

Emergency Unemployment Compensation Act of 1991

Questions & Answers for Clarification of P.L. 102-164, as amended :

Reachback

1. Q. When a State moves from one "applicable limit" to a higher "applicable limit", does the reachback provision still apply to an individual who has exhausted the maximum benefit amount (duration) payable by the State under the prior EUC trigger?

A. Yes. Such an individual must be notified of potential additional EUC eligibility. The individual's EUC account is established as an amount equal to the "applicable limit" times the Average Weekly Benefit Amount (AWBA) minus previously paid, or deemed paid, Extended Benefits (EB) and EUC with respect to the same benefit year.

Exhaustees for Purposes of EUC

1. Q. Must the State provide written notice to an exhaustee of potential eligibility for EUC if the State can determine from its records that the individual's EUC entitlement will be reduced to zero by the amount of previously paid EB?

A. Yes. The State may not deny a potentially eligible claimant benefits without a determination that accords with the Secretary's Standard for Claims Determination, Sections 6010-6019, Part V, Employment Security Manual. However, no determination may be issued in the absence of a claim.

2. Q. During an EB period, regular benefits in excess of 26 times the weekly benefit amount (WBA) are shareable compensation with the Federal government. Are such regular payments shareable compensation under the EUC Act?

A. No. "Shareable regular compensation" is a term used in Section 204(a)(1) of the Extended Unemployment Compensation Act of 1970 to refer to regular benefits in excess of 26 times the WBA paid during an EB period. This particular EB provision, with respect to shareable cost of regular benefits, does not apply to EUC. EUC benefits are totally Federally financed and the maximum amount payable is not reduced by regular benefits in excess of 26 times the individual's WBA.

3. Q. Are States authorized to suspend the payment of regular shareable compensation and pay EUC?

A. No. P.L. 102-164 authorizes States to trigger "off" EB in order to provide payment of EUC to exhaustees. It does not, however, authorize the shortening of regular benefit duration, including shareable regular benefits, to allow an individual to become an exhaustee for purposes of EUC.

4. Q. Does the definition of exhaustee for EUC purposes include an individual who has established a benefit year beginning prior to February 28, 1991, but has been denied benefits solely because of a failure to satisfy the requalification provisions?

A. Yes. However, the "applicable benefit year" for EUC purposes is the expired benefit year (See 20 CFR 615.5(a)(1)(iii)). Therefore, in the case described, the individual would not be eligible for EUC because the "applicable benefit year" ended prior to the beginning of the EUC period.

5. Q. When an individual's rights to regular UI have been partially or totally reduced, is the individual eligible for EUC? If yes, is the individual's EUC entitlement calculation based on the original or reduced monetary determination?

A. Yes, if the claimant meets all other eligibility requirements. If benefits were totally reduced, the individual's maximum benefit amount is calculated on the basis of the original entitlement determination before reduction (Refer to 20 CFR 615.5(a)(1)(i) and (b)(3)). If benefit" were partially reduced, the individual's maximum benefit amount is calculated on the basis of reduced benefit determination in accordance with the requirements of 20 CFR 615.7.

Jobs Prospect Classification

1. Q. During the early weeks of implementing the EUC program, in order to comply with the requirements for job prospects classification by the end of the week the initial claim is filed, may a State unilaterally issue job prospects classifications of "not good" to all EUC claimants on the presumption that individuals out of work long enough to be "exhaustees" have poor prospects for returning to work in their usual occupation within a reasonably short period of time?

A. Yes. However, such classification must be subject to review and reclassification based on an individual's assertion that the classification is incorrect.

2. Q. What action is the SESA required to take when a claimant whose prospects for work were deemed "good" is still out of work 4 weeks later?

A. Assuming that 4 weeks is the "reasonably short period" described by the State's EB law, the SESA must review the job prospects classification and determine the appropriate classification based on current circumstances. The SESA may automatically reclassify the individual's job prospects as "not good.. However, if the classification is changed to "not good", the SESA must notify the claimant of the effect of the change and ensure that the job service records reflect the appropriate broader occupational coding so that the appropriate referral criteria are used.

3. Q. Must the claimant's job prospects classification of "good" or "not good" be issued to claimant in writing?

A. Yes. Refer to 20 CFR 615.8(d)(1).

4. Q. Must the notice of the claimant's job prospects classification include appeal rights?

A. No. However, when a determination is issued that involves the claimant's classification, i.e., refusal of suitable work, the written appealable determination must include the claimant's job prospects at the time the issue arose, and information stating how the classification affected the determination. (See 20 CFR 615.8(d)(3).)

5. Q. To meet program requirements, assessment of capabilities must be done before the 5th week of the EUC claim. May the agency mail an assessment questionnaire covering the same questions asked in a personal interview? If this is not acceptable, can UI staff do the assessment instead of Job Service (JS) staff?

A. A job prospects classification is required for each EUC (EB) claimant within the first week the claim is filed. A claimant whose job prospects are classified as "good" and who remains unemployed at the end of the "reasonably short period., as defined in State law, must be automatically reclassified as "not good" or interviewed to determine appropriate classification on the basis of the claimant's current situation. The classification review or reclassification may be handled by mail. However, if the classification is changed to "not good", the SESA must notify the claimant of the effect of the change and ensure that the JS records reflect the appropriate broader occupational coding so that the appropriate referral criteria are used. The job prospects classification is a UI function that may be carried out by UI or JS staff. (Refer to 20 CFR 615.8(d)).

Work Search Requirements/Eligibility Review

1. Q. Does the EB work test apply to EUC partial claims?

A. Yes. With respect to tangible evidence of a sustained and systematic work search, the instructions issued in UIPL 6-92 apply to EUC claims for "partial unemployment". "Partial unemployment", as used in UIPL 6-92, is defined in the Employment Security Manual, Part V, Section 5001.

