

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 24-20

TO: STATE WORKFORCE AGENCIES

FROM: JOHN PALLASCH /s/
Assistant Secretary

SUBJECT: Temporary Changes to the Federal-State Extended Benefits (EB) Program in Response to the Economic Impacts of the Coronavirus Disease 2019 (COVID-19) Pandemic Emergency

1. **Purpose.** To provide guidance and respond to state inquiries related to the Federal-State EB program and temporary changes to the program in accordance with the Families First Coronavirus Response Act, specifically Division D, Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA), Public Law (Pub. L.) 116-127, and the Coronavirus Aid, Relief, and Economic Security Act of 2020 (CARES Act) (Pub. L. 116-136).
2. **Action Requested.** The U.S. Department of Labor’s (Department) Employment and Training Administration (ETA) requests that State Workforce Agency Administrators provide information contained in this Unemployment Insurance Program Letter (UIPL) and its attachment to appropriate program and other staff in the state’s workforce system.
3. **Summary and Background.**
 - a. Summary – The President signed the Families First Coronavirus Response Act into law on March 18, 2020. This legislation, which includes EUISAA in Division D, makes emergency supplemental appropriations in response to the economic impacts of COVID-19. The CARES Act, which was signed into law on March 27, 2020, includes additional assistance to unemployed individuals, including EB program recipients.

The enactments of EUISAA and the CARES Act temporarily change certain aspects of the EB program. This UIPL describes: (i) basic qualification requirements for an individual to collect EB; (ii) temporary Federal Pandemic Unemployment Compensation (FPUC) payments payable for weeks of EB; (iii) temporary emergency flexibility in modifying or suspending EB work search requirements in response to the spread of COVID-19; (iv) temporary full Federal funding to states for EB; and (v) temporary

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Federal matching for the first week of EB for states with no waiting week. The attachment to this UIPL contains answers to recently asked questions.

- b. Background – As a condition of certification under Section 3304(a)(11) of the Federal Unemployment Tax Act (FUTA) (26 U.S.C. 3304(a)(11)), a state is required to have an EB program in state law that is payable as provided by the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 note). The regulations governing EB are located at 20 CFR Part 615.

For details on how a state triggers “ON” and “OFF” of EB via the Insured Unemployment Rate (IUR) trigger and the optional Total Unemployment Rate (TUR) trigger, refer to 20 CFR 615.12 and UIPL No. 16-11. For information on the beginning and ending dates of EB periods, refer to the “Beginning and Ending Dates of EB Periods” section in Attachment I of UIPL No. 12-09, Change 1, pp. 6-7.

Importance of Program Integrity. The programs and provisions within EUISAA and the CARES Act operate in tandem with the fundamental eligibility requirements of the Federal-State unemployment compensation (UC) program, which remain in place and require adherence. In addition, some of the CARES Act programs include new eligibility requirements, which states must apply. These requirements include that individuals are only entitled to benefits if they are no longer working through no fault of their own and individuals must be able and available for work.

States play a fundamental role in ensuring program integrity is maintained for all programs, including the EB program. While states have some flexibilities in response to the COVID-19 pandemic emergency, those flexibilities are generally limited to dealing with the effects of COVID-19 and the efforts to mitigate its spread, as discussed in UIPL Nos. 10-20, 13-20, 14-20, 15-20, 16-20, and 17-20. States must ensure that individuals only receive benefits in accordance with the statutory provisions and these UIPLs.

Providing false information to a state workforce agency for the purpose of obtaining UC benefits is fraud. For example, it is fraud if an individual quits work solely to obtain benefits and knowingly provides false or misleading information to the state regarding the reason for the unemployment. Section 2104(f) of the CARES Act, which provides \$600 in addition to the EB weekly benefit amount for which the individual is otherwise eligible, expressly provides that if an individual has fraudulently obtained benefits, the individual is ineligible for any additional benefits in accordance with the applicable state law provisions, must pay back the benefits fraudulently obtained, and is subject to criminal prosecution under 18 U.S.C. 1001.

States are expected to enforce these statutory provisions. Failure to do so would be a violation of the state’s agreement to administer these programs and could result in termination of the state’s agreement.

The Department is actively working with states to help ensure that benefits are only paid to individuals who are entitled to such benefits. It is important to note that the CARES

Act requires the Department's Office of the Inspector General (OIG) to provide oversight of the Federal and state implementation of the CARES Act provisions. The CARES Act includes an appropriation of \$26 million to the OIG to carry out audits, investigations, and other oversight activities related to states' adherence to existing UI laws and policies, as well as the provisions of the CARES Act.

