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Military Retirement and Veterans' Compensation: Concurrent Receipt Issues

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(name redacted)
Specialist in National Defense
Foreign Affairs and National Defense Division

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Summary

Military retirees with disabilities incurred during their military service may receive military retired pay from the Department of Defense (DOD) and may be eligible for veterans' disability compensation from the Department of Veterans' Affairs (VA). However, current law requires that military retired pay be reduced by the amount of the veterans' benefits. Some military retirees have sought a change in law to permit concurrent receipt of both military nondisability retired pay (retired pay computed solely on the basis of length of service after a military career) and veterans' compensation benefits. They maintain that there are precedents for concurrent receipt of employment-related benefits among other Government programs, and that it is inequitable to deny concurrent benefits to military retirees. Others argue that concurrent receipt would cost the Government too much (DOD's cost estimates for full concurrent receipt in FY1993, for instance, were about \$2.1 billion), is not supported by precedents when other offsets are examined in detail, and could set a costly example for the reduction or elimination of similar offsets between other Federal programs.

Much of the difficulty in sorting out the issue of concurrent receipt is due to the fact that both military retirement and veterans' compensation have multiple objectives, and each program may be viewed differently by different observers. Some of these objectives overlap and others do not. Consequently, depending on how one regards these programs, concurrent receipt might be seen as appropriate from some viewpoints, but overlapping and duplicative from others. For instance, both military retirement and VA compensation have, to varying degrees, the aim of compensating disabled earning capacity. However, the military retirement system is designed primarily to facilitate the management of the active duty military career force; VA compensation has no similar aim.

According to some, alternatives to full concurrent receipt might achieve a middle ground between a full offset system and full concurrent receipt. In general, the alternatives either would designate some groups of retirees as higher priority beneficiaries of dual benefits than others, or would simply seek to make concurrent receipt more acceptable by limiting the cost through a limited offset (for instance, a proposal of Senator John McCain in the 103rd Congress would have limited concurrent receipt to about 3,500 people in FY1995, costing \$55-60 million in that year). Nevertheless, those who think concurrent receipt is an inappropriate policy warn that changing the current system in any way to allow some military retirees to receive benefits from both programs would lead to continued complaints about different and, therefore, allegedly inequitable treatment, and hence would set a costly precedent.

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Note: This report was originally written by Carolyn Merck and Robert Goldich.

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INTRODUCTION

Military retirees with disabilities incurred during their military service may receive military retired pay from the Department of Defense (DOD) and may receive veterans' disability compensation from the Department of Veterans Affairs (VA). However, current law requires that military retired pay be reduced ("offset") by the amount of veterans' benefits received. Despite the reduction in military retired pay, it is often to a retiree's advantage to receive veterans' compensation in lieu of military retired pay because veterans' benefits are not subject to Federal income tax. The disability percentage paid by the VA may increase upon medical reevaluation of the retiree's condition by the VA, enabling the retiree to receive a higher total compensation should the revised VA compensation be larger than the amount of military retired pay.

Some military retirees have sought a change in law to permit concurrent receipt of full military retired pay and veterans' compensation benefits. They point out that veterans' benefits may be received concurrently with non-military employment-related benefits and maintain that it is inequitable to deny concurrent benefits to those receiving military retired pay. However, those who oppose concurrent receipt indicate that (a) there are no precedents among nonmilitary programs for payment of disability and retirement benefits simultaneously from the same job, (b) allowing concurrent receipt of benefits from military service sets a costly precedent for removing limitations on concurrent receipt of disability and retirement benefits from nonmilitary employment, and (c) the reason Congress made a special exception regarding concurrent receipt of veterans' disability compensation and pay or benefits from post-military service employment was to preserve work incentives for disabled veterans who are able to work and achieve self-sufficiency.

The issue of concurrent receipt of military retired pay and veterans' compensation is primarily a concern of military retirees rather than non-career veterans, since veterans ineligible for military retired pay have nothing to gain from concurrent receipt. Indeed, in the past, some veterans have opposed concurrent receipt because they are concerned that it would divert scarce resources away from veterans who do not or cannot complete a full military career.

This report describes the history and background of the offset and the legislative history of recent attempts to eliminate or reduce the offset. It delineates and analyzes the arguments for and against eliminating or reducing the offset and allowing concurrent receipt, and addresses the issues of costs, precedents in other Federal programs, purposes of the two programs, and equity issues. Finally, options other than full concurrent receipt are mentioned.

Appendix A describes the background and major program features of military retirement and veterans' disability compensation. Appendix B summarizes the findings of a Congressional Research Service (CRS) report on precedents regarding interactions and offsets in other Federal benefit programs.

HISTORY AND BACKGROUND OF THE OFFSET

Retired Pay and Disability Pensions

Current law requiring that military retired pay be reduced ("offset") by the amount of veterans' disability compensation is the product of the historical development of both programs. (For summaries of the background, historical development, and major program features of both military retirement and veterans' disability compensation, see appendix A.)

The modern concept of military retirement began in limited form during the Civil War era, whereas compensation for soldiers injured in combat goes back to the beginning of our Nation. In 1861, Congress first authorized retirement pay for officers of the Army, Navy, and Marine Corps with more than 40 years of service.

The impetus for this legislation was the need to encourage or force the retirement of officers who were not fit for wartime duty. Thus, from its inception, the military nondisability retirement system has been as much a personnel management tool as an income maintenance method; the system was and is designed not only to provide for retired officers, but also to ensure a young and vigorous military force, to create an orderly pattern of promotion, and to serve as a recruiting and re-enlistment inducement.¹

It is important to define the terminology applicable to military and veterans' programs. In general, the term "pension" with regard to military programs refers to (or, in the past, has referred to) payments to a veteran based on the veteran's disability or financial need, or to the veteran's unremarried needy widow(er), or to a veteran's needy parent(s). Benefits to retired military personnel have frequently not been considered "pensions." This is because retirement from military service has often been characterized as reduced duty with reduced pay, due to military retirees being subject to involuntary recall to active duty (10 USC 688). Initially, military retired pay was often referred to as "longevity pay"; currently, military retirement benefits are referred to as "retired pay," again, because of the potential for recall.

In 1890 and 1891, when Congress was addressing disability pensions for veterans of the Mexican War, they became concerned that some veterans drew more than one pension, or a pension plus retired pay under the comparatively new retirement program, and even a pension plus active duty pay. It was discovered that, not only had some retired military personnel been receiving both retired pay and a disability pension, but also that some personnel on *active duty* were drawing their active duty pay plus a pension based on a disability from the Mexican War of 1846-1848. Therefore, in 1891 Congress prohibited the payment of what it regarded to be "dual compensation" for either past or current service and a disability pension. The FY 1892 appropriations legislation for veterans' benefits included the first prohibition of concurrent receipt. It said:

¹ *McCarty v. McCarty*, 453 U.S. 210, 212-13 (1981).

That hereafter no [disability] pension shall be allowed or paid to any officer, non-commissioned officer, or private in the Army, Navy or Marine Corps of the United States, either on the **active or retired** list. [emphasis added]

During debate on this legislation in 1891, Members of the Senate noted that longevity pay for military personnel "upon the retired list" was intended to be compensation in full for military service and that receipt of both a disability pension and retired pay arising from the same service would be prohibited. In arguing successfully for legislation to prohibit concurrent receipt of current salary or longevity pay (retirement pay) and a disability pension, Senator Francis Marion Cockrell of Missouri made the following statement in the Senate on February 5, 1891 (the term "pension" refers to payment for disability):

Mr. President, I think that everyone will admit that the salary we pay the officers of the Army is intended to be in full for all military services. We allow longevity pay, and all that, increasing as the service progresses, and it is in lieu of pension and everything else. It has always been understood that, when an officer was placed upon the retired list and received three-fourths of his pay, that was in lieu of compensation for all services performed in the Army, and in lieu of a [disability] pension. Also, when we created a retired list for non-commissioned officers and privates, we gave them three-fourths of their pay, longevity pay, and all that, it was understood that that was in lieu of all the military services that they had performed for us, and I know that that must have been the intention of Congress whenever a pension bill has been passed I want to know whether the Senate intends to establish the principle, that, in addition to paying an officer his full salary, his longevity pay, etc., we will give him a full pension when he is on the active list. If that is to be allowed I want the taxpayers of the country to know it.²

In a number of subsequent laws, Congress incorporated the same prohibition.³ However, it was modified somewhat in 1941, when P.L. 77-140 gave certain enlisted personnel a choice of either retired pay or a disability pension.

The present system, which applies to all members of the uniformed services, was adopted in 1944 in P.L. 78-314. Under this system, retired personnel may elect to waive an amount of their retired pay equal to their veterans' disability compensation payments. Because compensation is not subject to Federal income taxes, whereas military nondisability retired pay is taxable, the retiree who receives

² Congressional Record, Feb. 5, 1891: 2191.

³ Ch. 277, 27 Stat. 282, July 27, 1892; ch. 385, 31 Stat. 171, May 9, 1900; ch. 468, 34 Stat., 879, May 11, 1912; ch. 123, 37 Stat. 113; ch. 245, 41 Stat. 982, June 5, 1920; ch. 320, 43 Stat. 623, June 7, 1924.

veterans' compensation and the balance of the retired pay is financially better off than the retiree who receives only retired pay.⁴

Military Disability Retirement

In 1861, Congress established military disability retirement as a result of problems with physically unfit officers who attempted to command troops during the Civil War; Congress extended disability retirement to enlisted personnel in 1867. The Career Compensation Act of 1949 modernized those systems, and the military disability retirement program in effect today basically is unchanged from that Act. The 1949 Act specified that the disability rating schedule used by the VA also be used by DOD to rate the impairments of military disability retirees.⁵ The provision enabling retirees eligible for veterans' compensation to waive the amount of their retired pay equal to their compensation payments had been established in 1944; that waiver rule applied to the new military disability retirement program as well.

Legal Challenge to Concurrent Receipt

In 1985, a suit was brought against the U.S. Government in the U.S. Court of Claims regarding the constitutionality of the prohibition against concurrent receipt of veterans' compensation and military retired pay. The plaintiffs maintained that, because veterans who retire from the Federal civil service may receive veterans' compensation in addition to their full civil service pension, prohibiting military retirees from receiving their retired pay and their compensation benefits in full amounts to a violation of their right to equal protection under the Fifth Amendment to the U.S. Constitution.

The court noted that there were "two inquiries to be made" to see if the legislation advances some legitimate governmental purpose in a rational way:

1. Does the statute seek to achieve some purpose Congress may legitimately advance; and
2. Given the purpose, was there some rational basis for designating those chosen to be affected by the legislation?

