

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION EUC08
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE March 5, 2012

ADVISORY: **UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 04-10,
Change 9**

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: Extension and Modification of Emergency Unemployment Compensation,
2008 (EUC08) and Extension of Temporary Extended Benefits (EB)
Provisions

1. Purpose. To advise state workforce agencies of the latest extension and modifications of the EUC08 program, and of the extension of the temporary EB provisions.

2. References.

- *Middle Class Tax Relief and Job Creation Act of 2012*, P.L.112-96 (February 22, 2012), Title II, secs. 2001-2184 (Extended Benefits, Reemployment and Program Integrity Improvement Act) (the Act);
- Temporary Payroll Tax Cut Continuation Act of 2011, (P.L. 112-78);
- Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010 (Act), Public Law (P.L. 111-312);
- Unemployment Compensation Extension Act of 2010, (P.L. No. 111-205);
- Supplemental Appropriations Act, 2008, P.L. No. 110-252; Sections 2002 and 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, (P.L. No. 111-5);
- Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373);
- Public Information Collection Activities; Submission to Director; Approval and Delegation (44 USC § 3507)
- Public protection (44 USC § 3512)
- Unemployment Insurance Program Letter (UIPL) No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation*, and its Changes 1, 2, 3, 4, 5, and 6;
- UIPL No. 07-09; *Federal-State Extended Unemployment Compensation Act of 1970—Temporary Change in Federal Sharing for First Week of Extended Benefits*;
- UIPL No. 12-09; *Extended Benefits Program—Temporary Changes made by the Assistance for Unemployed Workers and Struggling Families Act*; and

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

- UIPL No. 04-10, *Extension of Temporary Provisions—Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and its Changes 1, 2, 3, 4, 5, 6, 7, and 8.

3. Summary of Provisions. The Act extends the expiration dates of the EUC08 program and the temporary provisions of the EB program, and makes several changes to the EUC08 program tier structure. It also adds new eligibility requirements for individuals filing EUC08 claims, including new work search requirements, and required participation in reemployment services, and in reemployment and eligibility assessment activities.

4. Changes to the EUC08 Program

A. Extension of EUC08 Program

- The end of the period during which an individual may establish initial eligibility for EUC08 First Tier is extended to weeks of unemployment ending on or before January 2, 2013.
- The end of the period during which a EUC08 account may be augmented is extended. Individuals must exhaust a EUC08 tier before December 29, 2012 (in most states), to qualify for the next higher tier.
- The “phase-out” period (that is, the period during which individuals who have remaining amounts in their EUC08 accounts may collect those amounts) is eliminated. No EUC08 First, Second, Third, or Fourth-Tier payments may be made for any week of unemployment ending after January 2, 2013. (In most states, this means the week ending December 29, 2012, will be the final payable week of EUC08.)

B. Modifications Relating to the Total Unemployment Rate Triggers

- EUC08 First Tier: There are no changes. EUC08 First Tier continues to have no trigger and is available to eligible individuals in all states.
- EUC08 Second Tier: Effective for weeks of unemployment ending after June 1, 2012, a total unemployment rate (TUR) “trigger” is added.
 - For weeks of unemployment ending before June 1, 2012 (in most states, this is the week ending May 26, 2012), EUC08 Second Tier continues to have no trigger and is available to eligible individuals in all states.
 - For weeks of unemployment ending after June 1, 2012 (in most states, this is the week ending June 2, 2012), the state must have a 3 month seasonally adjusted TUR of at least six (6) percent in order for EUC08 Second Tier to be available in the state.
 - If EUC08 Second Tier is no longer available in a state after the trigger becomes effective, individuals who established EUC08 Second Tier entitlement before June 1, 2012, will (if otherwise eligible) continue to receive their remaining EUC08 Second Tier balance after June 1, 2012, and until exhaustion or until the final payable week of EUC08 (which must end on or before January 2, 2013), whichever happens first.

- EUC08 Third Tier: Effective for weeks of unemployment ending after June 1, 2012, the TUR trigger will increase.
 - For weeks of unemployment ending before June 1, 2012, a 3 month seasonally adjusted TUR of at least six (6) percent continues to be required for EUC08 Third Tier to be available in the state.
 - For weeks of unemployment ending after June 1, 2012, a 3 month seasonally adjusted TUR of at least 7 percent is required for EUC08 Third Tier to be available in the state.
 - If EUC08 Third Tier is no longer available in a state after the new trigger becomes effective, individuals who established EUC08 Third Tier entitlement before June 1, 2012, will (if otherwise eligible) continue to receive their EUC08 Third Tier balance until exhaustion or until the final payable week of EUC08, whichever happens first.

