

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

**CHAPTER IV - MONETARY AND NONMONETARY DETERMINATIONS**

**1. Initial Claim - New.** A new UCX claim is a request for determination of eligibility for unemployment compensation for ex-servicemembers. This claim may be a UCX only claim based on Federal military service and wages, or a joint claim based on a combination of Federal military with Federal civilian, or State-covered employment and wages. Under the UCX equal treatment requirements at 20 CFR 614.9(a)(1), the provisions of the applicable State law governing claims filing apply to UCX claims, except where the result would be inconsistent with the provisions of Federal law, 20 CFR Part 614 or the UCX operating procedures issued by the U.S. Department of Labor (the Department).

It is important to note that the UCX equal treatment requirements at 20 CFR 614.13 also provide that claimants' rights to UCX shall be protected from waiver in the same manner and to the same extent as the rights of persons to State UI are protected under the applicable State law. This equal treatment includes protection against discrimination and obstruction in regard to seeking, applying for, and receiving any right to UCX.

A claimant who qualifies for UCX benefits in one State and also separately eligible for UI, UCFE, etc. in another State, may elect to file the UCX claim or to file against the separate eligibility under the other State's law or file a combined-wage claim. The first UCX claim filed after a period of Federal military service will result in Federal military service and wages being assigned to the State in which the claimant is physically located at the time the claim is filed if a benefit year is established. However, Federal military service and wages may be transferred for use on a combined-wage claim.

In determining entitlement, if the ex-servicemember also worked for a military service as a civilian, a Form ES-931 will be used to request for UCFE wage and separation information.

**a. Using the Proper Copy of the DD FORM 214 to Establish Eligibility.** The DD Form 214 is a multi-copy form with eight (8) copies to a set. The State agency should use Copy No. 4 of DD Form 214 to complete the State forms or Form ETA 841 (ES-970) and issue a UCX determination. If the claimant states that he/she has lost or was not issued Copy No. 4 of DD Form 214, he/she should be asked to provide a copy of Copy No. 1 as evidence of potential UCX eligibility.

Copies Nos. 1 and 4, are issued to all separatees. However, Copy No. 1 alone may not be used as the basis of a UCX determination.

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Copy No. 4, provides the information necessary to a determination of UCX entitlement/-eligibility.

The State agency should request and utilize Copy No. 4 whenever possible. However, the State agency may use a certified copy of Copy No. 2, 3, 6, 7, or 8, from the claimant, or a Copy No. 5 from the LCCC, as an official copy for making UCX eligibility determinations. However, in all cases, the requirements and procedures for verification of the DD Form 214 information with the LCCC are the same as if using Copy No. 4.

If possible, the State agency should base a UCX determination on a partially completed DD Form 214 supplemented by credible claimant statements certified on the Form ETA 841 (Form ES-970) if the missing information is not potentially disqualifying. A Form ETA 843 requesting military verification of the information is needed. However, the State agency should make a tentative UCX monetary determination and issue benefit payments, as appropriate, while awaiting a reply.

**NOTE:** If an ex-servicemember presents an original Copy No. 2, 3, 6, 7, or 8, the State agency should immediately use the Form ETA 843 to verify that the issuance of the "original" Copy, because the military normally issues a certified copy of one of these copies rather than an original.

If the ex-servicemember cannot present any of the appropriate copies of DD Forms 214, he/she should be informed that it is his/her responsibility to obtain a legible and complete Copy No. 4 or certified Copy 2, 3, 6, 7, or 8 of DD Form 214 to support a UCX determination. However, the State should advise the claimant that it will submit a inquiry to the LCCC. Entitlement and eligibility for UCX benefits will be based on Copy 5 of DD Form 214 made available by LCCC.

The claimant should also be advised of the preliminary use of military "orders to report" and "orders of release"; "orders to report" containing an endorsement of release. However, if the LCCC has no record of a claimant's service and is unable to provide Copy 5, the State agency should help the claimant obtain a DD Form 214 by using the Form ETA 843.

The State agency should encourage the claimant to continue to look for the necessary form(s) and advise the claimant that the UCX determination will be delayed until the necessary information is available. The claimant should be encourage to continue to

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file necessary claims, while the determination is pending, in order to protect benefit rights.

If an ex-servicemember reports that the DD Form 214 was lost or misplaced, in addition to using the Form ETA 843 to request a copy, the claimant should be advised that he/she may be able to obtain a duplicate DD Form 214 from:

(1) The Department of Veterans Affairs Regional Office, if the he/she filed a claim for disability benefits before separation (in any case, VA counselors will help the claimant in this matter); and

(2) The county clerk or the local Bureau of Vital Statistics, if it was registered.

**2. Determination of Monetary Entitlement.** Any UCX wages used as the basis of a monetary determination must meet the criteria for Federal military service under the Act, as outlined in Chapter II. By prior ruling, days of excess leave are ignored when determining Federal military wages. Although, in some instances, the number of days or the dates of excess leave may be shown in Item 18, "Remarks, of DD Form 214, neither days nor dates of excess leave will be recorded on Form ETA 841 (Form ES-970).

