

**VOLUME 7B, CHAPTER 12: “WAIVER OF RETIRED PAY”****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 April 2010 is archived.

<b>PARAGRAPH</b>	<b>EXPLANATION OF CHANGE/REVISION</b>	<b>PURPOSE</b>
All	This chapter is being updated with hyperlinks and formatted to comply with current administrative instruction.	Update
Table of Contents	Expanded the Table of Contents to include paragraphs.	Add
All	Deleted all references to Retired Serviceman’s Family Protection Plan (RSFPP). Effective September 21, 1972, RSFPP was superseded by Survivors Benefit Plan.  Public Law 106-65, signed into law October 5, 1999, extended the paid-up provision to active RSFPP participants. The law stated, effective October 1, 2008 no reduction may be made in the retired pay of a RSFPP participant for any month after the later of the 360 <sup>th</sup> month of retired pay reduction and the month during which the participant attains 70 years of age.  RSFPP is no longer utilized by any participants.  DoDFMR Volume 7B, Chapters 33 through 36 are located in the archive files and provides historical information on RSFPP	Delete
120305	Updated and rephrased fragmented verbiage to be complete sentences for clarity.	Update
120302.A.1.b.(1)	Deleted previous version subparagraph 120302.A.1.b.(1). There are no living veterans who served in the active military service between April 5, 1917 and November 12, 1918.	Delete
120302.A.1.b.(2)	Merged previous version subparagraph into parent subparagraph 120302.A.1.b.	Update
Bibliography	Added corresponding United States Codes amended by listed public laws.	Add

## Table of Contents

VOLUME 7B, CHAPTER 12: “WAIVER OF RETIRED PAY” .....	1
1201 WAIVER CONDITIONS AND BENEFITS .....	3
120101. General .....	3
1202 DEPARTMENT OF VETERANS AFFAIRS BENEFITS .....	3
120201. Dual Benefits.....	3
120202. Improved VA Pension.....	4
120203. Initial Award of VA Disability Compensation .....	4
120204. Change in VA Disability Compensation Awards .....	4
120205. Withdrawal of Waiver.....	5
120206. Withdrawal When the Retiree is Ruled Incompetent.....	5
120207. Survivor Benefit Plan (SBP) .....	5
1203 CIVIL SERVICE RETIREMENT & FEDERAL EMPLOYMENT RETIREMENT SYSTEM .....	5
120301. General .....	5
120302. Creditable Service .....	6
120303. Initial Waiver.....	6
120304. Dual Waivers.....	7
*120305. Withdrawal of Waiver .....	7
120306. Relationship of Civil Service Survivor Annuity to Military SBP .....	7
120307. Addresses .....	8
1204 WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT .....	8
120401. Definitions.....	8
120402. Reserve Training Category.....	8
120403. Entitlement .....	9
120404. Effect on Pay .....	9
BIBLIOGRAPHY .....	11

## CHAPTER 12

WAIVER OF RETIRED PAY

## 1201 WAIVER CONDITIONS AND BENEFITS

## 120101. 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. [Title 38, United States Code \(U.S.C.\), section 5305](#) permits a member to receive compensation or pension from the Department of Veterans Affairs (VA).

2. [Title 5, U.S.C., sections 8332\(c\)](#) and [8411](#) and [Title 5, Code of Federal Regulations, section 831.301](#) permit 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 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 withholding and reporting requirements of ordinary wages.

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

1. 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.

2. VA benefits may exceed the retired pay entitlement.

## 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 VA is generally 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 or is qualified to receive both under the Concurrent Retirement and Disability Pay (CRDP) program. For information regarding the CRDP program, see [Title 10 U.S.C. 1414](#).

## 120202. 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. See Appendix G, article III, paragraph 3-1. However, in order to obtain payment from VA, the member may be required to waive retired or retainer pay in the amount payable by the VA.

## 120203. Initial Award of VA Disability Compensation

See Appendix G, article I, paragraph 1-2.

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 in the VA-Department of Defense (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. Before repeal of the reduction in military retired pay for military retirees who were employed in civil service positions on October 1, 1999, when a regular retired officer was 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 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 Defense Finance and Accounting Service (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. VA will forward new pay data to the DFAS-Cleveland site in accordance with VA-DoD Memorandum of Understanding in Appendix G, article II, paragraphs 2-1.A.

## 120204. Change in VA Disability Compensation Awards

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

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

## 120205. 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 notification of the withdrawal of the previous waiver of retired pay must be submitted to the VA on VA Form 21-526, “[Veteran’s Application for Compensation and/or Pension](#).” The retiree will sign his/her signature on VA Form 21-526, Section VII, Item 21e, under the statement, “Sign here if you want to receive military retired pay instead of VA compensation.” 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 120205.A and B.

A. 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 Appendix G.

B. 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 by a cover letter indicating the monthly gross retired pay. Upon receipt, the VA follows the procedure in subparagraph 120205.A.

