


## Chapter 10: Federal programs affecting UI eligibility

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## Section 1: Non-citizen claimants

### A. Statutes

#### G. L. c. 151A, § 25(a)

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—

(a) Any week in which he fails without good cause to comply with the registration and filing requirements of the commissioner ...

#### G. L. c. 151A, § 25(h)

No waiting period shall be allowed and no benefits shall be paid to an individual under this chapter for—

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(h) Any period, after December thirty-first, nineteen hundred and seventy-seven, on the basis of services performed by an alien, unless such alien was lawfully admitted for permanent residence at the time such services were performed, was lawfully present for purposes of performing such services, or was permanently residing in the United States under color of law at the time such services were performed, including an alien who was lawfully present in the United States as a result of the application of the provisions of section 203(a)(7) [repealed and replaced with sections 207<sup>[1]</sup> and 208<sup>[2]</sup>] or section 212(d)(5)<sup>[3]</sup> of the Immigration and Nationality Act; provided, that any modifications to the provisions of section 3304(a)(14) of the Federal Unemployment Tax Act which specify other conditions or other effective dates than stated herein for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the Federal

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<sup>1</sup> Section 207 of the Immigration and Nationality Act, 8 U.S.C. § 1157, deals with the annual admission of refugees and the admission of emergency situation refugees.

<sup>2</sup> Section 208 of the Immigration and Nationality Act, 8 U.S.C. § 1158, deals with applications for asylum, including authorizing aliens granted asylum “to engage in employment in the United States[.]” 8 U.S.C. § 1158(c)(1)(B).

<sup>3</sup> Section 212(d)(5) of the Immigration and Nationality Act, 8 U.S.C. § 1182(d)(5), deals with the parole into the United States by the Attorney General on a temporary basis “for urgent humanitarian reasons or significant public benefit of any alien applying for admission to the United States[.]”

Unemployment Tax Act, shall be deemed applicable under the provisions of this section.

Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to such individual are not payable because of this alien status shall be made except upon a preponderance of the evidence.

**G. L. c. 151A, § 24(b)**

An individual, in order to be eligible for benefits under this chapter, shall—

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(b) Be capable of, available, and actively seeking work in his usual occupation or any other occupation for which he is reasonably fitted;

**42 USC 1320b-7(d)(B)(iii)(2).**

Satisfactory immigration status means an immigration status which does not make the individual ineligible for benefits under the applicable program.

If such an individual is not a citizen or national of the United States, there must be presented either –

- (A) alien registration documentation or other proof of immigration registration from the Immigration and Nationalization Service that contains the individual's alien admission number or alien file number (or numbers if the individual has more than one number),  
or
- (B) such other documents as the State determines constitutes reasonable evidence indicating a satisfactory immigration status.

## B. Principles

To be eligible for UI benefits, a claimant who is not a U.S. citizen must meet two conditions:

- (1) Services must have been performed while the claimant was in a satisfactory immigration status during the base period, as evidenced by a valid Alien Registration Number (A-Number)<sup>4</sup> or other evidence of satisfactory immigration status (see Satisfactory Immigration Status, below), otherwise the base period wages cannot be used to establish a claim; and
- (2) The non-citizen must be legally authorized to work during the benefit year.

An otherwise eligible non-citizen claimant is presumed eligible for benefits.<sup>5</sup> Accordingly, no determination may be made that an otherwise eligible claimant is ineligible because of alien status “except upon a preponderance of the evidence[.]”<sup>6</sup> But if a non-citizen claimant refuses to provide information needed to establish a satisfactory immigration status, and, therefore, the wages on which the claim is based, the issue should be determined based on the filing and registration requirements of § 25(a). To be considered a refusal, the claimant must declare an intention to not provide the requested documents. Determination of the issue on this basis does not involve the additional preponderance-of-the-evidence required to deny a claim based on a claimant’s status as a non-citizen.<sup>7</sup> If the claimant doesn’t refuse but simply fails to provide the necessary information, it’s a § 24(b) issue, addressed in more detail below.

If a claimant does not establish satisfactory immigration status during the base period of the claim, wages from the base period cannot be used to establish the claim. To establish that they were in satisfactory immigration status during the base period of their claim, claimants must provide DUA with a valid A-Number (or other evidence of satisfactory immigration status). In most cases, the documents

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<sup>4</sup> Alien registration documents issued by USCIS contain a seven or eight digit number preceded by the letter “A” (for example, A24 786 899). Each A-Number is unique and pertains to only one person.

<sup>5</sup> Department of Labor, Unemployment Insurance Program Letter No. 15–78, Attachment I, p. 1 (recognized as still in effect by Department of Labor, Unemployment Insurance Program Letter No. 12–87, p. 2, ¶ E(2)(a), and Department of Labor, Active Unemployment Compensation and Program Letters (August 24, 2012).

<sup>6</sup> 26 U.S.C. § 3304(a)(14)(C).

