

**You Can Purchase Federal Civilian Retirement Credit for your Active Duty Time, and this Does Not Affect your Reserve Component Retirement at Age 60**

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**Q: I am a noncommissioned officer in the Air Force Reserve and a member of the Reserve Officers Association (ROA).<sup>3</sup> I served on active duty in the Air Force for almost 13 years and left active duty in late 2016. After I left active duty, I affiliated with the Air Force Reserve because I was told that doing that was necessary to salvage some retirement benefit out of my 13 years of active duty, but I do not fully understand how the reserve retirement system works.**

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<sup>1</sup> I invite the reader's attention to [www.roa.org/lawcenter](http://www.roa.org/lawcenter). You will find more than 1600 "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 (ROA) initiated this column in 1997. I am the author of more than 1400 of the articles.

<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. I have dealt with USERRA and the Veterans' Reemployment Rights Act (VRRRA—the 1940 version of the federal reemployment statute) for 35 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).

<sup>3</sup> In 2013, ROA members amended the ROA Constitution and made noncommissioned officers eligible for full membership.

Six months after I left active duty, I found a full-time federal civilian job, working for the United States Department of Commerce (DOC). The DOC personnel office told me that I can purchase federal civilian retirement credit for my 13 years of active duty that I performed before I was first hired as a federal civilian employee. My concern is that purchasing the credit for federal civilian retirement purposes will preclude me from getting credit for reserve retirement purposes for that same period of active duty. When I asked the DOC personnel office about this question, all I got was a shrug of the shoulders. The personnel office employee told me: "We deal with federal civilian retirement here. Please don't ask us questions about the military retirement system."

This stuff is so complicated that it gives me a migraine headache. Please help me sort this out and understand my options.

**Answer, bottom line up front:**

The federal civilian retirement system is entirely separate from the reserve retirement system. You can and probably should purchase the federal civilian retirement credit for your active duty years, and this will have no effect on your qualifying for the reserve retirement or on the amount of your monthly retirement benefit under the reserve retirement system.

### **Explanation**

#### **Make a deposit to get federal civilian retirement credit for your active duty time.**

As I have explained in detail in Law Review 16116 (November 2016), you can get federal civilian retirement credit for the 13 years of active duty that you performed before you began your federal civilian career. To get the credit, you must make a deposit in the sum of 3% of the military base pay that you received during your active duty period. If you make the deposit during the first two years after the start of your federal civilian career, you need not pay interest on the deposit. If you wait more than two years, you will be required to pay interest. In any case, you must make the deposit before you retire from federal civilian service. I have talked to several ROA members who are retired reservists and retired federal civilian employees and who regret that they failed to make the deposit before they retired from federal civilian service.

If you make the deposit, you will qualify earlier for federal civilian retirement, and the amount of your federal civilian monthly retirement benefit will be greater. Under almost any conceivable circumstances, making the deposit will be beneficial to you.

### **The reserve retirement system**

Until 1948, it was necessary to spend 20 years on full-time active duty or to sustain a serious service-connected disability to qualify for military retirement. In that year, Congress enacted legislation providing for a third kind of military retirement, the reserve retirement system. The idea was that there were millions of still relatively young men and women who had served our country well in World War II, and it was thought that an emergency might arise requiring their recall to active duty. It was perceived necessary to keep some of those veterans available for recall and to give them periodic training so that they would be available for service quickly, without a lot of post-recall training. Just two years later, in June 1950, North Korea invaded South Korea and the value of this new system became apparent.

At ROA headquarters, in the treasured Minute Man Memorial Building, we have the pen that President Harry S. Truman used to sign the reserve retirement law.<sup>4</sup> The reserve retirement law is one of ROA's greatest accomplishments during almost a century of service. For many decades, it was a custom within ROA for members to contribute the first monthly retirement check to ROA, as a symbol of gratitude and as a way of supporting ROA's ongoing efforts on behalf of Reserve and National Guard personnel. Perhaps we should support a return to that custom today.