- EUC08 Fourth Tier: Effective for weeks of unemployment ending after June 1, 2012, the TUR trigger will increase.
 - For weeks of unemployment ending before June 1, 2012, a 3 month seasonally adjusted TUR of at least 8.5 percent continues to be required for EUC08 to be available in the state.
 - For weeks of unemployment ending after June 1, 2012, a 3 month seasonally adjusted TUR of at least nine (9) percent is required for EUC08 Fourth Tier to be available in the state.
 - If EUC08 Fourth Tier is no longer available in a state after the new trigger becomes effective, individuals who establish EUC08 Fourth Tier entitlement before June 1, 2012, will (if otherwise eligible) continue to receive the balance of their EUC08 Fourth Tier until exhaustion or the final payable week of EUC08, whichever happens first.

C. Modifications Related to Maximum Entitlement to EUC08 Tiers

- EUC08 First Tier: Effective for weeks of unemployment ending after September 2, 2012, the maximum entitlement will be reduced.
 - For all new EUC08 First Tier claims established for a week ending after September 2, 2012 (in most states, this is the week ending September 8, 2012), the maximum entitlement is reduced to the lesser of 54 percent (from 80 percent) of the maximum regular Unemployment Compensation (UC) entitlement or 14 times (from 20 times) the regular UC weekly benefit amount.
 - Individuals whose accounts were established with EUC08 First Tier amounts before the maximum entitlement was reduced will (if otherwise eligible) continue to receive the balance of their EUC08 First Tier until exhaustion or the final payable week of EUC08, whichever happens first.

- EUC08 Second Tier: There are no changes.
 - The maximum entitlement to EUC08 Second Tier continues to be the lesser of 54 percent of the maximum regular UC entitlement or 14 times the regular UC weekly benefit amount.
- EUC08 Third Tier: Effective for weeks of unemployment ending after September 2, 2012, the maximum entitlement will be reduced.
 - For all new EUC08 Third Tier claims established for a week ending after September 2, 2012, the maximum entitlement is reduced to the lesser of 35 percent (from 50 percent) of the maximum regular UC entitlement or nine (9) times (from 13 times) the regular UC weekly benefit amount.
 - Individuals whose accounts were augmented with EUC08 Third Tier amounts before the maximum entitlement was reduced will (if otherwise eligible) continue to receive the balance of their EUC08 Third Tier until exhaustion or the final payable week of EUC08, whichever happens first.
- EUC08 Fourth Tier for weeks of unemployment ending after February 22, 2012 (in most states, this is the week ending February 25, 2012) and before June 1, 2012:

States in an EB Period: There are no changes.

- The maximum entitlement to EUC08 Fourth Tier continues to be the lesser of 24 percent of the maximum regular UC entitlement or six (6) times the regular UC weekly benefit amount.

States not in an EB Period: The maximum entitlement is increased.

- For all individuals with new EUC08 Fourth Tier claims, and for any individuals with remaining EUC08 Fourth Tier amounts in their accounts as of February 22, 2012, the maximum entitlement is the lesser of 62 percent (up from 24 percent) of the maximum regular UC entitlement or 16 times (up from 6 times) the regular UC weekly benefit amount.
- If the State is in an EB period (as determined under the Federal-State Extended Unemployment Compensation Act (EUCA)) on February 22, 2012, but later triggers “off,” then individuals with EUC08 Fourth Tier amounts in their accounts on February 22, 2012 will NOT have the additional amounts of EUC08 Fourth Tier added to their accounts when the State triggers “off.” (The additional amounts for individuals with remaining EUC08 Fourth Tier entitlement under the “old” law are only available for individuals who: 1) Have remaining EUC08 Fourth Tier entitlement on February 22, 2012, and 2) are claiming against States not in an EB period (as determined under EUCA) on February 22, 2012.)
- Individuals who exhausted EUC08 Fourth Tier amounts in their accounts with respect to weeks of unemployment ending before February 22, 2012 (in most states, the last such week is the week ending February 18, 2012) **may not** have the additional amounts of EUC08 Fourth Tier added to their accounts.

- In states whose EB periods (as determined under EUCA) will end before June 1, 2012, beginning the first week after the EB period ends, all individuals with new EUC08 Fourth Tier entitlement could qualify for the increased maximum benefit amounts.
- While individuals may continue to be eligible to receive any remaining EUC08 Fourth Tier amounts in their accounts after a state triggers off EUC08 Fourth Tier, if a state is NOT triggered on EUC08 Fourth Tier, additional amounts may not be added to individuals' accounts.

Note: The amounts added to an individual's account under the EUC Fourth Tier may not cause the sum of the amount in that account, plus any weeks of weeks of EB, to exceed the lesser of 282 percent of the total amount of regular UC (including dependents' allowances) or 73 times the individual's UC weekly benefit amount (including dependents' allowances) based on the applicable benefit year.

