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Unemployment Compensation for Former Federal Employees and Military Servicemembers

Background

Unemployment Insurance (UI) is a joint federal-state system that provides income support through weekly benefit payments. The UI system's two main objectives are to provide temporary and partial wage replacement to involuntarily unemployed workers and to stabilize the economy during recessions (i.e., by providing income support to unemployed workers, who spend this income, maintaining a certain level of economic activity).

The Unemployment Compensation (UC) program provides unemployment benefits to eligible individuals who become involuntarily unemployed for economic reasons and meet state-established eligibility rules. This In Focus provides information specifically about UC benefits for former federal employees (Unemployment Compensation for Federal Employees [UCFE]) and former military servicemembers (Unemployment Compensation for Ex-Servicemembers [UCX]), which are authorized under federal law to provide income replacement similar to UC to these particular populations. Below is a brief discussion of the UC, UCFE, and UCX programs and benefit eligibility. This In Focus also provides summary information on selected policy considerations related to UCFE and UCX.

Unemployment Compensation

The Social Security Act of 1935 (P.L. 74-271) authorizes the joint federal-state UC program to provide unemployment benefits. The UC program provides income support through weekly UC benefit payments. Federal laws and regulations provide broad guidelines on UC benefit coverage, eligibility, and benefit determination, but the specifics are determined by the 50 states, the District of Columbia, Puerto Rico, and the U.S. Virgin Islands. Most states provide up to a maximum of 26 weeks of UC benefits. The U.S. Department of Labor (DOL) provides oversight of state UC programs and state administration of all UI benefits. DOL provides contact information for each state UC agency.

The UC program generally provides benefits to both eligible individuals who are on temporary layoff (furlough) as well as those who experience a permanent job loss. Among other requirements, to receive UC benefits claimants must be able, available, and actively searching for work. UC claimants generally may not refuse suitable work, as defined under state laws, in order to maintain their UC eligibility.

UC for Former Federal Employees

A federal employee who is furloughed or laid off may be eligible for UCFE (U.S.C. §§8501-8509). States are required to operate the UCFE program under the same

terms and conditions that apply to regular state UC. UCFE eligibility, like regular UC eligibility, is determined under the laws of the state in which an individual's official workplace is located. Thus, two former federal employees with the same earnings and work history may qualify for different amounts of benefits if they file for UCFE based on employment in different states. Employees in a probationary period who are separated from federal service may be eligible for UCFE and/or UC if their earnings history meets the state's minimum earnings requirements and other state eligibility requirements.

UC for Former Military Servicemembers

Individuals who served on active duty in the U.S. Armed Forces or the Commissioned Corps of the National Oceanic and Atmospheric Administration (NOAA) may be eligible for unemployment benefits through the UCX program (5 U.S.C. §§8521-8525) after they voluntarily separate from service. The Emergency Unemployment Compensation Act of 1991 (P.L. 102-164) provides that ex-servicemembers be treated the same as other unemployed workers with respect to benefit levels, waiting periods for benefits, and benefit durations. If a former servicemember was serving in the active component, in order to be eligible for UCX he or she must have left military service under honorable conditions and either have completed a full term of service or have been released early under a qualifying reason. If the former servicemember was a reservist, he or she must have been on active duty (or Space Force active status) for at least 180 continuous days.

Unlike the regular UC program, the state laws that determine the UCX benefit are based on where the applicant is physically present when filing the claim (rather than the last duty station). Therefore, UCX applicants would contact the state where they are physically located when filing for UCX benefits. UC eligibility criteria and benefits vary by state. Former servicemembers must meet the same criteria that civilian workers are required to meet for their UC benefit eligibility. Thus, two former servicemembers with the same earnings and work history may qualify for different amounts of benefits if they file for UCX in different states. The equivalent military measurement of wages and time in service are used to determine eligibility and benefit levels.

Policy Considerations

Congress may be interested in several policy issues related to UCFE and UCX benefits, including Extended Benefits (EB), financing, combined claims, the effect of any retirement payments, the availability of these unemployment benefits for affected employees during a government shutdown, and UCX and the role of training.

