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**ADVISORY:** UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 23-08, Change 2

**TO:** STATE WORKFORCE AGENCIES

**FROM:** BRENT R. ORRELL *Brent R. Orrell*  
Deputy Assistant Secretary

**SUBJECT:** Emergency Unemployment Compensation, 2008 – Program Expansion

1. Purpose. To advise states of an expansion of the Emergency Unemployment Compensation, 2008 (EUC08) program and to provide operating instructions for its implementation.
2. References. The Unemployment Compensation Extension Act, Public Law 110-449, enacted November 21, 2008; Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation, Public Law 110-252, enacted June 30, 2008; Unemployment Insurance Program Letter (UIPL) No. 23-08 and UIPL No. 23-08, Change 1.
3. Background. Public Law (P.L.) 110-449 expands the EUC08 program to provide up to 20 weeks of 100 percent federally-funded unemployment compensation to eligible individuals in all states. It also expands the EUC08 program by providing a second tier of benefits of up to 13 weeks for eligible individuals in those states with high unemployment.

These expanded EUC08 benefits are available only for weeks of unemployment beginning on or after the date of enactment, which is November 21, 2008. Although these amendments do not change the date for establishing initial eligibility for EUC08, they do extend the program's termination date. Under the new termination date, no EUC08 payments may be made for any week of unemployment beginning after August 27, 2009.

Detailed implementation guidance, including reporting instructions, is included in Attachment A. The text of the Unemployment Compensation Extension Act is included in Attachment B.

All states currently have agreements with the Secretary to administer the EUC08 program under provisions of the EUC08 Act. The existing agreements remain in effect, and no new agreements are necessary to implement these amendments.

4. Interpretation. The instructions in this document are issued to the states and cooperating state agencies as guidance provided by the Department of Labor in its role as the principal in the EUC08 program. As agents of the United States, the states and cooperating state agencies may not deviate from the operating instructions without the prior approval of the

<b>RESCISSIONS</b> None	<b>EXPIRATION DATE</b> Continuing
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Department. To the extent that the guidance provided in UIPLs Nos. 23-08 and 23-08, Change 1, is inconsistent with this UIPL, such guidance is superseded.

5. Action Requested. Administrators are to provide this information and instructions to the appropriate staff.
6. Inquiries. Direct questions to the appropriate Regional Office.
7. Attachments. Attachment A – Operating Instructions for the EUC08 Program Expansion.  
Attachment B – Text of the Unemployment Compensation Extension Act of 2008.

## **Attachment A to UIPL No. 23-08, Change 2 Operating Instructions for the EUC08 Program Expansion**

### **Introduction**

On Friday, November 21, 2008, the President signed Public Law 110-449, the Unemployment Compensation Extension Act of 2008 (the Extension Act), which amended the Supplemental Appropriations Act, 2008, Title IV—Emergency Unemployment Compensation (EUC08) program by:

- Providing for up to 7 additional weeks of benefits to eligible individuals in all states. These benefits will be referred to as “basic EUC08” or “First-Tier EUC08”;
- Adding a Second-Tier of EUC08 benefits for eligible individuals in those states with “high unemployment.” These benefits are referred to as “Second-Tier EUC08”; and
- Extending the EUC08 program’s termination date from the week that includes Tuesday, June 30, 2009, to the week that includes Thursday, August 27, 2009. In most states, where the week of unemployment ends on Saturday, this means the last week for which EUC08 may be paid is the week ending Saturday, August 29, 2009. In New York, where the week begins on Monday, this means that the last week for which EUC08 may be paid is the week ending Sunday, August 30, 2009. In states with variable start dates, this means the last week for which EUC08 may be paid is the week ending Wednesday, September 2, 2009.

### **Notifications**

1. Identification and Notification of Potentially Eligible Claimants. The state must identify individuals who are potentially eligible for additional EUC08 due to the program’s expansion. If the individual had previously exhausted an EUC08 claim, the state shall provide the individual with appropriate written notification of his/her potential entitlement to additional EUC08 benefits. If the individual has not exhausted his/her EUC08 claim prior to the enactment of the Extension Act, the state will recalculate the maximum benefit amount on the EUC08 claim and notify the individual of the increased amount added to his/her First-Tier EUC08 claim.
2. Notification of Media. To ensure public knowledge of the expansion of the EUC08 program, the state shall notify appropriate news media having coverage throughout the state. Should a state trigger “on” to Second-Tier EUC08, it must also notify the media of the availability of Second-Tier EUC08 benefits.