- EUC08 Fourth Tier for weeks of unemployment ending on or after June 1, 2012, and on or before September 2, 2012:

States in an EB Period: There are no changes.

- The maximum entitlement to EUC08 Fourth Tier continues to be the lesser of 24 percent of the maximum regular UC entitlement or six (6) times the regular UC weekly benefit amount.

States not in an EB Period: The maximum entitlement is reduced.

- For all new EUC08 Fourth Tier claims established for weeks of unemployment ending on or after June 1, 2012, through weeks of unemployment ending on or before September 2, 2012, the maximum entitlement is the lesser of 24 percent of the maximum regular UC entitlement or 6 times the regular UC weekly benefit amount.
 - Individuals whose accounts were augmented with EUC08 Fourth Tier amounts before the maximum entitlement was reduced may continue, if otherwise eligible, to receive the balance of their EUC08 Fourth Tier until exhaustion or January 2, 2013, whichever happens first.
- EUC08 Fourth Tier for weeks of unemployment ending after September 2, 2012 and on or before January 2, 2013:

All States: The maximum entitlement is increased.

- For all new EUC08 Fourth Tier claims established for a week ending after September 2, 2012, the maximum entitlement is the lesser of 39 percent (instead of 24 percent) of the maximum regular UC entitlement or 10 times (instead of 6 times) the regular UC weekly benefit amount.
- Any individual who established an EUC08 Fourth Tier claim with respect to weeks of unemployment ending before September 2, 2012 (in most states, the last such week is the week ending September 1, 2012) **may not** have the additional

amounts of EUC08 Fourth Tier available under this augmentation added to their accounts.

Note: There is no change to the Insured Unemployment Rate (IUR) triggers and these are not discussed in this UIPL since they rarely come into play.

D. Work Search Requirements for EUC08 Recipients

Prior to enactment of the Act, the applicable state law work search requirements, as well as the applicable state law employment service registration requirements, applied to the EUC08 program. In addition, there was previously no requirement that claimants maintain records of their work search efforts. The Act amended the eligibility provisions to require that individuals must be able to work, available for work, and actively seeking work in order to qualify for EUC08. Actively seeking work means that individuals must:

- Register for employment services as prescribed by the state;
- Engage in an active search for work and make appropriate employer contacts in light of the labor market, and their skills and capabilities;
- Maintain a detailed record of their employer contacts; and
- Provide their work search records to the state upon request.

Notification: States must immediately begin providing notification to all EUC claimants that they must meet the new EUC08 work search requirements. Such notification may be done via mail, Internet, or interactive voice response telephone systems.

The Act further requires states to review/audit a minimum number of claimants' work search records that are randomly selected to ensure that claimants receiving EUC08 are meeting the state's work search requirements. For individuals receiving EUC08 First and Second Tiers, the states' review/audit of individuals' work search documents may be conducted at the time the individual reports to the One-Stop Career Center for reemployment services and the continued eligibility assessment (see item E below). Further guidance will be provided to states regarding their responsibilities for conducting these audits.

E. Participation in Reemployment Services and Reemployment and Eligibility Assessment Activities

States are now required to provide reemployment services and in-person reemployment and eligibility assessments to those individuals establishing a new EUC08 First or Second Tier claim on or after the 30th day after the date of enactment, which is March 23, 2012. The following reemployment services and reemployment and eligibility assessment activities are required:

- 1) The provision of labor market and career information;
- 2) An assessment of the individual's skills;
- 3) Orientation to the services available through the One-Stop Career Centers established under title I of the Workforce Investment Act of 1998; and
- 4) Review of the eligibility of the individual for EUC08 relating to the job search activities of the individual.

Optional services to be provided include:

- 1) Comprehensive and specialized assessments;
- 2) Individual and group career counseling;
- 3) Training services;
- 4) Additional reemployment services; and
- 5) Job search counseling and the development or review of an individual reemployment plan that includes participation in job search activities and appropriate workshops and may include referrals to appropriate training services.

Participation in these reemployment services and continued eligibility assessment activities is required as a condition of eligibility for receipt of EUC08 unless there is good cause for the individual's failure to participate in or complete the services. Funding for these activities will be provided from the general fund of the Treasury in an amount equal to the estimated number of individuals who will be provided such services multiplied by \$85.

Further guidance is under development and will be issued by the U.S. Department of Labor in the near future under separate cover through a Training and Employment Guidance Letter.

F. Recovery of EUC08 Overpayments

States are now required, in accordance with the same procedures as apply to the recovery of overpayments of regular UC paid by the state, to recover any EUC08 overpayments by offset when an individual is eligible for EUC08. Under prior law, states were permitted to recover such overpayments by offset and the offset was capped at 50 percent of the weekly benefit amount.

