

HANDBOOK NO. 384
UNEMPLOYMENT COMPENSATION FOR EX-SERVICEMEMBERS (UCX)

**CHAPTER II - DETERMINATION AND ASSIGNMENT OF FEDERAL
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1. Evidence of Federal Military Service and Wages. Each individual released or discharged from active military service receives a DD Form 214, Certificate of Release or Discharge from Active Duty or NOAA Form 56-16, Report of Transfer or Discharge, if formerly employed by the National Oceanic and Atmospheric Administration, except that, Air Force regulations (AFR 35-6(C3)) precludes such issuance if the servicemember immediately reenlists in the Air Force (See section 2.b. below). The NOAA Form 56-16 is used by the State agency in the same manner as the DD Form 214 for determining entitlement to UCX benefits. (NOTE: Any future reference to DD Form 214 also applies to the DD form 215, when appropriate, and the NOAA Form 56-16).

In most cases, the DD Form 214 provides all of the information necessary for the State agency to determine if the ex-servicemember has federal military service and wages for the purpose of Federal law (5 U.S.C. 8521 et. seq.) and for completing a UCX claim's determination.

A military discharge certificate or other military certificate of service will not be used in lieu of a DD Form 214 to establish UCX eligibility. A UCX determination may be issued **ONLY** upon presentation by an ex-servicemember of:

- DD Form 214; or
- "orders to report" and "orders of release"; or
- "orders to report" containing an endorsement of release.

However, before issuing a determination based on the "orders" listed above, the State agency should make every effort to obtain a copy of the DD Form 214, including the use of Form ETA 843 to obtain a copy or to obtain the information necessary to the determination of a UCX claim.

The "orders" standing alone will not be the sole basis of a tentative or final UCX determination. The State agency will make the appropriate determination based on the branch of service response to the ETA 843. If the State agency does not receive a response to the ETA 843 within 30 days, it should request approval of the use of such "orders" from the ETA National Office, through the appropriate ETA Regional Office. The ETA Regional Office will submit such a request to the ETA National Office, Attn: TEUMI.

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a. Criteria for Determining Federal Military Service, except for Members of the National Guard or Reserve. The DD Form 214 for each period of active military service should be examined if one or more days of such service occurred on or after the beginning of the base period that applies to the individual's claim to determine if the period of service met the following requirements of 5 U.S.C. 8521 for Federal military service. To qualify for weeks of unemployment beginning on or after November 15, 1991, the ex-servicemember must have been:

(1) On active duty in the Armed Forces (Army, Navy, Marine Corps, Air Force, or Coast Guard) or the Commissioned Corps of the National Oceanic and Atmospheric Administration. However, members of the National Guard or other Reserve Component of the Armed Forces must have been on continuous active duty in a reserve status for 90 days or more;

(2) Discharged or released under honorable conditions, and if an officer, did not resign for the good of the service; and

(3) Discharged or released after completing the first full term of active military service which the individual initially agreed to serve, unless, the individual was discharged or released before completing such term of active service for one of the following reasons:

(a) The convenience of the Government under an early release program;

(b) Because of medical disqualification, pregnancy, parenthood, or service-incurred injury or disability;

(c) Because of hardship; or

(d) Because of personality disorders or inaptitude after having continuously served for 365 days or more.

b. Criteria Determining Federal Military Service for Members of the National Guard or Reserve. To meet the criteria for Federal service under the Act, the period of military service by a member of the National Guard or other Reserve Component must equal 90 days or more of continuous active duty in a reserve status in the Armed Forces, and the individual must be discharged or released under honorable conditions after completing the first full term of service (unless separated earlier for one of the reasons stated in Section 1.a.(3) above). Note: There is no reserve component for Commissioned Officers of the National Oceanic and Atmospheric Administration.

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NOTE: In some instances, an individual may join a branch of the Armed Forces in a reserve capacity without having previously served a first full term of active service. In such case, to meet the criteria for Federal service under the Act, the ex-servicemember must have at least 90 continuous days of active duty in a reserve status and be discharged or separated from that active duty in a reserve status under honorable conditions (and, if an officer, did not resign for the good of the service). The provisions of 5 U.S.C. 8521(a)(1)(B) relating to completion of the first full term of active service which the individual initially agreed to serve, is not applicable because the ex-servicemember does not have a first full term of active service.

