

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION EUC08
	CORRESPONDENCE SYMBOL OUI/DUIO
	DATE November 23, 2009

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 23-08, Change 6

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES *Jane Oates*
 Assistant Secretary

SUBJECT: Emergency Unemployment Compensation, 2008 (EUC08) - Program Expansion Question and Answers

1. Purpose. To respond to states' questions about the further expansion of the EUC08 program.
2. References. The Worker, Homeownership, and Business Assistance Act of 2009 (Worker Assistance Act), Public Law No. 111-92, enacted on November 6, 2009; the Supplemental Appropriations Act, 2008, Title IV – Emergency Unemployment Compensation (EUC08), Public law 110-252, enacted on June 30, 2008; and Unemployment Insurance Program Letter (UIPL) Nos. 23-08 and 23-08, Changes 1, 2, 3, 4, and 5.
3. Summary. The Worker Assistance Act provides that its amendments are to be treated “as if included in the enactment of” the original EUC08 Act; therefore, all references to the program and benefit entitlement under the four tiers continue to be referred to as EUC08, even though two of the amendments were made in 2009. The Worker Assistance Act expanded the EUC08 program, for weeks of unemployment beginning after November 6, 2009, in the following ways:
 - It increased the maximum EUC08 Second-Tier entitlement from 13 weeks to 14 weeks of benefits in all states, and this Tier is no longer triggered on by a state reaching a specified rate of unemployment;
 - It created an EUC08 Third Tier providing up to 13 additional weeks of benefits (for a total of up to 47 weeks of EUC08) in states with a 13-week insured unemployment rate of at least 4 percent or a three-month average seasonally adjusted total unemployment rate of at least 6 percent;

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

- It created an EUC08 Fourth Tier providing up to 6 additional weeks of benefits (for a total of up to 53 weeks of EUC08) in states with a 13-week insured unemployment rate of at least 6 percent or a three-month average seasonally adjusted total unemployment rate of at least 8.5 percent.

In addition, there are two provisions regarding the coordination of benefits:

- A state may continue to pay Extended Benefits (EB) prior to EUC08 under the amendments made by the Worker Assistance Act, to individuals who were in EB claims status at the time of the state's implementation of the Act, as explained in this UIPL, notwithstanding the state's prior election to pay EUC08 before EB.

NOTE: This is a change from UIPL No. 23-08, Change 5. See Q&A D.1., in the Attachment to this Change 6.

- If a state determines that implementation of the increased entitlement to EUC08 Second Tier (i.e., 13 to 14 weeks) would unduly delay prompt payment of EUC08, the state may elect to pay EUC08 Third Tier prior to payment of the increased amount of EUC08 Second Tier until such time as the state determines that the increased EUC08 Second Tier may be paid without undue delay.

The expiration date and phase-out period described in UIPL No. 23-08, Change 4 has not changed. However, in applying the phase out, states will need to take into account that EUC08 Second Tier no longer has a trigger and, for affected states, take into account the new EUC08 Third and Fourth Tiers. Accordingly, if an individual exhausts EUC08 First Tier on or before December 31, 2009, the individual may qualify for EUC08 Second Tier. Further, if an individual exhausts EUC08 Second Tier or Third Tier on or before December 31, 2009, the individual may qualify for the next higher Tier, if an EUC08 Third Tier or Fourth Tier period (whichever is appropriate) is either then in effect or subsequently ends (even if that period ends after December 31, 2009). However, an individual may not move to the next (a higher) Tier if s/he exhausts the prior EUC08 Tier after December 31, 2009. (In states where the week ending date is a Saturday, the last week of potential eligibility would be the week ending December 26, 2009.)