4. Basic Qualifications and Temporary Changes to EB Program Requirements.

- a. Basic Qualifications for EB. EB is payable only after exhaustion of PEUC and other UC as explained below. During the period that PEUC is available, an individual must have exhausted PEUC entitlement before commencing receipt of EB. To qualify for EB the individual must have:
 - exhausted all rights to regular UC under state law;
 - no rights to regular UC with respect to any UC law of another state or Canada;
 - exhausted PEUC;
 - wages in the base period (with respect to the regular UC claim that was exhausted) that includes one of the following: (1) 20 weeks of full-time covered employment; (2) wages higher than 40 times the individual's most recent weekly benefit amount; or (3) total wages in the base period equal to or greater than 1.5 times the highest quarter (see Section 202(a)(5), EUCA);
 - no disqualifications that would prevent the individual from being eligible for EB (see Section 202(a)(4), EUCA); and
 - at least one week in the benefit year that begins in an EB eligibility period (see Section 203(c), EUCA).
- b. Temporary Federal Pandemic Unemployment Compensation (FPUC) Payment for Weeks of EB. Section 2104 of the CARES Act provides for a \$600 supplemental FPUC payment each week to eligible individuals, including eligible EB recipients, for weeks of unemployment beginning after March 27, 2020, and ending before July 31, 2020. See UIPL No. 15-20.
- c. Temporary Work Search Requirements for Individuals Collecting EB. Section 202(a)(3)(E) of EUCA requires that an individual collecting EB engage in a systematic and sustained effort to obtain work during each week and provide tangible evidence of such activities. As discussed in UIPL No. 13-20, Change 1, Section 4102(b) of EUISAA allows states to modify or suspend this work search requirement on an emergency temporary basis in response to the spread of COVID-19.
- d. Temporary Full Federal Funding to States for EB. Section 4102 of EUISAA provides emergency grants to states for UC program administration that is made available in two separate allotments, as discussed in UIPL No. 13-20. Section 4105 of EUISAA provides that, for states receiving both allotments of the emergency administrative grants and also meeting the thresholds to trigger "ON" to EB, the Federal Government will pay 100 percent of sharable regular compensation and sharable extended compensation (*e.g.*, 100 percent of EB for service attributable to contributory employers and 501(c)(3) nonprofit organizations) for weeks of

unemployment beginning after March 18, 2020, and ending before December 31, 2020.

For states that do not receive both allotments of the emergency administrative grants, but meet the thresholds to trigger “ON” to EB, the Federal Government will pay 50 percent of sharable regular compensation and sharable extended compensation, as required by Section 204(a)(1) of EUCA.

- e. Temporary Federal Matching for the First Week of EB for States with No Waiting Week. Section 4105(b) of EUISAA provides that for any state without a waiting week provision under the state UC law or that elects to temporarily suspend the waiting week requirement, the Federal government will pay 50 percent (or 100 percent if the requirements of Section 4105(a) of EUISAA are met) of sharable regular compensation and sharable extended compensation for the first week of EB for weeks of unemployment beginning after March 18, 2020, and ending before December 31, 2020.
- f. Non-sharable EB, Reimbursement, and Charging. Section 204(a)(2) of EUCA identifies circumstances under which the Federal Government will not pay any costs for EB (*i.e.*, the extended compensation is not sharable). For example, the Federal government will not fund benefits where states round up (rather than down). In this case, if an individual is eligible for \$99.50 and the state (which is otherwise eligible to temporarily receive 100 percent Federal funding for EB) rounds the payment up to \$100.00, the Federal government will pay \$99.00 while the state will pay the \$1.00 attributable to rounding up.

Additionally, the EB costs attributable to state and local governmental entities and Federally-recognized Indian tribes are not sharable. Section 204(a)(3) of EUCA denies Federal sharing for EB based on services for state and local governments, and Federally-recognized Indian tribes.

Section 2103 of the CARES Act provides that, to the extent payment of EB results in a payment due in lieu of contributions, after the reimbursing employer pays the amount due in lieu of contributions, such employer is eligible for reimbursement up to one-half of the amount of EB paid by the state for any given week of unemployment beginning after March 13, 2020, and ending before December 31, 2020. See UIPL No. 18-20 for additional information.

As described in 20 CFR 615.10(a), a state is not required to charge EB paid to an individual to the experience rating accounts of employers (*i.e.*, contributory employers), but is permitted to do so for all or any part of EB paid.

- 5. **Inquiries.** States should direct inquiries to the email account covid-19@dol.gov and copy the appropriate Regional Office.

6. References.

- Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136), including Title II, Subtitle A, Relief for Workers Affected by Coronavirus Act;
- Sections 4102 and 4105 of the Families First Coronavirus Response Act (Public Law 116-127), including Division D, Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA);
- Section 3304(a), Federal Unemployment Tax Act (FUTA) (26 U.S.C. § 3304);
- Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 note);
- 20 CFR Part 615;
- UIPL No. 18-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Emergency Unemployment Relief for State and Local Governmental Entities, Certain Nonprofit Organizations, and Federally-Recognized Indian Tribes*, issued April 27, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5893;
- UIPL No. 17-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Emergency Unemployment Compensation (PEUC) Program Operating, Financial, and Reporting Instructions*, issued April 10, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8452;
- UIPL No. 16-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Pandemic Unemployment Assistance (PUA) Program Operating, Financial, and Reporting Instructions*, issued April 5, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=4628;
- UIPL No. 15-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Federal Pandemic Unemployment Compensation (FPUC) Program Operating, Financial, and Reporting Instructions*, issued April 4, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=9297;
- UIPL No. 14-20, *Coronavirus Aid, Relief, and Economic Security (CARES) Act of 2020 – Summary of Key Unemployment Insurance (UI) Provisions and Guidance Regarding Temporary Emergency State Staffing Flexibility*, issued April 2, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3390;
- UIPL No. 13-20, Change 1, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020 (EUISAA) – Reporting Instructions, Modifications to Emergency Administrative Grants Application Requirement, and Questions and Answers*, issued May 4, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=5374;
- UIPL No. 13-20, *Families First Coronavirus Response Act, Division D Emergency Unemployment Insurance Stabilization and Access Act of 2020*, issued March 22, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8634;
- UIPL No. 10-20, *Unemployment Compensation (UC) for Individuals Affected by the Coronavirus Disease 2019 (COVID-19)*, issued March 12, 2020, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=8893;
- UIPL No. 16-11, *Federal-State Extended Benefits Program – Methodology for Calculating “on” or “off” Total Unemployment Rate Indicators for Purposes of Determining When a State Begins and Ends an Extended Benefit Period*, issued May 20, 2011, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=3027; and