### **Operating Instructions**

Except where inconsistent with these instructions, the operating instructions that were included as Attachment A to UIPL No. 23-08 are applicable.

1. First-Tier Benefits. Under the Extension Act, the maximum benefit amount in an individual’s account is the lesser of 80 percent of the total amount of regular compensation (including dependents’ allowances), or 20 times the individual’s average regular compensation weekly benefit amount for a week of total unemployment (including dependents’ allowances), payable to the individual with respect to the “applicable benefit year.”

This increase in First-Tier EUC08 eligibility applies to all newly-qualifying individuals as well as to all individuals who established their EUC08 entitlement prior to the date the Extension Act was enacted. However, the extra seven weeks of basic EUC08 payable under the Extension Act are only payable for weeks of unemployment beginning on or after Friday, November 21, 2008, the date of enactment of the extension.

2. Second-Tier Benefits. Under the Extension Act, if, at the time that the amount in an individual's EUC08 account is exhausted or at any time thereafter (except as explained below), the state is in an "extended benefit period" (EUC08 Second-Tier period) (as defined in the Extension Act), the individual's EUC08 account will be augmented by an amount equal to the lesser of 50 percent of the total amount of regular compensation (including dependents' allowances), or 13 times the individual's average weekly benefit amount for the benefit year (including dependents' allowances), payable to the individual with respect to the "applicable benefit year." There is no Second-Tier augmentation of an individual's account if that individual exhausts his/her EUC08 account *after* an EUC08 Second-Tier period ends -- unless a second EUC08 Second-Tier period occurs thereafter.

The Extension Act defines an EUC08 Second-Tier period as:

- An Extended Benefit (EB) period currently in effect for the state under the Federal-State Extended Unemployment Compensation Act of 1970 (FSEUCA)
- An EUC08 Second-Tier period that would be in effect under the FSEUCA using an insured unemployment rate (IUR) for the relevant 13-week period that is equal to or greater than 4 percent. (Unlike the "regular" EB program under the FSEUCA, the EUC08 EB period does not use a 5 percent IUR trigger or have a 120 percent "lookback" requirement.)
- An EUC08 Second-Tier period that would be in effect under the FSEUCA using a three-month seasonally adjusted total unemployment rate (TUR) that is equal to or greater than 6 percent. (Unlike the "regular" EB program under the FSEUCA, the EUC08 Second-Tier program does not use a 6.5 percent TUR trigger or have a 110 percent "lookback" requirement.) This rate will be used in all states, whether or not the state uses it for the "regular" EB program.

The rules governing the timing of the triggering "on" and "off" an EUC08 Second-Tier period are the same as those governing the "regular" EB program under the FSEUCA, set forth at 20 CFR 615.11. The beginning date of a state's EUC08 Second-Tier period will be based on when the state would have triggered "on" under the FSEUCA using the above triggers as well as the rules governing the timing of those periods under 20 CFR 615.11. Notwithstanding these regulations, however, no EUC08 Second-Tier period will begin earlier than June 30, 2008—the date on which the Extension Act made the Second-Tier amendment effective. Further, as provided by this regulation, each EUC08 Second-Tier period will last at least 13 weeks. For example, if a state triggers "on" to an EUC08 Second-Tier period for the week beginning Sunday, August 31, 2008, using the 6 percent TUR trigger, the state would remain "on" for an EUC08 Second-Tier period for at least 13 weeks from that date. After these 13 weeks, the EUC08 Second-Tier period would end, in accordance with this regulation, on the last day of the third week after the first week for which there is an "off" indicator in the state. The Department will notify each state of the beginning and ending dates

of any EUC08 Second-Tier period applicable to that state in generally the same manner the states are notified of a “regular” EB period.

An individual may not have his/her EUC08 account augmented by these Second-Tier benefits more than once per EUC08 claim. Further, if the individual’s First-Tier EUC08 account is exhausted after Tuesday, March 31, 2009, there can be no Second-Tier benefit augmentation of the account. In most states, where the week of unemployment ends on a Saturday, this means that individuals who have a First-Tier EUC08 claim that exhausts on or after the week ending Saturday, April 4, 2009, do not qualify for a Second-Tier EUC08 claim. In states with variable claim start dates, this means the individuals who have a First-Tier EUC08 claim that exhausts after Tuesday, March 31, 2009, do not qualify for a Second-Tier EUC08 claim. However, if an individual’s EUC08 account is exhausted on or before Tuesday, March 31, 2009, the individual may qualify for a Second-Tier EUC08 claim if an EUC08 Second-Tier period is either then in effect or subsequently triggers “on” (even if that period triggers “on” after Tuesday, March 31, 2009).

