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PART VIII



DEPARTMENT OF
LABOR

Employment and Training
Administration



SPECIAL
UNEMPLOYMENT
ASSISTANCE

DEPARTMENT OF LABOR

Employment and Training Administration
[20 CFR Part 619]

SPECIAL UNEMPLOYMENT ASSISTANCE

Proposed Amendments to Regulations

AGENCY: Employment and Training Administration, Labor.

ACTION: Proposed rule.

SUMMARY: The Special Unemployment Assistance Program (SUA) is a temporary program to furnish unemployment benefits to individuals who are unemployed and unable to obtain work, and who have no right under any State or Federal law to unemployment benefits. The Department of Labor proposes to change the SUA regulations so as to reflect recent amendments to the law creating the program. The principal amendments reflected in these changes extend the program for an additional year, apply State base periods and benefit years to SUA claims, adopt a special ineligibility provision for nonprofessional school employees, and authorize State election on the use of SUA base period wage credits in transition claims filed under State law.

DATES: Comments: All comments on the changes in this proposal must be received on or before January 5, 1978. Proposed effective date: Thirty days after publication of the final rule in the FEDERAL REGISTER.

ADDRESSES: Send comments on this proposal to the U.S. Department of Labor, Employment and Training Administration, room 7000, Patrick Henry Building, 601 D Street NW., Washington, D.C. 20213.

All comments received will be available for public inspection during normal business hours, in room 7000 at the above address.

FOR FURTHER INFORMATION CONTACT:

Lawrence E. Weatherford, Jr., Administrator, Unemployment Insurance Service, Employment and Training Administration, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213, telephone: 202-376-7032.

SUPPLEMENTARY INFORMATION: The Special Unemployment Assistance Program is a temporary program, financed by Federal funds, to furnish unemployment benefits (referred to as Special Unemployment Assistance, or SUA) to individuals who are unemployed and unable to obtain work, and who have no right under any State or Federal law to compensation, assistance, or allowances with respect to their unemployment.

Part 619, Chapter V of title 20 of the Code of Federal Regulations implements the Special Unemployment Assistance Program, established by Title II of the "Emergency Jobs and Unemployment Assistance Act of 1974" (Pub. L. 93-567, 88 Stat. 1845, 1850). This Act has been amended by Title II of the Emergency Compensation and Special Unemploy-

ment Assistance Extension Act of 1975 (Pub. L. 94-45, 89 Stat. 236, 240), and has been supplemented by Chapter VI of Title I of the Second Supplemental Appropriations Act, 1975 (Pub. L. 94-32, 89 Stat. 173, 178). On March 23, 1976, a revision to Part 619 was published in the FEDERAL REGISTER (41 FR 12161) implementing the 1975 amendments to the Act. Amendments to Part 619 are proposed in this document, to implement the amendments to the Act in Section 121 and Title VI of the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566, 90 Stat. 2667, 2673, 2689), and in Section 6(b) of the Emergency Jobs Programs Extension Act of 1976 (Pub. L. 94-444, 90 Stat. 1476, 1482). The substantive changes in Part 619 are described below.

1. In § 619.2(a) the term "Act" is updated to include references to Pub. L. 94-444 and Pub. L. 94-566, which have further amended the original Act (Pub. L. 93-567).

2. In § 619.2(m) the definition of the term "Special Unemployment Assistance benefit year" is expanded to mean the benefit year as prescribed in the applicable State law with respect to benefit years that begin after December 31, 1976. The present definition is retained for benefit years that began on or before that date.

3. In § 619.2(u) the term "week of unemployment" is clarified to take account of its threefold ramifications. Previously this term was too loosely defined. This led to a variety of interpretations by the several State agencies. It is expected that the new definition will eliminate this ambiguity.

4. In § 619.3(b) the ending dates of the SUA program are changed from March 31, 1977, to June 30, 1978, for paying SUA, and from December 31, 1976, to December 31, 1977 for filing a valid claim for SUA.

5. In § 619.4(b) a new paragraph (3) is added to provide that, with respect to the benefit year for any individual that begins after December 31, 1976, the base period for the individual shall be the base period prescribed in the applicable State law. The provision is retained which prescribes a 52-week base year with respect to any individual benefit year that begins on or before December 31, 1976.

In addition, for any benefit year that begins after December 31, 1976, no employment and wages shall be taken into account in determining whether an individual meets the State law qualifying requirements, to the extent that the individual was entitled to SUA on the basis of such employment and wages during a benefit year beginning before January 1, 1977. This means that any employment and wages counted and used for the individual for the purpose of meeting the State law qualifying requirements in the base year for a SUA benefit year beginning before January 1, 1977, shall not be counted and used for the individual for such purpose in the base period prescribed in the State law to establish a new SUA benefit year beginning on or after such date. This restriction is ap-

plicable also to new §§ 619.5(d) and 619.6(f), relating to computation of the weekly benefit amount and maximum amount of SUA payable.