- UIPL No. 12-09, Change 1, *Extended Benefits Program – Temporary Changes made by the Assistance for Unemployed Workers and Struggling Families Act*, issued May 4, 2009, https://wdr.doleta.gov/directives/corr_doc.cfm?DOCN=2750.

7. **Attachment(s)**.

Attachment: Temporary Changes to Federal-State EB Program – Questions and Answers

Temporary Changes to the Federal-State EB Program - Questions and Answers

1. Question: If a state triggers “ON” to EB, must a state notify individual claimants of the availability of EB?

Answer: Yes. The state must provide potentially eligible individuals (discussed in Section 4.a. of UIPL No. 24-20) with appropriate written notification of their potential eligibility, including filing instructions, in accordance with state law. States must provide claimants with alternate modes of contact, which may include email, and communicate with the claimant based on his or her preferred method of contact. If the state contacts the claimant via email and the email is returned, the state must attempt to contact the claimant by U.S. mail.

2. Question: If the state triggers “ON” while an individual is collecting Pandemic Emergency Unemployment Compensation (PEUC), would the individual switch to EB?

Answer: No. The payment of EB for which an individual would otherwise be eligible must be deferred until after the individual exhausts PEUC benefits. See UIPL No. 14-20 for additional information on the coordination of programs.

3. Question: Would an individual collecting Pandemic Unemployment Assistance (PUA), having previously exhausted PEUC, have to switch to EB if the state triggers “ON” to EB?

Answer: Yes. If the individual meets the eligibility requirements for EB (including that the individual does not have any disqualifications that would prevent the individual from being eligible for EB), he or she is no longer eligible to receive PUA and must be notified by the state that an EB claim must be filed. As noted above, states must provide claimants with alternate modes of contact, which may include email, and communicate with the claimant based on his or her preferred method of contact. If the state contacts the claimant via email and the email is returned, the state must attempt to contact the claimant by U.S. mail.

If the individual continues to be unemployed after exhausting the EB claim and meets one of the listed COVID-19 related reasons in section 2102(a)(3)(A)(ii)(I) of the Coronavirus Aid, Relief, and Economic Security Act (CARES Act) (Public Law 116-136), he or she may resume receipt of PUA. However, any weeks of EB collected would be subtracted from his or her remaining PUA entitlement.

4. Question: Must an individual file a separate application for EB, or may the state automatically switch a UC claim, or other type of claim, to an EB claim?

Answer: A state may not automatically switch an individual to an EB claim. Each state must determine if an individual meets all EB eligibility requirements, as described in Section 4.a. of UIPL No. 24-20. While an initial application is not required, a state may not file the EB claim before determining that the individual meets the eligibility requirements under the EB

program. If a separate application is not taken, the state must document the steps taken to confirm EB eligibility.

5. Question: Federal law limits EB eligibility to two weeks for an individual who files a claim in one state while residing in another state that is not in an EB period. Does this limitation pertain to commuter claims?

Answer: No. The two-week limitation applies only to claims filed under the Interstate Benefit Payment Plan (IBPP) in a state where no extended benefit period is in effect. Commuter claims are made by individuals who regularly traveled across a state line from home to work, and file for regular UC with the state of employment. Because commuter claims are not filed through the IBPP, the two-week limitation does not apply. *See* Section 202(c) of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) (26 U.S.C. 3304 note) and 20 CFR 615.9(c).

6. Question: Do the provisions of EUISAA and the CARES Act require my state to amend its EB law?

Answer: States are not required to amend their EB laws, but might need to do so to respond to certain circumstances. States may qualify for both allotments of the emergency administrative grants described in Section 4102 of EUISAA and the increased Federal sharing of EB costs if the current provisions of state law meet the applicable requirements. Similarly, some states may have the authority to exercise the temporary emergency flexibility for modifying or suspending EB work search requirements in response to the spread of COVID-19 without amending state law. However, some states may need legislative or executive action to receive both allotments of the emergency administrative grants, be eligible for increased Federal sharing of EB costs, or to modify or suspend EB work search requirements.

7. Question: Are there any changes to the reporting requirements for EB reports because of EUISAA or the CARES Act?

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