If entries on the Form ETA 841 show UCX service and wages in the State's base period, such service and wages will be included in the person's monetary determination to the same extent that the applicable State's law requires the use of all base period employment and wages with respect to UI claims. All such employment and wages must be used even if the inclusion causes ineligibility or reduces the duration and/or the weekly amount of benefits to which the claimant would otherwise be entitled.

**a. Determining Rate of Pay and Total Base-Period Wages.** The monthly, weekly, and daily rates of pay for each grade (e.g., E-1, E-2) is determined from the Federal Schedule of Remuneration in effect at the time the ex-servicemember files the "first claim" as defined by 20 CFR 614. The pay grade held at the time of separation from the most recent period of Federal military service must be used to determine base period and lag period wages, whether or not the claimant served in more than one grade during or following the base period of the claim. For example, if the claimant's pay grade was E-2 during the period of service in the State's base period and the claimant was promoted to pay grade E-3 during the State's lag period, and separated at the

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higher grade, the claimant's rate of remuneration for pay grade E-3 is used in determining monetary entitlement even though the E-3 pay grade was not held during the State's base period.

Military wages are paid based on 30 days in a calendar month regardless of the number of actual days in the month. Thus military service which begins or ends on various dates of a 31-day or 29-day month must be treated for base-period wages as follows:

|                                       |                        |                                   |
|---------------------------------------|------------------------|-----------------------------------|
| (1) Service beginning in 31-day month | <u>Entry Date</u>      | <u>Service Credited for Month</u> |
|                                       | August 16              | 15 days                           |
|                                       | August 30              | 1 day                             |
|                                       | August 31              | None                              |
| (2) Service beginning in 28-day month | <u>Entry Date</u>      | <u>Service Credited for Month</u> |
|                                       | February 1             | 1 Month (30 days)                 |
|                                       | February 16            | 15 days                           |
|                                       | February 27            | 4 days                            |
|                                       | February 28            | 3 days                            |
| (3) Service ending in 31-day month    | <u>Separation Date</u> | <u>Service Credited for Month</u> |
|                                       | August 15              | 15 days                           |
|                                       | August 30              | 1 Month (30 days)                 |
|                                       | August 31              | 1 Month (30 days)                 |
| (4) Service ending in 28-day month    | <u>Separation Date</u> | <u>Service Credited for Month</u> |
|                                       | February 1             | 1 day                             |
|                                       | February 15            | 15 days                           |
|                                       | February 27            | 27 days                           |
|                                       | February 28            | 1 month (30 days)                 |

Accordingly, to determine wages for assignment and use in the monetary determination, months, weeks, and days of creditable Federal military service, as shown in item 26 of Form ETA 841, are multiplied by the appropriate rates of remuneration as follows: the monthly rate of remuneration will be used for each full calendar month of service regardless of the actual number of days in the month; the weekly rate for 7 days is calculated at 7/30th of the monthly rate; and, the daily rate is 1/30th of the

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monthly rate shown in the Federal Schedule of Remuneration. The daily rate applies to all periods of less than 7 days.

**b. Allocation of Military Accrued Leave.** Branches of the Armed Forces report the number of days of military accrued leave, for which a lump-sum payment was made, on DD Form 214, on other military documents, or in replies to State agency requests for such information. However, this leave is not considered allocated to any particular period. If this information is not on DD Form 214 (or a corresponding DD Form 215), and is necessary under the applicable State UI law for proper processing of a UCX claim, State agencies should use an ETA 843 to request the information. Days of military accrued leave (or Federal military wages related to such days) will be allocated by the State agency in the same manner as for State UI.

In general, lump-sum payment for days of military accrued leave made to a servicemember in connection with the separation from active U.S. military service must be treated the same as a lump-sum payment for accrued leave (or equivalent) is treated under the applicable State unemployment insurance law when made by an employer to a worker in connection with separation from private employment. Except that, the Federal Schedule of Remuneration must be used to compute the amount of the lump-sum payment based on the number of days of military accrued leave. The actual amount of the lump-sum payment received by the servicemember for accrued leave is disregarded.

Additionally, the days of accrued leave for which a lump-sum is paid are not part of an active service period and must not be used in determining if a claimant has the 90 continuous days of Federal military service required of members of the National Guard and Reserve to qualify for UCX benefits or the full term of active service required to qualify under 5 U.S.C. 8521(a)(1)-(B)(ii)(IV).

Additionally, the days of accrued leave for which a lump-sum is paid are not part of an active service period and must not be used in determining if a claimant has completed his/her first full term of service under honorable conditions, separated for a specified reason(s) prior to completing his/her initial term of service and were separated under honorable conditions required to qualify under 5 U.S.C. 8521(a)(1)(B)(ii)(IV).

