

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI
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ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 20-12

TO: STATE WORKFORCE AGENCIES

FROM: JANE OATES /s/
Assistant Secretary

SUBJECT: The Middle Class Tax Relief and Job Creation Act of 2012 (Public Law (P.L.) 112-96) – Provisions on Self-Employment Assistance Programs

1. Purpose. To advise state agencies of the provisions in the Middle Class Tax Relief and Job Creation Act of 2012, (the Act) governing Self-Employment Assistance (SEA) programs and offering assistance to state agencies that operate such programs.

2. References.

- Subtitle E of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96);
- Section 3304(a)(4)(F) of the Federal Unemployment Tax Act (FUTA);
- Section 3306(t), FUTA;
- Section 303(a)(5) of the Social Security Act (SSA);
- Section 208 of the Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373);
- North American Free Trade Agreement (NAFTA) Implementation Act (P.L. 103-182);
- Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998 (P.L. 105-306);
- Section 4001 of Title IV of the Supplemental Appropriations Act, 2008 (P.L. 110-252);
- Notice of Listening Sessions on Implementation of Unemployment Insurance Provisions of the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96), 77 Fed. Reg. 16074 (March 19, 2012);
- Section 134(d)(4)(D)(vi) of the Workforce Investment Act of 1998;
- Training and Employment Guidance Letter (TEGL) No. 12-10 (November 15, 2010) *Supporting Entrepreneurial and Self-Employment Training through the Workforce Investment System*;
- Unemployment Insurance Program Letter (UIPL) No. 14-94, *North American Free Trade Agreement Implementation Act (P.L. 103-182) - Provisions Affecting the Federal-State Unemployment Compensation (UC) Program relating to Self-Employment Assistance*;
- UIPL No. 11-99, *Permanent Authorization of the Self-Employment Assistance Program*;
- UIPL No. 12-01, *Outsourcing of Unemployment Compensation Administrative Functions*, and UIPL No. 12-01, Change 1;

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- UIPL No. 23-08, *Supplemental Appropriation Act, 2008, Title IV—Emergency Unemployment Compensation*, and UIPL No. 23-08, Changes 1, 2, 3, 4, 5, and 6;
- UIPL No. 04-10, *Extension of Temporary Provisions—Emergency Unemployment Compensation, 2008, Federal Additional Compensation, and Extended Benefits*, and UIPL No. 04-10, Changes 1, 2, 3, 4, 5, 6, 7, 8, and 9; and
- ET Handbook No. 336, 18th Edition (December 2009), “*Unemployment Insurance (UI) State Quality Service Plan -Planning and Reporting Guidelines.*”

3. Background. On February 22, 2012, the President signed into law the Middle Class Tax Relief and Job Creation Act of 2012 (P.L. 112-96). In recognition of the importance of supporting entrepreneurship, Subtitle E of P.L. 112-96 (hereinafter referred to as Subtitle E) amended Federal Unemployment Compensation (UC) law to extend the SEA program to the long-term unemployed receiving benefits under the Emergency Unemployment Compensation (EUC) and Extended Benefits (EB) programs. This is a further expansion of the SEA program, which began in 1993.

The “withdrawal standard” of Section 3304(a)(4), FUTA, and Section 303(a)(5), SSA, limits withdrawals (with specified exceptions not relevant here) from a state's unemployment fund for payments of “compensation.” The term “compensation” is defined in Section 3306(h), FUTA, as “cash benefits payable to individuals with respect to their unemployment.” Because payment must be made with respect to “unemployment,” prior to 1993, the withdrawal standard prohibited states from using unemployment funds to help individuals establish themselves in self-employment.

The North American Free Trade Agreement (NAFTA), enacted on December 8, 1993, included a provision allowing states to operate SEA programs over a five-year period that would permit certain individuals to receive payments from the state's unemployment fund in lieu of regular compensation to help them establish businesses. On October 28, 1998, the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, (P.L. 105-306) permanently authorized the SEA program.

Participation in a state SEA program is voluntary, on the part of both the state and the unemployed individual. These programs provide unemployed individuals financial support while they access the resources, information, and training they need to get a business off the ground. States work with the individual participants to determine what training they need to help them succeed in the program. Individuals enrolled in an SEA program receive a weekly allowance in the same amount as the individual’s regular UC weekly benefit amount. The definition of an SEA program under section 3306(t), FUTA requires an individual to be:

- a. Eligible to receive regular UC under the state’s law, except that the individuals are not required to meet the state’s requirements related to:
 - Availability for work;
 - Active work search;
 - Refusal to accept work; and
 - Disqualifying income with respect to income earned from self-employment;
- b. Identified under a state worker profiling system as being likely to exhaust regular UC;
- c. Participating in self-employment activities including entrepreneurial training, business counseling, and technical assistance that are approved by the state UC agency; and

- d. Actively engaged on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed.

