

## APPENDIX B

### PART 614—UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS

#### Subpart A—General Provisions

Sec.

- 614.1 Purpose and application.
- 614.2 Definitions of terms.

#### Subpart B—Administration of UCX Program

- 614.3 Eligibility requirements for UCX.
- 614.4 Weekly and maximum benefit amounts.
- 614.5 Claims for UCX.
- 614.6 Determinations of entitlement; notices to individual and Federal military agency.
- 614.7 Appeal and review.
- 614.8 The applicable State for an individual.
- 614.9 Provisions of State law applicable to UCX claims.
- 614.10 Restrictions on entitlement.
- 614.11 Overpayments; penalties for fraud.
- 614.12 Schedules of Remuneration.
- 614.13 Inviolate rights to UCX.
- 614.14 Recordkeeping; disclosure of information.
- 614.15 Payments to States.
- 614.16 Public access to Agreements.
- 614.17 Administration in absence of an Agreement.
- 614.18 Information, reports, and studies.

#### Subpart C—Responsibilities of Federal Military Agencies and State Agencies

- 614.20 Information to ex-servicemembers.
- 614.21 Findings of Federal military agency.
- 614.22 Correcting Federal findings.
- 614.23 Finality of findings.
- 614.24 Furnishing other information.

#### 614.25 Liaison with Department

- APPENDIX "A" TO PART 614—STANDARD FOR CLAIM FILING, CLAIMANT REPORTING, JOB FINDING, AND EMPLOYMENT SERVICES
- APPENDIX "B" TO PART 614—STANDARD FOR CLAIM DETERMINATION—SEPARATION INFORMATION
- APPENDIX "C" TO PART 614—STANDARD FOR FRAUD AND OVERPAYMENT DETECTION

AUTHORITY: 5 U.S.C. 8508; Secretary's Order No. 4-75 (40 FR 18515).

SOURCE: 47 FR 54697, Dec. 3, 1982, unless otherwise noted.

### Subpart A—General Provisions

#### § 614.1 Purpose and application.

(a) *Purpose.* Subchapter II of chapter 85, title 5 of the United States Code (5 U.S.C. 8521-8525) provides for a permanent program of unemployment compensation for unemployed individuals separated from the Armed Forces. The unemployment compensation provided for in subchapter II is hereinafter referred to as Unemployment Compensation for Ex-servicemembers, or UCX. The regulations in this part are issued to implement the UCX Program.

(b) *First rule of construction.* The Act and the implementing regulations in this part shall be construed liberally so as to carry out the purposes of the Act.

(c) *Second rule of construction.* The Act and the implementing regulations in this part shall be construed so as to assure insofar as possible the uniform interpretation and application of the Act throughout the United States.

(d) *Effectuating purpose and rules of construction.* (1) In order to effectuate the provisions of this section, each State agency shall forward to the United States Department of Labor (hereafter Department), not later than 10 days after issuance, a copy of each judicial or administrative decision ruling on an individual's entitlement to payment of UCX or to credit for a waiting period. On request of the Department, a State agency shall forward to the Department a copy of any determination or redetermination ruling on an individual's entitlement to UCX or waiting period credit.

(2)(i) If the Department believes that a determination, redetermination, or decision is inconsistent with the Department's interpretation of the Act or

this part, the Department may at any time notify the State agency of the Department's view. Thereafter, the State agency shall issue a redetermination or appeal if possible, and shall not follow such determination, redetermination, or decision as a precedent; and, in any subsequent proceedings which involve such determination, redetermination, or decision, or wherein such determination, redetermination, or decision is cited as precedent or otherwise relied upon, the State agency shall inform the claims deputy or hearing officer or court of the Department's view and shall make all reasonable efforts, including appeal or other proceedings in an appropriate forum, to obtain modification, limitation, or overruling of the determination, redetermination, or decision.

(ii) If the Department believes that a State agency has failed to use, or use in a timely manner, the crossmatch mechanism at the claims control center designated by the Department, the Department may at any time notify the State of the Department's view. Thereafter, the State agency shall take action to ensure that operable procedures for the effective utilization of the claims control center are in place and adhered to. In any case of any determination, redetermination, or decision that is not legally warranted under the Act or this part had the State used, or used in a timely manner, the crossmatch mechanism at the claims control center designated by the Department, State agency shall take the steps outlined in paragraph (d)(2)(1) of this section.

(3) If the Department believes that a determination, redetermination, or decision is patently and flagrantly violative of the Act or this part, the Department may at any time notify the State agency of the Department's view. If the determination, redetermination, or decision in question denies UCX to a claimant, the steps outlined in paragraph (2) above shall be followed by the State agency. If the determination, redetermination, or decision in question awards UCX to a claimant, the benefits are "due" within the meaning of section 303(a)(1) of the Social Security Act, 42 U.S.C. 503(a)(1), and therefore must be paid promptly to the claimant.

