

Highlights and Comparisons of Military Retirement and Federal Employees Retirement Systems (FERS)

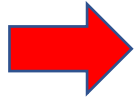
*The Family Law Bar Association – San Antonio
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OVERVIEW



- Hierarchy of Authority
- Effect of National Defense Authorization Acts of 2017 and 2018
- Comparison of Division of Military Retired Pay and Federal Employees Retirement System (FERS) Annuity





Military Retired Pay



10 U.S.C. Subtitle A – General Military Law

10 U.S.C. Part II – Personnel

**10 U.S.C.
Chapter 61 –
Ret. or Sep. for
Phys. Disability**

**10 U.S.C.
Chapter 71 –
Computation
of Retired Pay**

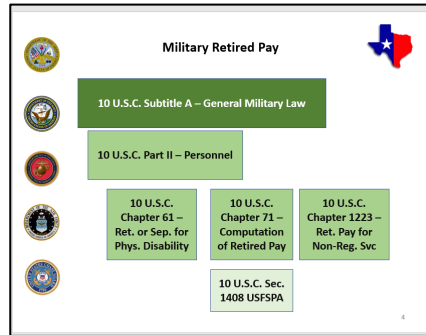
**10 U.S.C.
Chapter 1223 –
Ret. Pay for
Non-Reg. Svc**

**10 U.S.C. Sec.
1408 USFSPA**



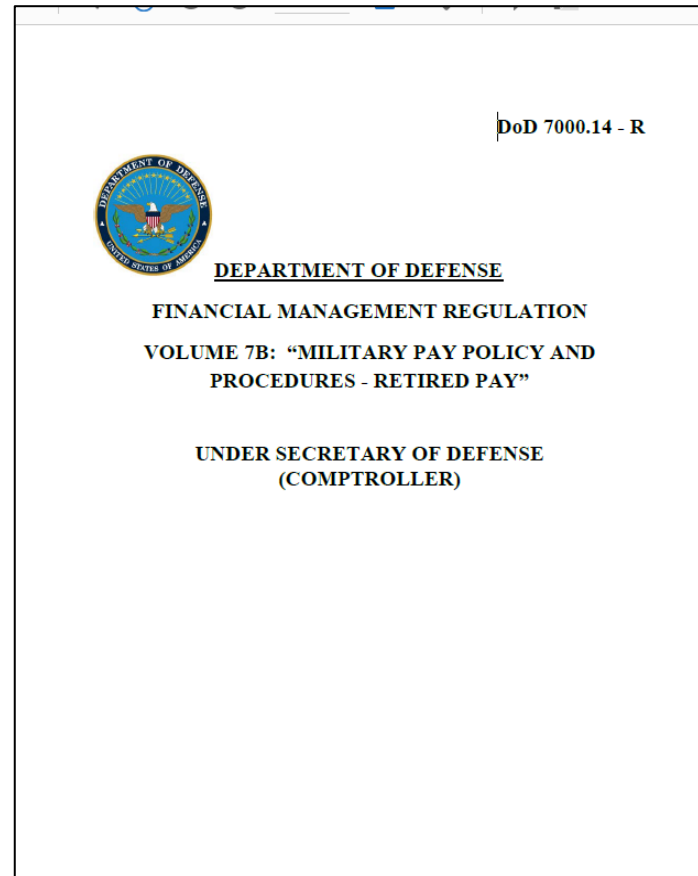


Military Retired Pay



Department of Defense Financial Mgmt Reg
7000.14-R, Volume 7B, *Military Pay Policy
and Procedures – Retired Pay* (738 pgs)

- Chapter 8 – COLAs
- Chapter 29 – Former Spouse Payments from Retired Pay
- Chapter 42-46 – SBP
- Chapter 54 – Reserve Component SBP
- Chapter 63 – Combat Related Special Comp.
- Chapter 64 – Concurrent Ret. and Disability Pay





Federal Employees Retirement System (FERS) and Thrift Savings Plan (TSP)



**5 U.S.C. CHAPTER 84 – FEDERAL EMPLOYEES’
RETIREMENT SYSTEM**

**5 U.S.C. CHAPTER 84 –
SUBCHAPTER VII – FEDERAL
RETIREMENT THRIFT INVESTMENT
MANAGEMENT SYSTEM**

TSP Statements

**District Court
Subpoena**



**5 C.F.R. Part 1631.41 –
Production of Records**

**5 C.F.R. Part 1653 – Court Orders
and Legal Processing Affecting
TSP Accounts**



Federal Employees Retirement System (FERS)



