

CHAPTER 12

WAIVER OF RETIRED PAY1201 WAIVER CONDITIONS AND BENEFITS120101. General

A. Retired pay is a statutory right and, as such, cannot be waived except as authorized by law. These two laws authorize a member to waive entitlement to retired pay:

1. 38 U.S.C. 5305 (reference (ar)) permits a member to receive compensation or pension from the Department of Veterans Affairs (VA).

2. 5 U.S.C. 8332(c) (reference (az)) permits a member to include creditable military service in computing a civil service retirement annuity.

★B. A member may not waive his or her right to retired pay. Even if retired pay is not being sent to a member on a monthly basis (for example, the member's whereabouts is unknown), the retired pay continues to accrue. Since, for income tax purposes, such retired pay is deemed to have been constructively received by the member once it is made available and can be drawn upon, it is subject to the withholding and reporting requirements of ordinary wages.

C. A member who waive his or her retired pay in order to receive VA compensation or a pension may benefit for these reasons:

1. VA benefits are nontaxable income for federal, state, and local income taxation. See [Chapter 24](#) of this volume for computation of taxable pay and federal income tax withholding.

2. VA benefits may exceed the retired pay entitlement.

3. A retired Regular officer who also is employed by the federal government and is subject to the dual compensation statutes may have that reduction reduced because of the waiver of retired pay to receive VA benefits. See [Chapter 5](#) of this volume for computation of the dual compensation deduction.

1202 DEPARTMENT OF VETERANS AFFAIRS BENEFITS

120201. Dual Benefits. A retiree receiving retired pay who is also eligible to receive disability compensation/pension from the Department of Veterans Affairs is barred from receiving concurrent payments of both retired pay and the VA benefit, unless the member elects to waive that portion of retired pay that is equal to the amount of the VA benefit awarded. A retiree receiving retired pay who also is eligible to receive an improved VA pension from the Department of Veterans Affairs is not required to waive any retired pay effective October 1, 1980. See [Appendix G](#), article III, paragraph 3-1.

120202. Initial Award. See [Appendix G](#), article I, paragraph 1-2.

A. The timeframe for processing the initial waiver is in accordance with agreements in the VA-DoD Memorandum of Understanding in [Appendix G](#), article II, paragraphs 2-1 and 2-2.

B. Responsibility for recouping overpayments in accordance with the VA-DoD Memorandum of Understanding is in [Appendix G](#), article II, paragraphs 2-1 and 2-2.

C. When a Regular retired officer is employed by the federal government or instrumentality thereof during the period of a retroactive initial award of VA benefits, all amounts classified as retired pay are subject to reduction under the dual compensation formula. Disability compensation payable by the Department of Veterans Affairs is not retired pay. Payments equal to the VA compensation entitlement, and received after the effective date of the waiver, are classified as disability compensation and are not subject to reduction under the Dual Compensation Act (reference (at)). When a member executes a retroactive waiver of retired pay, the DFAS-Cleveland Center must recompute any dual compensation reduction as of the retroactive effective date of the waiver. A DD Form 2279 (Request for Retroactive Waiver of Military Retired Pay), once completed by the member, authorizes the Department of Veterans Affairs to pay the member any additional compensation due. This form also authorizes the Department of Veterans Affairs to deduct the overpayment of retired pay from compensation and refund it to the DFAS-Cleveland Center.

120203. Change in Awards

A. For increased, reduced awards, or a statutory increase, see [Appendix G](#), article II, paragraphs 2-1 and 2-2.

B. A retiree may receive VA compensation while receiving Federal Employees Compensation Act (FECA) benefits as long as such payment is not for the same injury or retainer pay; and retired pay or retainer pay while receiving FECA benefits subject to the limitations on receipt of dual compensation by retired officers.

120204. Withdrawal. A retiree who has waived retired pay in favor of VA benefits may withdraw the waiver and elect to receive retired pay at any time. The notification of the withdrawal of the previous waiver of retired pay must be submitted to the Department of Veterans Affairs in writing over the retiree's signature. This renouncement of VA benefits terminates the retiree's right to these benefits from such filing of notification. Renouncement of VA benefits does not preclude the retiree from filing a new waiver of retired pay at a later date, enabling the retiree to receive VA benefits again. The effective date or reinstatement of retired pay is determined by the VA procedures outlined below.

