

Attachment A to UIPL No. 23-08

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.

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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 USC 3304(a)).
18. “Week” means a week as defined in the applicable state law.

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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.

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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.

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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

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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

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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 micro photocopy 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

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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

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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.

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- 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 Offense, 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

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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.

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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?

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- 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

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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.

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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.

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- 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.

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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:

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- (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

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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.

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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.