

## ATTACHMENT TO UIPL 9-92, CHANGE 3

### QUESTIONS AND ANSWERS (SUPPLEMENT 3)

**Correction to UIPL 9-92, Change** The following question appeared in UIPL 9-92, Change 1 with an answer that contained errors that are corrected below. Disregard the answer in UIPL 9-92, Change 1 and use the answer provided below:

#### **Overpayment Recovery**

1. Q. Under some States' procedures, overpayment amounts are added back into the claimant's UI balance. When the State utilizes the required EUC 50 percent offset limitation for a single deduction, is it possible that the claimant may be paid more than the EUC maximum benefit amount?

A. States should follow the overpayment provisions of their State UI law, regulations and/or procedures in so far as they do not conflict with Section 105 of P.L. 102-164, as amended. This position is consistent with the position taken in Section III.K. of Attachment A to GAL 4-92 (as corrected by Section 4.a. of Change 1 to GAL 4-92 and by Section 4.M. of Change 3 to GAL 4-92) and consistent with State regulations and procedures in support of applicable State UI law provisions (including the provisions applicable to extended compensation).

An overpayment procedure that restores the amount of a recoverable overpayment to the claimant's remaining UI balance does not conflict with any provisions of P.L. 102-164, as amended. Therefore, States using this procedure for the regular State UI program may use the same overpayment procedure for the EUC program. Consequently, it is possible that an overpaid EUC claimant may actually receive more than his/her EUC maximum benefit amount. However, the effect is no different than that for regular State UI in a State having such an overpayment procedure and an offset limitation for a single deduction of less than 100 percent.

**Correction to UIPL 9-92, Change 2.** The following question appeared in UIPL 9-92, Change 2 (Question 5, Page 18) with an answer that was different from the operating guidance that appears in GAL 4-92. Disregard the answer in UIPL 9-92, Change 2 and use the answer provided below:

#### **Overpayment Recovery**

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 State UI benefits to 50 percent of the State UI payment?

A. Yes. As stated in Section M.2.b.(5) of Attachment A to GAL 4-92, "To the extent permitted under State law, an EUC overpayment may be recovered by offset, within the 50 percent and three-year limitations, from benefits payable under the State unemployment compensation law."

Correction to UIPL 9-92. Change 2 and Clarification of UIPL 9-92

The Answer provided to Question 1., under the heading Exhaustees for Purposes of EUC, on page 2 of the Attachment to UIPL 9-92, provided that an individual is entitled to the lesser of 100 percent (now 130 percent) of the entitlement on his/her claim for regular compensation or the applicable limit in a State. The 100 percent (now 130 percent) of entitlement was to be determined before any total or partial reduction due to wage cancellation or as a result of the application of a disqualification.

The Answer provided to Question 5., under the same heading as above, on page 2 of the Attachment to UIPL 9-92, Change 2, provided in the last sentence, that if an individual's regular State UI benefits were partially reduced, then an individual's maximum EUC entitlement should be calculated on the basis of the reduced benefit determination. This sentence is incorrect. The Answer in UIPL 9-92 is correct. Section 202(b)(1)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 (the "EB law") and its implementing regulation at 20 CFR 615.7(b) address the computation of the amount in an individual's Extended Benefits (EB) account and is also applicable to the calculation of EUC entitlement.

Specifically, 20 CFR 615.7(b) provides that the amount in the EB account shall be equal to the lesser of one of three computations. The first and second computations require the of amounts "payable" (not "paid") to the individual during the individual's benefit year. The third computation takes into account the amount of "regular compensation paid (or deemed paid) during the individual's applicable benefit year." "Deemed paid" refers to regular compensation which was not paid because of a State law disqualification. Taken together, these three computations require that an individual may be eligible for EB even though no regular compensation was payable. This reading gives effect to 20 CFR 615.5(b)(3) which provides that an individual shall be considered an "exhaustee" if the individual is considered to have received all regular compensation payable in a benefit year even though "having established a benefit year, no regular compensation is payable during such year because wage credits were canceled or the right to regular compensation was totally reduced as a result of a disqualification." To not use the canceled or reduced entitlement penalizes the individual twice (for separate programs) for the action that caused the cancellation and defeats the purpose of an EB (or EUC) program.