<sup>7</sup> Department of Labor, Unemployment Insurance Program Letter No. 15–78, Attachment I, pp. 1–2 (recognized as still in effect by Department of Labor, Unemployment Insurance Program Letter No. 12–87, p. 2, ¶ E(2)(a), and Department of Labor, Active Unemployment Compensation and Program Letters (August 24, 2012).

issued by United States Citizenship and Immigration Services (USCIS) have an A-Number that can be verified through the Systematic Alien Verification for Entitlements (SAVE) Program, an inter-governmental information service that allows benefit-granting agencies to verify the immigration status of benefit applicants. Initial or Primary Verification of required information submitted by claimants via UI Online is immediately verified with the United States Department of Homeland Security. If status is not verified during Primary Verification process, a notice is sent to the claimant requesting documents for submittal through a Secondary Verification process.<sup>8</sup>

Non-citizens whose status has not been verified through primary verification must be provided “a reasonable opportunity” to submit evidence of satisfactory immigration status.<sup>9</sup> This reasonable opportunity requirement is satisfied by affording non-citizen claimants at least the same time period permitted for providing other information needed to determine eligibility benefits.<sup>10</sup> DUA “may not delay, deny, reduce, or terminate an individual's eligibility for benefits” because of immigration status until this reasonable opportunity has been provided.<sup>11</sup>

Non-citizen claimants must also be currently available for employment during their benefit year under § 24(b), which means that they **must be legally authorized to work** while claiming UI benefits. Documents submitted to establish current availability are verified through SAVE and adjudicators are responsible for making determinations related to non-citizen authorization to work. To establish current availability under § 24(b), the claimant may choose which documents to provide to DUA from among those listed below in Documents to establish current work authorization. The claimant may choose to provide one document only from List A or one document each from List B and List C. If a claimant chooses to present a document from List A, but is unable to present an unexpired original document, the claimant must provide a receipt or affidavit demonstrating that the claimant has applied to USCIS for a replacement of the document. In the absence of documents submitted, it cannot be established that the claimant is currently available.

Note: Since the Alien Card I-551 is a List A document, in addition to being used to confirm base period entitlement under § 25(h), it also may be used to confirm benefit year entitlement under § 24(b).

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<sup>8</sup> Secondary Verifications is used when indicated by the primary verification system (“initiate secondary verification”), when documentation provided by the alien is suspect or altered, or contains invalid alien registration numbers (A–50,000,000 to A–60,000,000 series), and when designated states are waived from using the primary verification. Secondary verification involves a more thorough search of USCIS files to validate the alien's legal status. USCIS conducts an in-depth search of the Alien Control Index. ET Handbook No. 301 (5<sup>th</sup> ed. July 2005), p. VI–22.

<sup>9</sup> 42 U.S.C. § 1320b–7(d)(4)(A)(i).

<sup>10</sup> Unemployment Insurance Program Letter No. 07—98, p. 1, ¶ 3.

<sup>11</sup> 42 U.S.C. § 1320b–7(d)(4)(A)(ii).

## **C. Satisfactory immigration status**

To have been in satisfactory immigration status at the time services were performed, a non-citizen must meet one of the following conditions:

- The claimant was lawfully admitted for permanent residence (including conditional residence) at the time such services were performed;
- The claimant was lawfully present for purposes of performing such services; or
- The claimant was permanently residing in the U.S. under color of law (PRUCOL) at the time such services were performed.

### **1. Permanent resident**

A person lawfully admitted for permanent residence will have an alien status registration card (commonly known as a green card), a passport stamp stating “lawfully admitted as a permanent resident”, reentry permit, service files, arrival manifests, arrival records, service index cards, immigrant identification cards, certificates of registry, or a declaration of intention.

Note: Alien status registration cards are now being issued for ten-year periods. It is the card itself and not the status that expires at the end of ten years. An employer who discharges a claimant for failure to acquire a new “green card” for continued employment after the card on file had expired, may violate federal law in committing an unfair immigration-related practice under 8 USC 1324(b). Consequently, a claimant cannot be denied benefits for failing to comply with this unlawful request.

### **2. Conditional residence**

Conditional residence status is given for a two-year period to a person who adjusts his or her status based on a family petition within two years of the establishment of the family relationship. This status is evidenced by a passport stamp or alien registration card with a two-year expiration date. The conditional resident may remove the condition on status, and become a permanent resident, by filing a petition to remove the conditions on residence within 90 days prior to expiration of the conditional status. Evidence of this would be an application to remove the condition on status, a receipt from the USCIS indicating that such a petition was filed, or an approval notice indicating that the condition on status has been removed.

### **3. Temporary resident status**

If a non-citizen is granted temporary resident status, that individual is in the process of becoming a U.S. citizen. Continuing authorization to work, as evidenced by an I-688 card, accompanies this status, and even though this card indicates availability for work, the adjudicator must still determine monetary

eligibility during the base period. The status of temporary residence or granting of work authorization does not confer retroactive legal presence for purposes of monetary eligibility.

After 18 months of temporary resident status, a non-citizen has one year to apply for adjustment of status to that of lawfully admitted for permanent residence.

#### **4. Permanent resident under color of law (PRUCOL)**

The third category describes claimants who are permanent residents under color of law (PRUCOL). Such claimants are in proper immigration status and should be paid benefits if otherwise eligible. For a claimant to be considered PRUCOL, USCIS must know of and acquiesce in the non-citizen's presence in the U.S. Claimants may provide any documentation from USCIS indicating its knowledge of the claimant's presence in the U.S., that the claimant has provided an address so that USCIS knows of the claimant's whereabouts, and that USCIS has not taken steps to deport the claimant.

In addition, the non-citizen must be permanently residing in the U.S. "Permanent" means a **continuing** presence, even though it could require renewal or be revoked by USCIS. The determination of PRUCOL status is made based on the documents presented. Note that if a claimant has current work authorization, but did not have such work authorization during the base period, the individual may have been PRUCOL during that time.

