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DEPARTMENT OF LABOR

Employment and Training Administration

20 CFR Part 615

RIN 1205-AB62

Federal-State Unemployment Compensation Program; Implementing the Total Unemployment Rate as an Extended Benefits Indicator and Amending for Technical Corrections; Notice of Proposed Rulemaking

Agency: Employment and Training Administration, Labor.

Action: Notice of Proposed Rulemaking; request for comments.

SUMMARY: The Employment and Training Administration (ETA) of the U.S. Department of Labor (Department) issues this notice of proposed rulemaking (NPRM) to implement statutory amendments to the Extended Benefits (EB) program, which pays extra weeks of unemployment compensation during periods of high unemployment in a State. Specifically, this NPRM proposes a methodology for computing the Total Unemployment Rate (TUR) indicator which is an optional indicator used to measure unemployment in a state. We also

propose amendments to make technical corrections to the current regulations and to correct minor mistakes.

DATES: To be ensured consideration, comments must be submitted in writing on or before [INSERT DATE 60 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

ADDRESSES: You may submit comments, identified by Regulatory Information Number (RIN) 1205-AB62, by only one of the following methods:

- Federal e-Rulemaking Portal: http:// www.regulations.gov. Follow the instructions for submitting comments.
- Mail/Hand Delivery/Courier:

Submit comments to Adele Gagliardi, Administrator, Office of Policy Development and Research (OPDR), U.S. Department of Labor, Employment and Training Administration, 200 Constitution Avenue, N.W., Room N– 5641, Washington, DC 20210. Because of security-related concerns, there may be a significant delay in the receipt of submissions by United States Mail. You must take this into consideration when preparing to meet the deadline for submitting comments. The Department will post all comments received on http://www.regulations.gov without making any changes to the comments or redacting any information, including any personal information provided. The http://www.regulations.gov Web site is the Federal e-rulemaking portal and all comments posted there are available and accessible to the public. The Department recommends that commenters not include personal information such as Social Security Numbers, personal addresses, telephone numbers, and e-mail addresses that they do not want made public in their comments as such submitted information will be available to the public via the http://www.regulations.gov Web site. Comments submitted through http://www.regulations.gov will not include the e-mail address of the commenter unless the commenter chooses to include that information as part of his or her comment. It is the responsibility of the commenter to safeguard personal information.

Instructions: All submissions received must include the agency name and the RIN for this rulemaking: RIN 1205-AB62. Please submit your comments by only one method.

Docket: All comments will be available for public inspection and copying during normal business hours by contacting OPDR at (202) 693–3700. You may also contact OPDR at the address listed above. As noted above, the Department also will post all comments it receives on http://www.regulations.gov. Copies of the proposed rule are available in alternative formats of large print and electronic file on computer disk, which may be obtained at the above-stated address. The proposed rule is available on the Internet at the Web address http://www.regulations.gov.

FOR FURTHER INFORMATION CONTACT:

Adele Gagliardi, Administrator, OPDR, Employment and Training Administration, (202) 693– 3700 (this is not a toll-free number) or 1–877–889–5627 (TTY). Individuals with hearing or speech impairments may access the telephone number above via TTY by calling the toll-free Federal Information Relay Service at (800) 877–8339.

SUPPLEMENTARY INFORMATION:

The Preamble to this proposed rule is organized as follows:

I. Background – provides a brief description of the development of the proposed rule.

II. Section-by-Section Review of the Proposed Rule – summarizes and discusses proposed changes to the Federal-State Unemployment Compensation Program.

III. Administrative Information – sets forth the applicable regulatory requirements.

I. Background

EB is payable in a State only during an EB period of unusually high unemployment in the State. Section 203 of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA), Pub. L. 91-373, provides methods for determining whether a State's current unemployment situation qualifies as an EB period. EB periods are determined by "on" and "off" indicators (commonly referred to as triggers) in the State. Section 203(d), EUCA, provides for an "on" indicator based on the insured unemployment rate (IUR). The IUR is computed weekly by the States using administrative data on State unemployment compensation claims filed and the total population of employed individuals covered by unemployment insurance. States trigger "on" EB if the IUR trigger value for the most recent 13-week period equals or exceeds 5 percent and equals or exceeds 120 percent of the average of such trigger values for the corresponding 13-week period ending in each of the preceding two calendar years. The calculation of the relationship between the current rate and prior two years' rates is commonly referred to as the "look-back."

The Unemployment Compensation Amendments of 1992, Pub. L. 102-318, added Section 203(f), EUCA, to provide for an optional alternative indicator that States may use to trigger "on" EB based on the TUR. That indicator requires that, for the most recent three months for which data for all States is published, the average TUR in the State (seasonally adjusted) for the most recent three-month period equals or exceeds 6.5 percent and the average TUR in the State (seasonally adjusted) equals or exceeds 110 percent of the average TUR for either or both of the corresponding three-month periods in the two preceding calendar years (look-back). The 1992 amendments also provided for a calculation of a "high unemployment period" when the TUR in a State equals or exceeds 8 percent and meets the 110 percent look-back described above, permitting the payment of additional weeks of EB. Section 203(f)(3), EUCA, provides that "determinations of the rate of total unemployment in any State for any period . . . shall be made by the Secretary." An EB period ends when the state no longer meets any of the "on" triggers provided for in State law.

Regulations at 20 CFR 615 implement the provisions of EUCA relating to the IUR indicators, including how they will be computed. The regulation, at 20 CFR 615.12, explains the IUR triggers and how the rates are computed. The regulation does not address the TUR indicator although the Department issued UIPLs No. 45-92 and No.

16-11, respectively, addressing the TUR indicator and its computation. To conform our regulations to current practice, the Department is issuing this proposed rule to describe how the TUR indicators are computed for purposes of determining whether a State meets the 110 percent look-back requirements.

In the absence of explicit guidance and regulation, the Department previously adapted a portion of the existing guidance for the IUR look-back as a basis for calculating the TUR look-back. Specifically, in computing the look-back percentage for the TUR trigger the procedure for determining the number of significant digits from the resulting fraction followed 20 CFR 615.12(c)(3).

The TUR indicator uses total unemployment rates determined by the Bureau of Labor Statistics (BLS). These rates are measured using sampled data and therefore are imprecise due to sampling error. TUR measured by BLS can be lower or higher than the true levels of unemployment and there is no systematic tendency in estimation. In order to ensure to the extent possible that the TUR indicator is measured with total unemployment rates that reflect the true levels of unemployment that can be often higher than the rates measured by BLS, the Department has determined that an appropriate methodology for computing the look-back on the TUR indicator is to switch from truncation to rounding to the nearest hundredth, or second decimal place. Additionally, rounding, rather than truncating, is consistent with BLS practices in treating the TUR data. UIPL No. 16-11, dated May 20, 2011, informed the SWAs that the full effect of this new rounding procedure was implemented retroactive to April 16, 2011.

The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Section 502, permitted States to amend State law in order to make determinations of whether there is an "on" or "off" indicator by comparing current unemployment rates to the unemployment rates for the corresponding period in the three preceding years. Authority to use this three-year look-back applies only for weeks of unemployment beginning after December 17, 2010, and ending on or before December 31, 2013.

General

Section 3304(a)(11) of the Federal Unemployment Tax Act (26 U.S.C. 3301 et seq.) (FUTA) requires, as a condition of employers in States receiving credits against the Federal unemployment tax, that the States' unemployment compensation laws provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals. EUCA established the EB Program by which, if certain conditions are met in a State under its law, extended unemployment compensation is provided to workers in the State who have exhausted their regular compensation during a period of high unemployment referred to as an EB period. EUCA provides methods for determining whether an EB period exists in the State. These methods are referred to as "on" or "off" indicators.

There were two "on" and "off" indicators in existence before the enactment of the UC Amendments. These indicators were based on the IUR. The IUR indicator's trigger value is, under section 203(e) of EUCA, the ratio of the average number of unemployment claims filed in a State during the most recent 13 weeks to the average monthly number of employed individuals covered by UC in that State during the first four of the last six completed calendar quarters. The first indicator has two conditions which must be met and is required to be in State law. Under section 203(d) of EUCA, the EB Program is activated if a State's IUR trigger value (first condition) is at least 5 percent (referred to as the regular IUR trigger threshold with "look-back"), and is at least 120 percent of the average of the trigger values in the prior two years for the corresponding 13-week calendar periods (second condition). The second condition – that the most recent 13-week period must be at least 120 percent of the average of the corresponding periods in the last two years – is commonly referred to as the "look-back" provision. The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the look-back.) The look-back provision supports activation of a State's EB Program only when the current unemployment rate is both high and increasing, which indicates that the State's labor market is worsening and additional compensation is warranted. Under the second indicator, which is an option for a State, section 203(d) of EUCA provides the EB Program may be triggered "on" with an IUR trigger value of at least 6 percent regardless of its relation to the IUR trigger values in the preceding two years. The 6 percent value is referred to as the regular IUR trigger threshold without look-back.

Alternative indicator

The UC Amendments amended the EUCA to permit States to adopt an alternative indicator based on the TUR to trigger "on" and "off" the EB Program.

Specifically, paragraph (f) of section 203 of EUCA provides for a TUR indicator comprised of a Trigger Value and look-back provision. The Trigger Value for this indicator is the three-month average of seasonally adjusted TURs for the most recent three months for which data for all States is published. The regular TUR trigger threshold is 6.5 percent. The look-back provision requires that the Trigger Value equals or exceeds 110 percent of the TUR Trigger Values for either or both of the corresponding three-month periods in the two preceding calendar years (the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the look-back). The TUR Trigger Value is determined by the Department based on data from BLS.

As with the IUR indicator, the look-back provision ensures that the State's TUR Trigger Value is both high and increasing, indicating that the State's labor market is worsening and additional compensation is warranted. A State will trigger "off" its EB Program when either the TUR Trigger Value falls below 6.5 percent, or the requirements pertaining to the look-back provision are not satisfied.

Regardless of whether a State's EB Program is triggered "on" based on the IUR or TUR indicators, sections 203(d)(2) and 203(f)(1)(B) of EUCA provide that the EB period is triggered "off' when the conditions supporting the activation of the EB Program are no longer satisfied. Additionally, when the program triggers "on" or "off" EB payments, it must remain in the new status ("on" or "off" EB payments) for a minimum of 13 weeks regardless of changes in future trigger values.

The Department implemented EUCA's provisions on the IUR indicator at 20 CFR part 615, published in 53 FR 27928, Jul. 25, 1988. The Department implemented the alternative TUR indicator provided by the UC Amendments through guidance on August 31, 1993 (UIPL No. 45-92). The Department now proposes to place the TUR indicator into regulations.

Payments of Additional Weeks of Extended Benefits

The UC Amendments provided that States electing to use the new TUR indicator must also provide for the payment of additional weeks of EB during a "high unemployment period" that occurs during an EB period. These additional weeks of EB are available if State law provides for the use of the alternative TUR indicator.

Consistent with EUCA § 203(b)(1), no EB period or high unemployment period may begin in any State by reason of a State "on" indicator before the 13-week minimum status period expires after the ending of a prior EB period with respect to such State. Conversely, no EB period or high unemployment period may end in any State by reason of a State "off" indicator before the 13-week minimum status period expires after the beginning of an EB period with respect to such State.

EUCA originally provided for the establishment of an EB account, and the amount in the account is the least of one of three amounts which is payable for regular extended compensation. The UC amendments added a new paragraph to section 202(b) of EUCA that increases the amount in these accounts during a high unemployment period. The amount payable in a high unemployment period is equal to whichever of the following is the least and is referred to as “high unemployment extended compensation”:

- 80 percent (as opposed to 50 percent in a “normal” EB period) of the total amount of regular UC (including dependent’s allowances) payable to the individual during the benefit year;
- 20 (as opposed to 13) times the individual’s weekly benefit amount; or
- 46 (as opposed to 39) times the individual’s weekly benefit amount, reduced by the regular UC paid (or deemed paid) during the benefit year.

The term “high unemployment period” is defined in Section 202(b)(3)(B), EUCA, as any period during which an EB Program would be in effect if the TUR indicator equaled or exceeded 8 percent and the TUR indicator equals or exceeds 110 percent of the TUR indicators for either or both the corresponding three-month periods in the two previous calendar years.

Whether a high unemployment period exists in a State for a particular week is determined in accordance with provisions of State law implementing sections 202(b)(3) and 203(f) of EUCA and the seasonally-adjusted TUR indicator determined by BLS. When this determination is made, the State follows the requirements of sections 203(a) and (b) of EUCA for determining the first and last week for which high unemployment EB is payable. Specifically, a high unemployment EB period begins on the first day of the third calendar week after the TUR indicator requirements are satisfied, and ends on the last day of the third week after the first week for which the TUR indicator requirements are not met. However, as stated above, no EB period or high unemployment period may begin in any State by reason of a State “on” indicator before the 13-week minimum status period expires after the ending of a prior EB period with respect to such State.

