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Mauricio J. Tamargo,
Chairman.

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DEPARTMENT OF LABOR

Employment and Training Administration

Application of State-Wide Personnel Actions to Unemployment Insurance Program

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration provided guidance to States explaining the Department's position concerning the application of State-wide personnel actions to the unemployment compensation program. The original guidance, UIPL No. 09-98, was published in the **Federal Register** on February 10, 1998, as continuing guidance. This guidance had not been rescinded. However, to remind States of the Department's position, on March 11, 2009, the Department issued UIPL No. 18-09, with UIPL No. 09-98 as an attachment. UIPL No. 18-09 is published below to inform the public and is available at: <http://wdr.doleta.gov/directives/attach/UIPL/UIPL18-09.pdf>.

SUPPLEMENTARY INFORMATION:

UIPL 18-09—Application of State-Wide Personnel Actions, including Hiring Freezes, to the Unemployment Insurance Program

1. *Purpose.* To advise states that Unemployment Insurance Program Letter (UIPL) 09-98 expresses the Department's position concerning the application of state-wide personnel actions such as hiring freezes, shutdowns, and furloughs to the unemployment insurance (UI) program.
2. *References.* Section 303(a)(1) of the Social Security Act (SSA) and IPL 09-98, issued on January 12, 1998 (63 FR 6774, 6779 (February 10, 1998)).
3. *Background.* During economic downturns, State revenues decline

while demands for UI services increase. As a result of declines in State revenues, States face budget constraints and some may impose hiring freezes or other personnel actions such as furloughs on a state-wide basis. When applied to the UI program, these actions will likely have a detrimental effect on unemployed workers and businesses and result in decreased performance against Federal standards.

UIPL 09-98 expresses the Department's interpretation of the Federal UI law requirements as applied to these state-wide personnel actions. In brief, IPL 09-98 provides that any state-wide personnel action that does not take into account the needs of the UI program is not a "method of administration" for assuring the proper and prompt delivery of UI services consistent with Section 303(a)(1), SSA. If the UI program is not exempted from such state-wide actions, the IPL requires States to demonstrate to the Department that it has adequately addressed the UI program's needs.

A copy of IPL 09-98 is attached.

4. *Action.* States are to address state-wide personnel actions applied to the UI program consistent with IPL 09-98.

5. *Inquiries.* Inquiries should be directed to your Regional Office.

6. *Attachment.* IPL 09-98.

Attachment I

UIPL 09-98

UIPL 09-98 was published in the **Federal Register**, Volume 63, No. 27 on February 10, 1998 and may be found at: <http://frwebgate.access.gpo.gov/cgi-bin/getdoc.cgi?IPaddress=frwais.access.gpo.gov&dbname=1998register&docid=98-3341-filed.pdf>.

Dated: This 11th day of August, 2009.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

[FR Doc. E9-19523 Filed 8-13-09; 8:45 am]

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DEPARTMENT OF LABOR

Employment and Training Administration

Federal-State Extended Unemployment Compensation Act of 1970—Temporary Changes in Extended Benefits

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Employment and Training Administration (ETA) has provided guidance to State workforce

agencies in response to the enactment of temporary changes to the extended benefits (EB) program as a result of recent Congressional enactments.

The first guidance, issued on January 2, 2009, as Unemployment Insurance Program Letter (UIPL) No. 7-09, advised State workforce agencies of the temporary change, enacted by Public Law 110-449, in Federal sharing for the first week of extended benefits (EB) under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA) and is available at <http://wdr.doleta.gov/directives/attach/UIPL/UIPL7-09.pdf>.

UIPL No. 12-09, issued on February 23, 2009, provided guidance related to temporary changes in the EB program as a result of Public Law 111-5. The IPL (available at: <http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09.pdf>) addressed questions related to Federal sharing for cost benefits, benefit eligibility provisions, amendments to State law and reporting requirements.

On May 4, 2009, ETA issued additional guidance with IPL No. 12-09, Change 1 (available at: http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09_ch1.pdf) to address general questions about the EB program, work search requirements, submission of tangible evidence, suspension of work search requirements, interstate claims, terminating disqualifications using work, entitlement during high unemployment periods, beginning and ending dates of EB periods, and draft language for the Total Unemployment Rate (TUR) trigger.