PRUCOL includes, but is not limited to, the following:

- Non-citizens admitted into the United States as **conditional entrants** under § 203(a)(7). Document: USCIS form I-94 endorsed "Refugee — Conditional Entry".
- Non-citizens paroled into the United States, including **Cuban/Haitian Entrants**. These are non-citizens paroled at the discretion of the U.S. Attorney General. Documents: USCIS form I-94 with notation that the non-citizen was paroled under § 212(d)(5) of the Immigration and Nationality Act (INA), or as to Cuban/Haitian entrants, "Cuban/Haitian entrants (status pending)" Although these forms may bear the notation "Employment authorized until January 15, 1981," Cuban/Haitian entrants are admitted under § 212(d)(5) of the INA.
- Asylees under § 208 of the INA. The USCIS has determined that the non-citizen faces persecution or has a well-founded fear of persecution in their home country. Also includes non-citizens with asylum applications pending. Documents: USCIS form I-94 or a letter establishing such status, or I-688B, or proof of filing an asylum application.



- Non-citizens admitted as **refugees** under § 207 of the INA. Documents: USCIS form I-94 so endorsed, or I-688B.
- Non-citizens granted deferred action status who have been so notified by USCIS in writing that deportation will not be pursued at the present time. Also includes non-citizens with deferred action pending. Documents: USCIS form I-210 or an USCIS letter showing that departure has been deferred, or I-688B.
- Registry applicants: entrants before 1/1/72.<sup>12</sup>
- Violence Against Women Act (VAWA) petitioners.<sup>13</sup>
- Class members: ABC settlement.<sup>14</sup>
- Immediate relative petition filed.
- Adjustment of status application pending.

Non-citizens who have been granted or have applications pending for one of the statuses listed above may also satisfy PRUCOL.

Claimants may document that they are PRUCOL by providing documentation from USCIS proving grant of status; the application itself or a receipt from an application for one of the following:

- Withholding of Deportation,
- Temporary Protected Status,
- Family Unity, Parole,
- Voluntary Departure,
- Stay of Deportation, Cancellation of Removal,
- Suspension of Deportation,
- Amerasian,
- Deferred Enforced Departure.

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<sup>12</sup> “Registry is a provision of immigration law that enables certain unauthorized aliens in the United States to acquire lawful permanent resident status. It grants the Attorney General the discretionary authority to create a record of lawful admission for permanent residence for an alien who lacks such a record, has continuously resided in the United States since before January 1, 1972, and meets other specified requirements.” See <http://congressionalresearch.com/RL30578/document.php> (last viewed 6/5/2019).

<sup>13</sup> Violence Against Women Act of 1994 (VAWA)(Title IV, § 40001-40703 of the Violent Crime Control and Law Enforcement Act of 1994, H.R. 3355) signed as Pub. L. 103–322.

<sup>14</sup> American Baptist Churches v. Thornburgh, 760 F. Supp. 796 (N.D. Cal. 1991).

If the document has an A-Number, process through Primary Verification. If there is no A-Number document, use Secondary Verification for any written correspondence from USCIS indicating PRUCOL status.

**a. Temporary protected status (TPS)**

The Secretary of Homeland Security may designate a foreign country for temporary protected status (TPS) due to conditions in the country that temporarily prevent the country's nationals from returning safely, or in certain circumstances, where the country is unable to handle the return of its nationals adequately. USCIS may grant TPS to eligible nationals of certain countries (or parts of countries), who are already in the United States. Eligible individuals without nationality who last resided in the designated country may also be granted TPS.

During a designated period, individuals who are TPS beneficiaries or who are found preliminarily eligible for TPS upon initial review of their cases (*prima facie* eligible) can obtain an employment authorization document (EAD).

Often there is a considerable lag between the grant or extension of TPS status and an update to the Employment Authorization Document, especially where extensions of TPS status have been achieved through litigation (most recently for the following designated countries: El Salvador, Haiti, Honduras, and Nicaragua). Consequently, an expired EAD does not necessarily mean that the claimant no longer has work authorization. This information is available in the Federal Register and the USCIS website.

**b. Deferred enforced departure (DED)**

The President may authorize Deferred Enforced Departure (DED) for citizens of designated countries as part of the President's power to conduct foreign relations. Although DED is not a specific immigration status, individuals covered by DED are not subject to removal from the United States, usually for a designated period of time.

Work authorization may be provided as a benefit of DED for the nationals of certain countries.

**D. Documents relating to immigration status and work authorization**

If a claimant is not a U.S. citizen, the claimant must present either an A-Number document, generally held by permanent residents, or reasonable evidence of satisfactory immigration status as explained below.

## 1. Work authorization and identity

The following are acceptable A-Number documents that a non-citizen may use to establish work authorization and identity:

- Alien Registration Receipt Card (I-551)<sup>15</sup>
- Alien Registration Receipt Card (AR-3A)
- Memorandum of Creations of Record of Lawful Permanent Residence (I-181a)
- Fee Receipt for employment authorization application
- Unexpired Employment Authorization Card (I-688A or I-688B or I-766)
- Temporary Resident Card (I-688)
- Unexpired Re-Entry Permit (I-327)
- Unexpired Refugee Travel Document (I-571)
- Unexpired Arrival-Departure Record (I-94). (This document does not always contain an A-Number.)
- Receipt showing petition to remove conditional status has been filed and been extended.
- Passport bearing stamp indicating lawful admission for permanent residence or conditional status.

## 2. Documents to establish current work authorization

Claimants who are not U.S. citizens must have documents establishing legal authorization to work to show that they are currently available for employment as required by § 24(b). (See lists A, B and C below.) A claimant satisfies this requirement by presenting:

- at least one document from List A; or
- one document from each of List B and List C; provided
- that the document(s) appear to be genuine.