2. Q. If an EUC (EB) claimant is working steadily at a regular part-time job, would a claim filed by such an individual be a "partial" claim under the interpretation provided in UIPL 6-92?

A. No. In order for this situation to constitute "partial unemployment", the part-time employment must result from a reduction in the individual's customary full-time hours due to lack of work. Refer to Section 5001, Part V, Employment Security Manual for the definition of "partial" vs "part-total" unemployment.

3. Q. Some UI agencies allow an individual to self-certify to an active search for work. Under the EUC (EB) requirements, is it allowable for an individual to certify to the existence of "tangible evidence" of a "systematic and sustained~ work search?

A. No. Regulations published at 20 CFR 615.8(g)(1) require the claimant to furnish "tangible evidence" of a systematic and sustained work search with each week claimed.

4. Q. Some EUC claimants receive supplemental unemployment benefits (SUB) under a union contract which, when combined with EUC benefits, represent a replacement rate of 95 percent of take-home pay. When an agency determines that such claimant's job prospects are "not good", must the wages for a job offered to such individual equal or exceed the 95 percent rate in order to be considered "suitable work"?

A. Yes. This is one of the special definitions of suitable work for extended benefit (EUC) claims provided at 20 CFR 615.8(f)(2).

5. Q. Paragraph 5, Item 4 of GAL 4-92 states in part all claimants, whose job prospects are determined to be "not good", must be provided at least one re-interview for job placement assistance early in the EUC eligibility period. n What is the "re-interview" requirement and must the re-interview be conducted in-person?

A. The term "re-interview" assumes that during the regular UI claim most individuals had at least one interview with JS. For job matching and referral purposes, the SESA is required to occupationally classify EUC (EB) claimants, whose job prospects are classified as "not good", in a manner to ensure the broadest possible exposure to jobs within the claimant's capabilities. An in-person re-interview for occupational reclassification purposes is recommended.

6. Q. If two occupational codes are maintained on the individual's JS record, is a re-interview required?

A. Yes. Two occupational codes may not represent the broadest classification possible for the claimant. See response to #5 above.

7. Q. Can a State allow claimants to submit tangible evidence of a "sustained and systematic" work search by mail?

A. Yes. However, the tangible evidence must be submitted with each week claimed.

8. Q. If a claimant serves on jury duty for a week after June 13, 1992, and is disqualified for unavailability, does the claimant's EUC eligibility period cease because of the break in meeting the eligibility requirements?

A. Yes. A claimant's eligibility period extends past June 13, 1992, for consecutive weeks of eligibility until the individual's EUC account is exhausted or there is a break in consecutive weeks due to the claimant's failure to meet the eligibility requirements. Under State law, the applicable eligibility requirement. for a week of jury duty during an EUC (EB) period may be the same as for regular benefits. Notwithstanding the lesser requirements, in the described, the claimant was denied benefits for failure to meet the eligibility requirements, thereby, breaking the consecutive weeks of eligibility. (Refer to 20 CFR 615.8(g)(3)(i)).

9. Q. When State law provides for partial reduction benefits due to partial unavailability during a week and the EUC claimant is determined to have satisfied the systematic and sustained work search requirement for such week, can the State deny benefits for a particular day(s) of unavailability under regular State law without the imposition of the 4x4 requalifying penalty?

A. Yes. A claimant who is determined to have met the systematic and sustained work search requirement is not subject to the 4x4 requalification requirements. However, the claimant may be subject to disqualification under the State law for one or more days or for an entire week for failure to meet other eligibility requirements. (See UIPL 22-81, dated May 12, 1981, Actively Seeking Work, Question No. 3.)

10. Q. Do the EUC (EB) work search requirements apply to weeks of unemployment during an individual's eligibility period prior to the claimant being notified of them?

A. No. The EUC (EB) work search requirements are effective the week following the week in which the individual has been informed of the requirements. (Refer to 20 CFR 615.8(g) (1)).

11. Q. If a claimant is denied EUC for failure to satisfy the State's regular work search requirements for a week of EUC prior to job prospects classification and notification of EUC systematic and sustained work search requirements, is the determination a reportable EUC or regular nonmonetary determination?

A. The claim is filed under the EUC program. Therefore, the determination is a reportable EUC nonmonetary determination.

12. Q. How often do eligibility review interviews (ERPs) have to be conducted for EUC claimants

A. Scheduling procedures for regular claims should be followed. However, claimants with "good" job prospects classifications filing under the interstate (IB) program should be immediately scheduled by the liable State for an ERP when a certification is received for the week ending "a reasonably short period" The agent State must review the classification and take appropriate actions.

13. Q. Does Federal law allow exceptions to the requirement for the 4x4 disqualification for failure to meet the EUC (EB) work search requirements?

A. Yes. 20 CFR 615.8(g)(3) requires the determination of EB eligibility under the applicable provision of State law with respect to regular benefits for periods of jury duty, hospitalization for treatment of an emergency or life-threatening condition without regard to the EB work search requirements. Additionally, State law applicable to type(s) of work union members applying for EB must seek and accept applies to whether union members applying for EUC must and accept nonunion work in their customary occupation. (Refer to 20 CFR 615.8(g)(3) and (4)).

14. Q. Does an individual have to seek work on more than one day each week to meet the sustained and systematic work search requirement?