A. When the Department of Veterans Affairs is the initial recipient of the request or withdrawal, the Department of Veterans Affairs notifies the appropriate retired pay activity of the effective date of termination of VA benefits. The effective date is the first of the

month after the month of the request for withdrawal or termination of VA benefits, whichever is later. See [Appendix G](#).

B. When a retired pay activity is the first recipient of the request for withdrawal, it sends the request to the appropriate VA office by a cover letter indicating the monthly gross retired pay. Upon receipt, the Department of Veterans Affairs follows the procedure in subparagraph 12004.A, above.

120205. Incompetents. See [Appendix G](#), article III, paragraph 3-2. The effective date for restoration of retired pay will be the first of the month following the month of the restoration request or termination of VA benefits, whichever is later.

120206. RSFPP and SBP. Any retiree participating in RSFPP and/or SBP who waives retired pay in favor of VA benefits may:

A. Authorize the Department of Veterans Affairs to withhold the cost of the RSFPP and/or SBP from the benefits awarded and remit that amount to the cognizant retired pay activity. (See [Chapters 36, 45, and 56](#) of this volume); or

B. Be subject to involuntary collection action by the DFAS. Such collection action is subject to the provisions of the Public Law 97-365 (reference (de)). For procedures, see [Appendix V](#), Interagency Agreement Between the Department of Veterans Affairs and the Department of Defense Military Retired Pay, September 6, 1990.

1203 CIVIL SERVICE RETIREMENT

120301. General. A retiree receiving retired pay, pursuant to any provision of law authorizing such payments, who applies for a retirement annuity under the laws administered by the Office of Personnel Management (OPM), or the Foreign Service, which bar credit for the military service, may elect to waive the retired pay in order to credit military service for computing civil service annuity. To avoid a delay in adjudicating a civil service retirement claim, the member should execute a waiver and send it to the DFAS at least 60 days before the anticipated starting date of the annuity.

120302. Creditable Service. All periods of military service before the date of separation on which title to annuity is based are creditable. However, if a member is awarded retired pay on account of military service, the military service may not be credited unless:

- A. The retired pay is awarded on account of a service-connected disability
1. Incurred in combat with an enemy of the United States; or
 2. Caused by an instrumentality of war and incurred in line of duty during a period of war as defined by 38 U.S.C. 1101 (reference (ar)). The term "period of war" includes, in the case of any veteran:

a. Any period of service performed after November 11, 1918, and before July 2, 1921, if such veteran served in the active military, naval, or air service after April 5, 1917, and before November 12, 1918; and

b. Any period of continuous service performed after December 31, 1946, and before July 26, 1947, if such period began before January 1, 1947.

B. The retired pay is awarded under 10 U.S.C., Chapter 1223 (reference (c)); or

C. The member waives retired pay.

120303. Initial Waiver. A retiree may request waiver of retired pay so that military service may be used in establishing eligibility for and/or computation of civil service retirement annuity. The request for waiver of retired pay must be submitted over the retiree's signature and should contain the effective date of the waiver of retired pay. Certain civil service annuities, starting on or after October 1, 1982, commence the first day of the month after separation from civil service or pay ceases and the service and age requirements for title to annuity are met. Individuals retiring during the first 3 days of a month are excluded; their annuities begin the following day. Also excluded are survivor annuities, disability annuities, or discontinued service annuities based on involuntary separation, death, or last day of pay. The member should also authorize the OPM to withhold amounts necessary from the civil service retirement annuity to repay amounts of retired pay paid beyond the effective date of waiver. The retired pay activity notifies the OPM of the date retired pay is waived. The OPM, in turn, advises the retired pay activity of the actual date member's retirement annuity started, enabling the retired pay activity to make any final settlement that might be due the retired member.

120304. Dual Waivers. Civil service regulations prohibit the credit of military service for retirement annuity purposes if the retiree is receiving retired pay except retired pay awarded in accordance with paragraph 120302, above. When a retiree has a total waiver of retired pay in effect to receive VA compensation, the OPM interprets its regulations as providing for crediting military service for retirement annuity purposes.

120305. Withdrawal of Waiver. The waiver of military retired pay to receive an increased civil service retirement annuity may be withdrawn and military retired pay reinstated under these conditions:

A. The member becomes a reemployed annuitant and the civil service annuity is terminated.

B. When the member becomes eligible for social security benefits based on the member's wages and/or self-employment income, military service performed after 1956 must be excluded from the computation of civil service annuity. The waiver may be withdrawn, and retired pay must be reinstated, but only if the military service was not used to establish eligibility for a civil service retirement annuity.

