

Drug	Schedule
Hydromorphone (9150) .....	II
Diphenoxylate (9170) .....	II
Benzoyllecgonine (9180) .....	II
Ethylmorphine (9190) .....	II
Hydrocodone (9193) .....	II
Levomethorphan (9210) .....	II
Levorphanol (9220) .....	II
Isomethadone (9226) .....	II
Meperidine (9230) .....	II
Meperidine intermediate-A (9232) .....	II
Meperidine intermediate-B (9233) .....	II
Meperidine intermediate-C (9234) .....	II
Methadone (9250) .....	II
Methadone intermediate (9254) .....	II
Dextropropoxyphene, bulk (non-dosage forms) (9273) .....	II
Morphine (9300) .....	II
Thebaine (9333) .....	II
Levo-alphaacetyl-methadol (9648) .....	II
Oxymorphone (9652) .....	II
Noroxymorphone (9668) .....	II
Racemethorphan (9732) .....	II
Alfentanil (9737) .....	II
Sufentanil (9740) .....	II
Fentanyl (9801) .....	II

The company plans to manufacture small quantities of the listed controlled substances to make reference standards which will be distributed to their customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Cerilliant Corporation to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Cerilliant Corporation to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 30, 2009.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E9-2541 Filed 2-5-09; 8:45 am]

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**DEPARTMENT OF JUSTICE**

**Drug Enforcement Administration**

**Manufacturer of Controlled Substances; Notice of Registration**

By Notice dated October 7, 2008 and published in the **Federal Register** on October 14, 2008, (73 FR 60719), Halo Pharmaceutical Inc., 30 North Jefferson Road, Whippany, New Jersey 07981, made application to the Drug Enforcement Administration (DEA) to be registered as a bulk manufacturer of the basic classes of controlled substances listed in schedules I and II:

Drug	Schedule
Dihydromorphone (9145) .....	I
Hydromorphone (9150) .....	II

Dihydromorphone is an intermediate in the manufacture of Hydromorphone and is not for commercial distribution. The company plans to manufacture Hydromorphone HCL for sale to other manufacturers and for the manufacture of other controlled substance dosage units for distribution to its customers.

No comments or objections have been received. DEA has considered the factors in 21 U.S.C. 823(a) and determined that the registration of Halo Pharmaceutical Inc. to manufacture the listed basic classes of controlled substances is consistent with the public interest at this time. DEA has investigated Halo Pharmaceutical Inc. to ensure that the company's registration is consistent with the public interest. The investigation has included inspection and testing of the company's physical

security systems, verification of the company's compliance with state and local laws, and a review of the company's background and history. Therefore, pursuant to 21 U.S.C. 823, and in accordance with 21 CFR 1301.33, the above named company is granted registration as a bulk manufacturer of the basic classes of controlled substances listed.

Dated: January 30, 2009.

**Joseph T. Rannazzisi,**

*Deputy Assistant Administrator, Office of Diversion Control, Drug Enforcement Administration.*

[FR Doc. E9-2538 Filed 2-5-09; 8:45 am]

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**DEPARTMENT OF LABOR**

**Employment and Training Administration**

**Employment and Training Administration Notice of Implementation of Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation, and the Unemployment Compensation Extension Act**

**AGENCY:** Employment and Training Administration, Labor.

**ACTION:** Notice.

**SUMMARY:** The Employment and Training Administration (ETA) of the United States Department of Labor (the Department) is publishing, for public information, notice of the issuance and availability of the Unemployment Insurance Program Letters (UIPL) that

provide guidance to the states regarding the implementation of the Emergency Unemployment Compensation program (EUC08) pursuant to the Supplemental Appropriations Act, 2008, Title IV, Emergency Unemployment Compensation, Public Law 110–252, signed by the President on June 30, 2008, and, subsequently, the Unemployment Compensation Extension Act, Public Law 110–449, enacted November 21, 2008.

**FOR FURTHER INFORMATION CONTACT:** Stephanie C. Garcia, 202–693–3207.

**SUPPLEMENTARY INFORMATION:** The EUC08 is administered through voluntary agreements between states and the Department. The EUC08 benefits are payable in a state the week following the week in which an agreement is signed. The Department has provided the states guidance in the form of UIPLs for implementing and operating the EUC08 program, including fiscal and reporting instructions: UIPL 23–08 (published July 7, 2008), UIPL 23–08, Change 1 (published August 15, 2008), UIPL 23–08, Change 2 (published November 24, 2008), and UIPL 23–08 Change 3 (published December 24, 2008). These documents furnish information about the EUC08 program, provide the Department’s interpretation of Title IV of the Supplemental Appropriations Act, 2008, and contain the operating instructions to guide states in implementing and administering the EUC08 program.

The complete text of these guidance documents are provided in this notice. In addition, they are available on the ETA Advisory Web site: UIPL 23–08—[http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2649](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2649); UIPL 23–08, Change 1—[http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2657](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2657); UIPL 23–08, Change 2—[http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2684](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2684); and UIPL 23–08, Change 3—[http://wdr.doleta.gov/directives/corr\\_doc.cfm?DOCN=2693](http://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2693).

**Advisory:** Unemployment Insurance Program Letter No. 23–08.

**To:** State Workforce Agencies.

**From:** Douglas F. Small, Deputy Assistant Secretary.

**Subject:** Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation.

1. *Purpose.* To provide states with instructions for implementing and operating the Emergency Unemployment Compensation, 2008 (EUC08) program, including fiscal and reporting instructions.

2. *References.* Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment

Compensation, Public Law 110–252, signed by the President on June 30, 2008; the Social Security Act (42 U.S.C.); the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*); Section 205 of the Federal-State Extended Unemployment Compensation Act of 1970, as amended; Section 233 of the Trade Act of 1974, as amended; 20 CFR Parts 603, 615, 616, and 650; Unemployment Insurance Program Letter (UIPL) 29–05; UIPL 12–87; UIPL 12–87, Change 1; and ET Handbooks 395, 401 and 410.

3. *Summary.* The EUC08 program provides up to 13 weeks of 100 percent federally-financed compensation to eligible individuals in all states.

EUC08 is payable to individuals who (1) have exhausted all rights to regular compensation with respect to a benefit year that ended on or after May 1, 2007; and (2) have no rights to regular compensation or extended benefits (EB); and (3) are not receiving compensation under the unemployment compensation law of Canada. However, the Governor of a state may elect to pay EUC08 prior to the payment of EB. To qualify for EUC, individuals must have had employment of 20 weeks of work, or the equivalent in wages, in their base periods. Continuing eligibility is determined under the requirements of the state law.

EUC08 is administered through voluntary agreements between states and the U.S. Department of Labor (the Department). EUC08 is payable in a state the week following the week in which an agreement is signed. In most states, where the week of unemployment ends on Saturday, the first week for which EUC08 may be paid is the week ending July 12, 2008. In these states, the last week for purposes of an initial determination of EUC08 eligibility is the week ending March 28, 2009. However, a claimant who has amounts remaining in his/her EUC08 account as of this week ending date may, if otherwise eligible, collect EUC08 through the week ending June 27, 2009. States are required to submit a separate financial status report (ETA 9130) for administrative grants and costs associated with the EUC08 program.

4. *Guidance.* This document furnishes information about the EUC08 program and provides the Department’s interpretation of Title IV of the Supplemental Appropriations Act, 2008. It also sets forth the operating instructions to guide states in implementing and administering the EUC08 program.

The instructions in this document are issued to states as guidance provided by the Department in its role as the

principal in the EUC08 program. As agents of the Department in administering the EUC08 program, states must follow the instructions as provided in the attached operating instructions.

5. *Action.* Administrators are to provide this information and instructions to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

7. *Attachments.*

Attachment A—Implementing and Operating Instructions for EUC08.

Attachment B—General Provisions for Administering EUC08.

Attachment C—Title IV—Emergency Unemployment Compensation.

### Attachment A—Implementing and Operating Instructions for EUC08

#### Introduction

On June 30, 2008, the President signed Public Law 110–252, the Supplemental Appropriations Act, 2008 (Act). Title IV created the Emergency Unemployment Compensation (EUC08) program. The EUC08 program is a federally funded benefit extension which provides up to 13 weeks of benefits to exhaustees, as defined, who otherwise meet the requirements of the Act. This document provides guidance to states in administering the provisions of the Act. This guidance explains the eligibility requirements, state procedures for determining who is eligible, how to establish valid EUC08 claims, and other administrative functions associated with the Act.

#### Definitions

This section contains the definitions of terms used throughout this document. To the extent possible, these definitions follow the extended benefit regulations found at 20 CFR 615.2, as required by Section 4006 of the Act regarding these terms. References to 5 U.S.C. Chapter 85 relate to Unemployment Compensation for Federal Employees (UCFE) and Unemployment Compensation for Ex-Servicemembers (UCX).

1. “Act” means Title IV of the Supplemental Appropriations Act, 2008, which establishes the Emergency Unemployment Compensation program.

2. “Additional Compensation” (AC) 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.

3. “Agreement” means the agreement between a state and the Department of Labor (the Department) under which the state agency makes payments, as the

Department's agent, of EUC08 in accordance with the Act as interpreted by the Department as set forth in these instructions or any other instructions issued by the Department.

4. "Applicable Benefit Year" means, with respect to an individual, the current benefit year if, at the time an initial claim for EUC08 is filed, the individual has an unexpired benefit year only in the state against which claim is filed, or, in any other case, the individual's most recent benefit year ending on or after May 1, 2007. 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 EUC08 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.

**Note.** The Act requires individuals to "have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007)." (Section 4001(b)(1) of the Act. Emphasis added.) In the majority of states, where benefit years end on Saturday, the practical effect is that the Act applies to individuals with benefit years ending on or after Saturday, May 5, 2007.

5. "Applicable State" means the state with respect to which the individual is an exhaustee for EUC08 purposes, and, in the case of a combined wage claim for regular compensation, the term means the "paying state" for such claim as defined in 20 CFR 616.6(e).

6. "Applicable State Law" means the state law of the state which is the applicable state for an individual.

7. "Base Period" means the base period as determined under the applicable state law for the individual's applicable benefit year.

8. "Benefit Year" means the benefit year as defined in the applicable state law.

9. "Compensation" means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular compensation, additional compensation, extended compensation, and EUC08 as defined in this section.

10. "Department" means the U.S. Department of Labor.

11. "Emergency Unemployment Compensation" means the compensation payable under the Act, and which is referred to as EUC08.

12. "Extended compensation" means the extended unemployment compensation payable to an individual for weeks of unemployment which

begin in an extended benefit period, under those provisions of state law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970 (hereafter called the Federal-State EB law), and, when so payable, includes compensation payable pursuant to 5 U.S.C. Chapter 85, but does not include regular compensation or additional compensation. Extended compensation is referred to as Extended Benefits or EB.

13. "Regular compensation" means compensation payable to an individual under any state law, and, when so payable, includes compensation payable under 5 U.S.C. Chapter 85, but does not include extended compensation or additional compensation.

14. "Secretary" means the Secretary of Labor of the United States.

15. "State" means the states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

16. "State Agency" means the state unemployment compensation agency of the state administering the state law.

17. "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)).

18. "Week" means a week as defined in the applicable state law.

19. "Week of Unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable state law, which shall be applied in the same manner to the same extent to claims filed under the requirements of this Act.

#### *Operating Instructions*

##### *1. Eligibility for EUC08.*

a. *Basic Eligibility Requirements.* To be eligible for a week of EUC08, in addition to meeting the applicable state law provisions, individuals must:

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

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

(3) Not be receiving compensation with respect to such week under the UC law of Canada;

(4) Be legally authorized to work in the United States. In determining work authorization, states will follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1230b-7(d)) and as explained in UIPL 12-87 and UIPL 12-87, Change 1; and

(5) Have had 20 weeks of full-time insured employment or the equivalent in insured wages, as determined under the provisions of the state law implementing section 202(a)(5) of the Federal-State EB law.