If the State uses "weeks" or "credit weeks" in determining entitlement, no more than 13 such weeks per calendar quarter of Federal military service may be allocated or used. Additionally,

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States will not allocate more than 7 days of Federal military service (or military accrued leave), to any one week.

When the State law allocates lump-sum leave payment to the last day of active military service, the amount of Federal military wages based on military accrued leave or combined active duty and military accrued leave, allocated to a calendar quarter may exceed the monthly rate under the Federal Schedule of Remuneration. Similarly, the total wages for the combined amount allocated to a week (or equivalent), may exceed seven times the derived daily rate (or the derived weekly rate) under the Federal Schedule of Remuneration.

If the claimant disagrees with the amount of accrued leave shown on the DD Form 214/215, the State agency should review the claimant's copy of the final military pay voucher issued at the time of separation from active military service. This form normally shows military accrued leave data. If the voucher shows the necessary information, the State agency may accept such documentary evidence as final and retain a copy in its files. The use of information on a military pay voucher in lieu of DD Forms 214/215 is an exception and applies only to information pertaining to a lump-sum payment for military accrued leave.

(1) Designated Period of Allocation. If under State law, the lump-sum payment for accrued leave is allocated to the date on which such payment was made and the claimant's DD Form 214 does not contain the payment date, and the claimant gives no other documentary evidence (e.g., final military pay voucher) showing such date, the State agency may consider that the payment date is the same as the date of separation from military service. The State agency does not need to verify the lump-sum payment date with the branch of the Armed Forces unless conflicting information is presented (e.g., the claimant states that the payment was made and the DD Form 214 shows that the payment is pending or vice versa).

If, under State law, the employer may designate the period to which a lump-sum payment to a worker for days of accrued leave will be allocated, the United States, as the employer for ex-servicemembers, considers that Federal military wages attributable to a lump-sum payment for military accrued leave must be allocated to the date of separation, as shown on DD Form 214.

If under State law, a lump-sum paid for days of accrued leave, in connection with a separation from employment, would be allocated to a period after the date of separation, and result in a denial or reduction of benefits for the period to which allocated, the

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lump-sum payment for military accrued leave should be allocated in the same manner and benefits to the ex-servicemember denied or reduced accordingly.

(2) Examples of Allocation of Military Accrued Leave.

Claim effective April 1, 1994. Using Schedule of Remuneration as in effect on April 1, 1994.

|  |  |
|--|--|
| Base period (first 4 of last<br>5 completed quarters)                                  | January 1, 1993 -<br>December 31, 1993 |
| Number of days of military<br>accrued leave reported on<br>DD Form 214                 | 20                                     |
| Active U.S. military service period<br>which qualifies as Federal military<br>service- |  |
| (a) "Date entered active duty<br>this period"  | March 1, 1990                          |
| (b) Date of separation:  | March 18, 1993                         |
| (c) Pay Grade:   | E-4                                    |

Example 1

Under State law, the military accrued leave (for which lump-sum payment is received) is allocated to the 20 day period (including Saturdays, Sundays and holidays) immediately following the date of separation:

Military Service and Wages credited during base period:

January 1 - December 31 (active duty);  
(Each quarter = 3 X (monthly rate)

Military Service and wages during lag period:

First Quarter -- January 1 - March 18, 1994  
= 2 months X (monthly rate) + 18 days X (daily rate)

Plus

March 19 - March 30, 1994  
= 11 allocated days of accrued leave X (daily rate)

Second Quarter -- April 1 - April 9, 1994  
= 9 allocated days of accrued leave X (daily rate)

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(Period of active duty service and wages plus accrued leave wage amount in lag-period are to be posted to wage file for future use.)

**EXAMPLE 2**

Under State law, the military accrued leave (for which lump-sum payment is received) is allocated to the date on which separation occurred or the lump-sum was paid.

For the January - March 1994 quarter, the Service and Wages credited is:

|  |                   |
|--|-------------------|
| January 1 - March 18 (active duty; no days lost):          |                   |
|  | 2 months, 18 days |
| Equivalent Federal military wages<br>(active duty period): | \$                |
| Plus 20 X (daily rate) for accrued leave                   | \$                |
| Total Military Service and Wages                           | \$                |

**NOTE:** In this example, it is assumed that the lump-sum payment date and the separation date are the same. Under this "when paid" allocation, the total military wages for the quarter will exceed the quarterly wage total (3 X monthly rate) calculated for other quarters.

**c. Days Lost.** For base period wages computation purposes, "days lost" are treated as days in which there were no Federal military service or wages, even though some pay or allowances were paid for such days. Calendar dates of days lost are not used in computing credible Federal military service. However, days lost are not deducted in determining period of continuous Federal military service.