Section 3306(t), FUTA, also provides that the aggregate number of individuals receiving SEA allowances may at no time exceed five percent of the number of individuals receiving regular UC. In addition, the SEA program may not result in any cost to the Unemployment Trust Fund (UTF) in excess of the cost that would be incurred by the state and charged to the UTF had the individual(s) not participated in the SEA program.

The “regular” SEA program remains unchanged except that, as explained in section 10 below, there are new reporting requirements. See the summary of changes below for the differences between the “regular” SEA program and the SEA program for EB and/or EUC authorized under P.L. 112-96.

4. Summary of Changes.

- A. Self-Employment Assistance Program for Individuals Eligible for EB.** Before the enactment of P.L. 112-96, Federal law limited SEA participation to individuals who were eligible to receive “regular compensation.” Subtitle E amended the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA) by adding section 208 providing permissive authority for states to establish SEA programs for individuals eligible to receive EB for weeks of unemployment beginning after the date of enactment.

Section 208, EUCA, provides that states operating SEA programs for individuals eligible for EB must follow the definition of an SEA program in section 3306(t), FUTA, except that:

- 1) References to “regular unemployment compensation” under state law in section 3306(t), FUTA, are deemed to refer instead to “extended compensation” under Title II of EUCA;
- 2) The requirement that participants must have been identified through a state's profiling system as likely to exhaust regular unemployment benefits does not apply;
- 3) References to “entrepreneurial training, business counseling, and technical assistance” in section 3306(t)(3)(C)(i), FUTA, shall be deemed instead to mean “entrepreneurial training that the state or non-profit organizations may provide in coordination with programs of training offered [through the workforce investment system or] by the [Small Business Administration] SBA, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance;”
- 4) The five percent limitation on the aggregate number of individuals receiving an SEA allowance in section 3306(t)(4) is, instead, a one percent limitation; and
- 5) The requirement that the program not result in any cost to the UTF does not apply.

However, section 208(c), EUCA, provides that no individual may be approved for participation in SEA, in lieu of EB, unless the state UC agency has a reasonable expectation that the individual has remaining entitlement to at least 13 weeks of EB.

P.L. 112-96 amended section 4001(e), Supplemental Appropriations Act, 2008 governing EUC, to mandate that effective March 4, 2012, states must pay EUC prior to EB. As a result, if a state is in an EB period and an individual had 26 weeks of regular UC entitlement, an individual must begin participation in the SEA program during the first week of EB eligibility. Individuals in an EB state with fewer than 26 weeks of regular UC entitlement may not participate in this SEA program as they would have fewer than 13 weeks of EB entitlement remaining. This is because the EB entitlement is the lesser of 50 percent of the regular UC entitlement or 13 times the regular UC weekly benefit amount. However, if a state is in a high unemployment period (HUP) (which entitles individuals to receive up to 20 weeks of EB), individuals with 26 weeks of regular UC entitlement must begin participation no later than the eighth week of their EB claim in order to have 13 weeks of EB entitlement remaining. Individuals in a HUP state with fewer than 26 weeks of regular UC entitlement must begin participation early in their EB claim in order to meet the 13 remaining weeks of EB entitlement requirement.

Section 208(d), EUCA, provides that individuals may cease participation in this SEA program at any time and receive the remaining balance of EB if they meet all eligibility requirements. Amounts of SEA allowances received by an individual must be deducted from the remaining amounts of EB available to the individual.

Section 2181 of the Act amended EUCA (P.L. 91-373) by adding section 208 and amended section 4001 of the Supplemental Appropriations Act, 2008 (P.L. 110-252) (EUC). The amendment provided for a “combined eligibility limit” that allows individuals to receive up to 26 weeks of SEA allowance payments in lieu of EUC, EB or combined EUC/EB eligibility. The “carryover rule” permits an individual who is receiving SEA in lieu of EB to continue to receive SEA in lieu of EUC when s/he exhausts his/her EB eligibility limit, and vice versa. This combined eligibility limit will only become a factor if a state provides for both EB SEA and EUC SEA. The practical effect of this rule is currently limited because states have been paying EUC before EB and individuals have not yet had the opportunity to receive EB SEA.