A. Yes. The EB actively seeking work provisions do not specify that a work search must be conducted on each day. However, they do describe actively seeking work as a sustained and systematic effort. A sustained effort is an effort maintained throughout the week. A systematic search is conducted in a methodical and regular manner with thoroughness and with a plan. A systematic search is conducted with consideration of labor market conditions and local hiring practices which may include methods that do not require in-person contact. What constitutes actively seeking work is a question which must be resolved on a case by case basis. However, there must be guidelines which are applicable even handedly to all similarly situated claimants.

Deductible Compensation

1. Q. When a claimant has received EUC prior to an EB period, must EB entitlement be reduced by the amount of EUC paid?

A. No. The EUC Act nor the EB regulations authorize the deduction of previously paid Federally funded extended compensation from EB entitlement.

EUC Benefit Intercept

1. Q. Are EUC payments subject to child support intercept, similar levies and attachments?

A. Yes. However, the limitations which apply to the intercept of E8 apply to EUC benefits.

2. Q. What is the order of priority for EUC pension deductions, overpayment offset and child support intercept?

A. First - pension deduction; Second - overpayment offset; and third - child support intercept.

3. Q. Can the SESA intercept and apply EUC benefits to an established UI tax delinquency?

A. No. Refer to UIPL 25-89 and 45-89.

Approved Training

1. Q. Are claimants who are attending college full-time and not available for work eligible for EUC?

A. Whether or not such an individual is eligible for EUC must be determined under the State's law concerning claimants attending training. If the claimant's school attendance meets the State's requirements for "approved training", EUC is payable so long as other eligibility requirements are met.

2. Q. Are EUC claimants in approved training subject to the EUC/EB work test?

A. No. As a condition of State law approval, Section 3304(a)(8), FUTA, requires that State law provide for the payment of benefits to claimants in approved training. EUC claimants attending State approved training are treated in the same manner as regular and EB claimants. (Refer to 20 CFR 615.2(o)(8)).

Interstate and Combined Wage Claims

1. Q. On the Initial Interstate Claim, Form IB-1, there are six choices for "claim type": UI, UCFE, UCX, EB, CWC, and Other. Will the IB-1 be revised so that the "Other" field - will accept a numeric value for type of program?

A. The Form IB-1 is currently being revised by the IB Committee. Consideration will be given to implementing a numeric value for "other" claim type to promote automatic processing of TC-IB1.

2. Q. Since each participating State's pro rata share of wages used in the determination of regular entitlement on a combined wage claim remains the same for EUC, must the EUC Report on Determination of Combined Wage Claim, Form IB-5 (TC-IB5) provide the basis of the potential liability calculation?

A. Yes. The Form IB-5 (TC-IB5) must provide the total basis of the EUC determination and the State's potential liability.

EUC Monetary Entitlement "Applicable Benefit Year"

1. Q. Section 102(b)(1)(B) of P.L. 102-164 states that the applicable limit (applicable benefit duration) is multiplied times the claimant's average weekly benefit amount (AWBA) for the benefit year to determine the amount established in the individual's EUC account. For EB computation, the AWBA is defined at 20 CFR 615.6(a). Does the EB definition of AWBA apply with respect to Section 102(b)(1)(B), EUC Act?

A. Yes.

2. Q. Is monetary entitlement for EUC computed as 13 or 20 times WBA (AWBA), or is it determined in the same manner as EB?

A. EUC-entitlement is computed as the lesser of 100 percent of the regular entitlement or the maximum EUC payable by the State (13 or 20 weeks times the average WBA on the regular claim).

3. Q. Does the claimant who has exhausted two benefit years, each in a different State, have a choice against which State the EUC claim is filed?

A. No. The "applicable benefit year" is the most recent benefit year or the benefit year with the most recent

activity if both benefit year ending dates are the same. Refer to the definition of "applicable benefit year" at 20 CFR 615.2(c)(2).

4. Q. During the reachback period, the amount payable in the State for a week of unemployment increased. The EUC claimant had an exhausted claim with an existing benefit year at the time of the increase. Is EUC restricted to the WBA of the regular entitlement times the applicable limit or can the State redetermine the WBA based on the increase in amount payable?

A. The EUC WBA is restricted to the amount payable to the individual for regular benefits (See 20 CFR 615.7(b). Additionally, Section 102(b)(1) P.L. 102-164 limits the amount established in an EUC account (maximum benefit amount) to the lesser of 100 percent of regular benefits (including dependent's allowance), or the applicable limit times the AWBA.

5. Q. What constitutes wages with respect to the 20 weeks of qualifying requirements for EUC purposes? In applying a wage equivalency test for the base period "20 weeks of work" qualifying requirement, can earnings (i.e., bonuses, severance pay, disability benefit. or student wages) that were not considered wages for monetary entitlement purposes on the regular claim be considered base period wages for EUC purposes?

A. No. In order for earnings to be considered in determining whether or not an individual's base period wages satisfied the qualifying requirements for EUC, the employment and wages must be considered as employment and wage~ for regular benefit entitlement.

6. Q. When the monetary entitlement for the "applicable benefit year" was based on employment and wages during an alternate base period that spans a period in excess of the regular 1-year base period, can all employment and wages in the alternate base period be used in determining whether or not the claimant's base period employment satisfies the monetary qualifying requirements of Section 202(a)(5) of

A. Yes. 20 CFR 615.2(b) defines "base period" for EB purposes as "... the base period as determined under the applicable State law for the individual's applicable benefit year."

7. Q. If out-of-State wages were not used in determining entitlement on the regular claim, can these wages be considered in determining if the claimant's base period employment meets the 20 weeks of work or equivalent requirement?

A. Yes, if wages are covered under a State or Federal UI law.

8. Q. When a State cancels a claim (wages) or reduces entitlement to zero, and/or prohibits the future use of wages under its fraud provisions, is EUC payable?