If the claimant disagrees with the "days lost" information on DD Form(s) 214/215, the State agency should issue a monetary determination based on the information available from the DD Form(s) 214/215 and forward an ETA 843 to the branch of service to verify the information. When the DD Form(s) 214/215 does not indicate the actual dates of the "days lost", the State agency should issue a monetary determination based on the claimant's certification of dates of "days lost" on the ETA 841 and forward an ETA 843 to the branch of service to verify the information. When a reply is received, the State agency should issue a monetary redetermination and take other actions, as appropriate.\*

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In computing military wages for a period during which "days lost" occurred, the portion of the month preceding and following the "days lost" period will be computed the same as the ending and beginning of a period of service.

**Example:**

Claim effective October 17, 1993

Base period (first 4 of last 5 completed calendar quarters): July 1, 1992 - June 30, 1993

Service entry date: October 19, 1990

Separation date: October 16, 1993

Dates of days lost: Feb. 27 - March 2, 1993  
Aug. 31 - Sept. 8, 1993

Base period wage credits: July - September 1992  
(3 X (monthly rate))  
October - December 1992  
(3 X (monthly rate))  
January - March 1993  
(Jan. = 1 X (monthly))  
(Feb. = 26 X (daily rate))  
(Mar. = 28 X (daily rate))

Lag-period wages credits: April - June 1993  
(3 X (monthly rate))  
July - September 1993  
(2 X monthly rate)  
+  
(22 X (daily rate))  
October - December 1993  
16 X (daily rate)

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**d. Joint Monetary Determinations - UCX-UCFE/UI.** A joint monetary determination must be identified as UCX-UI, UCX-UCFE or UCX-UCFE-UI, as appropriate. Federal civilian employment and wages, military service and wages and State covered employment and wages must be shown separately on a joint monetary determination. If a claimant worked in Federal civilian employment and was also in active military service during the base period of the claim, the civilian employment and wages should be shown as U.S. civilian and the military service as U.S. military, or other appropriate designation which identifies the kinds of service separately.

To the extent that State law requires the use of all base period employment in the monetary determination, any Federal civilian or military service and wages assignable to the base period must be used in the monetary determination.

When Federal UCX (UCFE) wages are included in the monetary determination, the benefit costs chargeable to the Federal Government will represent the same ratio to benefits paid as the Federal wages represent to the total of all wages used in the determination. When both Federal civilian and military service are used in the determination, the charges must be separately identified and must represent separately the same ratio to benefits paid as the UCX or UCFE wages represent to the total wages used in the determination.

When a monetary determination is issued under the Interstate Arrangement for Combining Employment and Wages (Combined Wage Program (CWC), the paying State will make a determination of the ratio of the Federal portion of the cost of UCX (UCFE) as stated above. State agencies should not use the Form IB-6, "Statement of Benefits Paid to Combined Wage Claimants" to request reimbursement of Federal benefit cost from the transferring State. The paying State will charge the Federal Government directly for its benefit costs based on the use of Federal employment and ages in the determination.

(1) **Examples of Calculation of Cost.** The following calculations are based on a benefit payment of \$100. The benefit

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amount used is after reduction by any deductible income. The Federal share of benefit costs will always be based on the benefit amount actually paid or deemed paid (e.g. overpayment offset). If both UCFE and UCX costs are involved, the respective program costs will be computed as provided above.

| Examples:             | A       | B        | C       | D        | E      |
|-----------------------|---------|----------|---------|----------|--------|
| Federal Wages         | 6,000   | None     | 10,000  | 1,000    | 9,500  |
| Total BP Wages        | 10,000  | 10,000   | 10,000  | 10,000   | 10,000 |
| State UI Wages        | \$4,000 | \$10,000 | \$ None | \$ 9,000 | \$ 500 |
| Federal Ratio         | 60%     | None     | 100%    | 10%      | 95%    |
| WBA                   | 100     | 100      | 100     | 100      | 100    |
| Federal Benefit Cost  | 60      | None     | 100     | 10       | 95     |
| State-UI Benefit Cost | 40      | 100      | None    | 90       | 5      |

Note that in "Example D" above, \$10 is chargeable to the Federal Government, even though the claimant may have qualified for maximum benefits based on State UI wages only. Also, in "Example E", \$5 would be charged to the State, even though the claimant may have qualified for maximum benefits based on Federal wages only and the claimant may have not have qualified for any benefits based on the State-UI wages only.

**3. Deduction of Employer Financed Pensions.** For the purpose of deducting Federal retirement and annuity payments from UCX benefits, all Federal civilian and military agencies are a single employer--the United States.

Federal retirement plans include the DOD Military Retirement Fund, the Civil Service Retirement System (CSRS), the Federal Employees' Retirement System (FERS), as well as the special Federal retirement plans such as the Civil Service Retirement System for Law Enforcement and Firefighter Personnel (CS-Spec), the Foreign Service Retirement and Disability System (FS), the Foreign Service Pension System (FSPS), the Federal Employees' Retirement System for National Guard Reserve Technicians (FERS-Reserve), and the Federal Employees' Retirement System for Air Traffic Controllers (FERS-ATC).