##### *b. Determining Exhaustees.*

(1) Under Section 4001(c) of the Act, for an individual to be considered to have exhausted benefit rights to regular compensation in an applicable benefit year (for purposes of meeting the first EUC08 eligibility criterion), the individual must have either:

(A) Received all regular compensation payable based on employment and/or wages during the applicable base period; or

(B) Had rights to regular compensation terminated by reason of the expiration of the applicable benefit year in which these rights existed.

(2) Exhaustees cease to be exhaustees when they can establish a valid new benefit year; therefore, at each quarter change, the state must check to see if an individual meets the state's requirements to establish a new benefit year. If the individual can establish a new benefit year, s/he would no longer qualify for the EUC08 claim. In these cases, the claimant should be advised that s/he no longer qualifies for the EUC08 claim and that s/he can file a regular UI claim. Once the claimant qualifies for a new claim, the payments on the EUC08 claim must end, even if the Weekly Benefit Amount (WBA) for the new claim is lower than what the claimant was receiving on the EUC08 claim.

**Note.** The requirement to check eligibility for regular compensation at each quarterly change was not explicitly stated in the guidance implementing the Temporary Extended Unemployment Compensation Act of 2002. However, the Department has determined that it is a method of administration necessary for assuring that individuals have, in fact, exhausted regular compensation as required by the Act.

##### *2. Beginning and Ending of the EUC08 Program in a State.*

Under Section 4007 of the Act, EUC08 is payable in a state beginning with the first week which begins after the date an Agreement is signed between the state and the Department. No new EUC08 determinations may be made for weeks of unemployment ending after March 31, 2009. In most states, where weeks of unemployment end on Saturday, this means no new EUC08 determinations may be made for weeks beginning after March 28, 2009. However, an individual having amounts remaining in his/her EUC08 account as of March 31, 2009, may collect the remaining balance in subsequent weeks, if otherwise eligible.

Any individual who qualifies for this phase-out is limited to the amount in the account as of this date. No EUC08 may be paid under this phase-out "for any week beginning after June 30, 2009." In states where weeks of unemployment end on Saturday, this means the last week of EUC08 payable during this phase-out is the week ending June 27, 2009.

3. *Termination of EUC08 Agreement.* The agreement provides that it may be amended by mutual consent and may be terminated by either party on thirty days' written notice. In the case of termination, the EUC08 period will end 30 days from the date the state notifies the Secretary of its election to terminate the EUC08 program. No EUC08 will be payable for weeks which begin after the date the termination of the agreement is effective. However, EUC08 is payable for weeks of unemployment up to such termination date.

4. *Notifications.*

a. *Identification and Notification of Potentially Eligible Claimants.* The state must identify individuals who are potentially eligible for EUC08 and provide them with appropriate written notification of their potential entitlement to EUC08, including filing instructions.

b. *Interstate Claims.* EUC08 is payable to individuals filing under the Interstate Benefit Payment Plan in the same manner and to the same extent that benefits are payable to intrastate claimants.

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

c. *Notification of Media.* To assure public knowledge of the status of the EUC08 program, the state must notify all appropriate news media having coverage throughout the state of the beginning of the EUC08 program.

5. *Relation of Extended Benefits to EUC08.* Section 4001(e) of the Act allows, if state law permits, the payment of EUC08 prior to EB to individuals who are otherwise eligible for EUC08. If a state elects to pay EUC08 prior to EB, the amount of the individual's EB entitlement is not otherwise affected; EB is deferred, not reduced. Therefore, if the state is in an EB period when the individual exhausts his or her EUC08 claim, s/he may receive any remaining EB entitlement, as long as s/he met the EB eligibility provisions. There is no provision in the Act that authorizes states to trigger "off" an EB period.

The following provisions from the Federal-State EB law do *not* apply to the EUC08 program:

a. The suitable work and work search requirements of Section 202(a)(3); and

b. The requirement of employment to purge certain disqualifications found in Section 202(a)(4).

Note, however, that the Federal-State EB law's 20-weeks of work requirement must be met. See item 10.c.(1) below.

6. *Effect of Additional Compensation Eligibility in a State.* Section 4001(b)(2) of the Act requires that an individual have no rights to regular compensation or EB in order to meet the eligibility requirements for EUC08. AC is not considered regular compensation or EB; therefore, EUC08 is payable regardless of an individual's AC eligibility. A state with an AC program in effect may pay AC following the payment of EUC08. AC does not affect the EUC08 maximum benefit amount (MBA).

7. *Applicability of State Law Provisions.* Under Section 4001(d)(2) of the Act, applicable state law provisions which apply to the payment and continuing eligibility for regular compensation also apply to the payment of EUC08. An individual is not entitled to receive EUC08 for a week for which the individual is disqualified under the applicable state law. For example, if the applicable state law requires, as a condition of eligibility for regular compensation, that an individual be able and available for work, this requirement applies to EUC08. If an individual is not able or available for work, the individual would be disqualified from receiving EUC08 until the individual became able and available again.

8. *Effect of Other UI-Related Programs on Eligibility for EUC08.*

a. *Trade Readjustment Allowances (TRA).* The maximum amount of EUC08 payable to an individual who is also entitled to TRA shall not be reduced by reason of TRA entitlement. However, under Section 233(a)(1) of the Trade Act of 1974, as amended, the individual's entitlement to EUC08 will reduce the individual's maximum amount of "basic" TRA payable if the EUC08 is payable during the UI benefit period established by or in effect at the time of the individual's first TRA qualifying separation under the applicable trade adjustment assistance certification issued by the Department. (For the definition of "benefit period," see 20 CFR 617.3(h).) If the EUC08 entitlement occurs during a UI benefit period subsequent to the one in which the individual's first TRA qualifying separation occurred, the maximum amount of "basic" TRA payable will not be reduced by the amount of EUC08 entitlement. In either case, however, the

individual is not eligible for TRA until EUC08 entitlement is exhausted.

The provisions of Section 233(d) of the Trade Act of 1974, as amended (relating to reduction of EB entitlement because of the receipt of TRA in the most recent benefit year), are not applicable to determinations of entitlement to EUC08.

b. *Disaster Unemployment Assistance (DUA).* An individual is not eligible for DUA with respect to a week of unemployment under Section 410 of the Robert T. Stafford Disaster Relief and Emergency Assistance Act, as amended (42 U.S.C. 5177), if the individual is eligible to receive EUC08 compensation for that week.

9. *Establishment of EUC08 Account.* Section 4002(a) of the Act requires the state to establish an EUC08 account for each eligible individual. The maximum benefit amount (MBA) in the individual's account will be equal to the lesser of 50 percent of the total amount of regular compensation or 13 times the average regular compensation WBA for a week of total unemployment (including dependents' allowances in either case) payable to the individual with respect to the "applicable benefit year."

If a redetermination or an appeal decision results in a determination that an individual is entitled to more or less regular compensation, the individual's status as an exhaustee must be redetermined, as appropriate, and an appropriate change shall be made in the individual's EUC08 account.

10. *EUC08 WBA and Other Information.*

a. *Total Unemployment.* The WBA payable to an individual for a week of total unemployment is equal to the individual's most recent weekly benefit amount (including any dependents' allowances) for the applicable benefit year.

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

c. *Exceptions.* The terms and conditions of the state law which apply to claims for regular compensation and to the payment thereof shall apply to claims for EUC08 and the payment thereof, except:

(1) The individual must have 20 weeks of full-time insured employment or the "equivalent" in insured wages in the individual's applicable base period as determined under the provisions of the state law implementing section 202(a)(5) of the Federal-State EB law

and 20 CFR 615.4(b). The equivalent in insured wages equals 40 times the individual's most recent weekly benefit amount, or 1.5 times the individual's high quarter insured employment.

To determine which of these earnings requirements the state may use to determine if the claimant has a qualifying applicable benefit year for EUC08, the state must consult "the provisions of state law implementing Section 202(a)(5)." Thus, for example, if the state law authorized the use of just one of the three requirements, the state may only use that single requirement for EUC08 purposes. If the state law authorizes the use of two alternatives, then the state may use the two alternatives and if the state law authorizes the use of all three alternatives, then all three alternatives may be used; and

(2) Where otherwise inconsistent with the provisions of the Act or with the operating instructions promulgated to carry out the Act; and

(3) The maximum amount of EUC08 payable to any individual for whom a EUC08 account is established under Section 4002 shall not exceed the amount established in such account for such individual.

11. *Record Maintenance and Disposal of Records.* The state will maintain EUC08 claims and payment data (including data on eligibility, disqualification and appeals) as required by the Department.

a. *Record Maintenance.* Each state will maintain records on the administration of the EUC08 program, and will make all such records available for inspection, examination, and audit by such federal officials or employees as the Secretary or the Department may designate or as may be required by the law.

b. *Disposal of Records.* The electronic/paper records created in the administration of the EUC08 program must be maintained by the state for 3 years after final action (including appeals or court action) on the claim, or for less than the 3-year period if copied by microphotocopy or by an electronic imaging method. At the end of the 3 year period, the EUC08 records are transferred to state accountability under the conditions for the disposal of records that apply to UCFE and UCX records as explained in Chapter XXII of ET Handbook No. 391 (1992 Edition) and Chapter I, Page I-15, of ET Handbook No. 384 (1984 Edition).

12. *Disclosure of Information.* Information in records made and maintained by the state agency in administering the Act must be kept confidential, and information in such

records may be disclosed only in the same manner and to the same extent as information with respect to regular compensation, and the entitlement of individuals thereto, may be disclosed under provisions of the applicable state law meeting the requirements of 20 CFR part 603. This provision on the confidentiality of information obtained in the administration of the Act shall not apply, however, to information, reports and studies with no individual identifiers.

13. *Inviolate Rights to EUC08.* Except as specifically provided in these instructions, the rights of individuals to EUC08 shall be protected in the same manner and to the same extent as the rights of persons to regular compensation are protected under the applicable state law. Such measures must include protection of claimants for EUC08 from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to EUC08. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for and receiving EUC08.

#### *Processing Claims for EUC08*

1. *Applicability of State Law Provisions.* Under Section 4001(d)(2) of the Act, except where inconsistent with the Act or with the operating instructions promulgated to carry out the Act, all terms and conditions of the state unemployment compensation law applicable to claims for and payment of regular compensation, apply to claims for, and payment of, EUC08. The provisions of the applicable state law that apply to claims for EUC08 include but are not limited to:

- a. Claim Filing and Reporting;
- b. Information to individuals, as appropriate;
- c. Notices to individuals and employers, as appropriate, including notice to each individual of each determination and redetermination of eligibility for or entitlement to EUC08;
- d. Determinations, redeterminations, appeals, and hearings;
- e. Disqualification, including disqualifying income provisions;
- f. Ability to work and availability for work, including legal authorization to work in the United States;
- g. The Interstate Benefit Payment Plan; and
- h. The Interstate Arrangement for Combining Employment and Wages.

#### *2. Claims for EUC08.*

**Note:** In processing claims for EUC08, although states will need to verify that claimants have no regular UI entitlement,

there is no requirement that the claimant file a regular UI initial claim. Each application should result in only one initial claim; a claimant application will result in either a regular UI initial claim or an initial EUC08 claim (which could be a denied claim).

a. *Intrastate Initial Claims.* An initial claim for EUC08 will be filed by an individual according to the applicable state's manual, remote, or electronic filing procedures. As noted above, this shall not be counted as a regular UI claim.

b. *Interstate Initial Claims.* Interstate EUC08 claims will be filed on the same forms and in the same manner as all other interstate initial claims against the liable state. Before accepting an initial EUC08 claim, the agent or liable state, whichever is taking the claim, must review the individual's work history, examine potential entitlement and advise the individual of all filing options. If the individual has sufficient employment and wages to establish a new benefit year under any state or federal program, including the combined wage arrangement, there is no eligibility under the EUC08 program. When an initial EUC08 claim is filed through the agent state, the state will:

- (1) Complete an Initial Interstate Claim, Form IB-1, check claim type "other" and identify as EUC08;
- (2) Review the individual's work history and advise the individual of all filing options; and
- (3) Transmit a TC-IB1 to the liable state.

c. *Intrastate and Interstate Weeks Claimed.* Claims for payments of EUC08 for weeks of unemployment must be filed at the same times and in the same manner as claims for regular compensation are filed under the applicable state law, and on forms or electronic filing procedures as furnished to the individual by the state agency.

d. *Combined Wage Claims (CWC).* EUC08 is payable to individuals filing under the Interstate Arrangement for Combining Employment and Wages in the same manner and to the same extent that benefits are payable to other intrastate or interstate claimants.