These three guidance documents are published below to inform the public.

SUPPLEMENTARY INFORMATION:

UIPL No. 7-09: Federal-State Extended Unemployment Compensation Act of 1970—Temporary Change in Federal Sharing for First Week of Extended Benefits

1. *Purpose.* To advise States of the temporary change in Federal sharing for the first week of extended benefits (EB) under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA).

2. *References.* The Unemployment Compensation Extension Act of 2008, Public Law (Pub. L.) 110-449 enacted on November 21, 2008; FSEUCA (26 U.S.C. 3304 note); 20 CFR 615.14; and Unemployment Insurance Program Letter No. 14-81.

3. *Background.* In general, the benefit costs of EB, as well as certain weeks of "regular" State unemployment compensation (known as "sharable regular compensation"), are shared equally by the States and the Federal

government. However, Federal law prohibits Federal sharing of benefit costs for the first week of EB or the first week of sharable regular compensation if the State compensates beneficiaries for the first week of regular State benefit eligibility “at any time or under any circumstances.” See section 204(a)(2) of FSEUCA; 20 CFR 615.14(c)(3). As a result, States with no waiting week or States that, under certain conditions, pay what would otherwise be a waiting week are ineligible for Federal sharing for the first week of EB or sharable regular compensation.

4. *Temporary Change.* Section 5 of Public Law 110–449 temporarily suspends this prohibition on Federal sharing of the costs of the first week of EB or sharable regular compensation for weeks of unemployment beginning after November 21, 2008, and ending on or before December 8, 2009. As a result, as long as States continue to meet all other applicable conditions in FSEUCA, all States qualify for Federal sharing for the first week of EB or sharable regular compensation occurring during this period.

5. *Action.* Administrators are to provide this information to the appropriate staff.

6. *Inquiries.* Direct questions to the appropriate Regional Office.

UIPL No. 12–09—Extended Benefits Program—Temporary Changes Made by the Assistance for Unemployed Workers and Struggling Families Act

1. *Purpose.* To advise States of temporary changes to the permanent Federal-State Extended Benefits (EB) program.

2. *References.* Section 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, of Public Law 111–5, enacted February 17, 2009; the Unemployment Compensation Extension Act of 2008, Public Law 110–449; the Federal-State Extended Unemployment Compensation Act of 1970 (“EB law”), 26 U.S.C. 3304(a)(11) note; 20 CFR Part 615; and Unemployment Insurance Program Letter (UIPL) No. 45–82 and UIPL No. 7–09.

3. *Background.* Section 2005 made several temporary changes to the EB program provided for under the EB law. One change is intended to encourage States experiencing high unemployment to enact the program’s optional total unemployment rate (TUR) trigger by providing that the Federal government will, in most cases, pay 100 percent of the benefit costs of EB for a specified period. This 100 percent reimbursement also applies to States triggering “on”

under other EB triggers and is available to States that already have the TUR trigger in their laws. Under another change, States may allow additional individuals to qualify for EB.

Attachment I discusses the temporary changes in greater detail. Attachment II contains the text of the EB provisions.

4. *Action.* State administrators should distribute this advisory to appropriate staff.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

Attachment I—Temporary Changes to Federal-State EB Program

Attachment II—Text of Section 2005 of Public Law 111–5

Attachment I

Temporary Changes to Federal-State EB Program

Federal Sharing for Benefit Costs

1. *Question:* How do the changes made by Section 2005 affect Federal sharing for EB?

Answer: With certain exceptions, the permanent EB law provides that one-half of EB benefit costs will be paid by the Federal government. (See Section 204(a) of the EB law and 20 CFR 615.14.) This Federal share is also paid for certain weeks of regular State unemployment compensation known as “sharable regular compensation.” (For purposes of this UIPL, all references to EB benefits include sharable regular compensation.)

Section 2005 amended the EB law to provide that the Federal government will pay 100 percent of EB benefit costs for weeks of unemployment beginning after the date of enactment (that is, after February 17, 2009) and before January 1, 2010.

Q&As 3, 4, and 5 discuss three exceptions to this Federal sharing. Also, see Q&A 7 for an optional exception to the January 1, 2010, ending date.

