

UIPL 14-94 ATTACHMENT III

COMMENTARY ON THE DRAFT LANGUAGE TO IMPLEMENT
A SELF-EMPLOYMENT ASSISTANCE PROGRAM

This commentary should be used in conjunction with Section 4 of this UIPL.

States will need to make adjustments in the draft language to accommodate State law conventions. Blanks have been provided for inserting cites to relevant sections of the State law.

(a) Definitions.

(1) Self-employment assistance activities. These activities are defined 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.

(2) Self-employment assistance allowance. This section 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 which governs withdrawals from the unemployment fund.

(3) Regular Benefits. A definition of "regular benefits" (or "regular compensation") is necessary since SEA allowances are payable "in lieu of" regular compensation. State law may already contain a definition of regular benefits in which case the addition of this definition may not be necessary. Some State laws contain a definition of regular benefits in the sections pertaining to EB. In these cases, the State will need to determine whether the definition is limited to the EB section, and, therefore, whether a cross-reference is necessary.

(4) 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 section 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

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relationship between payments of regular UC and SEA allowances with respect to a benefit year.

(c) Eligibility for self-employment assistance allowance. This section 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 should assure payment only to those participating in such activities. It also contains the requirement of Section 3306(t)(3)(D) that the individual be actively engaged in a full-time basis in activities relating to the establishment of a business and becoming self-employed.

States are free to 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. Conversely, quitting the SEA program may be grounds for a duration disqualification. The draft language provides for a disqualification only for the week the failure occurred.

States also have the option of dropping an individual from the SEA program for failure to meet SEA 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 section 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 commissioner 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 five percent limit will not be exceeded.

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

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Draft language for the noncharging of SEA allowances is not provided at this time as the Department is not addressing the issue of whether such allowances may be noncharged at this time.

(f) Effective Date and Termination Date. Since SEA allowances may be paid only after enactment of State law and approval by this Department, it will be necessary to specify that the allowances will not become payable until both conditions are met. The draft language assures that SEA allowances will not become payable until the first week after both conditions are met.

Since the authority under NAFTA for SEA programs terminates five years after the date of enactment of NAFTA, it is recommended that States "sunset" any SEA provisions. The draft language provided does not provide a definite expiration date since States may wish to continue operating a SEA program if the Federal authority is extended either on a temporary or permanent basis. States may, however, wish to include a specific expiration date. The draft language takes into account an expiration of Federal legislative authority which falls on a weekday by providing that the program will terminate as of the end of the week preceding the week containing the ending date of the Federal authority. If, however, the ending date of the Federal authority is a Saturday, then the State must end its SEA program no later than midnight on such Saturday.

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