Lastly, since EB is paid under state law, states wishing to pay EB SEA must enact new state legislation to provide for the payment of SEA allowances to individuals eligible for EB, unless a state has authority to do so by regulation or Executive Order. As required by the statute, we have developed model legislation, which is discussed further in section 8 below.

- B. Self-Employment Assistance Program for Individuals Eligible for EUC.** As noted above, before the enactment of P.L. 112-96, Federal law limited SEA participation to individuals who were eligible to receive “regular compensation.” Subtitle E amended section 4001 of the Supplemental Appropriations Act, 2008 (P.L. 110-252) (the EUC

law) by adding a new subsection (j) which permits states to establish SEA programs for individuals eligible for EUC. If a state elects to do so, the state would operate this SEA program through an addendum to its agreement under section 4001(a) of the Supplemental Appropriations Act, 2008. No state legislation is required to operate an EUC SEA program. Any state may operate an EUC SEA program conditioned on the state amending their section 40001(a) EUC agreement.

The new subsection (j) provides that in operating SEA programs for individuals eligible for EUC, states must follow the definition in section 3306(t), FUTA, except that:

- 1) All references to “regular unemployment compensation” under state law in section 3306(t), FUTA, are deemed to refer instead to “emergency unemployment compensation” under Title IV of the Supplemental Appropriations Act, 2008 and also, like EB except that;
- 2) The requirement that participants must have been identified through a state's profiling system as likely to exhaust regular unemployment benefits does not apply;
- 3) References to “entrepreneurial training, business counseling, and technical assistance” in section 3306(t)(3)(C)(i), FUTA, shall be deemed instead to mean “entrepreneurial training that the state or non-profit organizations may provide in coordination with programs of training offered by the SBA, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance”;
- 4) The five percent limitation on the aggregate number of individuals receiving an SEA allowance in section 3306(t)(4) is instead a one percent limitation; and
- 5) The requirement that the program not result in any cost to the UTF does not apply.

Note: The number of claimants participating in an EUC SEA program in a state may include interstate claimants residing in that state if the state of residence is operating an EUC SEA program, even though the “paying state” may not be operating an EUC SEA program. For example, an individual is claiming against State A, which does not have an EUC SEA program, but lives in State B, which does. State B may permit the individual, if otherwise eligible (including the “one percent” limitation), to participate in its SEA program, while collecting benefits from State A. As an EUC SEA participant, the individual would not be subject to the requirements for availability for work, active search for work, or refusal to accept work. To optimize the success of these EUC SEA programs, the Department strongly encourages states to coordinate efforts to facilitate and allow such EUC interstate claimants to be able to participate in these programs, if otherwise eligible. Further, the state agrees to honor interstate claims determinations of eligibility for enrollment in EUC SEA programs from agent states that have EUC SEA programs.

However, as with EB SEA, no individual may be approved for participation in SEA in lieu of EUC unless the state UC agency has a reasonable expectation that the individual has remaining entitlement to at least 13 weeks of EB and/or EUC.

Also, like with EB SEA, individuals may cease participation in this SEA program at any time and receive the remaining balance of EUC if they meet all eligibility requirements.

As described above, the new section 4001(j) provides for a “combined eligibility limit” that allows individuals to receive up to 26 weeks of SEA allowance payments in lieu of EUC, EB or combined EUC/EB eligibility. The “carryover rule” permits an individual who is receiving SEA in lieu of EUC to continue to receive SEA in lieu of EB when s/he exhausts his/her EUC eligibility limit, and vice versa. This combined eligibility limit will only become a factor if a state provides for both “EB” SEA and “EUC” SEA. In addition, the practical effect of this rule is limited because states have generally been paying EUC before EB and individuals have not yet had the opportunity to receive EUC SEA.

5. Collaboration with Service Providers. Implementing a successful SEA program requires collaboration with entrepreneurial training providers and other service providers to support new entrepreneurs. The U.S. Department of Labor (Department) recommends that states UC agencies actively engage with other workforce system partners at the state level, with partners in the One-Stop Career Centers, with the service providers described in section 6 operating under the auspices of the SBA, and with local and community-based organizations supporting new entrepreneurs. States are strongly encouraged to work with SBA’s network of staff and service providers to determine the most effective ways to integrate these services in a comprehensive plan for serving SEA participants and supporting their success as entrepreneurs.

