

Employment and Training Administration Advisory System U.S. Department of Labor Washington, D.C. 20210	CLASSIFICATION Extended Benefits
	CORRESPONDENCE SYMBOL DL
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER No. 12-09

TO: STATE WORKFORCE AGENCIES

FROM: DOUGLAS F. SMALL *Douglas F. Small*
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SUBJECT: Extended Benefits Program – Temporary Changes made by the Assistance for Unemployed Workers and Struggling Families Act

1. Purpose. To advise states of temporary changes to the permanent federal-state extended benefits (EB) program.
2. References. Section 2005 of Division B, Title II, the Assistance for Unemployed Workers and Struggling Families Act, of Public Law No. 111-5, enacted February 17, 2009; the Unemployment Compensation Extension Act of 2008, Public Law 110-449; the Federal-State Extended Unemployment Compensation Act of 1970 (“EB law”), 26 U.S.C. 3304(a)(11) note; 20 CFR Part 615; and Unemployment Insurance Program Letter (UIPL) No. 45-82 and UIPL No. 7-09.
3. Background. Section 2005 made several temporary changes to the EB program provided for under the EB law. One change is intended to encourage states experiencing high unemployment to enact the program’s optional total unemployment rate (TUR) trigger by providing that the Federal government will, in most cases, pay 100 percent of the benefit costs of EB for a specified period. This 100 percent reimbursement also applies to states triggering “on” under other EB triggers and is available to states that already have the TUR trigger in their laws. Under another change, states may allow additional individuals to qualify for EB.

Attachment I discusses the temporary changes in greater detail. Attachment II contains the text of the EB provisions.

4. Action. State administrators should distribute this advisory to appropriate staff.

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5. Inquiries. Questions should be addressed to your Regional Office.

6. Attachments.

Attachment I – Temporary Changes to Federal-State EB Program

Attachment II – Text of Section 2005 of Public Law 111-5

Temporary Changes to Federal-State EB Program

FEDERAL SHARING FOR BENEFIT COSTS

1. Question: How do the changes made by Section 2005 affect Federal sharing for EB?

Answer: With certain exceptions, the permanent EB law provides that one-half of EB benefit costs will be paid by the Federal government. (*See* Section 204(a) of the EB law and 20 CFR 615.14.) This Federal share is also paid for certain weeks of regular state unemployment compensation known as “sharable regular compensation.” (For purposes of this UIPL, all references to EB benefits include sharable regular compensation.)

Section 2005 amended the EB law to provide that the Federal government will pay 100 percent of EB benefit costs for weeks of unemployment beginning after the date of enactment (that is, after February 17, 2009) and before January 1, 2010.

Q&As 3, 4, and 5 discuss three exceptions to this Federal sharing. Also, *see* Q&A 7 for an optional exception to the January 1, 2010, ending date.

2. Question: My state was already in an EB period when the amendments were enacted. What is the first week of unemployment for which 100 percent Federal funding is available?

Answer: The state is entitled to obtain 100 percent of eligible EB costs for weeks of unemployment beginning after February 17, 2009.

3. Question: How do the changes affect Federal sharing for the first week of EB?

Answer: The permanent EB law prohibits Federal sharing of benefit costs for the first week of EB if the state compensates individuals for the first week of regular state benefit eligibility “at any time or under any circumstances.” (*See* Section 204(a)(2)(B) of the EB law and 20 CFR 515.14(c)(3).) As explained in UIPL 7-09, this prohibition on Federal sharing of the first week of EB was suspended for weeks of unemployment beginning after November 21, 2008, and ending on or before December 8, 2009.

Section 2005 extended this suspension through weeks of unemployment ending before May 30, 2010. As a result, even if a state does not have a waiting week for regular state unemployment compensation or permits payment of a waiting week under certain circumstances, the costs of the first week of EB will be paid as follows:

- The entire cost will be paid by the Federal government if the first week of EB

begins after February 17, 2009, and before January 1, 2010.

- 50 percent of the cost will be paid by the Federal government if the first week of EB begins after January 1, 2010, and ends before May 30, 2010.

4. Question: How do the changes affect Federal sharing for amounts that are not rounded down?

Answer: They have no effect. As a result, the prohibition on Federal sharing for situations where states round up (rather than down) remains in effect. For example, an individual is eligible for \$99.50 and the state rounds the payment up to \$100.00. For the period of time specified in the amendments, the Federal government will pay \$99.00 while the state will pay the \$1.00 attributable to rounding up. (See Section 204(a)(2)(C) of the EB law and 20 CFR 615.14(c)(5) regarding this rounding requirement.)

5. Question: How do the changes affect Federal sharing for EB based on employment with state and local governments and federally-recognized Indian tribes?

Answer: They have no effect. The EB law's prohibition on Federal sharing based on such employment remains in effect. (See Section 204(a)(3) of the EB law and 20 CFR 615.14(c)(6).)

BENEFIT ELIGIBILITY PROVISIONS

6. Question: What changes does Section 2005 permit to EB eligibility requirements?

Answer: To initially qualify for EB under the permanent EB law, an individual must have at least one week in his/her benefit year that begins in an EB period. (See Section 203(c) of the EB law and 20 CFR 615.2(h).) For example, if the final week of the individual's benefit year is also the first week of the state's EB period, the individual will qualify for EB. If otherwise eligible, this individual may receive EB until his/her EB account is exhausted or the state's EB period ends. Treatment of these individuals is unchanged.

