

## Questions and Answers

### A. General Information

- 1) **Question:** What is the effective date of the State EUC Options (providing continuing EUC08 eligibility for specified individuals despite their having qualified for a subsequent benefit year) under the provision of the Unemployment Compensation Extension Act of 2010 (Extension Act)?

**Answer:** The State EUC Options provision is applicable to individuals whose benefit years expire after the date of enactment of the Extension Act, which is July 22, 2010.

- 2) **Question:** States in an EB period began paying EB to individuals who could not qualify for EUC08 as of the week-ending June 5, 2010, because the EUC08 program had not yet been extended. May these states continue to pay EB to these individuals until exhaustion of these benefits rather than switching back to EUC08?

**Answer:** Yes, provided the state has determined that switching from EB back to the EUC08 claim would cause undue delays in the timely payment of benefits, the state may continue to pay EB until exhaustion and then pay EUC08.

- 3) **Question:** How should states report administrative activity for the recent gap in eligibility given the retroactive extension of coverage?

**Answer:** States will continue to follow existing guidance on reporting. There are no new reporting requirements as a result of this extension. Under current guidance, states report claims activity to reflect the weeks of unemployment experienced by the claimant, so data reported on the ETA 539 and ETA 5159 will be reported to coincide with the weeks of unemployment experienced by the claimant as opposed to when the state processes the claim. Reports that had been previously submitted must be amended to include any additional backdated claims activity. Reporting on the EUC specific and EB specific ETA 207, ETA 218, ETA 227, and ETA 5130 will continue to follow existing guidance.

### B. Individuals Affected by the State EUC Options

- 1) **Question:** Which individuals will be impacted by the State EUC Options to pay EUC08 instead of regular compensation?

**Answer:** Affected individuals are those who had already established and have remaining EUC08 entitlement, have a benefit year that expired after the date of enactment of the Extension Act, and qualify for a new benefit year with a weekly benefit amount (WBA) that is at least \$100 or 25 percent less than their EUC08 WBA.

Note: This provision is not retroactive and the individual's benefit year must have expired after July 22, 2010 (the date of enactment of the Extension Act).

- 2) **Question:** May a state include the FAC payment in the calculation to assess whether the individuals' WBA meets the criteria of having at least \$100 or 25 percent less than the EUC08 WBA?

**Answer:** No. States must calculate the regular compensation WBA and compare it against the EUC08 WBA. FAC is not included in the calculation.

### C. Interstate Claims and Combined Wage Claims (CWC)

- 1) **Question:** An individual has an unexpired benefit year in State A and is receiving EUC08. A quarter check by State A reveals that s/he is eligible for regular compensation in State B and his/her WBA is determined to be at least \$100 or 25 percent less than his/her EUC08 WBA. Does the new state options provision apply to this individual?

**Answer:** No. The individual does not meet the criteria in the above example because the individual's benefit year has not expired; the individual is no longer eligible for EUC08 because s/he has regular compensation entitlement in State B.

- 2) **Question:** If an individual has worked in multiple states and has regular compensation entitlement in more than one state, does the individual have to meet the threshold criteria (i.e., having a WBA that is \$100 or 25 percent less than the current EUC08 WBA) in each state in order to be eligible to continue to receive EUC08 benefits?

**Answer:** Yes. If the individual does not meet the criteria in any one of the states where she has potential new regular compensation entitlement, s/he would be ineligible to continue to receive EUC08 benefits under the Extension Act and the state must stop paying EUC08 and, under the CWC procedures, advise the individual of his/her potential entitlement in a state in which the WBA would not be reduced below the \$100/25 percent threshold.

### D. Regular Compensation Entitlement

- 1) **Question:** An individual is receiving First Tier EUC08 and his/her benefit year ends. The individual does not have sufficient wages to establish a new benefit year and thus begins receiving Second Tier EUC08. After the quarter changes, the individual has sufficient wages to qualify for regular compensation. Does the state option provision apply to this individual if s/he has a lower WBA that meets the criteria (\$100 or 25 percent less than the EUC08 WBA)?

**Answer:** Yes. At the time an individual becomes eligible for a new regular compensation claim while receiving EUC08, the new provision will apply, providing the individual's (applicable) benefit year expires after July 22, 2010.