6. In § 619.5 a new paragraph (d) is added to provide that, for the purpose of computing an individual's weekly amount of SUA with respect to a benefit year that begins after December 31, 1976, the base period for the individual shall be the base period prescribed in the applicable State law. As in § 619.4(b) the present base year is retained with respect to any benefit year that begins on or before December 31, 1976.

7. In § 619.6 a new paragraph (f) is added to provide that, for the purpose of computing an individual's maximum amount of SUA with respect to a benefit year that begins after December 31, 1976, the base period for the individual shall be the base period prescribed in the applicable State law. As in § 619.4(b) the present base year is retained with respect to any benefit year that begins on or before December 31, 1976.

8. In § 619.12(e) a new paragraph (3) is added to provide that SUA be denied to nonprofessional school employees for any week of unemployment commencing during a period between two successive academic years or terms if they performed services for an educational institution or agency in the first of such academic years or terms and there is a reasonable assurance that they will perform nonprofessional services for any educational institution or agency in the second or such academic years or terms. This provision is effective with respect to weeks of unemployment that begin after October 20, 1976. In determining eligibility of nonprofessional school employees for SUA, a State agency should obtain from the educational institution or agency a statement as to whether the individual has been notified that he or she has a reasonable assurance of re-employment for the ensuing academic year or term. For the purposes of this provision the term "a reasonable assurance" is defined to mean a written, verbal, or implied agreement that an individual, who performed services for an educational institution or agency in a nonprofessional capacity in the first of two successive academic years or terms, will perform nonprofessional services for any educational institution or agency in the second of such academic years or terms.

9. In § 619.12 paragraph (i) is deleted because the restrictions on entitlement specified in § 619.12 would apply with respect to Special Unemployment Assistance benefit years that begin after December 31, 1976, as a result of defining benefit year and base period as prescribed in the applicable State law.

10. In § 619.14 the provisions on in-violate rights to SUA are clarified, so as to provide that the rights of individuals to SUA shall be protected in the same manner and to the same extent as the rights of persons to regular unemployment compensation are protected under the applicable State law.

11. A new § 619.23 is added to authorize State election on the use of SUA base period wage credits in State transition claims for weeks of unemployment beginning on or after January 1, 1978, based on previously uncovered services. If a State elects to consider all such wage credits to be used when the SUA benefit year was established, an individual will be ineligible for SUA thereafter until all State and/or Federal benefits are exhausted, after which the individual will be eligible for SUA for any weeks, ending before June 30, 1978, remaining in the SUA benefit year established for the individual. If a State elects to use such wage credits which were not used for the payment of SUA, an individual's SUA entitlement will terminate once the individual is eligible for a State claim and no further SUA payments may be made for the duration of the SUA program.

12. New § 619.23 is added to the table of sections to reflect the new section entitled "Effect of transition claims."

13. The authority for the regulations is expanded to include section 121 of Pub. L. 94-566; 90 Stat. 2667, 2673 (26 U.S.C. 3304 note).

14. In addition a number of minor proofing and technical errors were made in the revision to Part 619 as published in the FEDERAL REGISTER on March 23, 1976, (41 FR 12161). Those errors have been corrected in the proposed document.

Note.—The Department of Labor has determined that this document does not contain a major proposal requiring the preparation of an Economic Impact Statement under Executive Order 11949 and applicable authority.

This document was prepared under the direction and control of Lawrence E. Weatherford, Jr., Administrator, Unemployment Insurance Service, Employment and Training Administrator, U.S. Department of Labor, 601 D Street NW., Washington, D.C. 20213, telephone: 202-376-7032

Accordingly, amendments to 20 CFR Part 619 are proposed as follows:

1. In § 619.2, paragraphs (a), (m), and (u) are amended to read as follows:

§ 619.2 Definitions.

(a) "Act" means part A of title II of the "Emergency Jobs and Unemployment Assistance Act of 1974" (Pub. L. 93-567; 88 Stat. 1845, 1850; approved December 31, 1974), as amended and supplemented by chapter VI of title I of the Second Supplemental Appropriations Act, 1975 (Pub. L. 94-32; 89 Stat. 173, 178), title II of the Emergency Compensation and Special Unemployment Assistance Extension Act of 1975 (Pub. L. 94-45; 89 Stat. 236, 240), section 6(b) of the Emergency Jobs Programs Extension Act of 1976 (Pub. L. 94-444; 90 Stat. 1476, 1482), and section 121 and title VI of the Unemployment Compensation Amendments of 1976 (Pub. L. 94-566; 90 Stat. 2667, 2673, 2689).