One-Stop Career Centers can also play a key role in supporting entrepreneurship including engaging with local, regional, and state partners to develop an entrepreneurial environment. One-Stop Center staff can assist in developing strategies to leverage workforce system resources to identify and support potential entrepreneurs. Information about opportunities for self-employment and entrepreneurship is available to One-Stop customers to assess whether self-employment is a good option for them as a reemployment strategy. One-Stop customers are provided information on the range of entrepreneurship resources and strategies to help small business owners grow their businesses such as developing growth strategies to enable new job creation.

The Department encourages state UC agencies to enter into agreements or have memoranda of understanding (MOU) with appropriate partners and service providers collaborating to administer the SEA program. This ensures that the necessary partners commit to providing self-employment services. In addition, states in which the UC partner has entered into an agreement with One-Stop Career Centers to provide SEA services and/or training must get a commitment of staff to perform the necessary tasks. The agreement or MOU should contain:

- Names of all parties to the agreement;
- A brief description of the collaborative process jointly developed;
- Identification of those who will provide the specific services;
- Description(s) of how feedback will be provided; and
- Descriptions(s) of the roles of the service providers.

6. Resources to Support Entrepreneurship Training. Section 2183(e) requires the Secretary of Labor (Secretary) to use resources available through the Department and to coordinate with the SBA “to ensure that adequate funding is reserved and made available for the provision of entrepreneurial training to individuals participating in” SEA programs. The Department intends to collaborate with SBA to provide a full array of technical assistance and tools to support state implementation of a robust SEA program. Below is a sample of some of the available resources that states should consider including in their programs. In addition to these resources, states can expect to receive additional guidance on how to effectively connect services available through the workforce system and the SBA network of services for the benefit of SEA participants, including outreach materials and an SBA entrepreneurship “tool kit” that can be offered to potential participants.

- a. **Entrepreneurship Training Using Workforce System Resources.** The Department has actively encouraged consideration of the use of resources within the public workforce system, including Individual Training Accounts available under the Workforce Investment Act of 1998, to support entrepreneurship training as an important alternative to traditional training, particularly in a slow economy. There is a range of activities allowable under WIA that promotes the success of small businesses and entrepreneurship. WIA funds may be used for training for small business owners and new entrepreneurs, which can range from general business courses to specific courses on such topics as how to address legal and personnel issues. WIA funds may also be used for skills training and to pay costs associated with obtaining a skill or occupational credential that demonstrates the expertise of the entrepreneur or small business owner. However, given limited resources within the workforce system, it is critical for states and Local Workforce Investment Boards to leverage resources from a wide array of entrepreneurship organizations and the resources provided through the SBA. TEGL No. 12-10 (published November 15, 2010) provides a detailed discussion about use of workforce system resources for this purpose. Also, see TEGL No. 12-10 for guidelines/information on how WIA performance measures relate to these SEA activities.
- b. **SBA Resources.** The SBA funds a robust portfolio of resources for prospective entrepreneurs and small business owners. SBA counsels and trains over 1 million clients annually as they start, sustain and grow their small businesses through its online training and vast resource partner network. SBA’s network reaches into communities across America: More than 18,000 business counselors, mentors and trainers available through over 100 Small Business Development Centers, 110 Womens’ Business Centers and 364 SCORE chapters. Resource partner business experts represent a vast network of industry-specific mentors who come from diverse communities across America. They provide face-to-face and online counseling, training and mentoring to help small businesses develop strategic plans, conduct market studies, implement new technologies, access needed capital, and much more. Full information about all of these programs is available at the SBA’s Web site at <http://www.sba.gov> and individuals can find the counselors in their community by entering their zip code at www.sba.gov/direct. States are strongly encouraged to

reach out to SBA District Offices as discussed below to coordinate plans for developing an SEA program.