C. Any time a member revokes a waiver of military retired pay, provided that this will not produce dual retirement benefits based on the same period of service.

120306. Relationship of Civil Service Survivor Annuity to Military RSFPP/SBP. When a retiree, who is participating in the survivor annuity program, elects to waive retired pay in favor of civil service retirement, the retiree is required to:

A. Pay the RSFPP cost during the period the waiver is in effect.

B. Pay the SBP cost during the period the waiver is in effect unless the OPM notifies the DFAS that the member elected to provide spouse coverage under the civil service annuity program.

120307. Addresses. The correspondence addresses for the OPM and the Foreign Service are:

Office of Personnel Management
Retirement and Insurance Group
1900 E. Street NW
Washington, D.C. 20415

Foreign Service
Department of State
Washington, D.C. 20520

1204 RESERVE TRAINING (ARMY AND AIR FORCE ONLY)

120401. Definitions

A. Retired member, as used in this section, refers to:

1. Army and Air Force Reserve officers who retire under 10 U.S.C. 3911 or 8911 (reference (c)), and

2. Army and Air Force Regular officers or enlisted members who transfer to a Reserve unit of the Armed Forces after retirement.

B. Active duty, as used in this section, does not include extended active duty (more than 30 days) where strength accountability passes from the Reserve Components to the active military establishment.

120402. Reserve Training Category. Each Armed Forces Reserve Component, is divided into three categories: ready (active status), standby (inactive status) and retired (retired status).

A. Ready Reserve

1. A member of the ready Reserve may, without consent, be ordered to active duty by the Secretary concerned during a period of war or national emergency, or when otherwise authorized by law.

2. Retired personnel having Ready Reserve status may participate in active duty for training or inactive duty training required by virtue of their assignment in a Reserve Component. Each period of training must be a duration of at least 2 hours with a maximum of two training periods in 1 calendar day. Compensation for each regular period of instruction or period of appropriate duty is at the rate of 1/30 of the member's authorized monthly pay and allowance, including that performed on a Sunday or holiday. Where the duty performed is for a continuous period of less than 1 month, compensation for each day of the period is at the rate of 1/30 of the monthly pay and allowances. The 31st day may not be excluded from computation. A member may perform inactive duty training without pay.

a. Active duty for training. This duty may include full-time training, annual training tours, or attendance at a school designated as a Military Service school by the Secretary concerned.

b. Inactive duty training. This training may include assemblies, additional flying training periods, and other additional duties as authorized by the Secretary concerned.

B. Standby Reserve. A member of the Standby Reserve may be called to active duty only in time of war or national emergency declared by the Congress or when otherwise authorized by law. This member does not participate in the duty referred to in subparagraph 120402.A.2.a or b, above.

C. Retired Reserve. A member of the Retired Reserve who is entitled to retired pay not be placed in the Ready Reserve unless the Secretary concerned makes a special finding that the member's services in the ready Reserve are indispensable. The Secretary may not delegate authority in this instance.

120403. Entitlement. A Reservist entitled to retired pay who performed Reserve training for compensation may elect to receive for that duty:

A. The retired pay to which entitled because of earlier military service; or

B. The pay and allowances authorized for the duty being performed, if the member specifically waives retired pay.

120404. Effect on Pay. A retired member who elects to receive compensation for periods of active duty for training or inactive duty training must waive 1 day of retired pay for each calendar day on which the Reserve training is performed. Performance of more than one drill in 1 calendar day requires the withholding of only 1 day of retired pay for that calendar day.

A. Waiver of Pay. The member must prepare in advance a waiver of retired pay for the entire or remainder of the fiscal year in which the training is to be performed. The waiver form should show, by month, the number of training periods for inactive duty and the inclusive dates of each anticipated active duty tour. Timely preparation of the waiver will prevent a possible overpayment of pay.

B. Supplemental Certificate of Waiver. The certificate is required when a member performs active or inactive duty not covered by the first declaration. This certification shows, by month, the additional days of duty performed and is added to the first declaration.

C. Certificate of Recoupment. The certificate recovers previously waived benefits that exceed active or inactive duty training performed. This request for recoupment must be signed by the unit commander and may not be submitted earlier than the last day of the fiscal year involved. The schedule for both the active and inactive duty for training may be shown on the same waiver form or certificate.

D. Adjustment of Pay. Pay is adjusted on an individual basis. Procedures for liquidating an outstanding debt or for collecting cash for RSFPP and SBP coverage are the same as for all other retired members.