Alternative Indicator Rounding Methodology

Before April 16, 2011, in absence of explicit statutory guidance and regulation, the Department adapted a portion of the requirement (in 20 CFR 615.12) for calculating the look-back percentage for the IUR indicator as a basis for determining the significant number of digits from the look-back percentage for the TUR indicator. Specifically, the quotient is computed to two decimal places and multiplied by 100 with all numbers to the right of the decimal point being dropped (known as “truncation”). The result is expressed as a percentage.

The UC Amendments provide for a State to trigger “on” EB using the TURs determined by BLS. As discussed above, because the TUR indicator uses unemployment rates determined by BLS using sampled data, the rates are imprecise due to sampling error. Total unemployment rates measured by the BLS can be lower or higher than the true levels of unemployment and there is no systematic tendency in estimation. In order to ensure to the extent possible that the TUR indicator is measured with total unemployment rates that reflect the true levels of unemployment that can be often higher than the rates measured by the BLS, the Department has determined that an appropriate methodology for computing the look-back on the TUR indicator is to switch from truncation to rounding to the nearest hundredth. In contrast, the IUR indicator values are computed from administrative data and thus represent the full universe. Because of these differences in the calculation of the insured and total unemployment rates, on May 20, 2011 the Department announced, in UIPL No. 16-11, that an appropriate methodology for computing the look-back percentage for the TUR indicator is to switch from truncation at the second decimal place to rounding to the second decimal place.

UIPL No. 16-11 informed States of the new rounding methodology the Department now employs when computing the current trigger rate as a percent of the comparable trigger rates in prior years for the TUR indicator. Since TURs have been rounded, an expression of a ratio of two TURs must also be rounded.

On a monthly basis, the three-month average of the seasonally adjusted TUR is divided by the same measure for the corresponding three months in each of the applicable two prior years (the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the look-back). The resulting decimal fraction is then rounded to the hundredths place (the second digit to the right of the decimal place). The resulting number is multiplied by 100, reported as an integer, and compared to the statutory threshold to determine if the State triggers "on" EB. UIPL No. 16-11 informed the SWAs that the full effect of this new rounding procedure was implemented retroactive to April 16, 2011.

II. Section-by-Section Review of the Proposed Rule

We propose to update 20 CFR part 615 so that it includes the TUR indicator. In addition, in updating Part 615 to incorporate the TUR indicator, we propose to incorporate the rounding method adopted for the look-back. We also propose technical amendments to this part to update its provisions since the last regulatory revision and to correct minor errors in the text of the rule.

First, we propose replacing all uses of the term "the Act" with "EUCA" to mean the Federal-State Extended Unemployment Compensation Act of 1970. Additionally, we propose to replace all instances of the term "Extended Benefits" with "extended unemployment compensation" to mean the funds actually paid out to UI recipients and to avoid confusion.

We propose to amend § 615.1 (Purpose) by clarifying that FUTA, 26 U.S.C. 3304(a)(11), requires, as a condition of tax offset, that States' unemployment compensation laws provide for the payment of extended unemployment compensation during periods of high unemployment to eligible individuals. We also propose to revise § 615.1 by deleting the reference to Extended Benefits and the Extended Benefit program at the end of the section to avoid confusion with the proposed definition of Extended Benefits in § 615.2 (Definitions).

We propose to amend 615.2 (Definitions) by adding several new definitions for clarity and to implement parts of EUCA in the regulation. Furthermore, while "EUCA" is a new definition, it merely replaces "Act" as a defined term. The new definitions we propose to add to § 615.2 follow.

<u>Extended benefit period</u> means the weeks during which extended compensation is payable in a State in accordance with § 615.11 (Extended Benefit Period or High Unemployment Period).

Extended Benefits Program, or EB Program, means the entire program under which monetary payments are made to workers who have exhausted their regular compensation including during a high unemployment period. In contrast, "extended compensation" refers narrowly to the actual monetary payment made to individuals eligible for benefits under the EB Program. Under the EB Program, an individual may be eligible to receive payments under distinct statutory entitlements, which the statute refers to as "plans," "programs," or "criteria," that comprise the EB Program. For example, the regular EB Program can provide for compensation up to 50 percent of the benefit amount claimants were eligible for in the regular UI program. For States in a high unemployment period, the EB Program can provide for compensation up to 80 percent of the benefit amount claimants were eligible for in the regular compensation.

Extended compensation account is the account established for each individual claimant for the payment of regular extended compensation or high extended compensation.

Extended unemployment compensation means the funds actually paid out to UI recipients. To avoid confusion, we propose to replace all instances of the term "Extended Benefits" with "extended unemployment compensation."

High unemployment extended compensation means the benefits payable to an otherwise eligible individual for weeks of unemployment which begin in a high unemployment period, under those provisions of a State law which satisfy the requirements of EUCA and this part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended compensation (as defined in this section), together with high unemployment extended compensation, comprise Extended compensation.

High unemployment period (HUP) means a period where the Department determines that the Trigger Value in a State, which has enacted the alternative TUR trigger in law, for the most recent three months for which data for all States is published, equals or exceeds 8 percent, and such Trigger Value equals or exceeds 110 percent of such Trigger Values for either or both of the corresponding three-month periods ending in the two preceding calendar years (the Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the look-back). If a State triggers "on" to a HUP, it must remain "on" for at least 13 weeks; if it triggers "off" a HUP, it must remain in a mandatory "off" period for at least 13 weeks.

Insured Unemployment Rate (IUR) means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in a State for weeks of unemployment in the most recent thirteen-consecutive-week period as determined by the State on the basis of State reports to the Secretary, by the average monthly employment covered under State law for the first four of the most recent six completed calendar quarters before the end of such 13-consecutive-week period.

Regular extended compensation means the benefits payable to an otherwise eligible individual for weeks of unemployment which begin in an EB Period, under those provisions of a State law which satisfy the requirements of EUCA for the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended compensation, together with high unemployment extended compensation, comprises the monetary benefits payable under the Extended Benefits program.

Regular EB period means a period during which a state is triggered "on" the EB Program because either the mandatory or optional IUR indicator satisfies the criteria to be "on" and the state is not in a 13-week mandatory "off" period; or the state is triggered "on" the EB Program because the TUR indicator's Trigger Value is both at least 6.5 percent, and at least 110 percent of the Trigger Value for the comparable three months in either of the prior two years.

Total Unemployment Rate means the number of unemployed individuals in a State (seasonally adjusted) divided by the civilian labor force (seasonally adjusted) in the State for the same period. The calculation uses BLS data.

Trigger Value or average rate of total unemployment means the ratio computed by adding three consecutive months of the level of seasonally adjusted unemployment in a State for the numerator and adding for the same consecutive three months the level of the seasonally adjusted civilian labor force in the State for the denominator. This ratio is an optional indicator used for triggering States "on" and "off" the EB Program and is added in § 615.12(e)(2)-(e)(3)).

In addition to these proposed new definitions, we propose to revise the existing definitions (with citations to current regulations included), primarily for consistency:

- 615.2(a) – We propose to revise the definition of Act by replacing it with EUCA. EUCA means the Federal-State Extended Unemployment Compensation Act of 1970, Pub. L. No. 91¬-373, 84 Stat. 708 (codified in 26 U.S.C. 3304, note), as amended. We propose to replace all instances of the term "the Act" with "EUCA."
- 615.2(c)(2) – We propose to revise the definition of "Applicable benefit year" to incorporate the concept that an individual's EB claims may expire in either a regular EB period or a high unemployment period;
- 615.2(j)(2) – We propose to revise the definition of "Department" to update the Secretary's Orders which delegate authority under EUCA from the Secretary of Labor to the Assistant Secretary for Employment and Training. Specifically, we propose to insert Secretary's Order No. 6-2010 (75 FR 66268) and delete Secretary's Order No. 4-75 (40 FR 18515) and Secretary's Order No. 14-75 in the definition because Secretary's Order No. 6-2010 is the most up-to-date order delegating authority to the Assistant Secretary for Employment and Training under EUCA.

- 615.2(g) – We propose to revise the definition of "extended compensation" to mean the funds payable to an individual for weeks of unemployment which begin in an extended benefit period or high unemployment period, under those provisions of a State law which satisfy the requirements of EUCA, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85 (unemployment compensation for former Federal employees and ex-servicememebers), but does not include regular compensation or additional compensation. Throughout the current 20 CFR 615, the term "extended benefits "refers to both the program as a whole, and the benefits payable to claimants. The new terminology clarifies that for the purposes of this regulation, Extended Benefits refers to the whole program while extended compensation refers to benefits payable to claimants.
- 615.2(h) – We propose to revise the definition of "Eligibility Period" to include references to a high unemployment period, in addition to the existing references to an EB period which we propose amending to "regular EB period."
- 615.2(i) – We propose to revise paragraph (1) of the definition of "Sharable Compensation" by replacing the phrase "extended benefits" with "extended compensation" to be consistent with proposed amendments made throughout the regulation text, and to clarify that this refers to the

availability of up to 50 percent of the compensation available to the claimant in the regular program. In paragraph (1)(ii) of this definition, we propose replacing the phrase "extended benefits" with "regular extended compensation" to be consistent. We propose to add a new paragraph (2) to this definition that defines how the entitlement for an individual claimant is computed in the EB Program when the State has enacted the optional TUR indicator and the State is in a high unemployment period. Because of this proposed paragraph addition, we further propose to renumber what were paragraphs (2) and (3) of section 615.2(i) as paragraphs (3) and (4).

- 615.2(m) – We propose to revise the definition of "Week" by replacing the word "benefits" with the term "compensation." Further, we propose to add the phrase "calendar week" to clarify that the time period used to compute trigger values may differ from a week as defined in State law for program implementation purposes.
- 615.2(o) – Current § 615.2(o) defines a variety of terms used in operation of the EB Program. Section 615.2(o) makes a reference to section 202(a)(3) of EUCA. However, within the definitions in paragraphs (o)(1) through (o)(8), there are more specific citations to EUCA that render the general citation to 202(a)(3) in the header unnecessary. Therefore, we propose to remove the citation to section 202(a)(3) of EUCA in § 615.2(o) for clarity.

In the definition for the "Provisions of the applicable State law" in § 615.2(o)(7), we propose to replace the citation to Trade Act section 236(e) with section 236(d). Section 236(e) discusses "suitable employment." Since the reference is to training in paragraph (o)(7), we propose to cite 236(d) which discusses training under the Trade Act. Similarly, in paragraph (o)(8)(v) of § 615.2, which describes the requirements and conditions under which a claimant is entitled to extended compensation, we propose to replace the citation to Trade Act "section 236(e)" with "section 236(d)." Section 236(e) of the Trade Act refers to a definition of "suitable work." Section 236(d) refers to an adversely affected worker not being determined to be ineligible or disqualified because of training or other reasons. The change in section reference from section 236(e) to 236(d) is made because section 236(d) is the proper reference as discussed above to the Trade Act in this paragraph.

Furthermore, the proposed rule amends the existing definitions by removing the separate paragraph designations and re-ordering the definitions in alphabetical order for clarity. This proposed change makes any future amendments to the definitions easier to implement by removing concerns of paragraph citation changes.

We propose to revise § 615.7 (Extended Benefits; maximum amount) to include a reference to a high unemployment period to incorporate a term necessitated by the addition of the TUR indicator, in addition to the existing reference to an EB period. In §

615.7(b), we propose to create a new paragraph (b)(3) to describe the method for computing the total monetary entitlement for claimants during a high unemployment period. Also, in paragraph (b)(2), we include a note providing how a State must re-compute the monetary eligibility of claimants at the conclusion of a high unemployment period if the State returns to a regular EB payable period. Also, we propose to replace all instances of the word "totalling" with "totaling," to correct a minor spelling error including instances in paragraphs (f)(1) and (g)(2).

In § 615.8(e)(5)(iii), we propose to move the phrase "without regard to any exemption" from the middle of the sentence to the end, and also add the phrase "elsewhere in those laws" after it. This change would enhance clarity.

In § 615.8(f)(2)(i), we propose to remove the reference to the acronym "SUB" as it refers to "supplemental unemployment benefits" as defined in the Internal Revenue Code. The Internal Revenue Code definition has changed the wording of "supplemental unemployment benefits" to "supplemental unemployment compensation benefits" (as defined in section 501(c)(17)(D)) of the Internal Revenue Code of 1986). Therefore, the acronym SUB is no longer correct. In paragraph (f)(2)(iii), we propose to add to the paragraph the phrase "or any applicable State or local minimum wage" after "the Fair Labor Standards Act of 1938" and before "without regard to any exemption elsewhere in those laws." We propose this change to clarify that State minimum wage laws apply instead of Federal minimum wage laws in this instance.

We propose to revise paragraphs 615.8(h)(3)and (h)(4) to to add requirements that States must, respectively, inform claimants that they are required to apply for and accept suitable work, and inform claimants when they are disqualified for failing to apply for, to accept, or to actively seek work. This amendment would call attention to State responsibility to help ensure claimants understand their responsibility to seek and accept suitable employment.

