

Implementing and Operating Instructions for Administering Self-Employment Assistance (SEA) Programs for Emergency Unemployment Compensation (EUC) Recipients¹

A. Introduction

The Federal SEA program is a voluntary program designed to encourage unemployed workers to become reemployed by starting their own businesses. Under an agreement with the Secretary of Labor states may pay Federal SEA allowances in lieu of EUC (under the new section 4001(j) of the Supplemental Appropriations Act of 2008) to individuals whom the state has determined to meet eligibility requirements of the state's SEA program. Under this program, states pay a weekly self-employment allowance instead of EUC, to help eligible unemployed workers while they actively engage in activities that will lead to establishing businesses and becoming self-employed. This document provides guidance to states in administering the provision of Section 2181 of the Middle Class Tax Relief and Job Creation Act of 2012 (the Act) - (Subtitle E-Self-Employment Assistance). The Act requires that no more than one percent of individuals receiving EUC may participate in this Federal SEA program.

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.

Subtitle E of the Act also amends the Supplemental Appropriations Act of 2008 to make Federal SEA available to individuals receiving EUC. States must execute an Addendum to their EUC agreement with the Secretary to pay Federal SEA allowances in lieu of EUC benefits (see Attachment 6 to this Unemployment Insurance Program Letter (UIPL)).

These SEA programs will be established consistent with section 3306(t) of the Internal Revenue Code of 1986, except that all references to "regular compensation" refer instead to "emergency unemployment compensation" under Title IV of the Supplemental Appropriations Act, 2008, as amended, except that:

- The requirement that participants must have been identified through a state's profiling system as likely to exhaust regular UC does not apply to the payment of Federal SEA for EUC; and
- The requirement that SEA programs not result in increased costs to the state UC program does not apply to SEA programs for EUC recipients.

¹ States may also use these instructions to operate an SEA program for EB recipients.

Note: To qualify for EUC, an individual must first be determined to be a UC “exhaustee” as defined in the EUC law. An individual who exhausts SEA under state law is not eligible for EUC because s/he is not a UC “exhaustee,” since individuals in an SEA program receive an allowance in lieu of regular UC while they are establishing their own businesses. (See UIPL No. 23-08 and UIPL No. 23-08, Changes 1 through 6, for more information regarding eligibility requirements for EUC). The instructions in this document are issued to the states and cooperating state agencies as guidance provided by the U.S. Department of Labor (Department) in its role as the principal in the Emergency Unemployment Compensation, 2008 (EUC08) program.

States may not deviate from the operating instructions without the prior approval of the Department. The interpretations, policies, and procedures issued in this document supersede those previously issued in UIPL Nos. 23-08 and 23-08, Changes 1, 2, 3, 4, 5, and 6 to the extent that any inconsistencies exist.

B. Background

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,” the withdrawal standard, prior to 1993, 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. Specifically, section 507, NAFTA, amended the withdrawal standard (and the definition of “unemployment fund” in section 3306(f), FUTA) to provide that amounts may be withdrawn from the unemployment fund of a state “for the payment of allowances under a self-employment assistance program (as defined in section 3306(t)), FUTA...” This exception to the withdrawal standard applies solely to the SEA allowances described in Section 3306(t), FUTA, which was also added to FUTA by section 507(a), NAFTA. Under new section 3306(t)(1), SEA allowances are payable “in lieu of regular” UC for the purposes of assisting individuals in establishing a business and becoming self-employed. On October 28, 1998, the Noncitizen Benefit Clarification and Other Technical Amendments Act of 1998, (P.L. 105-306) permanently authorized the SEA program.

C. Definitions

1. “Act” means Subtitle E-Self-Employment Assistance of Section 2181 of the Middle Class Tax Relief and Job Creation Act of 2012.

2. “Additional Benefits (AB)” means compensation totally financed by a state and payable under a state law by reason of conditions of high unemployment or by reason of other special factors.
3. “Agreement” means the agreement between a state and the Department under which the state agency makes payments, as the Department’s agent, of EUC08 in accordance with Title IV of the Supplemental Appropriations Act, 2008 as interpreted by the Department as set forth in these instructions or any other instructions issued by the Department.
4. “Applicable State Law” means the state law of the state, which is the applicable state for an individual.
5. “Compensation” means cash benefits (including dependents’ allowances) payable to individuals with respect to their unemployment, and includes regular UC, additional compensation, EB, and EUC08.
6. “Department” means the U.S. Department of Labor.
7. “Emergency Unemployment Compensation” means the compensation payable under the Supplemental Appropriations Act of 2008, as amended, and which is referred to as EUC.
8. “Extended Benefits” means the compensation payable under the Federal-State Extended Unemployment Compensation Act of 1970, as amended, and which is referred to as EB.
9. “Regular Unemployment Compensation” means compensation payable to an individual under any state law, and, when so payable, includes compensation payable under 5 U.S.C. Chapter 85, but does not include EB or additional compensation.
10. “Secretary” means the Secretary of Labor.
11. “State” means the 50 states of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands.
12. “State Agency” means the authority “designated under a State law to administer the unemployment fund in such state” as defined in Section 3306(e), FUTA.
13. “State Law” means the UC law of a state approved by the Secretary under Section 3304(a) of the Internal Revenue Code of 1986 (26 USC 3304(a)).
14. “Week” means a week as defined in the applicable state law.