2. *Question:* My State was already in an EB period when the amendments were enacted. What is the first week of unemployment for which 100 percent Federal funding is available?

Answer: The State is entitled to obtain 100 percent of eligible EB costs for weeks of unemployment beginning after February 17, 2009.

3. *Question:* How do the changes affect Federal sharing for the first week of EB?

Answer: The permanent EB law prohibits Federal sharing of benefit costs for the first week of EB if the State compensates individuals for the first week of regular State benefit eligibility “at any time or under any

circumstances.” (See Section 204(a)(2)(B) of the EB law and 20 CFR 615.14(c)(3).) As explained in UIPL 7–09, this prohibition on Federal sharing of the first week of EB was suspended for weeks of unemployment beginning after November 21, 2008, and ending on or before December 8, 2009.

Section 2005 extended this suspension through weeks of unemployment ending before May 30, 2010. As a result, even if a State does not have a waiting week for regular State unemployment compensation or permits payment of a waiting week under certain circumstances, the costs of the first week of EB will be paid as follows:

- The entire cost will be paid by the Federal government if the first week of EB begins after February 17, 2009, and before January 1, 2010.

- 50 percent of the cost will be paid by the Federal government if the first week of EB begins after January 1, 2010, and ends before May 30, 2010.

4. *Question:* How do the changes affect Federal sharing for amounts that are not rounded down?

Answer: They have no effect. As a result, the prohibition on Federal sharing for situations where States round up (rather than down) remains in effect. For example, an individual is eligible for \$99.50 and the State rounds the payment up to \$100.00. For the period of time specified in the amendments, the Federal government will pay \$99.00 while the State will pay the \$1.00 attributable to rounding up. (See Section 204(a)(2)(C) of the EB law and 20 CFR 615.14(c)(5) regarding this rounding requirement.)

5. *Question:* How do the changes affect Federal sharing for EB based on employment with State and local governments and Federally-recognized Indian Tribes?

Answer: They have no effect. The EB law’s prohibition on Federal sharing based on such employment remains in effect. (See Section 204(a)(3) of the EB law and 20 CFR 615.14(c)(6).)

Benefit Eligibility Provisions

6. *Question:* What changes does Section 2005 permit to EB eligibility requirements?

Answer: 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. (See Section 203(c) of the EB law and 20 CFR 615.2(h).) For example, if the final week of the individual’s benefit year is also the first week of the State’s EB period, the individual will qualify for EB. If otherwise eligible, this individual may receive EB until his/her

EB account is exhausted or the State's EB period ends. Treatment of these individuals is unchanged.

Section 2005 provides for 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. For example, an individual's benefit year ends during Week 7 of a calendar year and the individual is receiving EUC08, the State triggers "on" EB during Week 10, and the individual exhausts EUC08 during Week 13. The State may determine the individual to be eligible for EB beginning Week 14, because the individual exhausted all rights to EUC08 at Week 13 during an EB period. The individual may, if otherwise eligible, collect EB until that benefit is exhausted or, if earlier, the EB period ends.

This option is available to States for weeks of unemployment beginning after February 17, 2009, and before January 1, 2010.

7. *Question:* Is there any phase-out for individuals who have established EB eligibility as of the January 1, 2010, end date?

Answer: Yes. If an individual has received EB with respect to one or more weeks of unemployment beginning after February 17, 2009, and before January 1, 2010, the State may continue to pay EB to the individual (if otherwise eligible) for weeks of unemployment ending before June 1, 2010.

The Federal government will pay 100 percent of eligible EB benefit costs based on such claims during this phase-out period. Note this phase-out for Federal sharing applies to payments to individuals who established EB eligibility (1) under the rules pertaining to the permanent EB program as well as (2) as a result of the special rule described in the previous Q&A.

8. *Question:* Do the amendments affect the requirement that an individual must conduct a systematic and sustained work search?

Answer: No. States must require EB claimants (with exceptions in current law) to conduct a systematic and sustained search for work, and to submit tangible evidence of such search, as a condition of being eligible for EB for a week. States must administer these work search provisions (and all other EB eligibility requirements) to receive Federal sharing under both permanent EB law and under the temporary

amendments. (See Section 202(a)(3)(A)(ii) and 20 CFR 615.8(g)(2).)

