12(a) or (b).

(b) *Ending date.* Except as provided in paragraphs (c) and (e) of this section, an extended benefit period or high unemployment period in a State ends on the last day of the third week after the first week for which there is a State

“off” indicator in that State, unless another indicator is in “on” status.

(c) *Duration.* When an extended benefit period and/or high unemployment period becomes effective in any State, or triggers “off,” the attained status must continue in effect for not less than 13 consecutive weeks.

(d) *Limitation.* No extended benefit period or high unemployment period may begin or end in any State before the most recent week for which data used to trigger the State “on” or “off” or “no change” indicator has been published.

(e) *Specific applications of the 13-week rule.* (1) If a State concludes a 13-week mandatory “on” period by virtue of the IUR indicator which, at the end of the 13-week period no longer satisfies the requirements for a State to be “on,” the extended benefit period continues if the TUR indicator is “on” during the 11th week of the 13-week mandatory “on” period.

(2) If a State concludes a 13-week mandatory “on” period by virtue of the TUR indicator which, at the end of the 13-week period no longer satisfies the requirements for a State to be “on,” the extended benefit period continues if the IUR indicator is “on” during the 11th week of the 13-week mandatory “on” period.

(f) *Determining if a State remains “off” as a result of a total unemployment rate indicator after the 13-week mandatory “off” period ends.* (1) The State remains “off” if there is not an IUR “on” indicator the 11th week of the 13-week mandatory “off” period, and there is a TUR “off” indicator for the third week before the last week of the 13-week mandatory “off” period.

[81 FR 57781, Aug. 24, 2016]

§ 615.12 Determination of “on” and “off” indicators.

(a) *Standard State indicators.* (1) There is a State “on” indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Equalled or exceeded 120 percent of the average of such rates for the cor-

responding 13-week periods ending in each of the preceding two calendar years, and

(ii) Equalled or exceeded 5.0 percent.

(2) There is a State “off” indicator in a State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law—

(i) Was less than 120 percent of the average of such rates for the corresponding 13 week periods ending in each of the preceding two calendar years, or

(ii) Was less than 5.0 percent.

(3) The standard State indicators in this paragraph (a) shall apply to weeks beginning after September 25, 1982.

(b) *Optional State indicators.* (1)(i) A State may, in addition to the State indicators in paragraph (a) of this section, provide by its law that there shall be a State “on” indicator in the State for a week if the head of the State agency determines, in accordance with this section, that, for the period consisting of that week and the immediately preceding 12 weeks, the rate of insured unemployment (not seasonally adjusted) under the State law equalled or exceeded 6.0 percent even though it did not meet the 120 percent factor required under paragraph (a).

(ii) A State which adopts the optional State indicator must also provide that, when it is in an Extended Benefit Period, there will not be an “off” indicator until (A) the State rate of insured unemployment is less than 6.0 percent, and (B) either its rate of insured unemployment is less than 5.0 percent or is less than 120 percent of the average of such rates for the corresponding 13-week periods ending in each of the preceding two calendar years.

(2) The optional State indicators in this paragraph (b) shall apply to weeks beginning after September 25, 1982.

(c) *Computation of rate of insured unemployment—(1) Equation.* Each week the State agency head shall calculate the rate of insured unemployment under the State law (not seasonally adjusted) for purposes of determining the State “on” and “off” and “no change”

indicators. In making such calculations the State agency head shall use a fraction, the numerator of which shall be the weekly average number of weeks claimed in claims filed (not seasonally adjusted) in the State in the 13-week period ending with the week for which the determination is made, and the denominator of which shall be the average monthly employment covered by the State law for the first four of the last six calendar quarters ending before the close of the 13-week period. The quotient obtained is to be computed to four decimal places, and is not otherwise rounded, and is to be expressed as a percentage by multiplying the resultant decimal fraction by 100.

(2) *Counting weeks claimed.* To determine the average number of weeks claimed in claims filed to serve as the numerator under paragraph (c)(1), the State agency shall include claims for all weeks for regular compensation, including claims taken as agent State under the Interstate Benefit Payment Plan. It shall exclude claims—

(i) For Extended Benefits under any State law,

(ii) For additional compensation under any State law, and

(iii) Under any Federal law except joint claims which combine regular compensation and compensation payable under 5 U.S.C. chapter 85.

