

VOLUME 7B, CHAPTER 12: “WAIVER OF RETIRED PAY”**SUMMARY OF MAJOR CHANGES**

Changes are identified in this table and also 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 *July 2021* is archived.

PARAGRAPH	EXPLANATION OF CHANGE/REVISION	PURPOSE
All	Updated chapter with hyperlinks and formatting to comply with current administrative instructions.	Revision
4.2	Restored inadvertent omission of subparagraph 4.2.1.2 during the recent 508 and renumbering update.	Revision
References	Updated references.	Revision

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CHAPTER 12

WAIVER OF RETIRED PAY

1.0 GENERAL

1.1 Purpose

This chapter provides guidance for the waiver of retired pay. It includes the member's rights to retired pay, explains the exception provisions as authorized by law to waive retired pay and the impact of Veterans benefits on retired pay.

1.1.1. Retired pay is a statutory right and, as such, cannot be waived except as authorized by law. The following statutes and regulations authorize a member to waive entitlement to retired pay:

1.1.1.1. Title 38, United States Code, section 5305 ([38 U.S.C. § 5305](#)) permits a member to waive military retired pay in order to receive compensation or pension from the Department of Veterans Affairs (VA).

1.1.1.2. [Title 5, Code of Federal Regulations \(CFR\), section 831.301, 5 U.S.C. § 8332\(c\), and 5 U.S.C. § 8411](#), permit a member to include creditable military service in computing a civil service retirement annuity.

1.1.2. Generally, a member may not waive his or her right to retired pay. See [subparagraphs 1.1.1.1 and 1.1.1.2 for exceptions](#). Even if retired pay is not being sent to a member on a monthly basis (for example, the member's whereabouts are 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 tax withholding and reporting requirements of ordinary wages.

1.1.3. VA benefits are nontaxable income for federal, state, and local income taxation. See Chapter 24 for computation of taxable pay and Chapter 25 for federal income tax withholding.

1.1.4. VA benefits may exceed the retired pay entitlement.

1.2 Authoritative Guidance

The pay policies and requirements established by the DoD in this chapter are derived primarily from, and prepared in accordance with the U.S.C., including Titles 5, 10, 22, 31, 37, and 38. Due to the subject matter in this chapter, the list of authoritative sources is extensive. The specific statutes, regulations, and other applicable guidance that govern each individual section are listed in a reference section at the end of the chapter.

2.0 DEPARTMENT OF VETERANS AFFAIRS (VA) BENEFITS

2.1 Dual Benefits

[In general](#), a retiree receiving retired pay who is also eligible to receive disability compensation/pension from the VA is barred from receiving concurrent payments of both retired pay and the VA benefit, unless the member elects to waive the portion of retired pay that is equal to the amount of the VA benefit awarded. However, [effective January 1, 2004, pursuant to Public Law 108-136, section 641 \(e\), November 24, 2003, codified at 10 U.S.C. § 1414](#), certain retirees may receive both retired pay and the VA disability compensation concurrently. See [Chapter 64 for additional information on concurrent receipt of both retired pay and VA disability compensation](#).

2.2 Improved VA Pension

A retiree receiving retired pay who also is eligible to receive an improved VA pension from the VA is not required to waive any retired pay, effective October 1, 1980.

2.3 Initial Award of VA Disability Compensation

A. The time frame for processing the initial waiver of military retired pay in favor of an initial award of VA disability compensation is in accordance with agreements set forth in the “Memorandum of Understanding (MOU) between the Department of Veterans Affairs (VA) and the Defense Finance and Accounting Service (DFAS) – Cleveland” for Retired Pay and Survivor Annuities, hereinafter referred to as “MOU”.

B. Responsibility between the DFAS and the VA for recouping overpayments is in accordance with the MOU.

C. The Dual Compensation Act, [5 U.S.C. § 5532](#), which required a reduction in retired pay for military retirees employed in civil service positions, was repealed effective October 1, 1999. Prior to the repeal, when a regular retired officer employed by the Federal Government or instrumentality thereof waived his or her retired pay in lieu of VA benefits during the period of a retroactive initial award of VA benefits, all amounts classified as retired pay were subject to reduction under the dual compensation formula. Disability compensation payable by the VA 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 have never been subject to reduction under the Dual Compensation Act. If a member executes a retroactive waiver of retired pay for a period prior to October 1, 1999, then the DFAS Cleveland site must recompute any dual compensation reduction as of the retroactive effective date of the waiver. The member must authorize the VA in writing to pay any additional compensation due after deducting any retired pay overpayment. The VA will forward new pay data to the DFAS Cleveland site in accordance with the MOU.

