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B-205735 JANUARY 12, 1982

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The Honorable Sam Gejdenson
House of Representatives

Dear Mr. Gejdenson:

Subject: Ex-Service Member Eligibility for Unemployment Compensation (FPCD-82-15)

This responds to your September 15, 1981, request that we provide you with information concerning changes in unemployment insurance eligibility for ex-service members. Those changes, brought about by section 2405 of the Omnibus Budget Reconciliation Act of 1981 (Public Law 97-35), substantially altered ex-service member eligibility for unemployment compensation benefits so that military personnel who are allowed to voluntarily leave the service, or are eligible but choose not to reenlist, can no longer receive such benefits after they leave the service.

OBJECTIVE, SCOPE, AND METHODOLOGY

As you requested, our objective was to assess the equitability of section 2405 and how changes in unemployment compensation eligibility may affect future enlistments and reenlistments. In addition, you requested answers to the following specific questions:

--How much money is being saved by the changes in ex-service member eligibility for unemployment compensation benefits?

--How much money remains in the unemployment compensation for ex-service members (UCX) program?

--How many ex-service members will be adversely affected by the change in eligibility?

--How many ex-service members will still be able to collect unemployment compensation benefits?

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We obtained data on the potential number of persons affected by the change in the UCX program from the Congressional Budget Office. Program cost data was obtained from the Office of the Assistant Secretary of Labor for Employment and Training, which is responsible for program administration. Estimated future budgetary savings resulting from the change in the UCX program were made by the Congressional Budget Office on the basis of its own economic assumptions. We did not independently verify these estimates. We interviewed responsible officials of the Departments of the Army, Navy, and Air Force to obtain their views on (1) the overall equitability of the new eligibility requirements for unemployment compensation benefits and (2) the effect this change in legislation may have on recruiting and retaining service members. We considered relevant data developed during several of our previous studies. We also reviewed proposed legislation to amend section 2405 and assessed the bills which have been introduced.

BACKGROUND

Unemployment insurance was established in 1935 as part of the Federal-State employment security program authorized under the Social Security Act (42 U.S.C. 501) and the Wagner-Peyser Act (29 U.S.C. 49). Its primary objective is to insure workers against loss of wages as a result of adverse economic conditions. The program was designed to provide temporary protection for qualified insured workers until they could either be rehired or find new employment.

Public Law 85-848 created the UCX program which became effective October 1, 1958. Under this program, service members became eligible for benefits if their military service was continuous for 90 days or more, or was terminated earlier because of a service-incurred injury or disability. Further, a member must have been discharged under conditions other than "bad conduct" or "dishonorable." 1/ If the service member was an officer, he or she could not have resigned "for the good of the service" and still be eligible for benefits. Public Law 96-364 changed the eligibility criterion in September 1980 by lengthening the service requirement to 365 continuous days rather than the previous 90-day rule. Benefit amounts are determined by the law of the State in which the claim was first filed.

1/In descending order of desirability, military discharges are characterized as "honorable," "general (under honorable conditions)," "under other than honorable conditions" (formerly designated as "undesirable"), "bad conduct," and "dishonorable."

Section 2405 of the Omnibus Budget Reconciliation Act of 1981 substantially altered the conditions of eligibility for unemployment compensation benefits. Under its provisions, effective July 1, 1981, to receive unemployment benefits the service member must

--have been discharged or released under honorable conditions,

--not have resigned or been allowed to voluntarily leave the service, and

--not have been released or discharged for cause as defined by the Department of Defense.

Only service members who receive an "honorable" or "general" discharge are potentially eligible for unemployment compensation benefits. Service members who resign or are allowed to voluntarily leave the service before completing their enlistment term for any reason are denied unemployment insurance benefits. Also, in accordance with the intent of section 2405, unemployment insurance benefits are denied to service members who are eligible but who decide not to renew their enlistment contract after completing their term of service.

EQUITABILITY OF SECTION 2405

You and other Members of Congress, as well as the news media, have raised questions about the overall equitability of section 2405. These questions generally focus on (1) the perception that, under this provision, service members who perform well and are not disciplinary problems are punished by being denied unemployment compensation benefits should they decide not to continue their military career, while those who perform inadequately or who cause disciplinary problems are rewarded with unemployment benefits, and (2) the inconsistencies between the new unemployment compensation eligibility criteria for ex-service members and the criteria applied by the various jurisdictions to unemployed civilians.