(3) *Method of computing the State 120 percent factor.* The rate of insured unemployment for a current 13-week period shall be divided by the average of the rates of insured unemployment for the corresponding 13-week periods in each of the two preceding calendar years to determine whether the rate is equal to 120 percent of the average rate for the two years. The quotient obtained shall be computed to four decimal places and not otherwise rounded, and shall be expressed as a percentage by multiplying the resultant decimal fraction by 100. The average of the rates for the corresponding 13-week periods in each of the two preceding calendar years shall be one-half the sum of such rates computed to four decimal places and not otherwise rounded. To determine which are the corresponding weeks in the preceding years—

(i) The weeks shall be numbered starting with week number 1 as the

first week ending in each calendar year.

(ii) The 13-week period ending with any numbered week in the current year shall correspond to the period ending with that same numbered week in each preceding year.

(iii) When that period in the current year ends with week number 53, the corresponding period in preceding years shall end with week number 52 if there is no week number 53.

(d) *Amendment of State indicator rates.*

(1) Any determination by the head of a State agency of an “on” or “off” or “no change” IUR indicator may not be corrected more than three weeks after the close of the week to which it applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure must be used to redetermine the rate of insured unemployment and the 120 percent factor for that week and all later weeks, but no determination of previous “on” or “off” or “no change” indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph (d)(1). Any change is subject to the concurrence of the Department as provided in paragraph (e) of this section.

(2) The initial release of the TUR by the Bureau of Labor Statistics (BLS) is subject to revision. However, once a State’s TUR indicator is determined using the initial release of the TUR data, it is not subject to revision even if the BLS TUR for that period of time is revised.

(3) The “on” period under a State’s optional IUR or TUR indicator may not begin before the later of the date of the State’s adoption of the optional insured unemployment rate or total unemployment rate indicator, or the effective date of that enactment. The “off” period under a State’s optional insured unemployment rate or total unemployment rate indicator may not occur until after the effective date of the repeal of the optional insured unemployment rate or total unemployment rate indicator from State law.

(e) *Other optional indicators.* (1) A State may, as an option, in addition to the State indicators in paragraphs (a)

and (b) of this section, provide by its law that there is a State “on” or “off” indicator in the State for a week if we determine that—

(i) The Trigger Value in such State computed using the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 6.5 percent; and

(ii) The Trigger Value computed using data from the 3-month period referred to in paragraph (e)(1)(i) of this section equals or exceeds 110 percent of the Trigger Value for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years. This “look-back” is computed by dividing the Trigger Value by the same measure for the corresponding 3 months in each of the applicable prior years, and the resulting decimal fraction is rounded to the hundredths place, multiplied by 100 and reported as an integer and compared to the statutory threshold to help determine the State’s EB Program status; and

(iii) There is a State “off” indicator for a week if either the requirements of paragraph (e)(1)(i) or (ii) of this section are not satisfied.

(2) Where a State adopts the optional indicator under paragraph (e)(1) of this section, there is a State “on” indicator for a high unemployment period (as defined in §615.2) under State law if—

(i) The Trigger Value in the State computed using the most recent 3 months for which data for all States are published before the close of such week equals or exceeds 8.0 percent, and

(ii) The Trigger Value in the State computed using data from the 3-month period referred to in paragraph (e)(2)(i) of this section equals or exceeds 110 percent of the Trigger Value for either (or both) of the corresponding 3-month periods ending in the 2 preceding calendar years. This “look-back” is computed by dividing the Trigger Value by the same measure for the corresponding 3 months in each of the applicable prior years, and the resulting decimal fraction is rounded to the hundredths place, multiplied by 100 and reported as an integer and compared to the statutory threshold to help determine the State’s EB Program status; and

(iii) There is a State “off” indicator for high unemployment period for a week if either the requirements of paragraph (e)(2)(i) or (ii) of this section are not satisfied.

(3) *Method of computing the average rate of total unemployment.* The average rate of total unemployment is computed by dividing the average of 3 months of the level of seasonally adjusted unemployment in the State by the average of 3 months of the level of seasonally adjusted unemployment and employment in the State. The resulting rate is multiplied by 100 to convert it to a percentage basis and then rounded to the tenths place (the first digit to the right of the decimal place).