15. “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 claims filed under the requirements of the Act.

D. Operating Instructions

1. Eligibility Requirements. To be eligible for Federal SEA allowances, individuals must:
 - a. Be determined to be unemployed;
 - b. Meet EUC eligibility requirements, as applicable;
 - c. Be determined by the UC agency to have a reasonable expectation that they will be entitled to at least 13 weeks of EUC and/or EB, if applicable;
 - d. Be actively engaged in full-time activities related to the establishment of a business and becoming self-employed as prescribed by the state, which may include entrepreneurial training, business counseling, and technical assistance offered by either private or public entities, such as the Small Business Administration.

2. Identifying Federal SEA Recipients. Unlike the SEA program for recipients of regular UC, Federal SEA recipients need not be identified through a state’s profiling system as likely to exhaust (regular) benefits to participate in the Federal SEA program. However, Federal SEA participants must be eligible for EUC. EUC recipients include EUC for ex-servicemembers and former Federal employees. To qualify for EUC, individuals must have exhausted all rights to regular UC. Additional Benefits (AB) is not regular compensation and does not affect receipt of EUC.

Note: An individual’s eligibility for AB is determined by state UC law.

3. Monetary Entitlement/Amount of Allowance. The weekly allowance payable under this section to an individual will be equal to the weekly benefit amount for EUC otherwise payable. Individuals who are in the SEA EUC program, have an SEA EUC entitlement of less than 26 weeks, and exhaust the SEA EUC entitlement may be eligible to receive an SEA EB entitlement. However, no individual will receive SEA allowances with respect to EB and EUC in excess of a combined total of 26 weeks.

Individuals enrolled and participating in the Federal SEA program for EUC will receive a weekly allowance, which is the same as the individual’s EUC weekly benefit amount.

Since the SEA allowance is “in lieu of” EUC, the total amount of Federal SEA that individuals may receive is equal to their maximum benefit amount of EUC less any EUC previously received. Similarly, the weekly Federal SEA allowance amount must equal the weekly benefit amount for EUC, and Federal SEA and EUC may not be paid for the same week(s).

4. Weeks of Entitlement. Under the “combined eligibility limit,” individuals may receive up to a maximum of 26 weeks of Federal SEA payments based on EUC and/or EB combined.

It is possible that an individual may be eligible for EUC or SEA, or EB or SEA. This will occur when the individual is participating in training related to self-employment, which is also approved training under state law. In this instance, the state is free to determine whether EUC/EB or the Federal SEA allowance will be paid provided that

eligibility requirements for the respective program are met and when the individual consents to participate in the SEA program. However, in no instance may EUC and/or EB and Federal SEA be paid with respect to the same week(s).

5. Continuing Eligibility for EUC. Individuals who are terminated from or voluntarily leave the SEA program may collect EUC (if otherwise eligible) until the total amount of EUC paid and SEA paid equals the maximum EUC entitlement.
6. Nonmonetary Eligibility Requirements. The following provisions of EUC eligibility requirements do **not** apply to individuals engaged in self-employment activities:
 - a. EUC requirements relating to availability for work, active search for work, and refusal to accept work.
 - b. State requirements relating to disqualifying income are not applicable to income earned from self-employment by individuals claiming SEA allowances.
7. Disqualifications. Individuals must be actively engaged on a full-time basis in activities relating to the establishment of a business and becoming self-employed to be eligible for SEA. SEA participants who fail to attend and partake in scheduled SEA activities or fail to participate full-time in the SEA program are subject to disqualification. States should note that, like issues of unavailability for work, failure to participate may be only a temporary condition and would not necessarily result in an indefinite denial of benefits. The denial/disqualification would apply only for the week(s) the failure occurred. As with regular compensation, eligible individuals may receive SEA payments during a benefit year until the maximum benefit amount is exhausted.