2.4 Change in VA Disability Compensation Awards

2.4.1. For increased or reduced awards, or a statutory increase, see the MOU.

2.4.2. If a retiree is receiving Federal Employee Compensation Act benefits and is receiving VA benefits, the member will continue to receive both benefits unless the benefits are payable for the same injury.

2.5 Withdrawal of Waiver

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 retiree must submit a notification of the withdrawal of the previous waiver of retired pay to the VA on VA Form 21-526, Veteran's Application for Compensation and/or Pension. The retiree will check the box on VA Form 21-526, Part V, Item 25, under the statement, "NO, I DO NOT WANT VA COMPENSATION IN LIEU OF MILITARY PAY." This 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 in subparagraphs 2.5.1 and 2.5.2.

2.5.1. When the VA is the initial recipient of the request or withdrawal, the VA will notify the DFAS 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 the MOU.

2.5.2. When the DFAS retired pay activity is the first recipient of the request for withdrawal, it will send the request to the appropriate VA office with a cover letter indicating the monthly gross retired pay. Upon receipt, the VA follows the procedure in subparagraph 2.5.1.

2.6 Withdrawal When the Retiree is Ruled Incompetent

The trustee or guardian may request withdrawal of a previously executed waiver of retired pay of a retired member who has become incompetent. The VA will terminate VA benefits and the DFAS will restore retired pay. The effective date for the restoration of retired pay will be the first day of the month following the month of the termination of VA benefits. See the MOU.

2.7 Survivor Benefit Plan (SBP)

Any retiree participating in SBP who waives retired pay in favor of VA benefits may:

2.7.1. Authorize the VA to withhold the cost of the SBP from the benefits awarded and remit that amount to the cognizant retired pay activity (see Chapters 45 and 54);

2.7.2. Be subject to involuntary collection action by DFAS. Such collection action is subject to the provisions of [31 U.S.C. § 3701\(a\)\(1\)](#) and [31 U.S.C. § 3716](#); or

2.7.3. Directly remit the cost of the SBP to the cognizant retired pay activity.

3.0 CIVIL SERVICE RETIREMENT AND FEDERAL EMPLOYMENT RETIREMENT SYSTEM

3.1 Credit of Military Service for Computing Civil Service Annuity

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, may elect to waive their retired pay in order to obtain credit for their military service for the purpose of increasing their 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.

3.2 Creditable Service

If a member waives retired pay, then all periods of military service before the date of separation on which entitlement to military retired pay is based are creditable.

3.2.1. A member will receive credit for military service without waiver of retired pay, if the member was awarded retired pay:

3.2.1.1. On account of a service connected disability:

3.2.1.1.1. Incurred in combat with an enemy of the United States; or

3.2.1.1.2. Caused by an instrumentality of war and incurred in the line of duty during a period of war as defined by [38 U.S.C. § 1101](#). The term “period of war” includes, in the case of any veteran, any period of continuous service performed after December 31, 1946 and before July 26, 1947, if such period began before January 1, 1947.

3.2.1.2. For non-regular (reserve) service under [10 U.S.C., Chapter 1223](#).

3.2.2. A member who was awarded retired pay because of military service other than service described in subparagraph 3.2.1 will be required to waive retired pay in order to receive credit for military service for Civil Service Retirement.

3.3 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 contain the retiree’s signature and 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 when pay ceases and the service and age requirements for entitlement 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 the 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 a member's civil service retirement annuity started, enabling the retired pay activity to make any final settlement that might be due the retired member.

3.4 Dual Waivers

3.4.1. Federal law prohibits the credit of military service for civil service retirement annuity purposes if the retiree is receiving retired pay based on any period of military service, except retired pay awarded in accordance with subparagraph 3.2.1.

3.4.2. A retiree who is in receipt of retired pay which bars credit for military service may elect to waive the retired pay and have the military service added to civilian service for civil service annuity computation purposes subject to deposit requirements established by civil service law.

3.4.3. Individuals whose civilian retirement is not based on disability need not renounce VA benefits to receive credit for military service if they waive their military retired pay for civil service annuity computation purposes.

3.5 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:

3.5.1. The waiver of military retired pay may be withdrawn when the member becomes a reemployed annuitant and the civil service annuity terminates.

3.5.2. A civil service retirement retiree, who becomes eligible for Social Security benefits based on the member's wages and/or self-employment income, must exclude their military service performed after 1956 from the computation of their 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.