It should be noted that any additional denial associated with wage cancellation or reduction carries over to the EB or EUC claim. For example, if a State issues a disqualification which prohibits the individual from receiving regular compensation for one-year, then EB or EUC is not payable until the one-year period has expired.

## **Administration**

1. Q. If the governor elects to trigger "off" EB, will claimants have any rights to EB?

A. No. If the governor triggers "off", claimants may be eligible for EUC but not for EB as of the effective date of triggering "off". Under Section 102(a)(4) of P.L. 102-164, State agencies must deduct EB received which relates to the same benefit year, if any, from the potential EUC entitlement.

2. Q. Can a claimant receive EUC after the agreement is terminated, provided the claimant has a balance in the EUC account?

A. No. As provided in GAL 4-92, States may terminate the EUC agreement upon 30 days written notice. The EUC period will end 30 days from the date the State notifies the Secretary of its election to terminate the EUC program. No EUC will be payable for weeks beginning after the date the agreement is terminated. The agreement may also be terminated by the Secretary, as provided in the agreement.

## **Work Test - EB Work Search Requirements**

1. Q. If a claimant is participating in TAA training while receiving TRA and becomes entitled to EUC, must the claimant meet the EB work search requirements as required by P.L. 102-164 (EUC Act)?

A. No. In accordance with 20 CFR 615.2(o)(8)(v), any individual who is in approved training as defined under State law (including training under Section 236 of the Trade Act of 1974), must be exempted from the requirements of law relating to availability for work, active search for work or refusals of referral to or an offer of suitable work.

2. Q. Does failure to conduct a systematic and sustained search for work or refusal of suitable work when receiving EUC affect TRA entitlement? Does this scenario apply in reverse?

A. Yes. If the claimant fails to conduct a systematic and sustained work search or refuses suitable work, a 4x4 disqualification must be imposed in either scenario and the claimant must purge such disqualification(s) with subsequent employment before resuming entitlement to EUC and/or TRA. This claimant must also purge any applicable State law disqualification resulting from the same actions (5x5, if applicable) before becoming eligible to EUC and/or TRA.

A claimant or an adversely affected worker must be enrolled in, participating in, or have completed training to receive TRA. The EB work test is applicable to workers receiving basic TRA under the following conditions:

- 1) pending approval of a TAA training program for which a waiver is issued, and
- 2) after completion of a TAA training program when there is a remaining balance of TRA.

If during such waiver period or after completion of the TAA training program as described above, the worker does not meet the EB work test, such worker will be assessed a 4x4 disqualification and not be eligible for TRA and/or EUC.

3. Q. Is active membership and registration in a union sufficient to meet the EB work search requirements when the union has a hiring arrangement with most potential employers in an EUC claimant's customary occupation and where the union representative not only assigns the claimant to available work but also actively seeks work on behalf of the claimant?

A. No (but see Q. & A. No. 4. below for an exception). Standing ready for work is not sufficient to meet the EB work search requirements. To be eligible for EUC, claimant efforts to obtain work must be systematic and sustained and this requirement means the claimant must seek work in other than his/her usual occupation. The active search for work requirement applies to all EUC claimants and requires that a claimant on his/her own initiative must make an active and independent effort to find work.

4. Q. Does a union member who normally obtains work through a hiring hall and whose job prospects are classified as "good," have to meet the EB work search requirements?

A. If the State agency classifies the individual as having "good" prospects for obtaining work in his/her customary occupation in a reasonably short period, 20 CFR 615.2 (o)(8)(vii) provides that the individual's registration at a union hiring hall may be considered to fulfill the requirement of a systematic and sustained search for work during such week. Provided, however, the claimant normally obtains customary work through the hiring hall and, only if, under the State law applicable to regular compensation such individuals are permitted to limit their search for work to registering for work at the union hiring hall. As stated in the preamble to the final EB regulations (20 CFR Part 615) published in the Federal Register (53 FR 27926, July 25, 1988), the above guidance differed from instructions previously furnished the States for the EB program. Such guidance is now applicable to the EUC program.