*The claimant has the right to choose which document(s) to submit.* If a claimant submits an *Employment Authorization Document (I-688A, I-688B, or I-766)* to establish satisfactory immigration status during the base period of the claim and the card has expired, the claimant does not have to get this particular card renewed to establish *current availability* to work and eligibility for UI. The

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<sup>15</sup> The *I-551* is the revised edition of *I-151*. A date prior to 1978 indicates indefinite validity. An *I-551* with a two-year expiration date evidences conditional status, which may be extended. A ten-year expiration date indicates permanent resident status. The expiration date refers to the date the card must be renewed *and not the individual's status*.

claimant must be given the option of presenting alternative documents from the list below.

If a claimant chooses to present a document from List A, but is not able to present an unexpired original document, the claimant must provide a **receipt** or **affidavit** demonstrating that the claimant has applied to USCIS for a replacement of the document. The receipt from USCIS or affidavit attesting to such application for a replacement document must be presented within **three weeks** from the date of filing a claim.

If an **original** USCIS document from List A has not been presented within *90 days* of the application for its replacement with USCIS, because the USCIS has not issued an original document to the claimant, give the claimant a copy of the legal services organization list. The claimant must present an original USCIS interim employment authorization document or have made substantiated efforts to obtain interim employment authorization no later than 100 days from the date of the application for the A-list document. (Lawful permanent residents have 180 days to submit *I-551* after presenting a temporary *I-551*.)

**TN Status** is a special United States immigration status unique to citizens of Canada (and under similar but not identical circumstances, citizens of Mexico). TN status was introduced pursuant to the 1994 North American Free Trade Agreement (NAFTA). TN stands for “Treaty NAFTA.” It allows Canadian and Mexican citizens the opportunity to work in the United States in a limited number of specific occupations. Within the designated occupations, a Canadian or Mexican citizen can work for up to three years. TN status may be renewed indefinitely in three-year increments. A claimant who provides proof of being a Canadian citizen who has previously been granted TN status satisfies the requirements of § 24(b) so long as the claimant is actively seeking suitable work.

**Acceptable documents for UI purposes to establish availability under § 24(b)**

<b>List A: Work authorization <i>and</i> identity</b>
<i>U. S. Passport</i> (unexpired or expired)
<i>Permanent Resident Card</i> or <i>Alien Registration Receipt Card (Form I-551)</i>
An unexpired foreign passport with a temporary <i>I-551</i> stamp
An unexpired Employment Authorization Document that contains a photograph ( <i>Form I-766, I-688, I-688A, I-688B</i> )
An unexpired foreign passport with an unexpired <i>Arrival-Departure Record, Form I-94</i> , bearing the same name as the passport and containing an endorsement of the non-citizen's non-immigrant status, if that status authorizes the non-citizen to work for the employer.

**Acceptable documents for UI purposes to establish availability under § 24(b)**

<b>List B: Identity only</b>
Driver's license or ID card issued by a state or outlying possession of the United States provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
ID card issued by federal, state, or local government agencies or entities provided it contains a photograph or information such as name, date of birth, sex, height, eye color, and address
School ID card with a photograph
Voter's registration card
U.S. Military card or draft record
Military dependent's ID card
U.S. Coast Guard Merchant Mariner Card
Native American tribal document
Driver's license issued by Canadian government authority.

For persons under age 18 who are unable to present a document listed above:

- School record or report card
- Clinic, doctor or hospital record
- Day-care or nursery school record

### **Acceptable documents for UI purposes to establish availability under § 24(b)**

#### **List C: Work authorization only**

U.S. Social Security card issued by the Social Security Administration (other than a card stating it is not valid for employment)

Certification of Birth Abroad issued by the department of State (*Form FS-545* or *Form DS-1350*)

Original or certified copy of a birth certificate issued by a state, county, municipal authority or outlying possession of the United States bearing an official seal

Native American tribal document

U. S. Citizen ID Card (*Form I-197*)

ID Card for use of Resident Citizen in the United States (*Form I-179*)

Unexpired employment authorization document issued by DHS (other than those listed under List A)

If a claimant chooses to present documents from list B and C, these documents must be presented within **three weeks** from the date the claimant filed the claim.

Note: These documents establish **availability for work only**. The adjudicator must determine that the claimant was in satisfactory immigration status during the base period of the claim *and* that the claimant is currently available to work before approving the claim.

### **3. Reasonable evidence of immigration**

Reasonable evidence of immigration status for purposes of determining UI eligibility includes any written document issued by USCIS or a court which indicates lawful status in the base period and during the benefit year, whether or not there is an A-Number attached. Other documents such as marriage records

or court orders may indicate the identity, immigration status, or U.S. residence of the holder. (The holders of this type of document/evidence are generally *not* permanent residents, but may still be legally authorized to work.)

In cases where the claimant once had a right to work and then lost that privilege (for example, the claimant's work permit expired), all or part of the earnings may be subject under § 25(h), but the claimant would be disqualified for benefits under §24(b) because the claimant no longer has the legal right to enter the labor market as a worker, and is thus unavailable, unless and until the claimant is re-authorized to work in the U.S.

## **E. Policies and procedures**

### **1. Verification process**

All applicants for UI benefits must declare in writing under penalty of perjury, whether they are U.S. citizens, non-citizens and foreign nationals. Non-citizens must present immigration documentation which must be verified with DHS/USCIS via the SAVE program. Where a claimant cannot provide documents that can be verified using SAVE, the claimant should be provided a reasonable opportunity to submit other evidence of satisfactory immigration status.