A. Yes. When there is a qualifying "parent claim" on file, such a claimant is considered an exhaustee for EUC purposes. However, the individual would have to have satisfied any requalifying requirement imposed. (Refer to 20 CFR 615.5(b)(3)).

Eligibility

1. Q. Which claimants have potential eligibility under the EUC provisions?

A. Claimants with an existing benefit year on or after February 28, 1991 and who otherwise meet the definition of

an exhaustee under this Act. (Refer to 20 CFR 615.5 for the definition of an "exhaustee".)

2. Q. When the applicable EUC limit payable in a State increases, Section 102(b)(2)(C), EUC, provides for the increased limit to be reduced by the number of prior weeks for which EUC was paid from the individual's EUC account. on the other hand, Section 102(b)(3), EUC, requires that EUC be reduced for prior receipt of EB by the aggregate amount of EB received. Since in the case of EB and EUC an account is established in an amount "the lesser of" 100 percent of the regular entitlement, 13 X WBA or 20 X WBA, would a reduction of the applicable limit by the EUC amount previously paid satisfy the EUC reduction requirements?

A. Yes. The individual's EUC account shall be reduced by the amount of EB and/or EUC previously paid or deemed paid with respect to the same benefit year. The intent of both provision" is that the individual's maximum EUC entitlement shall be reduced by the amount of previously wholly or partially Federally funded extended compensation paid or deemed paid with respect to such benefit year.

3. Q. If a pension becomes payable during the EUC claim, is it deducted from the EUC payment even though the pension was not payable or deductible on the UI claim?

A. Yes. Except where inconsistent with the EUC Act, the terms and conditions of State laws with respect to claims for and the payment of extended benefit" apply to the payment of EUC. Therefore, consistent with 20 CFR 615.8, the application of provisions of State law related to the deductibility of pensions from benefits payable should be applied to the payment of EUC.

4. Q. Does a "4x4" disqualification imposed on an EB claim carry over to an EUC claim?

A. Yes. Section 101(d)(2) of the EUC Act applies the "terms and conditions" of State law a. applies to EB to the payment of EUC.

5. Q. If a State law has a requalification provision that is more stringent than the EB requirement, for example, a "5x5" disqualification for refusal of suitable work, which disqualification applies for purposes of EUC?

A. The EB law requires a disqualification under specified circumstances of "at least four weeks with wages from such employment totalling not less than four times the individual's weekly benefit amount" (See 20 CFR 615.8(f)(i) and (ii) and 20 CFR 615.8(g)(2)). The State law provision which implement. this requirement for EB purposes applies to the payment of EUC.

6. Q. Can a State's able and available provision applicable to the payment of regular benefits be applied to a week during which the EB work test applies?

A. Yes. However, the result of the application of such provisions must not be inconsistent with the EB provisions. Refer to 20 CFR 615.8(a).

7. Q. If an individual whose benefit year ended during the reachback period has been determined monetarily eligible on a subsequent benefit year and a denial has been imposed because of a disqualifying separation, is the individual eligible for EUC based on the prior claim?

A. No. The "applicable benefit year" for purposes of EUC is the subsequent benefit year.

8. Q. Is EUC payable to an individual who has been denied regular UI under a seasonality provision?

A. Yes. Such an individual is considered an exhaustee for EUC (EB) purposes. (Refer to 20 CFR 615.2(b)(2)(ii)).

9. Q. Do the Federal labor standards in Section 3304(a)(5) of the Internal Revenue Code of 1986 apply in determining suitable work for EUC claimants?

A. Yes. Suitable work for all claimants must meet the requirements of the Fair Labor Standards. (Refer to 20 CFR 615.8(e)).

10. Q. What EB provisions apply to EUC?

A. All terms and conditions of State law which apply to claims for EB apply to claims for EUC except where inconsistent with the provisions of the EUC Act, the EB regulations, or interpretations and instructions of the Secretary, as appropriate.

11. Q. FSC could not be paid for any week for which any regular UT was paid. Is it the same for EUC?

A. Yes. An individual who receives regular benefits for a week is not an "exhaustee" for EUC (EB) purposes. An individual must be an exhaustee prior to the effective date of an EUC (EB) claim. Refer to 20 CFR 615.5(a)(1)(i).

12. Q. Must separations from and refusals of employment that occurred subsequent to the claimant's exhaustion of regular or EB and prior to the effective date of the EUC program, be adjudicated under the EUC requirements?

A. If the State's regular UI law requires adjudication of such issues which occur between the exhaustion of regular benefits and the start of a new benefit year or extended benefit eligibility period, EUC adjudication/requalification is also required.

13. Q. Can the SESA require that the claimant obtain and provide an employer-signed work search validation for each contact considered in determining if the claimant has conducted a "systematic and sustained" work search?

A. No. An employer signed validation of a contact must not be required in order for a work search effort to be considered valid. A claimant, however, is required to provide the SESA with tangible evidence of such work search. A "systematic and sustained" work search may involve the use of a variety of methods to obtain employment that cannot be validated in that manner, i.e., submission of a resume, a written application, a general inquiry to a box number, etc.

Eligibility Period

1. Q. The EUC statute allows a Governor to terminate the agreement with the Secretary for the administration of the EUC program. If a State terminates the agreement, are EUC claims payable for any periods after the effective date of the termination?

A. EUC is payable in a State for weeks beginning after the week during which there is an agreement between the Secretary and the Governor, and, weeks beginning before 30 days after the date of the Governor's notice to terminate the agreement. (Refer to GAL 4-92, Attachment A, Section III B.)