Note that states may not commence recovery of EUC08 overpayments until the individual has had an opportunity for a fair hearing and the determination has become final. While the offset is no longer capped, states are still permitted to waive recovery if the individual was not at fault and if the repayment would be contrary to equity and good conscience.

G. Nonreduction Rule

The Act modified the applicability of the nonreduction rule. The nonreduction rule discourages states from changing the method governing the computation of regular compensation under the state law in a manner such that the average weekly benefit amount of regular compensation during the period of the EUC08 agreement will be less than the average weekly benefit amount of regular compensation which would otherwise have been payable during such period under the state law as in effect on June 2, 2010. Upon a determination by the Secretary of Labor that a state violates this rule, its agreement to administer the EUC08 program would be terminated. However, the Act provides that the nonreduction rule "shall not apply with respect to a State that has enacted a law before March 1, 2012, that, upon taking effect, would violate" the

nonreduction rule. Thus, states that enacted such legislation before this date will be held harmless.

H. Order of Payment

The Act establishes a new coordination rule concerning the order of payment. Effective March 4, 2012, states must pay any EUC08 entitlement before the payment of any EB entitlement.

5. Changes Made to the Extended Benefit Program – Temporary Provisions

A. 100 Percent Federal Funding

- The Federal government will reimburse states for 100 percent of the benefit costs of sharable EB and sharable regular compensation¹ for weeks of unemployment beginning before December 31, 2012.
- The phase-out period for states to receive 100 percent reimbursement for individuals who have established EB eligibility is extended. If an individual received EB with respect to one or more weeks of unemployment beginning after February 17, 2009, and before December 31, 2012, the Federal government will continue to pay 100 percent of the eligible (sharable) EB benefit costs for weeks of unemployment ending before June 30, 2013.

B. Individual Eligibility Period

- The provision permitting certain individuals to qualify for EB following exhaustion of EUC08 (without an overlap between their benefit year and the EB period²) is extended. States may continue to permit these individuals to qualify for EB after they have exhausted EUC08 during an EB period that began on or before the date the individuals exhausted EUC08, even if the benefit year of those individuals ended (See UIPL No. 12-09, Q&A 6). This option remains available to states for weeks of unemployment beginning after February 17, 2009, and before December 31, 2012.

C. Federal Sharing for First Week

- The suspension of the prohibition of Federal sharing for the first week of EB if state law permits individuals to be compensated for the first week of regular compensation

¹ Sharable regular compensation is “[r]egular compensation paid to an eligible individual with respect to weeks of unemployment in the individual’s eligibility period, but only to the extent that the sum of such compensation, . . . exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law” (20 CFR 615.2(i)(2))

² To initially qualify for EB under the permanent EB law, an individual must have at least one week in his/her benefit year that begins in an EB period. (20 CFR 615.2(h)) Section 2005 of P.L. 111-5 allows a state to, at its option, permit certain individuals to qualify for EB in cases where there is no overlap between the individual’s benefit year and the EB period. Specifically, the state may permit individuals to qualify for EB when the individuals have exhausted Emergency Unemployment Compensation (EUC08) during an EB period that began *on or before* the date the individual exhausted.” (See UIPL No. 12-09, Attachment 1 Question 6)

eligibility at any time or under any circumstances is extended through weeks of unemployment ending on or before June 30, 2013.

D. Three-year Look-back

- The authority for states to continue to use a three-year “look-back” in determining if the state remains in an EB period is extended through December 31, 2012.

6. Required Reporting. The current required reporting for the EUC08 program has not changed.

Compliance with the provisions of the Act (P.L. 112-96) will, however, necessitate additional reporting by state agencies regarding the provision of reemployment services and reemployment and eligibility assessment activities. The Department is in the process of submitting an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting changes to existing collections and new collections. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the Paperwork Reduction Act (PRA), and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. See 44 U.S.C. § 3507. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number. See 44 U.S.C. § 3512. The Department will notify states of OMB’s decision upon review of the Department’s ICR, including any changes that may result from this review process.

7. Interpretation. The information in this document is issued to the states and cooperating state agencies as guidance provided by the Department in its role as the principal in the EUC08 program. As agents of the Federal government, the states and cooperating state agencies may not deviate from this guidance without the prior approval of the Department. To the extent that the prior guidance (as outlined in #2, *References* above) is inconsistent with this UIPL, this UIPL supersedes that guidance.

8. Action Requested. Administrators are to provide this guidance to the appropriate staff.

9. Inquiries. Questions should be directed to the appropriate Regional Office.

10. Attachments.

Attachment 1—Key Dates for the Act.

Attachment 2—Relevant statutory provisions in the Act.