

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 asterisk (*) 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 *March 2015* is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Revised formatting to comply with current administrative instructions.	Revision
060102	Added "Purpose" paragraph.	Addition

Table of Contents

0601 GENERAL 3

 060101. Overview 3

 *060102. Purpose 3

 060103. Authoritative Guidance 3

0602 FOREIGN RESIDENCE..... 4

0603 LOSS OF U.S. CITIZENSHIP..... 4

 060301. Loss of Citizenship..... 4

 060302. Loss of Citizenship at Issue..... 5

 060303. Comptroller General (Comp Gen) Decisions on Loss of Citizenship..... 5

0604 CONDITIONS NOT SUBJECTED TO LOSS OF U.S. CITIZENSHIP AND/OR
LOSS OF ENTITLEMENT TO RETIRED PAY 5

 060401. Retired Pay for Non-regular Service 5

 060402. Retired Alien Enlisted of the Armed Forces 6

0605 DUAL CITIZENSHIP AND/OR SERVICE IN THE ARMED FORCES OF A
FOREIGN COUNTRY 6

 060501. Dual Citizenship..... 6

 060502. Service in the Armed Forces of a Foreign Country 6

Table 6-1. Comp Gen Decisions-Foreign Citizenship..... 7

BIBLIOGRAPHY 9

CHAPTER 6

FOREIGN CITIZENSHIP AFTER RETIREMENT

0601 GENERAL

060101. Overview

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 State 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 U.S. 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 or her U.S. 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 U.S. citizenship upon payment of retired pay must be determined by reviewing each case according to individual circumstances, governing laws and regulations.

*060102. Purpose

The purpose of this chapter is to provide guidance to retired members who have lost their citizenship, have dual citizenship, or are retired alien enlisted members living in foreign countries.

060103. Authoritative Guidance

The bibliography at the end of this chapter lists the authoritative references.

0602 FOREIGN RESIDENCE

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

0603 LOSS OF 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 United States 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 the retired member's application or upon an application filed on his or her behalf by a duly authorized agent;

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

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;

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. [The retired member](#) 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;

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

F. Making 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 United States is in a state of war and the Attorney General approves 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 United States, violating or conspiring to violate any of the provisions of Title 18, United States Code (U.S.C.), [section 2383](#), or willfully performing any act in violation of [18 U.S.C. § 2385](#), or violating [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, the burden of proof is 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, is presumed to have done so voluntarily unless it can be proven otherwise by a preponderance of the evidence.

060303. Comptroller General (Comp Gen) 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 U.S. 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, 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 United States, 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 United States, 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 Chapter 5, for provisions regarding service in military forces of newly democratic nations.

Table 6-1. Comp Gen Decisions-Foreign Citizenship

COMP GEN 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 U.S. 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. 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 U.S. citizenship when the retired member 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. U.S. 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. Manuscript (MS) Comp Gen B-144694 , February 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 the retired member 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, October 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. Comp Gen Decisions-Foreign Citizenship (Continued)

COMP GEN 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 U.S. citizen. While the loss of U.S. 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/U.S. 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/U.S. 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, February 2, 1984	A retired member of the Armed Forces who becomes a citizen of a foreign country by naturalization and who voluntarily renounces U.S. 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 U.S. 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 U.S. citizenship is renounced, may continue coverage under the plan by making the required payments into the Treasury.

BIBLIOGRAPHY

CHAPTER 06 – FOREIGN CITIZENSHIP AFTER RETIREMENT

0601 – General

- 060101.A Comp Gen (B-212481) February 2, 1984
58 Comp Gen 487 (B-193562) May 3, 1979
65 Comp Gen 382 (B-220860) March 10, 1986
40 Comp Gen 541 (B-120533) March 23, 1961
- 060101.B 37 Comp Gen 207 (B-132458) September 24, 1957
41 Comp Gen 715 (B-147777) May 1, 1962
- 060101.C Comp Gen (B-159945) January 30, 1957
United States vs Tyler, 105 US 244 (1882)
MS Comp Gen (B-157646) October 5, 1965
48 Comp Gen 699 (B-166142) April 24, 1969

0602 – Foreign Residence

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

0603 – Loss of U.S. Citizenship

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

0604 – Conditions Not Subjected to Loss of U.S. Citizenship and/or Loss of Entitlement to Retired Pay

- 060401 48 Comp Gen 699 (B-166142) April 24, 1969
10 U.S.C., Chapter 1223
10 U.S.C. § 12731
37 Comp Gen 207 (B-132458) September 24, 1957
- 060402 44 Comp Gen 51 (B-154218) August 4, 1964
MS Comp Gen (B-144694) February 14, 1961

0605 – Dual Citizenship and/or Service in the Armed Forces of a Foreign Country

- 060502.B 10 U.S.C. § 1060