

If you Marry after Receiving your Notice of Eligibility, after Electing Not To Participate in the RCSBP, you Can Elect RCSBP Coverage

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

5.4—Survivor Benefit Plan

Q: I am a Captain in the Navy Reserve and a life member of the Reserve Organization of America (ROA).³ I have read with great interest many of your “Law Review” articles about the Uniformed Services Employment and Reemployment Rights Act (USERRA) and other laws that are especially pertinent to those who serve our country in uniform.

¹ I invite the reader’s attention to www.roa.org/lawcenter. You will find more than 2,000 “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 Spouses’ 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. I am the author of more than 90% of the articles, but we are always looking for “other than Sam” articles by other lawyers.

² 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 45 years, I have collaborated 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 38 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 <mailto:swright@roa.org>.

³ At its 2018 annual convention, the Reserve Officers Association amended its Constitution to make all military personnel, from E-1 through O-10, eligible for full membership. The organization also adopted a new “doing business as” name—the Reserve Organization of America. The point of the name change is to emphasize that the organization now represents and admits to membership all military personnel, from the most junior enlisted personnel to the most senior officers.

I was born in 1975 and graduated from college in 1997. While in college, I participated in the Naval Reserve Officers Training Corps (NROTC), and when I graduated, I was commissioned as an Ensign in the Navy. I then served on active duty for the next six years, until May 2003. I affiliated with the Navy Reserve immediately after I left active duty, and I have been active every year.

In 2017, 20 years after I was commissioned, I received my Notice of Eligibility (NOE), affirming that I had completed 20 “good years” for Navy Reserve retirement and that I will be eligible to receive retired pay when I turn 60 in 2035.⁴ As part of the package that I received with the NOE, I received paperwork about the Reserve Component Survivor Benefit Plan (RCSBP).

In 2017, when I received the NOE, I was not married, had never been married, thought that I would never marry, and had no children. Accordingly, I chose not to participate in the RCSBP.

In 2021, I met the love of my life, and we married recently. Now that I am married, I want to elect RCSBP coverage. Is that possible?

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 Plan [RCSBP] but who later marries or acquires a dependent child may elect to participate in the Plan.”⁵ Section 1448 further provides: “Such an election must be written, signed by the person making the election, and received by the Secretary concerned [the Service Secretary, like the Secretary of the Navy in your case] within one year after the date on which that person marries or acquires that dependent child.”⁶

You need to use DD Form 2656 to elect RCSBP coverage for your new wife. Be sure to submit the completed form before the first anniversary of the marriage.

Please join or support ROA

This article is one of 2,000-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.

⁴ Congress amended the Reserve Retirement Law in 2008, and now Reserve and National Guard members who performed “contingency duty” after 1/28/2008 can receive their Reserve Retirement pay before they attain the age of 60, under certain circumstances. See 10 U.S.C. § 12731(f)(2)(A). See *generally* Law Review 16090 (September 2016).

⁵ 10 U.S.C. § 1448(a)(5)(A).

⁶ 10 U.S.C. § 1448(a)(5)(B).

ROA is more than 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 eight⁷ 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 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 Organization of America
1 Constitution Ave. NE
Washington, DC 20002⁸

Here is a link to an excellent military.com monograph about the Reserve Component Survivor Benefit Plan: <https://www.military.com/benefits/survivor-benefits/survivor-benefit-plan-for-reserve-component.html>.

For detailed information about military family law, including the Reserve Component Survivor Benefit Plan and the Uniformed Services Former Spouses’ Protection Act (USFSPA), see *The Military Divorce Handbook* (Am. Bar Assn., 3rd Ed. 2019), by Colonel Mark E. Sullivan, USA (Ret.).

⁷ Congress recently established the United States Space Force as the 8th uniformed service.

⁸ You can also contribute on-line at www.roa.org.

Colonel Sullivan, a life member of ROA, has a nationwide law practice, headquartered in Raleigh, North Carolina. He and the attorneys in his firm work with attorneys all over the country, advising on military-related issues in divorce cases. Here is a link to the law firm website:

<https://ncfamilylaw.com/mark-e-sullivan/>. The telephone number is (919) 832-8507.

If you or your spouse are military, and if you are divorcing, you need a divorce lawyer who is familiar with military family law matters, including the USFSPA and military survivor benefit plans. To protect your interests, you need to ensure that your lawyer is familiar with these military wrinkles on family law. It may be impossible for you to find such a lawyer, especially if you are far from any major military installation. In that case, you need to retain another lawyer to advise and assist your attorney on the military aspects of the case. There are several lawyers around the country who offer this service, but you cannot do better than Colonel Sullivan and his firm.

You need competent legal representation because you only get one chance to get this right. See Law Review 13169 (December 2013), by Colonel Sullivan.