

## **Way Back Pay: Legislation addresses retroactive promotions for World War II Navy and Marine Corps POWs.**

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### 9.0—Miscellaneous

The U.S. Code contains 50 titles, including Title 34 (Navy and Marine Corps), which was repealed in 1947 when Congress consolidated the Department of War and the Department of the Navy into the newly created Department of Defense (DoD). At the same time, Congress consolidated Title 10 (Army, including the Army Air Force) with Title 34. Title 10 now addresses all the DoD armed forces.

Before 1947, separate congressional committees addressed the Departments of War and the Navy. There were some glaring inconsistencies between the laws applicable to the Army and those applicable to the Navy and Marine Corps.

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<sup>1</sup>I invite the reader's attention to <https://www.roa.org/page/LawCenter>. You will find more than 2000 "Law Review" articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Servicemembers Civil Relief Act (SCRA), the Uniformed and Overseas Citizens Absentee Voting Act (UOCAVA), the Uniformed Services Former Spouse Protection Act (USFSPA), and other laws that are especially pertinent to those who serve our country in uniform. You will also find a detailed Subject Index, to facilitate finding articles about specific topics. The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997.

<sup>2</sup>BA 1973 Northwestern University, JD (law degree) 1976 University of Houston, LLM (advanced law degree) 1980 Georgetown University. I served in the Navy and Navy Reserve as a Judge Advocate General's Corps officer and retired in 2007. I am a life member of ROA. For 43 years, I have worked with volunteers around the country to reform absentee voting laws and procedures to facilitate the enfranchisement of the brave young men and women who serve our country in uniform. I have also dealt with the Uniformed Services Employment and Reemployment Rights Act (USERRA) and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 36 years. I developed the interest and expertise in this law during the decade (1982-92) that I worked for the United States Department of Labor (DOL) as an attorney. Together with one other DOL attorney (Susan M. Webman), I largely drafted the proposed VRRRA rewrite that President George H.W. Bush presented to Congress, as his proposal, in February 1991. On 10/13/1994, President Bill Clinton signed into law USERRA, Public Law 103-353, 108 Stat. 3162. The version of USERRA that President Clinton signed in 1994 was 85% the same as the Webman-Wright draft. USERRA is codified in title 38 of the United States Code at sections 4301 through 4335 (38 U.S.C. 4301-35). I have also dealt with the VRRRA and USERRA as a judge advocate in the Navy and Navy Reserve, as an attorney for the Department of Defense (DOD) organization called Employer Support of the Guard and Reserve (ESGR), as an attorney for the United States Office of Special Counsel (OSC), as an attorney in private practice, and as the Director of the Service Members Law Center (SMLC), as a full-time employee of ROA, for six years (2009-15). Please see Law Review 15052 (June 2015), concerning the accomplishments of the SMLC. My paid employment with ROA ended 5/31/2015, but I have continued the work of the SMLC as a volunteer. You can reach me by e-mail at [SWright@roa.org](mailto:SWright@roa.org).

Both Title 10 and Title 34 required that an officer present himself to a military medical officer for examination as a condition precedent to promotion. Title 10 provided, during World War II, that an officer could be promoted without the medical examination if military exigencies precluded the examination. Title 34 made no such provision.

During World War II, Army officers were promoted while interned as prisoners of war (POWs). When released at the end of the war, the POW received a lump sum payment of military salary accrued while interned. The payment included promotions that the officer received while interned. For example, let us assume that 2LT Jones was captured by the enemy in early 1942. He was promoted to first lieutenant on Jan. 1, 1943, and to captain on July 1, 1944. His lump sum payment included the effect of these promotions.

Navy and Marine Corps POWs were not promoted while interned because Title 34 made no provision for promoting an officer without a medical examination. Their lump sum payments on release therefore were significantly less than the payments received by Army POWs.

In the late 1990s, Congress and DoD addressed this injustice, but incompletely. DoD paid out approximately \$2.7 million to Navy and Marine Corps World War II POWs who were selected for promotion, but not promoted, during the internment. The payments did not include any interest or any inflation adjustment. Because of inflation, the payments made more than 50 years after the war did not come close to compensating these folks for what they lost. I invite the reader's attention to Law Review 0611 ("Interest on Back Pay Awards") for a discussion of the need to include interest in back pay awards under the Uniformed Services Employment and Reemployment Rights Act and other employment laws.

Sen. John McCain (R-Ariz.), himself a Vietnam War POW, has introduced legislation to provide for a modification of the calculation of the back pay award, to take into account changes in the Consumer Price Index during the decades following World War II. DoD, which opposes Sen. McCain's legislation, has determined that its passage would trigger an additional \$26.1 million in back pay awards for the Navy and Marine Corps World War II POWs.

### **Update – May 2022**

Senator John McCain's legislation, S. 2564, has not been enacted.

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This article is one of 1800-plus "Law Review" articles available at [www.roa.org/page/lawcenter](http://www.roa.org/page/lawcenter). The Reserve Officers Association, now doing business as the Reserve Organization of America (ROA), initiated this column in 1997. New articles are added each month.

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advocate for the implementation of policies that provide for adequate national security. For many decades, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation's defense needs.

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Through these articles, and by other means, we have sought to educate service members, their spouses, and their attorneys about their legal rights and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA or eligible to join, but please understand that ROA members, through their dues and contributions, pay the costs of providing this service and all the other great services that ROA provides.

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