Updated June 28, 2009

QUESTION & ANSWER
THE ECONOMIC RECOVERY BILL'S NEW "EXTENDED BENEFITS" STATE OPTION- NEARLY 1.5 MILLION WORKERS MAY QUALIFY FOR AN EXTRA 13 TO 20 WEEKS OF JOBLESS BENEFITS WHEN THEY RUN OUT OF THE FEDERAL EMERGENCY EXTENSION

What follows is a Q&A explaining a new option available under the American Recovery and Reinvestment Act of 2009 which allows high unemployment states to provide up to 13 to 20 weeks of additional extended benefits to workers who run out of their federal Emergency Unemployment Compensation (EUC). The EUC program currently provides 20 to 33 weeks of benefits to workers who run out of their state unemployment benefits. If adopted by all the states with unemployment rates exceeding the 6.5 percent threshold, the Extended Benefits (EB) program would provide as many as 1.5 million workers with additional weeks of 100% federally-funded assistance.

1. What is the Federal Extended Benefits (EB) Program and how does it relate to Emergency Unemployment Compensation?

The Extended Benefits program is a permanent program, started in 1970, that provides 13 to 20 weeks of extended unemployment benefits to states experiencing high levels of unemployment, as defined by certain "triggers." Because the EB triggers are so restrictive, states rarely qualify for EB even during serious recessions. Thus, Congress has frequently stepped in to create temporary federal extended benefits programs, including the Emergency Unemployment Compensation program enacted in July 2008, which provides 20 to 33 weeks of extended benefits depending on the state's unemployment rate.

In states that meet the EB program's requirements, workers are entitled to both EUC and EB consecutively and states are allowed to choose in which order they pay out benefits. Because EB costs are typically shared 50/50 between the states and the federal government, all states have chosen to pay EB after workers have exhausted EUC. EB acts as an additional benefit for workers who still cannot find work after receiving the EUC extension. However, EB benefits were not likely to be available to most EUC recipients due to the restrictive nature of the EB trigger and the fact that states would share the burden of cost.

2. How did the American Recovery and Reinvestment Act (ARRA) make it possible for more workers to collect EB after their EUC benefits run out?

The ARRA (Section 2005) made two key temporary changes to the EB program, allowing more workers to collect benefits under the EB program after their EUC benefits run out.

First, the ARRA temporarily shifts the costs of the EB program entirely to the federal government for the

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remainder of 2009 (and phasing out through June 2010), thus removing the requirement that states pay 50% of EB benefits.

Second, the ARRA suspends a federal eligibility rule that prevents many workers who are now collecting EUC from receiving EB. To qualify for EB under the old rules, a worker had to have filed for state unemployment benefits within one year of when the state reached the required level of unemployment to “trigger” on to the EB program.

Now, as a result of the ARRA, EB is available to anyone who exhausts his or her EUC benefits during an EB high-unemployment period, not just those workers who applied for state unemployment benefits one year before the EB period began. Without this provision, large numbers of workers now collecting EUC would not qualify for any weeks of EB because they started collecting state unemployment benefits more than one year ago. Indeed, most workers in high unemployment states are able to collect 59 weeks of unemployment benefits, including 26 weeks of state benefits and 33 weeks of EUC, which means they first filed for state benefits more than one year before they would be eligible to receive EB.

3. What is the necessary unemployment rate required for a state to “trigger on” to EB and what does the state have to do to adopt the trigger?

To qualify for EB under the 1970 federal law, a state must exceed either of the following unemployment levels, thus allowing the state to “trigger on” to EB benefits:

- Insured Unemployment Rate Trigger: The insured unemployment rate (IUR) is the number of workers receiving state unemployment benefits in the past 13 weeks divided by the total number of employed workers. If a state’s insured unemployment rate exceeds 5.0%, EB benefits trigger on. Under this requirement, which automatically applies to all states under the EB law, the state’s insured unemployment rate must also be on the rise. A state can only trigger on to EB if the current IUR is 20% higher than it was during the same period in both of the prior two years. The IUR trigger allows a state to receive 13 weeks of additional benefits.

- Optional Total Unemployment Rate Trigger: States can also trigger on to EB benefits if the total unemployment rate (TUR)--the standard unemployment rate published by the Bureau of Labor Statistics every month--exceeds 6.5% over a three-month period. Like the IUR requirement, the TUR has to be increasing, but only by 10% over each of the past two years. If the state exceeds the 6.5% TUR, workers are entitled to an extra 13 weeks of EB. If the state exceeds 8.0% unemployment, workers are entitled to 20 weeks of EB. In contrast to the IUR trigger, the TUR trigger only applies to those states that have passed a law adopting the more generous EB option. Currently, only twelve states have adopted the optional TUR trigger rule to access EB, while an additional four are expected to do so in the short-term (Table 1).