States also have the option of terminating an individual's participation in the SEA program for failure to meet SEA program requirements. This may be appropriate if, for example, the individual misses training necessary to commence self-employment activities. (Note: If otherwise eligible, individuals may revert back to regular UC and again to EUC SEA.)
8. Continued Claims.
 - a. Determination of Weekly Claims. The state agency must promptly, upon the filing of a claim for a payment of Federal SEA allowance for a week of unemployment, determine whether the individual is entitled to a payment of Federal SEA for such week, and, if entitled, the amount of Federal SEA to which the individual is entitled to and issue a prompt payment.
 - b. Redetermination. If the state agency determines that an individual failed to actively engage in self-employment activities (whether scheduled or in general), the individual must be issued an appealable determination. An individual filing a Federal SEA weekly certification has the same rights to request a reconsideration of a determination as are provided for in the applicable state law for regular UC.
9. Determinations.
 - a. Promptness. Full payment of Federal SEA when due must be made with the greatest promptness that is administratively feasible.

- b. Notices to Individuals. The state agency must give written notice to the individual of any determination or redetermination of an initial claim and all weekly claims. Each notice must include such information about rights to reconsideration or appeal, or both, using the same process that is used for redeterminations or appeal as in regular UC.
- c. Determination Standards. The procedures for making determinations and redeterminations and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals claiming Federal SEA allowances must be consistent with the Secretary's "Standard for Claim Determinations-Separation Information" (Employment Security Manual, Part V, sections 6010 et seq.).

10. Appeal and Hearing.
- a. Applicable State Law. The applicable state law provisions concerning the right of appeal and fair hearing from a determination or redetermination or entitlement to regular compensation must apply to determinations and redeterminations of eligibility for or entitlement to Federal SEA.
 - b. Rights of Appeal and Fair Hearing. The right of appeal and opportunity for a fair hearing to claims for Federal SEA must be consistent with these instructions and with sections 303(a)(1) and 303(a)(3) of SSA (42 U.S.C. 503(a)(1) and 503(a)(3)).
 - c. Promptness of Appeals Decisions.
 - 1) Decisions on appeals under the Federal SEA Program must accord with the “Standard for Appeals Promptness-Unemployment Compensation” in 20 CFR Part 650.
 - 2) Any applicable state law provision allowing the advancement or priority of UC cases on judicial calendars, or otherwise intended to provide for the prompt payment of UC when due, must apply to proceedings involving entitlement to Federal SEA.
11. Fraud, Overpayment, and Recovery. Section 4005(b) of the Supplemental Appropriation Act, 2008, as amended, Title IV-Emergency Unemployment Compensation, 2008, applies to benefits found to be improperly paid when paying Federal SEA in lieu of EUC.
12. Financial Information: Payments to States for SEA Grants. Section 2182 of the Act provides for grants to states with existing programs to improve administration and for those states that enact programs, funds for development, implementation, and administration of the program. In addition, funds are available to states to promote their SEA program and enroll unemployed individuals in the program. For states with approved applications, subaccounts will be established in state UTF accounts for each type of grant and the Treasury will transfer appropriate amounts to the subaccounts upon certification from the Secretary of Labor to the Secretary of the Treasury. States will be advised of the availability of the funds through an award letter from the Department. Upon award, states must report transactions by SEA subaccounts in these reports:
- a. ETA 8403 (Summary of Financial Transaction, Title IX Funds, OMB No. 1205-1254) and
 - b. ETA 2112 (UI Financial Transaction Summary, OMB No. 1205-1254) on lines 15 (Title IX Reed Act) and 44 (Title IX (Reed)), and transactions must be identified by amount and program type, as appropriate, in the comments section.

Currently, the ETA 2112, lines 15 and 44, and the Quarterly Progress Report (QPR) are in the process of being submitted as an Information Collection Request (ICR) to the Office of Management and Budget (OMB) requesting the establishment of a new 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). The Department will notify states of OMB's decision upon review of the Department's ICR, including any changes that may result from this review process, and provide instructions.

13. Required Reporting. OMB has recently approved a new collection of data for any state that is operating an SEA program (See Attachment 9). This report, the ETA 9161 (OMB No. 1205-0490), Self-Employment Assistance for UI Claimants, is available as an attachment to this UIPL and can also be accessed through the UI required reports systems that states currently use to provide electronic data to the National Office. Please note that this collection applies to any states that are currently offering SEA for claimants in the regular program, as well as state that begin to offer SEA to claimants in the EB or EUC program. The reports are program-specific and 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. The first ETA 9161 that states will submit to the National Office will be for the second calendar quarter of 2012, and that report will be due on August 1, 2012. Questions concerning reporting frequency, instructions or methods for developing or reporting this information should be directed to the Employment and Training Administration's appropriate regional office.

Attachment 10 includes the Quarterly Progress Report (QPR). The report is for SEA states whose grant applications were approved by the Department. SEA grantees should submit the QPR to the appropriate regional office on a quarterly basis to monitor grantee progress against the approved statement of work.