DHS/USCIS interface verification is a same-day transaction. When a claimant indicates that he or she is a non-citizen and does not provide or enter all requested information during the initial claims-taking process, a work authorization issue (SAVE/Not Legally Authorized) will be created. A flag issue also may be created based on expiration dates provided. SAVE issues are created based on different sub-types, such as Alien Name Discrepancy, Institute Additional Verification and Not Legally Authorized to Work. Fact-finding is generated in the UI Online system, requesting copies of DHS/USCIS documents from the claimant for verification purposes. If otherwise eligible, benefits should be paid during the initial verification process.

The claimant should return the documents within three weeks by mail as instructed. The fact-finding cover letter and the DHS/USCIS documents will be scanned into the UI Online system and attached to the particular issue(s).

An adjudicator is assigned to review information provided by the claimants in UI Online. Name, date of birth, Alien registration number, and document types will be verified by E-Verify first then Web3.<sup>16</sup> Adjudicators will process secondary or third verifications by submitting copies of all DHS/USCIS documents in the claim for review when necessary to DHS/USCIS. To make legal determinations,

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<sup>16</sup> Web3 is the software interface that the SAVE Unit uses to communicate with the Department of Homeland Security.

adjudicators will apply all federal and state laws that govern provisions of this issue to consider benefit eligibility.

Verification process with DHS/USCIS is required when a non-citizen files a new, reopened, or additional claim.

## **2. Failure or refusal to produce documents**

If a non-citizen claimant fails or refuses to provide information needed to establish a satisfactory immigration status, and, therefore, the wages on which the claim is based, the issue should be determined based on the filing and registration requirements of § 25(a).<sup>17</sup> If a claim is denied because the claimant did not produce necessary documents, the claimant may request a redetermination or appeal the decision, and submit the documents at that time. If the appeal or request for a redetermination is timely, the adjudicator should review the documents and apply the procedures described above. Late appeals will be adjudicated through the UI Online system, following current procedures for processing appeals.

## **3. Lost or stolen documents**

Non-citizens who state that their immigration documents were lost or stolen should be referred to legal services or an attorney referral service for assistance with requesting replacement documents. A number of USCIS forms may be filed to request a replacement document, depending upon the type of document sought (*I-90 form* is used only to replace an *alien status registration card/I-551*). Continue to pay benefits to the claimant as long as the claimant presents a USCIS-authorized receipt, or a copy of the original document, to be verified. In addition, a non-citizen who becomes a Permanent Resident before the age of fourteen is required to replace his or her card. Continue to pay benefits to the claimant as long as the claimant presents an USCIS-authorized receipt, or a copy of the original document, to then be verified.

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<sup>17</sup> Department of Labor, Unemployment Insurance Program Letter No. 15–78, Attachment I, pp. 1–2 (recognized as still in effect by Department of Labor), Unemployment Insurance Program Letter No. 12–87, p. 2, ¶ E(2)(a), and Department of Labor, Active Unemployment Compensation and Program Letters (August 24, 2012).



## Section 2. UCFE — Federal employee claimants

### A. Nonmonetary determinations – UCFE

Federal employees may claim benefits under Chapter 85 of Title 5 U.S. Code (known as a UCFE claim). All nonmonetary determinations and redeterminations for UCFE claimants should be made as they would be for any claimant pursuant to state law, with the exception of procedural differences discussed in this section.

For purposes of adjudication, the federal government is a single employer. Even though a claimant may have worked for more than one agency, the agency involved in the separation is considered the only one for nonmonetary issues.

Determinations regarding the reason for termination, amount of federal wages, and period(s) of federal employment are made in accordance with the state law. Therefore, the findings of a federal agency are not considered final or conclusive. But determinations regarding what constitutes federal service, federal wages, and the state to which federal wages are assigned are made according to federal laws and regulations.

#### 1. Procedures

##### a. Notice of a nonmonetary issue

When a former federal employee files a new claim for unemployment benefits, the UI Online system will automatically send a *Form ES-931 (Request for Wage and Separation Information — UCFE)* to the relevant federal agency.

##### b. Return of *Form ES-931*

When a federal agency returns a *Form ES-931* with information that indicates that there is a non-monetary issue, the form will be filed electronically on UI Online. It can be viewed by going to “Monetary”, and then to “Military/Federal Wage Information”, or it may be found in the Fact Finding.

If necessary, obtain a rebuttal statement from the claimant. If no further information is needed, make a determination in accordance with state law.

If *Form ES-931*, *931-A*, or *ES-934* reports that the claimant is “still on rolls” pending removal, adjudicate the separation as a discharge.

##### c. Non-return of *Form ES-931*

If the federal agency does not return *Form ES-931* within 12 calendar days of the date of request, process *Form ES-935 (Claimant’s Affidavit of Federal Civilian Service, Wages, and Reason for Separation)* and determine any nonmonetary issue based on the information provided on the Notification of Personnel Action given to the claimant by the employer (referred to as a

*Standard Form (SF) 50*) or obtained through regular fact-finding procedures. Do not mail a notice of determination to the federal agency until *Form ES-934* is received.

If the claimant does not present a *Standard Form 50* or similar form, or if the claimant's statement of facts does not agree with the information on the *Standard Form 50*, send a *Form ES-934* (Request for Information or Reconsideration of Federal Findings) to the federal agency for additional information. (See below for how to do this.) Do not send a notice of determination unless the agency returns *Form ES-934*.

Note: The Federal government is never considered 'late'; therefore, whenever the Federal government returns forms, the forms should be processed and a determination sent to the parties.

