

EMPLOYMENT AND TRAINING ADMINISTRATION ADVISORY SYSTEM U.S. DEPARTMENT OF LABOR Washington, D.C. 20210	CLASSIFICATION UI/UCX
	CORRESPONDENCE SYMBOL DL/DUIO
	DATE April 15, 2016

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-16

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

SUBJECT: The National Defense Authorization Act for Fiscal Year 2016 (Pub. L. 114-92) - Provisions that Affect the Unemployment Compensation for Ex-servicemembers Programs

1. **Purpose.** To provide information to state workforce agencies related to amendments to Federal law by the National Defense Authorization Act (NDAA) for Fiscal Year 2016 that: 1) increase the number of days of active duty required to be performed by reserve component members for such duty to be considered “Federal service” for purposes of Unemployment Compensation for Ex-servicemembers (UCX); 2) modify eligibility for UCX for certain individuals; and, 3) include a technical amendment to the Federal Unemployment Tax Act (FUTA).

2. **References.**

- Sections 513, 560, and 3503, NDAA, Pub. L. 114-92
- Sections 3305 and 3306(n), FUTA (26 U.S.C. 3305 and 3306(n))
- Sections 8521 and 8525, 5 U.S.C.
- Chapters 31, 33, and 35, 38 U.S.C.
- 10 U.S.C.
- Part 614, 20 CFR, Unemployment Compensation for Ex-servicemembers

3. **Background.** NDAA was enacted on November 25, 2015 and amended Federal unemployment compensation (UC) law by:

- a. Amending the definition of “Federal service” in 5 U.S.C. 8521(a)(1) to increase the number of active duty days for individuals in reserve status required for UCX eligibility from 90 days to 180 days;
- b. Amending 5 U.S.C. 8525(a) and (b) to exclude from eligibility for UCX certain individuals receiving “an educational assistance allowance under chapter 33 of title 38.” (Post-9-11 Educational Assistance.); and
- c. Amending Sections 3305 and 3306(n), FUTA, to replace all references to the “Secretary of Commerce” with “Secretary of Transportation.”

RESCISSIONS None	EXPIRATION DATE Continuing
----------------------------	--------------------------------------

4. **Analysis of New Provisions.**

a. **Section 513. Increase in the number of days of active service required to be considered Federal service for UCX.**

Section 513(a), NDAA, amended 5 U.S.C. 8521(a)(1) to increase from 90 to 180 the number of days of continuous service in active duty in a reserve status required for such service to be considered “Federal service” for purposes of eligibility for UCX.

Effective Date. Section 513(b), NDAA, provided that the change took effect on the date of enactment (November 25, 2015) and applies with respect to periods of Federal service (i.e., continuous service in active duty) commencing on or after that date.

b. **Section 560. Prohibition on receipt of UC for certain individuals while receiving post 9-11 educational assistance.**

Sections 8525(b) of 5 U.S.C. before this amendment, provided that individuals are not entitled to UCX for any period with respect to which the individual receives: 1) a subsistence allowance under chapter 31 of 38 U.S.C. or under part VIII of Veterans Regulation Numbered 1(a), or 2) an educational assistance allowance under chapter 35 of 38 U.S.C.

Section 560(a), NDAA, amended 5 U.S.C. 8525(b) to provide also that an individual is not entitled to UCX benefits for any period with respect to which the individual receives “an educational assistance allowance under chapter 33 of title 38.” Section 3311(b) of 38 U.S.C. defines individuals who are entitled to educational assistance under 38 U.S.C. The text of Section 3311(b) is contained in Attachment B. This allowance is referred to as Post 9-11 educational assistance.

Section 560(b), NDAA, amended 5 U.S.C. 8525 to provide in subsection (a) that the prohibition on receipt of UCX if the individual receives Post 9-11 educational assistance does not apply to an individual who “(1) is otherwise entitled to compensation under this subchapter; (2) is described in section 3311(b) of title 38; (3) is not receiving retired pay under title 10; and (4) was discharged or released from service in the Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration (including through a reduction in force) under honorable conditions, but did not voluntarily separate from such service.” The receipt of Post 9-11 educational assistance is disqualifying for any individual who does not meet all of the conditions in 5 U.S.C. 8525(a).

Effective date. Section 560, NDAA, took effect on the date of enactment (November 25, 2015).

c. **Section 3503. Update of references to the Secretary of Transportation regarding unemployment insurance and vessel operators.**

Section 3503, NDAA, made a technical amendment to Sections 3305 and 3306(n), FUTA, to replace all references to the “Secretary of Commerce” with “Secretary of Transportation.” This change has no effect on state UC laws.

