

Emergency Unemployment Compensation, 2008
Questions and Answers

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A. Claims Processing for EUC08

1. **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.

2. **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*).

3. **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.

4. **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.

5. **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.

6. **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

1. **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.

2. **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.

3. **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

1. **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*.)

2. **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.

3. **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

1. **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.)

2. **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.

3. **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.)

4. **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.

5. **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.

6. **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.

7. **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

1. **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

1. **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.

2. **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

1. **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.
2. **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.
3. **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

1. **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.
2. **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.
3. **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.
4. **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.
5. **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

1. **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.

2. **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

1. **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.

2. **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.

3. **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.*)

4. **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.

5. **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*.

6. **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

1. **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.

2. **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

1. **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

1. **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)

1. **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.

2. **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.

3. **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)*.

4. **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)

1. **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

1. **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)

1. **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

1. **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.