2. Q. When a claimant is determined entitled to 13 or 20 weeks of benefits on an EUC claim filed effective within 13 or 20 weeks, as appropriate, of June 13, 1992, does the claimant's eligibility period cease when the program ends on June 13, 1992?

A. No. The claimant may continue to receive benefits after the June 13, 1992, termination date if he or she has a

remaining balance and continues to meet the eligibility requirements for consecutive weeks including the week which included the program termination date. (Refer to Section 102(f)(2), EUC Act.)

3. Q. For a higher applicable limit to apply to an individual claimant, must the claimant be in active claims status on the effective date of the higher applicable limit?

A. No. When a State triggers to a higher "applicable limit", potentially eligible claimants must be notified of the additional potential entitlement and instructed as to steps required to reopen their claims. At the time of a reopened claim, the SESA must ensure that the claimant is currently an "exhaustee" for EUC purposes (has no entitlement under any State or Federal law), review the claimant's job prospects classification and reclassify if appropriate, and ensure current appropriate active registration with the Job Service.

Unemployment Compensation for Ex-Servicemen (UCX)

1. Q. If the monetary determination for a UCX claim cannot be redetermined under State law to apply the provisions of section 301 of P.L. 102-164 for weeks of unemployment beginning on and after November 15, 1991, must the determination of EUC entitlement be based on the 13-week limited duration applicable under the old UCX law?

A. As stated in GAL 3-92, the authority to redetermine UCX claims to implement the amendments made by section 301 of P.L. 102-164 is derived solely from Federal law. Therefore, provisions of State law that limit such redetermination authority shall not be used in this regard. All SESAs shall apply the requirements contained in GAL 3-92, and SESAs shall utilize provisions of applicable State law on procedural matters that are not inconsistent with Federal law. (Refer to Sections 3., 4.a., 4.b., and 5. of GAL 392.) Accordingly, the SESAs shall apply the provisions of section 301 of P.L. 102-164 to all unexpired UCX claims for weeks of unemployment beginning on and after November 15, 1991.

2. Q. Must States identify and notify Reservists and National Guard members who were issued ineligible monetary determinations because the use of Military Service in establishing entitlement was denied solely because they had less than 180 continuous days of active duty in a reserve status?

A. Yes. States should take appropriate actions to identify and inform individuals who filed or attempted to file initial claims on or after November 15, 1990 of the change in Federal law. Such actions should include a search of the agency's files, newspaper announcements and other appropriate media announcements.

The amendment in section 301(b) only relates to the "Federal service" requirement in 5 U.S.C. 8521(a)(1) so that the period of active duty in a reserve status for at least 90 continuous days can be included as employment and wages for UCX qualifying purposes. No other UCX qualifying requirements are changed by section 301 of P.L. 102-164.

3. Q. Must States identify eligible claims where the determination disregarded the previously non-qualifying UCX wages and redetermine those claims to increase the claimants' WBA or MBA?

A. Yes. However, the increase in the claimant's WBA is only applicable to weeks of unemployment beginning on and after November 15, 1991.

4. Q. A claimant has exhausted a UCX claim in one State and subsequently established a UI claim in another State and is in active claim status. A redetermination of the UCX claim results in an available balance on that claim. The claimant wants the higher benefit WBA of the UCX claim. Which claim takes precedence?

A. If the claimant has an unexpired benefit year on the UCX claim after November 15, 1991, the claimant should be informed of the potential UCX entitlement as the result of the provisions of section 301 of P.L. 102-164 and the requirements of GAL No. 3-92. After a full explanation of the options, the claimant should be given the opportunity to choose the claim under which he/she wishes to claim weeks of unemployment beginning on and after November 15, 1991. It must be explained to the claimant (prior to the claimant's decision) that once the choice of claim is made, benefits may only be claimed on that claim until benefits are no longer available. (Refer to ET Handbook No. 392, Section I, Item 3.) When benefits are no longer available, the claimant may reopen the other claim if benefits are still available.

5. Q. Do National Guard members who have been placed on active duty, qualify as ex-servicemembers under the definition of 5 U.S.C. 8521 for the purposes of applying the amendments of the EUC Act of 1991?

A. Yes. Such individuals who are placed on active duty perform "Federal service" within the meaning of 5 U.S.C. 8521(a)(1) if such period of active duty was for at least 90 continuous days. (For application of the UCX amendment in section 301(b) of P.L. 102-164, refer to Section 4.b. of GAL 3-92.) The key point in this regard is whether the Guard member is placed on active duty (Federalized). If so, the provisions of 5 U.S.C. 8521(a)(1) apply and what fund source (Title 10, 32, etc.) is used to pay wages to the Guard member is immaterial. The Department has been informed by the Department of Defense that all ex-servicemembers on active duty for Operations Desert Shield and Desert Storm will be issued a DD Form 214.

National Guard technicians covered under the National Guard Technicians Act of 1968 are covered for unemployment compensation purposes under the UCFE program except for periods in which such technicians were on active duty in the armed forces. For periods in which such technicians were on active duty, it must be determined that such technicians were on active duty for at least 90 continuous days for any of such active duty to be considered "Federal service" for UCX or joint UCX/UCFE purposes.

Trade Readjustment Allowances (TRA)

1. Q. When a TRA claimant monetarily exhausts basic TRA entitlement during the EUC eligibility period, what action should the SESA take?

A. The State should issue the claimant an exhaustion notice concerning his/her entitlement to basic TRA. If the claimant is participating in Trade Adjustment Assistance (TAA) program approved training at the point of basic TRA monetary exhaustion, the notice should inform the claimant of the fixed 26-week period during which weeks of additional TRA can be paid. The notice should also inform the claimant that no weeks of TRA can be paid until the claimant exhausts entitlement to UT (including EUC). In the example, the claimant should be informed by the SESA at the time the claimant became entitled to EUC that he/she must exhaust such EUC entitlement before any further TRA can be paid, and, furthermore, the SESA should inform the claimant as to what effect the entitlement to EUC would have on the claimant's receipt of basic and/or additional TRA.