5. Q. If an EUC claimant has been reporting on a mail claim basis, must he/she be required to report in person to complete a report of work seeking activities and to submit tangible evidence of seeking work in person each week?

A. No. Job seeking information may be obtained from a claimant either in person or by mail. .

6. Q. The disqualification for failing to meet the EB work search requirements continues until an individual is

subsequently employed in at least 4 weeks and earns 4xWBA. When an EB/EUC claimant is disqualified for not actively seeking work, is it necessary to impose disqualifications and issue nonmonetary determinations for each week, subsequent to the initial disqualification, that an individual does not satisfy the EB/EUC actively seeking work requirements?

A. No. It is not necessary to impose disqualifications for weeks claimed subsequent to an initial determination disqualifying an individual for failing to meet the EB work search requirements. The claimant is disqualified for all weeks after the 4x4 determination until such disqualification is purged or reversed (by redetermination or appeal). In the case of a reversal, subsequent weeks may have an issue that would then to be resolved.

7. Q. Does registration for work at the Job Service, by itself, fulfill the requirement under the EB/EUC provisions of actively engaged in seeking work?

A. No. Registration at the Job Service, by itself, is not complete evidence of a systematic and sustained effort to obtain employment. Registration for work at the Job Service should be considered as an effort to obtain work and should be weighed along with other efforts to obtain work in determining whether or not a claimant is actively seeking work.

8. Q. When a claimant's job prospects are classified as "not good," do the EB/EUC suitable work provisions limit how often a disqualification may be imposed for failing to accept an offer of work when the offered work is the same work for which the claimant had been previously disqualified for refusing?

A. No. Section 202(a)(3)(A) of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), as amended, in part states that "... payment of extended compensation under this Act shall not be made to any individual for any week of unemployment in his/her eligibility period during which he/she failed to accept any offer of suitable work..." This language includes no limitations on how often a disqualification shall be imposed for failing to accept an offer of the same work. .

9. Q. If an EUC claimant, whose job prospects have been determined to be "not good," refuses an offer of suitable work from a base period employer or refuses an offer of work as a result of his/her own job search, must the offer under these circumstances be listed with the State or offered in writing before a disqualification can be imposed for failing to accept an offer of suitable work?

A. Yes. When an EUC claimant's job prospects are determined to be "not good," in addition to other conditions necessary before a disqualification can be imposed for failing to accept an offer of suitable work, the job offer must be in writing or listed with the State Job Service (see 20 CFR 615.8(f)(2)).

10. Q. The State agency refers an EUC claimant, whose job prospects are "not good," to suitable work, but the claimant does not appear at the employer's place of business for a job interview. The claimant's reason for failing to go to the job interview is not "good cause" under State law. The offered work meets all the conditions for imposing a disqualification except there is no offer of work in writing. .

Is the claimant subject to a disqualification under the EUC provisions for failing to apply for suitable employment?

A. Yes. The EUC provisions (Section 202(a)(3) of EUCA) state that no payment of extended compensation may be made to an individual for any week in his/her eligibility period during which he/she fails to apply for work which was referred by the State agency. Under this scenario, failing to report to an interview is considered to be a failure to apply for suitable work.

11. Q. Can an EUC claimant's job prospects classification change from "not good" to "good" or from "good" to "not good" during the EUC eligibility period?

A. Yes. The State agency determines whether or not a claimant's job prospects are "good" or "not good." The agency may consider promises of employment, economic conditions, recall dates, seasonal hiring patterns and other information in determining a claimant's job prospects. Changes, in the labor market factors that the agency considers in determining job prospects, will require the agency to change the claimant's job prospects classification. Any change in job prospects classification from "good" to "not good" may be applicable only to weeks after the classification is made known to the claimant. However, a change from "not good" to "good" may be effective for earlier weeks.

12. Q. The State agency refers an individual whose job prospects in his customary field of engineering are classified as "not good" to a job as a stock clerk. Should the individual be disqualified from EB/EUC for failing to apply for the job?

A. Yes. However, the work as a stock clerk must meet the requirements of subparagraphs (C) and (D) of Section 202(a) of the EB law.