4. Which states currently qualify for EB benefits and which states could qualify if they changed their state laws to take advantage of the new ARRA provisions?

Thirty-six states, Puerto Rico, and the District of Columbia currently qualify for EB, either using the IUR formula (Arkansas, Idaho, Illinois, Massachusetts, Montana, Pennsylvania, Puerto Rico, South Carolina, Vermont) or the optional TUR formula[1] (Alaska, Arizona, California, Colorado, Connecticut, Delaware,

[1] Hawaii, Illinois and Texas are in the process of finalizing their TUR triggers.

District of Columbia, Florida, Georgia, Hawaii, Indiana, Kansas, Kentucky, Maine, Michigan, Minnesota, Missouri, Nevada, New Jersey, New York, North Carolina, Ohio, Oregon, Rhode Island, Tennessee, Texas, Virginia, Washington, Wisconsin). As a result, about 1.4 million workers will qualify for EB when their EUC benefits expire between now and August.

It is far more difficult for a state to trigger on under the IUR rule than the TUR because the IUR requires a large percentage of unemployed workers to actually be collecting benefits, which is not the case in many states. Indeed, another three states could now trigger on to EB using the TUR option if they adopt the required EB law.

As of June 28, these states include Alabama (20 weeks), Delaware (13 weeks), Maryland (13 weeks), and Mississippi (20 weeks). If all these states adopted the optional TUR trigger, nearly 464000 additional workers would qualify for EB after exhausting their EUC benefits, or a total of nearly 1.5 million when combined with those workers in states that have already triggered on through the TUR or IUR (Table 2).

Additionally, Massachusetts, South Carolina and Puerto Rico, which are already receiving 13 weeks of EB under the IUR trigger, could receive an additional 7 weeks (providing 20 weeks of total EB) if they adopted the optional TUR trigger, since their three-month TUR is over 8.0 percent. If these states adopted the TUR trigger, nearly 79,000 workers would receive the additional 7 weeks of benefits.

5. How can states take advantage of the new EB rules without being required to spend state dollars?

These states (and others whose unemployment rates exceed 6.5% over the next several months) can adopt the optional EB trigger without incurring any additional costs for workers beginning EB benefit periods this year. This will enable workers who will exhaust their EUC to receive 100% federal-funded EB benefits. If states are especially concerned about the long-term financial impact of the EB trigger, they can also sunset the legislation in late 2009 as 100% EB funding will only be eligible for workers and their families who exhaust EUC in 2009 (suggested language is attached).

However, it is vital for the states to act quickly to take up the EB option. Large numbers of workers who qualified for the full 33-week extension of EUC benefits will begin running out of benefits in March and April 2009. By moving expeditiously to pass the required state legislation, states can ensure that these workers do not reach the end of their emergency unemployment benefits in the depths of an extremely difficult job market. Attached is model legislation for states to enact the optional EB trigger formula, including highlighted provisions for those states that decide to sunset the benefits when the federal funding runs out in December 2009.

6. Where can workers find out whether their state qualifies for EB under the different "trigger" formulas in order to collect EB after running out of EUC benefits?

On a weekly basis, the U.S. Department of Labor (DOL) provides on update of which states have reached the required unemployment level to trigger on to EB. The most recent notice is summarized in Table 1, and the weekly DOL notice can be found at http://ows.doleta.gov/unemploy/claims_arch.asp by selecting "Extended Benefits Trigger Notice."

Model Legislation to Implement State Extended Benefit Triggers
(Sources: U.S., Department of Labor UIPL 45-92 and New Mexico Statutes Annotated 1978, § 51-1-48)

Drafting Instructions:

Insert the language below in bold and italics into the state's current Extended Benefits law.
The language in the boxes below is optional for those states that decide to sunset the provision.

DEFINITIONS --EXTENDED BENEFITS

A. As used in this section, unless the context clearly requires otherwise, "extended benefit period" means a period that:

(1) begins with the third week after a week for which there is a state "on" indicator;

(2) ends with either of the following weeks, whichever occurs later:

(a) the third week after the first week for which there is a state "off" indicator; or

(b) the thirteenth consecutive week of such period; and

(3) does not begin by reason of a state "on" indicator before the fourteenth week following the end of a prior extended benefit period that was in effect with respect to this state.