## 120206. Withdrawal When the Retiree is Ruled Incompetent

See Appendix G, article III, paragraph 3-2. Once the withdrawal is processed 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.

## 120207. Survivor Benefit Plan (SBP)

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

A. 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 Chapter 45 and 54); or

B. 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](#).

## 1203 CIVIL SERVICE RETIREMENT &amp; FEDERAL EMPLOYMENT RETIREMENT SYSTEM

## 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, 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 DFAS at least 60 days before the anticipated starting date of the annuity.

120302. 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.

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

1. On account of a service connected disability:

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

b. 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.

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

B. A member who was awarded retired pay on account of military service other than service described in subparagraph 120302.A will be required to waive retired pay in order to receive credit for military service for Civil Service Retirement.

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 a 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

A. Federal law prohibits the credit of military service for civil service retirement annuity purposes if the retiree is receiving retired pay, except retired pay awarded in accordance with subparagraph 120302.A.

B. A retiree who is in receipt of retired pay 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.

C. 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.

## \*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 waiver of military retired pay may be withdrawn when the member becomes a reemployed annuitant and the civil service annuity is terminated.

B. Civil service retirement retiree's who become 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 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. 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.

## 120306. 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 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  
2401 E. Street NW  
SA-1 H620  
Washington, D.C. 20522

## 1204 WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

## 120401. Definitions

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

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 of the Military Department concerned (or designee) 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 of the Military Department concerned.

b. 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.

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.

C. 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.

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 SBP coverage are the same as for all other retired members.

## BIBLIOGRAPHY

## CHAPTER 12 – WAIVER OF RETIRED PAY

## 1201 – WAIVER CONDITIONS AND BENEFITS

- |           |  |
|-----------|--|
| 120101.A. | 5 U.S.C. 5305<br>5 U.S.C. 8322(c)<br><a href="#">5 U.S.C. 8411</a><br>5 C.F.R. 831.301 |
| 120101.B  | 26 U.S.C. 451<br>Treasury Reg 1.451-1(a)   |

## 1202 – DEPARTMENT OF VETERANS AFFAIRS BENEFITS

- |          |  |
|----------|--|
| 120201   | 38 U.S.C. 5304<br>38 U.S.C. 5305<br>10 U.S.C. 1414   |
| 120202.B | MOU between VA/DFAS, February 26, 2007<br>55 Comp Gen 1402   |
| 120203   | MOU between VA/DFAS, February 26, 2007   |
| 120203.A | MOU between VA/DFAS, February 26, 2007   |
| 120203.B | MOU between VA/DFAS, February 26, 2007   |
| 120204   | 5 U.S.C. 8116<br>Public Law 93-416, Sep 7, 1974<br>MS Comp Gen B-222852, Apr 28, 1987<br>39 Comp Gen 321   |
| 120205   | MOU between VA/DFAS, February 26, 2007   |
| 120206   | MOU between VA/DFAS, February 26, 2007<br>50 Comp Gen 80   |
| 120207   | MOU between VA/DFAS, February 26, 2007<br>MS Comp Gen B-188932, Dec 23, 1977<br><a href="#">31 U.S.C. 3701(a)(1)</a><br><a href="#">31 U.S.C. 3716</a> |

## 1203 – CIVIL SERVICE RETIREMENT &amp; FEDERAL EMPLOYMENT RETIREMENT SYSTEM

120301	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
120302	5 U.S.C. 8332 (CSRS) 5 U.S.C. 8411 (FERS) <a href="#">10 U.S.C., Chapter 1223</a> <a href="#">38 U.S.C. 1101</a>
120303	Public Law 97-253, Section 303 Sep 8, 1982 <a href="#">5 U.S.C. 8334 and note</a> <a href="#">5 U.S.C. 8342 and note</a> <a href="#">5 U.S.C. 8348</a> Public Law 97-377, Section 768 Dec 21, 1982 <a href="#">10 U.S.C. 1210(c) and (d)</a> <a href="#">10 U.S.C., Chapter 61</a>
120304	5 U.S.C. 8332(c) 5 U.S.C. 8334 5 U.S.C. 8411(c) CFR 831.301 55 Comp Gen 684
120305.A. 120305.B.	49 Comp Gen 581 5 U.S.C. 8332(j) 49 Comp Gen 581 41 Comp Gen 460 52 Comp Gen 429 50 Comp Gen 80
120305.C.	41 Comp. Gen. 460

## 1204 – WAIVER OF PAY FOR RESERVE DUTY AFTER RETIREMENT

120401.A 120402	10 U.S.C. 12316(a) 10 U.S.C. 10141(a).(b) 32 C.F.R. 64.4 32 C.F.R. 101.5
120402.A.2	10 U.S.C. 12301 Vol. 7A, Chapter 57 37 U.S.C. 206, 1002, 1004
120402.B	10 U.S.C. 12301 10 U.S.C. 10145, 10146, 12301

120404

10 U.S.C. 12316(a)

MS Comp Gen B-179882, Dec 4, 1974

MS Comp Gen B-207370, Mar 22, 1983