Item 2 of DD Form 214 will show if the person was a member of the National Guard or Reserve component of the Armed Forces by the following entries:

Army	:	ANGUS or USAR
Air Force	:	ANGUS or USAFR
Navy	:	USNR
Marines	:	USMCR
Coast Guard	:	USCGR

Members of the National Guard can be activated into the armed forces of the United States under Title 10 or 32 of the U.S.C. for full time active duty in a reserve status. When activated under Titles 10 or 32 of the U.S.C., the National Guard members must meet the UCX qualifying requirements contained in the first paragraph of this Section 1.b. of Chapter II. Specifically, activation in the armed forces under Titles 10 or 32 § 316 or 502-505 is considered "active duty in a reserve status" for UCX qualifying purposes (see Section 1.a.(1) of this Chapter II).

NOTE: National Guard members may be involved in State counterdrug activities provided for in 32 U.S.C. 112. However, 32 U.S.C. only authorizes the Secretary of Defense to provide Federal funding for such State counterdrug activities of the National Guard under specified circumstances, and 32 U.S.C. 112 does not provide authorization for the activation of the National Guard into "active duty in a reserve status" in the armed forces of the U.S. In many cases, however, a National Guard member participating in State counterdrug activities provided for in 32 U.S.C. 112 are also activated under 32 U.S.C. 316 or 502-505. In such case, the National Guard member would be eligible for UCX following his/her separation from such active duty in a reserve status if he/she met the qualifying requirements contained in the first paragraph of this Section 1.b. of Chapter II.

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2. Determination of Federal Military Service.

a. Determination of Federal Military Service, Except Former Air Force Members (5 U.S.C. 8521(a)). When a "first claim" is filed, the State agency will reproduce and keep a copy of the ex-servicemember's DD Form 214 in its files. If the ex-servicemember has lost or misplaced the DD Form 214, such information may be obtained from the LCCC or the appropriate branch of the Armed Forces.

If the individual is not identified as a member of the National Guard or Reserve Component, the State agency will determine if the individual was separated from military service after completing a "full term of service" (or if earlier, under one of the conditions outlined above in Item 1.a.(3) above. However, if the claimant was a member of the National Guard or Reserve Component, the SESA will determine whether the claimant completed 90 days or more of continuous active duty.

To qualify a Federal military service for UCX purposes, the ex-servicemember must have been separated "under honorable conditions" and if an officer, must not have resigned "for the good of the service." The State agency will be guided by the narrative reasons for separation shown in item 28 of the DD Form 214, as well as rulings and interpretations of what constitutes Federal military service by the Department of Labor published in Appendix "D".

However, if an ex-servicemember has completed a first "full-term" of active military service and was honorably discharged, a nonconforming narrative reason in item 28 of DD Form 214 will not be considered in determining the individual's eligibility for UCX benefits. In this situation, the nonconforming narrative reason is not applicable. When the individual has met the first "full-term" of active military service requirement, consideration of the nonconforming narrative reasons is precluded. Therefore, if Item 12c of DD Form 214 shows "net service this period" for enlisted personnel of 4 or more years for Navy or Marines, the ex-servicemember will be credited with completing a first "full term of service" and information in item 28 will be ignored. Additionally, any combination of "prior active service" in item 12d of DD Form 214 and "net active service in current period" shown in item 12c that meets or exceeds the 4 years requirement, as applicable, constitutes a "constructive completion" of a "first full term of active service" for the Navy and Marine Corps. Hence, in such cases, item 28 will also be ignored.

The constructive completion concept applies only to members of the regular armed services in active duty service. It does not apply to reservists who are on active duty in a reserve status.

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Active service (regular) and active duty (reservist) cannot be combined for UCX qualifying purposes.