B. There is a "state 'on' indicator" for this state for a week if:

(1) the rate of insured unemployment not seasonally adjusted under this section for the period consisting of that week and the immediately preceding twelve weeks:

(a) equaled or exceeded one hundred twenty percent of the average of the rates for the corresponding thirteen-week period ending in each of the preceding two calendar years; and

(b) equaled or exceeded five percent; or

(c) equaled or exceeded six percent, regardless of the rate of insured unemployment in the two previous years; or

(2) with respect to weeks of unemployment beginning on or after February 1, 2009:

(a) the average rate of total unemployment, seasonally adjusted, as determined by the United States secretary of labor, for the period consisting of the most recent three months for which data for all states are published before the close of such week equals or exceeds six and one-half percent; and

(b) the average rate of total unemployment in this state, seasonally adjusted, as determined by the United States secretary of labor, for the three-month period referred to in Subparagraph (a) of this paragraph, equals or exceeds one hundred ten percent of such average for either or both of the corresponding three-month periods ending in the two preceding calendar years.

(c) This subparagraph shall take effect on or after February 1, 2009, and cease to be in effect the week ending December 12, 2009, or until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, whichever is later.

C. There is a "state 'off' indicator" for this state for a week only if, for the period consisting of that week and the immediately preceding twelve weeks, none of the options specified in Subsection B of this section result in a "state 'on' indicator".

D. Except as provided in Subsection E of this section, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) fifty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) thirteen times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) thirty-nine times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year….

E. Effective with respect to weeks beginning in a high-unemployment period, the total extended benefit amount payable to an eligible individual with respect to the applicable benefit year shall be the least of the following amounts:

(1) eighty percent of the total amount of regular benefits that were payable to the individual pursuant to this section in the individual's applicable benefit year;

(2) twenty times the individual's average weekly benefit amount that was payable to the individual pursuant to this section for a week of total unemployment in the applicable benefit year; or

(3) "forty-six" for "thirty-nine" in subparagraph (3)

F. For purposes of Subsection E of this section, "high-unemployment period" means a period during which an extended benefit period would be in effect if Paragraph (4) of Subsection B of this section were applied by substituting "eight percent" for "six and one-half percent".

G. Sections E and F shall take effect or after February 1, 2009, and cease to be in effect the week ending December 12, 2009, or until the week ending three weeks prior to the last week for which federal sharing is authorized by Section 2005(a) of Public Law 111-5, whichever is later.

Table 1

State Provisions Required to Access Additional 13 to 20 Weeks of Federal Extended Benefits

National Employment Law Project
June 28, 2009

State	EB Triggered ON, by Provision, and Number of Weeks Available			Insured Unemployment Rate (IUR)	Total Unemployment Rate (TUR)		
					TUR Trigger Option Exists in Law	3-Month TUR, Seasonally Adjusted	Qualifies for EB If State Adopts Optional TUR Trigger (# Weeks)
Alabama				3.99		9.3	X (20)
Alaska	X	TUR	20	5.37	X	8.2	
Arizona	X	TUR	13	4.01	X	7.9	
Arkansas	X	IUR	13	5.29		6.7	
California	X	TUR	20	5.46	X	11.3	
Colorado	X	TUR	13	3.36	X	7.5	
Connecticut	X	TUR	13	5.12	X	7.8	
Delaware	X	TUR	13	3.89		7.7	
District of Columbia	X	TUR	20	1.49	X	10.1	
Florida	X	TUR	20	3.94	X	9.9	
Georgia	X	TUR	20	3.88	X	9.4	
Hawaii	*see note			3.56	*X	7.1	
Idaho	X	IUR	13	5.90	X	7.3	
Illinois	X	IUR	13	5.42	*X	9.5	
Indiana	X	TUR	20	5.17	X	10.2	
Iowa				3.85		5.4	
Kansas	X	TUR	13	3.89	X	6.5	
Kentucky	X	TUR	20	4.69	X	10.1	
Louisiana				2.69		6.2	
Maine	X	TUR	13	4.21	X	8.1	
Maryland				3.59		6.9	X (13)
Massachusetts	X	IUR	13	5.08		8.0	**X (20)
Michigan	X	TUR	20	7.47	X	13.2	
Minnesota	X	TUR	20	4.30	X	8.1	
Mississippi				4.23		9.4	X (20)
Missouri	X	TUR	20	4.13	X	8.6	
Montana	X	IUR	13	5.15		6.1	
Nebraska				2.26		4.5	
Nevada	X	TUR	20	6.27	X	10.8	
New Hampshire				4.06	X	6.3	
New Jersey	X	TUR	20	5.45	X	8.5	
New Mexico				3.80	X	6.1	
New York	X	TUR	13	4.44	X	7.9	
North Carolina	X	TUR	20	5.43	X	10.9	
North Dakota				2.13		4.2	
Ohio	X	TUR	20	5.03	X	10.2	
Oklahoma				2.97		6.2	
Oregon	X	TUR	20	7.32	X	12.0	
Pennsylvania	X	IUR	13	6.38		7.9	
Puerto Rico	X	IUR	13	6.37		14.9	**X (20)
Rhode Island	X	TUR	20	5.61	X	11.3	
South Carolina	X	IUR	13	5.34		11.6	**X (20)
South Dakota				1.70		4.9	
Tennessee	X	TUR	13	4.16	X	10.1	
Texas	*see note			2.81	*X	6.8	
Utah				3.48		5.3	
Vermont	X	IUR	13	5.34	X	7.3	
Virgin Islands				2.71		5.2	
Virginia	X	TUR	13	2.60	X	6.9	
Washington	X	TUR	20	5.13	X	9.2	
West Virginia				4.22		7.7	X (13)
Wisconsin	X	TUR	20	6.28	X	8.7	
Wyoming				3.48		4.7	
Total:	*38*	*IUR: 9* *TUR: 29*			*33*		*5* *(3 Aditional Qualify for 20 Weeks with TUR)*