Perceptions regarding which ex-service members receive benefits

Our discussions with Army, Navy, and Air Force officials indicated that the perception concerning which service members are rewarded and which are not, as a result of section 2405,

is essentially correct for those who complete their enlistment contract. Under the unemployment compensation eligibility criteria prescribed by section 2405, service members who perform well in the service and are thus eligible, but decide not to reenlist, are denied unemployment compensation benefits. In contrast, service members with an inadequate service record who do not measure up to the services' reenlistment criteria, are eligible for unemployment benefits.

There are many reasons why the services might not allow an individual to reenlist but, at the same time, give that individual an "honorable" or "general" discharge. These reasons include a poor disciplinary record, low aptitude scores, failure to demonstrate job proficiency, or failure to meet educational or weight standards.

Previous studies by us have shown wide disparities in the type of discharges given within and among the services. Simply stated, different people get different discharges under similar circumstances, and the type of discharge an individual gets may have little to do with his or her behavior and performance on active duty. For example, in a recent study 1/ we found that Air Force regulations require that all people separated for marginal performance--generally not eligible for reenlistment--receive honorable discharges. We also noted that the probability of people with absence-without-leave and conviction records getting honorable discharges in the Air Force was about 13 times greater than in the Marine Corps.

The legislative history of section 2405 indicates that the change in unemployment compensation eligibility criteria was partly intended to encourage service members to reenlist if they were eligible to do so. While it is true that each of the services has experienced shortages of skilled personnel, the real problem has been one of skill imbalances--keeping quality people with the right mix of skills and experience. For example, the Air Force has projected that, by the end of fiscal year 1982, it will be short about 11,300 people in 73 "chronic critical skill" occupations. However, despite this shortage, the Air Force expects to

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1/ Military Discharge Policies and Practices Result in Wide Disparities: Congressional Review is Needed (FPCD-80-13, Jan. 15, 1980)

achieve its overall yearend strength goals for fiscal year 1982. This means that the Air Force will be short of people in some occupations and have excesses in others.

It is neither feasible nor desirable to have a 100-percent reenlistment rate--even of those who are eligible to reenlist. This is especially true of first-term reenlistments. Such a practice would not only lead to an aging and static Armed Forces, but would also be costly as the grade-curve increases and as more members become eligible for retirement benefits. Also, as the force ages, more dependents place greater demands on, and thus increase the cost of, family housing, medical care, transportation, and travel.

The question of whether the law is equitable to those who are allowed to voluntarily leave the service before the end of their enlistment contract is somewhat different. We have reported 1/ that attrition of first-term enlisted personnel--their separation from service before completion of their tours--has become an increasingly serious and costly problem for the Armed Forces and affects the services' ability to maintain full strength and combat readiness. Our February 16, 1979, study pointed out that over 444,000 persons entering the service during fiscal years 1974 through 1977 left before completing their initial enlistment. This attrition cost the Government about $5.2 billion, including extra recruiting, training, and benefits such as unemployment compensation available to these individuals after discharge. At the time of our 1979 study, ex-service members were entitled to unemployment compensation after serving only 90 continuous days.

Attrition continues to be a serious and costly problem for the services. Basically, a person who wants to leave the service badly enough can obtain a discharge. While official policy opposes this attitude, the reality of the services' counseling-discharge procedures confirms it. Many service members view their contract with the military as nonbinding and easily broken. In such cases, denying unemployment insurance benefits may have some merit. In addition to not unjustifiably benefiting service members who fail to fulfill

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1/"Attrition in the Military--An Issue Needing Management Attention" (FPCD-80-10, Feb. 20, 1980) and "High Cost of Military Attrition Can be Reduced" (FPCD-79-28, Feb. 16, 1979).

their enlistment contract, denying benefits to such individuals could provide an incentive for them to complete their tour, provided that unemployment insurance benefits would then be available.

Inconsistencies in benefits criteria between unemployed ex-service members and civilians

Our April 1978 study 1/ showed that jurisdictions have no uniform standards for determining who is eligible for benefits or how much their benefits will be. The study showed that some jurisdictions pay benefits to unemployed persons (1) who quit their jobs voluntarily, (2) who are fired for misconduct, (3) who are full-time students, or (4) whose unemployment is caused by labor disputes. Other jurisdictions do not pay benefits to persons in these circumstances. Thus, it appears that, at least in some jurisdictions, the unemployment compensation eligibility criteria for civilian personnel are considerably more liberal than the criteria applied to ex-service members.

Military service officials pointed out several other differences between civilian employment and military service which, in their opinion, cause section 2405 to be unfair to ex-service members. The following were among the differences mentioned:

--Unlike most civilian jobs, enlistment in the military service is a contract for a specific period of time and it is not expected nor desirable for all who enlist to make a 20- or 30-year career of the military.