In order for active service to qualify as "Federal service" for purposes of UCX, there are two requirements for service in a regular status and three requirements for service in a reserve status. For either type of active service to qualify, regular or reserve, it must be honorable and meet the preconditions contained of 5 U.S.C. 8521(a)(1)(B). For reserve service to qualify it must fulfill both of these minimum conditions that qualify an individual who has served on active duty in a regular status, and third a condition, relevant only if the other two are fulfilled, is that the individual must have served on active duty in a reserve status for a continuous period of 90 days or more.

For example, a person who first enlists in the armed forces and begins to serve on active duty in a regular status. That person will have satisfied the requirements of "Federal service" for UCX even if separated honorably for a service-incurred injury after 60 days. Those 60 days of service would meet the definition of "Federal service" in section 5 U.S.C. 8521(a)(1). Alternately, an Academy cadet commissioned as Reserve officer who initially agreed to serve on active duty for 5 years but failed to complete those 5 years and was not released for a satisfactory reason under 5 U.S.C. 8521(a)(1)(B) would not meet "Federal service" definition because this person failed to complete the first full term of service he/she initially agreed to serve. This person's active duty in a reserve status does not qualify as "Federal service" for UCX, regardless of the fact that it was for more than 90 continuous days.

The statute is clear that to fall within the definition of "Federal service", one must meet the requirements of § 8521(a)(1), § 8521(a)(1)(A), and § 8521(a)(1)(B)(i) or (B)(ii). An officer need only meet the requirements of §§ 8521(a)(1) and 8521(a)(1)(A); the requirements of §§ 8521(a)(1)(B)(i) and (B)(ii) are inapplicable on the basis that they do not appear to address the specific terms under which officers serve. Officers serve under a commitment or obligation for a specified period of time after commissioning, and this period of service is tantamount to the first full term of service "which the individual initially agreed to serve" within the meaning of § 8521(a)(1)(B). For an officer who had no prior service, such an initial period of service is in all respects the equivalent of the first term of enlistment of an enlisted member.

NOTE. The U.S. Army also informed this Department that it has advised all transition centers to provide information on DD Forms 214 concerning if the servicemember completed his/her first term of entitlement.

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The U.S. Army, U.S. Air Force, U.S. Navy and the U.S. Marine Corps have informed this Department that the term of enlistment may range from 2 to 6 years.

b. Determination of Federal Military Service and Wages for Former Air Force Members (5 U.S.C. 8521(a)). Air Force regulation (AFR 35-6(C3)) precludes the issuance of DD Forms 214 if former Air Force members immediately re-enlist. Additionally, DD Forms 214 that the Air Force issued in the past did not clearly identify the applicable enlistment periods and have frequently been found to provide insufficient basis for the State agency to accurately determine if the initial enlistment periods were completed under honorable conditions.

Effective October 1, 1993, the Air Force is entering, in block 18 of DD Form 214, the statement: "Member (has)(has not) completed first full term of service."

The Air Force has agreed to add two items in block 18 of DD Form 214 to assist State agencies in making accurate determinations. It has added "Term of Current Enlistment" to enable a State agency to know for what period (2 - 6 years) the former Air Force member enlisted, and "Continuous Active Military Service Date," which will indicate how long an individual served without a DD Form 214. Block 12a will show the Date Entered Active Duty This Period, and Block 12b, will show Separation Date This Period. From these two entries the State agency can determine if the former Air Force member completed the last enlistment. Whether the enlistment was for a 2 - 6 year period will show under TERM OF CURRENT ENLISTMENT. By comparing this information with Blocks 12a and 12b, the State agency can determine if the full enlistment period was completed. Block 12d, TOTAL PRIOR ACTIVE SERVICE, shows the total of all active military service before the most recent enlistment period.

3. Reviewing the Character of Service. The character of service is shown in item 24 of the DD Form 214 (item 12 of NOAA Form 56-16), as appropriate, e.g., "Honorable", "Under Honorable Conditions (General)", "Under Other Than Honorable Conditions", "Bad Conduct" or "Dishonorable". In some instances, the character of service will be shown as "Uncharacterized," "Drop from rolls" or "Void enlistment" which means that the person's discharge was "Under Honorable Conditions."