Under Federal laws, an ex-servicemember may receive military or veterans' retirement and pension payments from the Department of

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Veterans Affairs, the appropriate branch of service, or both. Also, active U.S. military service after 1956 is covered under the retirement, survivors and disability insurance programs provided by Title II of the Social Security Act; U.S. military service occurring between September 16, 1940, and December 31, 1956, may generally be used for such Title II wage credits.

Federal retirement payments and annuities are to be treated the same as private employer's retirement and pension payments are treated with respect to UI payments under State law. Therefore, if State law requires deduction of employer financed or contributed pensions from State UI, Federal annuities and retirement and pension payments (including Fleet Marine Corps Reserve and Naval Reserve retainer pay) will be deducted from UCX benefits.

**a. Federal Military Retirement Payments.** The Federal Government contributes 100 percent into the retirement fund for U.S. Military retirement payments, including the Fleet Marine Corps Reserve and Fleet Naval Reserve retainer pay. If a military retiree cannot provide a copy of the notice of award or pension check, or if a State agency needs additional information, a request for information should be directed to the branch of service from which he/she receives military retirement payment. All such correspondence should include the Social Security number and the service serial number.

Following are Military activity addresses for each branch of the Armed Forces:

| <u>Branch</u> | <u>Address</u>   |
|---------------|--|
| Air Force     | Director<br>DFAS Cleveland Center<br>Post Office Box 99191<br>Cleveland, Ohio 44199-1126   |
| Army          | Director<br>DFAS Cleveland Center<br>Post Office Box 99191<br>Cleveland, Ohio 44199-1126   |
| Coast Guard   | Commanding Officer (Retired Pay Branch)<br>U.S. Coast Guard and Personnel Center<br>Federal Bldg. 444 South East Quincy St.<br>Topeka, Kansas 66688-3591 |

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|  |  |
|--|--|
| Marine Corps                                 | Director<br>DFAS Cleveland Center<br>Post Office Box 99191<br>Cleveland, Ohio 44199-1126   |
| Navy   | Director<br>DFAS Cleveland Center<br>Post Office Box 99191<br>Cleveland, Ohio 44199-1126   |
| National<br>Oceanic<br>Atmospheric<br>Admin. | NOAA Commissioned Personnel Center.<br>1315 East-West Highway<br>Room 12100<br>Silver Spring, Maryland 20910-3282<br>Attention: Steve Eisenberg* |

In applying State law to UCX claimants for reducing unemployment compensation because the claimant receives a pension or retirement annuity, State agencies should ensure that their State UI law conforms with requirements of Section 3304(a)(15) of the Internal Revenue Code of 1954, as amended.

**b. Federal Civil Service and FERS Retirement and Annuity Payments.** The Federal Government contribution and employee contribution varies according to the particular retirement plan. To determine or verify the amount of a Federal civil service annuity payment, the claimant should be asked to present his/her notice of award or annuity, retirement or pension check. The notice of award sets forth the monthly retirement payment. The Federal civil service retiree's notice of award is Form RI 20-25, Civil Service Annuity Statement, which he/she receives after he/she has applied for such retirement annuity and the U.S. Office of Personnel Management has adjudicated the case.

SESAs should be aware that medical insurance payments may be deducted from the pension check, in this case, the annuity amount payable, which may be deductible in accordance with State law, would be more than the amount indicated on the pension check.

If a Federal retiree is not able to provide his/her copy of the annuity statement nor his/her retirement check, or if a SESA needs additional information, a letter should be directed to the:

U.S. Office of Personnel Management  
Retirement and Insurance Group  
Employees Service and Records Center  
Boyers, Pennsylvania 16017

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The correspondence should include the individual's Federal civil service annuity claim number, or, if the number is not available, the retiree's separating Federal agency, his/her date of birth, social security number, and the date of separation. The claimant's final SF-50 is a source of such data.

**4. Federal Schedule of Remuneration.** As provided by 5 U.S.C. 8521(a)(2), UCX wages means all pay and allowances "in cash" and "in kind" for Federal service computed based on the pay and allowances for the pay grade of the person at the time of discharge or release from the military service, as specified in the schedule applicable at the time the "first claim" is filed. The Schedule of Remuneration will be issued from time to time by the Secretary of Labor upon consultation with the Secretary of Defense. When a new Schedule of Remuneration is issued, it is published as a notice in the Federal Register. A new Schedule of Remuneration takes effect with the beginning of the first full week beginning in the calendar quarter following the calendar quarter in which the schedule is issued and shall remain in effect until another schedule becomes effective. (Refer 20 CFR 614.12.) Schedules shall apply to the determination of wage credits for all wage assignments as a result of "first claims" effective during the period they are in effect.

**5. Notice of Monetary Determination.** UCX claimants will be given notices of monetary determinations in the same manner that State UI claimants are given such notices. Copies of notices of monetary determinations will also be sent to the branch military service from which the ex-servicemember separated and any Federal agency which employed a UCX claimant as a civilian, to the same extent that chargeable employers are given such notices under State law and practice. The State agency's notice of monetary determination may be used in conjunction with Form ETA 841 without revision except to identify the determination as UCX, if items 22 and 23 are on the Form ETA 841. If these items are not on the Form ETA 841, they must be included on the State's monetary determination form. The notice of monetary determination must inform the person of the right to request correction of all findings of the appropriate branch of the service, by including the following statement on the determination:

"If you believe any military service information on which this determination is based is incorrect or substantially incomplete, you may request reconsideration directly from.