However, the State agency shall take the steps outlined in paragraph (d)(2) of this section, and payments to the claimant may be temporarily delayed if redetermination or appeal action is taken not more than one business day following the day on which the first payment otherwise would be issued to the claimant; and the redetermination action is taken or appeal is filed to obtain a reversal of the award of UCX and a ruling consistent with the Department's view; and the redetermination action or appeal seeks an expedited redetermination or appeal within not more than two weeks after the redetermination action is taken or the appeal is filed. If redetermination action is not taken or appeal is not filed within the above time limit, or a redetermination or decision is not obtained within the two-week limit, or any redetermination or decision or order is issued which affirms the determination, redetermination, or decision awarding UCX or allows it to stand in whole or in part, the benefits awarded must be paid promptly to the claimant.

(4)(i) If any determination, redetermination, or decision, referred to in paragraph (d)(2) or paragraph (d)(3) of this section, is treated as a precedent for any future UCX claim or claim under the UCFE Program (part 609 of this chapter), the Secretary will decide whether the Agreement with the State entered into under the Act shall be terminated.

(ii) In the case of any determination, redetermination, or decision that is not legally warranted under the Act or this part, including any determination, redetermination, or decision referred to in paragraph (d)(2) or in paragraph (d)(3) of this section, the Secretary will decide whether the State shall be required to restore the funds of the United States for any sums paid under such a determination, redetermination, or decision, and whether, in absence of such restoration, the Agreement with the State shall be terminated and whether other action shall be taken to recover such sums for the United States.

(5) A State agency may request reconsideration of a notice issued pursuant to paragraph (d)(2) or paragraph (d)(3) of this section, and shall be given

an opportunity to present views and arguments if desired.

(6) Concurrence of the Department in a determination, redetermination, or decision shall not be presumed from the absence of a notice issued pursuant to this section.

(Approved by the Office of Management and Budget under control number 1205-0163)

[47 FR 54697, Dec. 3, 1982, as amended at 53 FR 40553, Oct. 17, 1988; 53 FR 43799, Oct. 26, 1988; 57 FR 59799, Dec. 15, 1992]

#### § 614.2 Definitions of terms.

For purposes of the Act and this part:

(a) *Act* means subchapter II of chapter 85 of title 5 of the United States Code, 5 U.S.C. 8521-8525.

(b) *Agreement* means the Agreement entered into pursuant to 5 U.S.C. 8502 between a State and the Secretary under which the State agency of the State agrees to make payments of unemployment compensation in accordance with the Act and the regulations and procedures thereunder prescribed by the Department.

(c) *Base period* means the base period as defined by the applicable State law for the benefit year.

(d) *Benefit year* means the benefit year as defined by the applicable State law, and if not so defined the term means the period prescribed in the Agreement with the State or, in the absence of an Agreement, the period prescribed by the Department.

(e) *Ex-servicemember* means an individual who has performed Federal military service.

(f) *Federal military agency* means any of the Armed Forces of the United States, including the Army, Air Force, Navy, Marine Corps, and Coast Guard, and the National Oceanic and Atmospheric Administration (Department of Commerce).

(g) *Federal military 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—

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

(2)(i) The individual was discharged or released after completing his/her 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—

(A) For the convenience of the Government under an early release program,

(B) Because of medical disqualification, pregnancy, parenthood, or any service-incurred injury or disability,

(C) Because of hardship, or

(D) Because of personality disorders or inaptitude but only if the service was continuous for 365 days or more.

(h) *Federal military wages* means all pay and allowances in cash and in kind for Federal military service, computed on the basis of the pay and allowances for the pay grade of the individual at the time of his or her latest discharge or release from Federal/military service, as determined in accordance with the Schedule of Remuneration applicable at the time the individual files his or her first claim for compensation for a benefit year.

(i) *First claim* means an initial claim for unemployment compensation under the UCX Program, the UCFE Program (part 609 of this chapter), or a State law, or some combination thereof, first filed by an individual after the individual's latest discharge or release from Federal military service, whereby a benefit year is established under an applicable State law.

(j) *Military document* means an official document or documents issued to an individual by a Federal military agency relating to the individual's Federal military service and discharge or release from such service.

(k) *Period of active service* means a period of continuous active duty (including active duty for training purposes) in a Federal military agency or agencies, beginning with the date of entry upon active duty and ending on the effective date of the first discharge or release thereafter which is not qualified or conditional.

(l) *Schedule of Remuneration* means the schedule issued by the Department from time to time under 5 U.S.C. 8521(a)(2) and this part, which specifies

for purposes of the UCX Program, the pay and allowances for each pay grade of servicemember.