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

When an EUC08 determination or redetermination is issued on a CWC claim, no Report of Determination of Combined-Wage Claim, TC-IB5, will be issued to the transferring state. The paying state will not bill transferring

states for EUC08. The paying state will charge all EUC08 compensation paid on CWC claims directly to the EUCA in accordance with the fiscal instructions provided in these instructions.

3. *Secretary's Standard.* The procedures for reporting and filing claims for EUC08 must be consistent with these instructions and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" (*Employment Security Manual*, Part V, sections 5000 *et seq.*).

4. *Determination of Entitlement: Notices to Individuals.*

a. *Determination of Initial Claim.* When an individual files an initial claim for EUC08, the state agency must determine promptly the eligibility of the individual and, if eligible, the weekly and maximum amounts of EUC08 payable. If denied EUC08, the individual must be issued an appealable determination.

b. *Determination of Weekly Claims.* The state agency must promptly, upon the filing of a claim for a payment of EUC08 for a week of unemployment, determine whether the individual is entitled to a payment of EUC08 for such week, and, if entitled, the amount of EUC08 to which the individual is entitled to and issue a prompt payment.

c. *Redetermination.* An individual filing an EUC08 initial claim or weekly certification has the same rights to request a reconsideration of a determination as are provided for in the applicable state law for regular compensation.

d. *Notices to Individual.* The state agency must give written notice to the individual of any determination or redetermination of an initial claim and all weekly claims. Each notice must include such information regarding rights to reconsideration or appeal, or both, using the same process that is used for redeterminations of regular compensation. The state agency must also provide the following notice to all claimants filing an initial claim for EUC08:

Notice

Under 18 U.S.C. 1001, knowingly and willfully concealing a material fact by any trick, scheme, or device or knowingly making a false statement in connection with this claim is a Federal Offence, punishable by a fine or imprisonment for not more than five years, or both, under Title 18 of the United States Code.

e. *Promptness.* Full payment of EUC08 when due must be made with the greatest promptness that is administratively feasible.

f. *Secretary's Determination Standard.* The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming EUC08 must be consistent with the Secretary's "Standard for Claim Determinations—Separation Information" (*Employment Security Manual*, Part V, sections 6010 *et seq.*).

5. *Appeal and Hearing.*

a. *Applicable State Law.* The applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to regular compensation shall apply to determinations and redeterminations of eligibility for or entitlement to EUC08.

b. *Rights of Appeal and Fair Hearing.* The right of appeal and opportunity for a fair hearing to claims for EUC08 must be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of the Social Security Act (SSA) (42 U.S.C. 503(a)(1) and 503(a)(3)).

c. *Promptness of Appeals Decisions.*

(1) Decisions on appeals under the EUC08 Program must accord with the "Standard for Appeals Promptness—Unemployment Compensation" in 20 CFR Part 650.

(2) Any applicable state law provision allowing the advancement or priority of unemployment compensation cases on judicial calendars, or otherwise intended to provide for the prompt payment of unemployment compensation when due, must apply to proceedings involving entitlement to EUC08.

6. *Fraud and Overpayment, Section 4005 of the Act.* The Act contains specific provisions regarding fraud and overpayments of EUC08. Applicable state law provisions regarding the detection and prevention of fraudulent overpayments of EUC08 must be, as a minimum, the same as those applied by the state for regular compensation and must be consistent with the Secretary's "Standard for Fraud and Overpayment Detection" (*Employment Security Manual*, Part V, Sections 7510 *et seq.*).

a. *Fraudulent Claiming of EUC08.* Section 4005(a) of the Act provides for penalties for filing a fraudulent claim for EUC08. Specifically, if the individual knowingly makes or causes to be made by another, a false statement or fails to disclose or causes another to fail to disclose a material fact that would cause an overpayment of EUC08 benefits, the individual:

(1) Shall be ineligible for further EUC08 in accordance with the provisions of the applicable state

unemployment compensation law relating to fraud in connection with a claim for unemployment compensation, and

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

Applicable state law provisions relating to disqualification for fraudulently claiming or receiving a payment of compensation shall apply to claims for and payment of EUC08.

When a state has sufficient facts to make a prima facie case under 18 U.S.C. 1001, the state must consider referral to OIG for criminal prosecution in accordance with the provisions of the Memorandum of Understanding between the Department of Labor's Office of Inspector General and the Employment and Training Administration, which was transmitted as an attachment to UIPL No. 29-05.

States must pursue EUC08 fraud cases in the same way all other state and federal claims are handled.

b. *Overpayments.* Under Section 4005(b) of the Act, each state must require repayment from individuals who have received any overpayment of EUC08 (whether fraudulent or non-fraudulent), unless the state, under the optional language of Section 4005(b), elects to waive recovery. The option to waive recovery applies only to non-fraudulent overpayments.

(1) *Application of State Waiver Provision.* If the state has a state law waiver provision for regular compensation, the state provision may be applied to non-fraudulent EUC08 overpayments if the provision requires the state to determine that:

(A) The payment of such EUC08 was without fault on the part of the individual, and

(B) Such repayment would be contrary to equity and good conscience.

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

(2) *Optional EUC08 Waiver.* Under Section 4005(c) of the Act, any state that does not have a state waiver provision or does not have a state waiver provision that meets both the "fault" and "equity and good conscience" requirements stated in paragraph (1) above may adopt this optional EUC08 waiver. If the state elects to implement the optional EUC08 waiver, it may not do so until it has issued agency operating instructions for staff to follow.

(A) The state may waive recovery of a non-fraudulent EUC08 overpayment if it determines that:

i. The payment of such EUC08 was without fault on the part of the individual, and

ii. Such repayment would be contrary to equity and good conscience.

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

i. Was a material statement or representation made by the individual in connection with the application for EUC08 resulting in the overpayment, and did the individual know, or should the individual have known, that the statement or representation was inaccurate?

ii. Did the individual fail, or cause another to fail, to disclose a material fact in connection with an application for EUC08 resulting in the overpayment, and did the individual know or should the individual have known that the fact was material?

iii. Did the individual know, or would s/he have been expected to know, that s/he was not entitled to the EUC08 payment?

iv. Did the overpayment result directly or indirectly, and partially or totally, from any act or omission of the individual and which was erroneous, inaccurate or otherwise wrong and the individual knew or could have been expected to know that the act or omission was erroneous or inaccurate or otherwise wrong?

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

i. Was the overpayment the result of a decision on appeal?

ii. Had the state agency given notice to the individual that the individual may be required to repay the benefit payment in the event of a reversal of the eligibility determination on appeal?

iii. Will recovery of the overpayment cause financial hardship to the individual?

(3) *Recovery of Overpayments, Section 4005(c) of the Act.* The Act requires that no repayment of an EUC08 overpayment may be required, and no deduction may be made, until a determination has been issued and an opportunity for a fair hearing has been given to the individual concerned, and the determination has become final. When the determination requiring repayment is issued, the state shall restore the full amount of the recoverable overpayment to the individual's EUC08 available account balance.

(A) Unless an EUC08 overpayment is recovered, or is waived, the state may, during the three-year period after the date the individual received the payment of EUC08 to which the

individual was not entitled, recover the overpayment by deductions from any sums payable to the individual under any state or Federal UC law administered by the state or any other Federal law administered by the state which provides for the payment of any assistance or an allowance with respect to unemployment. Such recoveries may only be made as described in (F) and (G) below.

(B) To the extent permitted under state law, an EUC08 overpayment may be recovered by offset, except that:

i. No single offset may exceed 50 percent of the amount otherwise payable to the individual for the week; and

ii. Any offset of compensation payable is limited to the three-year period following the date that the claimant received the improper payment(s).

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

(D) EUC08 overpayment recovery shall be enforced by any action or proceeding which may be brought under state or Federal law, unless recovery of the overpayment is waived or prohibited in accordance with the Act and the instructions in this section.

(E) Overpayments of EUC08 recovered in any manner must be deposited into the fund from which payment was made.

(F) If a state has an agreement in effect with the Secretary to implement the cross-program offset provisions of Section 303(g)(2) of the SSA, EUC08 payments shall be used to offset state compensation overpayments, and state compensation payments shall be used to offset EUC08 overpayments.

If the state does not have an agreement with the Secretary under Section 303(g)(2), SSA, the state may not use EUC08 to offset a state compensation overpayment, but may under Section 303(g)(1), SSA, offset state compensation payments to recover EUC08 overpayments.

(G) If a state has the cross-program offset agreement and an Interstate Reciprocal Overpayment Recovery Arrangement in effect with the National Association of State Workforce Agencies, EUC08 payments may be used

to offset state compensation overpayments for other states that also have both agreements in effect.

If the other state does not have an agreement with the Secretary under Section 303(g)(2), SSA, EUC08 benefits may only be used to offset overpayments of Federal benefits for the other state.

#### *Financial Information and Instructions*

##### 1. Payment to States.

a. Requesting EUC08 Benefit Funds. Under Section 4003 of the Act, each state that has entered into an agreement to pay EUC08 will be paid an amount equal to 100 percent of the amount of EUC08 paid to individuals by the state under the agreement and in full accordance with the Act and these instructions. States will request funds from the Emergency Unemployment Compensation Account (EUCA) to pay all EUC08 benefits attributable to all claim types (UI, UCFE, and UCX). All requests will go through the Automated Standard Application for Payments (ASAP) system. Drawdown requests must adhere to the funding mechanism stipulated in the Treasury-State Agreement executed under the Cash Management Improvement Act of 1990. Requests will be funded in the same manner as all ASAP transactions elected by the states (FEDWIRE or ACH to the state benefit payment account).

There will be one new line in the ASAP for making drawdowns to pay EUC08 benefits, refer to #3 below for drawdown instructions. The line will be clearly labeled EMERGENCY UNEMP COMP (EUC08). The Bureau of Public Debt, managers of the Unemployment Trust Fund (UTF), will immediately inform state users of the ASAP of any modifications to screens or drawdown instructions. EUC08 benefits paid to former employees of state and local governments, former Federal employees and former service members, "501(c)(3)" nonprofit organizations and federally recognized Indian tribes are funded from U.S. Treasury general revenues through the EUCA. This does not affect the process for requesting funds, but does affect the reporting of those benefits on the ETA 2112. States are to report all EUC08 payments, including reimbursable, UCFE/X on line 39, column F. (Note that it does not matter whether these employers have elected reimbursement status.) See Reporting Instructions, Paragraph 2.f for details.

b. *EUC08 Administrative Funds.* Section 4004(c) of the Act appropriates funds from the Employment Security Administration Account (ESAA) in the UTF, to pay costs related to the



administration of the EUC08 agreement. Section 4004(c) also authorizes the Secretary to determine the amount to be paid to states for processing EUC08 workloads. States will receive EUC08 administrative funds through the contingency entitlement process. See Reporting Instructions, Paragraph 2.h. The supplemental budget request process will be used for states to request funds for implementation.

#### 2. *EUC08 Accounting.*

a. *Obligational Authority.* The Grant Officer will assign a separate line on the UI program notices of obligational authority for EUC08 administrative grant funds, and a separate sub-account for EUC08 will be set up in the Payment Management System for states to draw down EUC08 administrative funds.

b. *Administrative Fund Accounting.* Because of the separate appropriation for EUC08 administrative funds and the availability of these funds until expended, states must track and report EUC08 administrative expenditures and obligations separately from the regular UI program. Therefore, states must establish a separate fund ledger and must submit a separate ETA 9130 for the EUC08 program. States are to include any EUC08 administrative expenditures and obligations incurred in June 2008 in their September 30, 2008, EUC08 ETA 9130 report.

c. *Time Distribution.* To ensure that regular UI and EUC08 costs are tracked separately, states need to charge time used for all EUC08 activities to the appropriate UI functional activity codes as outlined in Appendix E to ET Handbook No. 410 under the separate EUC08 fund ledger; however, states should combine regular and EUC08 staff year usage data in Section A of the UI-3 worksheet.