We propose to revise § 615.11 (Extended Benefit Periods) to include a reference to a high unemployment period (HUP), in addition to the existing reference to an EB period. We further propose to add, for clarity, that a payable period may not begin before the date of the most recent data released for the purposes of triggering States "on" and "off." In addition, we propose to add, for clarity, two new paragraphs (e) and (f), to provide explicit guidance on which trigger values, the TUR indicator and the IUR indicator, will determine the status of the EB Program when States are concluding mandatory "on" and "off" periods. This is necessary because of differences in timing of the release of the different trigger values as there may be instances when one is "on" and the other is "off" and this can be confusing.

Specifically, proposed paragraph (e) provides details on determining when a State may continue an extended benefit period beyond the 13-week mandatory "on" period. Proposed paragraph (e)(1) explains that if the IUR indicator triggers "off" by the end of the 13-week mandatory status period, but the TUR indicator triggers on by the 11th week of the 13-week period, then the extended benefit period continues.

Proposed paragraph (e)(2) explains a similar scenario but, instead, the TUR indicator triggers "off" by the end of the 13-week mandatory status period and the IUR indicator triggers "on" by the 11^{th} week of the 13-week period, allowing the extended benefit period to continue.

Proposed paragraph (f) explains that a State will remain in a mandatory 13-week "off" period if the IUR indicator triggers "off" by the 11^{th} week of the 13-week period and the TUR indicator triggers "off" for at least 3 weeks before the last week of the mandatory 13-week "off" period.

Section 615.11(b), (c), and (d) would be amended to clarify that if a state enters a changed EB Program status, it remains in that changed status for at least 13 weeks even though an indicator may show the state satisfies the requirements for the status to be changed. The amendments also would provide guidance on what is the status of the EB Program in a state when different indicators reflect different EB Program status.

Section 615.12 (Determination of "on" and "off" indicators) describes the criteria for determining when States will begin and end payable periods in the EB Program, and the revisions to this section reflect the Department's primary purpose in the NPRM, as noted above, to incorporate the TUR indicator and the methodology used for rounding in the look-back calculation. Accordingly, the proposed revisions largely function to update the regulations so that they accurately reflect the amendments to EUCA that were enacted in 1992 in the UC Amendments.

We propose to replace the phrase "standard State indicators" with "required State indicators" in the title of paragraph 615.12(a) and the text of paragraph 615.12(a)(3) to more clearly reflect their mandatory nature, and to differentiate them from the optional indicators. The remaining triggers will continue to be described as optional triggers, with no change from the existing language.

We propose to amend section 615.12(a)(1) to clarify that revisions to BLS TUR data after the initial release will not change EB Program status once it has been determined using the initially released TUR data.

We propose to add paragraph 615.12(d)(3) to establish in these regulations a requirement that a state adopting an optional indicator may not enter into an "on" period before the later of the date of adoption of the indicator or its effective date. Further, an adopted optional indicator remains effective until the effective date cited in state law of repeal of the optional trigger. The current regulations do not prohibit implementation of an optional indicator on a date in the past, and this change does so. The IUR, defined at 20 CFR 615.12, is a weekly measure, so there is no ambiguity about which IUR measure should be used for each week's trigger value determinations. However, the monthly publication of TUR indicators means that it is not always clear which monthly rate should be used at the conclusion of a mandatory "on" or "off" period when monthly releases of the TUR Trigger Values during the mandatory period show a change in status. The proposed amended language in § 615.12 clarifies which monthly TUR Trigger Value is to be used.

TUR indicators are estimated and published monthly. The trigger notice published by the Department for any given week will show the most recent TUR indicator for each State. For consistency with paragraphs (a) and (b) of 20 CFR 615.12, the TUR indicator impacts the beginning and ending of EB periods in the third week following the release of a new TUR Trigger Value, i.e., an "on" period begins at the beginning of the third week following the TUR Trigger Value release if it equals or exceeds the TUR trigger threshold and satisfies the look-back condition, and an "off" period ends at the end of the third week if either Trigger Value falls below the TUR trigger threshold or the look-back condition is not met. If the State is in a 13-week mandatory "on" or "off" period, that status continues until the conclusion of the mandatory period.

We propose to move paragraph 615.12(e) and designate it as paragraph 615.12(f) because the required notices in the re-designated paragraph 615.12(f) will apply to a new paragraph (e) that we propose to add and which is addressed below. Also, we propose to change instances of the word "Department" to the word "Secretary" for clarity and to be consistent with the title of the re-designated paragraph (f), which is "Notice to Secretary."

We propose to add paragraph 615.12(e) to implement section 203(f) of EUCA, which establishes the TUR indicator. Proposed paragraph 615.12(e)(1) describes the 6.5 percent TUR threshold and how it is used to determine a State's EB Program status. Proposed paragraph 615.12(e)(2) describes the 8.0 percent TUR threshold and how it is used to determine whether a State is in a high unemployment period, as defined in §

615.2 (Definitions), that can lead to the payment of high unemployment extended compensation.

Paragraph (e)(2)(ii) of § 615.12 sets forth the method for computing the look-back percentage for the TUR indicator (as explained in the "Background") most recently conveyed in guidance to the States in UIPL No. 16-11. As discussed above, when the TUR indicator option was added to EUCA, and later adopted by a number of States, the regulations were not revised to include explicit instructions for the computation of the TUR indicator or its look-back component. Section 203(e)(3) of EUCA, added by the UC Amendments, set the threshold rates (6.5 percent and 8 percent) and the look-back percentage (110 percent) necessary for a State to become eligible to pay benefits under this program. It did not specify whether the quotient computed for the look-back percentage should be rounded, or instead truncated, to two decimal places before multiplying by 100 to obtain the look-back percentage.

For the reasons discussed in the Background section above, we propose to use rounding to two decimal places before multiplying by 100 in calculating the TUR.

Finally, we propose to update nomenclature to help clarify the differences that can exist between the indicators and the benefit periods. If a State, under its State law, meets either of two criteria under the IUR indicator or the criterion using the 6.5 percent TUR Trigger Value, it will begin a "regular EB period," and provide benefits referred to as "regular extended compensation." Similarly, if a State, under its State law, meets the criterion using the 8.0 percent TUR Trigger Value, it will begin a "high unemployment period," and provide "high unemployment extended compensation" as described above.

Section 615.13 (Announcement of the beginning and ending of Extended Benefit Periods) provides for public notice of the start and end of payable periods in the EB Program. We propose to include a reference to a high unemployment period, in the title and individual sections, in addition to the existing reference to an EB period which would change to "EB payable period."

We propose to amend paragraph (a)(1) by adding that we will publish in a Federal Register notice any change in a State's "on" or "off" status for the EB Program as determined by the TUR indicator. This is consistent with the current practice of publishing EB Program status changes determined by the IUR indicator.

The proposed amendments to paragraph (b) require the States to notify the public through their local media, a procedure that is better suited given States' knowledge of their jurisdictions. In paragraph (b), we propose to split the single existing requirement for public notification into three paragraphs. Proposed paragraph (b)(1) requires notification from States that trigger "on" or "off" via the IUR indicator. Proposed paragraph (b)(2) requires notification from States that trigger "on" or "off" via the TUR indicator. Proposed paragraph (b)(3) takes the existing requirements for public notification and applies them regardless of the indicator that caused the State to trigger "on" or "off." The requirements of new paragraph (b) would ensure that all requirements for public notification will be met regardless of how the State begins or ends a payable period in the EB Program.

In § 615.14 (Payments to States), we propose to include a reference to a high unemployment period, in addition to amending the existing reference to "EB period" to "extended benefit period." In addition, references to "Extended Benefits" would be changed to "extended compensation" in order to eliminate inconsistencies and to clarify meaning. In paragraph (b), we reduce the burden on the reader by providing the specific sections of 20 CFR part 615 with which States must comply in order to receive the Federal share of compensation provided, rather than cite the pertinent sections of EUCA. This amendment eliminates the need for the reader to consult a separate document to determine the requirements a State must enforce in order to receive payment for the Federal share of compensation paid.

In § 615.15 (Records and reports), we propose to revise paragraphs (a) and (b) for clarity by deleting unnecessary language regarding the Secretary's authority to request EB Program reports and to appoint audit officials for those reports. Furthermore, we propose to delete paragraphs (c) and (d) which were not required by EUCA, but by 42 U.S.C. 503(a)(6). The reporting instructions for the proper and timely submission of data are provided in ET Handbook No. 401, which governs UC required reporting. The ET Handbook is a more effective way to communicate reporting requirements because codifying the reporting requirements in paragraphs (c) and (d) of the regulation prevents the Department from adapting reporting instructions to changing conditions or needs. Furthermore, paragraph (d) existed during the implementation phase of the IUR indicator to ensure that States were consistent and comparable in their methods. With 30 years of experience, as well as numerous data validation and data quality programs in effect, it is unnecessary to compel State administrators to provide this information. Current reporting guidelines contained in UIPLs are clear enough that States continue to have clear standards about which claims are used for constructing totals used to compute trigger values, thus permitting the deletion of this paragraph.

Request for Comments

The Department looks forward to receiving comments on the proposed changes discussed in the NPRM.

III. Administrative Information

Executive Orders 12866 and 13563:

Executive Orders (E.O.) 13563 and 12866 direct agencies to assess all costs and benefits of available regulatory alternatives and, if regulation is necessary, to select regulatory approaches that maximize net benefits (including potential economic, environmental, public health and safety effects; distributive impacts; and equity). E.O. 13563 emphasizes the importance of quantifying both costs and benefits, reducing costs, harmonizing rules, and promoting flexibility.

Section 3(f) of E.O. 12866 defines a ''significant regulatory action'' as an action that is likely to result in a rule that: (1) Has an annual effect on the economy of $100 million or more or adversely and materially affects a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or Tribal governments or communities (also referred to as ''economically significant''); (2) creates serious inconsistency or otherwise interferes with an action taken or planned by another agency; (3) materially alters the budgetary impacts of entitlement grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) raises novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in E.O. 12866. Regarding item (4), any novel legal or policy issues raised by this rule do not arise from legal mandates, Presidential priorities, or the principles set forth in E.O. 12866.

For a "significant regulatory action," E.O. 12866 asks agencies to describe the need for the regulatory action and explain how the regulatory action will meet that need, as well as assess the costs and benefits of the regulation.[1] In the Unemployment Compensation Amendments of 1992 (UC Amendments), Congress adopted an optional indicator for the existing EB Program that is based on both the level of the TUR Trigger Value and the percentage the Trigger Value is of Trigger Values in comparable periods in each of the prior years (referred to as the look-back).[2] Although the TUR indicator

[1] Executive Order No. 12866, § 6(a)(3)(B).

[2] Unemployment Compensation Amendments of 1992, Pub. L. 102–318 (1992). This law added Section 203(f) to EUCA to provide for an optional alternative indicator that States may use to trigger "on" or "off"

was implemented in the early 1990s, there was never any regulation put in place defining its computation and its application. We now propose to establish regulations for the TUR indicator which would interpret the law related to the TUR indicator and clarify the computation of its look-back provision. As discussed in more detail in the Background section above, we propose to use rounding to calculate the TUR because it is consistent with the BLS's calculation of unemployment rates. Based on the economic impact analysis that follows, the Department believes this is not an economically significant regulatory action.

EUCA, as amended by the UC Amendments, requires two conditions be met for a TUR-based "on" indicator to occur in a State: (1) for the most recent three months for which data for all States is published, the three-month average seasonally-adjusted TUR in the State equals or exceeds 6.5 percent, and (2) that the Trigger Value equals or exceeds 110 percent of the Trigger Values for either or both of the corresponding three-month periods in the two preceding calendar years (look-back). (The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the look-back.) The UC Amendments also provide for a "high unemployment period" when the TUR Trigger Value in a State equals or exceeds 8 percent and meets the 110 percent look-back described above, permitting the payment

EB based on the total unemployment rate. EUCA originally provided for an "on" indicator based only on the IUR. EUCA, § 203(d)-(e).

of additional weeks of compensation.[3] States that want to use the optional TUR indicator must have authority under State law which may require States to enact legislation that implements the Federal requirements. An EB period ends when the State no longer meets any of the "on" requirements provided for in State law.

Under the original methodology by which the Department determined the look-back criterion for the optional TUR indicator, the indicator's Trigger Value was divided by the indicator's Trigger Value for the comparable period in the preceding year and second preceding year. Digits beyond the hundredths place (the second digit to the right of the decimal place) in the resultant decimal fractions were truncated and the results multiplied by 100 to determine the percent the current indicator Trigger Value was of the indicator Trigger Value in the comparable periods in the prior years. If the result was greater than or equal to 110 for one of the fractions, the look-back criterion was met. This approach paralleled the method used for the IUR look-back computation established in regulations at 20 CFR 615.12(c)(3); however, neither the law nor regulations specify the method for computing the TUR indicator look-back.[4]

We propose to change the method for computing the TUR look-back by rounding to the hundredths place, rather than truncating. The TUR indicator uses total unemployment rates determined by BLS. These rates are measured using sampled data

[3] EUCA, § 202(b)(3)(B). Meeting the 6.5 percent TUR indicator permits eligible claimants to receive up to an additional 50 percent of their regular entitlement during an EB period. Meeting the 8.0 percent indicator permits eligible claimant to receive up to a total of 80 percent of their regular entitlement during a high EB period.