- 1) ***SBA District and Regional Offices.*** SBA’s network of 68 district and 10 regional offices are the point of delivery for most SBA programs and services. They work to accomplish the SBA mission by providing quality service to the small business community; and work with SBA resources partners and intermediaries to accomplish the SBA mission. An SEA participant can find the closest SBA District Office by going to: <http://www.sba.gov/about-offices-list/3>
- 2) ***Small Business Development Centers (SBDCs).*** SBDCs provide free or low-cost training and technical assistance to current or prospective business owners. Located in every state, SBDCs are usually affiliated with a higher-education establishment such as a university, college, or business school. SBDCs are funded by grants from the SBA and matching funds. There are 63 SBDCs with more than 1,000 SBDC service centers in the 50 states and insular territories. In 2011, SBDCs helped small businesses leverage over \$3.6 billion in capital infusion.
- 3) ***SCORE, “For the Life of Your Business.”*** SCORE, a partner of the SBA, is a nonprofit association dedicated to educating entrepreneurs and to the formation, growth, and success of small businesses nationwide. It is comprised of over 13,000 volunteer business counselors who provide mentorship and share real-world ethically sound business practices to help entrepreneurs and small business owners at various stages in their business lifecycle. With nearly 370 community based chapters and an award winning online advise and training website, SCORE has served nearly 1.6 million entrepreneurs since 2009.
- 4) ***Women’s Business Centers (WBCs).*** WBCs represent a national network of 110 educational centers. Through these centers, SBA provides women entrepreneurs with face-to-face counseling, training, and assistance to help them develop strategic plans, conduct market studies, implement new technologies, and access capital. These centers have trained and counseled more than 160,000 women, many of them in underserved and economically disadvantaged communities and are, for the first time, in every state in the continental U.S.
- 5) ***Veterans Business Outreach Centers (VBOCs).*** The Veterans Business Outreach Centers (VBOP) provide entrepreneurial development services such as business training, counseling and mentoring, and referrals for eligible veterans owning or considering starting a small business. The SBA has 16 organizations across the country participating in this cooperative agreement and serving as VBOCs.
- 6) ***Small Business Training Network.*** SBA now offers on-line training courses covering a number of business topics that can be found at <http://www.sba.gov/category/navigation-structure/counseling-training>.

SBA online training courses are free, self-paced, and targeted to the specific needs of small business owners. Planning assessment tools and other digital tools allow users to explore entrepreneurship and connect with the right solution to fit their individual needs. Some of the existing courses include:

- Starting a Business
- Managing a Business
- Financing a Business
- Contracting

7) **Financing.** SBA provides a number of financial assistance programs for small businesses that have been specifically designed to meet key financing needs, including debt financing, surety bonds, and equity financing. Below provides a number of the financial assistance programs available through SBA. More information about SBA financing can be found at <http://www.sba.gov/financialassistance/borrowers/role/index.html>.

- a) Guaranteed Loan Programs (Debt Financing).** SBA does not make direct loans to small businesses. Rather, SBA sets the guidelines for loans, which are then made by its partners (lenders, community development organizations, and microlending institutions). The SBA guarantees that these loans will be repaid, thus eliminating some of the risk to the lending partners. So when a business applies for an SBA loan, it is actually applying for a commercial loan, structured according to SBA requirements with an SBA guaranty. SBA-guaranteed loans may not be made to a small business if the borrower has access to other financing on reasonable terms.
- b) 7(a) Loan Program.** The 7(a) Loan Program includes financial help for businesses with special requirements. For example, funds are available for loans to businesses that handle exports to foreign countries, businesses that operate in rural areas, and for other very specific purposes.
- c) CDC/504 Loan Program.** The SBA 504 Loan program is a powerful economic development loan program that offers small businesses another avenue for business financing, while promoting business growth, and job creation. This program is a proven success and win-win-win for the small business, the community and participating lenders. The 504 Loan Program provides approved small businesses with long-term, fixed-rate financing used to acquire fixed assets for expansion or modernization. 504 loans are made available through Certified Development Companies (CDCs), SBA's community based partners for providing 504 Loans.
- d) Microloan Program.** The Microloan Program provides small, short-term loans to small business concerns and certain types of not-for-profit child-care centers. The SBA makes funds available to specially designated

intermediary lenders, which are nonprofit community-based organizations with experience in lending as well as management and technical assistance. These intermediaries make loans to eligible borrowers. The maximum loan amount is \$50,000, but the average microloan is about \$13,000.