#### d. *Accounting for EUC08 Payments (Benefits).*

(1) EUC08 advances to the states' UTF accounts and disbursements for EUC08 benefit payments will be reported on the monthly ETA 2112. Do *not* use a separate form for this report. (See Reporting Instructions.) Accurate reporting of advances, reimbursements and payments is important due to the monthly reconciliation of balances with Department of Labor records.

(2) Since EUC08 paid to UCFE and UCX claimants will be funded out of General Revenues, the Federal Employees Compensation (FEC) Account will not be used to pay EUC08 benefits. Therefore, Federal agencies will not be required to reimburse the Unemployment Trust Fund for EUC08 paid to ex-Federal civilian and military employees. The ETA 191 report and UCFE/UCX detailed claimant data

provided by states to Federal agencies must exclude EUC08.

3. *Processing Refunds.* There are two scenarios for returning funds to the program line for EUC08.

a. The most likely scenario will be when the state has funds in its state benefit payment account and needs to return those funds to the EUCA. This should be completed as a negative amount posted to the appropriate line in ASAP. To accomplish this, the total draw for the day in ASAP must be greater than the negative balance posted to the appropriate line.

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

#### *Reporting Instructions*

1. *General.* The EUC08 program reports, ETA 207, ETA 218, ETA 227, ETA 5130 and ETA 5159 must be submitted electronically by using separate EUC08 entry screens that are available through the UI Required Reports electronic reporting system. EUC08 activity should also be reported on the ETA 2112, ETA 539 and UI-3 as specified below in section 2. Unless otherwise noted, definitions of items will follow definitions in the regular program as specified in ETA Handbook 401, 4th Edition. Due dates will be the same as the regular versions of reports.

Reporting will begin with the first reporting period in which the effective date of the EUC08 program falls. Reporting for all reports except the ETA 2112 will continue for twelve full months or four full quarters after the last payable week of the EUC08 program. For those reporting periods in this post-EUC08 time frame, only reports with non-zero data need be submitted. Reporting on the ETA 2112 must continue for as long as there is activity.

#### 2. *Data Items to be Reported.*

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

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

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

d. *ETA 5130.* Report all data elements.

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

(1) *First Payments.* Report the first payment under EUC08 program.

(2) *Final Payments.* A final payment is to be reported when a payment is issued that exhausts the benefit entitlement in the individual's EUC08 account.

f. *ETA 2112.* Regular activity must be reported in the aggregate on the electronic regular ETA 2112 report as usual. Information reflecting EUC08 activity must be reported as follows:

(1) Line 16. *Intra-Account Transfer.* Include in line 16F the amount of EUC08 funds transferred from the UTF to the state benefit payment account. *Line 16F must equal Line 47E.*

(2) Line 23. *Federal Extended Compensation.* Enter in columns C and E the amount of Federal funds received as advances or reimbursement for EUC08.

(3) Lines 33, 34, 35. Enter total benefits paid, attributable to state and local governments, section 501(c)(3) nonprofits, and federally recognized Indian tribes, as appropriate, on the appropriate line for the type of employer, excluding EUC08 benefits.

(4) Line 36. *UCX Net Payments.* Enter in columns C and F the net Federal portion of unemployment compensation paid to former members of the armed services, excluding EUC08. The total payments should be adjusted for refunds deposited during the month, credits and recharges, and cancellations and reissuances.

(5) Line 39. *EUC08 Activity.* Enter in columns C and F the net amount for which the Federal government is liable for EUC08, including for UCFE and UCX claimants. Break out *all disbursements by program* in the "Comments" section as follows:

(A) *FUTA Funded*—EUC08 benefits based on services for employers, except those listed in (B). For example, FUTA = \$XXX.

(B) *General Revenues (GR) Funded*—EUC08 benefits paid based on services performed for the Federal government



(UCFE and UCX), state and local government (contributory and non-contributory), section 501(c)(3) non-profit employers (contributory or non-contributory employers to which Section 3309(a)(1) of the Internal Revenue Code applies), and federally recognized Indian Tribes (contributory or non-contributory). For example, GR = \$YYY.

(6) Line 42. *Federal Emergency Compensation*. Enter in columns C and F the net Federal Emergency Compensation paid for which the Federal government is liable. Examples are past emergency or supplemental benefits programs authorized and financed entirely by the Federal government during periods of high unemployment, such as SUA—Special Unemployment Assistance, FSB—Federal Supplemental Benefits, or FSC—Federal Supplemental Compensation programs. (Note that payments under the Emergency Unemployment Compensation of 1991 and the Temporary Extended Unemployment Compensation Act of 2002 will continue to be reported on lines 40 and 41, respectively.) Identify the payment by program and amount in the “comments” section. Report all benefits paid, including the amounts transferred to the IRS for federal income tax withholding, regardless of whether paid from the state account in the UTF or the state benefit payment account.

(7) Line 46. *UCFE Net Payments*. Enter in columns C and F the net Federal portion of unemployment compensation paid to former Federal civilian (including postal) employees, excluding EUC08. The total payments should be adjusted for refunds deposited during the month, credits and recharges, and cancellations and reissuances.

(8) Line 50. *Withholding*. States are to report gross benefits in column F regardless of whether amounts of withholding transferred to the IRS go through the state benefit payment account. See ETA Handbook 401, 3rd Edition, for specific instructions.

g. *ETA 539*. Total weeks claimed for regular UC, UCFE, and UCX under the EUC08 program for the report period will be reported in the comments section and labeled as “EUC08” followed by the number. For example: “EUC08=239”. (The agent weeks claimed information needed for this report will be obtained from the LADT identified in field 28 as “code 2”, Federal Benefit Extension.)

h. *UI-3 Worksheet*. Report EUC08 claims activity/workload activity electronically on the lines for third tier programs on the regular UI-3 report.

i. *Benefit Accuracy Measurement (BAM)*. All paid and denied EUC08 claims will be *excluded* from the BAM Paid Claims Accuracy (PCA) and Denied Claims Accuracy (DCA) sampling frames. This is consistent with the policy followed for previous temporary programs. Per the instructions in ET Handbook 395, chapter III, the State UI Transactions File, Program Type (Data Element 11) must be coded “8” (Other) and Unemployment Duration Code (Data Element 12) must be coded “5” (Other federal extended benefits program).

If an EUC08 claim is selected for any PCA or DCA sample because it was not properly coded in the State UI Transactions File, it *must* be coded “8” in PCA data element c1 (Program Code) or DCA data element 22 (Program Code). These cases will not be investigated by BAM, and the BAM supervisor will not sign-off on these cases.

Denied State UI, UCFE, or UCX claims filed for the sole purpose of establishing eligibility for EUC08 should be considered “pro-forma” claims. These cases will be deleted from the sample and will be coded “9” in PCA data element c1 (Program Code) or DCA data element 22 (Program Code) using the Delete Cases application in the BAM Supervisor Case Management menu. These cases will not be investigated by BAM, and the BAM supervisor will not sign-off on these cases.

Because EUC08 and pro-forma UI, UCFE, and UCX cases will be excluded from the BAM PCA and DCA samples, BAM must sample additional cases in subsequent batches to compensate for the number of excluded PCA and DCA EUC08 and pro-forma cases.

3. *OMB Approval*. These instructions have been submitted to the Office of Management and Budget (OMB), but have not yet been approved. Therefore, they should be considered draft instructions of proposed data collections. ETA will notify states upon OMB approval and communicate any changes deemed necessary during the OMB approval process.

#### **Attachment B—General Provisions for Administering EUC08**

##### *Certifications and Assurances*

∩≈ Compliance with Federal Requirements. States must comply with the provisions contained in the states’ Agreements with the Department to administer EUC08 and with all applicable EUC08 funding instruments. States must perform such duties and functions in accordance with the Department’s administrative requirements for grants and cooperative

agreements at 29 CFR Parts 31, 32, 37, 96, 97, 98, and 99. Allowable costs shall be determined in accordance with the Office of Management and Budget Circular A–87 (Revised).

∥≈ Prohibition on Subsidization of Forced or Indentured Child Labor. States, consistent with Section 103 of the General Provisions of the Department of Labor Appropriation Act, 2008, and in accordance with Executive Order No. 13126, must not obligate or expend funds made available to administer EUC08 for the procurement of goods mined, produced, manufactured, or harvested or services rendered, whole or in part, by forced or indentured child labor in industries and host countries already identified by the United States Department of Labor prior to enactment of the Department’s 2008 appropriation.

Σ≈ Salary and Bonus Pay Limitations: States, in compliance with Section 103 of the General Provisions of the Department of Labor Appropriation Act, 2008, must not use funds provided for EUC08 administration to pay the salary and bonuses of an individual, either as direct costs or indirect costs, at a rate in excess of Executive Level II, except as provided for under section 101 of Public Law 109–149. This limitation shall not apply to vendors providing goods and services as defined in OMB Circular No. A–133. Where states are recipients of such funds, states may establish a lower limit for salaries and bonuses of those receiving salaries and bonuses from subrecipients of such funds, taking into account factors including the relative cost-of-living in the state, the compensation levels for comparable state or local government employees, and the size of the organizations that administer Federal programs involved including Employment and Training Administration programs. See TEGL number 5–06 for further clarification. The incurrence of costs and receiving reimbursement for these costs under this award certifies that the Grantee has read the above special condition and is in compliance.

∞≈ Veterans’ Priority Provisions: This program, funded by the U.S. Department of Labor, is subject to the provisions of the “Jobs for Veterans Act” (JVA), Public Law 107–288 (38 U.S.C. 4215). The JVA provides priority of service to veterans and spouses of certain veterans for the receipt of employment, training, and placement services. Please note that, to obtain priority service, a veteran must meet the program’s eligibility requirements. Training and Employment Guidance Letter (TEGL) No. 5–03 (September 16,

2003) provided general guidance on the scope of the veterans priority statute and its effect on current employment and training programs. In addition to TEGL No. 5-03, a series of questions and answers related to priority of service is posted at <http://www.doleta.gov/programs/VETs> for fifteen (15) programs administered by ETA. As made applicable by TEGL 13-06, the Department of Labor Planning Guidance on the Workforce Investment Act (WIA) of 1998 and the Wagner-Peyser Act (70 FR 19206 (Apr. 12, 2005)) and the revised Unified Planning Guidance (70 FR 19222 (April 12, 2005)) require states to describe the policies and strategies in place to ensure, pursuant to the JVA, that priority of service is provided to veterans (and certain spouses) who otherwise meet the eligibility requirements for all employment and training programs funded by the U.S. Department of Labor and administered by ETA. In addition, the states were required to provide assurances that they will comply with the Veterans' Priority Provisions established by the JVA. States must adhere to JVP requirements, as interpreted by the Department, in administering EUC08.

—≈ Certifications and Assurances. In administering EUC08, states must fully comply with the following State Quality Service Plan (SQSP) assurances, with two "exceptions/revisions" and one "expansion" annotated below. These SQSP assurances are detailed in Chapter 1, Part VII of the "Unemployment Insurance State Quality Service Plan (SQSP) Planning and Reporting Guidelines," ET Handbook No. 336 (18th Edition).

- A. Assurance of Equal Opportunity (EO).
- B. Assurance of Administrative Requirements and Allowable Cost Standards.
- C. Assurance of Management Systems, Reporting, and Recordkeeping.
- D. Assurance of Program Quality.
- E. Assurance on Use of Unobligated Funds.
- F. Assurance of Prohibition of Lobbying Costs (29 CFR Part 93).
- G. Drug-Free Workplace (29 CFR Part 98).
- H. Assurance of Disaster Recovery Capability.
- I. Assurance of Conformity and Compliance.
- J. Assurance of Automated Information Systems Security.
- K. Assurance of Confidentiality.

Additionally, the Office of Management and Budget (OMB), SF 424 B Assurances—Non-Construction Programs, signed and submitted by each state with the SQSP annual submission, also apply.