The court noted that the legislative history of the prohibition against concurrent receipt was to restrain spending, and that, "Few purposes are so clearly a legitimate congressional objective." It noted that a further purpose of the legislation was to limit the amount of compensation certain classes of individuals could receive as a result of military or uniformed service." The court noted that this, too, is a "proper object of congressional concern."

⁴ Charles Roget Absher, et al. v. the United States, brief filed in the U.S. Court of Claims, Dec. 3, 1985. p. 5.

⁵ U.S. Dept. of Defense, Military Compensation Background Papers, November 1991: 486-487.

Once it was established that the law had a legitimate governmental purpose, the next question was whether the class of individuals to whom it applied was identified in some rational manner. The opinion noted the many special benefits available to military retirees beyond their retired pay, including commissary privileges, recreational facilities, and travel and health benefits. It pointed out that these benefits are not generally available to veterans who retire from civilian Federal employment or from private employment. Thus, veterans who are also military retirees have many extra perquisites not available to other retirees, particular, to retirees from the civil service. Thus, the court ruled that the two classes were not similarly situated, and that the treatment of the class identified in the challenged legislation was rationally related to the purpose of the law. Therefore, it held, the law does not violate the equal protection component of the Fifth Amendment to the U.S. Constitution.⁶

Distinguishing Among Disabled Retirees

The offset rule requires that military retired pay be reduced dollar-for-dollar by the amount of veterans' disability compensation a military retiree receives (38 USC 5304-5305).⁷ However, the relationships and distinctions among military nondisability retired pay, military disability retired pay, different formulas for computing military disability retired pay, and veterans' disability compensation are complex.

Military Length-of-Service (Nondisability) Retirement

In general, a military servicemember qualifies for nondisability retirement with an immediate benefit upon completion of 20 creditable years of active duty. Benefits

⁶ *Absher v. United States*, 805 F. 2d 1025 (Fed. Cir. 1986).

⁷ Military disability severance pay, involuntary separation pay, and the lump-sum Special Separation Benefit (SSB) paid to voluntary "early" separatees (those with fewer than 20 years of service) who elect to receive it are also reduced by veterans' disability compensation. Recipients of these DoD benefits receive their full veterans' disability compensation, but the amount of the DoD benefit is reduced by the veteran's disability compensation (in the case of lump sum benefits, until the reductions in VA compensation add up to the DOD lump sum received). In addition, the yearly annuity known as the Voluntary Separation Incentive (VSI), which an eligible voluntary separatee may elect to receive in lieu of the SSB, is reduced by veterans' disability compensation. (10 U.S.C. sec. 1212, 1174, 1174a, and 1175.) In general, the arguments for and against concurrent receipt of military retired pay and veterans' disability compensation discussed in this report also apply to these other DoD benefits. Legislation introduced in the 103rd Congress (S. 2154, Sen. Jeffords) would have eliminated the offsets for VSI and SSB. See Remarks of Honorable James Jeffords. Congressional Record, May 25, 1994: S 6396-97. In addition, Section 654 of the FY1995 National Defense Authorization Act (P.L. 103-337, October 5, 1994), requires the Comptroller General of the United States (head of the General Accounting Office) to study the issue of offsetting military disability severance pay, involuntary separation pay, VSI, and SSB against VA disability compensation, and make recommendations on possible modification of the offset if so warranted. The study is due 180 days after enactment of the Act, or April 5, 1995. See also Adde, Nick. Bonus Offset Gets New Review. Army Times, September 5, 1994: 7.

for servicemembers retiring today are determined by multiplying final basic pay by the number of years of service and 2.5 percent (basic pay is one component of total military compensation, usually comprising 65-75 percent of the total, depending on the servicemember's entitlement to various special pays, bonuses, and other elements of compensation). Thus, upon completion of 20 years of service, retired pay is 50 percent of final basic pay. (For personnel who first entered service on or after September 8, 1980, the computation base is reduced from final basic pay to the average of the highest 3 years ("high-3"). For personnel who entered service on or after August 1, 1986, benefits after 20 years are further reduced to 40 percent of a servicemember's high-3 average.)⁸

A nondisability retiree who believes he or she has an ailment connected with military service may apply to the VA for a disability rating. Application may be made at the start of retirement or at any later time. If the retiree is determined by the VA to have a compensable condition, benefits are paid, but the retiree remains classified as a *nondisability retiree* by DOD.

Military Disability Retired Pay

To qualify for *military disability retirement* the disability must be determined by *medical personnel of the DoD* as permanent, and the individual:

. . . must have (1) at least 20 years of creditable service, *or* (2) in the determination of the evaluation board, a physical disability of at least 30 percent *and* have (a) at least 8 years of creditable service, *or* (b) a disability resulting from active duty.

Once eligibility for disability retirement is established by DOD medical evaluators, the individual has a choice of one of two formulas for computation of disability retired pay. (The individual presumably chooses the formula that is most financially advantageous.)

- Percent-of-disability formula. This formula is based on the individual's *percent of disability*; benefits are computed by multiplying the disability percentage rating by the pre-retirement basic pay on which retirement benefits are based. If the disability rating is, for example, 50 percent, the benefit is 50 percent of the preretirement basic pay. Any retiree who is certified by DOD to have a disability is classified as a disability retiree, regardless of the percentage of disability adjudged.
- Length-of-service formula. This formula is the same as the length-of-service formula applicable to nondisability retirees; benefits are 2.5 percent of the pre-retirement salary on which retirement benefits are based multiplied by years of service.

Perhaps the most important difference between military retired pay (whether disability or nondisability) and VA compensation is the extent to which each is

⁸ For more detail on the current military retirement system, see Appendix A.

subject to the Federal income tax. Disability retired pay computed according to the percent-of-disability formula is fully taxable, *unless* (a) military service began before September 25, 1975, or (b) the disability is a result of a combat-related injury. Disability retired pay computed according to the length-of-service formula is taxable only to the extent that it exceeds the amount the individual would receive under the percent-of-disability formula. For example, assume a disability retiree's retired pay is computed on the basis of length of service and is \$1,500 per month. If the benefit computed using the percent-of-disability formula would be \$1,000 per month, \$500 of the individual's monthly retired pay would be taxable, and \$1,000 would be tax-free. All VA disability compensation is nontaxable.

Eligibility for Veterans' Compensation

Regardless of the benefit computation formula chosen, an individual who receives a disability rating from DOD is classified as a *disability retiree*. However, disability retirees, as well as retirees not determined disabled by DOD, may also apply to the VA for benefits under the veterans' disability compensation system. This can be advantageous to retirees who have a DOD disability rating. If the disability is not combat-related, or if military service began after September 25, 1975, the disability retired pay is fully taxable, whereas veterans' compensation is not taxable. Thus, even though current law requires that military retired pay (including both disability retired pay and nondisability retired pay) be reduced by the amount of the veterans' compensation benefits, veterans' benefits are tax-free. Also, a retiree may (1) apply for veterans' compensation any time after leaving the service and (2) have his or her degree of disability changed as the result of a medical reevaluation, whereas the DOD makes a military disability retirement determination only at the time the individual is separating from the service. Many retirees seek benefits from VA years after retirement for a condition that may have been incurred during military service, but that may not manifest itself until years later.

RECENT LEGISLATION

Recent legislative activity on the issue of concurrent receipt began in early 1987, at the beginning of the first session of the 100th Congress. Several bills in each of these Congresses would have completely eliminated the offset and permitted full concurrent receipt of retired pay and veterans' compensation. Some of these bills had substantial numbers of co-sponsors. Other legislation was introduced to allow partial concurrent receipt. All of these bills, if enacted, would have allowed concurrent receipt of military *nondisability* retired pay and veterans' compensation. Payment of military *disability* retired pay and veterans' compensation would *not* have been allowed.⁹

102nd Congress (1992)

Congress did not take up concurrent receipt legislation in committee until 1992. In that year, the Senate version of the FY1993 National Defense Authorization Act included a provision that would have required DOD to (1) submit a legislative proposal to permit concurrent receipt of military nondisability retired pay and veterans' disability compensation "or another formula to accomplish this end," and (2) provide sufficient funds for such concurrent receipt to begin in FY1994. In reporting this provision, the Senate Armed Services Committee explained its rationale and actions in detail:

The committee takes this action because it believes that the current requirement for military retired pay received by an individual to be offset dollar for dollar by veterans' disability compensation is inequitable. The committee believes that nondisability military retired pay is post-service compensation for services rendered. Veterans' disability compensation, on the other hand, is compensation for a physical or mental disability incurred from performance of such service. The two pays are for different purposes, one for service and the other for physical or mental "pain and suffering."

The committee believes this inequity should be corrected, and has considered a number of proposals. These included a proposal to repeal the offset entirely, a proposal to require a sliding scale of offsets that would reduce as disability ratings increase, a proposal for a phase-in over a number of years of either one of the first two proposals, a proposal to apply the offset only to individuals who have a 30 percent or less rated disability, and a number of other variations on these themes. Because of the complexity of some of these proposals and the costs associated with them, the committee believes that DoD should be required to carefully study these proposals and then submit legislation that it considers appropriate.

⁹ Some bills stated explicitly that "payment of retirement pay and of compensation based upon the same disability [CRS italics]" would not be allowed. This language could be construed as allowing concurrent receipt of military disability retired pay and veterans' disability compensation if each were based on a different disability.

The committee intends to consider the legislation DOD submits with a view toward recommending a proposal for adoption by the Senate next year [1993].¹⁰

There was no similar provision in the House version of the FY1993 National Defense Authorization Act. Instead, the conference version of the Act, which was approved in the final legislation, contained a provision requiring the Secretary of Defense to submit to the House and Senate Armed Services Committees a report on "alternative approaches" to concurrent receipt, together with such recommendations as the Secretary deemed appropriate. The deadline for submission of the report was April 1, 1993.¹¹ In addition, the conference report:

...directed the Congressional Research Service (CRS) of the Library of Congress to provide a report to the Committees on Armed Services by April 1, 1993 on programs which currently have offsets similar to the offset made between military retired pay and VA disability compensation, or where the beneficiary is required to choose between benefits earned during the same chronological time period, e.g., Civil Service Retirement and Federal Employment Compensation Act. The study should include, but not be limited to the following programs:

- (1) Military survivors benefits/dependency and indemnity compensation
- (2) Federal civil service retirement/federal employment compensation
- (3) Railroad retirement/workers' compensation
- (4) Social Security/workers' compensation
- (5) Federal civil service disability/Federal Employees' Compensation Act/state and local government disability programs.

The Congressional Research Service study should further address the question of how the current policy of offsetting military retired pay and VA disability compensation, as it relates to military retirees, compares to other Federal beneficiaries affected by similar policies. The study should also estimate the budgetary impact of removing such policies throughout the federal government.