[4] EUCA provides that "determinations of the rate of total unemployment in any State for any period … shall be made by the Secretary." EUCA, § 203(f)(3).

and therefore are imprecise due to sampling error. TUR measured by BLS can be lower or higher than the true level of unemployment and there is no systematic tendency in estimation. In order to ensure to the extent possible that the TUR indicator is measured with total unemployment rates that reflect the true levels of unemployment that can be often higher than the rates measured by BLS, the Department has determined that an appropriate methodology for computing the look-back on the TUR indicator is to switch from truncation to rounding to the nearest hundredth, or second decimal place. In contrast, IUR indicators are computed from administrative data and thus represent the full universe. Because of these differences in the computation of the insured and total unemployment rates, the Department has determined that an appropriate methodology for computing the look-back for the TUR indicator is to switch from truncation at the second decimal place, to rounding to the second decimal place. Rounding, rather than truncating, is consistent with BLS practices for TUR data. UIPL No. 16-11, dated May 20, 2011, informed the SWAs that the full effect of this new rounding procedure was implemented retroactive to April 16, 2011.

<u>Proposed Rounding Change in the TUR Look-back Computation</u>

<u>Original Method:</u>

$$\frac{\text{Three Mo.SATUR}}{\text{Three Mo. SATUR (-1)}} = \text{(ratio truncated at second decimal place) * 100}$$

<u>Proposed Method:</u>

Three Mo.SATUR

$$\frac{\hphantom{\text{Three Mo. SATUR (-1)}}}{\text{Three Mo. SATUR (-1)}} = \text{(ratio rounded at second decimal place)} * 100$$

Where:

Three Mo. SATUR = three-month average seasonally-adjusted total unemployment rate.
Three Mo. SATUR (-1) = three-month average seasonally-adjusted total unemployment rate for the corresponding period in the prior year period.

Potential Impacts

Changing the look-back computational method will have a marginal economic impact because of the new rounding method and no increased operational burden because it would result in no change in claimant behavior or in procedure from the existing process.[5] The TUR indicator and new rounding method are currently implemented for the States to use; however, because we propose to implement in regulations the TUR indicator as well as the new rounding method for the TUR look-back, we offer estimates of both impacts.

The UI program is a transfer payment program. For the purposes of a cost-benefit analysis under E.O.s 13563 and 12866, transfer payments are not considered a cost. Therefore, the analysis will be on the possible redistribution of wealth that may take place, as opposed to any impact on aggregate social welfare.[6] In this case, the redistribution is primarily one that takes place over time rather than between groups.

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[5] The process of look-back calculation is done in the Division of Fiscal and Actuarial Services, Employment and Training Administration of the U.S. Department of Labor, using data from the Bureau of Labor Statistics which calculates the trigger values. The operational procedure will remain exactly the same as done previously by State and Federal staff.
[6] *See* Office of Management and Budget, *Circular A-4: Regulatory Analysis*, p. 46 (Sept. 17, 2003), *available at* http://www.whitehouse.gov/omb/circulars_default .

More specifically, the UI program is structured to act as a counter-cyclical program in terms of its impact on the economy – during recessions increased benefit payments (much higher than taxes paid) provide temporary income support and greater economic stimulus which prevents greater economic distress, while during expansions the program acts through higher taxes to lower overall employment and demand levels. Because a State whose Trigger Value meets or exceeds the threshold and whose look-back falls short of meeting the requirement by 0.05 percentage point or less would trigger "on" under the proposed rounding computation while under the truncation method would keep the State "off," the proposed change would marginally increase extended compensation as the TUR Trigger Value increases in a recession. A change to increase the duration of benefits during recessions will ultimately increase the counter-cyclical nature of the program by increasing stimulus during recessions while slightly decreasing economic activity during expansions. Following is an impact analysis which estimates the change in the level and timing of the UI benefits paid and taxes collected as a result of the proposed change for the look-back provision of the TUR indicator.

The actual future impacts of changing the look-back calculation on the flow of UI benefits and taxes are dependent upon the unemployment rate in relation to the TUR trigger threshold and the number of States that have actually implemented the optional TUR indicator. Historically, the proportion of months that the EB Program has been in effect was extremely low, due primarily to a relatively high threshold in relation to the level of unemployment, unwillingness by States to adopt the optional indicators, and Federal emergency benefit programs that at times can and have supplanted the EB

Program. For example, on average for the 1991 and 2001 high unemployment periods, State indicators were "on" in roughly 3 percent of the State trigger months.[7] In contrast, this past recession a high unemployment period (2007-2011) has been quite unique: in over 40 percent of the State trigger months, the EB Program has been "on," due primarily to the large number of States adopting the optional TUR indicator once the Federal Government began paying 100 percent of the costs (see Table 1). However, the low number of States permanently enacting the optional TUR indicator will cause the number of States triggering "on" to the EB Program in the future to return to the historically low levels once the full Federal funding expires.

Table 1. How Often the Extended Benefit Program is "On"

High Unemployment Periods	State Trigger Months	State Trigger Months EB was "On"	Percent of Trigger Months EB was "On"
1991-1994[1]	2,226	111	5.0%
2001-2004[2]	2,438	38	1.4%
2007-2011[3]	2,392	1,055	44%

[1] Period begins in July 1991 and goes to Dec. 1994 to include the post recessionary period of high unemployment.
[2] Period begins in Mar. 2001 and goes to Dec. 2004 to include the post recessionary period of high unemployment.
[3] Period begins in Dec. 2007 and goes to Sept. 2011 to include the post recessionary period of high unemployment.

Only seven States adopted the optional TUR indicator upon its introduction in 1993. Then from 1994 through 2008, only four more States added the TUR indicator to their State law, bringing the number to 11 at the start of 2009 (see Table 2). The number

[7] State trigger months are the number of months during high unemployment periods (see notes to Table 1) multiplied by the number of States, i.e., 53. During non-recessionary the percentage would be even less and close to zero. Extended Benefit Program data is found in the DOL ETA-394 annual report. http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp .

of States implementing the optional TUR indicator and how often the EB Program is actually activated are critical pieces of information for estimating the impacts of the proposed look-back rounding methodology change. In 2009, as part of the American Recovery and Reinvestment Act (Recovery Act), the Federal government began paying 100 percent of extended compensation and high unemployment extended compensation, so the number of States that adopted the optional TUR indicator went up to 38 in 2009, then 39 in 2011.[8] All of the 28 States that adopted the TUR indicator post-Recovery Act instituted the TUR indicator on a temporary basis – for as long as the Federal government was paying 100 percent of the compensation for the EB Program. Therefore, the number of States that are expected to continue using the TUR indicator is anticipated to decrease back to 11 when the Federal financing provisions expire.

Table 2. States that Have Adopted the Optional EB TUR Indicator

Years	1993-1998	1999-2001	2002	2003-2004	2005-2008	2009-2010	2011
Total TUR Indicator States	7	8	9	10	11	38	39
States	Alaska	New Hampshire	North Carolina	New Mexico	New Jersey	Alabama	Maryland
	Connecticut					Arizona	

[8] An additional feature of the TUR trigger that should be noted is that for claims beginning after December, 2010, Congress added a third year to the look-back calculation, so that if for the most recent three-month period the TUR equals or exceeds 6.5 percent (or 8.0 percent) and the average TUR in the State equals or exceeds 110 percent of the average TUR for any or all three of the corresponding three-month periods in the three preceding calendar years, then EB will trigger "on." Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, Pub. L. 111-312, § 502 (Dec. 17, 2010). This feature expired on January 1, 2012, and was not included in the impact analysis.

Kansas	California
Oregon	Colorado
Rhode Island	Delaware
Vermont	District of Columbia
Washington	Florida
	Georgia
	Idaho
	Illinois
	Indiana
	Kentucky
	Maine
	Massachusetts
	Michigan
	Minnesota
	Missouri
	Nevada
	New York
	Ohio
	Pennsylvania
	South Carolina
	Tennessee
	Texas
	Virginia
	West Virginia
	Wisconsin

Impact Assessment Methodology

ETA used two distinct methodologies, a time-series simulation and a Monte Carlo-type simulation analysis (each explained more fully below), to provide quantitative impact estimates for the change in the level and timing of the UI benefits paid and taxes collected as a result of the proposed change in formulation of the TUR indicator. The specific goal of these two analyses is to provide a quantitative measure for: (1) the increased probability of a State turning "on" the EB Program under the new rounding rules, and (2) the likely change in the aggregate level of UI benefits and taxes with each instance of additional EB benefits paid. The results of these measures will allow a determination of the economic impact of that occurrence of additional EB benefits paid on the overall economy and on any subgroups.

The time-series simulation estimates are developed using a historical simulation methodology: by first applying the existing TUR indicator computation, and then applying the new rounding rules to data from a specified period of time and measuring the difference in outcomes. To examine the impact on outcomes, the data used is from the introduction of the optional TUR indicator in 1993 through September 2011 when this analysis was completed. This period encompasses two recessions of varying severity, two complete economic cycles, and a large number of States turning "on" the EB Program. This period also includes the temporary period of 100 percent Federal reimbursement of EB benefit payments when a majority of States, 39, adopted the TUR indicator.[9]

The baseline case is considered to be the simulated outcomes under the current TUR look-back computation for the States that had adopted the optional TUR indicator. For each month during this historical period (January 1993 through September 2011),

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[9] The analysis does not include the computation of the three year look-back or the periods under which any State may have triggered "on" the EB Program by using the three year look-back. State data on adoption of the TUR trigger can be found on the weekly trigger notice at http://www.workforcesecurity.doleta.gov/unemploy/claims_arch.asp .

the actual seasonally-adjusted three-month average TUR[10] was used as well as the actual look-back percentages for each State that had adopted the TUR indicator. The number of months in EB periods was then estimated for each state.[11] The TUR look-back percentage was then computed using the new rounding methodology and the analysis rerun. These computations enabled measurement of the differences between the two types of trigger formulations in the number months when the EB Program is triggered "on," and then the amount of extended benefits paid.[12]

Probability of Turning "On" EB. Using just the States that had adopted the TUR indicator, there were 2,271 monthly observations in this simulation, of which there were 1,170 instances when a State triggered "on" the EB Program by using the TUR indicator under the current methodology. When the new rounding rules were applied there were 1,177 instances -- only 7 additional instances when a State would have triggered "on" EB, an increase of 0.6 percent (see Table 3).

Table 3. Extended Benefit Periods Under the Old and New TUR Indicator[1] (1993-2011)

	Estimated # of Instances of EB "on"	# of Instances of EB w/ TUR indicator ≥ 6.0%	# of Instances of EB w/ TUR indicator ≥ 8.0%
Old Method	1,170	362	808

10 The data for monthly seasonally adjusted State total unemployment rates is from Bureau of Labor Statistics LASST01000006 (http://data.bls.gov/timeseries/LASST01000006). The total amount of monthly EB benefits paid is from the Division of Fiscal and Actuarial Services in the Employment and Training Administration of the Department of Labor report 394 can be found here: http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp .

11 The "on" period was computed for each state rather than using the actual historical outcome.

12 Under the new rounding of the look-back formulation there will only be cases when the look back percentage in either of the two years, will be higher than the original so the EB Program will turn "on" while the original method will have the EB Program as "off."

New Method	1,177	365	812

Source: Periods of EB are estimated using federal law and data from the Bureau of Labor Statistics seasonally adjusted Total Unemployment Rate series by State LASST01000006.
[1] Data consists of measuring only the periods when the EB Program triggered "on" based on the TUR indicator and included only the States that had adopted the optional TUR indicator. The number of instances refers to the number of State months.

The seven instances included six different States. In four of the instances, the State was triggering "on" because of the 8.0 percent high unemployment period. In none of the instances were there two consecutive months in which a State had a different EB triggering outcome under the new rounding methodology compared to the truncation method. Two of the instances when States triggered "on" EB due to the rounding calculation occurred following the 1991 recession, one occurred following the 2001 recession, and four occurred following the 2007 recession when 39 States had adopted the optional TUR indicator (see Table 4). In six of the seven occurrences, the difference in the look-back calculation occurred in the second prior year look-back calculation.

Table 4. Periods When EB was Triggered "on" Under the New Rounding Formulation

State	EB Trigger Date	Rounded 3-month SATUR	First Year Look-back Truncated	Second Year Look-back Truncated	First Year Look-back Rounded	Second Year Look-back Rounded
Alaska	2/28/1993	8.0	86.02	109.58	86	110
Connecticut	5/31/1993	6.8	91.89	109.67	92	110
Oregon	11/30/2003	8.0	106.66	109.58	107	110
Alaska	1/31/2009	6.8	109.67	109.67	110	110
Alabama	3/31/2011	9.2	90.19	109.52	90	110
Kansas	3/31/2011	6.8	94.44	109.67	94	110
Georgia	4/30/2011	10.0	98.03	109.89	98	110

The 0.6 percent increase in the EB Program's being "on" in this simulation represents the percentage likelihood change in the number of times that the EB Program would trigger "on" due solely to the change in formulation of the look-back mechanism for, on average, 13 States having the TUR indicator in place. Therefore, the likelihood of a State turning "on" the EB Program with the new rounding formulation may be represented by .04 percent (.6 / 13).