Section 2005 provides for a state to, at its option, permit certain individuals to qualify for EB in cases where there is no overlap between the individual's benefit year and the EB period. Specifically, the state may permit individuals to qualify for EB when the individuals have exhausted Emergency Unemployment Compensation (EUC08) during an EB period that began *on or before* the date the individual exhausted. For example, an individual's benefit year ends during Week 7 of a calendar year and the individual is receiving EUC08, the state triggers "on" EB during Week 10, and the individual exhausts EUC08 during Week 13. The state may determine the individual to be eligible for EB beginning Week 14, because the individual exhausted all rights to EUC08 at Week 13 during an EB period. The individual may, if otherwise eligible, collect EB until that benefit is exhausted or, if earlier, the EB period ends.

This option is available to states for weeks of unemployment beginning after February 17, 2009, and before January 1, 2010.

7. Question: Is there any phase-out for individuals who have established EB eligibility as of the January 1, 2010, end date?

Answer: Yes. If an individual has received EB with respect to one or more weeks of unemployment beginning after February 17, 2009, and before January 1, 2010, the state may continue to pay EB to the individual (if otherwise eligible) for weeks of unemployment ending before June 1, 2010.

The Federal government will pay 100 percent of eligible EB benefit costs based on such claims during this phase-out period. Note this phase-out for Federal sharing applies to payments to individuals who established EB eligibility (1) under the rules pertaining to the permanent EB program as well as (2) as a result of the special rule described in the previous Q&A.

8. Question: Do the amendments affect the requirement that an individual must conduct a systematic and sustained work search?

Answer: No. States must require EB claimants (with exceptions in current law) to conduct a systematic and sustained search for work, and to submit tangible evidence of such search, as a condition of being eligible for EB for a week. States must administer these work search provisions (and all other EB eligibility requirements) to receive Federal sharing under both permanent EB law and under the temporary amendments. (*See* Section 202(a)(3)(A)(ii) and 20 CFR 615.8(g)(2).)

AMENDMENTS TO STATE LAW

9. Question. Do the provisions of Section 2005 require my state to amend its law?

Answer: States paying EB under current provisions of state law will automatically qualify for increased Federal sharing. Whether a state needs to amend its law to trigger “on” using the optional TUR trigger, and thereby obtain the increased Federal payments under Section 2005, is a matter determined under state law. Draft language for implementing the optional TUR trigger is found in UIPL 45-92.

REPORTING REQUIREMENTS

10. Question. Are there any changes for reports required by the Department of Labor?

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).

Text of Section 2005 of Public Law 111-5

SEC. 2005. FULL FEDERAL FUNDING OF EXTENDED UNEMPLOYMENT COMPENSATION FOR A LIMITED PERIOD.

(a) **IN GENERAL.**—In the case of sharable extended compensation and sharable regular compensation paid for weeks of unemployment beginning after the date of the enactment of this section and before January 1, 2010, section 204(a)(1) of the Federal-State Extended Unemployment Compensation Act of 1970 (26 U.S.C. 3304 note) shall be applied by substituting “100 percent of” for “one-half of”.

(b) **SPECIAL RULE.**—At the option of a State, for any weeks of unemployment beginning after the date of the enactment of this section and before January 1, 2010, an individual’s eligibility period (as described in section 203(c) of the Federal-State Extended Unemployment Compensation Act of 1970) shall, for purposes of any determination of eligibility for extended compensation under the State law of such State, be considered to include any week which begins—

- (1) after the date as of which such individual exhausts all rights to emergency unemployment compensation; and
- (2) during an extended benefit period that began on or before the date described in paragraph (1).

(c) **LIMITED EXTENSION.**—In the case of an individual who receives extended compensation with respect to 1 or more weeks of unemployment beginning after the date of the enactment of this Act and before January 1, 2010, the provisions of subsections (a) and (b) shall, at the option of a State, be applied by substituting “ending before June 1, 2010” for “before January 1, 2010”.

(d) **EXTENSION OF TEMPORARY FEDERAL MATCHING FOR THE FIRST WEEK OF EXTENDED BENEFITS FOR STATES WITH NO WAITING WEEK.**—

(1) **IN GENERAL.**—Section 5 of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449) is amended by striking “December 8, 2009” and inserting “May 30, 2010”.

(2) **EFFECTIVE DATE.**—The amendment made by paragraph (1) shall take effect as if included in the enactment of the Unemployment Compensation Extension Act of 2008 (Public Law 110–449).

(e) **DEFINITIONS.**—For purposes of this section—

- (1) the terms “sharable extended compensation” and “sharable regular compensation” have the respective meanings given such terms under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970;
- (2) the terms “extended compensation”, “State”, “State law”, and “week” have the respective meanings given such terms under section 205 of the Federal-State Extended Unemployment Compensation Act of 1970;
- (3) the term “emergency unemployment compensation” means benefits payable to individuals under title IV of the Supplemental Appropriations Act, 2008 with respect to their unemployment; and

(4) the term “extended benefit period” means an extended benefit period as determined in accordance with applicable provisions of the Federal-State Extended Unemployment Compensation Act of 1970.

(f) REGULATIONS.—The Secretary of Labor may prescribe any operating instructions or regulations necessary to carry out this section.