¹⁰ U.S. Congress. Senate. Committee on Armed Services. National Defense Authorization Act for Fiscal Year 1993; report to accompany S. 3114. July 31, 1992. Washington, U.S. Govt. Print. Off., 1992 (102nd Congress, 2nd session. Senate. Report no. 102-352): 208-09.

¹¹ Section 641, P.L. 102-484, October 23, 1992, FY1993 National Defense Authorization Act; 106 Stat. 2315 at 2424; U.S. Congress. Conference Committees. National Defense Authorization Act for Fiscal Year 1993; conference report to accompany H.R. 5006. October 1, 1992. Washington, U.S. Govt. Print. Off., 1992 (102nd Congress, 2nd session. House. Report no. 102-966): 714-15.

CRS delivered its study to the House and Senate Armed Services Committees in early May 1993. (The Committees removed the requirement for budgetary impact estimates from the charge to CRS.)¹² The report is summarized in appendix B. However, the requested DOD study was not completed until late 1993, prompting further congressional action during the first session of the 103rd Congress.

103rd Congress (1993-1994)

During the first session of the 103rd Congress, the Senate Armed Services Committee included in its version of the FY1994 National Defense Authorization Act a provision that would have authorized the Secretary of Defense to make "special" payments to nondisability military retirees rated as totally disabled by the VA (section 634 of the bill as reported by the committee). The "special pay" was to equal to the amount of the reduction in military retired pay caused by receipt of veterans' disability compensation. Thus, in effect, the legislation would have provided concurrent receipt for only those military nondisability retirees rated by the VA as 100-percent disabled. Because this "special pay" would have been categorized as *discretionary* spending rather than *mandatory* spending for budgetary purposes, it would not have been subject to the "pay-as-you-go" budget rules that require offsetting reductions in other mandatory spending programs or increases in revenues.¹³ As discretionary spending, payment of "special pay" was to be contingent on annual appropriations, and was to be effective after September 30, 1994 (the beginning of FY1995).¹⁴

The Senate Armed Services Committee was clearly displeased with DOD's failure to provide the report on concurrent receipt by the April 1, 1993, deadline specified in the previous year's National Defense Authorization Act:

In the absence of the required report, the committee has addressed this issue only partially, in the expectation that the Department of Defense will act promptly and responsibly in recommending a full resolution of this matter.¹⁵

When the FY1994 defense authorization bill was considered by the full Senate, Senator Nunn proposed an amendment specifying that: (1) "special pay" would be payable as of January 1, 1994 (not September 30, 1994, as provided in the Committee bill); (2) it would be paid out of funds appropriated to DOD for the official travel of

¹² Merck, Carolyn L., and (name redacted). Concurrent Receipt of Military Retired Pay and Veterans' Compensation: Analogies and Issues. May 5, 1993. 71 p.

¹³ Mandatory spending includes most entitlement programs and payments of interest on the national debt, expenditures for which annual appropriations are not required in most cases. Discretionary spending applies to programs the funding for which is determined solely by annual appropriations.

¹⁴ U.S. Congress. Senate. Committee on Armed Services. National Defense Authorization Act for Fiscal Year 1994; report to accompany S. 1298. July 27, 1994. Washington, U.S. Govt. Print. Off., 1993 (103rd Congress, 1st session. Senate. Report no. 103-112): 153.

¹⁵ Ibid.

DOD personnel in the Office of the Secretary of Defense and the offices of the Secretaries of the Army, Navy, and the Air Force; but (3) "special pay" was not to take effect if, before January 1, 1994, the Secretary of Defense submitted to the Congress the report on concurrent receipt that had been required in the previous year's National Defense Authorization Act.¹⁶ Senator Nunn's floor amendment was approved by voice vote on September 13, 1993.

The House version of the FY1994 defense authorization bill had no provisions regarding concurrent receipt, and the conference committee adopted the Senate language. Hence, Senator Nunn's floor amendment was included in the final version of the FY1994 National Defense Authorization Act.¹⁷ However, DOD submitted the required report on September 24, 1993,¹⁸ thereby meeting the requirement that the report be submitted before January 1, 1994. Thus, the "special pay" plan was automatically cancelled.¹⁹

During the 2nd session of the 103rd Congress, Senator McCain introduced a floor amendment to the FY1995 DOD Appropriation Act to waive the statutory prohibition against concurrent receipt for FY1995 only. (There were no concurrent receipt provisions introduced or included in any version of the FY1995 National Defense Authorization Act.) It would have authorized concurrent receipt for veterans who (1) had completed at least 20 years of military service (i.e., who were eligible for military retired pay computed in accordance with the nondisability retirement formula); (2) were rated 100 percent disabled by the military department concerned at the time of retirement from the military, or within 4 years after retirement by the VA; and (3) had a disability "incurred or aggravated" in the line of duty. Senator McCain stated that DOD estimated there were 7,000 100-percent-disabled veterans with at least 20 years of service; 3,500 of these would be eligible for concurrent receipt (i.e., had a disability "incurred or aggravated" in the line of duty). Allowing concurrent receipt for these 3,500 people would have cost \$55-60 million in FY1995.²⁰

In his accompanying statement, Senator McCain suggested that DOD fund the costs of providing concurrent receipt to this category of military retirees by cutting the travel of the Department's "senior-level" officers and civilian executives, estimated to cost \$370 million annually, or from the costs of processing DOD travel

¹⁶ See Nunn, Sam. National Defense Authorization Act for Fiscal Year 1994. Remarks in the Senate. Congressional Record, September 13, 1993: S 11543.

¹⁷ Section 634, P.L. 103-160, November 30, 1993; 107 Stat. 7547 at 1684.

¹⁸ Letter, Assistant Secretary of Defense (Personnel and Readiness) Edwin Dorn to the Honorable Sam Nunn, Chairman, Committee on Armed Services, United States Senate, September 24, 1993, Accompanied by Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation.

¹⁹ There was some controversy over whether the DoD report of September 24, 1993, fully met the statutory requirement. See Adde, Nick. "Joint Pay Fight Lost For Now." Army Times, December 27, 1993: 21.

²⁰ McCain, John. Remarks in the Senate. Congressional Record, August 10, 1994: S 11127-28.

orders, estimated to cost \$2.3 billion. More generally, he suggested that the funds be obtained "not at the expense of readiness in our armed forces, but rather from defense accounts such as executive travel, university research, development, test, and evaluation, and military construction, for example."²¹

Senator McCain's amendment was agreed to on August 10, 1994. Later in the day, Senator Stevens, on behalf of the FY1995 DOD Appropriation Act's managers, offered an amendment to Senator McCain's amendment which was adopted. The modified amendment provided that the concurrent receipt it proposed could not in fact occur unless authorized by a public law other than the FY1995 DOD Appropriation Act. Senator McCain explained the rationale for the modified amendment as follows:²²

The amendment I offered, and which was accepted, sought to appropriate funds for a program which is not authorized. As soon as I realized that the program was not authorized, I sought the assistance of the managers of the bill in correcting the amendment.

...I do not support the appropriation of funds for any unauthorized program, project, or activity.

There were no provisions regarding concurrent receipt in the House version of the FY1995 DOD Appropriation Act. The conference version of this Act dropped the requirement for payment of concurrent receipt during FY1995 to 100-percent-disabled veterans with at least 20 years of service with a line-of-duty disability. Instead, the conference version required a report from DOD on the subject as follows (Sec. 8128, P.L. 103-335):²³

The Secretary of Defense shall report to the congressional defense committees the existing standards for the provision of concurrent retirement and disability benefits to members of the Armed Forces with not less than twenty years of service: Provided, That this evaluation will address the number of individuals retired from the Armed Forces under conditions of total disability; the cost of extending concurrent benefits to these individuals; the comparability of the policy to Office of Personnel Management guidelines for civilian federal employees; the comparability of this policy to prevailing private sector standards; the number of individuals potentially eligible for concurrent benefits who now receive other forms of federal assistance and the cost of that assistance: Provided further, That the Secretary shall submit this report not later than March 15, 1995.

²¹ Ibid.: S11128.

²² Ibid.: S 11152.

²³ U.S. Congress. Conference Committees. Department of Defense Appropriation Bill, 1995; conference report to accompany H.R. 4650. September 26, 1994. Washington, U.S. Govt. Print. Off., 1994 (103rd Congress, 2nd session. House. Report no. 103-747): 26, 166.

PREVIOUS STUDIES AND ANALYSES OF CONCURRENT RECEIPT

The relationship between military retired pay and VA disability compensation has been addressed -- albeit not in detail -- in several studies of military compensation and benefits over the past 50 years. In general, these analyses called for greater rationalization of the way in which DOD and VA pay disabled military retirees, although the methods suggested differ. Interestingly, while none of the studies discussed the issue at great length, they suggested making them either totally additive or totally exclusive. These proposals are much more radical than the concurrent receipt proposals that have been made since the late 1980s, which generally do not involving fundamental restructuring of either program.

The 1948 Advisory Commission on Service Pay (known as the "Hook Commission" for its chairman), and the 1967-1969 First Quadrennial Review of Military Compensation (or QRMC; also known as the "Hubbell Report" for its chairman), contained broadly similar proposals. These studies both argued that retirees should be able to choose either DOD disability retirement or VA disability compensation, whichever was more financially advantageous, but not both.²⁴

Perhaps the lengthiest treatment of the concurrent receipt issue that received widespread dissemination prior to the late 1993 DOD report to the Congress on the subject is in a 1961 study prepared for the Senate Armed Services Committee by the University of Michigan.²⁵ The 1961 study noted that:²⁶

The fact that the Armed Forces operate a disability retirement program that parallels that of the Veterans' Administration and that is based on the same rating schedule naturally raises the question of whether it is necessary or desirable to have two separate and overlapping programs covering somewhat comparable groups of personnel administered by two different agencies.

Nevertheless, the Study Committee is of the opinion that the Department of Defense should continue to administer a disability retirement program. The military establishment should have a continuing interest in its career personnel; the Veterans' Administration should concern itself with the civilian soldiers who served their country only during wartime. One solution to the overlapping of services would be to make military disability retirement adequate so that recourse to the Veterans' Administration would not be necessary.

²⁴ Career Compensation for the Uniformed Forces. A Report and Recommendation for the Secretary of Defense by the Advisory Commission on Service Pay. Washington, U.S. Govt. Print. Off., December 1948: 46; and Modernizing Military Pay. Report of the First Quadrennial Review of Military Compensation. Volume IV. The Military Estate Program. Washington, U.S. Govt. Print. Off., 15 January 1969: 7-23.

²⁵ U.S. Congress. Senate. Committee on Armed Services. A Study of the Military Retired Pay System and Certain Related Subjects. Committee Print. July 6, 1961. 87th Congress, 1st session. Washington, U.S. Govt. Print. Off., 1961.