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your branch of the Armed Forces or through this local office. This local office should be informed promptly of any response received to your request."

A claimant whose military service is not "Federal military service" in accordance with the requirements as outlined in Chapter II, must be denied UCX benefits. A monetary determination will be issued under these circumstances.

The following statement should be included on the determination:

"The findings of Federal military service are final and conclusive. Hence, if you believe any military service information on which this determination is based is incorrect or substantially incomplete, it is your responsibility to request reconsideration by sending a request directly to your branch of military service and notify this local office, or file your request through the local office.

These actions must take place within the appeal period specified (indicate where specified on the determination form). File an appeal within such period to protect your rights while your request is being considered. You may wish to request assistance from this local office."

**6. Subsequent Benefit Year.** Lag-period Federal military service and wages in the base period of a subsequent claim to establish a benefit year, including service and wages allocated under State law for lump-sum payment of military accrued leave, may be used in the same manner as State covered wages. If the subsequent claim is filed under the combined wage program, the service and wages are transferrable in the same manner as State covered employment and wages.

When an initial claim is filed to establish a second benefit year based on Federal military service/wages, the State of assignment must take care to ensure that the wages used in the determination are based on the Schedule for Remuneration in effect at the time the person filed the "first claim".

**7. Determining Benefit Eligibility.** The finality of Federal military findings precludes the State agency from adjudication of certain issues under State law. State agencies must accept as "final and conclusive" the findings of the branch of the Armed Forces as shown on DD Form(s) 214/215 and completed request for military information as shown on Forms ETA 843.

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A State agency will apply the eligibility provisions of the State law with respect to: (1) ability to work; (2) availability for work; (3) refusal of suitable work as it relates to offer(s) of civilian employment; and (4) separation from civilian employment during or subsequent to active military service.

When benefits are due a UCX claimant at time of death, payment of the amount due should be made in accordance with State law governing the payment of UI benefits due at time of death.

The State agency will not apply the eligibility or disqualification provisions of the State law to: (1) the determination of UCX service and wages; (2) separation from active military service, including voluntary release request or retirement; (4) separation from a pre-service employer(s); (5) failure of an ex-servicemember to re-enlist in the Armed Forces; or (6) failure of an ex-servicemember to exercise re-employment rights with pre-service employer.

a. Failure to Exercise Re-employment Rights. A State may not disqualify an ex-servicemember, under State law provisions, as refusing an offer of suitable work for failure to exercise statutory re-employment rights a pre-service employer. Additionally, under Federal statute, failure to exercise re-employment rights cannot be construed as a voluntarily leaving employment because the separation occurred prior to military service and the employer-employee relationship is not continuous\* during military service.

This statute also confers re-employment rights on a person who, in order to perform "training and service" in the Armed Forces, "has left or leaves a position".

However, the limitation on the application of State law does not apply to persons who, under Federal statute, do not have to apply for re-employment but have the right to keep their positions with their pre-service employers during military service or during the period required to report for physical examination, entrance on service, or induction into the service. Their failure to report for work as required by Federal law can be deemed to be a voluntary quit because the employer-employee relationship with the pre-service employer continues. Such persons fall into two categories:

(1) Reservist and persons in the National Guard who perform active duty training or inactive duty training. Such persons must, upon request, be given a leave of absence by their employers; and

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(2) Any employee required to report for physical examination, entrance on service, or induction into the service. Such persons are given a leave of absence by statute and must be permitted to return to their pre-service position if, after examination, they are accepted but not immediately inducted; or do not enter service at that time; or are rejected. The statutory leave continues until the person is accepted or rejected for military service.

Persons in these categories must report for work at the beginning of their next regularly scheduled work period after the time necessary to travel to the place of employment following release from duty, completion of examination and acceptance, failure to enter service, or rejection. This time may be extended under certain contingencies enumerated in the statute.

**b. Subsistence Allowances for Vocational Rehabilitation Training.** Ex-servicemembers may qualify for subsistence allowances, provided by Federal law (38 U.S.C. Chapter 31), when they take vocational rehabilitation training. Under the Federal UCX law (5 U.S.C. 8525(b)(1)), a claimant is not eligible for UCX benefits or for the UCX portion of a joint claim for any week, or day(s) within a week, for which he/she receives such allowances from the Department of Veterans Affairs.

State law applies on whether: (1) waiting-week credit may be allowed for a UCX claim; or (2) State-UI, UCFE and joint UI-UCFE benefits may be paid during a period for which a claimant receives such allowances.