### E. State Selection of Options

- 1) **Question:** A state selects an option. Subsequently, the state's law is amended so that another option becomes permissible under its law. May the state then adopt that new option?

**Answer:** Yes, the state may select another option when it changes its law. Following the selection of the new option, the state must apply it uniformly to all affected individuals.

## **F. State EUC08 Options**

The State EUC08 Options below apply to individuals whose benefit years expire following the date of enactment of the Extension Act (dated July 22, 2010). These State EUC Options apply to individuals meeting the criteria through the statutory expiration date of the EUC08 program.

Under the latest extension, the last week for which EUC08 may be paid is the week ending April 30, 2011. (In New York, where a week of unemployment is Monday to Sunday, the last week of EUC08 would be the week ending May 1, 2011).

### **Option A**

*The state will establish a new benefit year but defer payment of regular compensation on that benefit year until the exhaustion of all EUC08 based upon the prior benefit year.*

- 1) **Question:** What will happen to an individual's regular compensation entitlement if a state elects Option A?

**Answer:** If the state elects Option A, eligible individuals will continue to receive EUC08 until exhaustion of their EUC08 accounts or until the expiration of the EUC08 program, whichever comes first. The state will then pay the individual any remaining regular compensation entitlement.

### **Option B**

*The state will defer the establishment of a new benefit year, putting on hold the wages that would otherwise be in the base period, until the exhaustion of all EUC08 benefits based on the prior benefit year.*

- 1) **Question:** If an individual exhausts EUC08 entitlement based upon an existing benefit year, is the state permitted to backdate the effective date of the new regular compensation claim (if there is a delay in filing that new regular claim)?

**Answer:** Under this option, states must establish the new benefit year with an effective date following the exhaustion of the EUC08 claim. The individual's benefit year will be based on the wages that would have been used had the state not paid EUC08 first. States must not pay EUC08 and regular compensation for the same weeks.

- 2) **Question:** For how long may the establishment of a new benefit year for an individual be deferred?

**Answer:** States must, at a minimum, permit the deferment of the benefit year through the statutory end of the EUC08 program.

## Option C

*The state will pay the new regular compensation claim and pay the difference between the prior EUC08 WBA and the new regular compensation WBA with funds from the claimant's EUC08 account.*

- 1) **Question:** If a state chooses Option C, may the individual's regular compensation claim continue to be augmented with EUC08 until exhaustion of that regular compensation?

**Answer:** No. Augmentation of the new regular compensation claim would continue (providing the claimant is eligible) until exhaustion of the remaining funds in the individual's EUC08 account, or until the end of the EUC08 program (the week ending April 30, 2011, in most states), whichever comes first.

If, for example, an individual exhausts his/her EUC08 account but still has 10 weeks remaining on his/her regular compensation claim, s/he would, if eligible, continue receipt of regular compensation at the original WBA established under the regular compensation benefit year for that claim.

- 2) **Question:** If an individual exhausts his/her regular compensation entitlement before exhausting the EUC08 balance, will s/he continue to receive the remaining EUC08?

**Answer:** Yes, provided individuals are otherwise eligible for EUC08 on the prior claim, they will continue to receive any remaining EUC08.

**Note:** If an individual establishes a new (second) EUC08 claim based on a subsequent (second) regular compensation benefit year, the EUC08 WBA on the second claim will be the same as the individual's WBA on the second regular compensation claim (including any dependents' allowances).

- 3) **Question:** Under Option C, if a state law requires that regular compensation overpayments be offset at 100 percent, may the state apply its own law in offsetting any resulting overpayment(s) where the regular compensation is supplemented by EUC08?

**Answer:** No, under section 4005(c)(1) of the EUC08 statute, no single deduction from EUC08 may exceed 50 percent of the weekly benefit amount from which the deduction is made. Thus, the state must limit the offset of the EUC08 portion of a weekly benefit payment to no more than 50 percent of that payment. The state will offset the regular compensation portion of the weekly benefit payment according to its state law.

## Option D

*The state will continue to pay EUC08 to an otherwise eligible individual if s/he elects not to file a claim for regular compensation under a new benefit year.*

- 1) **Question:** Under Option D, states will offer individuals the choice of continuing receipt of EUC08 or establishing a new regular compensation benefit year. If the individual elects to

continue EUC08, must the state offer the individual the option of switching to a regular compensation claim each subsequent calendar quarter?

