

Emergency Unemployment Compensation Act of 1991
Questions & Answers for Clarification of P.L. 102-318

EUC Monetary Entitlement

The applicable level of EUC entitlement for individuals who postpone establishing a new benefit year and the level for those who defer rights to regular benefits to elect a claim for EUC are determined differently. Section 102(b)(2)(B) of the UC Amendments of 1992 (P.L. 102-318) provide that an individual who defers regular benefits is to receive EUC in the same manner as if he/she had not been entitled to regular benefits. This means that the claimant's entitlement must represent the same level of entitlement that applied to other EUC claims filed during the period of time that the claimant was not allowed to file for EUC because of regular benefit entitlement.

On the other hand, Section 102(a), which added paragraph (f) to Section 101 of the EUC Act of 1991, simply allows individuals who were not in benefit status or whose rights to EUC were not affected by their rights to regular benefits subsequent to the exhaustion of the prior claim or the end of the prior benefit year to have the same option to elect an EUC claim prior to establishing a subsequent benefit year.

The requirement that an individual with an existing second benefit year have a remaining regular benefit balance acknowledges that some claimants affected by the definition of an "exhaustee" would not be covered by the amendment. However, it was considered to be the appropriate solution in maintaining the concept of the "applicable benefit year."

What is important to be remembered, in either case, is that the claimant's EUC entitlement based on the prior benefit year is determined minus any EUC previously paid on the basis of that prior benefit year.

The following questions pertain to the determination of EUC entitlement for individuals exercising election to postpone establishing a new benefit year "Section 102(a) of P.L.102-318).

1. Question. If an individual elects to postpone establishing a new benefit year to file an EUC claim, based on a prior benefit year where benefits were exhausted prior to July 3, 1992, is the level of EUC entitlement determined on the basis of what the individual would have been entitled to had he/she filed an EUC claim upon exhaustion of the prior claim?

Answer. No. EUC claims filed under the provisions of Section 102(a) of P.L. 102-318 are determined at the level applicable to EUC claims at the time of filing, without regard to whether or not the claimant could have filed an EUC claim or a regular claim upon exhaustion. Since no claim was filed at that time, no entitlement accrues under the provisions of Section 102(b)(2)(B) of P.L. 102-318.

Note: This is a different situation from that addressed in Question 21, page 8 of Change 4. In that case, the claimant had filed a regular claim at the time of the benefit year ending and was filing for EUC under the provisions of Section 102(b)(2)(B) of P.L. 102-318. The same answer applies when there was an exhaustion and the claimant filed a regular claim.

2. Question. Claimant has a prior "applicable benefit year" for EUC purposes. The claimant did not exhaust regular entitlement and returned to work prior to the benefit year ending date. The claimant now elects to postpone establishing a new benefit year to file for EUC. What level of entitlement applies?

Answer. The level applicable at the time of the election. The claimant has not been denied EUC because he/she was not an "exhaustee".

3. Question. The claimant has a prior benefit year (ending between March 1, 1991 to date) and has not previously filed an EUC claim during the EUC period (11/17/91 to date). When this claimant elects to postpone establishing a new benefit year to file for EUC based on the prior benefit year, what level of entitlement applies?

Answer. The level applicable to EUC claims filed at the time of the election. This claimant has not been denied an EUC claim because of the definition of an "exhaustee".

The following questions pertain to the determination of EUC entitlement for individuals exercising election to defer rights to regular benefits on an existing benefit year. (Section 102(b)(2)(B) of P.L. 102-318.)

1. Question. If an individual elects to defer regular benefits on a current claim to file a new EUC claim based on a prior benefit year, is the level of EUC entitlement based on what the individual would have been entitled to had he/she filed an EUC claim at the time of the effective date of the current benefit year?

Answer. In the case of an individual who was required to establish a benefit year for regular benefits because he/she was not considered an "exhaustee" for EUC purposes, the applicable EUC benefit level is the greater of the level payable by the State on the effective date of the regular claim, or thereafter during periods that he/she was required to file for regular benefits, or at the time of the election.

2. Question. The claimant was previously issued an EUC determination with an entitlement of 26 times the WBA and was in active benefit status with an EUC balance at the benefit year ending date, at which time a new benefit year was established. During the time the claimant was receiving regular benefits, the maximum level of EUC payable in the State increased to 33 weeks. What level of entitlement applies when this claimant defers regular benefits to receive EUC?