2. Q. At the start up of the EUC program, claimants on TRA will continue to be paid for several weeks before the State is able to process EUC claims for these individuals. How should adjustments in accounts be made? Can interfund adjustments be made, or must the State set up TRA overpayments?

A. If the weekly amount of the TRA paid for the week(s) is identical to the weekly amount of EUC payable for the same week(s), a bookkeeping adjustment between the FUBA (TRA) and EUCA (EUC) accounts can be done. However, if the weekly amounts of TRA paid and EUC payable are different for the same week(s), a TRA overpayment or an EUC underpayment must be established for the week(s) involved. In the case of a TRA overpayment, the SESA shall establish and recover the overpayment in accord with the requirements of section 243 of the Trade Act of 1974, as amended, and 20 CFR 617.55. In the case of an EUC underpayment, the SESA

shall follow its procedures to resolve the matter.

3. Q. An individual on TRA and in TAA approved training is converted to an EUC claim. Does the "break in training" provision under the Trade Act, which would require denial of benefits if the break exceeds 14 days, apply to this individual for a week that EUC is payable? What conditions apply to the payment of EUC in this case?

A. No, because the break in training provision in section 233(f) of the Trade Act of 1974, as amended, only relates to TRA payments. When the claimant is entitled to EUC and is participating in approved training as defined under State law (including training approved under section 236(a) of the Trade Act of 1974, as amended), the provisions of State law concerning claimants participating in State approved training apply.

4. Q. An individual receiving TRA is on a waiver of the training requirement because approved training begins beyond 30 days. Does the EB work test apply if the person is converted to an EUC claim?

A. Yes. The claimant is now an EUC claimant and is subject to the EB (EUC) work test until such time as the claimant is in TAA approved training. (Refer to Section III C. 8. g. of GAL 4-92 and Section C in Attachment A to GAL 15-90.)

5. Q. A TRA claimant has exhausted his/her eligibility period for TRA (basic and additional weeks). The claimant received 65 weekly TRA payments, and the original UI benefit year expired prior to March 1, 1991. The SESA has a procedure that is applicable to TRA claimants by which the claimant's UI benefit year is extended to enable TRA payments to be issued after the expiration of the claimant's UI benefit year (the SESA's computer system blocks the issuance of any unemployment payment outside the claimant's benefit year). The claimant has now applied for EUC. Would the claimant be eligible for EUC based on the benefit year extensions made during the time the claimant received TRA since these benefit year extensions went beyond March 1, 1991?

A. No. The claimant is not subject to the "reachback" provisions since the most recent UI benefit year expired before March 1, 1991. The fact that the SESA for administrative ease manipulates the claimant's UI benefit year in order to issue TRA payments does not constitute extending the claimant's benefit year for satisfying the EUC qualifying requirements.

Overpayment Recovery

1. Q. Can a State offset prior State UI overpayments with EUC benefits?

A. Yes. However, the State must have entered into an Agreement with the Secretary to perform cross-program offset as required by Section 303(g) of the Social Security Act. See UIPL 23-87 for additional information. Additionally, offset of EUC benefits must not exceed 50 percent of the amount payable for the week.

2. Q. If a claimant has outstanding State and Federal benefit overpayments, to which overpayment must the EUC offset be applied first?

A. The offset should be applied to the Federal program overpayment first. (Refer to GAL 4-92, Section M.2.b.9.)?

3. Q. When a State issues an EUC overpayment determination or when an appeals decision creates an EUC overpayment, is the State required to advise the claimant of the possibility of waiver of overpayment collection?

A. Yes. Any overpayment determination or decision issued by the SESA which establishes an overpayment of EUC benefits must include a statement about the claimant's right to request a repayment waiver.

4. Q. For the purpose of waiving the overpayment of EUC, the resources of which of the claimant's family members must be taken into consideration?

A. Consideration is limited to those cash resources to which the claimant and/or the claimant's spouse have an ownership right. Additionally, only the potential income of the claimant and the claimant's spouse is considered when estimating the potential family income.

5. Q. When State UI benefits are being offset to recover an EUC overpayment, does the provision of P.L. 102-164 which limits the offset of EUC benefits also limit the offset of UI benefits to 50% of the UI payment?

A. No. Section 105(c)(1) limits the amount that can be offset to repay an EUC overpayment from benefits payable under any Federal program to 50 percent of the weekly benefit payment from which the deduction is made.

EUC Trigger Calculation

1. Q. How much time will elapse between when a State is aware it will change trigger tiers and when the new tier is effective?

A. Trigger levels based on the Adjusted Insured Unemployment Rate (AIUR) change weekly and trigger levels based on the Mean Total Unemployment Rate (MTUR), for any individual State, change monthly. The effective date for a change to a higher tier is the beginning of the third week after the first week for which the requirements are met.

The effective date for a change to a lower tier is the beginning of the third week after the first week for which the requirements of the higher tier are no longer met.

Assuming the AIUR is published every Friday, the trigger levels contained in that publication will be for 13 weeks of unemployment for which claims are filed ending almost three weeks before. For example, the EUC trigger notice that was published January 3, 1992, reflects unemployment that occurred for the 13 weeks ending December 21, 1991, the 13th week being filed for during the week ending December 28, 1991. The beginning of the third week after December 21, 1991 is January 5. While the publication date of the trigger notice does not allow for much lead time, the State has the basic data used in the formula more than a week before the notice is published and should be able to accurately calculate the State's rate. However, the data is not official until published.