### Eligibility Requirements

1. Q. If State law does not require subsequent employment to purge a disqualification to enable a claimant to receive UI benefits after a voluntary quit, discharge for misconduct (including separations from base period employment), or refusal of suitable work, can the claimant be eligible for EUC?

A. No. Although the claimant may be entitled to and receive UI benefits without subsequent employment, the claimant must purge such disqualification with subsequent employment consistent with Section 202(a)(4) of EUCA to be eligible for EUC (See 20 CFR 615.8(c)).

2. Q. Are individuals in a work-sharing program eligible for EUC benefits?

A. Yes. Individuals in a work-sharing program establish UI entitlement on the basis of their base period employer wages and, consequently, establish EUC entitlement accordingly.

3. Q. An EUC claimant is disqualified under the EUC provisions for failing to actively seek work. The claimant files a new claim or a transitional claim and establishes a new benefit year. The claimant has not worked in at least 4 weeks and earned 4xWBA subsequent to the disqualification for failing to actively seek work.

In the above situation, does the EB disqualification for failing to actively seek work (subsequent employment in at least 4 weeks and earned 4xWBA) carry over into a claim for regular benefits?

A. No. The EB disqualification for failing to actively seek work is applicable to the payment of EUC, and does not carry over to a new benefit year and claims for regular benefits.

4. Q. What is the meaning of the phrase "date of such disqualification" as used in Section 202(a)(4) of EUCA in reference to employment subsequent to the date required to remove a disqualification for voluntarily leaving employment, discharge for misconduct, or refusal of suitable work?

A. This citation means the date the disqualification begins for voluntarily leaving employment, discharge for misconduct or refusal of suitable work in connection with a "parent" regular claim or during a period of EB/EUC eligibility. The date of disqualification does not mean the date the determination was made or notice furnished to

the claimant.

5. Q. Can the wages earned by an EUC claimant, earned subsequent to but during the same week that the claimant refused an offer of suitable work, for which a 4x4 disqualification was issued, count towards the requirements to purge the disqualification?

A. No. The EB/EUC provisions state that no benefits are payable for any week during which an individual fails to accept suitable work. The individual is ineligible for benefits beginning with the week following the week in which the failure to accept suitable work occurred. Earnings and weeks of employment usable to remove the disqualification must begin the week after the refusal of suitable work occurred.

6. Q. May earnings from self-employment and "non-covered" employment be used to remove the special disqualifications required by the EB law?

A. In brief, earnings from self-employment may not be used to remove these disqualifications. However, earnings, in "non-covered" employment may be used.

Section 202(a)(3)(B)(ii) of the EB law establishes requalifying requirements for an individual who is disqualified from receiving EB because of a failure to accept any offer of suitable work, to apply for suitable work, or to meet the EB work search requirements. Under this provision, the individual must be "employed" for 4 weeks and have earned not less than 4 times his/her weekly benefit amount.

Section 202(a)(4) of the EB law requires "employment" to terminate a disqualification for a voluntary quit, discharge for misconduct, or refusal of suitable work.

Under these provisions "employment" is required. "Employment" means services performed by an employee for an employer (Section 3306(c) of the Federal Unemployment Tax Act). Self-employment is not employment under this definition and may not be used to remove the above disqualifications. However, services performed in "non-covered" employment do not affect the fact that the earnings are in employment. Therefore, State law determines whether non-covered employment may be used to remove a disqualification.

7. Q. If a claimant received a certain amount for dependent's allowances during his/her entitlement to UI benefits in the parent claim, will such claimant receive the same amount of dependent's allowances during his/her entitlement to EUC benefits?

A. Yes. The EUC weekly benefit amount payable to an individual for a week of total unemployment will be equal to the individual's weekly benefit amount for regular compensation (including dependent's allowances) payable during -such individual's most recent benefit year. The EUC claimant will receive the same amount for dependent's allowances regardless of whether the State changes such rates at the time of EUC entitlement.

8. Q. Can a State enact legislation changing the monetary eligibility requirements for establishing an EB/EUC claim? Can a State use more than one method to calculate EB/EUC eligibility?

A. A State can only change among methods authorized in Federal law for determining monetary eligibility requirements and the State can use only one method at any given time.