²⁶ Ibid.: 72.

The 1961 Study Committee went on to suggest changing the formulas used to determine eligibility for military disability retirement, and the amount of disability retired pay, so that a retiree's length of service, pay grade, and the extent of disability would all be taken into account, the extent of disability being subject to periodic reexamination (as is the case with VA disability compensation, but not military disability retirement). This method would presumably have made the issue of concurrent receipt moot, by incorporating features of the VA program into a reformed military disability retirement program.

The 1976 Defense Manpower Commission proposed a restructuring of DOD and VA disability income programs so the two would be additive, rather than offset or mutually exclusive. Under the Commission's scheme, DOD would have paid disability compensation based on the calculated loss of earnings due to the disability, subject to later reevaluation based on medical status and the ability of the disabled member to secure civilian employment. VA would have compensated disabled individuals for the "pain and suffering of the disability itself," as distinguished from loss of income.²⁷

²⁷ Defense Manpower Commission Staff Studies and Supporting Papers. Volume V. Compensation and Retirement. Washington, U.S. Govt. Print. Off., May 1976: D-12/13.

FOR WHOM SHOULD CONCURRENT RECEIPT BE GRANTED?

A key policy issue that the Congress would need to address if it were to approve the concept of concurrent receipt is whether concurrent receipt should be allowed for: (1) only military nondisability retirees; (2) both military nondisability retirees and *all* military disability retirees; or (3) military nondisability retirees and military disability retirees whose benefits are based on the length-of-service formula, but not those under the percent-of-disability formula.

The 1993 DOD report on options for concurrent receipt assumed that concurrent receipt of veterans' disability compensation would be permitted for retirees receiving either military *disability* retired pay or *nondisability* retired pay. However, there is no evidence that advocates of concurrent receipt intend that retirees receiving DOD disability retired pay be granted full benefits from both programs. Legislation introduced in the past (including the Senate Armed Services Committee language in 1992-1993) would have provided concurrent receipt of veterans' compensation and *nondisability retired pay only*. According to most analysts, allowing concurrent receipt of *military **disability** retired pay* and veterans' disability compensation would provide two benefits for the same disability incurred during the same period of service,²⁸ a situation for which there is no precedent among other programs. Indeed, the main argument made by advocates of concurrent receipt is that military *nondisability* retired pay and veterans' compensation are compensation for two unrelated things: one for completion of a military career, and the other as recompense for a service-connected disability.

Another issue is the distinction between recipients of disability retired pay according to whether that pay is based on the percent-of-disability formula or the length-of-service formula. Legislation introduced in the past (including the 1993 Senate bill calling for "special pay") did not explicitly differentiate between (1) nondisability retirees and (2) disability retirees whose disability retired pay is computed on the basis of the length-of-service formula (see above, pp. 7-8). This is an arcane, but important, distinction that should be made when addressing concurrent receipt. DOD's cost and beneficiary estimates appear to assume concurrent receipt would be allowed for any retiree whose retired pay is computed using the length-of-service formula, *even if that retiree has a disability determination from the DOD*.

Paying full benefits from both the DOD retirement system and the veterans' compensation program to military disability retirees whose disability pay is based on the length-of-service formula seems illogical and would set a precedent for receipt of two disability benefits simultaneously for the same disability. Moreover, disability retirees receiving retirement benefits under the length-of-service formula may press for additional DOD benefits under the percent-of-disability formula, using the same arguments made for concurrent receipt of nondisability retired pay and veterans' compensation: that one is based on length-of-service, and the other on disability.

²⁸ Conceivably, a military retiree could be eligible for disability retired pay based on one specific medical condition, and later be determined eligible for VA disability compensation based on another condition.

ARGUMENTS FOR AND AGAINST CONCURRENT RECEIPT

Different Programs, Different Purposes

Pro - 1

Some say that military nondisability retirement from an active duty career is a reward for completion of a minimum number of years of active duty (at least 20 years), and is deferred compensation for that service, while eligibility for veterans' disability compensation has nothing to do with length of service, but is paid to compensate for a physical or mental impairment, the onset of which occurred during military service. In general, they say that concurrent receipt is justified because military nondisability retirement and veterans' compensation are awarded for two entirely different reasons.

Pro - 2

Federal, state, and local police and fire retirement plans frequently offer 20-year retirement at any age, for precisely the same reasons as the military -- the need for vigorous personnel who can meet the physical and emotional stresses (including, but not limited to, substantial possibility of death or wounding) of law enforcement and firefighting.

Con - 1

Veterans' disability compensation is intended to compensate for economic loss caused by a particular degree of disability. Similarly, some point out that military retired pay (both nondisability and disability retired pay) was designed primarily to facilitate removal from active military service those individuals who are medically incapable of performing their military duties satisfactorily (age being considered one indicator of such medical incapacity). Thus, to some extent, benefits from both programs are paid for the same thing: physical (or mental) impairment. Paying two benefits for the same thing argues against concurrent receipt.

Con - 2

Twenty-year career military personnel *may draw retirement benefits immediately upon separation from the service regardless of age*, a practice virtually unheard of for nonmilitary careers. Those who defend payment of military retirement benefits to persons who may be only 38 or 40 years old often justify it by describing early payment of retirement benefits as *compensation for physical wear and tear attributable to the rigors of military service*. They claim that this wear and tear may result in reduced earning capacity for military retirees separating from service in their early 40s, and that reduced earning capacity is compensated through payment of early retirement benefits.

Opponents of concurrent receipt point out that payment of "retirement" benefits after as few as 20 years of service to individuals who are typically in their early 40s plus veterans' compensation would amount to dual compensation for the same thing:

the rigors of military service. Again, paying two benefits for the same thing argues against concurrent receipt.

Veterans' Disability Compensation and Non-Military Pay and Benefits

Pro

Proponents of concurrent receipt point out that recipients of veterans' compensation may receive other Federal and non-Federal benefits in addition to their veterans' compensation, either fully or partially. For example, veterans can receive disability compensation and the following non-military benefits *without any offsets, reductions, or limits*: unemployment compensation; social security;²⁹ Federal civil service pay; pay from a private sector job; Federal civil service retirement (including disability retirement); retirement pensions from non-Federal jobs; and Federal workers' compensation (benefits for work-caused disability or illness provided under the Federal Employees' Compensation Act, or FECA). Proponents contend that, because these income sources are not offset, military retired pay should not be offset either.

Con - 1

Opponents of concurrent receipt note that, in most non-military occupations (including occupations that are physically demanding), earning capacity lost due to disability is compensated through a disability program, and earnings lost due to retirement are compensated through a retirement or pension program, but earning capacity lost due to *both* disability *and* retirement *from the same job* is never compensated simultaneously. For example: (1) social security benefits replace earnings lost due to disability *or* due to retirement based on age, *but not both*; (2) the Federal civil service retirement systems replace earnings lost by Federal employees due to disability *or* retirement, *but not both*; (3) Federal civilian employees disabled from work-related injury or illness may receive benefits under FECA *or* the civil service disability retirement system, *but not both*; (4) private long-term disability insurance benefits (generally part of an employee benefit package for workers in the private sector) replace earnings lost by disabled private sector workers who are too young to qualify for a pension, *but those benefits stop at retirement age when a pension becomes payable*; and (5) members of the reserve components of the armed forces who have been rated as disabled by the VA must elect whether to receive reserve pay or VA compensation, *but not both*.³⁰ In short, in none of these cases are

²⁹ For all disabled workers except recipients of veterans' disability compensation, social security disability benefits are limited if disability benefits from all sources total more than 80 percent of predisability pay. However, veterans can receive full social security disability benefits plus veterans' compensation because Congress explicitly exempted recipients of veterans' compensation from the 80 percent "megacap" that applies to non-veterans. See Merck and Goldich, *Concurrent Receipt of Military Retired Pay and Veterans' Compensation: Analogies and Issues*: 3-6 and passim.

³⁰ Allowing persons with a VA disability rating to serve in the reserve components
(continued...)

concurrent benefits provided for earnings lost due to both retirement and disability from the same job.

As summarized in appendix B, there are many more precedents for having full or partial offsets of one Federal program against another than there are for allowing full concurrent receipt of Federal benefits, including disability benefit programs.

Con - 2

Opponents of concurrent receipt point out that Congress allowed concurrent receipt of veterans' disability compensation and income from *non-military* sources in order to ensure that the disability system did not create work disincentives for veterans who, despite a disability, are able to work and be self-sufficient. Thus, Congress decided to allow disabled veterans to keep their disability benefits when they earn other income. Work incentives for retiree/veterans could be seriously undermined by the availability of a substantial Government-paid guaranteed income and cost-of-living adjustments for life. At the same time, VA benefits for severely disabled veterans are designed to be generous enough to support veterans who are unable to work without supplementation from other sources.

Inequitable Treatment of Veterans Who Retire from the Federal Civil Service

Pro

Proponents of concurrent receipt point out that military retirees who subsequently pursue a Federal civil service career and later become eligible for civil service retirement can elect to combine their military service with their civilian service (in which case they must waive their military retired pay) and apply their combined service to the computation of their Federal civil service pension. This combination of service usually increases the retirement income value of the retiree's military service. Military retirees who waive their retired pay are eligible for full concurrent receipt of a civil service pension and veterans' disability compensation with no offset, whereas retirees who do not waive their military retired pay, but who receive it plus a civil service pension, have their military retired pay reduced by their veterans' compensation. Advocates of concurrent receipt say it is inequitable to offset military retired pay for those who do not waive it, but not to offset retirement benefits for those who do waive their military retired pay.

Con

Opponents of concurrent receipt point out that equity can be achieved by applying the offset to the civil service retirement benefit of military retirees who

³⁰(...continued)

would at least appear to be inconsistent with efforts by DOD to increase the capabilities of the reserve components, and with statements that standards for reserve component personnel are identical to those of the active force.

waive their retired pay, thus treating retirees who waive their retired pay the same as those who do not. Moreover, they point out that those who waive retired pay in order to combine their military and civilian service usually have more retirement income than those who receive two separate retirement benefits.³¹

Unique Nature of Military Service and Related Disability Compensation

Pro

Some say that veterans' disability compensation, which is awarded for "service-connected" disabilities, cannot be equated with disabilities incurred in civilian life. It is suggested that military service rendered in defense of, and on behalf of, the Nation deserves special consideration when determining policy toward such matters as benefit offsets. In this view, it is a moral requirement to award preferential treatment to the needs of veterans, given their sacrifices and the hardships incurred in military service.