(4) *Method of computing the State “look-back.”* The average rate of total unemployment, ending with a given month, is divided by the same measure for the corresponding 3 months in each of the applicable prior years. The resultant decimal fraction is then rounded to the hundredths place (the second digit to the right of the decimal place). The resulting number is then multiplied by 100 and reported as an integer (no decimal places) and compared to the statutory threshold to help determine the State’s EB Program status.

(f) *Notice to Secretary.* Within 10 calendar days after the end of any week for which the head of a State agency has determined that there is an “on,” or “off,” or “no change” IUR indicator in the State, the head of the State agency must notify the Secretary of the determination. The notice must state clearly the State agency head’s determination of the specific week for which there is a State “on” or “off” or “no change” indicator. The notice must include also the State agency head’s findings supporting the determination, with a certification that the findings are made in accordance with the requirements of §615.15. The Secretary may provide additional instructions for the contents of the notice to assure the correctness and verification of notices given under this paragraph. The Secretary will accept determinations and findings made in accordance with the provisions of this paragraph and of any instructions issued under this paragraph. A notice does not become final for purposes of EUCA and

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this part until the Secretary accepts the notice.

[53 FR 27937, July 25, 1988, as amended at 81 FR 57782, Aug. 24, 2016]

§615.13 Announcement of the beginning and ending of Extended Benefit Periods or High Unemployment Periods.

(a) *State indicators*—(1) *Extended benefit period.* Upon receipt of a notice required by §615.12(f) which the Department determines is acceptable, the Department will publish in the FEDERAL REGISTER a notice of the State agency head's determination that there is an "on" or an "off" indicator in the State, as the case may be, the name of the State and the beginning or ending of the extended benefit period, or high unemployment period, whichever is appropriate. If an "on" or "off" EB period is determined by the Department to be based on a State's TUR Trigger Value, the Department publishes that information in the FEDERAL REGISTER as well.

(2) *Notification.* The Department also notifies the heads of all other State agencies, and the Regional Administrators of the Employment and Training Administration of the State agency head's determination of the State "on" or "off" indicator for an extended benefit period, or high unemployment period (based on the insured unemployment rate in the State), or of the Department's determination of an "on" or "off" indicator (based on the total unemployment rate in a State) for an extended benefit period or high unemployment period and of the indicator's effect.

(b) *Publicity by State.* (1) Whenever a State agency head determines that there is an "on" indicator in the State by reason of which an extended benefit period (based on the insured unemployment rate in the State) will begin in the State, or an "off" indicator by reason of which an extended benefit period in the State (based on the insured unemployment rate) will end, the head of the State agency must promptly announce the determination through appropriate news media in the State after the Department accepts notice from the agency head in accordance with §615.12(f).

(2) Whenever the head of a State agency receives notification from the Department in accordance with §615.12(f) that there is an "on" indicator by reason of which an extended benefit period or high unemployment period (based on the total unemployment rate in the State) will begin in the State, or an "off" indicator by reason of which a regular extended benefit period or high unemployment period (based on the total unemployment rate) will end, the head of the State agency must promptly announce the determination through the appropriate news media in the State.

(3) Announcements made in accordance with paragraphs (b)(1) or (b)(2) of this section must include the beginning or ending date of the extended benefit period or high unemployment period, whichever is appropriate. In the case of a regular EB period or high unemployment period that is about to begin, the announcement must describe clearly the unemployed individuals who may be eligible for extended compensation or high extended compensation during the period, and in the case of a regular EB period or high unemployment period that is about to end, the announcement must also describe clearly the individuals whose entitlement to extended compensation or high extended compensation will be terminated. If a high unemployment period is ending, but an extended benefit period will remain "on," the announcement must clearly state that fact and the effect on entitlement to extended compensation.

(c) *Notice to individuals.* (1) Whenever there has been a determination that a regular extended benefit period or high unemployment period will begin in a State, the State agency must provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end before the beginning of the regular extended benefit period or high unemployment period, and who exhausted all rights under the State law to regular compensation before the beginning of the regular extended benefit period or high unemployment period.

(2) The State agency must provide the notice promptly to each individual

who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during a regular extended benefit period or high unemployment period, including exhaustion by reason of the expiration of the individual's benefit year.

(3) The notices required by paragraphs (c)(1) and (2) of this section must describe the actions required of claimants for sharable regular compensation and extended compensation and those disqualifications which apply to the benefits which are different from those applicable to other claimants for regular compensation which is not sharable.