Amendments to State Law

9. *Question:* Do the provisions of Section 2005 require my State to amend its law?

Answer: States paying EB under current provisions of State law will automatically qualify for increased Federal sharing. Whether a State needs to amend its law to trigger "on" using the optional TUR trigger, and thereby obtain the increased Federal payments under Section 2005, is a matter determined under State law. Draft language for implementing the optional TUR trigger is found in UIPL 45–92.

Reporting Requirements

10. *Question:* Are there any changes for reports required by the Department of Labor?

Answer: No. However, States should note that, for purposes of the ETA 2112 report (OMB No. 1205–0154), any payment fully funded by the Federal government should be reported in its entirety on line 38 (pertaining to the Federal share of EB).

Attachment II

Text of Section 2005 of Public Law 111–5

Text of the law may be found at: <http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09a2.pdf>.

UIPL No. 12–09, Change 1—Extended Benefits Program—Temporary Changes Made by the Assistance for Unemployed Workers and Struggling Families Act

1. *Purpose.* To respond to questions about the permanent Federal-State extended benefits (EB) program, including temporary changes made by Public Law 111–5.

2. *References.* Section 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, of Public Law 111–5, enacted February 17, 2009; the Unemployment Compensation Extension Act of 2008, Public Law 110–449; the Federal-State Extended Unemployment Compensation Act of 1970 ("EB law"), 26 U.S.C. 3304(a)(11) note; 20 CFR Part 615; Unemployment Insurance Program Letter (UIPL) No. 45–92; UIPL No. 7–09; and UIPL No. 12–09.

3. *Background.* UIPL No. 12–09 provided guidance to States on the provisions of Public Law 111–5 regarding temporary changes to the EB program. This UIPL provides:

- Question and Answers (Q&As) responding to questions received from

States about these temporary changes and about permanent EB law.

- Draft legislation that States can use when enacting the EB program's optional total unemployment rate (TUR) trigger.

Attachment I addresses the temporary changes and other questions in greater detail. Attachment II contains the draft language for enacting the TUR trigger.

4. *Action.* State administrators should distribute this advisory to appropriate staff.

5. *Inquiries.* Questions should be addressed to your Regional Office.

6. *Attachments.*

Attachment I—Extended Benefits—Questions and Answers

Attachment II—Draft Legislation—TUR Trigger

Attachment I

Extended Benefits

Questions and Answers

In General

CH 1–1. Question: Section 2005(c) of Public Law 111–5 includes a six-month phase-out of the temporary 100-percent Federal financing for Extended Benefits (EB) that the Public Law establishes. For individuals who received EB for a week of unemployment beginning before Friday, January 1, 2010, EB payments made for weeks ending before June 1, 2010, will continue to be eligible for 100-percent Federal financing. However, payments to individuals who first received EB for weeks of unemployment beginning after January 1, 2010, would be funded through a 50-percent Federal share and a 50-percent State share. After January 1, 2010, can a State limit EB to only those individuals who were covered by full Federal funding?

Answer: No. If the State is in an EB period, it must pay all individuals who qualify for EB, regardless of Federal sharing. Conversely, if a State is not in an EB period, it may not pay any EB.

CH 1–2. Question: My State is in the process of adding the Total Unemployment Rate (TUR) trigger to its law. May my State law provide that the EB period will begin prior to the date of enactment?

Answer: Assuming that the requirements for an EB period are met, nothing in Federal law or regulation prohibits the retroactive EB period described in the question.

CH 1–3. Question: To follow-up on the preceding question, how will eligibility for any retroactive weeks be determined, particularly with respect to backdating claims and to the EB program's requirement that an

individual engage in a “systematic and sustained” search for work?

Answer: For purposes of backdating claims, State law applies. *See* 20 CFR 615.8(a)(1). The EB work search requirements do not apply to retroactive weeks. The EB work search requirements only apply after individuals are notified in writing that their prospects of finding employment are “not good”. *See* Q&A CH 1–7.