Con

Opponents of concurrent receipt maintain that the operational definition of "service connection" allows veterans to qualify for benefits for impairments not related to the unique rigors of military service. In 1924, Congress changed the definition of a qualifying injury or illness from conditions incurred "in the line of duty" to conditions incurred "while in the military." Opponents say the post-1924 definition allows veterans' disability compensation to be paid for conditions that may afflict civilian workers and which are not, therefore, "unique" to military service. They point out that many civilian occupations such as firefighting or law enforcement are "worthy," are for the public good, and are rigorous and dangerous. Thus, the argument that the "unique" nature of military service should justify special benefits is unfounded.

Additional Arguments Against Concurrent Receipt

Targeting Benefits

In general, military retirees may be both *less* disabled than non-retiree veterans and better off financially than non-retiree veterans. By definition, *retired* servicemembers were able to complete a career of at least 20 years of military service and, as a result, they draw a guaranteed income for life (military retired pay). However, servicemembers becoming disabled while on active duty may be unable to remain in the service for a 20-year career. Consequently, they have no guaranteed source of income after separation from the service other than their VA disability compensation payments. Hence, some argue that providing disability compensation benefits to those able to serve for 20 years or longer overcompensates veterans who may be among the less disabled and the more financially privileged.

³¹ It should be noted that the option of combining military and civilian service is of no practical value for Federal retirees covered under the Federal Employees Retirement System (FERS), as opposed to those covered by the pre-1984 Civil Service Retirement System.

Windfall Benefits

Because military retirees are, by definition, older at separation from the service than non-retiree veterans, provision of veterans' compensation to military retirees may amount to compensation for the normal physical declines associated with aging. A military retiree is at least 20 years older at retirement than when entering the service, and it is reasonable to assume that the aging process will result in a retiree not being in poorer physical condition at age 40 or 45 than at age 20-22.

The eligibility rules for veterans' compensation do not distinguish between impairments that are service-*caused* or incurred "in the line of duty" and those for which the onset occurred *while in the military*. For example, a healthy 20-year-old recruit may be found 25 years later to have high blood pressure when he or she retires from the service at age 45. However, the veterans' compensation system would virtually automatically establish the high blood pressure as service-connected because it commenced during military service. Hence, it is a compensable condition. Opponents of concurrent receipt say that such an individual likely would have developed high blood pressure, for example, (or another of the "ordinary diseases of life") during the preceding years had he or she not been in military service. Moreover, retirees may seek veterans' compensation years after retirement from the service, claiming a condition was caused by military service, but took years to become symptomatic, a claim that may be difficult to prove or disprove. Thus, some maintain that, were full concurrent receipt allowed, some (perhaps most) retiree/veterans who are found to have a condition that qualifies them for disability compensation would reap a windfall because they would have developed the same condition had they been in civilian life.

Disability Retirement Versus Veterans' Compensation: Benefit Adequacy and Equity

Receipt of military length-of-service retirement plus veterans' compensation could result in higher total benefits to retiree/veterans who *do not qualify* for military disability retirement than are paid to those who *do qualify* for military disability retirement. Since it is alleged that the DOD disability retirement eligibility determination process is more stringent than that of the VA, those who *do* qualify for military disability retirement might claim that they are being undercompensated compared with nondisability retirees who are granted disability status by the VA.

Offsets Between Military Survivor Benefits

An offset similar to the current offset rules for military retirement and veterans' compensation applies to the surviving spouses of these beneficiaries. Benefits from the military Survivor Benefit Plan (SBP) are reduced by benefits payable from the veterans' Dependency and Indemnity Compensation (DIC) program. Thus, surviving spouses of disabled military retirees generally cannot receive benefits through both

the retirement system and the veterans' disability system.³² It would be difficult to justify paying military retired pay and veterans' compensation concurrently to the retiree but not paying surviving spouse benefits from both the SBP and the DIC concurrently to that retiree's widow(er).

Dual Benefits Were Not Promised to Retirees

Certain benefits for military retirees are criticized as excessive, and some have been reduced recently, including limits on accessibility to military health care facilities and delayed retired pay COLAs.³³ The Government has no contractual obligation to provide these benefits (nor is there any statutory entitlement to them that cannot be modified by enactment of a public law), although retirees sometimes claim that they had been implicitly (or perhaps explicitly) promised them by recruiting and retention personnel. However, no such argument can be made regarding concurrent receipt of military retired pay and veterans' disability compensation. It has never been allowed and, therefore, never promised, to military personnel as a benefit of military service.

Creating a New Benefit While Cutting Others

Allowing concurrent receipt would create a new benefit for military retirees while existing ones may have been cut, such as access to military health care facilities and delayed retirement COLAs.

Substantial Costs to the Government

An important argument against concurrent receipt is its cost to the Federal Government in an era of budgetary stringency and mounting concern about the long-term fiscal consequences of Federal entitlements. According to the DOD, full concurrent receipt for all military nondisability retirees would have cost \$2.085 billion in FY 1993.³⁴ (For more detailed cost estimates for various concurrent receipt options, see the section below on alternative approaches.)

³² There are certain exemptions to the general rule that military SBP benefits and VA DIC cannot be received concurrently by a surviving spouse. If a surviving spouse is entitled to additional DIC due to (1) supporting a dependent child or children, (2) being in a nursing home, blind, or requiring aid or assistance from another person, or (3) being housebound or institutionalized in a ward or clinic, then this additional DIC is not offset against military SBP annuities [38 USC 411(a)-(d)]. See also Burrelli, David F., *The Military Survivor Benefit Plan: A Description of Its Provisions*. CRS Report 94-779 F, October 6, 1994: 26-27.

³³ See Goldich, Robert L. *Military Retirement and Separation Benefits: Major Legislative Issues*. CRS Issue Brief 85159, updated regularly; Goldich, Robert L. *COLAs for Military Retirees: Summary of Congressional and Executive Branch Action Since 1982*. CRS Report 94-7, February 2, 1995 (updated annually each January); and Best, Richard A. *Military Medical Care Services: Questions and Answers*. CRS Issue Brief 93103, updated regularly.

³⁴ Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation: 3.

Undermining Public Support

For many career members of the military, the service offers not only educational benefits but also training and development of expertise in a wide variety of technical and managerial fields which give them important advantages in pursuing post-retirement careers. Comparatively minor physical ailments that qualify for veterans' disability compensation may not impede these retirees from maximizing their post-retirement earnings. If the general public perceived that such individuals, particularly those receiving compensation for ailments not incurred in the line of duty, were being offered further advantages at taxpayer expense, support for veterans programs in general could be significantly undermined.

Setting a Costly Precedent

Allowing full or partial concurrent receipt for military retired pay and veterans' disability compensation would set a precedent that could lead to pressure for concurrent receipt of many other Federal benefits. The May 1993 CRS study prepared for the House and Senate Armed Services Committees identified 15 offsets or analogous restrictions regarding the receipt of two separate Federal benefits.³⁵ Elimination of these offsets could lead to costs to the Federal Government running into many billions of dollars, and the statutory Cost of Living Adjustments (COLAs) found in many Federal programs, would compound the costs even further.

In Summary

The primary arguments made in support of concurrent receipt include: (1) retirement benefits and veterans' disability benefits are payable for different reasons, one for completion of a career and the other for disability incurred during that career, and there is no justification for denying payments to individuals eligible for benefits from programs serving different purposes; and (2) veterans' benefits can be received concurrently with pay or benefits from nonmilitary programs, which constitutes a precedent for concurrent receipt.

Arguments against concurrent receipt include: (1) the military retirement program and the veterans' compensation program serve similar purposes (compensation for rigorous duty); (2) no nonmilitary jobs pay both retirement and disability simultaneously; (3) current receipt would set a precedent for removing offsets and benefit limits in other Federal programs; (4) concurrent payment would bestow a generous guaranteed lifetime income paid by the Government on military retirees who have suffered no financial loss because of military service; (5) receipt of retirement plus compensation could create substantial work disincentives for younger retirees able to work; (6) concurrent receipt would add a new and costly entitlement when reductions in other entitlements are under consideration; and (7) public support for military and veterans' benefit programs could be undermined if the benefits were perceived as going to a largely non-needy population.

³⁵ Merck and Goldich, Concurrent Receipt of Military Retired Pay and Veterans' Compensation: Analogies and Issues.

Much of the difficulty in sorting out the issue of concurrent receipt is due to the fact that both military retirement and veterans' compensation have multiple objectives, and each program may be viewed differently by different observers. The retirement system is a military personnel management system with a variety of different objectives, including: facilitating recruitment and retention of qualified military personnel; fostering turnover among senior grade personnel completing 20 years of service, thereby facilitating upward mobility among younger servicemembers; removing from active duty "older" servicemembers with diminished stamina; compensating for the wear and tear of a career that may be physically demanding and that may diminish civilian earning capacity; providing income support during the transition into the civilian labor force for those separating from military service in early middle-age; and providing old-age retirement income.

Different objectives have also been ascribed to veterans' disability compensation, including compensating for clearly diminished or curtailed earning capacity and providing indemnification for presumed loss of civilian earning capacity. However, military retirement has similar objectives. Under that system, payment of "retirement" benefits to career servicemembers in their early 40s is justified as, among other things, compensation for the physical and mental toll that results from the arduous nature of a military career, as well as potential reduced civilian earning capacity. Thus, the two programs have both overlapping and different objectives. Consequently, depending on how one regards these programs, concurrent receipt might be seen as appropriate from some viewpoints, but overlapping and duplicative from others.

Alternative Approaches

According to some, alternatives to full concurrent receipt might achieve a middle ground between a full offset system and full concurrent receipt.³⁶ In general, the alternatives either would designate some groups of retirees as higher priority beneficiaries of dual benefits than others, or would simply seek to make concurrent receipt more acceptable by limiting the cost through a partial offset. Nevertheless, those who think concurrent receipt is inappropriate warn that changing the current system in any way to allow some retiree/veterans to receive benefits from both programs would lead to continued complaints about different, and therefore allegedly inequitable, treatment and would set a costly precedent.

Alternatives for provision of full concurrent receipt to *limited groups* of retirees include (1) limitation of concurrent receipt to *nondisability* retirees, or (2) limitation of concurrent receipt based on the cause of the disability to:

- retirees disabled by combat or combat training-related injuries, or
- retirees rated by the VA as 100 percent (or other percentage threshold) disabled, or

³⁶ Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation: 3.

- retirees disabled from combat or combat training-related injuries *and* who are 100 percent (or other percentage threshold) disabled.

Following are alternatives for allowing all retiree/veterans to receive benefits concurrently, but with limitations on the benefit amount:

- allow receipt of the portion of veterans' benefits equal to the retiree's disability rating (an "inverse offset" approach), as follows:
- those rated 100 percent disabled would have no offset; those rated 90 percent disabled have their retired pay reduced by 10 percent of the veterans' benefit; those rated 80 percent disabled would have an offset of 20 percent reduction, etc., so that those with the highest level of disability would receive the most veterans' compensation; or
- limit the reduction in retired pay to 50 percent of veterans' compensation, regardless of the retiree/veteran's disability rating; or
- limit concurrent receipt to a fixed dollar amount for combined benefits.