The time series estimates used the actual State unemployment rates as they occurred from 1993 through September 2011 and include only the States which had adopted the optional TUR indicator. To provide further support for the estimate of the difference in the number of times the EB Program may trigger "on" due to rounding in the look-back calculation during a recession, an additional analysis was employed based on a Monte Carlo-type methodology. The Monte-Carlo methodology allows the simulation of thousands of possible State TUR values rather than just the historical values used in the time series analysis. Thirteen States — the seven original States that adopted the optional TUR indicator and six additional randomly selected States — were chosen,[13] and then, using the mean and standard deviation of their total unemployment rates during the past four recessions,[14] one thousand TUR periods were created for each State using a random number generator with a normal distribution.

[13] Thirteen States were used as a number of States likely to maintain the TUR indicator in the future. The six States were randomly selected to insure a representative group from the remaining States. The six States randomly chosen were: Colorado; Delaware; Illinois; Kentucky; Maine; and Maryland.
[14] The mean and standard deviation were taken from actual monthly observations over the recession and post-recession periods of: 1980-1983; 1991-1993; 2001-2003; and 2008-2011.

The number of periods when the EB Program would trigger "on" by rounding (proposed method) as opposed to truncating (current method) was computed. Of the 13,000 total State observation periods (each representing recessionary periods), the EB Program would have triggered "on" in 4,822 periods using the original method of truncation for the look-back computation, while the EB Program would have triggered "on" in 4,903 periods using the proposed method of rounding, an increase of 81 additional periods (see Table 5).

Table 5. Difference Between EB Trigger Formulations Under Simulated Recessionary TURs
(For 1,000 simulations for each State)

State[1]	Mean TUR in Recession Periods (%)[2]	Standard Deviation of Recession Period[2]	Instances when EB "on" w/ truncating	Instances when EB "on" w/ rounding	Difference	% increase due to rounding
Alaska	8.14	1.21	448	459	11	2.40
Colorado	6.35	1.48	226	229	3	1.31
Connecticut	6.31	1.59	363	375	12	3.20
Delaware	6.23	1.80	367	371	4	1.62
Illinois	8.22	1.98	499	507	8	1.58
Kansas	5.32	1.08	119	120	1	0.83
Kentucky	8.04	2.07	510	517	7	1.35
Maine	6.70	1.48	418	425	7	1.65
Maryland	5.24	1.30	183	185	2	1.08
Oregon	8.53	2.03	512	521	9	1.73
Rhode Island	8.01	2.08	497	506	9	1.78
Vermont	5.66	1.21	221	223	2	0.90
Washington	8.06	1.95	459	465	6	1.29

[1] Original seven States to adopt the optional TUR indicator are in bold.
[2] The mean and standard deviation were taken from actual monthly TUR observations over the recession and post-recession periods of: 1980-1983; 1991-1993; 2001-2003; 2008-2011.

Across the States this represents, on average, a 1.7 percent (81 / 4822) increase in the likelihood of turning "on" the EB Program under the new rounding rules (see Table

6). This also represents the cumulative difference of the 13 States, meaning that each State in this simulation could be considered to have added a 0.13 percent increase of an added instance of turning “on” the EB Program (1.7 / 13). This value will be used as the per-State increase in the likelihood of turning “on” the EB Program under the new rounding rules in this simulation.

Table 6. Monte Carlo-Type Analysis of Difference in EB Trigger Formulation (For 1,000 simulated monthly trigger values per State)

State	# Instances EB “on” w/ Truncating	# Instances EB “On” w/ Rounding	Difference	% Difference
13 States	4,822	4,903	81	1.7
Per State Average	371	377	6	

Source: Computations made by U.S. DOL ETA/OUI/DFAS.

Transfer to EB Recipients: Temporary Income Support (During Recession)

The proposed revision to the TUR indicator computation methodology would result in increased benefits payments during a recession, which provide temporary income support and greater economic stimulus than would otherwise exist during that economic time period. This increased economic stimulus would prevent greater economic distress during a recession. This impact is not a true benefit of the proposed rule because, as explained above, the proposed TUR indicator formulation would redistribute existing transfer payments only over time. That is, a change to increase extended benefits during recessions will ultimately increase the counter-cyclical nature of the program by increasing stimulus during recessions while slightly decreasing economic activity during expansions.

Increased Compensation. A value for the amount of additional extended compensation and number of people who would receive the extended compensation under the proposed rounding rules was estimated using a time-series methodology. The estimated total level of extended compensation that would have been paid under the proposed look-back computation was estimated using a weekly survival rate method. In this methodology, for each week that the EB Program is "on," the number of State EB claimants is multiplied by the State average weekly benefit amount to get the weekly total benefit amount. To arrive at the weekly number of EB claimants, a weekly survival rate is applied for each week of EB to a beginning number of regular UI program exhaustees.[15] This was done for each week of the EB period (either 13 or 20 weeks) and aggregated to get total EB payments for the applicable period, i.e., the period during which each State was "on" EB. This computation is represented in the formula below.

Computation of Total Extended Compensation Paid:

Total Wkly Extended Compensation EB Benefits =

Σ (Reg. Program Wkly Exhaustions[16] * Wkly Survival Rate[17]) * Avg. Wkly Benefit[18]

[15] Survival rate is the probability that a claimant will collect Unemployment Compensation from one week to the next. An exhaustee is a person collecting Unemployment Compensation who would be in their last week of compensation but for the EB Program.
[16] ETA-5159 report includes monthly regular program exhaustees which were divided by the number of weeks in a month to get weekly data.
[17] The weekly survival rate is the proportion of individuals claiming unemployment compensation in week n that will also claim unemployment compensation in week n+1. A weekly survival rate of 0.97 was used as a constant for each week of extended benefits. This level is derived from the Division of Fiscal and Actuarial Services State Benefit Forecasting Model.
[18] State average weekly benefit is derived from the ETA-5159 monthly claims report: http://www.workforcesecurity.doleta.gov/unemploy/finance.asp .

(Summed over each week of the EB period.)

Applying this computation to the seven State periods that turned "on" the EB Program under the proposed rounding formulation in the time series simulation, it was estimated that in total $294 million[19] more would have been paid out in extended compensation, and there would be an increase of 148,000 new first payments in the EB Program. This translates into an estimated 1.2 percent increase ($294 million / $24,897 million - total extended compensation in the simulation) in extended compensation and a 1.5 percent increase ($151,000 / $9.6 million- total EB first pays in the simulation) of EB first payments under the proposed rounding rules compared to the current methodology (i.e., truncating the look-back computation after two decimal places).

Table 7. Compensation Paid Under New Rounding Formulation During Recessionary Periods

Period[1]	Total Extended Compensation (mil.)	Increase in Extended Compensation w/ rounding (mil.)	Total EB First pays (mil.)	Increase in First Pays w/ rounding
Recession 2001-2003	$478	$66	1.1	30,385
Recession 2007-2011	$23,844	$201	5.7	91,362

Source: U.S. DOL ETA/OUI/DFAS – computations from constructed database.

[1] Recessionary periods for this purpose are defined as beginning with the start of the official recession and ending with the end of any Federal Emergency benefit program or a subjective determination for the end of the high unemployment period.

[19] This amount is, of course, dependent on the size of the States, but it does represent a reasonable estimate since these are the States most likely to have the TUR indicator in the future. Also, this amount is considered a high estimate, since 4 of the States triggered on to 20 weeks of benefits, and the average is a reasonable expected value for the level of per State extended benefits. For all of the periods except one (Alaska, 1/2009) during the State EB period triggered on by the rounding calculation, there was no "on" period for the truncation calculation. The Alaska data was adjusted for the truncation period.

Again, dividing these results into the per State added percentage point increase for each instance of triggering "on" the EB Program means there would be a 0.17 percent increase in extended compensation paid[20] and a 0.22 percent increase[21] in first payments.

In terms of how the increased extended compensation paid would be distributed among subgroups of EB recipients, attempting to disaggregate this level of benefits into numerically small select subgroups of claimants such as low-wage workers, or minority claimants, would mean working with monetary flows of very little statistical consequence. Therefore, the Department has determined that no distributional analysis is necessary.

Transfer from State Unemployment Insurance Accounts: Increased Employer Taxes (During Expansions)

The proposed revision to the TUR indicator computation methodology would result in increased economic stimulus during recessions, while dampening overall activity with higher taxes during expansions. In particular, a significant increase in extended compensation may result in a State UI tax increase on employers. An increased UI tax on employers might result in dampened overall economic activity as employers postpone equipment purchases or hiring. This impact does not represent a true cost of the proposed rule because it is associated with a corresponding transfer of

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[20] Total additional extended compensation from rounding, $294 million divided by the number of State periods, 7, and then divided by the total extended compensation for the entire period, $24,897 million.
[21] The increase in first pays due to rounding, 148,000, divided by the number of State periods, 7, and then dividing by the total number of EB first pays during the period of 9.6 million.

payments to EB recipients during recessions. That is, the proposed regulation would result in redistribution of wealth over time (based on the counter-cyclical nature of the EB Program), rather than have a net social welfare impact.

UI Taxes. Except for the temporary provisions that are no longer in effect, Federal statutes specify that 50 percent of extended compensation is paid from the Extended Unemployment Compensation Account (EUCA) in the Unemployment Trust Fund (UTF), which is funded through the Federal Unemployment Tax Act (FUTA), and 50 percent is paid by the liable State from its account in the UTF.

The Federal monies for extended compensation flow from EUCA, which is also used to fund additional Federal emergency benefit programs. Historically, the balance of this account has been sufficient to pay the level of extended compensation during a recession and would therefore be much greater than the estimated amounts that may result from the proposed change in the look-back mechanism.[22] Nevertheless, even if EUCA, together with the other Federal accounts in the UTF is depleted, the account can obtain advances from the General Fund with no impact on the FUTA tax, which means there would be no expected increase in Federal taxes from the change in formulation of the TUR indicator.

On the State side, every State has a tax structure that responds with higher taxes when the amount of reserves in its UTF account declines.[23] Thus, a significant increase

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[22] Historical balances of the EUCA fund can be found here: http://www.treasurydirect.gov/govt/reports/tfmp/tfmp_utf.htm .

[23] For applicable State triggering laws see Comparison of State UI Laws: http://www.workforcesecurity.doleta.gov/unemploy/comparison2011.asp .

in paid extended compensation may result in a State UI tax increase on employers. However, the tax response takes place only with relatively large changes in the State trust fund account balance, and differs by State depending on the size of the account balance; small changes in a State trust fund account balance may actually have no impact in a State's UI taxes. To gauge the magnitude of the tax impact from an increase in extended compensation paid, a generalized rule of State UI tax collections can be applied: for any specified increase in unemployment compensation, 100 percent of the increase will be collected in UI taxes over a 10-year period.[24]

Using the estimated increase of extended compensation paid (due to the TUR indicator rounding computation) from the time-series simulation, $294 million, an estimate was derived for the amount of potential State tax increases by assuming the increase in extended compensation was divided among the average number of States that experienced an increase in extended EB compensation paid over a 10-year period. To arrive at an estimate for the expected increase in State unemployment compensation taxes due to a change in the rounding rule for the look-back feature of the TUR indicator, 50 percent of the total extended compensation, $147 million, is assumed to be financed by seven States for an average of $21 million per State. The amount is assumed to be financed by increased State taxes over a 10-year period for an average of

[24] Recoupment rule of UI taxes in response to a compensation increase is from an Office of Unemployment Insurance, Division of Fiscal and Actuarial Services State Revenue model run over a range of scenarios, 12/2011.

$2.1 million per year. This amount represents an estimated increase of 0.14 percent[25] in State unemployment compensation taxes for each State that turns "on" the EB Program under the proposed new rounding rules.

Table 8. Estimated Increase in State Taxes Collected Under New Rounding Formulation
(Based on the Estimated Extended Compensation from the Time-Series data, 1993-2011)

Period	Est. Amt. Of Added Extended Compensation to Finance[1] (mil.)	Amt. Financed Per State[2] (mil.)	Avg. Amt. Financed Per Year (mil.)	% Increase in Taxes Per State[3]
1993-2011 data period	$147	$21	$2.1	0.14

[1] Fifty percent of total estimated amount of increased extended compensation paid due to rounding from the Time-Series Data.
[2] Derived from 50 percent of the estimated increase in extended compensation payments under the Time Series data divided by the number of States that experienced an increase.
[3] Total extended compensation to be financed divided by the total unemployment compensation contributions over the period: http://www.workforcesecurity.doleta.gov/unemploy/hb394.asp

In terms of specific distribution of these impacts, disaggregating the tax increases into subgroups of employers such as small businesses would mean working with monetary flows of very little consequence. Therefore, the Department has determined that no distributional analysis is necessary.