4. Interpretation. The instructions in this document are issued to the states and cooperating state agencies as guidance provided by the Department of Labor (Department) in its role as the principal in the EUC08 program. States may not deviate from the operating instructions without the prior approval of the Department. The interpretations, policies, and procedures issued in this document supersede those previously issued in UIPL Nos. 23-08 and 23-08, Changes 1, 2, 3, 4, and 5 to the extent that any inconsistencies exist.
5. Guidance. This document provides a set of questions and answers regarding the expansion of the EUC08 program and sets forth additional operating instructions to assist states in implementing and administering the program.
6. Action Requested. Administrators are requested to provide this information and instructions to the appropriate staff.
7. Inquiries. Direct questions to the appropriate Regional Office.
8. Attachment. Questions and Answers on the EUC08 Program Expansion

Attachment to UIPL No. 23-08—Change 6

Questions and Answers on the EUC08 Program Expansion

A. Effective Date

1. **Question:** What is the effective date of the EUC08 program expansion under the Worker Assistance Act?

Answer: The first week payable under the changes made by the Worker Assistance Act is the first week of unemployment (as defined under state law) following the enactment of the bill, which was November 6, 2009. In most states, this means the first compensable week of unemployment is the week beginning November 8, 2009.

B. EUC08 Second Tier

1. **Question:** Must states re-determine all existing EUC08 Second-Tier accounts?

Answer: Yes. The amendments apply to all EUC08 Second-Tier accounts of otherwise eligible individuals.

C. EUC08 Augmentation and Order of Payment

1. **Question:** Prior to passage of the Worker Assistance Act, individuals who exhausted EUC08 First-Tier benefits simultaneously with the ending of a state's Second-Tier period were eligible to receive the next higher Tier benefits. Does the same rule apply to Third and Fourth-Tier benefits under the Worker Assistance Act?

Answer: Yes. Individuals who exhaust any EUC08 Tier (whether through a partial or full weekly amount) in the same week as the qualifying period for the next higher EUC08 Tier period ends will have their accounts augmented with the next higher Tier of EUC08 benefits.

Note: EUC08 Second-Tier no longer has an unemployment rate threshold; all states are paying up to 14 weeks of this tier. The Third and Fourth Tier period(s) will end when the state's IUR or TUR falls below the applicable threshold unemployment rate(s).

2. **Question:** May a state make payments of EUC08 in the following order:

1) Pay 13 weeks of Second Tier; 2) Pay 13 weeks of Third Tier; 3) Pay week 14 of Second Tier?

Answer: Yes, under certain circumstances. Section 4002(f)(2) of the EUC08 law, as amended by the Worker Assistance Act, allows states to make the payment of the "extra" week of EUC08 Second Tier following the payment of the EUC08 Third Tier if the state determines that paying the increased EUC08 Second Tier would unduly delay the prompt payment of any of the EUC08 entitlements. This option is available until such time as the state determines that the enhanced Second Tier benefits may be paid without undue delay.

The Department recognizes that whether an "undue delay" exists may vary depending on the situation for different groups of individuals. For example, for individuals who

exhausted EUC08 Second Tier prior to the amendments, a state may find that payment of “week 14” prior to payment of Third Tier to individuals would unduly delay payment of any EUC08 under the Worker Assistance Act. However, states may also find that individuals exhausting EUC08 First-Tier benefits who are newly eligible for EUC08 Second-Tier benefits may be paid the additional “14th week” without any “undue delay.” Thus, it is permissible to provide differing treatment by paying EUC08 Third-Tier benefits to one group prior to “week 14” of the EUC08 Second Tier while also paying “week 14” of EUC08 Second Tier prior to EUC08 Third Tier to another group.

3. **Question:** If individuals exhaust EUC08 First-Tier benefits on or before December 31, 2009, are they then potentially eligible for all other EUC08 benefits under any Tier after that date, assuming the state is triggered “on” (EUC08 Second Tier does not depend upon a trigger) to the appropriate Tier?

Answer: No. Section 4007(b)(2) of the EUC08 law contains a “non-augmentation” rule, which prior to the amendments under the Worker Assistance Act prohibited augmentation with EUC08 Second-Tier benefits after December 31, 2009. This has now been amended to include references to EUC08 Third and Fourth Tiers.

Specifically, Section 4007(b)(2) provides that there will be no Second-Tier, Third-Tier or Fourth-Tier augmentation “[i]f the amount established in an individual’s account under subsection (b)(1) is exhausted after December 31, 2009.” Subsection (b)(1) of Section 4007 provides for a phase-out of EUC08 payments, subject to the non-augmentation rule in subsection (b)(2). Specifically, subsection (b)(1) of Section 4007 applies to “amounts remaining in an account established under section 4002” Thus, when the “amount[] remaining in an account established under Section 4002,” whether a First, Second, or Third-Tier amount, is exhausted after December 31, 2009, augmentation is prohibited.