Table 1 shows the estimated costs in fiscal year 1993 and numbers of individuals affected for selected concurrent receipt options. These costs are a "snapshot" of one fiscal year's costs; they exclude the compounding effects of sustained higher benefit levels over time and the increased costs due to regular COLAs.³⁷

Table 1. Effects of Selected Concurrent Receipt Alternatives Estimated FY1993 Retirees and Outlays		
	Number of Retirees	Outlays
All Retirees Full Concurrent Receipt	496,000	\$2.085 billion
Nondisability Retirees (At Least 20 YOS) Full Concurrent Receipt	342,000	\$1.125 billion
Sliding Scale of Offsets*	494,000	\$1.227-\$1.395 billion
All Retirees 50% Concurrent Receipt	496,000	\$1.042 billion

*The higher the disability, the higher the percentage of concurrent receipt -- i.e., 10% disability results in allowing concurrent receipt of 10% of VA disability compensation; 50% allows concurrent receipt of 50% of compensation, etc. About 2,000 retirees have no disability rating, but receive a special payment from the VA.

³⁷ Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation.

Table 2 shows the FY1993 costs and numbers of retirees affected if concurrent receipt were limited to retirees at or above a particular disability threshold.³⁸

Table 2. Options for Basing Concurrent Receipt on Percentage of Disability Estimated FY1993 Retirees and Outlays		
Disability Threshold	Number of Eligible Retirees	Cost
100%	43,100	\$449.7 million
90%	50,700	\$527.0 million
80%	65,300	\$672.4 million
70%	86,500	\$867.6 million
60%	119,300	\$1,129.3 million
50%	146,900	\$1,294.2 million
40%	201,100	\$1,541.8 million
30%	272,800	\$1,776.8 million
20%	353,800	\$1,934.7 million
10%	494,400	\$2,078.9 million
0*	496,400	\$2,084.8 million

*"Some veterans with specific limited impairments are classified under a zero disability percentage, but receive a fixed amount under the VA disability compensation system. These payments may be restricted in both amount and duration." Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation: 3.

Implementation Options

Other approaches to reducing the cost of concurrent receipt are essentially alternative implementation schedules. For example, concurrent receipt could be phased in over a number of years for current retirees; it could be provided prospectively, for servicemembers either entering service or retiring after the effective date of the legislation; or it could be restricted to those who had a certain number of years of service upon enactment.³⁹ However, although phasing in concurrent receipt would reduce costs in the short term, costs would reach the maximum amount in the next century, when, absent major structural changes, entitlements will claim a much larger proportion of the nation's resources.

Another alternative would be to make the retirement and veterans' disability programs mutually exclusive. Thus, a retiree could elect military retirement benefits

³⁸ Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation: 3.

³⁹ For a discussion of the issue of phasing in benefit increases, see Congressional Budget Office. The Military Retirement System: Options for Change. Budget Issue Paper for Fiscal Year 1979. January 1978: 37.

or veterans' disability benefits, but not both. "This would make the systems pure and distinct and discourage the concept of additive systems."⁴⁰ It also could result in a need to examine and change a wide variety of other offsets of Federal programs, such as military retirees who later become eligible for civil service retirement. A variation on this alternative would be to make military retirees ineligible for VA compensation, on the grounds that they legally remain members of the armed forces, have a panoply of DOD benefits available to them, and do not need access to VA benefits.

While these alternatives might make sense if the existing system were being designed from scratch, it is difficult to see how implementation could proceed without doing injury to existing beneficiaries of both systems. Would military retirees who elected VA compensation be denied access to non-monetary military retirement benefits, such as commissaries, exchanges, and health care? Would those who elected military retirement be denied access to VA non-monetary benefits, such as health care, home loans, and educational benefits? Perhaps making the DOD and VA disability systems mutually exclusive could be applied only to new members of the armed forces, or to those who had been in the service for a comparatively short period of time ("grandfathering"), to avoid the negative effects on morale, recruiting, retention, and faith in the political system that such a change would pose for current retirees or those on active duty who have already made a decision to stay on active duty until retirement.

⁴⁰ Department of Defense Report on the Concurrent Receipt of Military Retired Pay and VA Disability Compensation: 5.

APPENDIX A.

BACKGROUND AND MAJOR PROGRAM FEATURES OF MILITARY RETIREMENT AND VETERANS' DISABILITY COMPENSATION

MILITARY RETIREMENT

Status of Military Retirement

In FY 1996, total Federal budget outlays for military retirement will be an estimated \$27.9 billion, and DOD budget outlays will be \$11.1 billion. The differing figures for total Federal and DOD outlays result from the use of the "accrual" method in accounting for the costs of military retirement.⁴¹ The number of retirees and survivors at the end of FY 1993 was 1.747 million; the estimate for the end of FY 1994 is 1.759 million, and for the end of FY 1995, 1.782 million. In FY 1993, approximately 497,000 retirees also received veterans' disability compensation, or almost 33 percent of all active duty retirees.⁴²

Basis of the Current Military Retirement System

Since the inception of the military retirement system in the mid-19th century, both the "nondisability" and "disability" components of military retirement have developed *primarily* around the need to prevent the military efficiency of the armed forces from being impaired by the presence on active duty of people medically incapable of performing their military duties. Frequently, of course, medical incapacity was, and is, related to age. A secondary rationale of maintaining the income and living standards of retired personnel has also been a factor.⁴³

⁴¹ Since FY 1985, the "accrual accounting" concept has been used to budget for the costs of military retired pay. Under this system, the DOD budget for each fiscal year reflects the estimated amount of money which must be set aside and accrued at interest to fund the retired pay to which those persons now on active duty will be entitled in the future, based on estimates of the number who are likely to serve until retirement. All DOD budgets through FY 1984 reflected the costs of retired pay actually being paid out to personnel who had already retired. Since FY 1985, under accrual accounting, these latter costs have been included in the Income Security Function of the overall Federal budget. Accrual accounting changes only the manner in which the Federal Government accounts for military retired pay on paper; it does not affect actual payments to individuals in any way. For a more detailed discussion, see: U.S. Library of Congress. Congressional Research Service. The Military Retirement Reform Act of 1986: Issues and Implications. CRS Report for Congress No. 87-702 F, by (name redacted). Washington, July 27, 1987 (reprinted Oct. 26, 1989). p. 34-37 (Hereafter cited as Goldich, The Military Retirement Reform Act); and U.S. Dept. of Defense. Office of the Actuary. Valuation of the Military Retirement System. Sept. 30, 1993.

⁴² Office of the Actuary, Department of Defense. DoD Statistical Report on the Military Retirement System for FY 1993: 168.

⁴³ This section on the development of the military retirement system, unless otherwise noted, is based on the following sources: U.S. Library of Congress. Congressional Research Service. U.S. Military Retirement Pay: History and Analysis of Key Legislation, (continued...)

Over time, additional rationales have been added, such as the need to maintain total military compensation competitive with civilian compensation, thereby facilitating the recruiting and retention of career personnel, and the availability of military retirees as mobilization assets in time of war or national emergency. However, the maintenance of a career force with sufficient physical and mental vigor to withstand the rigors of war has remained the dominant rationale for the system.

The criteria for entitlement to what is now called "nondisability" retirement, in terms of length of service and/or age, have always been based on contemporary standards of superannuation. These have become much more rigorous since the first retirement statute was enacted in 1861.⁴⁴ In large part, the greater emphasis on a medically fit career force has paralleled the evolution of the United States from an isolated nation, little involved in great power politics, to a superpower. To support this change in the United States' role in the world, the U.S. Armed Forces have evolved from the 19th Century's minuscule cadres, designed to provide a minimal basis for wartime expansion and to fight the Indians, to the large standing forces, required to be ready for instant commitment to combat, that have been maintained since the end of World War II. The experience of the armed forces in World Wars I and II with overage career officers who proved incapable of meeting the rigors of wartime service due to lack of physical endurance led to the adoption of 20-year retirement, combined with an "up-or-out" promotion system established by statute for officers and by administrative regulation for enlisted personnel.⁴⁵

⁴³(...continued)

1861-1958. CRS Report for Congress No. 73-14 F, prepared by the National Defense Section, Foreign Affairs Division. Dec. 8, 1972. Also printed in U.S. Congress. House. Committee on Armed Services. Recomputation and Other Retirement Legislation. Hearings before the Special Subcommittee on Retired-Pay Revisions, 92d Cong., 2d Sess. Oct. 4-12, 1972. H.A.S.C. 92-78. Washington, U.S. Govt. Print. Off., 1972. p. 17321-17355; Disability Retirement Pay of U.S. Military Personnel: History and Analysis of Pertinent Legislation, 1861-1949. Prepared by Bert H. Cooper, Analyst in National Defense, Foreign Affairs Division, CRS. Printed in U.S. Congress. House. Committee on Armed Services. Hearing on the Disability Retirement of General Earl E. Anderson, U.S. Marine Corps, before the Subcommittee on Military Compensation, 94th Cong., 1st Sess. July 30, 1975. H.A.S.C. 94-23. Washington, U.S. Govt. Print. Off., 1975. p. 77-93; and U.S. Dept. of Defense. Military Compensation Background Papers. Compensation Elements and Related Manpower Cost Items: Their Purposes and Legislative Backgrounds. 4th ed., Nov. 1991. p. 447-490. (Hereafter cited as U.S. Dept. of Defense, Military Compensation Background Papers.) These sources are, in turn, based on exhaustive research in the legislative histories of military retirement statutes from the mid-19th century through 1991.

⁴⁴ Arguably, a statute with elements of what became disability retirement was enacted in 1855, pertaining to Navy officers. See: U.S. Dept. of Defense, Military Compensation Background Papers, p. 451-452, 479.

⁴⁵ For examples of the problems with overage officers at the beginning of both World Wars, see: Marshall, George C. *Memoirs of My Services in the World War, 1917-1918*. Boston, Houghton Mifflin, 1976. p. 171-176; Watson, Mark Skinner. *Chief of Staff: Prewar Plans and Preparations*. The War Department. United States Army in World War II series. Washington, Historical Division, Department of the Army, 1950. p. 241-69.

World War II also prompted a review of the disability retirement system, which did not vary disability retired pay levels according to the degrees of disability, and appeared to be tilted in favor of regular, as opposed to reserve, officers (that is, reserve officers on extended active duty), and officers over enlisted personnel.