5 U.S.C. CHAPTER 84 – FEDERAL EMPLOYEES' RETIREMENT SYSTEM

5 C.F.R. Part 838 – Court Orders Affecting Retirement Benefits

A Handbook for Attorneys on Court-ordered Retirement, Health Benefits and Life Insurance Under the

- Civil Service Retirement Benefits
- Federal Employees Retirement Benefits
- Federal Employees Health Benefits
- Federal Employees Group Life Insurance Program



United States
Office of
Personnel
Management

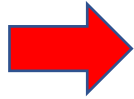
Retirement and
Insurance
Service

RI 38-116
Revised July 1997

137 pgs



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NDAА 2017 Public Law 114-328



Sec. 641. *APPLICATION OF AMENDMENTS.*—The amendments made shall apply with respect to any division of property as part of a final decree of divorce, dissolution, annulment, or legal separation involving a member of the Armed Forces to which section 1408 of title 10, United States Code, applies that becomes final after the date of the enactment of this Act.

Enacted December 23, 2016



NDAА 2018 Public Law 115-91

Sec. 624. *TECHNICAL CORRECTIONS. OF AMENDMENTS.*—The amendments made shall take effect on December 23, 2016, as if enacted immediately following the enactment of the NDAА 2017.





NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce



1) Active Duty already retired and in receipt of retired pay at divorce

2) Reserve Component (Reserve or Guard) already retired and in receipt of retired pay (generally starts at age 60) at divorce



3) Active Duty still serving (whether less than 20 years or 20 years or more) at time of divorce.



4) Reserve Component still drilling/serving (whether less than 20 “good years” or 20 years good years” or more) at time of divorce.



5) Reserve Component retired but awaiting pay at time of divorce, commonly known as a “gray area retiree.”



NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled as determined pursuant to subparagraph B, less amounts which—





NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled as determined pursuant to subparagraph B, less amounts which—

(i) are owed by that member to the United States for **previous overpayments** of retired pay and for recoupments required by law resulting from entitlement to retired pay;





NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled as determined pursuant to subparagraph B, less amounts which—



(i) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;



(ii) are deducted from the retired pay of such member as a result of **forfeitures** of retired pay **ordered by a court-martial** or as a result of a **waiver** of retired pay required by law in order to **receive compensation under title 5 or title 38**;





NDAA 2017/2018 10 U.S.C. Sec. 1408(a)(4)



(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled as determined pursuant to subparagraph B, less amounts which—



(i) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;



(ii) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;



(iii) in the case of a member entitled to retired pay under **chapter 61** of this title, are equal to the amount of retired pay of the member under that chapter computed using the **percentage of the member's disability** on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or





NDAA 2017/2018 10 U.S.C. Sec. 1408(a)(4)



(A) The term “disposable retired pay” means the total monthly retired pay to which a member is entitled as determined pursuant to subparagraph B, less amounts which—



(i) are owed by that member to the United States for previous overpayments of retired pay and for recoupments required by law resulting from entitlement to retired pay;



(ii) are deducted from the retired pay of such member as a result of forfeitures of retired pay ordered by a court-martial or as a result of a waiver of retired pay required by law in order to receive compensation under title 5 or title 38;



(iii) in the case of a member entitled to retired pay under chapter 61 of this title, are equal to the amount of retired pay of the member under that chapter computed using the percentage of the member's disability on the date when the member was retired (or the date on which the member's name was placed on the temporary disability retired list); or



(iv) are deducted because of an election under chapter 73 of this title to provide an **annuity to a spouse or former spouse** to whom payment of a portion of such member's retired pay is being made pursuant to a court order under this section.



NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



(B) For purposes of subparagraph (A), in the case of a division of property as part of a final decree of divorce, dissolution, annulment, or legal separation that becomes final prior to the date of a member's retirement,, the total monthly retired pay to which the member is entitled shall be –



(i) in the case of a member not described in clause (ii), **the amount of retired pay to which the member would have been entitled using the member's retired pay base and years of service on the date of the decree of divorce, dissolution, annulment, or legal separation, as computed under sections 1406 or 1407 of this title, whichever is applicable, increased by the sum of the cost of living adjustments that –**



(I) would have occurred under section 1401a(b) of this title between the date of the decree of divorce, dissolution, annulment, or legal separation and the time of the member's retirement using the member's retirement using the adjustment provisions under section 1401a of this title applicable to the member upon retirement; and



(II) occur under 1401a of this title after the member's retirement, or



NDAAs 2017/2018 10 U.S.C. Sec. 1408(a)(4)



(ii) in the case of a member who becomes entitled to retired pay pursuant to chapter 1223 of this title [Reserve or National Guard non-regular retirements], **the amount of retired pay to which the member would have been entitled using the member's retired base pay and creditable service points on the date of the decree of divorce, dissolution, annulment, or legal separation, as computer (sic) [should say "computed"] under chapter 1223 of this title, increased by the sum of cost-of-living adjustments as describe in clause (i) that apply with respect to the member.**



(8) A division of property award computed as a percentage of a member's disposable retired pay shall be increased by the same percentage as any cost-of-living adjustments made under section 1401a after the member's retirement.





NDAA 2017/2018 10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce



- 1) Active Duty already retired and in receipt of retired pay at divorce



Months Married During Mil Svc at Ret



X DRP

Total Month Mil Svc at Ret



Easy!



NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce



- 2) Reserve Component (Reserve or Guard) already retired and in receipt of retired pay (**generally starts at age 60**) at divorce



Points Married During Mil Svc at Ret



X DRP



Total Points Mil Svc at Ret



Easy!



NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce

Months Married During Mil Svc at Div



X (High 36 at Div x Ret
Pay Multiplier at Div)

Total Months Mil Svc at Div



- 3) Active Duty still serving (whether less than 20 years or 20 years or more) at time of divorce.



Easy!



NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce



Points Married During Mil Svc at Div

X (High 36 at Div x Ret Pay Multiplier at Div)

Total Points Mil Svc at Div



- 4) Reserve Component still drilling/serving (whether less than 20 “good years” or 20 “good years” or more)



Easy!



NDAA 2017/2018 10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce

Not So Easy!



10 U.S.C Sec. 1407(d) (provides longevity pay increases from retirement until commencement of retired pay using current pay tables)



Pay Longevity Accrues

Current Year Py Charts



- 5) Reserve Component **retired but awaiting pay** at time of divorce, commonly known as a “gray area retiree.”

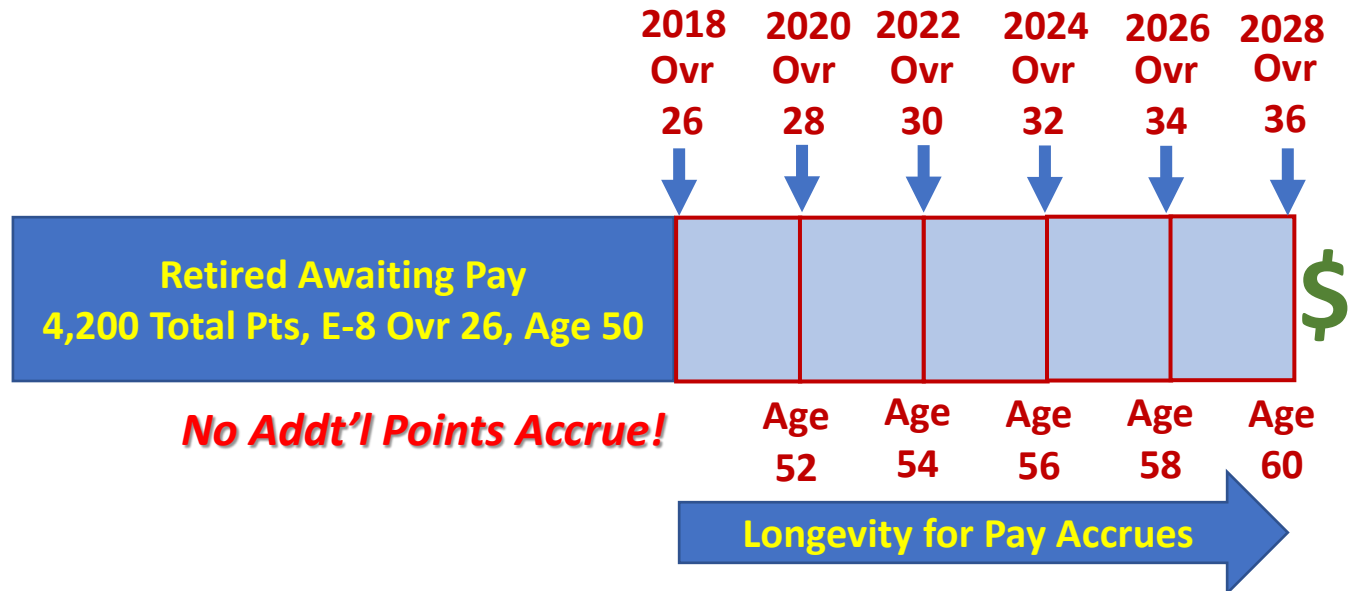


Not So Easy!