(m) (1) "Special Unemployment Assistance benefit year" means the fifty-two week period beginning with the first week for which an individual files a valid

claim for SUA, as to any benefit year which begins on or before December 31, 1976.

(2) Effective with respect to benefit years which begin after December 31, 1976, the term "Special Unemployment Assistance benefit year" means the benefit year as prescribed in the applicable State law, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690.

(3) No Special Unemployment Assistance benefit year shall be established with an effective date later than December 31, 1977, and no Special Unemployment Assistance benefit year shall continue in effect after the last week which ends on or before June 30, 1978.

(u) "Week of unemployment" means a week of total, part-total, or partial unemployment as defined in the applicable State law, which shall be applied in the same manner and to the same extent to all employment and earnings, and in the same manner and to the same extent for the purposes of the SUA program as if the individual filing an application for SUA were filing a claim for regular unemployment compensation.

2. In § 619.3, paragraph (b) is amended to read as follows:

§ 619.3 Effective period of the program.

(b) *Ending dates.* SUA shall not be payable to any individual with respect to any week of unemployment ending after June 30, 1978; and no individual shall be entitled to a payment of SUA with respect to any week of unemployment that begins after December 31, 1977, unless the individual has filed a valid claim for SUA which is effective with respect to a week that begins on or before December 31, 1977.

3. In § 619.4, paragraph (b) is amended by adding thereto a new paragraph (3) to read as follows:

§ 619.4 Eligibility requirements for Special Unemployment Assistance.

(3) (i) Effective with respect to the Special Unemployment Assistance benefit year of any individual that begins after December 31, 1976, the base period for the individual shall be the base period prescribed in the applicable State law, instead of the base year prescribed in paragraph (b)(1) of this section, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690.

(ii) Employment and wages counted and used for the individual for the purpose of meeting the qualifying employment and wage requirements of the applicable State law in the base year for a SUA benefit year beginning before January 1, 1977, shall be counted and used for the individual for such purpose in the base period prescribed in the applicable State law to establish a new SUA benefit year beginning on or after such date, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690.

4. In § 619.5, a new paragraph (d) is added to read as follows:

§ 619.5 Special Unemployment Assistance: Weekly amount.

(d) *Change in base period.* Effective with respect to the Special Unemployment Assistance benefit year of any individual that begins after December 31, 1976, the base period for the individual shall be the base period prescribed in the applicable State law, instead of the base year prescribed in paragraph (a)(1) of this section, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690. No employment and wages counted and used for the individual for the purpose of computing the individual's weekly amount of SUA payable with respect to a SUA benefit year beginning before January 1, 1977, shall be counted and used for the individual for such purpose with respect to a new SUA benefit year beginning on or after such date, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690.

5. In § 619.6, a new paragraph (f) is added to read as follows:

§ 619.6 Special Unemployment Assistance: Maximum amount.

(f) *Change in base period.* Effective with respect to the Special Unemployment Assistance benefit year of any individual that begins after December 31, 1976, the base period for the individual shall be the base period prescribed in the applicable State law, instead of the base year prescribed in paragraph (a) of this section, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690. No employment and wages counted and used for the individual for the purpose of computing the individual's maximum amount of SUA payable with respect to a SUA benefit year beginning before January 1, 1977, shall be counted and used for the individual for such purpose with respect to a new SUA benefit year beginning on or after such date, in accordance with section 602 of Pub. L. 94-566, 90 Stat. 2667, 2690.

6. In § 619.12, paragraph (e) is amended by adding thereto a new paragraph (3) to read as follows:

§ 619.12 Restrictions on entitlement.

(3) (i) Effective with respect to weeks of unemployment that begin after October 20, 1976, an individual who performs services for an educational institution or agency (other than primarily in an instructional, research, or principal administrative capacity) shall not be eligible for a payment of SUA or waiting period credit with respect to any week commencing during a period between two successive academic years or terms if—

(A) Such individual performed such services for any educational institution or agency in the first of such academic years or terms; and

(B) There is a reasonable assurance that such individual will perform services for any educational institution or agency in any capacity (other than primarily in an instructional, research, or principal administrative capacity) in the second of such academic years or terms.

