

VOLUME 7B, CHAPTER 6: “FOREIGN CITIZENSHIP AFTER RETIREMENT”**SUMMARY OF MAJOR CHANGES**

All changes are denoted by [blue font](#).

Substantive revisions are denoted by an * symbol preceding the section, paragraph, table, or figure that includes the revision.

Unless otherwise noted, chapters referenced are contained in this volume.

Hyperlinks are denoted by [***bold, italic, blue and underlined font***](#).

The previous version dated May 2011 is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated hyperlinks and formatted to comply with current guidance.	Update
060101.A	Added hyperlink and reference to the emolument clause of the United States Constitution to facilitate ease of understanding the definition to “hold an office”.	Add
060102.B	Added U.S. Code and hyperlink to Title 10, Chapter 61 for clarity.	Add
060301	Restructured paragraph to avoid repetition.	Update
Bibliography	Updated bibliography	Update

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CHAPTER 6

FOREIGN CITIZENSHIP AFTER RETIREMENT

0601 GENERAL APPLICATION

***060101. Retired Pay Based on Military Status**

The right to retired pay based on years of active service or disability for Regular or Reserve officers and Regular enlisted personnel, is generally contingent upon the continuation of their military status.

* A. Article I, section 9, clause 8 of the Constitution of the United States prohibits any person "holding any Office of Profit or Trust" under the United States from accepting any present, emolument, office or title, "of any kind whatever," from a foreign government without the consent of Congress. This provision prohibits employment by a foreign government of retired personnel with a continuing military status, including Fleet Reserve or Fleet Marine Corps Reserve, unless prior congressional consent is granted. Without prior congressional consent, it also subjects such persons to withholding of their retired pay in an amount equal to the amounts received from the foreign government. This constitutional provision also considers retired regular officer and enlisted members of regular components to hold an office under the United States military.

B. While receiving retired pay a retiree remains subject to rules, regulations, and recall to active duty as required. A retired member of the Armed Forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces his United States citizenship loses the right to retired pay when entitlement to the retired pay depends upon the retiree's continued military status.

C. The effect of a member's loss of United States citizenship upon payment of retired pay must be determined by reviewing each case according to individual circumstances, governing laws and regulations.

***060102. Retired Pay Not Based on Military Status**

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

* B. 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 under [Title 10, United States Code, \(10 U.S.C.\) Chapter 61, Retirement or Separation for Physical Disability](#), to Army of the United States officers does not confer a retired status to such personnel but merely authorized their entitlement to retired pay without relation to continued military status.

0602 FOREIGN RESIDENCE

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

0603 LOSS OF UNITED STATES (U.S.) CITIZENSHIP

*060301. Loss of Citizenship

Generally, loss of U.S. citizenship requires a measure of voluntary positive action. A retiree cannot renounce U.S. citizenship on behalf of their minor child(ren) (reference subparagraphs 060301.E and F). [After having attained age 18 years or older](#), a person who is a citizen of the U.S. loses that citizenship, by voluntarily taking one of the following actions with the intention of relinquishing U.S. citizenship:

A. Obtaining citizenship in a foreign state upon his or her application or upon an application filed on his or her behalf by a duly authorized agent; or

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

C. Entering, or serving in, the Armed Forces of a foreign state if:

1. Such Armed Forces are engaged in hostilities against the United States, or

2. Such persons serve as a commissioned or non-commissioned officer; or

D. Accepting, serving in, or performing the duties of any office, post, or employment under the government of a foreign state or a political subdivision thereof if:

1. He or she has or acquires the nationality of such foreign state; or

2. The acceptance of the office, post, or employment requires the retiree to take an oath, affirmation, or declaration of allegiance thereof; or

E. Making a formal renunciation of nationality before a diplomatic or consular officer of the U.S. in a foreign state, in such form as may be prescribed by the Secretary of State; or

F. Making in the U.S. a formal written renunciation of nationality in such form as may be prescribed by, and before such officer as may be designated by, the Attorney General, whenever the U.S. shall be in a state of war and the Attorney General shall approve such renunciation as not contrary to the interests of national defense; or

G. Committing any act of treason against, or attempting by force to overthrow, or bearing arms against, the U.S., violating or conspiring to violate any of the provisions of Title 18 of the United States Code, section 2383 ([18 U.S.C. 2383](#)), or willfully performing any act in violation of [18 U.S.C. 2385](#), or violating section [18 U.S.C. 2384](#), by engaging in a conspiracy to overthrow, put down, or to destroy by force the Government of the United States, or to levy war against them, if and when convicted thereof by a court martial or by a court of competent jurisdiction.

060302. Loss of Citizenship at Issue

If the loss of U.S. citizenship is put at issue in any action or proceeding commenced on or after September 26, 1961, then the burden of proof shall be upon the person or party stating the claim. Any person who has renounced his or her citizenship or performs any act of expatriation under the provisions of this section or any other Act shall be presumed to have done so voluntarily unless it can be proven otherwise by a preponderance of the evidence.