### Attachment C—Title IV—Emergency Unemployment Compensation

#### Title IV—Emergency Unemployment Compensation

##### Federal-State Agreements

SEC. 4001. (a) In General.—Any State which desires to do so may enter into and participate in an agreement under this title with the Secretary of Labor (in this title referred to as the "Secretary"). Any State which is a party to an agreement under this title may, upon providing 30 days' written notice to the Secretary, terminate such agreement.

(b) Provisions of Agreement.—Any agreement under subsection (a) shall provide that the State agency of the State will make payments of emergency unemployment compensation to individuals who—

(1) Have exhausted all rights to regular compensation under the State law or under Federal law with respect to a benefit year (excluding any benefit year that ended before May 1, 2007);

(2) Have no rights to regular compensation or extended compensation with respect to a week under such law or any other State unemployment compensation law or to compensation under any other Federal law (except as provided under subsection (e)); and

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

(c) Exhaustion of Benefits.—For purposes of subsection (b)(1), an individual shall be deemed to have exhausted such individual's rights to regular compensation under a State law when—

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

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

(d) Weekly Benefit Amount, etc.—For purposes of any agreement under this title—

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

(2) The terms and conditions of the State law which apply to claims for regular compensation and to the payment thereof shall apply to claims for emergency unemployment compensation and the payment thereof, except—

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

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

(3) The maximum amount of emergency unemployment compensation payable to any individual for whom an emergency unemployment compensation account is established under section 4002 shall not exceed the amount established in such account for such individual.

(e) Election by States.—Notwithstanding any other provision of Federal law (and if State law permits), the Governor of a State that is in an extended benefit period may provide for the payment of emergency unemployment compensation prior to extended compensation to individuals who otherwise meet the requirements of this section.

(f) Unauthorized Aliens Ineligible.—A State shall require as a condition of eligibility for emergency unemployment compensation under this Act that each alien who receives such compensation must be legally authorized to work in the United States, as defined for purposes of the Federal Unemployment Tax Act (26 U.S.C. 3301 *et seq.*). In determining whether an alien meets the requirements of this subsection, a State must follow the procedures provided in section 1137(d) of the Social Security Act (42 U.S.C. 1320b-7(d)).

#### Emergency Unemployment Compensation Account

SEC. 4002. (a) In General.—Any agreement under this title shall provide that the State will establish, for each eligible individual who files an application for emergency unemployment compensation, an emergency unemployment

compensation account with respect to such individual's benefit year.

(b) Amount In Account.—

(1) In General.—The amount established in an account under subsection (a) shall be equal to the lesser of—

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

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

(2) Weekly Benefit Amount.—For purposes of this subsection, an individual's weekly benefit amount for any week is the amount of regular compensation (including dependents' allowances) under the State law payable to such individual for such week for total unemployment.

#### Payments to States Having Agreements for the Payment of Emergency Unemployment Compensation

SEC. 4003. (a) General Rule.—There shall be paid to each State that has entered into an agreement under this title an amount equal to 100 percent of the emergency unemployment compensation paid to individuals by the State pursuant to such agreement.

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

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

#### Financing Provisions

SEC. 4004. (a) In General.—Funds in the extended unemployment compensation account (as established by section 905(a) of the Social Security Act (42 U.S.C. 1105(a)) of the Unemployment Trust Fund (as established by section 904(a) of such Act (42 U.S.C. 1104(a)) shall be used for the making of payments to States having agreements entered into under this title.

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

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

(d) Appropriations for Certain Payments.—There are appropriated from the general fund of the Treasury, without fiscal year limitation, to the extended unemployment compensation account (as so established) of the Unemployment Trust Fund (as so established) such sums as the Secretary estimates to be necessary to make the payments under this section in respect of—

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

(2) Compensation payable on the basis of services to which section 3309(a)(1) of the Internal Revenue Code of 1986 applies. Amounts appropriated pursuant to the preceding sentence shall not be required to be repaid.

#### Fraud and Overpayments

SEC. 4005. (a) In General.—If an individual knowingly has made, or caused to be made by another, a false statement or representation of a material fact, or knowingly has failed, or caused another to fail, to disclose a material fact, and as a result of such false statement or representation or of such

nondisclosure such individual has received an amount of emergency unemployment compensation under this title to which such individual was not entitled, such individual—

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

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

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

(1) The payment of such emergency unemployment compensation was without fault on the part of any such individual; and

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

(c) Recovery by State Agency.—

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

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

(d) Review.—Any determination by a State agency under this section shall be subject to review in the same manner and to the same extent as

determinations under the State unemployment compensation law, and only in that manner and to that extent.

Definitions

SEC. 4006. In this title, the terms "compensation", "regular compensation", "extended compensation", "benefit year", "base period", "State", "State agency", "State law", and "week" have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note).

Applicability

SEC. 4007. (a) In General—Except as provided in subsection (b), an agreement entered into under this title shall apply to weeks of unemployment—

(1) Beginning after the date on which such agreement is entered into; and

(2) Ending on or before March 31, 2009.

(b) Transition for Amount Remaining in Account.—

(1) In General.—Subject to paragraph (2), in the case of an individual who has amounts remaining in an account established under section 4002 as of the last day of the last week (as determined in accordance with the applicable State law) ending on or before March 31, 2009, emergency unemployment

compensation shall continue to be payable to such individual from such amounts for any week beginning after such last day for which the individual meets the eligibility requirements of this title.

(2) Limit on Compensation.—No compensation shall be payable by reason of paragraph (1) for any week beginning after June 30, 2009.

Advisory: Unemployment Insurance Program Letter No. 23–08, Change 1.

To: State Workforce Agencies.

From: Brent R. Orrell, Deputy Assistant Secretary.

Subject: Emergency Unemployment Compensation, 2008—Questions and Answers.

1. Purpose. To respond to questions regarding the Emergency Unemployment Compensation, 2008 (EUC08) program (included as Attachment A to this UIPL); to correct the ending date(s) during which an individual may receive a final payment for EUC08 during the phase-out period of the program; and to change the expiration date of Unemployment Insurance Program Letter (UIPL) No. 23–08 to "continuing."

2. References. UIPL 23–08; Supplemental Appropriations Act, 2008 (Act), Title IV—Emergency Unemployment Compensation, Public Law 110–252.

3. Background. The EUC08 program became effective in most states during the week beginning July 6, 2008 (week beginning July 7th in New York). The program provides up to 13 weeks of 100 percent federally-funded compensation to eligible individuals.

4. Correction to End Date for EUC08 Payments and to "Expiration Date" of UIPL 23–08. The legislation provides that no EUC08 is payable for weeks "beginning after June 30, 2009." In most states, where benefit weeks end on Saturdays, the practical effect is that the week ending July 4, 2009, is the last week for which benefits can be paid. UIPL No. 23–08 stated incorrectly that the week-ending June 27, 2009, was the final week for which benefits could be paid. In addition, the "Expiration Date" for UIPL No. 23–08 is changed to read "Continuing."

5. Action. State Administrators are requested to provide this guidance to appropriate staff.

6. Attachment. Emergency Unemployment Compensation, 2008—Questions and Answers

Emergency Unemployment Compensation, 2008

Questions and Answers

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A. Claims Processing for EUC08

∩≈ Question: What is the earliest effective date for EUC08 claims, and what is the first week payable?

Answer: In most states, where the week of unemployment begins on Sunday, the earliest effective date for a claim is July 6, 2008. In these states, the first week for which EUC08 may be paid is the week ending July 12, 2008.

∥≈ Question: If an individual is in continued claim status on a regular UC claim when s/he exhausts UC, may the claim be automatically switched to an EUC08 claim without an EUC08 initial claim?

Answer: No. An EUC08 initial claim must be filed that meets the state's requirements for claim filing. (See Attachment A to UIPL No. 23–08; page A–8, #2, Claims for EUC08).

Σ≈ Question: May a state backdate an EUC08 claim if an individual files a late claim and requests backdating?

Answer: Section 4001(d)(2) of the Act provides that state law will apply; the state must follow its own unemployment compensation (UC) law with respect to backdating of an EUC08 claim.

∞≈ Question: If state law requires a request for redetermination before

appeal of a monetary determination, is state law followed for EUC08 monetary appeals?

Answer: Yes. Section 4001(d)(2) of the Act provides that the provisions of state law will apply regarding EUC08 claim re-determinations and appeals.

→≈ Question: Section 4007(a)(2) of the Act provides that EUC08 shall apply to weeks of unemployment ending on or before March 31, 2009. How does this apply to weeks of unemployment that are not a calendar week, for example, the seven day period of March 25–March 31, 2009?

Answer: Where state laws permit “flexible weeks” of unemployment that follow, for example, an employer’s payroll week structure, weeks ending on or before (Tuesday) March 31, 2009, would be payable.

→≈ Question: Regarding the phase-out of the EUC08 program (when there are remaining amounts in an individual’s EUC08 account), Section 4007(b)(2) of the Act provides that no EUC08 shall be payable for any week beginning after June 30, 2009. Is EUC08 payable for the week of (Tuesday) June 30, 2009, that ends (Monday) July 6, 2009?

Answer: Yes. If state law permits weeks of unemployment to begin on (Tuesday) June 30, 2009, the week ending (Monday) July 6, 2009, would be the final week.

#### *B. Individuals Potentially Eligible for EUC08*

∩≈ Question: Is an individual potentially eligible for EUC08 if s/he filed a new claim and established a benefit year that ended on or after May 1, 2007, but received no payments before the benefit year ended?

Answer: Yes. The ending of the benefit year prevents the individual from receiving the regular UC balance that was available. The individual is an exhaustee for EUC08 purposes.

∥≈ Question: Is there a waiting week for EUC08 if the individual has never served a waiting week during the applicable benefit year?

Answer: No. There is no waiting period requirement for EUC08.

Σ≈ Question: If an individual files a new UC claim and is found monetarily ineligible (e.g., no wages or insufficient wages) for regular UC, does the agency need to check for any earlier/prior benefit year(s) to determine if the individual may qualify for EUC08?

Answer: Yes. To determine if the individual qualifies for EUC08, the state will need to check for any prior benefit year(s) that ended on or after May 1, 2007, and determine if the individual is an exhaustee. See Attachment A to UIPL

23–08, page A–1 *Definitions—#4* and page A–3, #1(b), *Determining Exhaustees*.

#### *C. Applicable Benefit Year for EUC08 Purposes*

∩≈ Question: May an individual choose the benefit year under which an EUC08 claim will be filed? For example, the individual has two different benefit years that ended on or after May 1, 2007, or the individual has one benefit year that ended on or after May 1, 2007 and another benefit year that has not ended but all UC benefits have been exhausted?

Answer: No. The applicable benefit year is the most recent benefit year. (See Attachment A to UIPL No. 23–08, page A–1, *Definitions—#4*.)

∥≈ Question: If, due to the receipt of severance pay, an individual’s eligibility for regular UC is postponed or reduced to zero and no regular UC is paid during the entire benefit year, which has ended, is the individual considered to be an “exhaustee?”

Answer: Yes. Once the individual’s benefit year ends, the individual is an exhaustee. (See Section 4001(c)(2) of the Act.) Note: Disqualifications, including those related to deductible income, that are imposed by state law will also apply to EUC08 claims.

Σ≈ Question: An individual has two different benefit years that ended on or after May 1, 2007. However, on the most recent benefit year, the individual does not meet the 20 weeks of work requirement. The individual’s prior benefit year does meet this requirement. Since the most recent benefit year does not meet the EUC08 monetary requirements, might the individual qualify for EUC08 based on the prior benefit year?

Answer: No. The applicable benefit year, which is used as the basis for an EUC08 claim, is the most recent benefit year.

#### *D. Monetary Eligibility*

∩≈ Question: Is there a uniform 13-week duration for all EUC08 claims?

Answer: No. The EUC08 maximum benefit amount (MBA) is computed as the lesser of 50 percent of the individual’s regular UC MBA, including dependents’ allowance(s), or 13 times the individual’s average weekly benefit amount (WBA). Fifty percent of the regular MBA may result in less than 13 weeks of benefits, for example, where an individual only qualifies for an MBA of 10 weeks of regular UC. (See Section 4002(b)(1) of the Act.)