Answer. Thirty-three (33) weeks. During the period that the applicable level for EUC was 33 weeks, the claimant was in active benefit status and prevented from filing an EUC claim by the definition of an "exhaustee". Therefore, the claimant's entitlement is redetermined to

the higher level minus EUC previously paid.

3. Question. The claimant has a remaining balance on an EUC claim based on the prior benefit year and elects to defer regular benefits to file for EUC. What level of entitlement applies to this claimant?

Answer. The greater of the level applicable on the effective date of the prior EUC determination, the level applicable in the State for any week during which the claimant was in active claim status and not allowed to file for EUC because of regular entitlement or the level currently applicable to the State. The claimant's entitlement is redetermined to the higher level, minus any EUC previously paid.

4. Question. Prior to EUC exhaustion, the second benefit year, on which the claimant had deferred regular benefit rights in order to file for EUC based on a prior benefit year, ends and the claimant has no potential regular entitlement for a new benefit year. Is the claimant allowed to continue to receive EUC based on the prior benefit year or is the "applicable benefit year" for EUC the second benefit year? Is there a difference if the claimant has rights to a new benefit year to postpone?

Answer. When the second benefit year ends, the claimant no longer has regular benefit rights to defer under the provisions of Section 102(b)(2)(B) of P.L. 102-318. The claimant's rights to postpone a new benefit year, under the provisions of Section 102(a) of P.L. 102-318, provide for EUC entitlement based on the prior benefit year. Therefore, in either case, EUC entitlement is based on the "applicable benefit year" as defined in 20 CFR 615.

Please Note: This means that in some cases the claimant will have no further EUC entitlement if during the base period of the second benefit year the claimant's earnings do not meet the "earnings test". When a claimant is entitled to EUC based on the second benefit year, that determination does not take into consideration EUC benefits previously paid based on the prior benefit year.

5. Question. A claimant has deferred regular benefit rights on a second benefit year to receive EUC based on a prior benefit year and the second benefit year ends prior to EUC exhaustion. The claimant has potential regular entitlement for a new benefit year. If the claimant elects to postpone regular entitlement, is the claimant allowed to continue to receive EUC based on the first benefit year?

Answer. No. The claimant's entitlement to EUC based on the first "prior" benefit year ceases with the end of the **benefit year** of the claim on which regular benefits were deferred. When the second benefit year ends, the provisions of Section 102(a) of P.L. 102318 apply with respect to the claimant's options. Therefore, when the claimant postpones establishing a new benefit year, EUC is payable based on the entitlement of the most recent "prior benefit year" without regard to any EUC previously paid.

The following questions pertain to individuals who were ineligible for EUC benefits prior to July 3, 1992, for failure to satisfy the base period "earnings test."

1. Question. When a claimant who was ineligible for EUC prior to July 3, 1992, because he/she failed to meet the base period earnings test, elects to postpone the filing of a new claim to establish a benefit year in order to file an EUC claim based on that prior benefit year, is the EUC entitlement determined based on the level payable by the State at the time of the prior EUC denial?

Answer. No. In such cases, EUC entitlement is based on the level of benefits payable at the time the claimant elected to postpone the regular claim. Prior to July 3, 1992, this claimant did not have a valid EUC claim because of the base period earnings requirement. He/she was not affected by the definition of an "exhaustee."

2. Question. When a claimant who was ineligible for EUC prior to July 3, 1992, because he/she failed to meet the base period earnings test elects to defer regular benefits to file an EUC claim based on that prior benefit year, is the EUC entitlement determined based on the level payable by the State at the time of the prior EUC denial?

Answer. No. EUC entitlement is based on the level of benefits payable at the time the claimant elected to postpone the regular claim. Although the claimant in this case has been allowed the option to defer benefits, the benefit levels provided under the provisions of Section 102(b)(2)(B) of P.L. 102-318 do not apply as such claimants were not denied EUC benefits because of regular benefit entitlement.