Extended Benefits

The Federal-State Extended Unemployment Compensation Act of 1970 (P.L. 91-373) established the EB program to provide additional weeks of unemployment benefits if high unemployment exists within a state. After entitlement to UC, UCFE, or UCX is exhausted, unemployed workers—including former federal employees and former military servicemembers—may qualify for additional weeks of EB. The EB program, also administered by states, may provide up to an additional 13 or 20 weeks of benefits, depending on worker eligibility, state law, and economic conditions.

Financing

With the exception of UCFE and UCX, UC benefits are funded through employer payroll taxes and the EB program is funded 50% by the federal government and 50% by the states through employer payroll taxes.

Unlike UC benefits, UCFE and UCX benefits and any subsequent EB benefits based on prior federal or military service are not paid for by employer payroll taxes. Instead, a state submits the amount of UI benefits paid by the state to the former employing agency for reimbursement. For example, any UCX benefit payments to a former Air Force servicemember would be charged to the Air Force. That service branch then would reimburse the state for the UCX benefits out of its operating budget. Likewise, any UCFE benefit paid to a former civilian employee of the Department of Defense (DOD) would be paid from a transfer of funds from DOD's operating budget.

These UCFE and UCX reimbursements (as well as any EB payments based on federal or military service) flow as transfers from the appropriate service branch's or federal agency's appropriated funds into the Unemployment Trust Fund (UTF) account for such reimbursements: the Federal Employees Compensation Account (FECA). These FECA amounts subsequently provide transfers of the funds to the proper state account within the UTF.

Combined Claims

A former federal employee or former military servicemember may receive a combined UI benefit (e.g., a combination of UC and UCFE or UC and UCX) if the unemployment benefit is based on a period that included federal or military service as well as other employment. This situation is generally referred to as a *combined claim*. In general, based upon each state's law, only the amount of the benefit that is attributable to federal or military service would be charged to the agency for the purposes of financing UCFE or UCX.

Retirement Payments

Program guidance interpreting federal tax law requires all states to reduce unemployment benefits (UC, UCX, UCFE) by the amount of any pension or similar payment if that retirement payment and unemployment benefit are based on work with the same employer and the retirement payment is 100% employer funded and not made as a lump sum. (Military retired pay is 100% employer funded.) States may

implement additional retirement pay provisions. Most states deduct pension and retirement payments proportionally based on the rate of contributions made by the former employee and the employer (civilian federal retirement benefits include an employee contribution).

Availability of UI Benefits During a Government Shutdown

UC, UCFE, and UCX are classified as mandatory entitlements and are not funded through annual appropriations. Thus, all UI benefits, including UCFE and UCX, must be paid to eligible individuals.

During a government shutdown due to a lapse in appropriations, an affected federal agency may *except* certain workers from furlough based on the Office of Management and Budget's guidance. These excepted workers are required to report for work and perform duties, but their pay is delayed until appropriations are enacted. According to guidance issued by DOL on November 22, 2021, excepted federal employees who are performing services (but whose payment for that work is delayed) would generally be ineligible for UCFE benefits based on states' definitions of unemployment.

However, retroactive pay for furloughed federal employees and federal employees excepted from furlough was permanently authorized under P.L. 116-1, the Government Employee Fair Treatment Act of 2019 (enacted January 16, 2019). Therefore, under current law, UCFE payments made to a former federal employee during a shutdown may be (1) deemed an overpayment once that federal employee is retroactively paid and (2) subject to state laws regarding UC overpayment recovery.

Active-duty military personnel are considered to be working even if their pay is unavailable, and thus are ineligible for UCX or regular state UC benefits during a government shutdown.

UCX and Training/Education

UCX benefits are not payable during periods in which the former servicemember is eligible to receive certain allowances or educational assistance allowances from the Department of Veterans Affairs, including the Survivors' and Dependents' Educational Assistance Program, the Vocational Rehabilitation and Education Program, and Post-9/11 Veterans Educational Assistance. Participation in the Montgomery GI bill does not preclude receipt of UCX benefits; however, status as a student does limit UC benefit eligibility in most states, and these limitations would extend to workers receiving UCX benefits. Many states exclude workers while they attend school, and some states include vacation periods in that exclusion.

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