Effective date. Section 3503, NDAA, took effect on the date of enactment (November 25, 2015).

5. **Implementing UCX Eligibility Requirements Under the NDAA Amendments.** As noted above, section 513(a), NDAA, amended 5 U.S.C. 8521(a)(1) to increase from 90 to 180 the number of continuous active duty days for individuals in reserve status to be considered to have performed “Federal service” for purposes of UCX eligibility. Attachment A of this Unemployment Insurance Program Letter contains a set of questions and answers related to this new definition. The 180-day provision applies to individuals who began active service on or after November 25, 2015. Thus, an individual who began such service on or before November 24, 2015, would fall under the 90-day requirement, and an individual who began service on or after November 25, 2015, would fall under the 180-day requirement.

The U.S. Department of Labor is coordinating with the Veterans’ Administration (VA) regarding procedures to facilitate the necessary information exchange between the VA and the states to address Post 9-11 educational assistance that may impact UCX claimants. Future guidance will be issued regarding state responsibilities to address Post 9-11 educational assistance for impacted UCX claimants.

6. **Action Requested.** States must ensure that: 1) staff is aware of these changes; and 2) procedures and any necessary programming changes are implemented to meet the new definition of “Federal service” for individuals in reserve status for purposes of UCX eligibility.
7. **Inquiries.** Inquiries should be directed to the appropriate Regional Office.
8. **Attachments.**
- Attachment A - National Defense Authorization Act of 2016, Questions and Answers: Federal Service for Individuals in Reserve Status
 - Attachment B - Text of 38 U.S.C. 3311(b)
 - Attachment C - Text of Sections 513, 560 and 3503 National Defense Authorization Act for Fiscal Year 2016 Pub. L. 114-92 – Enacted November 25, 2015

National Defense Authorization Act of 2016 (NDAA)

Questions and Answers: Federal Service for Individuals in Reserve Status

- 1) **Question:** What is the effective date of the NDAA amendments?

Answer: The NDAA legislation was enacted on November 25, 2015, and the amendments became effective on November 25, 2015, except where a specific provision has its own effective date.

- 2) **Question:** What does the increase from 90 to 180 days of active duty for reservists mean with respect to their eligibility for UCX?

Answer: Before the NDAA amendments, a service member must have had 90 days of continuous service in active duty in a reserve status for the term of employment to be considered “Federal service.” The NDAA amended the definition of Federal service for UCX purposes and increased the number of days of continuous service in active duty in a reserve status from 90 days to 180 days.

The 180-day provision applies to individuals who began active service on or after November 25, 2015. Thus, if an individual began service on or before November 24, 2015, this individual would fall under the 90-day requirement.

- 3) **Question:** Are states required to redetermine UCX claims that were filed on or after November 25, 2015?

Answer: A redetermination would be required only if the period of service started after November 24, 2015, and UCX eligibility was determined under the old provision.

- 4) **Question:** Will the military change Form DD-214 to reflect the new 180-day requirement of continuous service for reservists?

Answer: No. The military will continue to provide the date enlisted and the date the individual separated from the military on the DD-214. States will continue to be responsible for calculating the number of days of continuous service and must ensure that the reservist has served 180 continuous days in order to meet the new requirement for UCX eligibility.

Text of 38 U.S.C. 3311(b)

(b) Covered Individuals.—An individual described in this subsection is any individual as follows:

- (1) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 36 months on active duty in the Armed Forces (including service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty; or
 - (ii) is discharged or released from active duty as described in subsection (c).
- (2) An individual who—
 - (A) commencing on or after September 11, 2001, serves at least 30 continuous days on active duty in the Armed Forces; and
 - (B) after completion of service described in subparagraph (A), is discharged or released from active duty in the Armed Forces for a service-connected disability.
- (3) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 30 months, but less than 36 months, on active duty in the Armed Forces (including service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty for an aggregate of less than 36 months; or
 - (ii) before completion of service on active duty of an aggregate of 36 months, is discharged or released from active duty as described in subsection (c).
- (4) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 24 months, but less than 30 months, on active duty in the Armed Forces (including service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty for an aggregate of less than 30 months; or
 - (ii) before completion of service on active duty of an aggregate of 30 months, is discharged or released from active duty as described in subsection (c).
- (5) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 18 months, but less than 24 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty for an aggregate of less than 24 months; or
 - (ii) before completion of service on active duty of an aggregate of 24 months, is discharged or released from active duty as described in subsection (c).