3. Question. Prior to July 3, 1992, the claimant(s) was ineligible for EUC for failure to satisfy the base period earnings test. After July 3, 1992, such a claimant elects to postpone the filing of a claim to establish a new benefit year or defer regular benefits to file for EUC based on the prior benefit year or wants to file an EUC claim under the new base period earnings requirement. What level of entitlement applies?

Answer. The level applicable at the time of the election. The claimant(s) was ineligible for EUC prior to the alternative base period earnings test provisions of the July 3 amendments for monetary reasons, not because of the definition of an "exhaustee."

The following questions pertain to Eligibility.

1. Question. When a disqualification has been issued on an EUC claim which was based on a prior benefit year, and the claimant has subsequently established a new benefit year and has been determined eligible for regular benefits and has a benefit balance, should the individual be offered an EUC election?

Answer. Yes. However, if the individual has not satisfied the EUC requalifying requirement, no EUC benefits are payable. An EUC disqualification carries forth through the entire EUC ~period of eligibility" (i.e., 11/17/91 through 3/6/93).

2. Question. If a claimant was in regular benefit status for the first week beginning after July 3, 1992, must the individual's election to defer regular benefits be effective with that first week if notice of the election is not provided until a later date?

Answer. Yes. The election to defer rights to regular benefits is effective for week of unemployment beginning after July 3, 1992. If an individual is in benefit status and does not elect EUC effective with the first week of unemployment beginning after July 3, 1992, the individual has elected to receive regular benefits. Therefore, no further election is available under Section 102(b)(2)(B) of the UC Amendments of 1992.

3. Question. If an individual had a benefit year ending before July 3, 1992, with entitlement based on non-educational wage credits and prior to July 3 was determined ineligible because of a "between terms denial" on a second benefit year, does the individual have an election to file an EUC claim based on the prior benefit year?

Answer. No. This individual is not an "exhaustee" under the provisions of 20 CFR 615 and has no rights to regular benefits to defer under the provisions of Section 102(b)(2)(B) of P.L. 102-318. However, if such an individual has no benefit year established and has rights to establish a new benefit year, he/she has an election under Section 102(a) of P.L. 102-318 (Section 101(f), EUC Act).

The following questions pertain to EUC to EB transition.

1. Question. If an EB period begins after the EUC program ends for initial claims (March 6, 1993) and a claimant has a EUC balance, is the claimant allowed to continue to receive EUC, or must he/she file an EB claim?

Answer. When an EB period triggers "on" in a State after March 6, 1993, the claimant is entitled to receive the greater of EUC or EB. If an EB period triggers "on" before March 6, 1993, and the claimant has EB entitlement, no additional EUC benefits are payable until EB exhaustion and the claimant's EUC account has been reduced, but not below zero, by the amount of EB payments paid.

2. Question. If an EB period begins during an individual's benefit year on the basis of which the claimant has already received EUC benefits, is the claimant entitled to EB based on the same benefit year?

Answer. Yes. If a claimant has an "applicable benefit year" for EB purposes, entitlement to EB is determined without regard to prior EUC payments. EB entitlement is not reduced by EUC benefits.

The following questions pertain to Combined Wage Claims.

1. Question. States were instructed in GAL 4-92, Change 4 to discontinue charging transferring States for EUC benefits based on combined wage claims effective with payments issued on and after July 1, 1992. If a paying State determines that some charges to a transferring State for

one or more of the quarters ending December 31, 1991, March 31, 1992, or June 30, 1992 need to be adjusted because of a prior error or subsequent determination, what procedure should the State follow?

Answer. The paying State will take the necessary actions to ensure that EUC payments to the claimant are properly adjusted and documented. The paying State will take no action to notify a State of any redeterminations, overpayment determinations or error corrections, etc.

2. Question. For benefits paid prior to July 1, 1992, transferring States were responsible for accounting for drawdowns from the EUCA account to reimburse paying States for EUC benefits attributable to CWC claims. If after July 1, 1992, paying States are not required to advise transferring States of adjustments to EUC payments nor adjust prior charges, how will the transferring State adjust its EUCA drawdowns to reflect the correct payments?

Answer. The documentation of the original IB-6 charges will remain in place to justify the transferring State's drawdown. This documentation will accurately reflect the transferring State's actions. The paying State's records will accurately reflect the payments to the claimant and any adjustments to the EUCA account.