3.5.3. A member may revoke a waiver of military retired pay at any time providing this will not produce dual retirement benefits based on the same period of service.

3.6 Relationship of Civil Service Survivor Annuity to Military 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 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.

3.7 Addresses

The correspondence addresses for the OPM and the Foreign Service are:

U.S. Office of Personnel Management
Retirement Operations Center
Post Office Box 45
Boyers, PA 16017

Office of Retirement
Department of State, SA-1, H-620
2401 E. Street NW
Washington, DC 20522

4.0 WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

4.1 Definitions

4.1.1. Retired member, as used in this section refers to a member of the Army, Navy, Air Force, Space Force, Marine Corps or Coast Guard who because of earlier military service is entitled to pension, retired or retainer pay, or disability compensation.

4.1.2. 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.

*4.2 Reserve Training Category

Each Armed Forces Reserve Component is divided into three categories: Ready (active status), Standby (inactive status), and Retired (retired status).

4.2.1. Ready Reserve

4.2.1.1. A member of the Ready Reserve may, without consent, be ordered to active duty by the Secretary of the Military Department concerned (or designee) during a period of war or national emergency, or when otherwise authorized by law.

4.2.1.2. 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 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 the computation. A member may perform inactive duty training without pay.

4.2.1.2.1. 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 of the Military Department concerned.

4.2.1.2.2. Inactive Duty Training. This training may include assemblies, additional flying training periods, and other additional duties as authorized by the Secretary of the Military Department concerned.

4.2.2. 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 subparagraphs 4.2.1.2.1 or 4.2.1.2.2.

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

4.3 Entitlement Prior to June 30, 2021

Prior to June 30, 2021, a Reservist entitled to retired pay who performed Reserve training for compensation, except during a period of war or national emergency, may have elected to receive for that duty:

4.3.1. The retired pay to which the member was entitled because of earlier military service;
or

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

For periods of war or national emergency, see 10 U.S.C. § 12316.

4.4 Effect on Pay Prior to June 30, 2021

Prior to June 30, 2021, a retired member who elected to receive compensation for periods of active duty for training or inactive duty training was required to waive 1 day of retired pay for each calendar day on which the Reserve training was performed. Performance of more than one drill in one calendar day required the withholding of only 1 day of retired pay for that calendar day.

4.4.1. 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 helped to prevent a possible overpayment of pay.

4.4.2. Supplemental Certificate of Waiver. The certificate is required when a member performed active or inactive duty not covered by the first declaration. This certificate showed the additional days of duty performed by month and was added to the first declaration.

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

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

5.0 PAYMENT OF CERTAIN RESERVES WHILE ON ACTIVE DUTY, PURSUANT TO PUBLIC LAW 116-283, SECTION 621, EFFECTIVE JUNE 30, 2021

5.1 Entitled to Retired or Retainer Pay

Except as provided by paragraph 5.3, a Reserve member of the Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard who because the Reserve member's earlier military service is entitled to a retired or retainer pay and who performs duty for which the Reserve member is entitled to compensation, may elect to receive for that duty either:

5.1.1. The pay and allowances authorized by law for the duty that the Reserve member is performing; or

5.1.2. If the Reserve member specifically waives those payments, the retired or retainer pay to which the Reserve member is entitled because of the Reserve member's earlier military service.

5.2 Entitled to a Pension or Disability Compensation

Except as provided by paragraph 5.3, a Reserve member of the Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard who because of the Reserve member's earlier military service is entitled to a pension or disability compensation, and who performs duty for which the Reserve member is entitled to compensation, may elect to receive for that duty either:

5.2.1. The pension or disability compensation to which the Reserve member is entitled because of the Reserve member's earlier military service; or

5.2.2. If the Reserve member specifically waives those payments, the pay and allowances authorized by law for the duty that the Reserve member is performing.

Note: Under 38 U.S.C. § 5304(c), a member is prohibited from receiving VA disability compensation for any period for which he receives active service pay.

5.3 Not Entitled to Retired or Retainer Pay When Ordered to Active Duty for More Than 30 Days in Time of War or National Emergency

A Reserve member ordered to active duty for a period of more than 30 days in time of war or national emergency and found physically qualified to perform that duty is not entitled to retired or retainer payments until the period of active duty ends, unless the retired or retainer payments are greater than the compensation prescribed by subparagraphs 5.1.1 or 5.2.2. Other rights and benefits of the Reserve member or the Reserve member's dependents are unaffected by this paragraph.

