

CHAPTER 2

FOREIGN CITIZENSHIP AFTER RETIREMENT

20201. General Application

a. The right to retired pay based on service or disability for regular and reserve officers and regular enlisted personnel generally is contingent upon continuation of their military status; loss of citizenship is inconsistent with a continuation of that status.

b. A member retains military status with the attendant obligation to conform to prescribed rules and regulations and to remain subject to recall to active duty.

(1) Retired enlisted members of regular components are still considered to hold an office under the United States within the meaning of that term as used in the constitutional provision quoted in paragraph 20141.

(2) Retired regular officers of the armed forces are still in the military service of the United States.

c. Termination of such military status by loss of United States citizenship would operate to deprive these members of entitlement to retired pay.

d. A recognized distinction exists between the term "retired" and "entitled to retired pay."

(1) It is the law under which a member is retired or becomes entitled to retired pay which governs member's "retired" status and fixes the rights. The award of disability retirement pay to Army of the United States officers under section 5 of the Act of 3 Apr 1939, did not confer a retired status to such personnel but merely authorized their entitlement to retired pay without relation to continued military status.

(2) The effect of a member's loss of United States citizenship upon payment of retired pay must be viewed in light of circumstances in the individual's case.

20202. Foreign Residence

A citizen of the United States may live outside the United States indefinitely without losing United States citizenship.

20203. Loss of United States Citizenship

Generally, loss of citizenship requires a measure of voluntary positive action. A person who is a citizen of the United States loses that citizenship by:

a. Obtaining citizenship in a foreign state upon member's application, upon an application filed in member's behalf by a parent, guardian, or duly authorized agent, or through naturalization of a parent having legal custody of member; or,

b. Taking an oath or making an affirmation or other formal declaration of allegiance to a foreign state or a political subdivision thereof.

c. See table 2-2-1 for decisions of the Comptroller General pertaining to loss of United States citizenship upon acquisition of foreign citizenship.

20204. Conditions Not Subjected to Loss of United States Citizenship and/or Loss of Entitlement to Retired Pay

a. Retired pay benefits authorized for non-regular service members of the uniformed services in chapter 67 of 10 U.S.C. are viewed as a pension and entitlement to retired pay under 10 U.S.C. 1331 is not dependent on the continuation of military status.

(1) A member eligible to receive retired pay at age 60, who before attaining age 60 acquires foreign citizenship and/or status in a foreign military service does not lose entitlement to retired pay at age 60.

(2) A member who receives retired pay pursuant to 10 U.S.C. 1331 is not required to forfeit such pay upon becoming a citizen of a foreign country. Further, entitlement continues if the member enters the armed forces of the foreign country if the foreign country is not one that is engaged in hostile military operations against the United States.

b. A retired alien enlisted member of a regular component of the Armed Forces who lives in a foreign country does not lose the right to retired pay, in the absence of some provision of law or regulation affecting the member's right in such circumstances.

c. A right to retirement pay for non-regular members retired for disability under the provisions of the Act of 27 Aug 1940, is not conditioned on their remaining in the military service. Therefore, these non-regular members are entitled to retirement pay without regard to whether they remain citizens of the United States, since that retired pay is viewed as being in the nature of a pension.

20205. Dual Citizenship and/or Service in the Armed Forces of a Foreign Country

a. A retired officer of a regular component who resides in a foreign country and acquires foreign citizenship by operation of that country's law and who does not relinquish United States citizenship is considered to have dual citizenship. Dual citizenship alone does not require a member to lose entitlement to retired pay.

b. Service in the military force of a foreign country by a retired member of the Regular

component would be inconsistent with a Regular retired status, as well as being prohibited without Congressional consent by article I, section 9, clause 8 of the Constitution. Conditional Congressional consent to accept foreign government "civil employment" granted by section 509, Public Law 95-105 does not apply to foreign military service.

c. Retired pay must be discontinued when a retired officer becomes a member of a foreign military service without authorizing legislation.