Monetary eligibility requirements for establishing an EB/EUC claim are established by Section 202(a)(5) of the EB law. Under that provision, an individual have "20 weeks of full-time insured employment, or the equivalent in insured wages." The equivalent in "insured wages" is described as "earnings covered under State law for compensation purposes which exceed 40 times the individual's most recent weekly benefit amount or 1 1/2 times

the individual's insured wages in the highest quarter.

Section 202(a)(5) further specifies that "the State shall, by law, provide which one of the foregoing methods of measuring employment and earnings shall be used in that State" "Emphasis added). Therefore, only one method may be used by any State and that method must be specified in State law.

9. Q. May a State hold an individual ineligible for EB/EUC because the individual failed to report during a week EB/EUC was claimed for a Benefits Quality Control interview investigating a week of regular compensation?

A. Yes. There are no special provisions in the EB/EUC laws pertaining to a failure to report. Therefore, the State is free to apply the provisions of its law pertaining to failure to report.

10. Q. What is the definition of consecutive weeks during EUC phase down for weeks beginning after July 4? Would this provision discourage claimants from seeking employment (part-time, temporary, etc.) if they realized that by working for a short period they may lose their potential EUC entitlement balance?

A. Consecutive weeks for EUC entitlement means that the claimant is either paid full or a reduced amount of EUC entitlement for the given week.

This provision should not discourage claimants from seeking employment of a part-time or temporary nature. The EB work test requires that the claimant be engaged in a systematic and sustained work search. In issuing a determination, the State agency must ascertain if the offer of employment meets the requirements of the EB work test. If the claimant refuses employment under such circumstances and the employment meets the suitable employment criteria, the State agency must issue a disqualification even if the job is of a temporary duration and the claimant will risk losing his/her EUC entitlement.

11. Q. In computing the 130% of entitlement, do the States round up or down?

A. States may round up or down to the nearest even dollar amount as permitted by State law. A State may not round upward to a multiple of the weekly benefit amount as such could exceed 130% significantly.

12. Q. Because of the "between and within terms denial" of Section 3304(a)(6)(A) of FUTA, an individual may not use services performed for certain educational entities during certain periods. However, an individual may be paid regular compensation based on employment which was not affected by the between and within terms denial. May an individual be paid EUC after exhaustion of the regular claim even if the "educational" wage credits were not used? If so, how would monetary entitlement be established?

A. For EB/EUC purposes, the individual is an exhaustee and EB/EUC entitlement is to be established as if no educational employment were involved. However, the educational employment may be used to satisfy the monetary eligibility requirements for EB/EUC because it is "insured employment, or the equivalent in insured wages" as provided by Section 202(a)(5) of the EB law.

Unlike provisions of State law that cause wage credits to be canceled or the reduction of benefit rights, the "between and within terms denial" only suspends the use of wage credits during certain periods. It would be inconsistent with the intent of the "between and within terms denial" provisions of Section 3304(a)(6)(A) of FUTA, to authorize payment of EB/EUC during these periods. At the same time, the "between and within terms denial" was not intended to deny the use of non-educational wage credits. Therefore, when the individual no longer has non-educational employment on which to base regular compensation, the individual is to be treated as an exhaustee of the regular claim.

It should be noted that an individual who is "between or within terms" may be eligible for regular compensation but may not be actively seeking work under the EB/EUC requirements.

As with regular claims, the application of the "between and within terms denial" may vary from week to week. For example, if the individual no longer has a reasonable assurance or the week claimed is not in a period between or within terms, the denial is not applicable.

13. Q. Some States do not establish a benefit year until the individual is eligible for a compensable week in that new benefit year. Therefore, if an individual's first benefit year has ended, the individual may have earnings which prohibit the establishment of a second benefit year. Because of a higher benefit amount in the first benefit year, the individual would be eligible for EB/EUC even with the same amount of earnings. May the individual continue to be paid EB/EUC?

