

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

ADVISORY: UNEMPLOYMENT INSURANCE PROGRAM LETTER NO. 14-16

TO: STATE WORKFORCE AGENCIES

FROM: PORTIA WU /s/
Assistant Secretary

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

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

2. **References.**

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

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

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

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4. **Analysis of New Provisions.**

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

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

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

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

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

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

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

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

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

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

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

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

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

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