NDAA 2017/2018
10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce



- 5) Reserve Component **retired but awaiting pay** at time of divorce, commonly known as a “gray area retiree.”



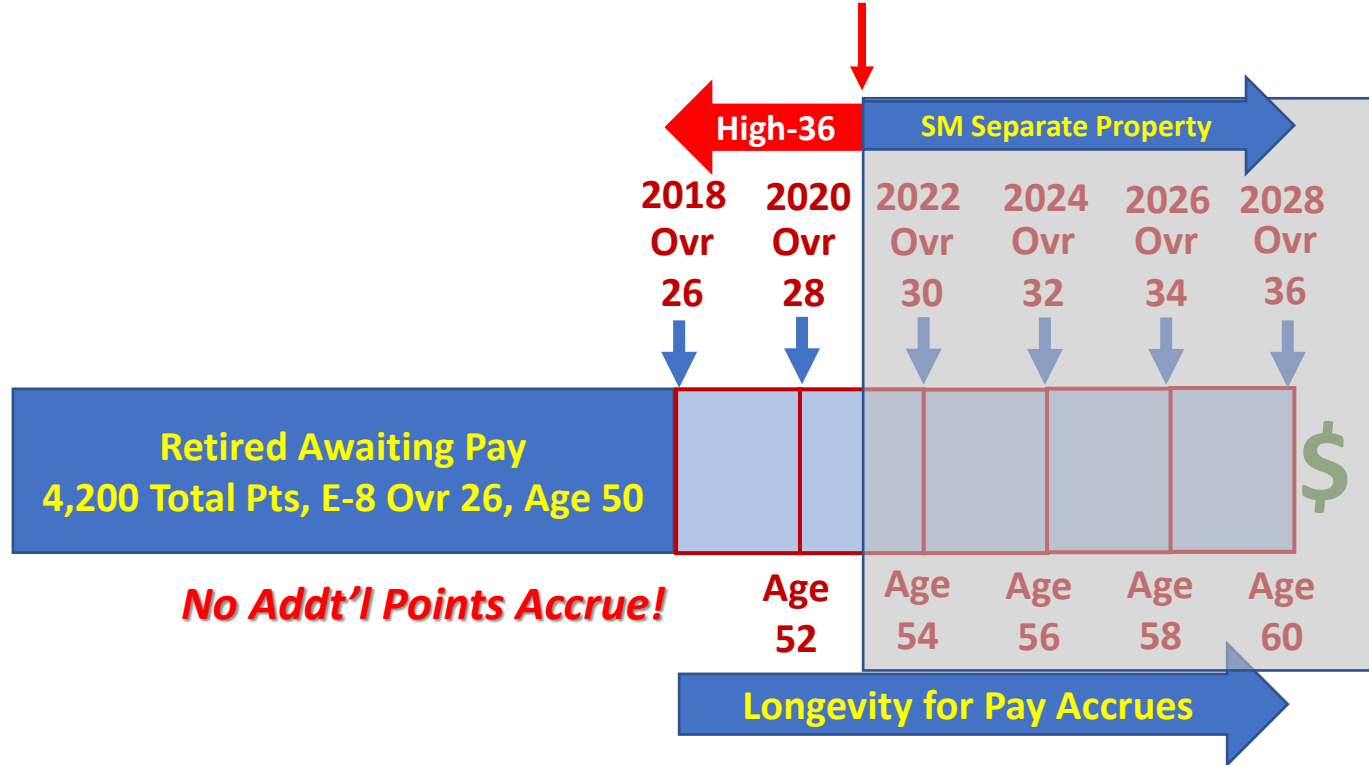
Not So Easy!