Some have argued that the existing nondisability retirement system and the career personnel management system it supports, centered around a 20-year military career, costs too much, has lavish benefits, and has contributed to inefficient personnel management. Enactment of the Military Retirement Reform Act of 1986 (P.L. 99-348, July 1, 1986; 100 Stat. 682), which cuts retired pay for future retirees, was a partial response to these criticisms. DOD and other defenders of 20-year retirement have in turn argued that the pre-1986 system (or, in relation to proposals for further cuts, the current system) was and is essential to recruiting and maintaining sufficient high-quality career personnel capable of withstanding the rigors of wartime service.⁴⁶ However, these arguments, have all centered around the precise degree of "youth and vigor" required by modern career military personnel, and how best to structure the retirement system so as to insure that career personnel have the youth and vigor that is required in modern war. They have not challenged the fundamental assumption that the retirement system is primarily a personnel management rather than an income maintenance tool, the primary purpose of which is to support the warfighting capability of the armed forces by maintaining a medically fit career force.

Eligibility and Benefit Criteria

The military retirement system covers members of the active duty and reserve components of the armed forces, and consists of three major elements: (1) nondisability retirement from both the active and reserve components of the armed forces (retirement after a full-time military career, or from a part-time military career of at least 20 years of active duty and creditable reserve component service combined); (2) disability retirement; and (3) survivor benefits for eligible survivors of deceased military retirees. In FY1993, nondisability retirement from an active duty military career accounted for approximately 82 percent of all military retirement costs and 70 percent of all retirees and survivors; disability retirement for 8 percent of costs and 8 percent of beneficiaries; reserve retirement for 7 percent of costs and 11 percent of beneficiaries; and survivor benefits for 4 percent of costs and 11 percent of beneficiaries.⁴⁷ This report does not discuss survivor benefit programs,

⁴⁶ For enumerations of these arguments and counterarguments, see: Goldich, Robert L. *Military Nondisability Retirement "Reform," 1969-1979: Analysis and Reality*. Armed Forces and Society, fall 1983. p. 64-70; U.S. General Accounting Office. *Military Compensation: Key Concepts and Issues*. NSIAD-86-11. Jan. 10, 1986. p. 66-75; U.S. Congress. House. Committee on the Budget. *Military Retirement System*. Hearing before the Task Force on Entitlements, Uncontrollables, and Indexing, 98th Cong., 1st Sess. Washington, U.S. Govt. Print. Off., July 20, 1983; and U.S. Congress. House. Committee on Armed Services. *Overview of the Military Retirement System*. Hearings before the Military Personnel and Compensation Subcommittee, 98th Cong., 1st Sess. July 28-Sept. 22, 1983. H.A.S.C. 98-24. Washington, U.S. Govt. Print. Off., 1984.

⁴⁷ See the annual DOD Statistical Reports on the Military Retirement System, published by the Office of the Actuary, Department of Defense. As of this writing, the most
(continued...)

because they are not relevant to the issue of concurrent receipt of military retired pay and VA disability compensation.⁴⁸

Nondisability Retirement from an Active Duty Military Career

Entitlement to nondisability retired pay and retired pay computation base.

A servicemember is generally authorized to retire upon completion of 20 years of service, regardless of age.⁴⁹ (The typical enlisted member retiring from an active duty military career in FY 1993 was 42 years old; the typical officer was 46 years old.) A member who retires from active duty is paid an immediate monthly annuity based on a percentage of his or her retired pay computation base. For persons who entered military service before September 8, 1980, the retired pay computation base is final monthly basic pay at the time of retirement. (Basic pay is one component of total military compensation, comprising 65 to 75 percent of the total depending on the service member's entitlement to various special pay, bonuses, and other elements of compensation.) For those who entered service on or after September 8, 1980, the retired pay computation base is the average of the highest 3 years (36 months) of basic pay.

Nondisability retired pay computation formula. The formula used for computing the annuity as a percentage of the retired pay computation base was changed by the Military Retirement Reform Act of 1986.⁵⁰ The Act provides that the previous formula shall be used in computing the retired pay of all military personnel who first entered military service before August 1, 1986. This formula provides that retired pay is computed at the rate of 2.5 percent of the retired pay computation base for each year of service. The minimum amount of retired pay a member can receive under the old formula is, therefore, 50 percent of the computation base (20 years of service x 2.5 percent). A 25-year retiree receives 62.5 percent of the computation

⁴⁷(...continued)

recent is that for FY 1993.

⁴⁸ See note 32, p. 24, above.

⁴⁹ The FY 1993 National Defense Authorization Act (Sec. 4403, P.L. 102-484, October 23, 1992) authorizes DOD, on a temporary (until October 1, 1995) and discretionary basis, to allow active duty military members to retire and immediately begin receiving retired pay, with a minimum of 15, rather than the preexisting 20, minimum years of service (YOS)). DOD may use such factors as grade, precise years of service, and occupational skill in determining whether a military member will be allowed to retire with no less than 15 YOS. Such early retirement was in fact used in the 1930s to assist in removing a surplus of officers with 15-20 YOS. Early retirees will be eligible for the full range of medical, commissary and exchange, and other benefits that current 20-year retirees receive. Existing formulas for computation of retired pay and COLAs will apply. The early retirement statute also authorizes additional, deferred retired pay for early military retirees who take certain critical public sector jobs after leaving the military. The early retirement authorized by the FY1993 Act is different from the Variable Separation Initiative and Special Separation Benefit (although all three benefits were provided to assist in the post-Cold War drawdown) summarized above in footnote 7.

⁵⁰ For a detailed analysis, see: Goldich, The Military Retirement Reform Act.

base (25 years of service x 2.5 percent). The maximum, reached at the 30-year mark, is 75 percent of the computation base (30 years of service x 2.5 percent).

For military personnel who first enter military service on or after August 1, 1986, the Military Retirement Reform Act of 1986 made two major changes in the retired pay computation formula:

- **First**, the Act provides that for retirees under age 62, retired pay will be computed at the rate of 2.0 percent of the retired pay computation base for each year of service through 20, and 3.5 percent for each year of service from 21 to 30. Under this new formula, a 20-year retiree received 40 percent of the retired pay computation base upon retirement (20 years of service x 2.0 percent), and a 25-year retiree will receive 57.5 percent of the computation base [(20 years of service x 2.0 percent) + (5 years of service x 3.5 percent)]. A 30-year retiree, however, will continue to receive 75 percent of the retired pay computation base [(20 years of service x 2.0 percent) + (10 years of service x 3.5 percent)]. The new formula, therefore, is skewed much more sharply in favor of the longer-serving career military member, theoretically providing an incentive to remain on active duty longer before retiring.
- **Second**, the 1986 Act provides that when a retiree reaches age 62, retired pay will be recomputed on the basis of the old formula (i.e., a straight 2.5 percent of the retired pay computation base for each year of service). Thus, beginning at age 62, the 20-year retiree receiving 40 percent of the computation base for retired pay, according to the new formula, begins receiving 50 percent of the original computation base; the 25-year retiree's annuity jumps from 57.5 percent of the original computation base to 62.5 percent; and the 30-year retiree's annuity, already at 75 percent of the original computation base under both the old and new formulas, does not change.

These changes in the retired pay computation formula apply only to active duty nondisability retirees (those individuals retiring from a military career) who first enter military service on or after August 1, 1986. Disability retirees and Reserve Component retirees are not affected.

Cost of living adjustments (COLAs). Military retired pay is protected against inflation. The 1986 Act provides that, for military personnel who first entered military service before August 1, 1986, each December a COLA equal to the percentage increase in the Consumer Price Index (CPI) between the third quarters of successive years will be applied to military retired pay for the annuities paid beginning each January 1.

For military personnel who first enter military service on or after August 1, 1986, the Act modifies the above formula by providing that annual retirement COLAs will be held to 1 percentage point below the actual inflation rate. Retirees covered by this new COLA formula would thus receive a 2.0 percent increase (rather than 3.0 percent) in their military retired pay under the hypothetical example described in the above paragraph. When a retiree reaches age 62, there is a one-time recomputation of his or her annuity to make up for the lost purchasing power caused by the holding of COLAs to the inflation rate minus 1 percentage point. This

recomputation is applied to the old, generally more liberal retired pay computation formula on which retirees 62 or older have their annuities computed (see the above subsection entitled *Nondisability Retired Pay Computation Formula*), compounding, for most retirees, the size of this one-time annuity increase. After the recomputation at 62, however, future COLAs will continue to be computed on the basis of the inflation rate minus 1 percentage point.

These changes in the COLA formula apply to all persons who first enter military service after August 1, 1986--active duty nondisability retirees, disability retirees, and Reserve Component retirees. The Act thus applies the changed COLA formula to a much broader group of individuals than it does the changed retired pay computation formula.

The statutes were temporarily modified by legislation enacted in 1993 and 1994. The Omnibus Budget Reconciliation Act (OBRA) of 1993 moved the payment date of the 1994 COLA for nondisability retirees from January 1 to April 1, and to October 1 for 1995, 1996, 1997, and 1998. However, provisions of the FY 1995 National Defense Authorization Act (Section 631, P.L. 103-337, October 5, 1994) and the FY1995 DOD Appropriation Act (Section 8114A, P.L. 103-335, September 30, 1994) superseded the 1993 OBRA and provides that the FY1995 COLA will first to be paid in April 1995.

Disability Retirement

Entitlement to disability retired pay and retired pay computation base. A service member with *at least 8 years of service* becomes entitled to disability retired pay if:

- the disability is at least 30 percent (based on a standard schedule of rating disabilities maintained by the VA, although the medical examinations to determine the degree of disability are conducted by DOD); *or*
- the member, regardless of the degree of disability, has at least 20 years of service (i.e., is eligible for nondisability retired pay).⁵¹

A service member with *less than 8 years of service* becomes entitled to disability retired pay if:

- the disability is at least 30 percent; *and*
- it was incurred on active duty or in the line of duty.⁵²

⁵¹ See below for a more detailed discussion of the disability retired pay computation formula for disability retirees who are entitled also to nondisability retired pay.

⁵² This is a simplification of complex and overlapping statutes which operate to produce a comparatively simple set of entitlements to disability retired pay. See: U.S. Dept. of Defense, Military Compensation Background Papers, p. 485-486. DOD also notes that "...for all practical purposes the distinction between over 8 and under 8 is negligible, as line (continued...)

As with nondisability retired pay, for persons who entered military service before September 8, 1980, the retired pay computation base is final monthly basic pay being received at the time of retirement. For those who entered service on or after September 8, 1980, the retired pay computation base is the average of the highest 3 years (36 months) of basic pay.

Although the standards used to determine disability ratings are the same for military disability retirement and veterans' compensation, the bases on which payment amounts are determined are different: disability retirement payments are based on preretirement military pay, whereas veterans' compensation payments are essentially arbitrary amounts legislated by the Congress and increased periodically to account for inflation. (See below, pp. 39-41.)