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The later three types of separations in the preceding paragraph are always "Uncharacterized" and are considered to be under honorable conditions unless otherwise noted in item 24 of the DD Form 214. These entries mean that the individual's character of discharge was "Under Honorable Conditions" and that the time in service was too short for a fair rating. The phrases "Entry Level Separation," "Drop from rolls" and "Void enlistment" are deviations from the term "Uncharacterized" which is an authorized entry in item 24 according to the DOD Instructions Number 1336.1. However, we have been informed by the DOD that those three phrases and "Uncharacterized" are synonymous and are therefore considered to be separations under honorable conditions.

An ex-servicemember separated by the military under any of the above "Uncharacterized" conditions must have completed less than 180 days of continuous military service to receive an uncharacterized separation. Any ex-servicemember that has been on active duty in excess of 180 continuous days of military service should be issued a characterization by the military.

An ex-servicemember's period of service should be considered Federal military service under the Act, if the individual's separation was "honorable", or "under honorable conditions" if the narrative reason(s) for separation shown on the DD Form 214 conforms to narrative reasons for separation supplied by the DOD.

If the narrative reason for separation does not conform, the military service cannot be used as the basis of UCX entitlement as it does not meet the requirements of 5 U.S.C. 8521(a).

For an ex-servicemember's discharge to be determined to have been due to "inaptitude," the word inaptitude must be included in the narrative reason for separation.

If the "Narrative Reason For Separation," is blank or appears incomplete, the State agency should send a Form ETA 843 to the appropriate branch of service requesting the specific reason for separation or clarification. For example, if only the word "unsuitability" is shown on DD Form 214, an ETA 843 should be sent to ascertain if the narrative reason for separation was "unsuitability due to inaptitude."

4. Use of Form ETA 843, UCX Request for Military Information.
The ETA 843 should be used to obtain a copy of the DD Form 214, to obtain or clarify the "narrative reasons for separation," or to obtain or clarify any other information omitted from or shown on the DD Form 214. A copy of the DD Form 214 should be attached to the ETA 843, and any question asked by the State agency should be specific and complete. The branch of service should not be asked a general question such as whether or not the ex-servicemember is eligible for UCX benefits under 5 U.S.C. 8521 et seq.

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(The military agency is not authorized to make that determination.)

If the narrative reason for separation shown on the DD Form 214 is clear and complete, an ETA 843 should not be used to obtain additional information simply because the claimant disagrees with the narrative reason provided. Under such circumstances, the claimant should be informed that the Federal law provides that the findings of the branch of service must be accepted as "final and conclusive" for determining UCX entitlement (5 U.S.C. 8523-(b)(1)(A)) and 20 CFR 614.23).

SESAs are reminded that they should not apply their own interpretation in determining whether or not a narrative reason for separation is acceptable. The narrative reason for separation should be either "acceptable" or "unacceptable" based on the lists of acceptable narrative reasons for separation provided by DOL.

NOTE: Questions about the acceptability of narrative reasons for separation should be addressed to the National Office, Attention: TEUMI, through the appropriate Regional Office.

a. Ex-servicemember Disagrees with Narrative Reason For Separation. If the claimant disagrees with the military findings, it is his/her responsibility to obtain a correction to the DD Form 214 or DD Form 215 from the appropriate branch of the military service. However, in accordance with 20 CFR 614.22, the State agency should assist the claimant with requesting a correction and advise the claimant of UCX claims filing procedures.

5. Assignment of Military Service and Wages with "First Claim". All Federal military service and wages, including lag period service and wages, must be assigned to the State in which a "first claim" (UCX) is filed in accordance with 5 U.S.C. 8522. The "first claim" is defined as the first claim filed, for unemployment compensation, after separation from the latest period of Federal military service which establishes a benefit year. Therefore, the "first claim" may be an intrastate or interstate UI, UCX, UCFE or Joint claim. When the "first claim" filed is an interstate claim, as the State in which the claim is filed, the agent State is the State of assignment for the UCX wages.

The State to which military service and wages are assignable is responsible for sending an inquiry to the LCCC to ensure that wages were not previously assigned. However, the assignment of the military service and wages is not complete unless a benefit year is established. Therefore, if an intrastate or interstate claim does not result in a benefit year, the military service and wage assignment will be corrected, as appropriate.