**c. War Orphans' (or Widows') Educational Assistance Allowances.** Ex-servicemembers may qualify for educational assistance allowances, provided by Federal law (38 U.S.C. Chapter 35), if they are war orphans or widows (or, in some cases, children and wives of permanent, totally disabled veterans). Under the Federal UCX law (5 U.S.C. 8525), a claimant is not eligible for UCX benefits or for the UCX portion of a joint claim for any week, or day(s) within a week, for which he/she received such allowances from the Department of Veterans Affairs.

**d. Other Educational Assistance Allowances.** Ex-Servicemembers may also qualify for educational assistance allowances, provided by Federal law (38 U.S.C. Chapter 34), and payable by the Department of Veterans Affairs. Federal law does not identify such allowances as disqualifying for UCX benefit purposes or require that such allowances will disqualify a

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claimant for UCX benefit entitlement, or that UCX benefits need be reduced. Whether or not these educational assistance allowances are disqualifying or deductible from UCX benefits will be determined according to a particular State's law applicable to UI claims.

**NOTE:** State agencies should be aware of the distinction between allowances payable under Chapters 31 and 35, Title 38, U.S. Code, and those payable under Chapter 34 of that Title.

**e. Department of Veterans Affairs Disability Pay.** Federal law does not require a deduction from UCX benefits for military service connected disability compensation payable under 38 U.S.C. Chapter 11 by the Department of Veterans Affairs because it is based on the percentage of disability sustained by the individual rather than on the previous work performed by the individual, the relationship to the level of prior remuneration, or the length of past service.

**f. Military Severance or Separation Pay.** Federal law does not require that receiving severance or separation pay related to active service with the U.S. Armed Forces will disqualify a claimant for UCX benefit entitlement or reduce UCX benefits. Whether or not such pay is disqualifying or deductible from UCX benefits will be determined according to the provisions of State law.

The military awards nondisability severance or separation pay and disability severance or separation pay. Nondisability severance or separation pay is authorized only for officers in regular and reserve military service, both commissioned and warrant officers, and reserve enlisted personnel involuntarily discharged, released, or otherwise not continued in military service after at least five years of continuous active duty. Disability severance or separation pay is a special lump-sum payment made to members of the armed forces separated from active military service because of minor physical disabilities that, while substantial enough to adversely affect their abilities to perform the duties of their respective offices or grades, are not so severe as to seriously impair their civilian earnings capacities. Such disability severance and separation payment is to assist such personnel in their transitions back to civilian life.

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Federal military separation, dismissal, or severance payments, including those under the Voluntary Separation Program (VSI) and Special Separation Benefit (SSB) programs, are not "Federal military wages" as defined at 20 CFR 614.2(h). These payments do not represent pay and allowances in cash or in kind for Federal military service, and are not computed on the basis of the pay grade of the individual at the time of his/her latest discharge or release in accordance with the Schedule of Remuneration applicable at the time his/her first claim is filed.

**g. National Guard and Reserve Earnings.** SESAs whose State UI law provides for the reduction of National Guard or Reserve earnings from the UI WBA should cover this requirement in BRIS and clearly note this State law requirement in informational material provided to claimants. SESAs should also include this requirement on weekly claims forms.

**8. Nonmonetary Determinations.**

**a. Applicability of State Law Provisions.** Federal Law (5 U.S.C. 8502(b)) and agreements between the U.S. Secretary of Labor and State employment security agencies require, with specified exceptions, that ex-servicemembers receive unemployment benefits in the same amount and under the same terms and conditions that apply to individuals claiming UI under the law of the State to which such military service and wages are assigned or transferred. It is important to ensure that UCX benefits are administered according to this requirement.

**b. Limitations on Use of State Law Disqualification Provisions.** A State agency will apply the eligibility or disqualification provisions of the State law, including cancellation of wage credits or reduction of benefits, on

- (1) Ability to Work;
- (2) Availability for work;
- (3) Refusal of suitable work as it relates to offer(s) of civilian employment; and

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(4) Reason for separation from civilian employment during or subsequent to active military service.

The State agency will not apply the eligibility or disqualification provisions of the State law with respect to the separation from active military service or the pre-service employer that affect the determination and use of military employment and wages or the payment of benefits. The fact that an ex-servicemember could have re-enlisted, but did not after completing a period of active military service, or that he/she voluntarily requested release or retirement, after serving a period (or length) of time in the military, is not considered a basis for holding that they are not available for, or not actively seeking work, or for the assessment of a disqualification for "voluntary quit" or "refusal of suitable work", or for the assessment of a "earnings requalification requirement".

c. Nonmonetary Determinations. UCX claimants will be given notices of nonmonetary determinations in the same manner that UI and UCFE claimants are given such notices. The branch of military service for which the claimant served, and any Federal military or civilian agency which employed a UCX claimant as a civilian, should receive a notice of claim filing, and any subsequent notice of nonmonetary determination, in the same manner as State law or procedures/practices require such notices to State covered employers.