060303. Comptroller General Decisions on Loss of Citizenship

See Table 6-1 for decisions of the Comptroller General pertaining to loss of U.S. citizenship upon acquisition of foreign citizenship.

0604 CONDITIONS NOT SUBJECTED TO LOSS OF UNITED STATES CITIZENSHIP AND/OR LOSS OF ENTITLEMENT TO RETIRED PAY

060401. Retired Pay for Non-regular Service

Retired pay benefits authorized for non-regular members of the Uniformed Services in [10 U.S.C., Chapter 1223](#) are viewed as a pension and entitlement to retired pay under [10 U.S.C. 12731](#) is not dependent on the continuation of military status.

A. A member entitled to receive retired pay under 10 U.S.C. 12731(a)(1), who acquires foreign citizenship and/or status in a foreign military service prior to becoming eligible to receive retired pay does not lose entitlement to retired pay at the age of eligibility. See Chapter 1 of this volume for information regarding entitlements to retired pay under 10 U.S.C. 12731.

B. A member who receives retired pay pursuant to [10 U.S.C. 12731](#) is not required to forfeit such pay upon becoming a citizen of a foreign country. Further, if the retiree enters the Armed Forces of the foreign country, then the retiree's entitlement to retired pay continues if:

1. The foreign country is not one that is engaged in hostile military operations against the U.S.; or
2. The retiree is not serving as a commissioned or non-commissioned officer of the foreign services.

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

060402. Retired Alien Enlisted of the Armed Forces

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.

0605 DUAL CITIZENSHIP AND/OR SERVICE IN THE ARMED FORCES OF A FOREIGN COUNTRY

060501. Dual Citizenship

A retired member 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 U.S. citizenship is considered to have dual citizenship. Dual citizenship alone does not require a member to lose entitlement to retired pay.

060502. Service In The Armed Forces Of A Foreign Country

A. Service in the military force of a foreign country by a retired member of the Regular Component is inconsistent with the obligations of a Regular retired status, as well as being prohibited without congressional consent under article I, section 9, clause 8 of the Constitution. Conditional congressional consent to accept foreign government "civil employment" granted by [37 U.S.C. 908](#) does not apply to foreign military service.

B. Retired pay must be discontinued when a retired member becomes a member of a foreign military service without legislation indicating congressional intent. The eligibility of a retired member to receive retired or retainer pay and other benefits arising from the retired member's status as a retired member of the uniformed services, and the eligibility of dependents of the retired member to receive benefits based on the retiree's status, may not be terminated by reason of employment or holding of an office or position consented to by Congress. See [Volume 7B, Chapter 5](#), section 0505 for provisions regarding service in military forces of newly democratic nations.

Table 6-1. Comptroller General Decisions-Foreign Citizenship

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. 12731, who lose U.S. citizenship by acquiring 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, then his or her retired pay may be terminated.</p>
4. 44 Comp Gen 227	A retired member who voluntarily loses U.S. citizenship by becoming 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. 12731, 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.
7. MS Comp Gen B-144694, Feb 14, 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, Oct 5, 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.

Table 6-1. Comptroller General Decisions-Foreign Citizenship (Continued)

COMPTROLLER GENERAL DECISIONS—FOREIGN CITIZENSHIP	
Decision Number	Synopsis
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, Feb 2, 1984	<p>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. Such a person, however, 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.</p>

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0601 – General Application

060101.A	MS Comp Gen B-212481 Feb 2, 1984 58 Comp Gen 487 (B-193562) May 3, 1979 65 Comp Gen 382 (B-220860) Mar 10, 1986
060101.B	37 Comp Gen 207 41 Comp Gen 715
060101.C	MS Comp Gen B-159945, Jan 30, 1957 <u>US vs Tyler</u> , 105 US 244 (1882) MS Comp Gen B-157646, Oct 5, 1965 48 Comp Gen 699
060102.B	40 Comp Gen 541

0602 – Foreign Residence

US vs Gay, 264 US 353
(1924)
Schneider vs Rusk,
377 US 163 (1964)

0603 – Loss of United States Citizenship

060301	8 U.S.C. 1481(a) MS Comp Gen B-212481 Feb 2, 1984
060302	8 U.S.C. 1481(b)

0604 – Conditions Not Subjected to Loss of United States Citizenship and/or Loss of Entitlement to Retired Pay

060401	48 Comp Gen 699 10 U.S.C., Chapter 1223 10 U.S.C. 12731 37 Comp Gen 207
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060402	44 Comp Gen 51 MS Comp Gen B-144694 Feb 14, 1961 50 Comp Gen 269
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0605 – Dual Citizenship and/or Service in the Armed Forces of a Foreign Country

060502.B	10 U.S.C. 1060
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