#### **d. Request for reconsideration of federal findings (ES-934)**

If the information on *Form ES-931* is incorrect, incomplete, or contrary to that shown on *Standard Form 50*, or if the claimant so requests, ask the federal agency for additional information by submitting a *Form ES-934* (Request for Information or Reconsideration of Federal Findings). The *ES-934* request is done electronically by going to the claimant's "Monetary" information, and then going to "Military/Federal Wage" information. Do not obtain this information by telephone. If the claimant submits written documentation in support of the request, upload the documentation into Fact-Finding.

When the federal agency returns the *Form ES-934*, compare the reconsidered findings on *Form ES-934* with the corresponding information on *Form ES-934*, and proceed according to the facts.

#### **e. Approved claim**

When the adjudicator approves a claim on any nonmonetary issue, the federal agency should be notified—as long as it has returned *Form ES-931*—and provided a detailed explanation of the reason for the approval. Federal agencies have the same right of appeal as other employers involved in ordinary UI determinations. No *ES-931s* are considered late if they have been returned.

#### **f. Disqualified claim**

If the claimant is disqualified based on any nonmonetary issue, notify the claimant through regular procedures and provide a detailed explanation of the reason. UCFE claimants have the same appeal rights under § 39 as other claimants.

## Section 3. UCX — Ex-service member claimants

### A. Nonmonetary determinations -- UCX

A former service member who files a claim for benefits under Title XV of the Social Security Act as amended by the “Ex-Servicemen’s Unemployment Compensation Act of 1958” (known as a UCX claim) is subject to the standard provisions of G.L. c. 151A, with the exceptions noted in this section. Except for the separation issue, all nonmonetary determinations and redeterminations for UCX claimants are processed the same as regular claims. To address the separation issue, determine whether the individual’s military service is “federal military service” within the meaning of 5 U.S.C. § 8401(31).

As described in greater detail below, evaluate a UCX claim by determining whether the claimant’s discharge from military service was honorable, and whether the claimant either served for a minimum period or had a legitimate reason for not doing so.

All military separations within the base period are adjudicated even if the U.S. military is not an interested party employer.

### B. Policies and procedures

#### 1. Obtaining discharge documentation

A claimant who files a new claim for UCX benefits will be asked to present *Form DD-214* (Copy 4), or orders in lieu of the form, for each period of military service. The UI Online system also sends a request for the *DD-214* to the Federal Claims Control Center, which forwards the request to the relevant service branch. The form includes information about the period of service (in Item 12a, 12b, 12c and 12d), character of service (in Item 24), and a narrative reason for separation (in Item 28).

A claimant who questions the accuracy of any information contained on *Form DD-214* should be advised that it is the claimant’s responsibility to have the data corrected through the appropriate branch of the Armed Forces. A *DD-214* cannot be altered in any manner. Any alterations render the form invalid. The document used by the military to change information on a *DD-214* is a *DD-215*. If the claimant decides to pursue a discrepancy on a *DD-214*, the Department of Veterans Affairs can provide *DD-149*. If the claimant requests, the Interstate Coordinator can also assist in obtaining a copy of a *DD-214* by submitting *Form ETA 8-43* to the proper military authority.

## **2. Assisting the claimant to obtain a DD-214**

If the claimant is unable to furnish Copy 4 of *DD-214*, it is the claimant's responsibility to obtain the documentation. Claimants may be referred to the following resources:

- (1) The claimant may contact their branch of service, the Veteran's Representative at their local Career Center, or go to [www.dd214.org](http://www.dd214.org). Claimants who served in the Reserves or in the National Guard may contact their unit.
- (2) Claimants may also be referred to a local representative of the Department of Veteran's Affairs.

## **3. Determining whether an ex-service member has performed federal military service for purposes of receiving UCX benefits**

To determine whether a claimant has performed federal military service for purposes of receiving UCX benefits, review the claimant's *Form DD-214*, following the four steps described below, in order.

Step 1 – Establish that the ex-service member was separated “under honorable conditions.”

- Item 24 indicates the character of service, which must be “Honorable,” “Under Honorable Conditions,” “General”, or “Uncharacterized” including the following versions of “Uncharacterized” designations, “Drop from Rolls,” “Void Enlistment,” “Entry Level Separation.”
- Individuals who served fewer than 180 days receive an uncharacterized designation in Item 24 which is synonymous with an honorable discharge.
- Any other type of discharge (i.e., “dishonorable,” “other than honorable,” “bad conduct”) results in disqualification because it does not meet the requirements for “creditable military service.”

Step 2 – Determine whether the ex-service member is or was a member of the National Guard or Reserve Component with 180 days or more of continuous active duty.<sup>18</sup>

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<sup>18</sup> See UIPL 14-16. Because 5 U.S.C. 8521(a)(1) defines “Federal service” as “active service (not including active duty in a reserve status unless for a continuous period of 180 days or more) in the armed forces”, a claimant's prior active non-reserve status duty outside of the base period does not count toward the period of 180 continuous days required for reserve status duty to be considered “Federal service.”

- The following acronyms on Item 2 on *Form DD-214* indicate National Guard or Reserve status:

ARNGUS or USAR – Army

ANGUS or USAFR - Air Force

USNR – Navy

USMCR – Marines

USCGR - Coast Guard

Item 12(c) of the *DD-214* will indicate whether the claimant had 180 days or more of continuous active duty.

- If the individual meets the criteria in Step 1, is in the National Guard or Reserves, and has at least 180 days of continuous active duty, use that period of military service which qualifies as “Federal Service” to establish the claim.
- If the individual is in the National Guard or Reserves but does not have 180 days or more of continuous active duty, then the period of military services does not meet the requirements for “creditable military service.” See “Period of Service Not Credible Military Service” below.
- If the individual was not a member of the National Guard or Reserves, continue to Step 3.