NDAA 2017/2018
10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce

DIVORCED IN 2021





NDAA 2017/2018

10 U.S.C. Sec. 1408(a)(4)



Five Categories of SM's at Divorce



Points Married During Mil Svc at Ret



_____ X ("Gray Area" High-36 at Div x Ret Pay Multiplier at Div)

Total Points Mil Svc at Ret



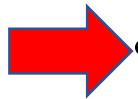
- 5) Reserve Component **retired but awaiting pay** at time of divorce, commonly known as a "gray area retiree."



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MILITARY VS. FERS RETIREMENT



Retirement Eligible	
Military	FERS*
<p>Active:</p> <ul style="list-style-type: none"> • 20 years <p>Reserve Component:</p> <ul style="list-style-type: none"> • 20 “good years” 	<p>Immediate Ret:</p> <ul style="list-style-type: none"> • Age 62 w/ 5 yrs svc • Age 60 w/ 30 yrs svc • MRA + 30 yrs svc <p>Min. Retirement Age (MRA), born:</p> <ul style="list-style-type: none"> • 1953 to 1964 – 56 yrs of age • 1967 – 56 yrs, 6 mo. of age • 1970+ - 57 yrs of age

* FERS: requirements are not all inclusive; other options apply

MILITARY VS. FERS RETIREMENT



Retirement Pay or Annuity	
Military ¹	FERS ^{1,2}
<ul style="list-style-type: none"> • High-36 • Multiplier: <ol style="list-style-type: none"> 1) 2.5% per year 2) 2.5% x (total points divided by 360) <p>Blended Ret. Sys. Is 2.0%</p>	<ul style="list-style-type: none"> • High-36 • Multiplier <ol style="list-style-type: none"> 1) 1.0 per yr or 1.1 % per year if 62 or older w/ 20 or more yrs svc at ret 2) 1.7% first 20 yrs svc and 1.% after

Note ¹ - Retired pay multiplier includes fraction thereof for each whole month short of a whole year

Note ² – Sub-2), above, applies to Air Traffic Controllers, Firefighters, Law Enforcement, Capitol Police, Supreme Ct Police or Nuclear Materials Couriers

MILITARY VS. FERS RETIREMENT



Type Pay or Annuity	
Military	FERS
<ul style="list-style-type: none">• Disposable Ret. Pay	<ul style="list-style-type: none">• “Self-Only” Annuity• “Gross” Annuity• “Net” Annuity



MILITARY VS. FERS RETIREMENT



FERS

Self-Only Annuity: Equals the gross annuity for someone who has elected not to provide a Survivor Annuity to anyone

MAXIMUM ANNUITY FOR FORMER SPOUSE



MILITARY VS. FERS RETIREMENT



FERS

Gross Annuity: Equals a self-only annuity less the Survivor Annuity premium

Note: If the order simply states “annuity” and is **silent as to which type**, OPM will use a **gross annuity**

MIDDLE OUTCOME FOR FORMER SPOUSE



MILITARY VS. FERS RETIREMENT



FERS

Net Annuity: Equals a gross annuity, **less**

1. Recoupments owed to U.S.
2. Retiree health benefit premiums
3. Retiree life insurance premiums
4. Retiree Medicare premiums
5. Retiree Federal income tax withholding

WORST OUTCOME FOR FS

MILITARY VS. FERS RETIREMENT



Survivor Annuity	
Military	FERS
<ul style="list-style-type: none"> • FS Survivor Benefit Plan (SBP) • SBP pays 55% of “base amount” (i.e., “base amt) can be full ret pay but not less than \$300) • Premium is 6.5% of “base amount” • Premium “must” be deducted fm SM share • Cannot split benefits 	<ul style="list-style-type: none"> • FS Survivor Annuity (FSSA) • FSSA pays up to 50% of retiree annuity; percentage NTE 50% may be split between multiple beneficiaries • Premium is 10% of amount insured • Premium may be ordered to come from FS share

MILITARY VS. FERS RETIREMENT



When FS predeceases SM/Employee	
Military	FERS
<ul style="list-style-type: none">• FS Retired Pay reverts to the SM• FS has no ability to assign his or her share	<ul style="list-style-type: none">• FS Annuity reverts to Employee if order is silent• Order may direct OPM to pay FS share until death of retiree to FS's<ul style="list-style-type: none">• estate, or• qualifying child <p>FS's Estate?</p>



Summary



- Hierarchy of Authority
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OVERVIEW



Thank you!