(4) Whenever there is a determination that a regular extended benefit period or high unemployment period will end in a State, the State agency must provide prompt written notice to each individual who is currently filing claims for extended compensation of the forthcoming end of the regular extended benefit period or high unemployment period and its effect on the individual's right to extended compensation.

[81 FR 57783, Aug. 24, 2016]

§ 615.14 Payments to States.

(a) *Sharable compensation.* (1) The Department shall promptly upon receipt of a State's report of its expenditures for a calendar month reimburse the State in the amount of the sharable compensation the State is entitled to receive under EUCA and this part.

(2) The Department may instead advance to a State for any period not greater than one day the amount the Department estimates the State will be entitled to be paid under EUCA and this part for that period.

(3) Any payment to a State under this section shall be based upon the Department's determination of the amount the State is entitled to be paid under EUCA and this part, and such amount shall be reduced or increased, as the case may be, by any amount by which the Department finds that a previous payment was greater or less than the amount that should have been paid to the State.

(4) Any payment to a State pursuant to this paragraph (a) shall be made by a transfer from the extended unem-

ployment compensation account in the Unemployment Trust Fund to the account of the State in such Fund, in accordance with section 204(e) of EUCA.

(b) *Payments not to be made to States.* Because a State law must contain provisions fully consistent with sections 202 and 203 of EUCA, the Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986—

(1) In respect of any regular or extended compensation paid to any individual for any week if the State does not apply—

(i) The provisions of the State law required by section 202(a)(3) and this part, relating to failure to accept work offered or to apply for work or to actively engage in seeking work or the provisions of State law required by section 202(a)(4) and this part, relating to terminating a disqualification;

(ii) The provisions of the State law required by section 202(a)(5) and this part, relating to qualifying employment; or

(2) In respect of any regular or extended compensation paid to any individual for any week which was not payable by reason of the provision of the State law required by section 202(c) and this part as determined by the Department with regard to each State.

(c) *Payments not to be reimbursed.* The Department shall make no payment under paragraph (a) of this section, whether or not the State is certified under section 3304(c) of the Internal Revenue Code of 1986, in respect of any regular or extended compensation paid under a State law—

(1) As provided in section 204(a)(1) of EUCA and this part, if the payment made was not sharable extended compensation or sharable regular compensation;

(2) As provided in section 204(a)(2)(A) of EUCA, if the State is entitled to reimbursement for the payment under the provisions of any Federal law other than EUCA;

(3) As provided in section 204(a)(2)(B) of EUCA, if for the first week in an individual's eligibility period with respect to which Extended Benefits or sharable regular benefits are paid to

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the individual and the State law provides for the payment (at any time or under any circumstances) of regular compensation to any individual for the first week of unemployment in any such individual's benefit year; except that—

(i) In the case of a State law which is changed so that regular compensation is not paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall not apply to any week which begins after the effective date of such change in the State law; and

(ii) In the case of a State law which is changed so that regular compensation is paid at any time or under any circumstances with respect to the first week of unemployment in any individual's benefit year, this paragraph (c)(3) shall apply to all weeks which begin after the effective date of such change in the State law;

(4) As provided in section 204(a)(2)(C) of EUCA, for any week in which extended compensation is not payable because of the payment of trade readjustment allowances, as provided in section 233(c) of the Trade Act of 1974, and §615.7(d).

(5) As provided in section 204(a)(2)(D) of EUCA and this part, if the State does not provide for a benefit structure under which benefits are rounded down to the next lower dollar amount, for the 50 percent Federal share of the amount by which sharable regular or Extended Benefits paid to any individual exceeds the nearest lower full dollar amount.

(6) As provided in section 204(a)(3) of EUCA, to the extent that such compensation is based upon employment and wages in service performed for governmental entities or instrumentalities to which section 3306(c)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3306(c)(7)) applies, in the proportion that wages for such service in the base period bear to the total base period wages;

(7) If the payment made was not sharable extended compensation or sharable regular compensation because the payment was not consistent with the requirements of—

(i) Section 202(a)(3) of EUCA, and §615.8 (e), (f), or (g);

(ii) Section 202(a)(4) of EUCA, and §615.8(c); or

(iii) Section 202(a)(5) of EUCA, and §615.4(b);

(8) If the payment made was not sharable extended compensation or sharable regular compensation because there was not in effect in the State an Extended Benefit Period in accord with the Act and this part; or

(9) For any week with respect to which the claimant was either ineligible for or not entitled to the payment.