Non-quantified Impacts

[25] Derived by taking the average estimated yearly tax increase per State, $2.1 million, divided by the estimated amount of contributions per State per year, $1.4 billion. This is certainly a very rough estimate that depends on the size of the States having the optional TUR indicator in the simulation. However, because those States would be expected to continue having the indicator, it is considered a reasonable level.

OMB Circular No. A-4 requires the identification of any non-quantifiable benefits and costs that cannot be reasonably measured.[26] One primary non-quantifiable benefit of implementing regulations for the TUR indicator and the associated rounding rule, and which is a driving factor for its adoption, is that by codifying the TUR indicator the Department will explicitly clarify a methodology for computing the TUR look-back that regulations previously left unspecified. The proposed regulation would remove the potential for future misunderstanding in the computation of the optional TUR indicator, as compared to the current status quo where the TUR look-back computation method is not specified in Department regulations.

Regarding the secondary impacts from increased temporary income during recessions and increased employer taxes during expansions, the Department has determined that the estimates of extended compensation and UI tax increases are too small to meaningfully model their impact on the macro economy. With a likely impact of increasing the number of instances the EB Program triggers "on" by two during an average recession and nine instances during a severe recession (as computed in detail in the scenarios below), these impact numbers are too small to model any stimulus impact during a recession or a dampening effect of the tax increases during expansions. Not only are the impacts on extended compensation and taxes small compared to the U.S. economy (e.g., far below the $1 billion limit for use of an economic multiplier effect on

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[26] See Office of Management and Budget, Circular A-4: Regulatory Analysis, pp. 2-3, 10, 26-27 (Sept. 17, 2003), available at http://www.whitehouse.gov/omb/circulars_default.

the level of employment or economic activity[27]), but even compared to aggregate unemployment compensation payments and taxes the numbers are rather insignificant.

Summary: Potential Future Stimulative and Distributional Impacts Scenarios

By increasing the overall level of benefits paid by States during recessionary periods, the proposed change in TUR indicator computation methodology would aid in the counter-cyclical nature of the Unemployment Compensation program by increasing the economic stimulus during recessions and then tend to dampen the overall activity with higher taxes during expansions. The estimates for the increased probability of States triggering "on" the EB Program, increased benefits, higher first payments, and potential changes to UI taxes, can provide estimates for the change in flows of the Unemployment Compensation program that this proposal may cause under various future recessionary scenarios.

<u>Scenario 1 (11 States with the optional TUR indicator; typical severity three-year recession and post-recession period)</u>.[28] In a likely scenario, assuming a recession and post-recession high unemployment period lasting three years, with 11 States having the optional TUR indicator in place, it would mean 396 possible State months (11 States * 36 months) of high enough unemployment for the EB Program to trigger "on." Using the results from the high unemployment periods in the Monte Carlo-type analysis, we could expect approximately 147 periods of the EB Program to be triggered "on" in

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[27] In OMB Circular A-4 in reference to the size of stimulative impacts: "… that rules with annual costs that are less than one billion dollars are likely to have a minimal effect on economic growth."

[28] Similar in severity to the 1991 recession.

States with the optional TUR indicator (37 percent[29] * 396 State months) using the original truncation methodology. With 11 States having the optional TUR indicator, the likelihood of turning "on" the EB Program under the rounding methodology would be 1.4 percent (11 States * 0.13 percent per State likelihood), this would increase the number of EB Program periods by two instances (1.4 percent * 147 periods). Assuming a recession with $2 billion in total extended compensation paid and 1.5 million first payments in the EB Program, then with two more instance of the EB Program triggering "on" we would expect an increase in extended compensation paid of $7 million (0.34 percent * $2 billion) and an increase of 9,000 in the number of first payments (1.5 million * 0.44 percent). The resulting tax increases spread over a 10-year period in one State would then be expected to be approximately $350,000 per year (($7 million * 0.5 State cost) / 10 years).

<u>Scenario 2 (20 States with optional TUR indicator; more severe three-year recession and post-recession period)</u>.[30] In a less likely scenario, but one with possibly the highest expected impact, assuming a recession and post-recession period lasting three years, with 20 States having the optional TUR indicator in place - 720 State months (20 States * 36 months). In a more severe recession we could expect 360 periods of the EB Program to be triggered "on" with the optional TUR indicator (720 * 50 percent). With 20 States having the optional TUR indicator the likelihood of triggering "on" the EB Program under the new rounding rules would be 2.6 percent (20 States * 0.13

[29] A value similar to the percentage of State months that triggered on to EB in the 1991 and 2001 recessions.
[30] Similar in severity to the 2007 recession.

percent) this would increase the number of periods the EB Program would be triggered "on" by nine instances (2.6 percent * 360 periods). Assuming a recession with $5 billion in total extended compensation paid and 3.0 million first payments for the program, with nine more instances of the EB Program triggering "on," we would expect an increase in extended compensation of $77 million (0.17 percent * 9 periods * $5 billion) and an increase of 60,000 in the number of first payments for the program (3 million * 8 periods * 0.22 percent). The resulting tax increases spread over a 10-year period in one State would then be expected to be approximately $190,000 per year ($77 million * 0.5 State cost) / 20 States) / 10 years).

Impact of the TUR Option

The preceding impact analysis focused on changing the computational methodology of the TUR look-back provision. Since the Department is not considering the removal of the optional TUR indicator, the analysis does not measure the impact of the original adoption of the TUR indicator in 1992. However, it should be noted that a review of the most evident differences caused by the implementation of this option shows a rather small impact.

From 1993 to 2006, for the 11 States that adopted the TUR indicator by 2006 (Table 2), EB costs are totaled for each period when one of these States triggered on to the EB Program with the TUR option but would not have turned on extended compensation under the IUR option.[31] During this 14-year period, there were 28 instances when a State triggered on to the EB Program using the TUR option and would not have triggered on using the IUR trigger. The total extended compensation costs of these instances were approximately $310 million and the number of First Payments was 330,000.

Table 9. States triggering on to the EB Program using the TUR option (without qualifying with the IUR Option)

1993	1994	1995	1996	1997	1998	1999
Alaska Oregon Rhode Is. Washington	Alaska Oregon Rhode Is.	Alaska Rhode Is.	Alaska	Alaska	Alaska	Alaska

2000	2001	2002	2003	2004	2005	2006
Alaska	Alaska	Alaska	Alaska N. Carolina Oregon	Alaska Michigan N. Carolina Oregon Washington	Alaska Michigan Oregon Washington	

This is a relatively small number of States and amount spent, on average approximately $22 million per year, and in no year did the amount spent on extended compensation from States that triggered on using the TUR option ever exceed $100 million. Indeed, measuring the change in cyclical financial flows of the UI program does not seem necessary under these aggregates.

Conclusion

[31] For a state to trigger on extended compensation using the IUR, its insured unemployment rate (IUR) for the previous 13 weeks is at least 5 percent and is 120 percent of the average of the rates for the corresponding 13-week period in each of the two previous years.

Placing the optional TUR indicator in regulations does not impose any additional change in burden, since no change in the operational procedure will occur. In addition, it incorporates in regulations the computational methodology previously communicated in UIPL No. 16-11 for the TUR's look-back.

Changing the look-back computation does have an impact, although it is estimated to be small. For each State that adopted the optional TUR indicator, it was found that the new rounding rule would likely add a 0.13 percentage point increase in the likelihood of a single State triggering "on" the EB Program during a recession. For each State that triggered "on" the EB Program, it would likely add a 0.17 percent increase in the level of extended compensation paid, a 0.22 percent increase in people receiving extended compensation, and a per State increase in unemployment compensation taxes of 0.14 percent per year. These numbers indicate a negligible impact on the redistribution of the flows (unemployment compensation and taxes) in the Unemployment Compensation program. These impacts are so small that any stimulative or distributional effects would be considered of little consequence. Indeed, the probable economic impact encompasses the likely possibility (depending on the future level of the TUR) that there would be no measurable impact from a change in the derivation of the TUR indicator due to rounding the look-back proportion as opposed to truncating that value.

<u>Paperwork Reduction Act</u>:

The purposes of the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 <u>et seq</u>., include minimizing the paperwork burden on affected entities. The PRA requires certain actions before an agency can adopt or revise a collection of information, including publishing a summary of the collection of information and a brief description of the need for and proposed use of the information.

A Federal agency may not conduct or sponsor a collection of information unless it is approved by OMB under the PRA, and displays a currently valid OMB control number, and the public is not required to respond to a collection of information unless it displays a currently valid OMB control number. Also, notwithstanding any other provisions of law, no person shall be subject to penalty for failing to comply with a collection of information if the collection of information does not display a currently valid OMB control number (44 U.S.C. 3512).

The Department has determined that this rule does not contain new information collection requiring it to submit a paperwork package to OMB.

<u>Executive Order 13132</u>:

Section 6 of Executive Order 13132 requires Federal agencies to consult with State entities when a regulation or policy may have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of government, within the meaning of the Executive Order. Section 3(b) of the Executive Order further provides that Federal agencies must implement regulations that have a substantial direct effect only if statutory authority permits the regulation and it is of national significance.

This proposed rule does not have a substantial direct effect on the States or the relationship between the National Government and the States, or the distribution of power and responsibilities among the various levels of Government, within the meaning of the Executive Order 13132. Any action taken by a State as a result of the proposed rule would be at its own discretion as the rule imposes no requirements.

Unfunded Mandates Reform Act of 1995:

This regulatory action has been reviewed in accordance with the Unfunded Mandates Reform Act of 1995 (Reform Act). Under the Reform Act, a Federal agency must determine whether a regulation proposes a Federal mandate that would result in the increased expenditures by State, local, or tribal governments, in the aggregate, or by the private sector, of $100 million or more in any single year. The Department has determined this proposed rule does not include any Federal mandate that may result in increased expenditure by State, local, and Tribal governments in the aggregate of more than $100 million, or increased expenditures by the private sector of more than $100 million.

Accordingly, it is unnecessary for the Department to prepare a budgetary impact statement. Further, as noted above in the conclusion of the economic impact analysis, the impact is positive for State UTF accounts.

Effect on Family Life:

The Department certifies that this proposed rule has been assessed according to section 654 of the Treasury and General Government Appropriations Act, enacted as part of the Omnibus Consolidated and Emergency Supplemental Appropriations Act of 1999 (Pub. L. 105-277, 112 Stat. 2681), for its effect on family well-being. It will not adversely affect the well-being of the nation's families. Therefore, the Department certifies that this proposed rule does not adversely impact family well-being.

Regulatory Flexibility Act/SBREFA:

The Regulatory Flexibility Act (RFA) at 5 U.S.C. 603(a) requires agencies to prepare and make available for public comment an initial regulatory flexibility analysis which will describe the impact of the proposed rule on small entities. Section 605 of the RFA allows an agency to certify a rule, in lieu of preparing an analysis, if the proposed rulemaking is not expected to have a significant economic impact on a substantial number of small entities. Furthermore, under the Small Business Regulatory Enforcement Fairness Act of 1996, 5 U.S.C. 801 (SBREFA), an agency is required to produce compliance guidance for small entities if the rule has a significant economic impact on a substantial number of small entities.

The RFA defines small entities as small business concerns, small not-for-profit enterprises, or small governmental jurisdictions. The proposed rule does not regulate small entities. As a result, any indirect impact on small entities would be from a tax increase resulting from a State triggering "on" because of the new computation method for the look-back. Therefore, the Department certifies that the proposed rule will not have a significant economic impact on a substantial number of these small entities.

Plain Language:

The Department drafted this rule in plain language.

List of Subjects in 20 CFR Part 615

Grant programs-labor; Reporting and recordkeeping requirements; Unemployment compensation

For the reasons discussed in the preamble, ETA proposes to amend 20 CFR part 615 as follows:

PART 615—EXTENDED BENEFITS IN THE FEDERAL-STATE UNEMPLOYMENT COMPENSATION PROGRAM

1. The authority citation for 20 CFR part 615 is revised to read as follows:

AUTHORITY: 26 U.S.C. 7805; 26 U.S.C. 1102; Secretary’s Order No. 6-10.

