

## LAW REVIEW<sup>1</sup> 16088

September 2016

### The Notice of Eligibility and the RC Retirement System

By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>

#### 5.5—Other Military Service and Family Obligations

**Q: I am the Coast Guard Reserve petty officer who asked the questions in Law Review 16086 and Law Review 16087. I have heard some of my fellow reservists talking about the “Notice of Eligibility” (NOE) or “20-year letter.” What is this notice, and why is it important?**

**A:** As I explained in Law Review 16086, you must have at least 20 “good years” for Reserve Component (RC) retirement purposes to qualify for the RC retirement benefit at age 60. A few months after you reach that 20-year threshold, the Coast Guard (or the service of which you are a member at that time) will send you a Notice of Eligibility (NOE), informing you that you have met the threshold to qualify for the retirement benefit at age 60. That notice is binding on the Federal Government, unless you obtained it by fraud.<sup>3</sup>

---

<sup>1</sup>I invite the reader’s attention to [www.roa.org/lawcenter](http://www.roa.org/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 very 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 (VRRA—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 VRRA 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 VRRA 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).

For example, Petty Officer Josephine Smith received her NOE in September 2016. After receiving the notice, she discontinued her participation in the Coast Guard Reserve, secure in the knowledge that she qualified for the RC retirement at age 60. Many years later, as she approached her 60th birthday, she applies for the RC retirement benefits. At that point, the Coast Guard discovers that the NOE was issued in error and that Smith only had 19 “good years” at the time the NOE was issued. The NOE is binding on the Government. Smith receives her RC retirement benefits starting at age 60, although she had only 19 good years, because she reasonably relied upon the NOE.

An RC member who receives the NOE is permitted but not required to stop participating at that point. For example, I received my NOE in May 1993, about the time of my 42nd birthday. I could have stopped participating at that point, secure in my entitlement to RC retirement at age 60 in May 2011, when I turned 60. But I chose to continue my participation. I was a Commander (O-5) when I received the NOE. I was promoted to Captain (O-6) in December 1995, and I earned more than 1,000 additional retirement points after May 1993. I kept participating until April 2007, when I reached my mandatory retirement date, based on 30 years of commissioned service. By continuing my participation after I received the NOE, I added greatly to my RC retirement benefit at age 60.<sup>3</sup>

Receiving the NOE is important for another reason, as receipt of this notice marks the individual’s first opportunity to select the Reserve Component Survivor Benefit Plan (RCSBP). When I received my NOE in May 1993, I was married, and I chose the RCSBP. There was a deduction from my monthly retirement benefit for making this election, but not until May 2011, when I turned 60 and started receiving my RC retirement benefit. If I had died sometime between May 1993 and May 2011, my wife would have received the survivor benefit, although there had been no deductions from my RC retired pay. Now that I am retired and the monthly deduction is being made, she will receive the monthly survivor benefit for the rest of her life, assuming that I die before she does.

Because I was married at the time I received the NOE in May 1993, my wife had an effective veto on my electing not to participate in the RCSBP or electing to participate at a reduced rate. My wife was required to sign off on the RCSBP election, and she did, and I elected full participation in the RCSBP. If I had submitted the election without her signature, or if I had not responded to the NOE at all, the default selection would have been for me to participate at the full rate. Although I really had no choice in the matter, I can say that selecting full participation in the RCSBP was the right choice and the choice I would have made in any case.

**Q: I know a Coast Guard Reserve officer (let’s call her Commander Semper Paratus) who received her NOE in May 2014. At the time, she was not married and had never been married and had no children. Accordingly, she chose not to participate in the RCSBP. Two years later**

---

<sup>3</sup>Please see Law Review 16087.

**(May 2016), she married Joe Jones, a civilian who has never served in the military. Does the marriage give Commander Paratus a new opportunity to select the RCSBP?**

A: Yes. Under these circumstances, Commander Paratus gets a new opportunity to elect RCSBP. Her election of RCSBP coverage must be in writing and must be received by the Secretary concerned (the Secretary of Homeland Security for the Coast Guard) within one year after the date of the marriage.<sup>4</sup> It is *not sufficient* for Commander Paratus to enroll her new husband in DEERS (the Defense Eligibility Enrollment Recording System). She needs to *elect RCSBP coverage for her new husband*, in writing, by May 2017 (one year after the date of the marriage). This is separate and apart from enrolling her new husband in DEERS.

### **Please join or support ROA**

This article is one of 2,300-plus “Law Review” articles available at [www.roa.org/lawcenter](http://www.roa.org/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.

ROA is almost a century old—it was established on 10/1/1922 by a group of veterans of “The Great War,” as World War I was then known. One of those veterans was Captain Harry S. Truman. As President, in 1950, he signed our congressional charter. Under that charter, our mission is to advocate for the implementation of policies that provide for adequate national security. For almost a century, we have argued that the Reserve Components, including the National Guard, are a cost-effective way to meet our nation’s defense needs.

Through these articles, and by other means, including amicus curiae (“friend of the court”) briefs that we file in the Supreme Court and other courts, we educate service members, military spouses, attorneys, judges, employers, DOL investigators, ESGR volunteers, congressional and state legislative staffers, and others about the legal rights of service members and about how to exercise and enforce those rights. We provide information to service members, without regard to whether they are members of ROA, 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.

If you are now serving or have ever served in any one of our nation’s eight<sup>5</sup> uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20 or \$450 for a life membership. Enlisted personnel as well as officers are eligible for full membership, and eligibility applies to those who are serving or have served in the Active Component, the National Guard, or the Reserve. If you are eligible for ROA membership, please join. You can join on-line at [www.roa.org](http://www.roa.org) or call ROA at 800-809-9448.

---

<sup>4</sup>10 U.S.C. > 1448(a)(5)(B). Please see Law Review 1008 (January 2010) for a detailed discussion of this provision.

<sup>5</sup>Congress recently established the United States Space Force as the 8<sup>th</sup> uniformed service.

If you are not eligible to join, please contribute financially, to help us keep up and expand this effort on behalf of those who serve. Please mail us a contribution to:

Reserve Organization of America

1 Constitution Ave. NE

Washington, DC, 20002