- (6) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 12 months, but less than 18 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty for an aggregate of less than 18 months; or
 - (ii) before completion of service on active duty of an aggregate of 18 months, is discharged or released from active duty as described in subsection (c).
- (7) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 6 months, but less than 12 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty for an aggregate of less than 12 months; or
 - (ii) before completion of service on active duty of an aggregate of 12 months, is discharged or released from active duty as described in subsection (c).
- (8) An individual who—
 - (A) commencing on or after September 11, 2001, serves an aggregate of at least 90 days, but less than 6 months, on active duty in the Armed Forces (excluding service on active duty in entry level and skill training); and
 - (B) after completion of service described in subparagraph (A)—
 - (i) continues on active duty for an aggregate of less than 6 months; or
 - (ii) before completion of service on active duty of an aggregate of 6 months, is discharged or released from active duty as described in subsection (c).
- (9) An individual who is the child or spouse of a person who, on or after September 11, 2001, dies in line of duty while serving on active duty as a member of the Armed Forces.

UNITED STATES CODE ANNOTATED
 TITLE 5. GOVERNMENT ORGANIZATION AND EMPLOYEES
 PART III--EMPLOYEES
 SUBPART G--INSURANCE AND ANNUITIES
CHAPTER 85--UNEMPLOYMENT COMPENSATION
 SUBCHAPTER II--EX-SERVICEMEN

Subchapter II. Ex-servicemen

§ 8521. Definitions; application

(a) For the purpose of this subchapter--

(1) "Federal service" means active service (not including active duty in a reserve status unless for a continuous period of 90 days or more) in the armed forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration if with respect to that service--

(A) the individual was discharged or released under honorable conditions (and, if an officer, did not resign for the good of the service); and

(B) (i) the individual was discharged or released after completing his first full term of active service which the individual initially agreed to serve, or

(ii) the individual was discharged or released before completing such term of active service--

(I) for the convenience of the Government under an early release program,

(II) because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(III) because of hardship (including pursuant to a sole survivorship discharge, as that term is defined in section 1174(i) of title 10), or

(IV) because of personality disorders or inaptitude but only if the service was continuous for 365 days or more;

(2) "Federal wages" means all pay and allowances, in cash and in kind, for Federal service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his latest discharge or release from Federal service as specified in the schedule applicable at the time he files his first claim for compensation for the benefit year. The Secretary of Labor shall issue, from time to time, after consultation with the Secretary of Defense, schedules specifying the pay and allowances for each pay grade of servicemen covered by this subchapter, which reflect representative amounts for appropriate elements of the pay and allowances whether in cash or in kind; and

(3) "State" means the several States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(b) The provisions of subchapter I of this chapter, subject to the modifications made by this subchapter, apply to individuals who have had Federal service as defined by subsection (a) of this section.

§ 8522. Assignment of Federal service and wages

Notwithstanding section 8504 of this title, Federal service and Federal wages not previously assigned shall be assigned to the State in which the claimant first files claim for unemployment compensation after his latest discharge or release from Federal service. This assignment is deemed an assignment under section 8504 of this title for the purpose of this subchapter.

§ 8523. Dissemination of information

- (a) When designated by the Secretary of Labor, an agency of the United States shall make available to the appropriate State agency or to the Secretary, as the case may be, such information, including findings in the form and manner prescribed by regulations of the Secretary, as the Secretary considers practicable and necessary for the determination of the entitlement of an individual to compensation under this subchapter.
- (b) Subject to correction of errors and omissions as prescribed by regulations of the Secretary, the following are final and conclusive for the purpose of sections 8502(d) and 8503(c) of this title:
 - (1) Findings by an agency of the United States made in accordance with subsection (a) of this section with respect to--
 - (A) whether or not an individual has met any condition specified by section 8521(a)(1) of this title;
 - (B) the periods of Federal service; and
 - (C) the pay grade of the individual at the time of his latest discharge or release from Federal service.
 - (2) The schedules of pay and allowances prescribed by the Secretary under section 8521(a)(2) of this title.

[§ 8524. Repealed. Pub.L. 91-373, Title I, § 107, Aug. 10, 1970, 84 Stat. 701]

§ 8525. Effect on other statutes

[(a) Repealed. Pub.L. 90-83, § 1(90), Sept. 11, 1967, 81 Stat. 219]

- (b) An individual is not entitled to compensation under this subchapter for any period with respect to which he receives--
 - (1) a subsistence allowance under chapter 31 of title 38 or under part VIII of Veterans Regulation Numbered 1(a); or
 - (2) an educational assistance allowance under chapter 35 of title 38.