Two examples follow:

Example 1: An individual exhausts First-Tier EUC08 on Saturday, April 18, 2009. This individual will not qualify for a Second-Tier of EUC08, even if an EUC08 Second-Tier period is in effect, because the individual will have exhausted First-Tier EUC08 after Tuesday, March 31, 2009, and there can be no augmentation of his/her EUC08 account.

Example 2: An individual exhausts First-Tier EUC08 on Saturday, March 14, 2009. This individual may qualify for a Second-Tier of EUC08 (if otherwise eligible) if an EUC08 Second-Tier period is either in effect or the state subsequently triggers “on” (even if that period triggers “on” after March 31, 2009), because the First-Tier benefits were exhausted on or prior to Tuesday, March 31, 2009.

As with First-Tier EUC08, the state may provide for the payment of all EUC08 (including Second-Tier EUC08) prior to the payment of extended unemployment compensation payable under the FSEUCA.

3. Effective Date of Amendments. The expanded First-Tier EUC08, and the newly added Second-Tier EUC08 benefits, are payable only with respect to weeks of unemployment beginning on or after the enactment of Public Law, 110-449. Thus, there is no provision for payment of these expanded EUC08 benefits for weeks of unemployment occurring prior to the enactment on Friday, November 21, 2008.

Example: An individual exhausts his/her original EUC08 entitlement on Saturday, September 6, 2008, and the Extension Act is enacted on Friday, November 21, 2008. The first potentially payable week for the expanded EUC08 benefits would be for the week beginning Sunday, November 23, 2008. In New York, where the week begins on Monday, the first potentially payable week is Monday, November 24, 2008. Those states with a variable start date, the first potentially payable week would begin no earlier than the week beginning Friday, November 21, 2008.

4. Ending Date of the EUC08 Program. Under the Extension Act, an individual having amounts remaining in his/her EUC08 account as of the last day of the last week of unemployment (as determined under state law) ending on or before Tuesday, March 31, 2009, may collect the remaining First-Tier or Second-Tier balance in subsequent weeks, if otherwise eligible, until

the EUC08 program terminates. Under the Extension Act, no EUC08 is payable for any week beginning after Thursday, August 27, 2009.

### **Reporting Instructions**

1. **General.** EUC08 reporting instructions are unchanged except as described below. States should continue to report First Tier activity as they have done previously. The first report on Second Tier activity for December 2008 will be transmitted on the ETA 5159 by states in mid-January 2009.
2. **ETA 5159.** Claims and payment activities for the First-Tier, which now allows up to 20 weeks of benefits, will continue to be reported as they were previously, except as indicated below. Claims and payment activities for the Second-Tier, which allows up to 13 additional weeks in those states triggered “on” to an EUC08 Second Tier period, will be reported separately in a new section C of the report.
  - a. **First-Tier.** Report final payments on line 303 as the number of claimants issued a payment that exhausts the benefit entitlement in the First-Tier of their EUC08 account, including the additional entitlement provided in the new law. Reports submitted previously should be revised to reflect that claimants who have their accounts increased with the additional entitlement and were previously reported as receiving final payments did not, in fact, receive final payments.
  - b. **Second-Tier.** A new Section C, which mirrors Section B, has been added to the report. Only data for claimants who qualified for the Second-Tier should be included in this section. Weeks compensated will be reported in columns 23-27 of line 401; benefits paid in columns 23-27 of line 402, and first and final payments in columns 28-33 of line 403. First payments will represent the number of claimants who had their benefits augmented and received at least one Second-Tier payment. Report final payments as the number of claimants issued a payment that exhausts the benefit entitlement to the Second-Tier of their EUC08 account.
3. **ETA 539.** Total weeks claimed for regular UC, UCFE, and UCX for the two tiers of the EUC08 program for the report period will be reported separately in the comments section and labeled as “EUC08 First-Tier” and “EUC08 Second-Tier” followed by the number. For example: “EUC08 First-Tier = 239, EUC08 Second-Tier = 186”. (The agent weeks claimed information needed for this report will be obtained from the LADT identified in field 28 as “code 2”, Federal Benefit Extension.)
4. **UI-3 Worksheet.** States will report on line 12, labeled “Monetary Redeterminations,” the count of redeterminations conducted when a claimant’s account is increased for the additional First-Tier entitlement or augmented for the Second-Tier entitlement.
5. **OMB Approval.** These reports each bear their own OMB control numbers, estimated burden hours and expiration dates indicating that they are valid collections. Modifications to the ETA 5159 have been submitted to OMB for expedited clearance and approval.