CH 1–4. Question: Q&A 5 in UIPL No. 12–09 states that the changes made by Public Law 111–5 do not affect Federal sharing for EB based on service performed in the employ of State and local governments and Federally-recognized Indian Tribes. How should the State charge EB based on service for these entities?

Answer: The answer differs for reimbursing employers and contributing employers:

- Because Section 204(a)(3) of the EB law denies Federal reimbursement for EB based on service for State and local governments and Federally-recognized Indian Tribes, 20 CFR 615.10(b) requires these employers, when they elect the reimbursement option, to reimburse 100 percent of these EB costs. Public Law 111–5 does not change this result because it does not change the fact that there is no Federal reimbursement for these costs.

- State law dictates whether or not contributory employers are charged for EB. (However, States must continue to charge contributing employers for their share of shareable regular compensation.) *See* 20 CFR 615.10(a).

EB Work Search Requirements

CH 1–5. Question: Where can I find more information on the EB work search requirements?

Answer: Regulations governing the EB work search requirements, and other matters related to the EB program, are available at 20 CFR Part 615. The core provisions are summarized in Q&As CH 1–6 through CH 1–14.

CH 1–6. Question: When must individuals begin the EB work search?

Answer: Individuals must begin a work search after the State provides notification that their prospects for obtaining work within a reasonably short period of time are “good” or “not good.” The State must provide this notification no later than the end of the week in which individuals file their first EB claim. Individuals whose job prospects are “not good” must be notified of the EB work search requirements at the same time. The work search requirements apply to the week following the week in which the

individual receives such notice. *See* 20 CFR 615.8(d)(1).

CH 1–7. Question: How does the State determine whether an individual’s prospects for obtaining work within a reasonably short period of time are “good” or “not good”?

Answer: State law specifies what constitutes a reasonably short period of time. *See* 20 CFR 615.2(o)(3). Since individuals claiming EB have exhausted regular compensation and Emergency Unemployment Compensation (EUC08), they have been unemployed for a long time. There is a presumption that their prospects of obtaining work within a reasonably short period of time generally will be considered “not good.” Individuals can rebut this presumption by furnishing to the State satisfactory evidence to the contrary.

CH 1–8. Question: What are the work search requirements for an individual who is claiming EB?

Answer: The answer depends on whether the individual’s prospects for obtaining work within a reasonable time are “good” or “not good.” Individuals whose prospects are “good” must conduct the same search for suitable work as is required of individuals claiming regular compensation under State law. Many State laws allow such individuals to establish eligibility if they limit their work search to their usual occupation. In other words, many State laws do not require individuals to immediately search for any kind of work available.

The EB law and regulations set forth the work search requirements that States must require for individuals whose work prospects are “not good.” Taken together, this authority requires a “systematic and sustained effort” to search for “suitable work” for each week of EB claimed. (*See* Sections 202(a)(3)(C)–(E) of the EB law and 20 CFR 615.8(d)(4), and 615.2(o)(8).) A “systematic and sustained effort” means, among other things, that the search is “not limited to the classes of work or rates of pay to which the individual is accustomed or which represent the individual’s higher skills, and which includes all types of work within the individual’s physical and mental capabilities * * *” 20 CFR 615.2(o)(8)(iv).

CH 1–9. Question: How do the work search requirements relate to individuals participating in a short-time compensation (STC) program?

Answer: The job prospects for individuals participating in a STC program are considered “good” because they are working, although at reduced hours. Moreover, Section 401(d)(1) of Public Law 102–318 defines STC as a

program under which, among other things, “eligible employees are not required to meet * * * work search requirements while collecting” STC. Thus, individuals are not required to seek work as a condition of receiving STC, regardless of whether the individual is claiming regular compensation or EB.

Submission of Tangible Evidence

CH 1–10. Question: What tangible evidence of seeking work must the individual submit?

Answer: The individual must supply information which includes the (1) actions taken, (2) methods of applying for work, (3) type(s) of work sought, (4) dates and places where work was sought, (5) name of the employer or person contacted, and (6) outcome of the contact. *See* 20 CFR 615.2(o)(9).

CH 1–11. Question: Must the individual actually submit the tangible evidence of work search to the State prior to the State issuing payment? Alternatively, may States issue payment based on the individual’s certification, via Interactive Voice Response (IVR) or other means, that the tangible evidence has been transmitted to the State?