The Total Unemployment Rate (TUR), on which the MTUR is based, is published for "direct use" States, generally, the first Friday of the month following the month of reference. For "non-direct use" States, the publication date is generally the second Tuesday of the second month after the month of reference. The MTUR computed from the most recently published data will be in the first EUC trigger notice published on or after the TUR publication date and will be effective the beginning of the third week after the TUR publication. For example, the non-direct use States TUR for October 1991, was published December 17, 1991, and was used in the MTUR published December 20, 1991. Any tier change caused by the new MTUR was effective with the week beginning January 5, 1992.

2. Q. If the State errs in its count, can the SESA correct its figures and retroactively trigger "on" or "off" an EUC tier or should it just correct the count in the next week's figures?

A. The reported count, which trigger EUC are also used to trigger Extended Benefit. (EB), for economic forecasting, and to track workload. It is very important that weekly counts be accurate and reflect the activity for that week. If a State finds there were under- or over-counts, the data for the appropriate week should be corrected for future use. Do not simply make adjustments in the next report. Generally, the rules which govern corrections under the EB trigger also apply to EUC. The appropriate section of EB regulations which also apply to the EUC trigger is 20 CFR 615.12(d). As with EB, corrections to trigger data for purposes of a specific week's trigger may be made, and thus change the trigger status, within three weeks. Corrections may be made after the three-week period but these corrections cannot be used to alter the trigger status of the State. As States have the basic information before the National Office, if a trigger change is anticipated, the State should thoroughly review its data to be sure it is accurate.

Administrative Costs

1. Q. How will States be reimbursed for EUC start-up costs? What about Job Service (JS) related costs?

A. States will receive contingency funds equal to the staff years earned as a result of reimbursing EUC initial claims at their regular Minutes Per Unit (MPU) instead of the lower standard MPU of 25 minutes which was used for the ESC program. The national average initial claim MPU is 43 minutes, with a range of 29 to 67. As stated in GAL 4-92, these contingency funds are intended to cover both operating costs and any start-up costs the States experience.

JS staff who conduct EUC eligibility interviews may charge that time to the UI program. They may not, however, charge to UI time spent conducting interviews for job placement assistance during the eligibility period. That is a JS function and is not chargeable to UI.

2. Q. Should administrative costs be summarized as a separate program under UI administration or in a ledger by itself?

A. States should account for UI administrative costs for EUC under the regular UI ledger code - 92102.

3. Q. Will the standard UI function codes be used for EUC administration or will there be special requirements for different function codes?

A. States should use the standard UI function codes for EUC.

4. Q. Will there be provisions for reimbursement of special Non Personal Services (NPS) needs, i.e. printing, mailing, equipment (terminals, letter openers, etc.), additional security staff? The normal contingency funding process only funds NPS as part of a 19 percent add-on, which also includes Administrative Services and Technical Support (AS&T).

A. These cost" are covered by the additional funding provided by utilizing a higher MPU for EUC initial claims than the standard MPU of 25 minutes which was used in the FSC program.

Reporting Requirements

1. Q. The State's laws pertaining to disqualifying separations and job refusals provide a "postponement of benefits" disqualification with respect to regular benefits and a work requalification requirement with respect to EB. Is there a reportable EUC (EB) non-monetary determination when, upon the filing of an EUC (EB) claim, the State issues a disqualifying determination, which includes the initial notification to the claimant of the work requalification requirement or, to a previously noticed claimant for failure to satisfy the requalifying requirements?

A. Yes. The determination issued with respect to EUC (EB) eligibility does not arise until such time as there is a claim filed under the EUC (EB) program. Therefore, the EUC (EB) determination issued under the circumstances described is a reportable nonmonetary determination of EUC (EB) eligibility.

Note: The Secretary's Determination Standard requires that a disqualifying determination must not only state the period of disqualification or ineligibility, it must also explain in sufficient detail what the claimant must do to "qualify for benefits or purge the disqualification". To comply with this Standard, a disqualifying determination that is issued under a State law that imposes a benefit postponement denial for regular benefits and a work requalification requirement for EB, must include all requalifying conditions resulting from the determination.

2. Q. A claimant has been denied benefits on the regular claim as a result of a disqualifying separation or job refusal and has satisfied a benefit postponement requalification. Is there a reportable non-monetary determination when the State reviews the claimant's employment, including a verification call to the employer(s), to determine if the requalification requirements have been met?

A. When there is no doubt whether a claimant has met the conditions for the removal of the disqualification, an eligible determination is not reportable. However, even when there is no doubt, an ineligible determination is reportable.

When there is a question or doubt whether or not a claimant has met the conditions for the removal of the disqualification which requires fact-finding beyond normal claimstaking procedures, an eligible or ineligible nonmonetary determination, as appropriate, is reportable.

Benefit Financing/ETA 2112 Reporting

1. Q. How do States draw EUC funds from the EUCA Account through the automated State Unemployment Drawdown System (SUDS)?

A. Treasury has modified the SUDS requisition screen to include a line for EUC drawdowns. Line 3 of the SUDS screen labeled "Temporary EB" must be used to request EUC funds.

2. Q. Does the requirement to identify State, local, and nonprofit employers relate to the method of payment they employ in satisfying their UI liability to the State (i.e. reimbursables vs contributory)?

A. No. Such employers are identified because they are not liable for the payment of federal unemployment taxes (UTA), the funding source of the EUCA, and therefore do not contribute to the EUCA. EUC payments made to their former employees will be financed by funds appropriated from General Revenue.