(d) *Effectuating authorization for reimbursement.* (1) If the Department believes that reimbursement should not be authorized with respect to any payments made by a State that are claimed to be sharable compensation paid by the State, because the State law does not contain provisions required by EUCA and this part, or because such law is not interpreted or applied in rules, regulations, determinations or decisions in a manner that is consistent with those requirements, the Department may at any time notify the State agency in writing of the Department's view. The State agency shall be given an opportunity to present its views and arguments if desired.

(2) The Department shall thereupon decide whether the State law fails to include the required provisions or is not interpreted and applied so as to satisfy the requirements of EUCA and this part. If the Department finds that such requirements are not met, the Department shall notify the State agency of its decision and the effect thereof on the State's entitlement to reimbursement under this section and the provisions of section 204 of EUCA.

(3) Thereafter, the Department shall not authorize any payment under paragraph (a) of this section in respect of any sharable regular or extended compensation if the State law does not contain all of the provisions required by sections 202 and 203 of EUCA and this part, or if the State law, rules, regulations, determinations or decisions are not consistent with such requirements, or which would not have been payable if the State law contained

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the provisions required by EUCA and this part or if the State law, rules, regulations, determinations or decisions had been consistent with such requirements. Loss of reimbursement for such compensation shall begin with the date the State law was required to contain such provisions, and shall continue until such time as the Department finds that such law, rules and regulations have been revised or the interpretations followed pursuant to such determinations and decisions have been overruled and payments are made or denied so as to accord with the Federal law requirements of EUCA and this part, but no reimbursement shall be authorized with respect to any payment that did not fully accord with EUCA and this part.

(4) A State agency may request reconsideration of a decision issued pursuant to paragraph (d)(2) above, within 10 calendar days of the date of such decision, and shall be given an opportunity to present views and arguments if desired.

(5) Concurrence of the Department in any State law provision, rule, regulation, determination or decision shall not be presumed from the absence of notice issued pursuant to this section or from a certification of the State issued pursuant to section 3304(c) of the Internal Revenue Code of 1986.

(6) Upon finding that a State has made payments for which it claims reimbursement that are not consistent with EUCA or this part, such claim shall be denied; and if the State has already been paid such claim in advance or by reimbursement, it shall be required to repay the full amount to the Department. Such repayment may be made by transfer of funds from the State's account in the Unemployment Trust Fund to the Extended Unemployment Compensation Account in the Fund, or by offset against any current advances or reimbursements to which the State is otherwise entitled, or the amount repayable may be recovered for the Extended Unemployment Compensation Account by other means and from any other sources that may be available to the United States or the Department.

(e) *Compensation under Federal unemployment compensation programs.* The

Department shall promptly reimburse each State which has paid sharable compensation based on service covered by the UCFE and UCX Programs (parts 609 and 614 of this chapter, respectively) pursuant to 5 U.S.C. chapter 85, an amount which represents the full amount of such sharable compensation paid under the State law, or may make advances to the State. Such amounts shall be paid from the Federal Employees Compensation Account established for those programs, rather than from the Extended Unemployment Compensation Account.

(f) *Combined-wage claims.* If an individual was paid benefits under the Interstate Arrangement for Combining Employment and Wages (part 616 of this chapter) any payment required by paragraph (a) of this section shall be made to the States which contributed the wage credits.

(g) *Interstate claims.* Where sharable compensation is paid to an individual under the provisions of the Interstate Benefit Payment Plan, any payment required by paragraph (a) of this section shall be made only to the liable State.

[53 FR 27937, July 25, 1988, as amended at 71 FR 35514, June 21, 2006; 81 FR 57783, Aug. 24, 2016]

§ 615.15 Records and reports.

(a) *General.* State agencies must furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of this part.

(b) *Recordkeeping.* Each State agency must make and maintain records pertaining to the administration of the Extended Benefit Program as the Department requires, and must make all such records available for inspection, examination and audit by such Federal officials or employees as the Department may designate or as may be required by law.

[81 FR 57783, Aug. 24, 2016]