D. Extended Benefits Coordination Rule

1. **Question:** If a state elects to pay EB prior to EUC08, for which individuals may the state do so (that is, which individuals will qualify)?

Answer: Under Section 4002(f)(1) of the EUC08 law, a state may pay EB to an individual prior to EUC08 under the Worker Assistance Act amendments, “if such individual claimed extended compensation for at least 1 week of unemployment after the exhaustion of emergency unemployment compensation under subsection (b) [relating to the establishment of an EUC08 account] (as such subsection was in effect on the day before the date of enactment of this subsection).” Hereafter, this provision will be referred to as the “EB coordination rule.” There are several criteria that must be met before a state may pay EB under the EB coordination rule:

- First, EB may be paid prior to EUC08 based upon the Worker Assistance Act amendments. This means that EB may only be paid prior to the “extra” week of EUC08 Second-Tier benefits and EUC08 Third and Fourth-Tier benefits.
- Second, the individual must have claimed at least one week of unemployment “after the exhaustion of” an EUC08 account based upon the statute as in effect prior to the Worker Assistance Act amendments. This means that the individual must have exhausted EUC08 First-Tier benefits and all EUC08 Second-Tier benefits, except for the “extra” week under the Worker Assistance Act

amendments, in order for the state to pay EB.

- Third, the individual must have “claimed extended compensation for at least 1 week” after the exhaustion of the pre-Worker Assistance EUC08 benefits described in the preceding paragraph. The past-tense “claimed extended compensation for at least 1 week” means that the week “claimed” must have occurred in the past. The purpose of this language is to permit states a transition period with respect to individuals who were receiving EB. Thus, it affords states the option of continuing to pay EB to individuals who had “claimed” EB after exhausting “old” EUC08, rather than switching them to the “new” EUC08. In order to effectuate this transition period, the Department interprets this third requirement as meaning that EB must have been “claimed” for a week during, or prior to, the state implementing the amendments made by the Worker Assistance Act.

The first week of EUC08 payable under the Worker Assistance Act amendments (in states where the week begins on Sunday) was the week beginning November 8, 2009, and ending November 14, 2009. Thus, all states were in the process of implementing the amendments that week. Recognizing that some states might take a little longer to implement these amendments, the Department will allow states to apply the EB coordination rule where the first week(s) of EB claimed occurs as late as the week of November 29, 2009, for week(s) ending November 28, 2009. Thus, for example, if an individual’s EB claim is effective as late as the week beginning November 22, 2009, even though the individual does not claim that first week until the following week, the state may apply the EB coordination rule, assuming the other criteria are met.

Note: This is a change from the guidance in UIPL No. 23-08, Change 5, Q&A, A.5, which took the position that, in order to apply the EB coordination rule, the individual had to have been in EB claims status at the time of enactment of the Worker Assistance Act.

Further Note: Whether or not a state elects to keep individuals in EB status under the EB coordination rule, no EUC08 payments may be made for any week of unemployment beginning after May 31, 2010, when the EUC08 program terminates.

2. **Question:** Under the EB coordination rule, a state elects to pay EB prior to EUC08. How does this affect when the state re-determines eligibility for EUC08 Second Tier and when the state augments with Third-Tier benefits?

Answer: The premise behind the EB coordination rule is that the state chooses to pay EB prior to any EUC08 *for which the individual is otherwise eligible*. Thus, individuals receiving EB under the coordination rule will be treated as though they were receiving EUC08, instead of EB, for purposes of determining when they exhausted an EUC08 Tier and when they are entitled to augmentation of their accounts with the next higher Tier. This means that if an individual exhausts an EUC08 tier after receiving EB under the coordination rule, s/he may still qualify for either Second or Third Tier benefits even if this occurs after December 31, 2009, if otherwise eligible.