**Answer:** No. The state must offer individuals the choice between EUC08 and regular compensation when s/he first becomes eligible for regular compensation. The state must advise individuals that they may be eligible for regular compensation every new calendar quarter (see the question below).

Once an individual makes an informed choice to continue receiving EUC08, the state will continue to pay EUC08 (if the individual is eligible) until exhaustion. If an individual subsequently elects to establish a new regular compensation benefit year, even though s/he still has remaining EUC08 entitlement, the state must stop payments of EUC08 and establish the new benefit year. Once a new regular compensation benefit year has been established, the choice no longer applies; the individual may not revert to EUC08 while s/he has remaining regular compensation entitlement, because the EUC08 statute requires exhaustion of regular compensation before an individual may be eligible for EUC08.

2) **Question:** Under Option D, what must the state do to notify affected individuals that they may elect to continue receiving EUC08 instead of establishing a new benefit year?

**Answer:** States must provide individuals with sufficient information to allow them to make an informed choice. Notifications must include:

- The individual's potential entitlement on a new regular compensation claim;
- The consequences of remaining on EUC08 versus filing a new claim; use of wages to qualify for regular compensation will generally diminish every quarter an individual remains on EUC08, because they are no longer in the base period.
- Information that individuals have the option to switch to a regular compensation claim during any subsequent quarter, providing there are sufficient base period wages to support a new regular compensation claim.
- Instructions on how the individuals can advise the state of their election.
- Information on scheduling interviews to provide the appropriate information and to offer an opportunity to make an election.

3) **Question:** Are states required to use a specified method for the notifications to the individual regarding the availability of this choice?

**Answer:** No. States may determine an appropriate method to provide the notification based on the state's filing procedures, provided that individuals have sufficient information to make an informed choice. Appropriate methods may include, but are not limited to:

- a. Providing written notification to the affected individuals by mail.

- b. Providing appropriate information via the Internet to allow individuals to make an election via the Internet, for example, through a state's Internet continued claims filing system.

**4) Question:** If an individual does not respond to an election notice, must the state continue to pay the individual EUC08 (assuming s/he's otherwise eligible)?

**Answer:** Yes. However, the notice must include information that advises individuals that failure to respond to the notice within a specified time (to be determined by the state) will constitute an election to stay on EUC08. This notice might also indicate that any future continued claim certifications for EUC08 also constitutes the individual's agreement to continue receiving EUC08.

**5) Question:** If an individual elects to continue to receive EUC08 before establishing a new benefit year under Option D and the final week payable of EUC08 is not a full WBA, may the state augment the partial EUC08 week with regular compensation funds based on a new benefit year?

**Answer:** No. EUC08 and regular compensation remain separate programs and benefits must be paid separately on the EUC08 or regular compensation claim.

#### **G. FAC Phase Out**

**1) Question:** An individual received FAC on his/her regular compensation claim and later qualifies for EB sometime after June 2, 2010 and during FAC phase-out. Does the individual qualify for FAC on the EB claim?

**Answer:** Yes. UIPL No. 11-09, Attachment A, section C.2, provided that "individuals qualifying for Trade Readjustment Allowances (TRA), EUC08, or EB on the basis of regular compensation on which FAC was paid [before the phase out date, now June 2, 2010] are potentially eligible for FAC during the 'phase-out' period." This is true even if the EB, EUC08, or TRA claim was effective May 30, 2010 or later. The individual would qualify for FAC providing s/he is otherwise eligible and the EB, EUC08, or TRA claim was based on a claim on which FAC was paid before June 2, 2010.

**2) Question:** Individuals are receiving FAC on claims for EUC08 based upon eligibility established before June 2, 2010. If these individuals exhaust the current tier of EUC08 after June 2, 2010 and are otherwise eligible to receive the next tier of EUC08, do the FAC payments continue?

**Answer:** Yes. Once the individual has received FAC on an EUC08 claim based upon eligibility established before June 2, 2010, s/he will continue to receive FAC on any subsequent tiers of EUC08 that may be paid through the phase-out of the FAC program.