∥≈ Question: If there has been a recent increase in the state’s WBA that applies to all benefit years on file with

a balance, what impact does it have on the EUC08 WBA and MBA?

Answer: The increase will affect the calculation of the EUC08 WBA and MBA if it increases the claimant’s WBA for regular compensation for the applicable benefit year. The individual’s EUC08 WBA is the most recent WBA of regular compensation for the applicable benefit year. The individual’s EUC08 MBA is also affected by the WBA increase for regular compensation because the EUC08 MBA is the lesser of 50 percent of the total regular UC for the benefit year (which would be increased by the WBA increase) or 13 times the average WBA paid during the benefit year (which also would be increased by the WBA increase). (See Section 4002(b)(1) of the Act.)

For example, if an individual received regular UC for 20 weeks at \$200 and the remaining 6 weeks at \$220, his/her EUC08 WBA will be \$220, and the EUC08 MBA will be \$2,660 which is the lesser of 50% of \$5320 (\$2,660) or 13 times \$210 (\$200 + \$220 divided by 2 (\$2,730), the average of both WBAs). State law rounding provisions will apply.

Σ≈ Question: If an individual receives a monetary penalty on his/her regular claim, is the EUC08 claim based on the regular amount before or after the penalty (e.g., wage cancellation or reduction of the MBA)?

Answer: The EUC08 claim is based on the amount determined before the penalty. Section 4002(b)(1) of the Act requires that the amount in the EUC08 account equal the lesser of 50 percent of the regular benefits payable or 13 times the average WBA. The Department has consistently held that the determination of the monetary award for federally financed extensions should be based on the regular UC amount prior to the application of a penalty because to base entitlement on the lesser re-determined amount would be tantamount to imposing a second penalty for the same disqualifying act. (See 20 CFR 615.5(a)(1)(i) and (b)(3), which applies the same principle in the extended benefits (EB) program in determining exhaustion.)

∞≈ Question: May individuals who have had their base period wage credits canceled or who have had their regular maximum benefit amount reduced to one week establish a EUC08 claim? If “yes,” how is the EUC08 monetary account calculated?

Answer: Yes. Consistent with the EB regulations (20 CFR 615.5(a)(1)(i) and (b)(3)) the individual is an exhaustee if no regular compensation is payable. Also, the individual’s EUC08 monetary account is calculated using the

monetary determination *before* wage cancellation or benefit reduction, as explained in #3 above.

→≈ Question: If the calculation of the individual's EUC08 MBA at 50 percent of the MBA for regular compensation results in a fraction that requires rounding, are state law rounding provisions followed?

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

→≈ Question: A state's formula for determining the MBA for regular compensation is the lesser of 26 times the WBA or one-third of the base period wages credits. When an individual is unemployed due to a plant closing, the state pays up to 13 additional weeks of benefits as the lesser of 39 times the WBA or one-half of the base period wage credits. State law does not specifically define these benefits as additional compensation. Are the plant closing benefits considered additional compensation for EUC08 purposes?

Answer: Yes. These benefits meet the definition of "additional compensation" in Attachment A to UIPL No. 23-08, that is, "compensation totally financed by a state and payable under a state law by reason of high unemployment or *other special factors*." (Emphasis added.) The "special factor" here is that these benefits are paid for plant closings. As "additional compensation," these benefits are excluded from use in the calculation of EUC08 monetary entitlement. Further, EUC08 may be paid prior to these benefits, because Section 4001(b)(2) of the Act does not require, as a condition of EUC08 eligibility, exhaustion of additional compensation.

←≈ Question: May an individual have more than one EUC08 claim?

Answer: Yes. An individual may establish a claim for EUC08, qualify for a new UC benefit year, exhaust that benefit year, exhaust the first EUC08 claim and subsequently qualify for a second EUC08 claim based on the new (most recent) benefit year.

*Example:* An individual is determined eligible for EUC08 based on a UC benefit year that ended on May 12, 2007. S/he receives 10 weeks of EUC08 prior to the calendar quarter change, at which point s/he qualifies for a new UC benefit year. Because the individual qualifies for regular UC, EUC08 payments must stop.

The individual exhausts benefits based on his/her new UC benefit year; therefore, s/he is again an exhaustee for EUC08 purposes. S/he may collect the remaining entitlement on his/her existing (first) EUC08 claim and after exhausting these benefits s/he may file a new (second) EUC08 claim based on the new (most recent) UC benefit year. The new/most recent benefit year is the applicable benefit

year for a second EUC08 claim, if the initial claim for that second claim is for a week of unemployment ending on or before March 31, 2009.

#### *E. Requalifying Requirements for Successive Benefit Years ("Double Dip") Provisions*

∩≈ Question: State law requires an individual who received UC in a benefit year to have had work since the beginning of the benefit year to qualify for a new benefit year. How does this "double dip" requirement affect eligibility for EUC08?

Answer: Section 3304(a)(7) of the Federal Unemployment Tax Act (FUTA) requires, as a condition of a state's participation in the federal-state UC program, that the state law provide that "an individual who has received [UC] during his benefit year is required to have had work since the beginning of such year in order to qualify for [UC] in his next [second] benefit year."

Where an individual is unable to satisfy this "double dip" requirement, some states will nevertheless establish a second benefit year, although the individual will have no monetary entitlement on that benefit year until s/he satisfies the requirement. Whether or not the state establishes a new benefit year when the individual does not satisfy the double dip requirement, an individual is an exhaustee and will qualify for EUC08, if otherwise eligible. This follows the approach taken in the EB program. (See 20 CFR 615.2(c)(2))

#### *F. Base Period Employment Requirement*

∩≈ Question: An individual has covered employment and wages in two states and filed a combined wage claim (CWC). Although wages were transferred to State A from State B, the individual has established a benefit year based only on wages from State A because the base period wages from State B do not increase the weekly or maximum benefit amount. Therefore, a CWC was not established and State A returned wages to State B. May State A use the wage transfer record (TC-IB4) it received from State B as evidence of employment and wages in the base period of the claim, which will satisfy the 20-week work requirement or its equivalent for EUC08 entitlement?

Answer: Yes. Section 4001(d)(2)(A) of the Act requires an individual to have 20 weeks of full-time insured employment or the equivalent in insured wages under the provisions of applicable state law to qualify. It does not require all of the employment and wages to have been used in the

determination of monetary entitlement for the applicable benefit year.

∥≈ Question: How is full-time work determined for purposes of the 20-weeks-of-work requirement?

Answer: It is "determined under the provisions of the State law implementing section 202(a)(5) of the Federal-State Extended Unemployment Compensation Act of 1970." (Section 4002(d)(2)(A) of the Act.) This requires the state to follow the *monetary* qualifying requirements that the individual meets at least one of the following:

- One and one-half times the individual's high quarter wages;
- 40 times the most recent weekly benefit amount; or
- 20 weeks of full-time insured employment as provided by the state's law. Note: Full-time may not always be defined as 40 hours per week; states will refer to their state law for the definition of "full-time." See 20 CFR 615.4(b) regarding these options.

#### *G. Seasonal Provisions/Between Terms Denial*

1. Question: Are employees of educational institutions who are denied regular benefits because of the between-and-within terms denial provisions eligible for EUC08 during those between-and-within terms periods?

Answer: No. Section 3304(a)(6)(A) of the Federal Unemployment Tax Act (FUTA) requires, as a condition of participation in the federal-state UC program, that state law limit the eligibility of individuals based upon services performed for educational institutions between and within academic terms. With exceptions not relevant here, section 4001(d)(2) of the Act applies the terms and conditions of the state law to claims for EUC08. Therefore, the same between and within terms denial provisions of state law apply to EUC08 claims. *Note:* Employees of educational institutions who establish a benefit year based on non-school wages may qualify for EUC08 between-and-within terms after exhausting all UC that is based on their non-school wages. The WBA for the EUC08 claim must be based on the non-school wages.

2. Question: Under a state's seasonality provisions, benefits based on seasonal wages may be paid only during the normal seasonal period for which the seasonal wage credits were earned. Is a seasonal worker, whose monetary determination is based solely on seasonal wages and who is ineligible because of the seasonality provisions, considered an "exhaustee" for EUC08 purposes?

Answer: Yes. The EB exhaustion provisions (20 CFR 615.5(b)(2)) regarding seasonal workers make seasonal workers potentially eligible as exhaustees during the "off" season. The same rule is applicable for EUC08 claims.

#### H. Work Search/Job Service Registration Requirements

⊃≈ Question: Do EB work search requirements apply to EUC08?

Answer: No. The Act does not apply the EB work search requirements to EUC08. Rather, under section 4001(d)(2) of the Act, the work search requirements of state law apply to EUC08.

∥≈ Question: Do state law provisions requiring an individual to be able and available for work apply to EUC08?

Answer: Yes. See Section 4001(d)(2) of the Act.

Σ≈ Question: Is it inconsistent with federal law for a state to electronically reactivate prior work registrations and require the same number of job contacts for EUC08 as was required for regular UC?

Answer: No. Federal law requires this result. Under Section 4001(d)(2) of the Act, state law work search and employment service registration requirements apply to EUC08 eligibility.

#### I. Non-Monetary Issues

⊃≈ Question: Must states adjudicate any new separation issue(s) that occurred after the individual exhausted his or her UC claim?

Answer: Yes. State must adjudicate separation issues in accordance with state law for all EUC08 claims.

∥≈ Question: If state law provides for adjudication of all separations from the beginning of the base period to the time a claim is filed, does this provision of state law apply to EUC08 claims?

Answer: Yes. See Section 4001(d)(2) of the Act.

Σ≈ Question: If an individual has satisfied/purged a disqualification, for example, disqualifications related to fraud, separation, or refusal of suitable work, is s/he eligible for EUC08, if otherwise eligible?

Answer: Yes. The individual is eligible for EUC08, if all other requirements are met.

∞≈ Question: Our state assesses penalty weeks for making false statements. An otherwise eligible individual must certify for benefits to satisfy this penalty. May an individual who is otherwise eligible to file an EUC08 claim use EUC08 weeks to satisfy this penalty?

Answer: Yes, the individual may use EUC08 weeks to satisfy this penalty, but will be ineligible for EUC08 during those penalty weeks.

¬≈ Question: Our state assesses penalty weeks for false statements and suitable work disqualifications. Our penalty is a set number of weeks and the individual does not have to certify or be eligible for benefits to "serve" these penalty weeks. Would individuals qualify for EUC08 payments during the period when they are "serving" these weeks?

Answer: No. As in the answer above, the individual is ineligible for EUC08 for the penalty weeks. Where an individual is disqualified for benefits under state law, s/he would not qualify for EUC08 until the time period for the disqualification has been satisfied/has passed.

#### J. EUC08 Benefit Intercept

⊃≈ Question: Are EUC08 payments subject to child support intercept and similar levies and attachments?

Answer: Yes, but only to the extent that doing so is consistent with federal and state law. As explained in UIPL No. 45-89, the Federal "withdrawal standard" limits deductions from UC to those authorized or required by Federal law. One of the required offsets pertains to child support. Further, the terms and conditions of state law apply to EUC08, including intercepts and offsets, except where inconsistent with the Act or operating instructions.

∥≈ Question: What is the order of priority for deductions of overpayment offset, child support, and income taxes?

Answer: The state will follow the same procedures that apply to regular compensation. (See UIPL 17-95, Change 1.)

#### K. Overpayments

⊃≈ Question: May EUC08 benefits be offset to recover state UC overpayments?

Answer: Yes, if the state has a Cross-Program Overpayment Offset Agreement with the Secretary. The state must follow the agreement in recovering overpayments.

∥≈ Question: Must all offsets from EUC08 be 50 percent even if state law requires a 100 percent offset of benefits?

Answer: No. The Act provides that the 50 percent limit applies only to offsets to recover EUC08. It does not apply to offsets of EUC08 to recover state UI overpayments.

Σ≈ Question: May a state apply its own state law waiver provisions to EUC08 overpayments?

Answer: A state law's waiver provision may be applied to non-fraudulent EUC08 overpayments if the provision requires the state to determine that (1) the payment of EUC08 was without fault on the part of the

individual and (2) repayment would be contrary to equity and good conscience. (See Attachment A to UIPL NO. 23-08, page A-11, #6(b)(1), Application of State Waiver Provision.)