--Individuals in the military are often stationed far from their place of residence, either overseas or within the United States. As a result, prior to separation, military members have no real access to the civilian job market near their place of residence.

1/ Unemployment Insurance--Need to Reduce Unequal Treatment of Claimants and Improve Benefit Payment Control and Tax Collection (HRD-78-1, Apr. 5, 1978).

ESTIMATED IMPACT OF SECTION 2405 ON FUTURE RECRUITMENT AND RETENTION

Because section 2405 of the Omnibus Budget Reconciliation Act of 1981 is so recent, it is too early to tell how the change in unemployment insurance eligibility will affect future enlistments or reenlistments. Furthermore, officials of each of the services pointed out, and we agree, that there are so many variables involved in an enlistment or reenlistment decision, that it would be nearly impossible to scientifically isolate this change as the pivotal point of an individual's decision.

Although no data exists on how this new provision will affect future recruitment or retention, military service managers offered the following opinions based on their experience in the area.

Military service managers generally believe that section 2405 will have very little effect on either initial recruitment or retention. They indicated that, generally, young people considering an initial enlistment have more immediate concerns than that of being out of work in 3 to 6 years without unemployment insurance benefits. It was also their general opinion that, while section 2405 is inequitable to ex-service members choosing not to reenlist, very few people eligible for reenlistment, but not wanting a military career, would change their reenlistment decision simply because they could no longer collect unemployment compensation benefits. Furthermore, service managers indicated that members who decide to reenlist only because unemployment compensation benefits are unavailable probably would be unhappy with the service and would not be very effective members.

Some military service managers indicated that section 2405 may cause some service members to alter their behavior while in the service so that they would still receive an "honorable" discharge but not be eligible to reenlist. In this way, they would still be able to collect unemployment benefits. However, there is no evidence that this is happening.

ESTIMATED SAVINGS AND NUMBER OF PEOPLE MADE INELIGIBLE FOR BENEFITS BY SECTION 2405

As indicated in the following table, section 2405 of the Omnibus Budget Reconciliation Act of 1981 will result in sizable cost reductions.

	Fiscal year 1982	Fiscal year 1983	Fiscal year 1984
	millions		
Estimated UCX cost under previous eligibility criteria	$306	$294	$279
Estimated UCX cost under current eligibility criteria	47	46	43
Estimated savings from section 2405	$259	$248	$236

Source: Congressional Budget Office estimates. The Department of Labor's savings estimates, based on the Administration's economic assumptions, are about 11 percent higher for fiscal year 1982 and about 3 percent higher for fiscal year 1983. We did not obtain Labor's estimate for 1984.

While the budgetary savings resulting from section 2405 will be substantial, a large number of former service members may be adversely affected. The following table shows the estimated number of ex-service members who may be adversely affected by section 2405. The estimates are based on the number of ex-service members who would be expected to claim benefits, not the total number who might potentially be eligible.

	Fiscal year 1982	Fiscal year 1983	Fiscal year 1984
Members expected to claim benefits under previous criteria	172,430	159,080	143,360
Members expected to claim benefits under section 2405 criteria	26,730	24,660	22,220
Members who may be adversely affected by section 2405	145,700	134,420	121,140

Source: Congressional Budget Office.

UCX PROGRAM FUNDING

You specifically requested information on how much money remains in the unemployment compensation for the UCX program. The UCX program is one of several financed from the Federal Unemployment Benefits and Allowances account administered by the Department of Labor. (Other programs financed from this account include the Trade Adjustment Assistance Program and benefits paid under the Redwood National Park Expansion Act.) Under the UCX program, ex-service members apply for unemployment benefits in their State of residence (including the District of Columbia and Puerto Rico) and are subject to all the unemployment provisions and regulations of that State. Once eligibility for benefits is established, the State pays the former military member and is then reimbursed by the Federal Government.

Department of Labor officials advised us that the Federal Unemployment Benefits and Allowances account did not receive an appropriation during fiscal year 1981, but was funded by Continuing Resolution Authority for the entire fiscal year. In March 1981, the Department of Labor requested a fiscal year 1982 appropriation for the Unemployment Benefits and Allowances account. According to Labor officials, at that time they estimated, on the basis of the Administration's economic assumptions, that $38 million from this account would be required for the UCX program. This estimate differs from the Congressional Budget Office's current estimate by about $9 million, primarily because different economic assumptions were used.

The appropriation bill which includes funds for this program has not yet been enacted, and the program continues to be funded by Continuing Resolution Authority. This authority, among other things, provided for any funds that may be necessary to continue paying for programs financed from this account. Accordingly, although claims continue to be paid, the current balance in the account which finances the UCX program is zero.