Step 3 – Determine if the ex-service member was separated from military service after completing a first “full term of active service.” An ex-service member will be credited with having completed the first full term of active service to which he or she initially agreed if:

- Item 28 on *Form DD-214* contains narrative reasons such as “Expiration term of service,” “Completion of required service,” “Holiday Early Release Program,” or other similar entries.

- Item 12c of *Form DD-214* (“Net Active Service This Period”) added to Item 12d (“Total Prior Active Service”) must meet or exceed the number of years required by the particular branch of service to be credited with a first full term of service:

Air Force:	4-6 years*
Army:	2-6 years*
Coast Guard:	4 years
Marines:	4 years
Navy:	4 years

\*The “Remarks” section of the *DD-214* item 18 will indicate whether the member has or has not completed the first full term of service.

- If the ex-service member completed the first full term of service which he or she initially agreed to serve, the service is “Federal Service.” Use this to establish a claim.
- If the ex-service member did not complete the first full term of service, continue to Step 4.

Step 4 – Determine whether the ex-service member qualified for UCX entitlement despite being discharged or released before completing the first full term of service.

- Item 28 of *Form DD-214* contains a Narrative Reason for Separation. If the Narrative Reason for Separation is one of the Acceptable Narrative Reasons for Separation that meets the requirements of 5 U.S.C. 8521(a)(1)(B)(ii)(I)-(IV) and 20 CFR § 614 listed below, the wages may be used. Note that the narrative reason in Item 28 must match one of the items on this list exactly.
  - Attend Civilian School
  - Completion of Required Active Service
  - Condition, not a Disability
  - Condition, not a Disability; Involuntary in lieu of a Board
  - Conditions, not Disability; Resignation
  - Defective Enlistment Agreement
  - Disability, Aggravation
  - Disability, Aggravation (Enhanced)
  - Disability, Existed Prior to Service, Med Board
  - Disability, Existed Prior to Service, Med Board (Enhanced)

- Disability, Existed Prior to Service, PEB
- Disability, Existed Prior to Service, PEB (Enhanced)
- Disability, Not in Line of Duty
- Disability, Not in Line of Duty (Enhanced)
- Disability, Other
- Disability, Other (Enhanced)
- Disability, Permanent
- Disability, Permanent (Enhanced)
- Disability, Severance Pay
- Disability, Severance Pay (Enhanced)
- Disability, Severance Pay, Combat Related
- Disability, Severance Pay, Combat Related (Enhanced)
- Disability, Severance Pay, Non-Combat
- Disability, Severance Pay, Non-Combat Related (Enhanced)
- Disability, Temporary
- Disability, Temporary (Enhanced)
- Erroneous Entry (Other)
- Force Shaping (Board Selected)
- Force Shaping-VSP (Voluntary Separation Pay)
- Hardship; General\*
- Hardship; Resignation Allowed due to Support of a Dependent
- Hardship; Servicemember Initiated due to Dependency
- Holiday Early Release Program
- Insufficient Retainability (Economic Reasons)
- Intradepartmental Transfer
- Medal of Honor Recipient
- Miscellaneous/General Reasons
- Parenthood or Custody of Minor Children
- Pregnancy or Childbirth
- Reduction in Force
- Surviving Family Member

The following Narrative Reasons for Separation require 365 Continuous Days of Service BEFORE being applicable:

- Adjustment Disorder
- Alcohol Rehabilitation Failure
- Conscientious Objector
- Disruptive Behavior Disorder
- Drug Rehabilitation Failure
- Ecclesiastical Endorsement
- Erroneous Entry (Alcohol Abuse)
- Erroneous Entry (Drug Abuse)
- Failure to Complete a Commission or Warrant Program
- Failure to Complete a Course of Instruction
- Homosexual Conduct (Acts)
- Homosexual Conduct (Marriage or Attempted Marriage)
- Homosexual Conduct (Statement)
- Impulse Control Disorder
- Mental Disorder (other)
- Military Personnel Security Program
- Non-retention on Active Duty
- Non-selection, Permanent Promotion
- Non-selection, Temporary Promotion
- Personal Alcohol Abuse
- Personal Drug Abuse
- Personality Disorder
- Physical Standards
- Secretarial Authority
- Substandard Performance
- Unsatisfactory Performance
- Weight Control Failure

#### **4. Period of service not creditable military service**

When a claimant's period of military service does not meet the requirements for creditable military service as described above, the claimant is disqualified under 5 U.S.C. § 8521(a) and the claimant's federal wages can never be used to establish UCX entitlement. The UI Online system is programmed to auto-adjudicate military decisions when wages are not usable.



No disqualification under § 25(e) (see *Chapter 7 (Voluntary Leaving)* and *Chapter 8 (Discharge, Suspension and Conviction)*) should be imposed due to separation from military service. However, apply these provisions, as well as all other disqualifying provisions of state law, to separations from civilian employment after military service.

## **5. Nature of claim filing and nonmonetary determinations**

20 CFR § 614.6(d)(2) relates to processing unemployment insurance claims for ex-service members; it reads:

A notice of claim filing and subsequent notices of monetary and non-monetary 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.

UI Online sends out electronic requests for *DD-214s* to the military branches through the Federal Claims Control Center (FCCC). Timeliness is not an issue.

Notice of all nonmonetary determinations will be mailed to the appropriate branch of the service. A nonmonetary determination will be mailed only if a protest is received from the branch of service.

