

**LAW REVIEW<sup>1</sup> 26038****July 2026****New Federal Employee Can Purchase Federal Retirement Credit for  
Active-Duty Service Performed before Starting Federal Career.****By Captain Samuel F. Wright, JAGC, USN (Ret.)<sup>2</sup>****1.3.2.3—Pension credit for service time.****1.8—Relationship between USERRA and other laws/policies.****9.0—Miscellaneous.**

**Q: I am a retired Army Reserve Colonel and a life member of the Reserve Organization of America (ROA). For many years, I have read with great interest your “Law Review” articles about the Uniformed**

---

<sup>1</sup> I invite the reader’s attention to <https://roa.org/lawcenter/>. You will find more than 2,300 “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), the title 38 chapters that provide for veterans’ benefits administered by the Department of Veterans Affairs (VA), 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.

<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 44 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. As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. You can reach me by e-mail at [samuel@maherlegalservices.com](mailto:samuel@maherlegalservices.com) or by telephone at (708) 468-8155.



**Services Employment and Reemployment Rights Act (USERRA). While I was still participating in the Army Reserve, I utilized your articles to help me understand my rights and obligations with respect to my civilian employer concerning necessary absences from work for military training and service, and I shared your articles with many of my colleagues and subordinates in the Army Reserve. Now that I am retired, I have been sharing your articles with my daughter.**

**My daughter participated in the Army's Reserve Officers Training Corps (ROTC) while she was in college. When she graduated in May 2021, she was commissioned as a Second Lieutenant. She remained on full-time active duty for exactly five years, until May 2026. After she left active duty, she applied for and was selected for a federal Civil Service job and started that job recently. This is my daughter's first civilian job.**

**I have heard that, under USERRA, my daughter is eligible to purchase federal civilian retirement credit for her five years of active duty, from May 2021 until May 2026. Is that correct?**

**A:** Your daughter is eligible to purchase the federal civilian retirement credit, but not under USERRA. The pertinent subsection of title 5 of the United States Code (U.S.C.) reads as follows:

**(j)**

**(1)**

**(A)** Except as provided in subparagraph (B), and subject to paragraph (5), each employee or Member [of Congress] who has *performed military service before the date of the separation on*

*which the entitlement to any annuity under this subchapter [5 USCS §§ 8331 et seq.] is based may pay, in accordance with such regulations as the Office shall issue to the agency by which the employee is employed or, in the case of a Member or a Congressional employee, to the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, an amount equal to 7 percent of the amount of the basic pay paid under section 204 of title 37 to the employee or Member for each period of military service after December 1956. The amount of such payments shall be based on such evidence of basic pay for military service as the employee or Member may provide, or if the Office determines sufficient evidence has not been so provided to adequately determine basic pay for military service, such payment shall be based upon estimates of such basic pay provided to the Office under paragraph (4).*

**(B)** In any case where military service interrupts creditable civilian service under this subchapter [5 USCS §§ 8331 et seq.] and reemployment pursuant to chapter 43 of title 38 [38 USCS §§ 4301 et seq.] occurs on or after August 1, 1990, the deposit payable under this paragraph may not exceed the amount that would have been deducted and withheld under subsection (a)(1) from basic pay during civilian service if the employee had not performed the period of military service.

**(2)** Any deposit made under paragraph (1) of this subsection more than two years after the later of—

**(A)** October 1, 1983; or

**(B)** *the date on which the employee or Member making the deposit first becomes an employee or Member following the period of military service for which such deposit is due, shall include interest on such amount computed and compounded annually beginning on the date of the expiration of the two-year period.* The interest rate that is applicable in computing interest in any year under this paragraph shall be equal to the interest rate that is applicable for such year under subsection (e) of this section.

**(3)** Any payment received by an agency, the Secretary of the Senate, or the Chief Administrative Officer of the House of Representatives under this subsection shall be immediately remitted to the Office for deposit in the Treasury of the United States to the credit of the Fund.

**(4)** The Secretary of Defense, the Secretary of Transportation [The Coast Guard was part of the Department of Transportation until 2003, when it was transferred to the new Department of Homeland Security.], the Secretary of Commerce [The commissioned corps of the National Oceanic & Atmospheric Administration is part of the Department of Commerce.], or the Secretary of Health and Human Services [The commissioned corps of the Public Health Service is part of the Department of Health & Human Services.], as appropriate, shall furnish such information to the Office as the Office may determine to be necessary for the administration of this subsection.

**(5)** Effective with respect to any period of military service after December 31, 1998, the percentage of basic pay under section 204 of title 37 payable under paragraph (1) shall be equal to the same percentage as would be applicable under subsection (c) of this section for that same period for service as an employee, subject to paragraph (1)(B).

**(6)**

**(A)** In calculating and processing the deposit under paragraph (1) with respect to an employee, Member, or annuitant, if the employing agency of such employee, Member, or annuitant makes an administrative error, such employing agency may pay, on behalf of the employee, Member, or annuitant, any additional interest assessed due to the administrative error.