(m) *Secretary* means the Secretary of Labor of the United States.

(n) *State* means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands.

(o) *State agency* means the agency of the State which administers the applicable State unemployment compensation law and is administering the UCX Program in the State pursuant to an Agreement with the Secretary.

(p)(1) *State law* means the unemployment compensation law of a State approved by the Secretary under section 3304 of the Internal Revenue Code of 1986, 26 U.S.C. 3304, if the State is certified under section 3304(c) of the Internal Revenue Code of 1986, 26 U.S.C. 3304(c).

(2) *Applicable State law* means the State law made applicable to a UCX claimant by §614.8.

(q)(1) *Unemployment compensation* means cash benefits (including dependents' allowances) payable to individuals with respect to their unemployment, and includes regular, additional, emergency, and extended compensation.

(2) *Regular compensation* means unemployment compensation payable to an individual under any State law, but not including additional compensation or extended compensation.

(3) *Additional compensation* means unemployment 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.

(4) *Emergency compensation* means supplementary unemployment compensation payable under a temporary Federal law after exhaustion of regular and extended compensation.

(5) *Extended compensation* means unemployment compensation payable to an individual for weeks of unemployment in an extended benefit period, under those provisions of a State law which satisfy the requirements of the Federal-State Extended Unemployment Compensation Act of 1970, as amended, 26 U.S.C. 3304 note, and part 615 of this chapter, with respect to the payment of extended compensation.

(r) *Unemployment Compensation for Ex-Servicemember* means the unemployment compensation payable under the Act to claimants eligible for the payments, and is referred to as UCX.

(s) *Week* means, for purposes of eligibility for and payment of UCX, a week as defined in the applicable State law.

(t) *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 all employment and earnings, and in the same manner and to the same extent for the purposes of the UCX Program, as if the individual filing for UCX were filing a claim for State unemployment compensation.

[47 FR 54697, Dec. 3, 1982, as amended at 53 FR 40554, Oct. 17, 1988; 53 FR 43799, Oct. 26, 1988; 57 FR 59799, Dec. 15, 1992]

## Subpart B—Administration of UCX Program

### §614.3 Eligibility requirements for UCX.

An individual shall be eligible to receive a payment of UCX or waiting period credit with respect to a week of unemployment if:

(a) The individual has Federal military service and Federal military wages in the base period under the applicable State law;

(b) The individual meets the qualifying employment and wage requirements of the applicable State law, either on the basis of Federal military service and Federal military wages alone or in combination with service and wages covered under a State law or under the UCFE Program (part 609 of this chapter);

(c) The individual has filed an initial claim for UCX and, as appropriate, has filed a timely claim for waiting period credit or payment of UCX with respect to that week of unemployment; and

(d) The individual is totally, part-totally, or partially unemployed, and is able to work, available for work, and seeking work within the meaning of or as required by the applicable State law, and is not subject to disqualification under this part or the applicable State law, with respect to that week of unemployment.

[47 FR 54697, Dec. 3, 1982, as amended at 53 FR 40554, Oct. 17, 1988; 57 FR 59799, Dec. 15, 1992]

**§614.4 Weekly and maximum benefit amounts.**

(a) *Total unemployment.* The weekly amount of UCX payable to an eligible individual for a week of total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of total unemployment as determined under the applicable State law.

(b) *Partial and part-total unemployment.* The weekly amount of UCX payable for a week of partial or part-total unemployment shall be the amount that would be payable to the individual as unemployment compensation for a week of partial or part-total unemployment as determined under the applicable State law.

(c) *Maximum amount.* The maximum amount of UCX which shall be payable to an eligible individual during and subsequent to the individual's benefit year shall be the maximum amount of all unemployment compensation that would be payable to the individual as determined under the applicable State law.

(d) *Computation rules.* The weekly and maximum amounts of UCX payable to an individual under the UCX Program shall be determined under the applicable State law to be in the same amount, on the same terms, and subject to the same conditions as the State unemployment compensation which would be payable to the individual under the applicable State law if the individual's Federal military service and Federal military wages assigned or transferred under this part to the State had been included as employment and wages covered by that State law, subject to the use of the applicable Schedule of Remuneration.

[47 FR 54697, Dec. 3, 1982, as amended at 53 FR 40554, Oct. 17, 1988; 57 FR 59800, Dec. 15, 1992]

**§614.5 Claims for UCX.**

(a) *First claims.* A first claim for UCX shall be filed by an individual in any State agency of any State according to the applicable State law, and on a form prescribed by the Department which

shall be furnished to the individual by the State agency where the claim is filed.

(b) *Weekly claims.* Claims for waiting week credit and payments of UCX for weeks of unemployment shall be filed in any State agency (or Canada) at the times and in the manner as claims for State unemployment compensation are filed under the applicable State law, and on forms prescribed by the Department which shall be furnished to the individual by the State agency where the claim is filed.