**Attachment B to UIPL No. 23-08, Change 2**  
**Text of the Unemployment Compensation Extension Act of 2008**

**AN ACT**

To provide for additional emergency unemployment compensation.

*Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,*

**SECTION 1. SHORT TITLE.**

This Act may be cited as the 'Unemployment Compensation Extension Act of 2008'.

**SEC. 2. ADDITIONAL FIRST-TIER BENEFITS.**

Section 4002(b)(1) of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended—

- (1) in subparagraph (A), by striking '50' and inserting '80'; and
- (2) in subparagraph (B), by striking '13' and inserting '20'.

**SEC. 3. SECOND-TIER BENEFITS.**

Section 4002 of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended by adding at the end the following:

(c) Special Rule-

- (1) IN GENERAL—If, at the time that the amount established in an individual's account under subsection (b)(1) is exhausted or at any time thereafter, such individual's State is in an extended benefit period (as determined under paragraph (2)), such account shall be augmented by an amount equal to the lesser of—
  - (A) 50 percent of the total amount of regular compensation (including dependents' allowances) payable to the individual during the individual's benefit year under the State law, or
  - (B) 13 times the individual's average weekly benefit amount (as determined under subsection (b)(2)) for the benefit year.
- (2) EXTENDED BENEFIT PERIOD- For purposes of paragraph (1), a State shall be considered to be in an extended benefit period, as of any given time, if—
  - (A) such a period is then in effect for such State under the Federal-State Extended Unemployment Compensation Act of 1970;
  - (B) such a period would then be in effect for such State under such Act if section 203(d) of such Act--
    - (i) were applied by substituting '4' for '5' each place it appears; and
    - (ii) did not include the requirement under paragraph (1)(A) thereof; or
  - (C) such a period would then be in effect for such State under such Act if--
    - (i) section 203(f) of such Act were applied to such State (regardless of whether the State by law had provided for such application); and
    - (ii) such section 203(f)—
      - (I) were applied by substituting '6.0' for '6.5' in paragraph (1)(A)(i) thereof; and

(II) did not include the requirement under paragraph (1)(A)(ii) thereof.

(3) LIMITATION- The account of an individual may be augmented not more than once under this subsection.

#### **SEC. 4. PHASEOUT PROVISIONS.**

Section 4007(b) of the Supplemental Appropriations Act, 2008 (26 U.S.C. 3304 note) is amended—

(1) in paragraph (1), by striking 'paragraph (2),' and inserting 'paragraphs (2) and (3),'; and

(2) by striking paragraph (2) and inserting the following:

(2) NO AUGMENTATION AFTER MARCH 31, 2009- If the amount established in an individual's account under subsection (b)(1) is exhausted after March 31, 2009, then section 4002(c) shall not apply and such account shall not be augmented under such section, regardless of whether such individual's State is in an extended benefit period (as determined under paragraph (2) of such section).

(3) TERMINATION- No compensation under this title shall be payable for any week beginning after August 27, 2009.

#### **SEC. 5. TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.**

With respect to weeks of unemployment beginning after the date of the enactment of this Act and ending on or before December 8, 2009, subparagraph (B) of section 204(a)(2) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall not apply.

#### **SEC. 6. EFFECTIVE DATE.**

(a) In General- The amendments made by sections 2, 3, and 4 shall apply as if included in the enactment of the Supplemental Appropriations Act, 2008, subject to subsection (b).

(b) Additional Benefits- In applying the amendments made by sections 2 and 3, any additional emergency unemployment compensation made payable by such amendments (which would not otherwise have been payable if such amendments had not been enacted) shall be payable only with respect to any week of unemployment beginning on or after the date of the enactment of this Act.