Answer: It is preferable that a State require an individual to submit the tangible evidence with each claim. However, the Department of Labor (Department) will permit States to make payment based on the individual’s certification that s/he has conducted the required work search and transmitted the evidence to the State.

Section 615.8(g)(1) of 20 CFR requires the submission of tangible evidence of actively seeking work “with each claim,” suggesting that the State must receive the evidence at the same time as other claims materials. However, that section was drafted when simultaneous submittal of work-search data was more practical since claims were filed either in-person or through the mail. The current use of technologies such as IVR generally allows the States to process claims quickly and efficiently, but does not readily permit a claimant to submit “tangible evidence,” that is, “a written record” (20 CFR 615.2(o)(9)), “with each claim.” Accordingly, the Department interprets section 615.8(g) as permitting a State to make payment upon the individual certifying, “with each claim,” that s/he has conducted the required work search and is submitting the tangible evidence. At a minimum, a State must periodically audit reasonable samples of the tangible evidence submitted to ensure that it has received these “written records” and that they are complete.

CH 1-12. Question: Must the State review the tangible evidence before making each payment?

Answer: No. It is not practical for States to review all tangible evidence before making payments. However, States must, at a minimum, periodically review for completeness a reasonable sample of such evidence after payment.

CH 1-13. Question: How may the tangible evidence of an active search be submitted?

Answer: No single method of submission is required. What is essential is that the individual provide the necessary information in a verifiable form. As a result, States may require submission through paper, on-line, IVR, fax, or any other method that assures the State obtains the information. (For audit purposes, the State is required to maintain the individuals' responses for the same length of time as any written record(s). See 20 CFR 615.15(b).)

Suspension of Work Search Requirements

CH 1-14. Question: May a State suspend the EB work search requirement?

Answer: The work search requirements for individuals whose job prospects are "not good" may be suspended when:

- "[S]evere weather conditions or other calamity forces suspension of such activities by most members of the community." (See 20 CFR 615.2(o)(8)(vi).) High unemployment is not a "calamity" which "forces" suspension of work search.

- Individuals are on jury duty or "[h]ospitalized for treatment of an emergency or life-threatening condition." However, such suspension criteria only apply when State law authorizes suspension for both EB and regular UC. (See 20 CFR 615.8(g)(3).) Any illnesses or disabilities not requiring hospitalization for the reasons described are not permissible reasons to suspend the EB work search requirements.

In addition, "State law applies regarding whether members of labor organizations shall be required to seek nonunion work in their customary occupations." See 20 CFR 615.8(g)(4).

Interstate Claims

CH 1-15. Question: Federal law limits EB eligibility to two weeks for certain individuals who file from a State that is not in an EB period. Does this limitation pertain to commuter claims?

Answer: No. The two-week limitation applies only to claims filed under the Interstate Benefit Payment Plan (IBPP). Commuter claims are made by

individuals who regularly traveled across a State line from home to work, and file for UC with the State of employment. Because commuter claims are not filed through the IBPP, the two-week limitation does not apply. See EB law, Section 202(c) and 20 CFR 615.9(c).

Terminating Disqualifications Using Work

CH 1-16. Question: My State law provides that individuals are not required to return to work to terminate certain disqualifications. Instead, they must only wait a certain number of weeks to qualify. To be eligible for EB, an individual must terminate a disqualification using employment. How, in practice, does this work?

Answer: The Department's regulations provide that, for EB purposes, a State "shall require that the individual be employed again subsequent to the date of the disqualification before it may be terminated." (20 CFR 615.8(c)(2).) Under this rule, when the individual first files for EB, the State will apply the EB provisions of its UC law which require employment to terminate a disqualification. If the State finds that the individual has performed the employment required by its law prior to filing for EB, the disqualification will be terminated and initial EB eligibility may be established. If the State finds that such employment has not been performed, the State will issue an appealable determination specifying the amount of employment required for EB eligibility.

Entitlement During High Unemployment Periods

CH 1-17. Question: My State has triggered "off" the 8 percent high unemployment period (HUP) provided for under the TUR trigger. It remains triggered "on" under the 6.5 percent TUR trigger. How does my State treat individuals with remaining HUP entitlement?