- e) **Bonding Program (Surety Bonds).*** SBA's Surety Bond Guarantee (SBG) Program helps small business contractors who cannot obtain surety bonds through regular commercial channels. A surety bond is a three-party instrument between a surety (someone who agrees to be responsible for the debt or obligation of another), a contractor and a project owner. The agreement binds the contractor to comply with the terms and conditions of a contract. If the contractor is unable to successfully perform the contract, the surety assumes the contractor's responsibilities and ensures that the project is completed. Through the SBG Program, the SBA makes an agreement with a surety guaranteeing that SBA will assume a percentage of loss in the event the contractor should breach the terms of the contract. The SBA's guarantee gives sureties an incentive to provide bonding for eligible contractors, thereby strengthening a contractor's ability to obtain bonding and greater access to contracting opportunities for small businesses. SBA can guarantee bonds for contracts up to \$5 million, covering bid, performance and payment bonds, and in some cases up to \$10 million for certain contracts.
- f) **Venture Capital Program (Equity Financing).*** SBA's Small Business Investment Company (SBIC) Program is a public-private investment partnership through which the SBA provides venture capital to small businesses. SBICs are privately owned and managed investment funds, licensed and regulated by SBA. With the private capital they raise and with funds borrowed at favorable rates through SBA, SBICs provide financing in the form of debt or equity to small businesses. SBICs are similar to venture capital, private equity and private debt funds in terms of how they operate and their ultimate objective to generate high returns for their investors. However, unlike those funds, SBICs limit their investments to qualified small business concerns as defined by SBA regulations.

7. Grants for SEA Programs. Section 2182 of the Act gives the Secretary authority to award grants to states to develop, enhance, and promote SEA programs in their state.

Grants may be awarded to states for:

- improved administration of existing SEA programs that had been established before the date of enactment of the Act;
- development, implementation, and administration of new SEA programs established after the date of enactment of the Act; and

- development, implementation, and administration of SEA programs for individuals who are eligible to receive EB or EUC.

In addition to submitting applications for funding to do one or more of the activities above, additional funds are available to promote SEA programs and enroll unemployed individuals in such programs. These additional funds are available only for those states that have been approved to receive a grant for the activities listed above. States are strongly encouraged to apply for these additional funds at the same time they apply for implementation and administration grants.

These grants provide a unique opportunity for states to consider innovative strategies for targeting different types of unemployment claimants who may have greater potential to be successful in starting new businesses. Traditionally, dislocated workers with years of experience in a particular field have been considered as potential SEA participants. More recently, self employment has been seen as a reemployment strategy for the long term unemployed. Today, young adults continue to experience high unemployment. States are encouraged to also consider focusing on young adults as a target for promoting SEA as a reemployment option. Many young adults are technology savvy, highly experienced in the use of social media, and are frequently more open to new and creative experiences – all factors that are valuable for someone starting a new business in today’s economy.

The Act provides for a total of \$35 million for SEA grants (see Attachment 2). Of this amount, \$30 million will be available for implementation and improved administration of the SEA program. The remaining \$5 million is available for the promotion of the SEA program and enrollment of individuals into the program, which the Department believes is important to the success of this program. Under section 2182(c) of the Act, each state is to receive an allotment from the total funds “based upon the percentage of unemployed individuals in the state relative to the percentage of unemployed individuals in all States.” The Department interprets this to mean that each state should receive a share of the total equal to its share of US total unemployment for the 12-month period ending February 2012. This is consistent with the way unemployment data is used for allocating funds for other ETA programs. If a state has a balance of funds remaining in either grant after completion of the grant activities, the state may request a redirection of these funds to the other grant to carry out functions permitted under the agreement.

8. Application Process. For a state to receive funds under Section 2182 of the Act, it must submit a complete application to the Department in accordance with the instructions provided below. To be considered complete, the application must include a narrative description of the proposed activities to be undertaken using these funds, including:

- a project plan with a detailed timeline of activities;
- identified milestones;
- actions to be taken to secure high-quality training opportunities for SEA participants;
- projected goals, outcomes, and products;
- a project budget that indicates other funding, if any, (source and amount) that the state plans to use for the grant activities; and

- if applicable, a copy of the law, regulation, or executive order reflecting the changes to state law provisions, including EB provisions under EUCA, as amended.

Examples of allowable activities to be funded include, but are not limited to, automation and programming costs, staffing, advertisements and promotional materials, curriculum development, and entrepreneurship training. Assurances that the state will provide the data required in ET Handbook No. 336, 18th Edition (December 2009) (State Quality Service Plan (SQSP)) must also be included (See Attachment 9).