∞≈ Question: How should states handle prosecutions of EUC08 fraud overpayments?

Answer: States must pursue EUC08 fraud cases in the same manner as all other Federal UC fraud cases are handled. For referrals of fraud cases to the U.S. Department of Labor's Office of Inspector General (OIG), see UIPL No 29-05.

¬≈ Question: Are states required to use only benefit offsets to recover EUC08 overpayments?

Answer: No, Section 4004(c)(1) merely authorizes offset against EUC08 benefits as one method of recovery.

"EUC08 overpayment recovery shall be enforced by any action or proceeding which may be brought under state or Federal law \* \* \*" See Attachment A to UIPL No. 23-08; page A-13, #6(b)(3)(D), Recovery of Overpayments, Section 4005(c) of the Act.

→≈ Question: States are still recovering overpayments from the 2002 Temporary Extended Unemployment Compensation (TEUC) program. Is it necessary to separately report those 2002 overpayments recovered from any EUC08 overpayments recovered?

Answer: Yes. Transactions concerning the 2002 TEUC program should be reported separately from EUC08 transactions.

#### L. Short-Time Compensation (STC) Program

⊃≈ Question: May EUC08 be paid to individuals participating in a short-time compensation (STC or worksharing) program?

Answer: Yes. If an individual participating in an STC program is an exhaustee for EUC08 purposes and is otherwise eligible, EUC08 must be paid to an otherwise eligible individual on the same terms and conditions as apply to regular compensation. The payment of EUC08 to STC participants is unlikely to occur since STC participants rarely exhaust their UC benefits and an individual participating in an STC program whose benefit year has ended will have wages that must be used to establish, if possible, a new benefit year before any EUC08 is payable.

∥≈ Question: When a state law requires regular compensation to be paid to individuals participating in an STC program, the criteria for earnings deductions from the benefits is based on a percentage of the earnings instead of the rules that apply to regular claims. Do the provisions of the state law



governing STC deductions apply to EUC08? If “yes,” does the state law provision that limits the number of weeks payable to STC participants apply to an STC participant receiving EUC08?

Answer: Yes to both questions. EUC08 is to be paid to STC participants under the provisions of the state law governing STC.

#### M. Extensions for Approved Training

⊃ Question: If a state has a special extension for individuals who exhaust regular compensation and are participating in approved training, may EUC08 be paid to these individuals?

Answer: Yes. The benefits paid under this special extension are additional compensation. Section 4001(b)(2) of the Act does not require exhaustion of additional compensation to qualify for EUC08. Therefore, a state may pay additional compensation concurrent with, or after, EUC08. See Attachment A to UIPL No. 23–08; page A–5, #6, Effect of Additional Compensation Eligibility in a State.

#### N. Self-Employment Assistance

⊃ Question: May EUC08 be paid to individuals participating in a self-employment assistance (SEA) program?

Answer: No. Since SEA is paid to an individual “in lieu of” regular UC (Section 3306(t)(1) of the FUTA), the individual has not exhausted regular compensation, until s/he has exhausted SEA. This renders him/her ineligible for EUC08, until either SEA is exhausted or, if the individual has stopped participating in an SEA program, s/he has exhausted regular compensation.

#### O. EUC08 Effect on Trade Readjustment Allowances (TRA)

⊃ Question: The individual exhausted 26 weeks of regular UC on a first benefit year and began receiving TRA based on that benefit year. S/he qualified for a second benefit year and payment of TRA stopped. The individual has now exhausted all benefits available on the second benefit year and meets the requirements for EUC08 based on the second benefit year. After exhaustion of EUC08, are TRA benefits again payable based on the first benefit year?

Answer: Yes. If the individual continues to meet all the TRA eligibility requirements, TRA payments may resume based on the first benefit year.

⊃ Question: An individual has received 26 weeks of regular UC and 22 weeks of basic TRA prior to qualifying for 13 weeks of EUC08. What remaining TRA entitlement does the individual have?

Answer: Under 20 CFR 617.14(a), the TRA MBA is 52 times the TRA WBA, minus the total sum of UC to which the individual was entitled. Since EUC08 is UC, the 13 weeks of EUC08 is subtracted, along with the 26 weeks of regular UC and the 22 weeks of basic TRA already paid. At this point, basic TRA entitlement is exhausted; additional TRA may be available to the individual if s/he is in training and is otherwise eligible.

Σ Question: If an individual has received 26 weeks of UC and 26 weeks of basic TRA, is the individual entitled to EUC08, if otherwise eligible?

Answer: Yes. TRA does not reduce the amount of EUC08. Therefore, EUC08 is payable to the individual if all other eligibility requirements are met. See Attachment A to UIPL No. 23–08; page A–5, #8(a), Trade Readjustment Allowances (TRA).

∞ Question: An individual has been in training for the past year, received 26 weeks of regular UC, 26 weeks of basic TRA, and 13 weeks of EUC08. Is this individual entitled to any weeks of additional TRA?

Answer: If this individual meets the additional TRA eligibility requirements s/he is entitled to additional TRA for any weeks remaining in the fixed 52 consecutive-week eligibility period. (See 20 CFR 617.3(m) and Training and Employment Guidance Letter No. 11–02 page 22.)

**Note:** EUC08 is not deductible from additional TRA. However, although the benefit amount is not reduced, the length of time for which the individual may claim additional TRA is reduced if the s/he collects EUC08 during the fixed consecutive-week period for which additional TRA is payable.

#### P. Interstate Benefits/Combined Wage Claims (CWC)

⊃ Question: Under regular interstate and CWC procedures, when an individual is indefinitely disqualified under State A’s law and has sufficient employment and wages to qualify under State B’s law, the individual files against State B. Using this scenario, an individual has existing benefit years ending on or after May 1, 2007, in both State A and State B. If the second claim is indefinitely disqualified in State B, may the individual file for EUC08 using the claim in State A if, for example, the disqualification in State A could be purged/satisfied?

Answer: No. Only the claim in State B meets the definition of an “applicable benefit year” for EUC08 purposes. (See Attachment A to UIPL No. 23–08; page A–1, Definitions—#4.)

#### Q. Claims Filed by Aliens

⊃ Question: What requirements must an alien meet to qualify for EUC08?

Answer: To qualify for EUC08 for a week, the alien must be authorized to work in the United States for that week. The alien’s authorization to work must be verified through the System for Alien Verification of Eligibility at Social Security Act section 1137(d), which state agencies for regular UC. However, if the state has information obtained from the verification made in connection with the regular UC claim that the alien’s work authorization remains in effect, no additional verification is required until the expiration date of his/her qualified alien status is reached.

#### R. Application of Worker Profiling and Reemployment Services (WPRS)

⊃ Question: Are individuals filing for EUC08 subject to profiling and selection and referral to services under the WPRS program?

Answer: No. Only individuals filing new initial claims for regular UC must be profiled and, as appropriate, selected and referred to services under the WPRS program.

#### S. EUC08 Relation to Extended Benefits

⊃ Question: If a state in an EB period chooses to pay EB before EUC08, must the state pay EUC08 to individuals who have an applicable benefit year for EUC08, but not for EB?

Answer: Yes. The state must pay EUC08 to eligible exhaustees whether or not they previously received EB.

*Advisory:* Unemployment Insurance Program Letter No. 23–08, Change 2.

*To:* State Workforce Agencies.

*From:* Brent R. Orrell, Deputy Assistant Secretary.

*Subject:* Emergency Unemployment Compensation, 2008—Program Expansion.

1. *Purpose.* To advise states of an expansion of the Emergency Unemployment Compensation, 2008 (EUC08) program and to provide operating instructions for its implementation.

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 UIPL No. 23–08, Change 1.

3. *Background.* Public Law (Pub. L.) 110-449 expands the EUC08 program 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 benefits of up to 13 weeks for eligible individuals in those states with high unemployment.

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.

Detailed implementation guidance, including reporting instructions, is included in Attachment A. The text of the Unemployment Compensation Extension Act is included in Attachment B.

All states currently have agreements with the Secretary to administer the EUC08 program under provisions of the EUC08 Act. The existing agreements remain in effect, and no new agreements are necessary to implement these amendments.

4. *Interpretation.* The instructions in this document are 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 the operating instructions without the prior approval of the Department. To the extent that the guidance provided in UIPLs Nos. 23-08 and 23-08, Change 1, 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. *Attachments.* Attachment A—Operating Instructions for the EUC08 Program Expansion.

Attachment B—Text of the Unemployment Compensation Extension Act of 2008.

### **Attachment A to UIPL No. 23-08, Change 2**

#### *Operating Instructions for the EUC08 Program Expansion*

##### *Introduction*

On Friday, November 21, 2008, the President signed Public Law 110-449,

the Unemployment Compensation Extension Act of 2008 (the Extension Act), which amended the Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation (EUC08) program by:

- Providing for up to 7 additional weeks of benefits to eligible individuals in all states. These benefits will be referred to as “basic EUC08” or “First-Tier EUC08”;
- Adding a Second-Tier of EUC08 benefits for eligible individuals in those states with “high unemployment.” These benefits are referred to as “Second-Tier EUC08”; and
- Extending the EUC08 program's termination date from the week that includes Tuesday, June 30, 2009, to the week that includes Thursday, August 27, 2009. In most states, where the week of unemployment ends on Saturday, this means the last week for which EUC08 may be paid is the week ending Saturday, August 29, 2009. In New York, where the week begins on Monday, this means that the last week for which EUC08 may be paid is the week ending Sunday, August 30, 2009. In states with variable start dates, this means the last week for which EUC08 may be paid is the week ending Wednesday, September 2, 2009.

##### *Notifications*

1. *Identification and Notification of Potentially Eligible Claimants.* The state must identify individuals who are potentially eligible for additional EUC08 due to the program's expansion. If the individual had previously exhausted an EUC08 claim, the state shall provide the individual with appropriate written notification of his/her potential entitlement to additional EUC08 benefits. If the individual has not exhausted his/her EUC08 claim prior to the enactment of the Extension Act, the state will recalculate the maximum benefit amount on the EUC08 claim and notify the individual of the increased amount added to his/her First-Tier EUC08 claim.

2. *Notification of Media.* To ensure public knowledge of the expansion of the EUC08 program, the state shall notify appropriate news media having coverage throughout the state. Should a state trigger “on” to Second-Tier EUC08, it must also notify the media of the availability of Second-Tier EUC08 benefits.

##### *Operating Instructions*

Except where inconsistent with these instructions, the operating instructions that were included as Attachment A to UIPL No. 23-08 are applicable.

1. *First-Tier Benefits.* Under the Extension Act, the maximum benefit amount in an individual's account is the lesser of 80 percent of the total amount of regular compensation (including dependents' allowances), or 20 times the individual's average regular compensation weekly benefit amount for a week of total unemployment (including dependents' allowances), payable to the individual with respect to the “applicable benefit year.”

This increase in First-Tier EUC08 eligibility applies to all newly-qualifying individuals as well as to all individuals who established their EUC08 entitlement prior to the date the Extension Act was enacted. However, the extra seven weeks of basic EUC08 payable under the Extension Act are only payable for weeks of unemployment beginning on or after Friday, November 21, 2008, the date of enactment of the extension.

2. *Second-Tier Benefits.* Under the Extension Act, if, at the time that the amount in an individual's EUC08 account is exhausted or at any time thereafter (except as explained below), the state is in an “extended benefit period” (EUC08 Second-Tier period) (as defined in the Extension Act), the individual's EUC08 account will be augmented by an amount equal to the lesser of 50 percent of the total amount of regular compensation (including dependents' allowances), or 13 times the individual's average weekly benefit amount for the benefit year (including dependents' allowances), payable to the individual with respect to the “applicable benefit year.” There is no Second-Tier augmentation of an individual's account if that individual exhausts his/her EUC08 account *after* an EUC08 Second-Tier period ends—unless a second EUC08 Second-Tier period occurs thereafter.