5.4 Regulations

The Secretary of Defense shall prescribe regulations under which a Reserve member of the Army, Navy, Air Force, Space Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law for the duty the Reserve member is performing under subparagraphs 5.1.2 or 5.2.2.

*REFERENCES

CHAPTER 12 – WAIVER OF RETIRED PAY

1.0 – GENERAL

- | | |
|-------|--|
| 1.1.1 | 38 U.S.C. § 5305
5 U.S.C. § 8332(c)
5 U.S.C. § 8411
5 CFR 831.301 |
| 1.1.2 | 26 U.S.C. § 3402 |

2.0 – DEPARTMENT OF VETERANS AFFAIRS (VA) BENEFITS

- | | |
|-------|---|
| 2.1 | 38 U.S.C. § 5304
38 U.S.C. § 5305
10 U.S.C. § 1414
Public Law 108-136, section 641(e)
November 24, 2003 |
| 2.2 | MOU between VA/DFAS,
February 16, 2017
Public Law 96-385, section 503,
October 7, 1980
38 U.S.C. § 5304
38 CFR 3.750 |
| 2.3 | MOU between VA/DFAS,
February 16, 2017 |
| 2.3.1 | MOU between VA/DFAS,
February 16, 2017 |
| 2.3.2 | MOU between VA/DFAS,
February 16, 2017 |
| 2.3.3 | MOU between VA/DFAS,
February 16, 2017
5 U.S.C. § 5532
55 Comptroller General (Comp Gen)
1402 |
| 2.4 | 5 U.S.C § 8116
Public Law 93-416, September 7, 1974
Manuscript (MS) Comp Gen B-222852,
April 28, 1987
39 Comp Gen 321 |
| 2.5 | MOU between VA/DFAS,
February 16, 2017 |
| 2.6 | MOU between VA/DFAS,
February 16, 2017
50 Comp Gen 80 |

REFERENCES (continued)

- 2.7 MOU between VA/DFAS,
February 16, 2017
MS Comp Gen B-188932,
December 23, 1977
31 U.S.C. § 3701(a)(1)
31 U.S.C. § 3716
- 3.0 – CIVIL SERVICE RETIREMENT & FEDERAL EMPLOYMENT RETIREMENT SYSTEM
- 3.1 5 U.S.C., Chapter 83, 84
22 U.S.C., Chapter 14
25 Comp Gen 631
28 Comp Gen 367
43 Comp Gen 551
46 Comp Gen 404
- 3.2 5 U.S.C. § 8332 (CSRS)
5 U.S.C. § 8411 (FERS)
10 U.S.C., Chapter 1223
38 U.S.C. § 1101
- 3.3 Public Law 97-253, section 303
September 8, 1982
5 U.S.C. § 8334 and note
5 U.S.C. § 8342 and note
5 U.S.C. § 8348
Public Law 97-377, section 768
December 21, 1982
10 U.S.C. § 1210(c) and (d)
10 U.S.C., Chapter 61
- 3.4 5 U.S.C. § 8332(c)
5 U.S.C. § 8334
5 U.S.C. § 8411(c)
5 CFR 831.301
55 Comp Gen 684
- 3.5.1 49 Comp Gen 581
- 3.5.2 5 U.S.C. § 8332(j)
49 Comp Gen 581
41 Comp Gen 460
52 Comp Gen 429
50 Comp Gen 80
- 3.5.3 41 Comp Gen 460

REFERENCES (Continued)

4.0 – WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

- | | |
|---------|--|
| 4.1.1 | 10 U.S.C. § 12316(a) |
| 4.2 | 10 U.S.C. § 10141(a) and (b) |
| | 32 CFR 64.4 |
| | 32 CFR 101.5 |
| 4.2.1.2 | 10 U.S.C. § 12301 |
| | Volume 7A, Chapter 57 |
| | 37 U.S.C. §§ 206, 1002, and 1004 |
| 4.2.2 | 10 U.S.C. § 12301 |
| | 10 U.S.C. §§ 10145, 10146, and 12301 |
| | 10 U.S.C. § 12316(a) |
| 4.4 | MS Comp Gen, B-179882,
December 4, 1974 |
| | MS Comp Gen, B-207370,
March 22, 1983 |

5.0 – PAYMENT OF CERTAIN RESERVES WHILE ON DUTY, PURSUANT TO PUBLIC LAW 116-283, SECTION 621, EFFECTIVE JUNE 30, 2021

- Public Law 116-283, enacted
January 1, 2021, section 621,
effective June 30, 2021
10 U.S.C. § 12316