The new SEA allowances may be paid under the EB program, which all states' laws contain as a requirement under FUTA and which follows the payment of regular compensation under the state regular UC program. SEA allowances may also be paid under the EUC program, which also follows the payment of regular UC under the state program. Therefore, any state that is not certified under section 3304, FUTA, or eligible for the administrative grants under section 303(a), SSA, is not eligible for these grants.

The Department will begin accepting applications upon the issuance of this guidance, although states are encouraged to take sufficient time to form the necessary partnerships, particularly with state and local workforce system partners and with Small Business Development Centers and other SBA service providers, and to develop their applications thoroughly. The Department will only consider complete applications; incomplete applications will be returned as denied. If an application is incomplete or has been denied, a state may submit a subsequent application for consideration by the Secretary. Although the statute allows that applications may be filed through December 31, 2013, the Department has no authority to obligate the SEA grant funds appropriated by the statute beyond the end of the fiscal year ending September 30, 2013. Accordingly, the Department will only accept applications postmarked on or before June 30, 2013, to ensure that both Departments, Labor and Treasury, have enough time to fulfill their responsibilities to review and approve grant applications, and to assure the timely award and funding of grants.

The Department will approve or deny applications within 30 days of receipt. The 30-day period begins on the day following actual receipt of a complete application. Upon receipt of a complete application submitted in accordance with this guidance, the application will be reviewed. The applicant state will be notified whether its application has been approved. If it is approved, the Secretary of Treasury will transfer the amount of the approved funds within seven days of receipt of the Department's certification. If the application is denied, the Department will provide technical assistance to the state to support submission of a successful application.

Each application must contain the name, telephone number, and e-mail address of the state administrator who is to be notified of approval of the application. Applications must also include the name, telephone number, and e-mail address of the individual who can respond to questions about the SEA application and management of the program.

SEA applications are to be signed by the state agency administrator and addressed to:

Gay M. Gilbert
Administrator
Office of Unemployment Insurance
200 Constitution Ave, N.W. Room S-4524
Washington, D.C. 20210

States are strongly encouraged to submit applications by fax or email (with PDF attachments), followed by a hard copy to the address above. Delivery may also be made by the U.S. Postal Service or private companies such as FedEx or UPS. States may fax applications to 202-693-3526 to the attention of the Division of Unemployment Insurance Operations. Email submissions should be sent to the following email address: SEA_Application@dol.gov. Copies should be provided to the appropriate Regional Office. For purposes of determining date of receipt, the date the application is received in the National Office shall be used. Applications sent only via the U.S. Postal Service may be delayed due to security precautions with mail coming into the Department.

The format and instructions for preparing the SEA funding applications are provided in the attachments to this UIPL. All pages in the state's proposal must be numbered. Included are:

- 1) Attachment 3 - Self-Employment Assistance (SEA) Funding Application Outline;
- 2) Attachment 4 - Self-Employment Assistance (SEA) Cover Page; and
- 3) Attachment 5 - Implementing and Operating Instructions for Administering Self-Employment Assistance Programs for Emergency Unemployment Compensation (EUC).

9. Technical Assistance. Subsection 2183(a)(2) of the Act requires the Department to “provide technical assistance and guidance in establishing, improving, and administering such programs.” Accordingly, the Department is developing a technical assistance strategy that will include webinars, additional guidance, and a collection of successful practices to help states implement SEA programs.

A webinar about SEA and related reporting requirements will be conducted upon release of this guidance. Other technical assistance will include SEA information, model legislative language (as discussed in Section 10), tools and outreach materials that will be shared through the UI Community of Practice Web site at <http://ui.workforce3one.org>.

10. Model Legislation. Subsection 2183(c) of the Act requires the Department to develop model legislation that may be used by a state to enact an SEA program and which will allow flexibility for states and participating individuals and ensure accountability and program integrity. In the development of such language, the Department was required to consult with employers, labor organizations, state workforce agencies, and other program experts. As provided by the Notice of Listening Sessions published at 77 Fed. Reg. 16074, consultations occurred on March 19 and 20, 2012. During these listening sessions, the provisions of Subtitle E, including anticipated reporting requirements, were discussed and comments and suggestions from stakeholders and program experts were solicited. Transcripts from the March 19th listening

session are available at <https://www.workforce3one.org/view/2001208245173949276/info>. A transcription of the March 20th listening session is available at <https://www.workforce3one.org/view/2001208348041396009/info>. Model legislative language for both the regular SEA program and the EB SEA program is found in attachments 7 and 8 of this UIPL. The Department plans to provide technical assistance to states through webinars.