The Extension Act defines an EUC08 Second-Tier period as:

- An Extended Benefit (EB) period currently in effect for the state under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA).
- An EUC08 Second-Tier period that would be in effect under the FSEUCA using an insured unemployment rate (IUR) for the relevant 13-week period that is equal to or greater than 4 percent. (Unlike the “regular” EB program under the FSEUCA, the EUC08 EB period does not use a 5 percent IUR trigger or have a 120 percent “lookback” requirement.)
- An EUC08 Second-Tier period that would be in effect under the FSEUCA using a three-month seasonally adjusted total unemployment rate (TUR) that is equal to or greater than 6 percent. (Unlike the “regular” EB program under

the FSEUCA, the EUC08 Second-Tier program does not use a 6.5 percent TUR trigger or have a 110 percent “lookback” requirement.) This rate will be used in all states, whether or not the state uses it for the “regular” EB program.

The rules governing the timing of the triggering “on” and “off” an EUC08 Second-Tier period are the same as those governing the “regular” EB program under the FSEUCA, set forth at 20 CFR 615.11. The beginning date of a state’s EUC08 Second-Tier period will be based on when the state would have triggered “on” under the FSEUCA using the above triggers as well as the rules governing the timing of those periods under 20 CFR 615.11. Notwithstanding these regulations, however, no EUC08 Second-Tier period will begin earlier than June 30, 2008—the date on which the Extension Act made the Second-Tier amendment effective. Further, as provided by this regulation, each EUC08 Second-Tier period will last at least 13 weeks. For example, if a state triggers “on” to an EUC08 Second-Tier period for the week beginning Sunday, August 31, 2008, using the 6 percent TUR trigger, the state would remain “on” for an EUC08 Second-Tier period for at least 13 weeks from that date. After these 13 weeks, the EUC08 Second-Tier period would end, in accordance with this regulation, on the last day of the third week after the first week for which there is an “off” indicator in the state. The Department will notify each state of the beginning and ending dates of any EUC08 Second-Tier period applicable to that state in generally the same manner the states are notified of a “regular” EB period.

An individual may not have his/her EUC08 account augmented by these Second-Tier benefits more than once per EUC08 claim. Further, if the individual’s First-Tier EUC08 account is exhausted after Tuesday, March 31, 2009, there can be no Second-Tier benefit augmentation of the account. In most states, where the week of unemployment ends on a Saturday, this means that individuals who have a First-Tier EUC08 claim that exhausts on or after the week ending Saturday, April 4, 2009, do not qualify for a Second-Tier EUC08 claim. In states with variable claim start dates, this means the individuals who have a First-Tier EUC08 claim that exhausts after Tuesday, March 31, 2009, do not qualify for a Second-Tier EUC08 claim. However, if an individual’s EUC08 account is exhausted on or before Tuesday, March 31, 2009, the individual may qualify for a Second-Tier EUC08 claim if an EUC08 Second-Tier period is either then in effect or subsequently

triggers “on” (even if that period triggers “on” after Tuesday, March 31, 2009).

Two examples follow:

*Example 1:* An individual exhausts First-Tier EUC08 on Saturday, April 18, 2009. This individual will not qualify for a Second-Tier of EUC08, even if an EUC08 Second-Tier period is in effect, because the individual will have exhausted First-Tier EUC08 after Tuesday, March 31, 2009, and there can be no augmentation of his/her EUC08 account.

*Example 2:* An individual exhausts First-Tier EUC08 on Saturday, March 14, 2009. This individual may qualify for a Second-Tier of EUC08 (if otherwise eligible) if an EUC08 Second-Tier period is either in effect or the state subsequently triggers “on” (even if that period triggers “on” after March 31, 2009), because the First-Tier benefits were exhausted on or prior to Tuesday, March 31, 2009.

As with First-Tier EUC08, the state may provide for the payment of all EUC08 (including Second-Tier EUC08) prior to the payment of extended unemployment compensation payable under the FSEUCA.

3. *Effective Date of Amendments.* The expanded First-Tier EUC08, and the newly added Second-Tier EUC08 benefits, are payable only with respect to weeks of unemployment beginning on or after the enactment of Public Law 110–449. Thus, there is no provision for payment of these expanded EUC08 benefits for weeks of unemployment occurring prior to the enactment on Friday, November 21, 2008.

*Example:* An individual exhausts his/her original EUC08 entitlement on Saturday, September 6, 2008, and the Extension Act is enacted on Friday, November 21, 2008. The first potentially payable week for the expanded EUC08 benefits would be for the week beginning Sunday, November 23, 2008. In New York, where the week begins on Monday, the first potentially payable week is Monday, November 24, 2008. Those states with a variable start date, the first potentially payable week would begin no earlier than the week beginning Friday, November 21, 2008.

4. *Ending Date of the EUC08 Program.* Under the Extension Act, an individual having amounts remaining in his/her EUC08 account as of the last day of the last week of unemployment (as determined under state law) ending on or before Tuesday, March 31, 2009, may collect the remaining First-Tier or Second-Tier balance in subsequent weeks, if otherwise eligible, until the EUC08 program terminates. Under the Extension Act, no EUC08 is payable for any week beginning after Thursday, August 27, 2009.

#### Reporting Instructions

4. *General.* EUC08 reporting instructions are unchanged except as described below. States should continue

to report First Tier activity as they have done previously. The first report on Second Tier activity for December 2008 will be transmitted on the ETA 5159 by states in mid-January 2009.

5. *ETA 5159.* Claims and payment activities for the First-Tier, which now allows up to 20 weeks of benefits, will continue to be reported as they were previously, except as indicated below. Claims and payment activities for the Second-Tier, which allows up to 13 additional weeks in those states triggered “on” to an EUC08 Second Tier period, will be reported separately in a new section C of the report.

a. *First-Tier.* Report final payments on line 303 as the number of claimants issued a payment that exhausts the benefit entitlement in the First-Tier of their EUC08 account, including the additional entitlement provided in the new law. Reports submitted previously should be revised to reflect that claimants who have their accounts increased with the additional entitlement and were previously reported as receiving final payments did not, in fact, receive final payments.

b. *Second-Tier.* A new Section C, which mirrors Section B, has been added to the report. Only data for claimants who qualified for the Second-Tier should be included in this section. Weeks compensated will be reported in columns 23–27 of line 401; benefits paid in columns 23–27 of line 402, and first and final payments in columns 28–33 of line 403. First payments will represent the number of claimants who had their benefits augmented and received at least one Second-Tier payment. Report final payments as the number of claimants issued a payment that exhausts the benefit entitlement to the Second-Tier of their EUC08 account.

3. *ETA 539.* Total weeks claimed for regular UC, UCFE, and UCX for the two tiers of the EUC08 program for the report period will be reported separately in the comments section and labeled as “EUC08 First-Tier” and “EUC08 Second-Tier” followed by the number. For example: “EUC08 First-Tier = 239, EUC08 Second-Tier = 186”. (The agent weeks claimed information needed for this report will be obtained from the LADT identified in field 28 as “code 2”, Federal Benefit Extension.)

4. *UI-3 Worksheet.* States will report on line 12, labeled “Monetary Redeterminations,” the count of redeterminations conducted when a claimant’s account is increased for the additional First-Tier entitlement or augmented for the Second-Tier entitlement.

5. *OMB Approval.* These reports each bear their own OMB control numbers,

estimated burden hours and expiration dates indicating that they are valid collections. Modifications to the ETA 5159 have been submitted to OMB for expedited clearance and approval.

### Attachment B to UIPL No. 23–08, Change 2

#### *Text of the Unemployment Compensation Extension Act of 2008 An Act*

To provide for additional emergency unemployment compensation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

#### Section 1. Short Title

This Act may be cited as the “Unemployment Compensation Extension Act of 2008”.

#### Sec. 2. Additional First-Tier Benefits

Section 4002(b)(1) of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended—

- (1) In subparagraph (A), by striking “50” and inserting “80”; and
- (2) In subparagraph (B), by striking “13” and inserting “20”.

#### Sec. 3. Second-Tier Benefits

Section 4002 of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended by adding at the end the following:

##### (c) Special Rule—

(1) In General—If, at the time that the amount established in an individual’s account under subsection (b)(1) is exhausted or at any time thereafter, such individual’s State is in an extended benefit period (as determined under paragraph (2)), such account shall be augmented by an amount equal to the lesser of—

- (A) 50 percent of the total amount of regular compensation (including dependents’ allowances) payable to the individual during the individual’s benefit year under the State law, or
- (B) 13 times the individual’s average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.

(2) Extended Benefit Period—For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—

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

(B) Such a period would then be in effect for such State under such Act if section 203(d) of such Act—

- (i) Were applied by substituting “4” for “5” each place it appears; and

(ii) Did not include the requirement under paragraph (1)(A) thereof; or

(C) Such a period would then be in effect for such State under such Act if—

(i) Section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and

(ii) Such section 203(f)—

(I) Were applied by substituting “6.0” for “6.5” in paragraph (1)(A)(i) thereof; and

(II) Did not include the requirement under paragraph (1)(A)(ii) thereof.

(3) Limitation—The account of an individual may be augmented not more than once under this subsection.

#### Sec. 4. Phaseout Provisions

Section 4007(b) of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended—

(1) In paragraph (1), by striking “paragraph (2),” and inserting “paragraphs (2) and (3),”; and

(2) By striking paragraph (2) and inserting the following:

(2) No Augmentation after March 31, 2009—If the amount established in an individual’s account under subsection (b)(1) is exhausted after March 31, 2009, then section 4002(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual’s State is in an extended benefit period (as determined under paragraph (2) of such section).

(3) Termination—No compensation under this title shall be payable for any week beginning after August 27, 2009.

#### Sec. 5. Temporary Federal Matching for the First Week of Extended Benefits for States With No Waiting Week

With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 8, 2009, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

#### Sec. 6. Effective Date

(a) In General—The amendments made by sections 2, 3, and 4 shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008, subject to subsection (b).

(b) Additional Benefits—In applying the amendments made by sections 2 and 3, any additional emergency unemployment compensation made payable by such amendments (which would not otherwise have been payable if such amendments had not been enacted) shall be payable only with respect to any week of unemployment

beginning on or after the date of the enactment of this Act.

#### *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.

**Attachment to UIPL 23–08 Change 3  
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.

Signed at Washington, DC, this 23rd day of January 2009.

**Douglas F. Small,**

*Deputy Assistant Secretary, Employment and Training Administration, U.S. Department of Labor.*

[FR Doc. E9-2533 Filed 2-5-09; 8:45 am]

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## NATIONAL SCIENCE FOUNDATION

### Proposal Review Panel for Physics; Notice of Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92-463, as amended), the National Science Foundation announces the following meeting.

*Name:* LIGO Science Education Center Partnership (SUBR), Proposal Review Panel for Physics, #1208.

*Date and Time:* Thursday, February 19, 2009; 8:30 a.m.–5:30 p.m.

Friday, February 20, 2009; 8 a.m.–4 p.m.

*Place:* Southern University of Baton Rouge, Louisiana and LIGO Livingston, Louisiana.

*Type of Meeting:* Partially Closed.

*Contact Person:* Kathleen McCloud, Program Director, Division of Physics, National Science Foundation (703) 292-8236.

*Purpose of Meeting:* To provide an evaluation concerning the proposal submitted to the National Science Foundation.

#### Tentative Agenda

*Thursday, February 19, 2009*

8:30 a.m.–11 a.m. Closed—Executive Session, Overview by LIGO-SUBR staff.  
11 a.m.–1:30 p.m. Open—tour of LIGO Education Center and Lunch.  
1:30 p.m.–2 p.m. Travel to SUBR.  
2:30 p.m.–5:30 p.m. Closed—Executive Session.

*Friday, February 20, 2009*

8 a.m.–9 a.m. Closed—Executive Session.  
9 a.m.–10:30 a.m. Open—tour of SUBR facilities.  
11 a.m.–4 p.m. Closed—Executive Session with LIGO and SUBR, Close out.

*Reason for Closing:* The proposal contains proprietary or confidential material, including technical information on personnel. These matters are exempt under 5 U.S.C. 552b(c)(2)(4) and (6) of the Government in the Sunshine Act.

Dated: February 3, 2009.

**Susanne Bolton,**

*Committee Management Officer.*

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