For example, the state elects under the EB coordination rule to continue paying EB to an individual otherwise eligible for EUC08. Therefore, the individual is entitled to have

his/her EUC08 account immediately re-determined for the “extra” week (i.e., week 14) of EUC08 Second Tier the first week after November 6, 2009, the date of enactment of the Worker Assistance Act. The individual is entitled to have his/her account augmented with EUC08 Third Tier (assuming the state is in an EUC08 Third-Tier period) effective immediately following the “extra” week of EUC08 Second Tier, just as though s/he had exhausted EUC08 Second Tier when EB was paid instead of EUC08 and even if the exhaustion of EB or the payment of the “extra” week (week 14) occurs after December 31, 2009.

3. **Question:** If an individual is disqualified under the EB rules for not making a systematic and sustained search for work, will the individual remain disqualified for EUC08?

Answer: No. The EB work search requirements apply only to individuals who are receiving EB; these EB work search requirements do not apply to EUC08. Therefore, an individual who is disqualified from receipt of EB due to not meeting the EB work search requirements will qualify for EUC08, if otherwise eligible. (Note: If the individual would have been disqualified for failure to meet work search or “able and available” requirements under state law/policy, such disqualification may remain in effect).

4. **Question:** If an individual is disqualified under the EB rules for refusal of suitable work or referral to suitable work, will the individual remain disqualified for EUC08?

Answer: That depends. As noted above, the EB requirements for a systematic and sustained search for work are unique to EB, and apply only to that program. However, an individual may be disqualified for refusing, or not accepting a referral to, suitable work under the state unemployment compensation (UC) law, although the EB requirements are generally stricter. Section 4001(d)(2) of the EUC Act provides (with exceptions not relevant here) that the terms and conditions of the state UC law apply to claims for EUC08. Thus, if the individual would have been disqualified under the state UC law for refusing, or not accepting a referral to, suitable work, the disqualification will remain in effect for EUC08; however, if the disqualification resulted solely because it was determined under the stricter EB rules, then the individual will qualify for EUC08, if otherwise eligible.

5. **Question:** May a state that is in an EB period stop applying the EB coordination rule at any time, for example, stop EB the week ending December 19, 2009, and begin paying EUC08 Third Tier to these claimants?

Answer: Yes. States electing to apply the EB coordination rule may at any future point decide to stop applying the rule. This might occur, for example, when the state determines that switching individuals to EUC08 would not disrupt payment to individuals. However, when the state does so, it must then pay EUC08 prior to EB for all claims, because all individuals must be treated on an equal basis.

E. EUC08 Claim Applications

1. **Question:** Will claim applications (Third/Fourth Tier) be required for individuals who have already exhausted all EUC08 First and Second Tier and EB benefits?

Answer: When there has been a break in claim certification, the state will need to take a claim application to ensure there are no issues and that there has been no intervening employment, etc., that would disqualify the individual. When the individual is in

continuing claim status, the state will not need to take an application.

F. Multiple EUC08 Claims

1. **Question:** Section 3(d)(3) of the Worker Assistance Act states that the “account of an individual may be augmented not more than once....” Why, therefore, would states augment more than the last EUC08 claim paid?

Answer: Section 4002(a) provides for the establishment of “an emergency unemployment compensation account with respect to such individual’s benefit year” based on a state UC claim. Thus, an individual’s EUC08 account is tied to a specific “benefit year.” If an individual establishes an EUC08 account on a benefit year and, subsequently, establishes a new (second) benefit year based on subsequent work, s/he may establish a second EUC08 account on that new (second) benefit year, if otherwise eligible. See attachment to UIPL No. 23-08, Change 3, Section D.

2. **Question:** If a claimant has two EUC08 accounts, is it correct that states must augment and pay the earlier EUC08 account first before augmenting and paying benefits on the second (later) EUC08 account even though it may mean stopping the individual’s payments (effective November 8, 2009) on the second account to shift back to the first account (causing a delay in continued payments)?

Answer: States are advised to pay the oldest EUC08 account first. However, recognizing the delays in payment that may occur, the Department will not object if a state continues payment on the most recent EUC08 account until such time that the state is able to shift back to the oldest account without undue delay in making continued payments to the claimant.