

## **Model Language and Commentary on Language to Implement a Self-Employment Assistance (SEA) Program for Individuals Eligible for Extended Benefits (EB)**

### Section \_\_\_\_. SELF-EMPLOYMENT ASSISTANCE PROGRAM FOR EB CLAIMANTS

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

(1) “Self-employment assistance activities” means activities (including any entrepreneurial training that the State or non-profit organizations may provide in coordination with programs of training offered by the Small Business Administration, which may include business counseling, mentorship for participants, access to small business development resources, and technical assistance) approved by the *[enter appropriate state agency or official]* for the purpose of establishing a business and becoming self-employed.

(2) “Self-employment assistance allowance” means an allowance, payable in lieu of extended 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) “Extended compensation” means benefits payable to an individual under the Act and title II of the Federal-State Extended Unemployment Compensation Act of 1970, as amended.

(4) “Emergency unemployment compensation” means benefits payable to an individual under an agreement pursuant to Title IV of the Supplemental Appropriations Act, 2008, as amended.

(5) “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 extended compensation otherwise payable under section *[enter appropriate section]* of this Act. The sum of (1) the allowance paid under this section and (2) the extended 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. No individual shall receive self-employment assistance allowances from programs established under section *[enter relevant section of state EB law]*, and under agreement for emergency unemployment compensation for a total of more than 26 weeks.

(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 extended compensation under this Act and title II of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 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]*;

(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; and

(5) an individual shall not be eligible to receive a self-employment allowance unless the *[enter appropriate state agency or official]* has a reasonable expectation that the individual will be entitled to at least 13 times the individual's average weekly benefit amount of extended compensation and emergency unemployment compensation.

(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 1 percent of the number of individuals receiving extended 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. The provisions of this Act relating to the charging of extended compensation shall apply to allowances paid under this section.

(f) 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).

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

The commentary below concerns the model language for states wishing to amend their extended benefit (EB) law to provide for the optional SEA program.

States will need to 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 208(b)(3) of the Federal-State Extended Unemployment Compensation Act of 1970 (EUCA). 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.

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

(4) Emergency unemployment compensation. This provision defines “emergency unemployment compensation.” It is necessary to implement section 208(c), EUCA which provides that SEA allowances are only payable to those individuals that the state agency has a reasonable expectation to be entitled to at least 13 times the individual’s average weekly benefit amount of extended compensation and emergency unemployment compensation.

(5) 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 extended compensation. It also clarifies the relationship between payments of extended compensation and SEA allowances with respect to a benefit year. Lastly, this provision implements section 208(a)(3), EUCA, which limits the total amount of SEA allowances payable to an individual with respect to extended compensation and emergency unemployment compensation to 26 weeks.

(c) Eligibility for self-employment assistance allowance. Section 208(b), EUCA, provides that SEA programs for individuals eligible for EB must conform to the definition of an SEA program

in section 3306(t), FUTA. Section 3306(t)(2), FUTA, contains an “equal treatment” requirement providing that SEA allowances must be paid “in the same amount, on the same interval, on the same terms, and subject to the same conditions” as extended compensation with three exceptions. The exceptions to the “equal treatment” requirement 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 assured 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 extended compensation, individuals may receive SEA payments until the maximum benefit amount with respect to a benefit year 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.

SEA allowances may only be payable to an individual if the state agency has a reasonable expectation that such individual will be entitled to at least 13 times the individual’s average weekly benefit amount of extended compensation and emergency unemployment compensation.

(d) Limitation on receipt of self-employment assistance allowances. This provision implements section 208(b)(4), EUCA, which limits the number of individuals receiving SEA allowances at any given time to 1 percent of the number of individuals receiving extended compensation. 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 this Department and that the one percent limit will not be exceeded.

(e) Financing costs of SEA allowances. Since State UC law may provide only for the financing of extended compensation and not SEA allowances, it may be necessary to describe the financing mechanism for the allowances. The model language uses the same mechanism as is used for extended compensation.

(f) This section 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.

(g) Effective Date. This language establishes the first week of unemployment during which SEA allowances may be paid in lieu of regular unemployment compensation.