A. Yes. Since no new benefit year has been established, the "applicable benefit year" for purposes of establishing EB/EUC entitlement under 20 CFR 615.2(c)(2) is the first expired benefit year. Under 20 CFR 615.5(a)(iii), an individual is an "exhaustee" if the individual has received all of the regular compensation payable for the applicable benefit year. However, under 20 CFR 615.5(b), an individual is no longer an exhaustee with "the first week that the individual becomes eligible for regular compensation."

## **Reporting**

1. Q. When an individual exhausts his/her EUC benefits and later becomes eligible for additional weeks of EUC, is that counted as an initial claim?

A. When an individual who has exhausted EUC benefits comes in to file for additional EUC benefits which have become available in the State, there are three possible actions:

- a) If the individual has sufficient employment to establish a new benefit year under the regular program, then a count for a new initial claim under the regular program would be taken.
- b) If there is insufficient employment to establish a new benefit year under the regular program, then a count of an additional initial claim under the EUC program would be taken.
- c) If there has been no employment since the EUC exhaustion, then the claim is a reopened claim.

2. Q. Does the new legislation change any of the reporting instructions?

A. No. EUC statistical reporting is not changed with the recent legislated extension. However, as a result of the recent extension, two items should be emphasized as stated in the reporting instructions from GAL 4-92:

- a) There can only be one first payment for a claimant under the EUC program. Moving from one duration of benefits to another does not constitute another first payment.
- b) There can, however, be more than one exhaustion of EUC for any one claimant. Because a claimant can exhaust benefits and then, through a legislated extension, be eligible for further benefits, there may be a subsequent exhaustion. Both exhaustions should be reported.

3. Q. Should any form used for EUC claimants to report workseeking activities be retained in SESA files and if so, for how long?

A. Yes. Except as otherwise provided in 29 CER 97.42(b), records must be retained for three years

4. Q. May information about a claimant's work search be recorded on the continued claim form used by the SESA?

A. Yes. The SESA should also retain in its files any "tangible evidence" presented by the claimant.

## **Overpayments**

1. Q. Section 105(b) of the EUC Act provides that the State agency shall require individuals to repay amounts of EUC to which they were not entitled, except that the State agency may waive such repayment if it determines (1) such payment was made without fault on the part of the individual, and (2) repayment would be contrary to equity and good conscience. Section III.M.2 of GAL 492, provides essentially the same, and, in addition, provides detailed waiver requirements, which parallel those in the regulations implementing the Trade Act of 1974 (20 CFR 617.S5). 20 CFR 617.55 permits the State to elect to implement the waiver procedures. The GAL is silent on this election, but national office training provided at the beginning of the EUC program seemed to imply that there was not an election. Therefore, is it mandatory that a State implement the EUC waiver provisions?

A. No. A State may elect not to allow a waiver of EUC overpayments. This is the Department's position, the same as provided in 20 CFR 617.55. We intended to convey in our training sessions, that if a State does elect to allow waiver of EUC overpayments, then it is mandatory that the waiver provisions outlined in Section III. U.2. of GAL 4-92 which are the same as the waiver provisions at 20 CFR 617.55 be followed. Any State law waiver requirements of regular UI benefits are not applicable.

2. Q. Must a State agency issue an overpayment determination ) to the claimant in cases when the State agency discovers that it made an administrative error indetermining the claimant's EUC weekly benefit amount within a week or two after the erroneous payments were issued? Can the State agency correct this agency error by simply offsetting the amount of the payment error against future weeks of EUC?

A. Yes, the State agency must issue an overpayment determination to the claimant in the situation described in this question just as it would be required to issue an overpayment determination in the same circumstances under the regular State UI program. Section I.4. of Attachment A to GAL 4-92 provides that the State agency is to give notice in writing to the claimant and such notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of the right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for regular UI.

## **UCX**

1. Q. Can a State agency backdate a UCX claim to the original date of separation from the military for reservists who at the time of separation did not have 180-days or more of service requirement and were denied benefits taking into consideration that recent UCX amendments require only 90 days or more of service?

A. State agencies may backdate claims only if authorized by the particular State law where the UCX claim was filed.

2. Q. Would a UCX claimant be eligible for EB and/or State additional benefits?

A. Yes. A UCX claimant will be eligible for EB, State additional benefits, EUC and other programs as a result of the UCX amendments.