**(B)** For purposes of subparagraph (A), the Secretary of the Senate or the Chief Administrative Officer of the House of Representatives, as appropriate, shall be considered the employing agency of a Member or Congressional employee.

**(C)** The Director of the Office of Personnel Management shall issue such regulations as are necessary to carry out this paragraph.<sup>3</sup>

If your daughter plans to make a career out of the federal Civil Service, it will behoove her to purchase the federal civilian pension credit for her five active-duty years, before she began her federal Civil Service career in 2026. The Defense Finance & Accounting Service (DFAS) will compute the pay that she received during her active-duty service, and

---

<sup>3</sup> 5 U.S.C. § 8334(j) (emphasis supplied).

she will need to pay 7% of that figure. If she can make this payment within two years after she began her federal civilian job, she will not be required to pay interest.

**Q: My daughter is considering signing up for the Army Reserve or Army National Guard now that she is off active duty. Somebody in the civilian personnel office at work told her that she is not allowed to “double-dip” and that she will not be permitted to purchase the federal civilian pension credit for her five active-duty years if she is planning to use those years to help her qualify for the Army Reserve retired pay at age 60. Is what she was told correct?**

**A: NO.** Denying her civilian pension credit on the basis that she is entitled to use those five active-duty years to help her qualify for Reserve retirement violates federal law. Here is the pertinent section:

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>4</sup>

**Q: Why does USERRA not apply to my daughter’s situation with the Federal Government?**

---

<sup>4</sup> 10 U.S.C. § 12736. See also *Cantwell v. County of San Mateo*, 631 F.2d 631 (9<sup>th</sup> Cir.), cert. denied, 450 U.S. 998 (1980); *Hereford v. Tennessee Valley Authority*, 1999 U.S. App. LEXIS 3647 (Fed. Cir. March 5, 1999); *Almeida v. Retirement Board of the Rhode Island Employees Retirement System*, 116 F. Supp. 2d 269 (D.R.I. 2000). See generally *Law Review* 57 (November 2002).

**A:** Your daughter did not leave a federal civilian job to report to active duty in 2021, so she is not entitled to be treated as a reemployed veteran in 2026. But USERRA does not supersede another federal law that provides greater or additional rights.<sup>5</sup>

**Q: Where can I find a lawyer or law firm that fully understands laws like the Servicemembers Civil Relief Act (SCRA), the Uniformed Services Employment and Reemployment Rights Act (USERRA), the Uniform Code of Military Justice (UCMJ), and other laws that are especially pertinent to those who serve our country in uniform?**

**A:** As of 5/1/2026, I have come out of retirement and have joined Maher Legal Services in an “of counsel” role. This firm has a great team, headed by attorneys John Maher and Kevin Mikolashek, both of whom have served as Army judge advocates for many years. These attorneys and this firm have a great record, and I am proud to join their team.

Here is a link to the Maher Legal Services website:

<https://www.lawyersdefendingwarriors.com/about>.

**Join the Organization That Fights for You.**

This article is one of more than 2,000 "Law Review" articles available at <https://roa.org/lawcenter/> — a free legal resource that the Reserve

---

<sup>5</sup> See 38 U.S.C. § 4302(a).



Organization of America (ROA) has built and maintained since 1997, adding new articles every month.

ROA is the only national military organization dedicated exclusively to America's reserve components — all eight of them. From the 6,179 members of the Coast Guard Reserve to the 329,705 soldiers of the Army National Guard, ROA exists to serve the nearly 773,000 men and women who answer the call while maintaining civilian lives. No other organization does what we do for the people we serve.

Our roots run deep. On October 2, 1922, veterans of the Great War gathered at Washington's historic Willard Hotel — at the invitation of General of the Armies John J. Pershing — to build something lasting. One of the junior officers in that room was Captain Harry S. Truman, who, as President, signed ROA's congressional charter in 1950. That charter gives us a clear mission: advocate for policies that ensure adequate national security. For more than a century, we've made the case that America's Reserve Components and National Guard are among the most cost-effective pillars of our national defense.

Beyond this library of legal resources, ROA files amicus curiae ("friend of the court") briefs in the Supreme Court and federal courts, and actively educates service members, military spouses, attorneys, employers, legislators, and others about the legal rights of those who serve — and how to enforce them. We provide this information to all service members, regardless of membership. But it's ROA members — through their dues and contributions — who make it possible.

Your membership makes the mission possible.



If you are currently serving, or have ever served, in any of America's eight uniformed services, you are eligible to join ROA — and membership starts at just \$20 for a full year, or \$450 for life. Officers and enlisted personnel alike qualify, whether your service was in the Active Component, the National Guard, or the Reserve. ROA has also recently expanded eligibility to include ancestors and lineal descendants of past or present service members, so families can stand with those who serve. Join online at <https://members.roa.org/join/person/mbrtype.html?action=join> or call 800-809-9448.

If you are not eligible for membership but believe in this mission, your financial contribution directly funds this resource and the advocacy work that protects those who serve. Donations may be mailed to:

Reserve Organization of America  
1 Constitution Ave. NE  
Washington, DC 20002