***** Hawaii, Illinois and Texas are in the process of finalizing their TUR triggers. This will bring 13 weeks of EB benefits to Hawaii, 7 additional weeks to Illinois (for 20 weeks total), and 20 weeks to Texas.

** South Carolina, Puerto Rico, and Pennsylvania are currently receiving 13 weeks of EB benefits under the IUR trigger, but could qualify for an additional 7 weeks if they adopt the TUR trigger since their unemployment rate is 8.0 percent or higher.

Note: TUR reflects average seasonally adjusted TUR for 3 month period ending May 2009
IUR reflects 13-week period ending June 28, 2009

Source: US DOL ETA Extended Benefits Trigger Notice, Effective June 28 2009
http://atlas.doleta.gov/unemploy/trigger/2009/trig_062809.html

Table 2

Potential Impact of the Federal Extended Benefit Provisions of the Economic Recovery Legislation

National Employment Law Project
June 28, 2009

State	Workers Exhausting EUC January - August 2009	Workers Receiving EB as of June 28, 2009	Workers Potentially Eligible for EB with Optional TUR Trigger	Workers Eligible for 7 Additional EB Weeks with Optional TUR Trigger*
Alabama	16,996		16,996	
Alaska	7,276	7,276		
Arizona	20,743	20,743		
Arkansas	11,720	11,720		
California	235,837	235,837		
Colorado	11,905	11,905		
Connecticut	22,644	22,644		
Delaware	2,762	2,762		
District of Columbia	3,633	3,633		
Florida	119,735	119,735		
Georgia	58,499	58,499		
Hawaii	2,054	2,054		
Idaho	7,275	7,275		
Illinois	71,652	71,652		
Indiana	42,502	42,502		
Iowa	9,485			
Kansas	0	0		
Kentucky	14,598	14,598		
Louisiana	0			
Maine	4,626	4,626		
Maryland	12,383		12,383	
Massachusetts	39,518	39,518		39,518
Michigan	88,488	88,488		
Minnesota	28,215	28,215		
Mississippi	11,056		11,056	
Missouri	22,259	22,259		
Montana	3,751	3,751		
Nebraska	7,587			
Nevada	19,563	19,563		
New Hampshire	1,169			
New Jersey	79,649	79,649		
New Mexico	0			
New York	93,385	93,385		
North Carolina	66,291	66,291		
North Dakota	2,541			
Ohio	74,363	74,363		
Oklahoma	0			
Oregon	22,912	22,912		
Pennsylvania	86,498	86,498		
Puerto Rico	7,813	7,813		7,813
Rhode Island	8,635	8,635		
South Carolina	31,259	31,259		31,259
South Dakota	641			
Tennessee	30,556	30,556		
Texas	38,111	38,111		
Utah	8,176			
Vermont	2,616	2,616		
Virgin Islands	533			
Virginia	7,349	7,349		
Washington	20,553	20,553		
West Virginia	3,194		3,194	
Wisconsin	31,842	31,842		
Wyoming	1,299			
United States	*1,516,143*	*1,441,083*	*43,629*	*78,589*

Number of Workers:	
Workers who will receive EB:	1,441,083
Workers who would receive EB if state enacted TUR trigger:	43,629
Total number of workers who will/could benefit from EB:	1,484,712
Of these, workers who could get 7 *additional* weeks with TUR trigger:	78,589