### **U.S. Army (MX 801)**

Attn: AHRC-PDP-TU  
1600 Spearhead Division Ave., Dept. 481  
Fort Knox, KY 40122-5408

### **Navy (MX 802)**

Navy Personnel Command (NPC-31)  
5720 Integrity Drive  
Millington, TN 38055-3120

### **US Marine Corps (MX 804)**

Marine Corps Milpayops – UCX Section  
1240E 9<sup>th</sup> Street  
Cleveland, OH 44199-2001

### **Air Force (MX 803)**

DPIEPC UCX 803  
550 C Street West, Suite 3  
Randolph AFB, TX 78150-4739

### **Coast Guard (MX 805)**

Department of Homeland Security  
Military Pay  
US Coast Guard  
2703 Martin Luther King Ave SE  
Washington, DC 20593-7618 **NOAA (MX 806)**  
NOAA Commissioned Personnel Center  
8403 Colesville Rd., Suite 500  
Silver Spring, MD 20910-3282

### **United States Public Health Service**

United States Public Health Service  
Office of Commissioned Corps Support Services  
5600 Fishers Lane  
Rockville, MD 20857

## **6. Period for which benefits are payable**

When an ex-service member files for unemployment compensation, a claim must be taken and filed at that time. The Massachusetts waiting period week will be served during the first week of unemployment.

The ex-service member is entitled to the same number of weeks of benefits as any other claimant under c. 151A.

## **7. Appeals**

All issues arising in connection with UCX claims may be appealed in the same manner, and to the same authorities, as regular UI claims. In the case of UCX claims, however, the findings of the relevant branch of the military are final and conclusive.

If a claimant believes that incorrect or incomplete information provided by the military adversely affected the determination, advise the claimant to go directly to the branch of military service in which the claimant served and request that the information be corrected or completed. The claimant should notify DUA that such a request was made, and continue to complete weekly certifications.

Adjudicators may tell UCX claimants that information on procedures and evidence to be submitted can be obtained from the service officer of any veteran's organization, a Department of Veterans Affairs contact office, the State Veterans Affairs Commission or bureau representative.

## **8. Reemployment rights**

Under the provisions of several federal laws, an ex-service member has reemployment rights with his or her civilian employer prior to entering the service. Do not disqualify a UCX claimant who fails to exercise these rights under § 25(c), but be sure that the claimant is fully available for work as required by § 24(b).

## **9. Duplicate UCX claim**

If a claimant files a UCX claim in Massachusetts and is paid benefits, but is later found to have filed a previous UCX claim in another state, the Massachusetts claim should be voided and an overpayment established because benefits are paid by the state in which the claim was filed first. The liable state shall be asked to withhold benefits in the amount of the overpayment and forward such benefits to Massachusetts to offset the overpayment.

## **10. National Oceanic and Atmospheric Administration (NOAA) claimants**

Officers of the Commissioned Corps of NOAA — there is no Reserve Component — are entitled to file for UCX benefits. Use standard UCX forms and procedures when adjudicating such claims.

Any commissioned officer who is separated from NOAA is issued NOAA *Form 56-16 (Report of Transfer or Discharge)*, which should be used to determine UCX eligibility. If a UCX determination cannot be made using this form, send a *Form ETA 8-43* to obtain the necessary additional information.

## **C. UCX pensions**

If a UCX claimant is receiving a pension related to military service, it must be determined whether or not the pension payments are deductible from the UI claim. (For more on pensions, see *Chapter 9- Other Pay and Benefits*.)

There are two sources of pension payments related to military service:

- (1) A military pension from the appropriate branch of service based upon the duration of service, level of compensation, etc. A military pension paid by the branch of service, whether or not a disability is involved, is entirely funded by the federal government and is 100% deductible from an individual's unemployment insurance benefits.

(2) Service-connected disability compensation paid by the Department of Veterans Affairs. Compensation for a military service-connected disability paid by the Department of Veterans Affairs would not require a deduction because it is based on the percentage of disability sustained by the individual rather than on the duration of service, or level of compensation, etc.

## **1. How to locate pension information on Form DD-214**

In most instances, information regarding pension benefits paid by a former service member's branch of service can be found on the individual's *DD Form 214*, Certificate of Release or Discharge from Active Duty. To locate a claimant's *DD-214* in UI Online, go to "Monetary," and then to "Military/Federal Wage Information," then view the UCX response. There are three informational items on a *DD-214* that can potentially identify a military retiree whose pension is deductible from UI benefits. They are:

- Item 18. Remarks - May contain retirement information, such as, "Placed on retired list," "Effective date of temporary retirement," "Retired grade" etc.
- Item 23. Type of Separation - Often contains a retirement indicator in the type of separation from the branch of service, e.g., "Retired," "Retirement," "Temporary Disability Retired List."
- Item 28. Narrative Reason for Separation - Usually this block is used to provide separation information about individuals who have not completed the first full term of service. There are instances when a narrative reason indicates a potential retirement situation. A narrative may say "Sufficient Service for Retirement", or "Retirement: Disability, Temporary." "Disability, Temporary" in Item 28 is an approvable reason for separation and, when it is listed, Type of Separation (Item 23) may reflect some type of retirement status.

Since the information obtained on *DD-214* may vary from case to case, it is important to review Items 28, 23 and Item 18 for a pension indicator.

Any one or a combination of these 3 items on a *DD-214* should alert UI staff to a potential pension issue. The issue should be identified and data-entered at the time the initial claim is filed or as soon as it is discovered.

## **2. How UI Staff can verify the status of individuals applying for pensions from the Department of Veterans Affairs**

Upon request, the Department of Veterans Affairs will issue a letter to the claimant confirming the status of a disability award/application.