2. In part 615 remove the words "the Act" and add, in their place, the acronym "EUCA" in the following places:

a. Section 615.1 introductory text (two places);

b. Section 615.2 introductory text;

c. Section 615.2(g);

d. Section 615.2(i)(1);

e. Section 615.2(i)(1);

f. Section 615.2(i)(2);

g. Section 615.2(i)(3);

h. Section 615.2(j)(2);

i. Section 615.2(n)(2);

j. Section 615.2(o);

k. Section 615.2(o)(1) (three places);

l. Section 615.2(o)(4);

m. Section 615.3 introductory text (four places);

n. Section 615.4(a);

o. Section 615.4(b);

p. Section 615.7(d);

q. Section 615.8(a);

r. Section 615.8(c);

s. Section 615.8(c)(2);

t. Section 615.8(d);

u. Section 615.8(d)(3) (two places);

v. Section 615.8(d)(4);

w. Section 615.8(e);

x. Section 615.8(e)(8);

y. Section 615.8(f);

z. Section 615.8(f)(1)(ii);

aa. Section 615.8(f)(4);

bb. Section 615.8(g)(1);

cc. Section 615.8(g)(5)

dd. Section 615.9(d);

ee. Section 615.12(e);

ff. Section 615.14(a);

gg. Section 615.14(a)(2);

hh. Section 615.14(a)(3);

ii. Section 615.14(a)(4);

jj. Section 615.14(b);

kk. Section 615.14(c)(1);

ll. Section 615.14(c)(2) (two places);

mm. Section 615.14(c)(3);

nn. Section 615.14(c)(4);

oo. Section 615.14(c)(5);

pp. Section 615.14(c)(6);

qq. Section 615.14(c)(7)(i);

rr. Section 615.14(c)(7)(ii);

ss. Section 615.14(c)(7)(iii);

tt. Section 615.14(d);

uu. Section 615.14(d)(2) (two places);

vv. Section 615.14(d)(3)(four places);

ww. Section 615.14(d)(6); and

xx. Section 615.15(a).

3. Revise § 615.1 to read as follows:

§ 615.1 Purpose.

This part implements the "Federal-State Extended Unemployment Compensation Act of 1970" (EUCA). Under the Federal Unemployment Tax Act, 26 U.S.C. 3304(a)(11), an approved State law must provide for the payment of extended compensation to eligible individuals who have exhausted all rights to regular compensation during specified periods of unemployment, as prescribed in EUCA and this part.

4. Amend § 615.2 by:

a. Removing the paragraph designations wherever they may occur and reorder the definitions alphabetically; and

b. Adding alphabetical order the definitions for “EUCA,” “Extended benefit period,” “Extended Benefits Program or EB Program,” “Extended compensation account,” “Extended unemployment compensation,” “High unemployment extended compensation,” “High unemployment period,” “Insured Unemployment Rate,” “Regular extended compensation,” “Regular EB period,” “Total Unemployment Rate,” “Trigger Value or average rate of total unemployment” as set forth below;

c. Revising the definitions for “Applicable Benefit Year,” “Department,” “Eligibility Period,” “Extended Compensation,” “Provisions of Applicable State Law,” “Sharable Compensation,” and “Week;” and

d. Removing introductory paragraph (o) and redesignating them accordingly. .

The revisions and additions read as follows:

§ 615.2 Definitions.

* * * * *

Applicable benefit year means, with respect to an individual, the current benefit year if, at the time an initial claim for extended compensation is filed, the individual has an unexpired benefit year only in the State in which such claim is filed, or, in any other case, the individual’s most recent benefit year. For this purpose, the most recent benefit year for an individual who has unexpired benefit years in more than one State when an initial claim for extended compensation is filed, is the benefit year with the latest ending date or, if such benefit years have the same ending date, the benefit year in which the latest continued claim for regular compensation was filed. The individual's most recent benefit year which expires in an extended benefit period, when either extended compensation or high unemployment extended compensation is payable, is the applicable benefit year if the individual cannot establish a second benefit year or is precluded from receiving regular compensation in a second benefit year solely by reason of a State law provision which meets the requirement of section 3304(a)(7) of the Internal Revenue Code of 1986 (26 U.S.C. 3304(a)(7)).

Department means the United States Department of Labor, and shall include the Employment and Training Administration, the agency of the United States Department of Labor headed by the Assistant Secretary of Labor for Employment and Training to whom has been delegated the Secretary's authority under the Act in Secretary's Order No. 6-2010 (75 FR 66268).

Eligibility period means, for an individual, the period consisting of—

(1) The weeks in the individual's applicable benefit year which begin in an extended benefit period or high unemployment period, or for a single benefit year, the weeks in the benefit year which begin in more than one extended benefit period or high unemployment period, and

(2) If the applicable benefit year ends within an extended benefit period or high unemployment period, any weeks thereafter which begin in such extended benefit period or high unemployment period,

(3) An individual may not have more than one eligibility period for any one exhaustion of regular benefits, or carry over from one eligibility period to another any entitlement to extended compensation.

EUCA means the Federal-State Extended Unemployment Compensation Act of 1970, title II of Pub. L. 91-373, 84 Stat. 695, 708 (codified in note to 26 U.S.C. 3304), as amended.

Extended benefit period means the weeks during which extended compensation is payable in a State in accordance with § 615.11.

Extended Benefits Program or EB Program means the entire program under which monetary payments are made to workers who have exhausted their regular compensation during periods of high unemployment.

Extended compensation means the funds payable to an individual for weeks of unemployment which begin in a regular EB period or high unemployment period (HUP), under those provisions of a State law which satisfy the requirements of EUCA and this part with respect to the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation.

Extended compensation account is the account established for each individual claimant for the payment of regular extended compensation or high unemployment extended compensation.

Extended unemployment compensation means:

(1) Regular extended compensation paid to an eligible individual under those provisions of a State law which are consistent with EUCA and this part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year; or

(2) High unemployment extended compensation paid to an eligible individual under an optional TUR indicator enacted under State law when the State is in a high unemployment period, in accordance with § 615.11(e) of this part, and that does not exceed the smallest of the following:

(i) 80 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 20 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 46 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(3) Regular extended compensation paid to an eligible individual for weeks of unemployment in the individual's eligibility period, but only to the extent that the sum of such compensation, plus the regular compensation paid (or deemed paid) to the individual for prior weeks of unemployment in the applicable benefit year, exceeds 26 times the individual’s weekly benefit amount and does not exceed 39 times the individual’s weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: Provided, that such regular compensation is paid under provisions of a State law which is consistent with EUCA and this part.

(4) Notwithstanding the preceding provisions of this paragraph, sharable compensation does not include any regular or extended compensation for which a State is not entitled to a payment under section 202(a)(6) or 204 of EUCA or § 615.14 of this part.

<u>High unemployment extended compensation</u> means the benefits payable to an individual for weeks of unemployment which begin in a high unemployment period, under those provisions of a State law which satisfy the requirements of EUCA and this part for the payment of high unemployment extended compensation. When so payable, high unemployment extended compensation includes compensation payable under 5

U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended unemployment compensation, along with high unemployment extended compensation, are part of the program referred to in this part as Extended Benefits.

High unemployment period (or HUP) means a period where the Department determines that the Trigger Value in a State, which has enacted the alternative Total Unemployment Rate indicator in law, for the most recent three months for which data for all States is published equals or exceeds 8 percent and such Trigger Value equals or exceeds 110 percent of such Trigger Value for either or both of the corresponding three-month periods ending in the two preceding calendar years.

Insured Unemployment Rate means the percentage derived by dividing the average weekly number of individuals filing claims for regular compensation in a State for weeks of unemployment in the most recent 13-consecutive-week period as determined by the State on the basis of State reports to the United States Secretary of Labor by the average monthly employment covered under State law for the first four of the most recent six completed calendar quarters before the end of such 13-week period.

Provisions of the applicable State law, as used in section 202(a)(3)(D)(iii) of EUCA, means that State law provisions must not be inconsistent with sections 202(a)(3)(C) and 202(a)(3)(E). Therefore, decisions based on State law provisions must not require an individual to take a job which requires traveling an unreasonable distance to work, or which involves an unreasonable risk to the individual's health, safety or morals. Such State law provisions must also include labor standards and training provisions required under sections 3304(a)(5) and 3304(a)(8) of the Internal Revenue Code of 1986 and section 236(d) of the Trade Act of 1974.

Regular extended compensation means the benefits payable to an individual for weeks of unemployment which begin in an extended benefit period, under those provisions of a State law which satisfy the requirements of EUCA and this part for the payment of extended unemployment compensation, and, when so payable, includes compensation payable under 5 U.S.C. chapter 85, but does not include regular compensation or additional compensation. Regular extended compensation, along with high unemployment extended compensation, are part of the program referred to in this part as Extended Benefits.

Regular EB period means a period in which a state is "on" the EB Program because either the mandatory or optional IUR indicator satisfies the criteria to be "on" and the state is not in a 13-week mandatory "off" period; or the State is "on" the EB Program because the TUR indicator's Trigger Value is at least 6.5 percent and it is at least 110 percent of the Trigger Value for the comparable three months in either of the prior two years.

Sharable compensation means:

(1) Extended compensation paid to an eligible individual under those provisions of a State law which are consistent with EUCA and this part, and that does not exceed the smallest of the following:

(i) 50 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 13 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 39 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(2) Extended compensation paid to an eligible individual under an optional TUR indicator enacted under State law when the State is in a high unemployment period, in accordance with § 615.12(f) of this part, and that does not exceed the smallest of the following:

(i) 80 percent of the total amount of regular compensation payable to the individual during the applicable benefit year; or

(ii) 20 times the individual's weekly amount of extended compensation payable for a week of total unemployment, as determined under § 615.6(a); or

(iii) 46 times the individual's weekly benefit amount, referred to in paragraph (1)(ii) of this definition, reduced by the regular compensation paid (or deemed paid) to the individual during the applicable benefit year.

(3) Regular compensation paid to an eligible individual for weeks of unemployment in the individual's eligibility period, but only to the extent that the sum

of such compensation, plus the regular compensation paid (or deemed paid) to the individual for prior weeks of unemployment in the applicable benefit year, exceeds 26 times and does not exceed 39 times the average weekly benefit amount (including allowances for dependents) for weeks of total unemployment payable to the individual under the State law in such benefit year: Provided, that such regular compensation is paid under provisions of a State law which are consistent with EUCA and this part.

(4) Notwithstanding the preceding provisions of this paragraph, sharable compensation does not include any regular or extended compensation for which a State is not entitled to a payment under section 202(a)(6) or 204 of EUCA or § 615.14 of this part.

Total Unemployment Rate means the number of unemployed individuals in a State (seasonally adjusted) divided by the civilian labor force (seasonally adjusted) in the State for the same period.

Trigger Value or average rate of total unemployment means the ratio computed using three months of the level of seasonally adjusted unemployment in a State in the numerator and three months of the level of the seasonally adjusted civilian labor force in the State in the denominator. This rate is used for triggering States "on" and "off" the optional Total Unemployment Rate indicator is described in § 615.12(e).

Week means:

(1) For purposes of eligibility for and payment of extended compensation, a week as defined in the applicable State law.

(2) For purposes of computation of extended compensation “on” and “off” and ”no change” indicators and insured unemployment rates and the beginning and ending of an EB Period or a HUP, a calendar week.

* * * * *

5. Amend section 615.3 by revising the third sentence in the paragraph to read as follows:

§ 615.3 Effective period of the program.

*** * ***Conformity with EUCA and this part in the payment of regular compensation, regular extended compensation, and high unemployment extended compensation (if State law so provides) to any individual is a continuing requirement, applicable to every week as a condition of a State's entitlement to payment for any compensation as provided in EUCA and this part.

6. Amend § 615.7 by:

a. Removing the term “Extended Benefits” wherever it appears and replacing it with the term “Extended compensation” throughout. ;

b. Adding paragraph (b)(3) ; and

c. Revising introductory paragraph (d).

The additions and revisions read as follows:

§ 615.7 Extended Benefits; maximum amount.

* * * * *

(b) ***

(3) If State law provides, in accordance with § 615.12(e), for a high unemployment period for weeks of unemployment beginning after March 6, 1993, the provisions of paragraph (b)(1) of this section are applied by substituting:

(i) 80 percent for 50 percent in (b)(1)(i),

(ii) 20 for 13 in (b)(1)(ii), and

(iii) 46 for 39 in (b)(1)(iii).

Note to paragraph (b)(3). Provided, that if an individual's extended compensation account is determined in accordance with the provisions of paragraphs (b)(3)(i) through (b)(3)(iii) (for a "high unemployment period" as defined in § 615.2) during the individual's eligibility period, upon termination of the high unemployment period, such individual's account must be reduced by the amount in the account that is more than the maximum amount of extended compensation or high extended compensation payable to the individual. Provided further, if the account balance is equal to or less than the maximum amount of extended compensation or high unemployment extended compensation payable, there will be no reduction in the account balance upon termination of a high unemployment period. In no case will the individual receive more regular extended compensation or high unemployment extended compensation than the amount determined in accordance with paragraphs (b)(1)(i) through (b)(1)(iii) of this section, nor more extended compensation or high unemployment extended compensation than as provided in paragraphs (b)(2)(i) through (b)(2)(iii) of this section.

* * *

(d) Reduction because of trade readjustment allowances. Section 233(c) of the Trade Act of 1974 (and section 204(a)(2)(C) of EUCA), requiring a reduction of extended compensation because of the receipt of trade readjustment allowances, must be applied as follows:

* * * * *

7. Amend § 615.8 by revising paragraph (e)(5)(iii), (f)(2)(i), (f)(2)(iii), (h)(3) and (h)(4) to read as follows:

§ 615.8 Provisions of State law applicable to claims.

