

Model Language and Commentary on Language to Implement a Self-Employment Assistance (SEA) Program for Individuals Eligible for Regular Unemployment Compensation

Section ____. SELF-EMPLOYMENT ASSISTANCE PROGRAM

(a) Definitions. As used in this section--

(1) “Self-employment assistance activities” means activities (including entrepreneurial training, business counseling, and technical assistance) approved by the *[enter appropriate state agency or official]* in which an individual identified through a worker profiling system as likely to exhaust regular unemployment compensation participates for the purpose of establishing a business and becoming self-employed.

(2) “Self-employment assistance allowance” means an allowance, payable in lieu of regular unemployment compensation and from the unemployment fund established under section *[enter relevant section of state law]*, to an individual participating in self-employment assistance activities who meets the requirements of this section.

(3) “Regular unemployment compensation” means benefits payable to an individual under this Act (including benefits payable to Federal civilian employees and to ex-servicemembers pursuant to 5 U.S.C. Chapter 85) other than additional and extended benefits.

(4) “Full-time basis” shall have the meaning contained in regulations promulgated by the *[enter appropriate state agency or official]*.

(b) Amount of self-employment assistance allowance. The weekly allowance payable under this section to an individual will be equal to the weekly benefit amount for regular unemployment compensation otherwise payable under section *[enter appropriate section of state law]* of this Act. The sum of (1) the allowance paid under this section and (2) the regular unemployment compensation paid under this Act with respect to any benefit year shall not exceed the maximum benefit amount as established by section *[enter appropriate section of state law]* with respect to such benefit year.

(c) Eligibility for self-employment assistance allowance. The allowance described in subsection (a) shall be payable to an individual at the same interval, on the same terms, and subject to the same conditions as regular unemployment compensation under this Act, except that--

(1) the requirements of sections *[enter relevant sections of state law]* relating to availability for work, active search for work, and refusal to accept work are not applicable to such individual;

(2) the requirements of section *[enter relevant section of state law]* relating to self-employment income are not applicable to income earned from self-employment by such individual;

(3) an individual who meets the requirements of this section shall be considered to be unemployed under section *[enter relevant section of state law]*; and

(4) an individual who fails to participate in self-employment assistance activities or who fails to actively engage on a full-time basis in activities (which may include training) relating to the establishment of a business and becoming self-employed shall be disqualified for the week such failure occurs.

(d) Limitation on receipt of self-employment assistance allowances. The aggregate number of individuals receiving the allowance under this section at any time shall not exceed 5 percent of the number of individuals receiving regular unemployment compensation. The *[enter appropriate state agency or official]* shall, through regulations, prescribe such actions as are necessary to assure the requirements of this subsection are met.

(e) Financing costs of self-employment assistance allowances. Allowances paid under this section shall be charged to employers as provided under provisions of this Act relating to the charging of regular unemployment compensation.

(f) The self-employment assistance program may not result in any cost to the Unemployment Trust Fund in excess of the cost that would be incurred by the state and charged to the Fund had the program not been operated.

(g) Self-employment assistance allowances paid under this section shall be paid in accordance with any additional program requirements established by the Secretary of Labor pursuant to 26 U.S.C. 3306(t).

(h) Effective date. The provisions of this section will apply to weeks beginning after the date of enactment *[or enter appropriate date.]*.

The commentary below concerns the model language for states wishing to amend their unemployment compensation (UC) law to provide for the optional SEA program.

States may modify the model language to accommodate state law conventions. Blanks have been provided for inserting cites to relevant sections of the state law, state agencies, or state officials.

(a) Definitions.

(1) Self-employment assistance activities. This provision defines these activities consistent with Section 3306(t)(3)(C) and (D), FUTA. States should note that the approval of the state agency is limited to the self-employment “activities” themselves. States may not base a denial of approval on factors unrelated to the self-employment assistance activities. Additionally, this section implements the requirement in section 3306(t)(3)(B) that SEA participants be identified pursuant to a state worker profiling system as likely to exhaust regular unemployment compensation.

(2) Self-employment assistance allowance. This provision defines the SEA allowance and establishes that such allowances are to be paid from the state's unemployment fund. States may also wish to consider whether to amend the section of state law that governs withdrawals from the unemployment fund.

(3) Regular unemployment compensation. This provision defines “regular unemployment compensation.” It is necessary since SEA allowances are payable “in lieu of” regular unemployment compensation. State law may already contain a definition of regular unemployment compensation, in which case the addition of this definition may not be necessary.

(4) Full-time basis. This provision defers to the states to define “full-time basis.” Since the Department is not at this time providing a specific definition of “full-time basis,” it is recommended that states reserve the right to prescribe the definition in regulations in order to assure consistency with Federal law.

(b) Amount of self-employment assistance allowance. This provision governs the weekly and maximum amount of SEA allowance payable. It assures that SEA allowances are paid “in the same amount” as regular UC. It also clarifies the relationship between payments of regular UC and SEA allowances with respect to a benefit year.

(c) Eligibility for self-employment assistance allowance. This provision contains the “equal treatment” requirement of Section 3306(t)(2), FUTA (except for the requirement that SEA allowances be paid “in the same amount,” which is contained in subsection (b) above). It also contains the three exceptions to the “equal treatment” requirement which are found in subparagraphs (A) through (C) of Section 3306(t)(2), FUTA.

By cross referencing the definition of “self-employment assistance activities,” this provision assures payment only to those individuals participating in such activities. It also contains the requirement of Section 3306(t)(3)(D) that the individual be actively engaged on a full-time basis in activities relating to the establishment of a business and becoming self-employed.

States may establish their own disqualifications for failure to meet these requirements. States should note that, like unavailability for work, failure to participate may be only a temporary condition which should not necessarily result in an indefinite denial. (Note: If otherwise eligible, individuals may revert back to regular UC and again to EUC SEA.) The model language provides for a disqualification only for the week the failure occurred. As with regular compensation, 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.

(d) Limitation on receipt of self-employment assistance allowances. This provision implements section 3306(t)(4), FUTA, which limits the number of individuals receiving SEA allowances at

any given time to 5 percent of the number of individuals receiving regular UC. Giving the state agency authority to create regulations to meet this requirement provides flexibility to the agency to assure that necessary data will be collected as required by the Department and that the five percent limit will not be exceeded.

(e) Financing costs of SEA allowances. Since State UC law might explicitly provide only for the financing of regular UC and not SEA allowances, it may be necessary to describe the financing mechanism for the allowances. This provision in the model language uses the same mechanism as is used for regular UC.

(f) This provision implements section 3306(t)(5), FUTA, which prohibits SEA programs from resulting in any increased cost to the state's unemployment fund.

(g) This provision implements section 3306(t)(6), FUTA, which provides the Secretary of Labor with authority to establish other program requirements that are deemed to be appropriate, including reporting requirements.

(h) Effective Date. This provision establishes the first week of unemployment, beginning after the Governor signs the agreement, during which SEA allowances may be paid in lieu of regular unemployment compensation.