Answer: In general, when a State triggers "on" to a HUP, an individual's maximum entitlement to EB will equal up to 20 weeks of benefits, as opposed to up to 13 weeks of benefits for "basic" EB. These additional weeks of benefits are payable only for weeks of unemployment occurring in a HUP. As a result, when a State triggers "on" a HUP, the State will redetermine amounts payable for an otherwise eligible individual. However, when a State triggers "off" a HUP and the individual has not exhausted all entitlement, the State must redetermine the individual's remaining entitlement.

Specifically, when a HUP triggers "off," the State must redetermine

entitlement based upon the "basic" EB monetary determination, minus benefits paid. For example, if an individual first becomes EB-eligible during a HUP, the individual will initially be entitled to 20 weeks. If the individual is paid six weeks and the HUP ends, the individual's remaining entitlement will be recalculated based on the current 13-week maximum entitlement minus any weeks of EB paid. In this case, the individual's remaining entitlement would equal seven weeks. (13 – 6 = 7.)

As another example, assume the above individual was paid 15 weeks of EB and the HUP ends. In this case, the individual would have no remaining entitlement because the individual's current entitlement is capped at 13 weeks and an amount exceeding 13 weeks has already been paid.

Beginning and Ending Dates of EB Periods

CH 1-18. Question: When does my State's EB period begin and end if it triggers "on" and "off" under different triggers? For example, my State:

- Triggers "on" EB under the TUR trigger.
- While still meeting the TUR trigger, also meets the mandatory insured unemployment rate (IUR) "on" trigger.
- While still meeting the IUR trigger, stops meeting the TUR trigger.
- Finally, stops meeting the IUR trigger.

Answer: The State's EB period will begin with the first week payable under the TUR trigger and end with the last week payable under the IUR trigger. In this case, although there are different triggers for determining when an EB period may begin and end, there is only one EB period. As long as EB remains triggered "on" throughout this period under any trigger, the EB period continues. (See UIPL No. 45–92.)

The answer would be different if the "on" triggers do not overlap. For example, if the last week payable under the TUR trigger is week 14 of the calendar year and the first week payable under the IUR trigger is week 15, then the EB period would not be continuous. Instead, the TUR EB period would end. In this case, even though the State is continuing to experience high unemployment, the State must trigger "off" EB for a minimum of 13 weeks as required by EB law, Section 203(b)(1)(B), and 20 CFR 625.11(d).

CH 1-19. Question: An EB period based on the TUR trigger begins the third week following the Department's EB trigger notice identifying that the State meets the "on" indicator. For the IUR trigger, the EB period begins the week immediately following the release

of the trigger notice with an “on” notice. What is the reason for this difference?

Answer: Under Federal law, an EB period based on either the IUR or the TUR trigger begins the “third week after the first week for which there is a State ‘on’ indicator.” (EB law, Section 203(a)(1).) However, since the “on” indicators for the IUR and TUR triggers are based upon different events, the EB periods they trigger begin at different times following the trigger notices:

- Under the IUR trigger, the week of the “on” indicator is the last week of a 13-week period when the State’s IUR reaches the levels specified in law and regulation. (See Section 203(d)(1) of the EB law and 20 CFR 615.12(a).) Under Section 203(a)(1) of the EB law, the EB period begins the third week after this “on” indicator week. The week that the EB period begins is the week after the trigger notice is published because the process proceeds as follows:
 - Week 1 is the week when individuals submit benefit claims for the prior week. That prior week will be deemed the “on” indicator week if these benefit claims meet the IUR trigger requirements.
 - Week 2 is the week the State compiles the benefit claims submitted during Week 1, the State reports its IUR to the Department, and the Department issues the EB trigger notice based on the State report.
 - Week 3 is the beginning of the EB period.

- Under the TUR trigger, the week of the “on” indicator is the week “the average rate of total unemployment in [a] State (seasonally adjusted) for the period consisting of the most recent 3 months for which data for all States are published” meets certain criteria. (EB law, Section 203(f)(1)(A)(i).) Thus, the statute ties the TUR “on” indicator to the week of publication, and the EB period begins the third week following this indicator week. As a result, for example, when data for the month of February for all States was published on March 27, 2009, the EB period for States triggering “on” using this data began April 12, 2009.