* * * * *

(e) * * *

(5) * * *

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, or any applicable State or local minimum wage, without regard to any exemption elsewhere in those laws, or

* * * * *

(f) * * *

(2) * * *

(i) The gross average weekly remuneration for the work for any week does not exceed the sum of the individual's weekly benefit amount plus any supplemental unemployment compensation benefits (as defined in section 501(c)(17)(D) of the Internal Revenue Code of 1986) payable to the individual,

(ii) * * *

(iii) The work pays less than the higher of the minimum wage set in section 6(a)(1) of the Fair Labor Standards Act of 1938, or any applicable State or local minimum wage, without regard to any exemption elsewhere in those laws, or

* * * * *

(h) * * *

(3) What kind of jobs he/she must be actively engaged in seeking each week depending on the classification of his/her job prospects, and what tangible evidence of such search must be furnished to the State agency with each claim for benefits. In addition, the State must inform the claimant that he/she is required to apply for and accept suitable work, and

(4) The resulting disqualification if he/she fails to apply for work to which referred, or fails to accept work offered, or fails to actively engage in seeking work or to

furnish tangible evidence of such search for each week for which extended compensation or sharable regular benefits is claimed, beginning with the week following the week in which such information shall be furnished in writing to the individual.

8. Revise § 615.11 to read as follows:**§ 615.11 Extended Benefit Periods.**

(a) Beginning date. Except as provided in paragraph (d) of this section, an extended benefit period or high unemployment period begins in a State on the first day of the third calendar week after a week for which there is a State "on" indicator in that State under either § 615.12(a) or (b).

(b) Ending date. Except as provided in paragraphs (c) and (e) of this section, an extended benefit period or high unemployment period in a State ends on the last day of the third week after the first week for which there is a State "off" indicator in that State, unless another indicator is in "on" status.

(c) Duration. When an extended benefit period and/or high unemployment period becomes effective in any State, or triggers "off," the attained status must continue in effect for not less than 13 consecutive weeks.

(d) Limitation. No extended benefit period or high unemployment period may begin in any State by reason of a State "on" indicator before the 14th week after the ending of a prior extended benefit period or high unemployment period in such State. Conversely, no extended benefit period or high unemployment period may end in any State by reason of a State "off" indicator before the 14th week after the beginning of an extended benefit period or high unemployment period in such State. In addition, no extended benefit period or high unemployment period may begin or end in any State before the most recent week for which data used to trigger the State "on" or "off" or "no change" indicator has been published.

(e) Specific applications of the 13-week rule:

(1) If a State concludes a 13-week mandatory "on" period by virtue of the IUR indicator which, at the end of the 13-week period no longer satisfies the requirements for a State to be "on," the extended benefit period continues if the TUR indicator is "on" during the 11^{th} week of the 13-week mandatory "on" period.

(2) If a State concludes a 13-week mandatory "on" period by virtue of the TUR indicator which, at the end of the 13-week period no longer satisfies the requirements for a State to be "on," the extended benefit period continues if the IUR indicator is "on" during the 11^{th} week of the 13-week mandatory "on" period.

(f) Determining if a State remains "off" as a result of a total unemployment rate indicator after the 13-week mandatory "off" period ends:

(1) The State remains "off" if there is not an IUR "on" indicator the 11^{th} week of the 13-week mandatory "off" period, and there is a TUR "off" indicator for the third week before the last week of the 13-week mandatory "off" period.

9. Amend § 615.12 by:

a. Revising paragraph (d)(1) and (d)(2);

b. Adding paragraph (d)(3);

c. Revising and redesignating paragraph (e) as paragraph (f);and

d. Adding new paragraph (e).

The additions and revisions read as follows:

§ 615.12 Determination of "on" and "off" indicators.

* * * * *

(d) * * *

(1) Any determination by the head of a State agency of an "on" or "off" or "no change" IUR indicator may not be corrected more than three weeks after the close of the week to which it applies. If any figure used in the computation of a rate of insured unemployment is later found to be wrong, the correct figure must be used to redetermine the rate of insured unemployment and the 120 percent factor for that week and all later weeks, but no determination of previous "on" or "off" or "no change" indicator shall be affected unless the redetermination is made within the time the indicator may be corrected under the first sentence of this paragraph (d)(1). Any change is subject to our concurrence as provided in paragraph (e) of this section.

(2) The initial release of the TUR by BLS is subject to revision. However, a State's TUR indicator will be determined by the initial release of the TUR data and is not subject to revision even if the BLS TUR is revised.

(3) The "on" period under a State's optional IUR or TUR indicator may not begin before the later of the date of the State's adoption of the optional insured unemployment rate or total unemployment rate indicator, or the effective date of that enactment. The "off" period under a State's optional insured unemployment rate or total unemployment rate indicator may not occur until after the effective date of the repeal of the optional insured unemployment rate or total unemployment rate indicator from State law.

(e) Other optional indicators.

(1) A State may, as an option, in addition to the State indicators in paragraphs (a) and (b) of this section, provide by its law that there is a State "on" or "off" indicator in the State for a week if we determine that—

(i) The Trigger Value in such State computed using the most recent three months for which data for all States are published before the close of such week equals or exceeds 6.5 percent; and

(ii) The Trigger Value computed using data from the three-month period referred to in paragraph (e)(1)(i) of this section equals or exceeds 110 percent of the Trigger Value for either (or both) of the corresponding three-month periods ending in the two preceding calendar years, (The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the "look-back". This provision has been extended in the past and could be again.) This "look-back" is computed by dividing the Trigger Value by the same measure for the corresponding three months in each of the applicable prior years, and the resulting decimal fraction is rounded to the hundredths place, multiplied by 100 and reported as an integer and compared to the statutory threshold to help determine the State's EB Program status; and

(iii) There is a State "off" indicator for a week if either the requirements of paragraph (e)(1)(i) or (e)(1)(ii) of this section are not satisfied.

(2) Where a State adopts the optional indicator under paragraph (e)(1) of this section, there is a State "on" indicator for a high unemployment period (as defined in § 615.2) under State law if—

(i) The Trigger Value in the State computed using the most recent three months for which data for all State are published before the close of such week equals or exceeds 8.0 percent, and

(ii) The Trigger Value in the State computed using data from the three-month period referred to in paragraph (e)(2)(i) of this section equals or exceeds 110 percent of the Trigger Value for either (or both) of the corresponding three-month periods ending in the two preceding calendar years. (The Tax Relief, Unemployment Insurance Reauthorization, and Job Creation Act of 2010, P.L. 111-312, allowed States to temporarily modify provisions in their EB laws to use the prior three years in applying the "look-back." This provision has been extended in the past and could be again.) This "look-back" is computed by dividing the Trigger Value by the same measure for the corresponding three months in each of the applicable prior years, and the resulting decimal fraction is rounded to the hundredths place, multiplied by 100 and reported as an integer and compared to the statutory threshold to help determine the State's EB Program status; and

(iii) There is a State "off" indicator for high unemployment period for a week if either the requirements of paragraph (e)(2)(i) or (e)(2)(ii) of this section are not satisfied.

(3) Method of computing the average rate of total unemployment. The average rate of total unemployment is computed by dividing the average of three months of the level of seasonally adjusted unemployment in the State by the average of three months of the level of seasonally adjusted unemployment and employment in the State. The resulting rate is multiplied by 100 to convert it to a percentage basis and then rounded to the tenths place (the first digit to the right of the decimal place).

(4) Method of computing the State "look-back." The average rate of total unemployment, ending with a given month, is divided by the same measure for the corresponding three months in each of the applicable prior years. The resultant decimal fraction is then rounded to the hundredths place (the second digit to the right of the decimal place). The resulting number is then multiplied by 100 and reported as an integer (no decimal places) and compared to the statutory threshold to help determine the State's EB Program status.

(f) Notice to Secretary. Within 10 calendar days after the end of any week for which the head of a State agency has determined that there is an "on," or "off," or "no change"

IUR indicator in the State, the head of the State agency must notify the Secretary of the determination. The notice must state clearly the State agency head's determination of the specific week for which there is a State “on” or “off” or “no change” indicator. The notice must include also the State agency head's findings supporting the determination, with a certification that the findings are made in accordance with the requirements of § 615.15. However, the Secretary may provide additional instructions for the contents of the notice to assure the correctness and verification of notices given under this paragraph. The Secretary will accept determinations and findings made in accordance with the provisions of this paragraph and of any instructions issued under this paragraph. A notice does not become final for purposes of EUCA and this part until the Secretary accepts the notice.

10. Amend § 615.13 by:

a. Adding the term “or High Unemployment Periods” after the term “Extended Benefit Periods” throughout so that it reads as “Announcement of the beginning and ending of Extended Benefit Periods or High Unemployment Period”;

b. Adding paragraphs (a)(1), (a)(2), (b)(1), (b)(2), and (b)(3);

c. Revising paragraphs (c)(1) through (c)(4).

The additions and revisions read as follows:

§ 615.13 Announcement of the beginning and ending of Extended Benefit Periods.

* * * * *

(a) * * *

(1) Extended benefit period. Upon receipt of the notice required by § 615.12(f) which is acceptable to us, we publish in the Federal Register a notice of the State agency head's determination that there is an "on" or an "off" indicator in the State, as the case may be, the name of the State and the beginning or ending of the extended benefit period, whichever is appropriate. If an "on" or "off" EB period is a result of our determination based on a State's TUR Trigger Value, we publish that information in the Federal Register as well.

(2) Notification. We also notify the heads of all other State agencies, and the Regional Administrators of the Employment and Training Administration of the State agency head's determination of the State "on" or "off" indicator for an extended benefit period (based on the insured unemployment rate in the State) or our determination of an "on" or "off" indicator (based on the total unemployment rate in a State) for an extended benefit period or high unemployment period and of the indicator's effect.

(b) * * *

(1) Whenever a State agency head determines that there is an "on" indicator in the State by reason of which an extended benefit period (based on the insured unemployment rate in the State) will begin in the State, or an "off" indicator by reason of which an extended benefit period in the State (based on the insured unemployment rate) will end, the head of the State agency must promptly announce the determination

through appropriate news media in the State after the Department accepts notice from the agency head in accordance the 615.12(f).

(2) Whenever the head of a State agency receives notification from us in accordance with § 615.12(f) that there is an "on" indicator by reason of which an extended benefit period or high unemployment period (based on the total unemployment rate in the State) will begin in the State, or an "off" indicator by reason of which a regular extended benefit period or high unemployment period (based on the total unemployment rate) will end, the head of the State agency must promptly announce the determination through the appropriate news media in the State.

(3) Announcements made in accordance with paragraphs (b)(1) or (b)(2) of this section must include the beginning or ending date of the extended benefit period or high unemployment period, whichever is appropriate. In the case of a regular EB period or high unemployment period that is about to begin, the announcement must describe clearly the unemployed individuals who may be eligible for extended compensation or high extended compensation during the period, and in the case of a regular EB period or high unemployment period that is about to end, the announcement must also describe clearly the individuals whose entitlement to extended compensation or high extended compensation will be terminated. If a high unemployment period is ending, but an extended benefit period will remain "on," the announcement must clearly state that fact and the effect on entitlement to extended compensation.

(c) * * *

(1) Whenever there has been a determination that a regular extended benefit period or high unemployment period will begin in a State, the State agency must provide prompt written notice of potential entitlement to Extended Benefits to each individual who has established a benefit year in the State that will not end before the beginning of the regular extended benefit period or high unemployment period, and who exhausted all rights under the State law to regular compensation before the beginning of the regular extended benefit period or high unemployment period.

(2) The State agency must provide the notice promptly to each individual who begins to claim sharable regular benefits or who exhausts all rights under the State law to regular compensation during a regular extended benefit period or high unemployment period, including exhaustion by reason of the expiration of the individual's benefit year.

(3) The notices required by paragraphs (c)(1) and (c)(2) of this section must describe the actions required of claimants for sharable regular compensation and extended compensation and those disqualifications which apply to the benefits which are different from those applicable to other claimants for regular compensation which is not sharable.

(4) Whenever there is a determination that a regular extended benefit period or high unemployment period will end in a State, the State agency must provide prompt written notice to each individual who is currently filing claims for extended

compensation of the forthcoming end of the regular extended benefit period or high unemployment period and its effect on the individual's right to extended compensation.

11. Amend § 615.14 by revising paragraph (a)(4) to read as follows:

§ 615.14 Payments to States.

(a) * * *

(4) As provided in section 204(a)(2)(C) of EUCA, for any week in which extended compensation is not payable because of the payment of trade readjustment allowances, as provided in section 233(c) of the Trade Act of 1974, and § 615.7(d).

* * * * *

12. Amend § 615.15 by removing paragraphs (c) and (d) and revising paragraphs (a) and (b) to read as follows:

§ 615.15 Records and reports.

(a) General. State agencies must furnish to the Secretary such information and reports and make such studies as the Secretary decides are necessary or appropriate for carrying out the purposes of this part.

(b) Recordkeeping. Each State agency must make and maintain records pertaining to the administration of the Extended Benefit Program as we require, and must make all such records available for inspection, examination and audit by such Federal officials or employees as we may designate or as may be required by law.

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Portia Wu
Assistant Secretary for Employment and Training

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