(ii) For the purposes of this paragraph (e)(3), the term "a reasonable assurance" means a written, verbal, or implied agreement than an individual, who performed services for an educational institution or agency in a nonprofessional capacity in the first of two successive academic years or terms, will perform nonprofessional services for any educational institution or agency in the second of such academic years or terms. In determining eligibility of nonprofessional school employees for SUA, a State agency shall obtain from the educational institution or agency a statement as to whether the individual has been given notification with respect to his or her employment status. If such individual has been notified that he or she has a reasonable assurance of reemployment for the ensuing academic year or term, the individual is not eligible for SUA until the State agency receives new information that the individual does not have a reasonable assurance of reemployment or that the individual was not, in fact, offered reemployment. In any case where the educational institution or agency fails to furnish such statement requested by the State agency, the State agency shall employ its fact-finding procedures used under State law to determine whether the individual has a reasonable assurance of reemployment. Any determination by a State agency denying SUA to an individual under this paragraph (e)(3) shall be in writing and shall include notice of right to reconsideration or appeal in accordance with § 619.8(d).

7. In § 619.12, paragraph (i) is deleted.

8. Section 619.14 is amended to read as follows:

§ 619.14 Inviolate rights to SUA.

Except as specifically provided in this part, the rights of individuals to SUA shall be protected in the same manner and to the same extent as the rights of

persons to regular unemployment compensation are protected under the applicable State law. Such measures shall include protection of applicants for SUA from waiver, release, assignment, pledge, encumbrance, levy, execution, attachment, and garnishment, of their rights to SUA. In the same manner and to the same extent, individuals shall be protected from discrimination and obstruction in regard to seeking, applying for, and receiving any right to SUA.

9. A new § 619.23 is added to read as follows:

§ 619.23 Effect of Transition Claims.

(a) *Use of SUA wage credits.* (1) A State whose unemployment compensation law provides for the payment of compensation for any week of unemployment beginning on or after January 1, 1978, on the basis of previously uncovered services with respect to which reimbursement is authorized under section 121 of Pub. L. 94-566 (90 Stat. 2667, 2673), shall determine the extent that SUA was not paid to any individual on the basis of such services. In making this determination, a State shall elect one of the following methods:

(i) All SUA base period wage credits based on previously uncovered services were considered to be used when the SUA benefit year was established and may not subsequently be used to establish entitlement to regular compensation under State law; or

(ii) Any SUA base period wage credits based on previously uncovered services which were not used for the payment of SUA, as computed in accordance with the prescribed SUA unused wage credit formula in ET Handbook No. 364, may subsequently be used to establish entitlement to regular compensation under State law.

(2) Whichever method is elected by a State, such method shall be applied uniformly to all individuals in the State.

(b) *Effect on SUA claims.* (1) If a State elects the method described in paragraph (a)(1)(i) of this section, an individual will be ineligible for SUA beginning with the first week the individual is eligible for regular compensation under the State law and for weeks thereafter until the individual has exhausted all compensation payable to the indi-

vidual, if other otherwise eligible, will be eligible for SUA for any weeks remaining in the SUA benefit year established for the individual.

(2) If a State elects the method described in paragraph (a)(1)(ii) of this section, an individual's SUA entitlement will terminate beginning with the first week the individual is eligible for regular compensation under the State law and no further SUA payments may be made to the individual.

(3) No individual shall be deemed to be ineligible for waiting week credit on a transition claim under any State law because the individual is eligible for or is paid SUA for such week.

10. A new section is added to the table of sections to read as follows:

Sec. 619.23 Effect of transition claims.

11. The authority for the regulations is amended to read as follows:

AUTHORITY: Sec. 202, Pub. L. 93-567; 88 Stat. 1845, 1850; Secretary's Order No. 4-75 (40 FR 18515); sec. 121, Pub. L. 94-566; 90 Stat. 2667, 2673 (26 U.S.C. 3304 note).

12. Corrections in the printing of Part 619 are made as follows:

In § 619.3(c), a comma is inserted following the word "Part".

In § 619.4, in the text preceding paragraph (a) thereof, the semicolon following the words "benefit year" is changed to a comma.

In § 619.4(a), in the reference to the "Public Works and Economic Development Act Amendments of 1974", the word "Amendments" is stricken and "1974" is changed to "1965".

In § 619.4(b), the word "compensation" is changed to "compensation".

In § 619.4(f), a comma is inserted following the word "employed".

In § 619.9(b), the word "part" is changed to "Part".

In § 619.10(a), the word "part" is changed to "Part".

In § 619.20, the word "part" is changed to "Part".

Signed at Washington, D.C., on November 30, 1977.

ERNEST G. GREEN,
Assistant Secretary for
Employment and Training.

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