3. Q. Will EUC benefit funds be drawn down through the Smartlink process on a daily basis? Will there be separate procedures for requesting money for benefits paid to claimants who were employed by taxable versus reimbursable employers?

A. The Smartlink process will not be used. The drawdown process remains unchanged. Requests are made through SUDS and funded through FEDWIRE on a daily basis. There are no separate drawdowns or procedures for requesting funds to pay claimants who were former employees of taxable versus reimbursable employers.

4. Q. Will there be any restrictions on the frequency or amount of cash drawdowns?

A. No. States should estimate the amount of EUC funds needed for benefits during the period for which funds are requisitioned and request that amount. Over and under estimates should be adjusted in later requisitions.

Effective November 1, 1992, the interest exchange provisions of the Cash Management Improvement Act (CMIA) of 1990 will apply to all federal funds, including EUC. States should therefore minimize balances to avoid potential interest liabilities to the Federal government.

5. Q. Currently, the bank charges for UI benefit accounts are funded by the use of a compensating balance. Can EUC cash be used to support an equitable share of the compensating balance based on the volume of checks issued?

A. (1) It is not permissible to draw down EUC funds, or any other funds from the Unemployment Trust Fund, to establish compensating balances to offset bank charges. However, earning credits given by banks on residual daily account balances may be used to offset bank charges.

(2) All funds withdrawn from the UTF, with the exception of funds withdrawn from State UTF accounts for regular UI payments, will be subject to the interest exchange provisions of CMIA. That is, effective November 1, 1992, States which draw down funds from EUC before they are needed to redeem benefit checks or warrants, may have to pay interest. That rate is the bond equivalent rate of thirteen week T-Bills auctioned during the period in which the interest is calculated. Net interest for all programs covered by CMIA is exchanged between the State and the Federal Government in the annual settlement.

6. Q. The existing UI check stock was purchased using UI Administration funds. Should UI Administration be credited with a charge to EB Administration for the checks used to pay EUC?

A. No. There is no Federal requirement to establish a separate fund ledger code for EUC administrative costs. Administrative costs for the EUC program are paid with UI administrative funds under the regular UI ledger code. Since check stock has been paid with administrative funds, EUC check stock is properly chargeable to the same ledger code.

7. Q. How will overpayments be returned, letter or check?

A. Net payments by States to the Treasury for overpayment recovery may be made via letter or electronic funds transfer (EFT), at the State's discretion. States must show a breakout of the total amount being returned by program category (Regular UI, UCFE, UCX, Other) in order to identify and credit the proper funding source. Overpayment amounts being returned and included in line 39 on ETA 2112, must also be noted under "Comments" with a breakout by program category.

8. Q. How should reimbursements for CWC-EUC payments received from other States be reported on Form ETA 2112?

A. Reimbursements for CWC payments received from other States should be included on line 24 or 25 ("From other Sources"), in columns C and F and noted as CWC-EUC receipts from other States in the Comments section.

Governor's Election of EB "Off" Trigger

1. Q. When a Governor elects an EB "off" trigger and the State has a regular duration in excess of 26 weeks, is the claimant an exhaustee upon payment of 26 weeks or must the claimant exhaust the other regular weeks

(which would have been "regular shareable" under an EB "on" trigger) before EUC can be paid?

A. Under the circumstances described, the claimant is not an exhaustee until all regular benefits have been exhausted. The EB provision which limits the total amount payable for regular and EB to 39 times the WBA gives rise to shareable compensation when a State is in an EB period. The Federal Government's sharing of regular benefit costs in excess of 26 weeks provides for equity in Federal cost sharing with all States. There is no cost sharing provision for EUC as benefits are totally Federally financed.

2. Q. Can a State be in an EB and an EUC period simultaneously?

A. Yes. The statute allows but does not require the Governor to waive the EB trigger. However, if a State is in both an EB and EUC period, EB is payable prior to and deductible from EUC entitlement.

3. Q. If a State is in both an EB and EUC period, is EUC payable to claimants eligible for EUC but ineligible for EB? Is EB payable to individuals who have exhausted EUC?

A. There are no prohibitions against the payment of EUC to individuals that are ineligible for EB. However, since benefits are paid under both programs under the same terms and conditions, except with respect to duration, it is not likely that an individual would be eligible for EUC and not EB. EB is payable prior to and deductible from EUC entitlement. EUC is not deductible from EB.

Program Audits

1. Q. Does the "Lopez Rule" apply if the State fails to register claimants with job prospects classified as "not good" in a manner sufficient to match such claimants with the agency's suitable job listings and refer to jobs?

A. Yes. Application of the "Lopez Rule" will be considered if the Department concludes that the SESA made payments due to the agency's failure to take appropriate and timely action to register and consider EUC claimants for referral to opportunities of "suitable work".

Job Service Registration

1. Q. Can a person be registered with JS without an in-person interview?

A. There is no requirement for an in-person interview. However, a full JS registration and determination of suitable work for a claimant may be difficult without an in-person interview.

2. Q. Are all EUC claimants required to be fully registered with JS?

A. Yes. Claimants must be registered to the extent necessary for full job matching and referral to all suitable work with respect to the individual under the requirements of 20 CFR 615.8(d) and (e).

3. Q. JS is expected to select and refer EUC claimants to "suitable work", as defined. When an issue arises in connection with a referral, is a determination of "suitable work" issued based on the JS decision to refer or is this a determination made by the UI adjudicator?

A. The JS is required to implement the EB (EUC) program definition of "suitable work" applicable to EB (EUC) claimants based on job prospect classification in carrying out its responsibilities under the law. However, the determination that a job is "suitable work" within the meaning of the EB (EUC) rules is made by the UI adjudicator as the outcome of fact-finding.