Similarly, the end dates of EB periods in relation to the Department’s EB trigger notice depend on whether the State triggers “off” an EB period based on the TUR trigger or the IUR trigger.

Attachment II

Draft Legislation—Tur Trigger

Discussion

Below is suggested legislative language for States that choose to add a TUR EB trigger and make the first week

of EB payable the week beginning February 22, 2009. (This is the first week most EB payments qualify for 100 percent Federal sharing. The exceptions to 100 percent Federal sharing are discussed in Q&As 4 and 5 in Attachment I to UIPL No. 12–09.) This language is identical to the suggested provisions in UIPL No. 45–92, Attachment II, with two exceptions. First, the date provided in paragraph (a)(2)(C) for the start of the TUR trigger differs. Second, two unnecessary words were deleted. States that choose to adopt a later date should edit the dates as appropriate.

States that do *not* want to make the TUR EB trigger permanent have requested assistance in developing two termination options. The first end date would be the last week that 100 percent Federal sharing is available for most EB payments (*i.e.*, the last week beginning before January 1, 2010). The second would be the last week of the phase-out (*i.e.*, the last week ending before June 1, 2010). As discussed above, the phase-out allows 100 percent Federal sharing to continue for individuals who were paid EB for a week of unemployment ending before January 1, 2010. The bolded language in the draft legislation offers two dates, depending on when the State chooses to terminate the TUR trigger. (The earlier date relates to the first option; the later to the second option.)

An alternative approach is based on the possibility that Congress will extend the termination dates for Federal sharing. Under this option, the expiration date is tied to the date that Congress selects. If the State chooses this approach, then, as above, it has two options.

- Under the first option, EB would terminate the last week 100 percent Federal sharing is available for most EB payments. State law could provide that the EB trigger will remain in effect “until the week ending four weeks prior to the last week of unemployment for which 100 percent Federal sharing is available under Section 2005(a) of Public Law 111–5, without regard to the extension of Federal sharing for certain claims as provided under Section 2005(c) of such law.”

- Under the second option, EB would terminate the last week 100 percent Federal sharing is available under the phase-out. State law could provide that the trigger will remain in effect “until the week ending four weeks prior to the last week of unemployment for which 100 percent Federal sharing is available for any claim under Section 2005(c) of Public Law 111–5.”

The draft language also implements the HUP trigger of 8 percent TUR (with lookback). States implementing the optional 6.5 percent TUR trigger must also implement the HUP trigger, which has the effect of increasing EB eligibility from 13 to 20 weeks. (See UIPL No. 45–92, Attachment 1, section I.B.2.)

States should consider whether it is necessary to enact amendments expanding EB eligibility provisions to cover certain individuals who have exhausted EUC08, as authorized under Public Law 111–5. (See UIPL No. 12–09, Q&As 6 and 7.) States choosing to enact such amendments may add language indicating that, notwithstanding anything in State law, an individual’s eligibility period shall include any eligibility period provided for in section 2005(b) of Public Law 111–5.

Draft Language

The draft language for legislation is available at: http://wdr.doleta.gov/directives/attach/UIPL/UIPL12-09_ch1_a2acc.pdf.

Dated: This tenth day of August, 2009.

Jane Oates,

Assistant Secretary of Labor, Employment and Training Administration.

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DEPARTMENT OF LABOR

Employment and Training Administration

Notification of the Recovery and Reemployment Research Conference

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice of the Recovery and Reemployment Research Conference.

SUMMARY: The Employment and Training Administration will host a Recovery and Reemployment Research Conference on September 15 and 16, 2009 at the L’Enfant Plaza Hotel in Washington, DC.

Purpose and Agenda: The conference is designed to give the workforce community an opportunity to engage with experts and colleagues to broaden their understanding of critical labor issues and challenges in the present economy. This conference translates specific research, pilot, demonstration, and evaluation efforts into actionable strategies that can be used in the workforce system. The conference, from a research perspective, builds on the success of the *ReEmployment Works!* Summit and subsequent Regional Recovery and Reemployment Forums.