

LAW REVIEW¹ 20054
June 2020
(Updated September 2020)

If you Marry after you Receive your Reserve Component Retirement Notice of Eligibility, you Can Elect to Participate in the RC Survivor Benefit Plan, But you Must Act within One Year after the Marriage.

By Captain Samuel F. Wright, JAGC, USN (Ret.)²

5.4— Survivor Benefit Plan

Q: I am a Lieutenant Colonel in the Army Reserve and a life member of the Reserve Organization of America (ROA).³ For many years, I have read with great interest your “Law Review” articles about military-legal topics.

¹I invite the reader’s attention to 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.

²BA 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.

³At its September 2018 annual convention, the Reserve Officers Association amended its Constitution to make all service members (E-1 through O-10) eligible for membership and adopted a new “doing business as” (DBA) name: Reserve Organization of America. The full name of the organization is now the Reserve Officers Association DBA the Reserve Organization of America. The point of the name change is to emphasize that our organization represents the interests of all Reserve Component members, from the most junior enlisted personnel to the most senior officers. Our nation has seven Reserve Components. In ascending order of size, they are the Coast Guard

I graduated from college in 1995 and was commissioned a Second Lieutenant in the Army, via the Army's Reserve Officers Training Corps (ROTC). I served on active duty for five years, until 2000. After I left active duty, I affiliated with the Army Reserve, and I have continuously participated for almost 20 years, including weekend drills, annual training, and several voluntary and involuntary recalls to active duty.

I earned a "good year" for Reserve Component (RC) retirement purposes each year, so I met the 20-good-year threshold in May 2015, 20 years after I was commissioned a Second Lieutenant. I received my RC Notice of Eligibility (NOE) in November 2015. At the time, I was a confirmed bachelor, or at least I thought I was. I was not married, I had never been married, and I had no child. Accordingly, I designated my brother as the recipient for my Survivor Benefit Plan (SBP) benefits.

In 2017, I met the love of my life—let us call her Mary Jones. We got married in July 2019, almost a year ago. I have heard that now that I have married, I can elect the RC Survivor Benefit Plan (RCSBP) for my new wife instead of my brother. Is that correct?

A: Yes. Section 1448 of title 10 of the United States Code provides:

A person who is not married and has no dependent child upon becoming eligible to participate in the [RC Survivor Benefit] Plan but who later marries or acquires a dependent child may elect to participate in the Plan.⁴

Such an election must be written, signed by the person making the election, *and received by the Secretary concerned* [the Secretary of the Army] *within one year after the person marries or acquires a dependent child.*⁵

Almost a year has passed since your wedding. I suggest that you get on the stick today and complete and submit the RC SBP election.⁶

UPDATE—September 2020

Here is a reminder from the Defense Finance and Accounting Service (DFAS) that is pertinent to the subject of this article:

Reserve, the Marine Corps Reserve, the Navy Reserve, the Air Force Reserve, the Air National Guard, the Army Reserve, and the Army National Guard. The number of service members in these seven components is almost equal to the number of personnel in the Active Components of the armed forces, so Reserve Component personnel make up almost half of our nation's pool of trained and available military personnel. Our nation is more dependent than ever before on the Reserve Components for national defense readiness. More than a million Reserve Component personnel have been called to the colors since the terrorist attacks of 9/11/2001.

One of the reasons we ask you to check and update your retired pay account is because the Survivor Benefit Plan has a number of important one-year deadlines.

If you get married, lose a spouse, or have a child, and you don't notify DFAS within the one-year deadline, you may be barred from covering your loved one.

When you notify us, be sure to include supporting documents, such as birth or marriage certificates.

As a retiree, the sooner you alert us to any change that might affect your pay or your SBP coverage, the more timely and accurate payments will be. Keeping your account up to date includes making sure your mailing address, email address, banking information, and your beneficiaries are current.

Find out more about updating your Survivor Benefit Plan beneficiaries on our website:
<http://go.usa.gov/xftby>

Sincerely,
DFAS Retired & Annuitant Pay

Please join or support ROA

This article is one of 2000-plus “Law Review” articles available at 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 in 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 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. Indeed, ROA is the *only* national military organization that exclusively supports America’s Reserve and National Guard.

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, 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 seven uniformed services, you are eligible for membership in ROA, and a one-year membership only costs \$20. 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 or call ROA at 800- 809-9448.

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 Officers Association
1 Constitution Ave. NE
Washington, DC 20002