LEGISLATION PROPOSED TO AMEND SECTION 2405

At least four bills have been introduced (H.R. 4433, H.R. 4686, H.R. 4573, and H.R. 4942) to amend section 8521 of title 5, United States Code, which was changed by section 2405 of the Omnibus Budget Reconciliation Act of 1981. H.R. 4433 would simply repeal section 2405 and restore ex-service members' unemployment compensation eligibility status to what it was before July 1, 1981.

H.R. 4686, H.R. 4573, and those provisions of H.R. 4942 pertaining to the UCX program are nearly identical. In essence, they would amend section 8521 of title 5, United States Code, as follows:

--The eligibility requirement in effect before July 1, 1981, would be restored, except that the length of service requirement would be extended from 365 days to 730 days.

--A new 4-week waiting period would be imposed following separation from the service before the ex-service member could begin receiving unemployment compensation.

--An eligible ex-service member's total unemployment compensation benefits would be limited to no more than 13 times the weekly benefit amount payable.

All four bills would provide for paying unemployment compensation to ex-service members who (1) are allowed to voluntarily leave the service before the end of their term of enlistment or (2) complete their enlistment and are eligible, but decide not to reenlist, provided that the conditions regarding length of continuous service and discharge characterizations are met. Concerning discharge characterizations, each of the bills would restore the discharge requirements in effect prior to passage of section 2405; that is, a member must have been discharged under conditions other than "bad conduct" or "dishonorable." If approved, the bills would make individuals currently ineligible because of receiving a discharge characterized as "under other than honorable conditions" eligible for benefits.

The House Committee on Ways and Means is now considering these bills.

CONCLUSIONS

There is little doubt that the questions raised about the fairness of section 2405 are legitimate, particularly for service members who faithfully complete their enlistment obligations and are eligible but decide not to reenlist. Service members can be, and are, denied reenlistment eligibility for a variety of reasons, including overstaffing in the individual's occupational specialty as well as inadequate performance, inaptitude, and disciplinary problems (for example, drug-related offenses). Persons discharged for any one of these reasons could be given discharges under honorable conditions.

It is reasonable that section 2405 provides unemployment compensation benefits to service members who are denied reenlistment through no fault of their own, such as in those instances where an individual's occupational specialty is overstaffed. However, it is unfair to provide these same benefits to service members who perform inadequately or who cause disciplinary problems during their enlistment tour while at the same time denying benefits to those who perform well throughout their tour but who do not desire a military career.

The question of fairness seems to be somewhat different for those who are allowed to leave the service before completing their enlistment contract. First-term attrition continues to be a serious and costly problem for all services. While, as we reported in February 1980, much can be done from a management standpoint to control this problem, we believe that the idea that a military service contract is binding needs to be reinforced. Disallowing unemployment compensation benefits to those who "volunteer" to leave before the end of their contractual obligation may help reinforce this idea.

We believe that the provisions of H.R. 4573, H.R. 4686, and H.R. 4942 are a reasonable solution to the equitability problem. These bills provide for paying benefits to service members who complete their enlistment tour, decide not to reenlist, and receive a discharge under honorable conditions. However, the bills would also provide the same benefits to (1) service members denied reenlistment because of performance or disciplinary problems but who receive discharges characterized as "honorable" or "general" and (2) those given discharges characterized as "under other than honorable conditions." Some may view the payment of benefits under such circumstances as inappropriate.

House bills 4573, 4686, and 4942 address early separations by extending the length of service required for benefit eligibility to 2 years as opposed to the current 1 year. In our opinion, lengthening the service eligibility requirement will have little effect on the attrition problem. Nevertheless, we favor this provision because it will not unduly benefit individuals who do not take their military service contract seriously, nor will it penalize individuals who have almost completed their enlistment tour and are permitted an "early out" for legitimate reasons, such as to attend school at the beginning of a school year.

We do not favor H.R. 4433 because it does nothing to address the problem of early military separations.

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As requested by your office, we did not obtain official comments on this report from the Department of Labor or the military services. Also, as arranged with your office, unless you publicly announce its contents earlier, we do not plan to distribute this report further until 3 days from its issue date. At that time we will send copies to the Secretaries of Labor, Defense, Army, Navy, and Air Force; the Chairman, Committee on Ways and Means, House of Representatives; the Chairman, Committee on Finance, United States Senate; and other interested parties.

Sincerely yours,

Charles A. Bowsher

Comptroller General
of the United States