9. Appeal of State Agency Determination. Appeals from determinations of the State agency in UCX cases, will be made to the same State administrative appellate authority that handles regular State UI appeals. Appeal forms and decisions will contain the designation "UCX".

a. Applicability of State Appeal Procedures. As provided in 20 CFR 614.7, determinations involving entitlement to, and eligibility for, UCX may be appealed and reviewed under the same procedures as determinations under the applicable unemployment insurance law. UCX decisions will follow the format and criteria used for regular State UI decisions. However, UCX findings, as shown on DD Form(s) 214/215 and ETA 843, must be identified and included, preferably by direct quotation, in the appeal decision's statement of facts. The same time periods for filing appeals, notices of hearing, etc., used for UI appeals will be used for UCX appeals.

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Appeals on interstate UCX claims will be processed under interstate appeals procedures. If the liable State procedure requires redetermination before appeal, the agent State may use Form IB-101, Notice of Interstate Appeal, to file the request. The form should be identified as a request for redetermination, and will bear the notation "UCX", as appropriate.

If additional information or review is being requested of an Armed Forces branch, the claimant's right of redetermination/appeal should be reserved pending completion of Federal action. For example, the State agency may take the claimant's appeal when the request for review is filed and suspend action on the appeal pending receipt of the military branch's report. Alternative methods may be used if the claimant's right to appeal is not adversely affected. However, no hearing should be scheduled pending a reply from the appropriate branch of the Armed Forces.

b. Appeal Decisions. A State agency may use its regular benefit appeal forms if they show the symbol "UCX" to indicate that the State administrative appellate authority appeal decision is connected with an ex-servicemember's claim for benefits under Federal law (5 U.S.C Chapter 85). In hearing appeals and issuing decisions, the information obtained from the branch of service must be accepted as final and conclusive.

e State agency is required to send a copy of all UCX appeal decisions to the appropriate branch of the Armed Forces (or NOAA), and additional copies to the National Office, and the appropriate Regional Office (Refer to Addresses of Military Appeals Tribunals on pages IV-22 and IV-23 of this chapter).

10. Appeal of Federal Findings. If a claimant disagrees with the Federal findings of the branch of military service, he/she may request reconsideration of such finding by appealing directly to the branch of service or applying through the State agency before the period elapses for redetermination of entitlement or appeal under the State law.

Any information on the corrected military document, issued to the claimant as a result of the appeal, will constitute findings of such branch of the military service which are final and conclusive for UCX purposes.

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a. Appeal Directly to Branch of Service. A claimant may file an appeal directly with the Branch of Service. Individuals may obtain information pertaining to the evidence to be submitted through the service officer of any veterans organization, a Department of Veterans Affairs (formerly known as the Veterans Administration) contact office, or State veterans affairs commission or bureau representative, or in some localities, from the Red Cross. A direct appeal to the Branch of Service should be filed and the State agency notified prior to the end of the appeal period under the State law.

If the claimant is appealing due to a determination issued by the State agency, follow the procedures in section 10.a. above to protect the claimants benefit rights.

b. Addresses of Military Appeals Tribunals.

| <u>Branch</u> | <u>Address</u>   |
|---------------|--|
| Air Force     | HQ AFMPC/DPPTU<br>ATTN: Mary Stigers<br>550 C Street West Suite 11<br>Randolph AFB, TX 78150-4713*   |
| Army          | Army Board for Corrections<br>of Military Records<br>1941 Jefferson Davis Highway<br>Crystal Mall 4<br>Arlington, VA 22202-4508                  |
| Coast Guard   | Commander<br>Coast Guard Personnel Command<br>2100 Second Street, S.W.<br>Washington, D.C. 20593-0001<br>CGPC-Adm-3<br>Attention: Valeria Smith* |

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|   |   |
|---|---|
| Marine Corps  | Commandant<br>U.S. Marine Corps<br>(Code MMSB-10)<br>2008 Elliot Road<br>Quantico, Virginia 22134-5030  |
| Navy  | Bureau of Naval Personnel<br>Attn: Karen Stanton<br>UCX Liaison Officer<br>5720 Integrity Drive<br>Millington, TN 38055-3120*                 |
| National Oceanic<br>and Atmospheric<br>Administration | NOAA Commissioned Personnel<br>Center<br>1315 East-West Highway<br>Room 12100<br>Silver Spring, Md. 20910-3282<br>Attention: Steve Eisenberg* |

c. Appeal Filed Through the State Agency. If the claimant disagrees with a determination which is based on Federal findings and the claimant also disagrees with the Federal findings, the State agency should assist the claimant with filing of an appeal, and send the request together with any supporting information to the appropriate branch of service. To protect the claimant's UCX rights, the agency will also assist the claimant with filing an appeal of the agency determination. However, when such an appeal is filed, no hearing will be scheduled by the State until the appropriate branch of the service replies. Upon receiving notice of the action from the military service, the State agency will promptly issue a determination or redetermination to the claimant or will schedule a hearing on the appeal, whichever is appropriate.