(c) *Secretary's standard.* The procedures for reporting and filing claims for UCX and waiting period credit shall be consistent with this part 614 and the Secretary's "Standard for Claim Filing, Claimant Reporting, Job Finding and Employment Services" in the *Employment Security Manual*, part V, sections 5000-5004 (appendix A of this part).

[47 FR 54697, Dec. 3, 1982, as amended at 53 FR 40554, Oct. 17, 1988]

**§614.6 Determinations of entitlement; notices to individual and Federal military agency.**

(a) *Determinations of first claim.* Except for findings of a Federal military agency and the applicable Schedule of Remuneration which are final and conclusive under §614.23, the State agency whose State law applies to an individual under §614.8 shall, promptly upon the filing of a first claim for UCX, determine whether the individual is otherwise eligible, and, if the individual is found to be eligible, the individual's benefit year and the weekly and maximum amounts of UCX payable to the individual.

(b) *Determinations of weekly claims.* The State agency promptly shall, upon the filing of a claim for a payment of UCX or waiting period credit with respect to a week, determine whether the individual is entitled to a payment of UCX or waiting period credit respect to such week, and, if entitled, the amount of UCX or waiting period credit to which the individual is entitled.

(c) *Redetermination.* The provisions of the applicable State law concerning the right to request, or authority to undertake, reconsideration of a determination pertaining to State unem-

ployment compensation under the applicable State law shall apply to determinations pertaining to UCX.

(d) *Notices to individual and Federal military agency.* (1) The State agency promptly shall give notice in writing to the individual of any determination or redetermination of a first claim, and, except as may be authorized under paragraph (g) of this section, of any determination or redetermination of any weekly claim which denies UCX or waiting period credit or reduces the weekly amount or maximum amount initially determined to be payable. Each notice of determination or redetermination shall include such information regarding the determination or redetermination and notice of right to reconsideration or appeal, or both, as is furnished with written notices of determinations and redeterminations with respect to claims for State unemployment compensation. Such notice shall include the findings of any Federal military agency utilized in making the determination or redetermination, and shall inform the individual of the finality of Federal findings and the individual's right to request correction of such findings as is provided in §614.22.

(2) A notice of claim filing and subsequent notices of monetary and nonmonetary determinations on a UCX claim shall be sent to each Federal military agency for which the individual performed Federal military service during the appropriate base period, together with notice of appeal rights of the Federal military agency to the same extent that chargeable employers are given such notices under State law and practice unless an alternate mechanism is established by the Department of Labor in lieu of such notices.

(e) *Obtaining information for claim determinations.* (1) Information required for the determination of claims for UCX shall be obtained by the State agency from claimants, employers, and others, in the same manner as information is obtained for claim purposes under the applicable State law, but Federal military findings shall be obtained from military documents, the applicable Schedule of Remuneration, and from Federal military agencies as prescribed in §§ 614.21 through 614.24.

(f) *Promptness.* Full payment of UCX when due shall be consistent with this part and shall be made with the greatest promptness that is administratively feasible, but the provisions of part 640 of this chapter (relating to promptness of benefit payments) shall not be applicable to the UCX Program.

(g) *Secretary's standard.* The procedures for making determinations and redeterminations, and furnishing written notices of determinations, redeterminations, and rights of appeal to individuals applying for UCX and to appropriate Federal military agencies shall be consistent with this part 614 and the Secretary's "Standard for Claim Determinations-Separation Information" in the *Employment Security Manual*, part V, sections 6010-6015 (Appendix B of this part).

[47 FR 54697, Dec. 3, 1982, as amended at 53 FR 40554, Oct. 17, 1988]

#### §614.7 Appeal and review.

(a) *Applicable State Law.* The provisions of the applicable State law concerning the right of appeal and fair hearing from a determination or redetermination of entitlement to State unemployment compensation (exclusive of findings which are final and conclusive under §614.25) shall apply to determinations and redeterminations of eligibility for or entitlement to UCX and waiting period credit. Any such determination or redetermination shall be subject to appeal and review only in the manner and to the extent provided in the applicable State law with respect to determinations and redeterminations of entitlement to State unemployment compensation.

(Section 614.24 governs appeals of findings of the Veterans Administration)

(b) *Rights of appeal and fair hearing.* The provisions on right of appeal and opportunity for a fair hearing with respect to claims for UCX shall be consistent with this part and with sections 303(a)(1) and 303(a)(3) of the Social Security Act, 42 U.S.C. 503(a)(1) and 503(a)(3).

(c) *Promptness on appeals.* (1) Decisions on appeals under the UCX Program shall accord with the Secretary's "Standard for Appeals Promptness—