I describe the reserve retirement system in detail in Law Reviews 16086 through 16091 (September 2016). To qualify for the reserve retirement at age 60, you need at least 20 "good years." A good year is a year in which you have earned at least 50 points. You earn 15 "gratuitous points" just for being in the system, so it is not difficult to earn a good year. You earn one point for each "drill" of inactive duty training, so a traditional drill weekend (all day Saturday and Sunday) earns you four points.<sup>5</sup>

You also earn one point for each day of active duty or active duty for training, so you already have 13 good years and about 4745 points (13 times 365). Since I turned 60 in 2011, I have been receiving a generous monthly retirement check for my Navy and Navy Reserve career, during which I earned 4,401 points, so you already have more points than I earned, but unless you attain at least seven more good years you have nothing.

If you attain the 20 good years, the amount of your monthly retirement check is based on a formula. One of the items in the formula is your total number of points in your career. Because you already have more than 4,700 points, it makes sense for you to participate in the Air Force Reserve or Air National Guard at least until you have at least 20 good years. Your highest

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<sup>4</sup> Public Law 80-810. Captain Harry S. Truman, a combat veteran of World War I, was one of the founders of ROA in 1922.

<sup>5</sup> In today's post-September 11 "operational reserve," some Reserve and National Guard units drill on Friday and/or Monday, in addition to Saturday and Sunday, so an individual can earn as many as eight points in a drill weekend today. Moreover, inactive duty training can be performed on any day of the week.

military grade also is an item in the formula, so if you can get promoted to a higher rank that will also help you in the computation of your monthly retirement check.

You can use your 13 years of active duty in computing your reserve retirement and in computing your federal civilian retirement, without offsetting one against the other. The pertinent section of the United States Code is as follows:

No period of service included wholly or partly in determining a person's right to, or the amount of, retired pay *under this chapter* may be excluded in determining his eligibility for any annuity, pension, or old-age benefit, *under any other law, on account of civilian employment by the United States* or otherwise, or in determining the amount payable under that law, if that service is otherwise properly credited under it.<sup>6</sup>

**Q: I have heard that it is possible for Reserve and National Guard personnel to qualify for the reserve retirement before the 60<sup>th</sup> birthday in some circumstances. Is that true?**

**A:** Yes. Please see Law Review 16090 (September 2016). The pertinent subsection of the reserve retirement law is as follows:

In the case of a person who *as a member of the Ready Reserve* serves on active duty or performs active service described in subparagraph (B) after January 28, 2008, the eligibility age for purposes of subsection (a)(1) shall be reduced, subject to subparagraph (C), below 60 years of age by three months for each aggregate of 90 days on which such person serves on such active duty or performs such active service in any fiscal year after January 28, 2008, or in any two consecutive fiscal years after September 30, 2014. A day of duty may be included in only one aggregate of 90 days for purposes of this subparagraph.<sup>7</sup>

**Q: While on active duty from 2003 until 2016, I performed “contingency service” in Iraq and Afghanistan for five years, that is 2004-07 and 2010-12. Do those five years of contingency service qualify me for early receipt of my reserve retirement benefit?**

**A:** No. Section 12731(f)(2)(A) refers to contingency service performed “as a member of the Ready Reserve.” You performed that 2004-07 and 2010-12 contingency service as a member of the Active Component of the Air Force, not as a member of the Ready Reserve.

If you perform contingency service as an Air Force Reservist, you can qualify for early receipt of your reserve retirement benefit.

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<sup>6</sup> 10 U.S.C. 12736 (emphasis supplied). I discuss the meaning and effect of this section in detail in Law Review 16091 (September 2016).

<sup>7</sup> 10 U.S.C. 12731(f)(2)(A) (emphasis supplied). I discuss this subsection in detail in Law Review 16090 (September 2016).

**Q: With 13 years of active duty under my belt, I would like to try to get to 20 years of full-time active duty and qualify for an immediate military retirement. Is that possible?**

**A:** As I describe in detail in Law Review 16092 (September 2016), it is conceivable but unlikely that you could return to active duty for enough time to qualify for a regular military retirement. The Air Force will track your active duty total carefully, and when you get closer to the 20-year point the Air Force will prevent you from volunteering for active duty to qualify for the regular retirement.

If you do somehow manage to qualify for a regular military retirement, your active duty (including the 13 years of active duty that you have already performed) cannot be used for federal civilian retirement purposes, because section 12736 refers to retired pay *under this chapter* (meaning the reserve retirement law). If you have made the civil service deposit to qualify for federal civilian retirement credit for your 13 years of active duty, the deposit will be returned to you with interest.