11. Staffing Guidelines. Social Security Act, section 303(a)(1) conditions a state's receipt of a UC administrative grant upon the state law providing for "...[s]uch methods of administration (including after January 1, 1940, methods relating to the establishment and maintenance of personnel standards on a merit basis...) as are found by the Secretary of Labor to be reasonably calculated to insure full payment of unemployment compensation when due." The Department continues to require that "inherently governmental" functions be performed by merit staffed state government personnel. (See UIPL No. 12-01, Outsourcing of Unemployment Compensation Administrative Functions, and Change 1 to that UIPL.)

12. Reporting Requirements. The current required reporting for the SEA program has not changed. However, as a result of the new Federal requirements for SEA, the Act has necessitated new collection of data documenting SEA activities and outcomes for participants. Attachment 9 to this UIPL contains the reporting instructions for the new ETA 9161, the form states will use to report aggregate SEA program activity and outcomes. This new report was recently approved (OMB No. 1205-0490) and will be submitted, on a quarterly basis, through the current electronic reporting system that states use to submit virtually all UI required reports. The report is projected to be available in the reporting system by mid-July, 2012, and the first report, for activity during the second calendar quarter of 2012, will be due August 1, 2012.

As noted above, Attachment 9 shows the reporting instruments and instructions for the approved collection of data for any state that is operating an SEA program. Note that this collection also applies to those states that are currently offering SEA for claimants in the regular UC program as well as states that offer SEA to claimants in the EB or EUC program. The reports are program-specific; states must record SEA activity for claimants based on the program in which the claimants would have been drawing benefits had they not enrolled in SEA. Questions concerning these reports should be directed to the appropriate Regional Office.

13. Evaluation of SEA Programs. Subsection 2183(b) of the Act requires the Secretary of Labor to report to Congress on the effectiveness of SEA programs no later than 5 years after the date of enactment—February 22, 2017. Information required to complete the report to Congress will be collected from the states by a survey or other method as deemed adequate by the Department. States receiving grants as described in Section 7 above will be required to participate fully in this national evaluation. The evaluation report will include:

- 1) An analysis of the implementation and operation of new and existing SEA programs;
- 2) An evaluation of the economic outcomes for individuals who participated in an SEA program as compared to individuals who received UC and did not participate in an SEA program and who are close comparisons in terms of previous employment histories, education, gender, age, race/ethnicity, and geographical location. The

- economic outcomes should include employment status, income, and duration of receipt of UC or SEA; and
- 3) An evaluation of the state of the businesses started by individuals who participated in an SEA program, including:
 - a. Information regarding the type of businesses established;
 - b. The sustainability of the businesses;
 - c. The total income collected by the businesses;
 - d. The total number of individuals employed through such businesses; and
 - e. The estimated Federal and state tax revenue collected from such businesses and their employees.

At an appropriate time, the Department will submit an Information Collection Request (IRC) to the Office of Management and Budget (OMB) for this collection. The Department notes that a Federal agency cannot conduct or sponsor a collection of information unless it is approved by OMB under the Paperwork Reduction Act of 1995, 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 (see 44 U.S.C. 3507). 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 (see 44 U.S.C. 3512).

14. Action Requested. Administrators are to provide this advisory to appropriate staff.

15. Inquiries. Questions should be directed to the appropriate regional office.

16. Attachments.

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| Attachment 1 | Subtitle E—Self-Employment Assistance |
| Attachment 2 | Available Self-Employment Assistance (SEA) Grants |
| Attachment 3 | Self-Employment Assistance (SEA) Funding Application Cover Page |
| Attachment 4 | Self-Employment Assistance (SEA) Funding Abstract |
| Attachment 5 | Implementing and Operating Instructions for Administering Self-Employment Assistance (SEA) Programs for Emergency Unemployment Compensation (EUC) Recipients |
| Attachment 6 | Addendum to Agreement under the Supplemental Appropriations Act, 2008 |
| Attachment 7 | Model Language and Commentary on Language to Implement a Self-Employment Assistance (SEA) Program for Individuals Eligible for Regular Unemployment Compensation |
| Attachment 8 | Model Language and Commentary on Language to Implement a Self-Employment Assistance (SEA) Program for Individuals Eligible for Extended Benefits (EB) |
| Attachment 9 | ETA 9161 Reporting Instructions |
| Attachment 10 | Quarterly Progress Report |