TABLE 2-2-1

COMPTROLLER GENERAL DECISIONS—FOREIGN CITIZENSHIP

Decision Number	Synopsis
1. 37 Comp Gen 207	The right of a retired member of regular Navy to receive retired pay is contingent upon continuation of a status in the regular Navy and loss of United States citizenship by a member is inconsistent with continuation of military status. Therefore, the right to retired pay terminates if a member of the regular Navy becomes a citizen of a foreign country.
2. 41 Comp Gen 715	<p>a. Retired Reserve officers, receiving retired pay under laws other than 10 U.S.C. 1331, who acquire foreign citizenship are no longer eligible for involuntary recall to active duty in times of war or national emergency, and the acquisition of foreign nationality would be inconsistent with the oath prescribed for Reserve officers to support and defend the Constitution of the United States in section 16 of title 5. Therefore, in the absence of any law authorizing continuation of an officer's membership in a Reserve organization after the officer becomes a citizen of a foreign country, payment of retired pay may not be approved.</p> <p>b. A Reserve officer may not terminate retired status through resignation or other means, then acquire foreign citizenship and continue to receive retired pay.</p> <p>c. Retired enlisted members of the regular components remain a part of the armed forces, and their right to retired or retirement pay is dependent on continuation of their military status.</p>
3. 44 Comp Gen 51	<p>a. A retired enlisted member of a regular component of the armed forces who loses United States citizenship when he or she acquires citizenship in a foreign country has taken a voluntary action so inconsistent with the oath of allegiance to the United States and status as a member of the armed forces to warrant termination of retired pay.</p> <p>b. United States citizenship is not a prerequisite to receipt of retired pay; however, if a citizen of the United States by birth acquires foreign citizenship, his or her retired pay may be terminated.</p>
4. 44 Comp Gen 227	A retired member who becomes a citizen of a foreign country is regarded as having taken a voluntary action inconsistent with an oath of allegiance to the United States to warrant termination of retired pay.
5. 48 Comp Gen 699	Retired pay benefits authorized non-regular service members under 10 U.S.C. 1331, viewed as a pension, are not dependent on continuation of military status. Member acquiring foreign citizenship and/or status in a foreign military service before age 60 does not lose entitlement to retired pay at age 60. Neither is retired pay forfeited upon becoming a citizen of a foreign country, and/or entry in the armed forces of a foreign country, provided that country is not one engaged in hostile military operations against the United States.
6. 50 Comp Gen 269	Payment of retired pay to an alien who chooses to live outside the United States after retirement would not constitute a bar to the receipt of retired pay in the absence of some provision of law or regulation affecting retiree's right in such circumstances.

TABLE 2-2-1. CONTINUED

Decision Number	Synopsis
7. MS Comp Gen B-144694, 14 Feb 1961	An enlisted member of the regular Air Force—an alien who had met the statutory requirement for enlistment by filing a legal intention to become a citizen of the United States—when retired is entitled to receive retired pay. In the absence of a provision of law barring the payment of retired pay to an alien or indicating the lack of citizenship is consistent with status as a retired member of the regular Air Force, it would appear that so long as member's allegiance status remains unchanged after retirement, the fact that he or she chooses to live outside the United States after retirement would not in and of itself constitute a bar to the receipt of retired pay.
8. MS Comp Gen B-157646, 5 Oct 1965	A naturalized citizen retired for disability under 10 U.S.C. 1201, who returned to the country of birth and resumes former nationality because of employment, loses retired status. Member receives retired pay, as distinguished from a grant of retirement pay, and upon transfer to the retired Reserve is subject to recall to active duty.
9. 58 Comp Gen 566	<p>a. A retired regular Army officer residing in Israel acquired Israeli citizenship by operation of Israeli law, but also remains a United States citizen. While the loss of United States citizenship is inconsistent with status as a retired regular officer and thus results in loss of status as an officer and loss of entitlement to retired pay, dual Israeli/United States citizenship alone does not require loss of entitlement to retired pay</p> <p>b. A retired regular Army officer residing in Israel who has dual Israeli/United States citizenship is subject to service in the Israel Defense Forces, the Israeli armed force. Such service in a foreign armed force by a retired regular officer appears inherently inconsistent with the position as a regular Army officer, as well as being prohibited (without congressional consent) by article I, section 9, clause 8 of the Constitution of the United States. Thus, service in the foreign armed force would make the status as a retired Army officer very doubtful. Retired pay may not be paid without authorizing legislation.</p>
10. MS Comp Gen B-212481, 2 Feb 1984	A retired member of the Armed Forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces United States citizenship loses the right to retired pay since entitlement to retired pay depends upon the continuation of the individual's status as a retired member of the Military Service available for service as required and that status is incompatible with renunciation of United States citizenship. However, such a person who elected to participate in the Survivor Benefit Plan and from whose retired pay the required deductions were being made for coverage under the plan when United States citizenship is renounced, may continue coverage under the plan by making the required payments into the Treasury.