Disability retired pay computation formula. Disability retired pay is computed on the basis of one of two formulas, whichever is more financially advantageous to the service member: (1) 2.5 percent of the retired pay computation base for each year of service (which is identical to the nondisability retired pay computation formula); or (2) the retired pay computation base multiplied by the percentage of disability.

Reserve Retirement

To be eligible for reserve retired pay, a military member must complete at least 20 years of qualifying service (either (1) active duty or (2) part-time reserve duty at a specified minimum level of participation) and be at least age 60. Retired pay is generally computed based on the basic pay scale in effect when the member applies for retired pay on or after age 60. It is calculated by multiplying the reservist's "equivalent years of active service" by 2.5 percent, and multiplying the resulting percentage amount by the member's final basic pay level, if the member entered military service before September 8, 1980, or by the average basic pay of the highest 3 years (36 months) of the member's military service, if the member entered on or after September 8, 1980. "Equivalent years of active service" are computed on a point system, in which a certain number of points are credited to an individual based on active duty, active duty for training, inactive duty training ("weekend drill"), completion of various military training and educational requirements, and participation in a reserve component in an active status.⁵³

⁵²(...continued)

of duty includes virtually all cases." Comments on a draft of this report by a staff member of the Compensation Directorate, Office of the Secretary of Defense, Feb. 21, 1995.

⁵³ See Department of Defense. Sixth Quadrennial Review of Military Compensation. Volume I: National Guard and Reserve Compensation. August 1988: 9-2. Several benefits, broadly analogous to those provided the active force, have been enacted to assist personnel involuntarily separated from the reserve components. These include, for various categories of reservists, (1) early reserve retirement, (2) early eligibility for reserve retired pay (such entitlement now comes at age 60), and (3) a lump-sum separation benefit.

In FY1993, reserve retirement accounted for 7 percent of retirement costs (\$1.85 billion) and 11 percent of beneficiaries (198,000).

VETERANS' DISABILITY COMPENSATION

Status of Veterans' Compensation

In FY 1995, nearly 2.2 million disabled veterans received monthly disability compensation payments totaling \$12.5 billion. About 479,000 military *retirees* (32 percent of retired personnel, excluding retired reserves) received veterans' disability compensation, which was offset against their retired pay. Of the 225,177 military disability retirees, 64 percent received veterans' compensation that was offset against their disability retired pay.

Basis of the Veterans' Disability Compensation System

Veterans' disability compensation is based on a combination of disparate concepts. At different times in the program's long history it has been characterized as a "gratuity" or pension, as replacement for lost earning capacity, and as indemnification or reparation for injury or illness sustained in service to the Nation. Throughout the 20th century, the dilemma underlying the design of the eligibility and benefit criteria for veterans' compensation has been how to relate medical impairment to loss of earning capacity, and how to translate that relationship into a benefit formula that yields payments that are adequate, equitable, and that preserve work incentives for those able to work.

The history of compensation for war injuries and military pensions is complex. The Continental Congress established a system of "compensation" for veterans disabled in the Revolutionary War. In the first half of the 19th Century, Congress authorized "pensions" for *needy* veterans of the Revolution. The need requirement was gradually liberalized, and the pension and compensation programs became substantially intermingled and difficult to distinguish.⁵⁴ Legislation was enacted in 1862 to provide for large numbers of veterans disabled by the ongoing Civil War to receive compensation based on rank, with officers qualifying for larger payments than enlisted personnel. This was done for cost reasons rather than for philosophical reasons: the rank-based system was adopted largely because it would cost too much to pay all disabled veterans the same rate as an officer.⁵⁵ Veterans were required to show that their disability was a direct result of an injury incurred in the line of duty. Partial disability benefits were awarded based on a physician's judgment about the "degree of disability" the veteran would have in earning a living doing manual labor,

⁵⁴ U.S. Congress. House. Committee on Veterans Affairs. Veterans' Benefits in the United States. A Report to the President by the President's Commission on Veterans' Pensions. Parts I and II, Findings and Recommendations. House Committee Print No. 236, 84th Cong., 2d Sess., Apr. 23, 1956. Washington, U.S. Govt. Print., Off., 1956. p. 71. (Later known as the Bradley Commission report.)

⁵⁵ Eisenberg, Roland, M.D. Veterans Compensation. An American Scandal. Shreveport, LA, Pierremont Press, 1985. p. 20.

since manual labor was the primary type of occupation at the time. Legislation enacted in 1873 and 1890 established more specific rules. Although impairment in the ability to perform manual labor was the basis for most awards, the 1890 law permitted a veteran to continue to receive unreduced benefits if he earned his living by means other than manual labor.⁵⁶

The War Risk Insurance Act of 1917, enacted at the beginning of World War I, termed payments to disabled veterans as "compensation" rather than "pensions." The term "compensation" was chosen to reflect the concept of indemnification (or financial reparations) for injury and to distinguish these payments from "pensions," which connote a gratuity or a type of welfare. The law replaced the system of rank-related disability benefits with a system under which benefits are unrelated to previous rank, and it authorized the establishment of a new disability rating schedule. This new schedule was based on "the average impairment in earning capacity" caused by specific injuries or combinations of injuries. "Average impairment" referred to lost earning capacity averaged over all occupations, not just the occupation of the individual in question, although the standard for "average impairment" was still based on the ability to perform manual labor.⁵⁷ In 1924, Congress changed the requirement that the injury qualifying the veteran for benefits be incurred "in the line of duty" to its being incurred "while in the military." This change substantially broadened the types of claims that are compensable.

The measure of loss of earning capacity has remained complex and imprecise. In the 1960s the VA attempted to create a disability rating system based on a detailed examination of census and other data on the comparative economic status of disabled and nondisabled veterans. The results of this study proved controversial in part because it concluded that certain obvious physical impairments did not appear to result in the same economic handicap as less obvious impairments from disease and mental impairments. Its recommendations were never implemented.⁵⁸

The current disability rating system is extremely detailed with dozens of specific impairments and combinations of impairments spelled out and compensated at different payment amounts. However, there is still no particular relationship between the payment amounts and any objectively established economic evidence of impaired earning capacity. Benefit amounts are legislated by Congress and are generally a compromise between those advocating veterans' interests and fiscal constraints. Moreover, there is no linear relationship among the gradations of impairment and the amount of compensation payments. That is, the payment for a 50-percent disability is not 50 percent of the payment for a 100-percent disability. In general, this is because Congress legislates the payment levels, and, at certain times, and usually because of budget constraints, Congress has raised benefits for 100-percent disabled veterans, but not for others. This veterans' compensation payment system is therefore substantially different from that used under the *military disability retirement* system (see above, pp. 35-36).

⁵⁶ Ibid., p. 22.

⁵⁷ Bradley Commission, p. 148.

⁵⁸ Bradley Commission, p. 168-69.

Eligibility and Benefit Criteria

Basic entitlement and service connection. Disability compensation may be paid for personal injury suffered or disease incurred or aggravated in the line of duty while the veteran was in the Armed Forces. Service connection generally is established by a determination that a veteran sustained a particular injury or disease resulting in disability, or had a preexisting disease or injury aggravated due to military service, while in the Armed Forces.

Presumptions relating to certain diseases and disabilities. In addition to injury or illness incurred or aggravated while in the Armed Forces, the law provides that service connection may be established for certain diseases or disabilities that become evident after the veteran leaves the Armed Forces, even if there is no record of the onset of symptoms of the disease during the period of service, and if such diseases result in a disability of 10 percent or more. There are additional presumptive service-connected disabilities for veterans who are former prisoners of war and who were held captive for at least 30 days.

Although compensation for venereal disease, complications from alcohol consumption, or drug use are not specified in the law, the regulations allow these conditions to be considered service-connected under certain circumstances. Certain other conditions are compensable on a presumptive basis, i.e., without empirical medical evidence. These include Vietnam veterans who contract various diseases and conditions associated with exposure to Agent Orange, an herbicide containing dioxin, depending on the degree of disability and when contracted. In 1991, Congress extended presumptive disability to certain conditions associated with radiation exposure.

Secondary condition to a service-connected disability. Another eligible condition that may be granted service connection is a condition that is the result of a service-connected disability. If a service-connected disability is the cause of a nonservice-connected disability, both disabilities are considered service-connected.

Benefit Amounts

Payments to veterans. The Secretary of Veterans' Affairs is authorized to develop and apply a system of ratings by which reductions in earning capacity can be identified and converted to payments. *Thus, unlike payments under the military disability retirement program, veterans' compensation payments are unrelated to the veterans' pre-disability military pay* (see the description of military disability retirement on pp. 35-36).

The schedule of ratings includes 10 grades, from 10 to 100, although the relationships among the grades are not linear. For example, a 90-percent rating does not pay benefits that are 90 percent of a 100-percent rating. There is no permanent law authorizing COLAs, but Congress generally legislates COLAs annually based on inflation as measured by increases in the CPI. The percentage increases are usually equal to the COLA granted to social security beneficiaries. Monthly benefit payments in 1994 ranged from \$87 for a 10- percent disability, to \$513 for 50-

percent, to \$1,774 for 100-percent. In addition to this schedule of percentage ratings, the law authorizes "statutory awards" for some specific disabilities and combinations of disabilities that are severe. Currently, the maximum monthly compensation payment resulting from a combination of these payments is \$5,071. Additional monthly compensation payments are authorized if the disabled veteran requires regular aid and attendance or if the disabled veteran is housebound. All benefits are tax-free.

Payments to dependents and survivors. Dependency allowances are available to certain family members of veterans with a disability rating of 30 percent or more, and additional allowances are paid to dependents of totally disabled veterans. These vary in accordance with the number of dependents (spouse, children, dependent parents, children age 18-22 in school, disabled parents or adult children), and the degree of disability. In 1993, the maximum such monthly benefit was \$164.⁵⁹

Reexamination of Disabling Condition

Under regulation, a reexamination of a compensable disability is to be done whenever there is evidence that the disability is likely to, or has, become more severe, or is likely to improve materially in the future. Therefore, the reexamination may result in an increase or decrease in benefits. In general, no decrease may be applied if a condition has existed for at least 20 years, and no condition may be determined upon reexamination to be nonservice-connected if it has existed for at least 10 years. Reexaminations of disability status are not generally done when the disability is established as static, when symptoms have persisted without improvement for 5 years or more, if the veteran is over age 55, and under certain other conditions.

⁵⁹ Surviving spouses, dependent children, and needy dependent parents of veterans who die of service-connected causes are also entitled to monthly benefits under a separate VA program, the Dependency and Indemnity Compensation (DIC) program. In 1994, DIC payments varied from \$769 to \$1,636 per month. DIC payments can also vary in accordance with whether the beneficiary is housebound, blind, or has other disabilities. See also above, note 32, page 24.

APPENDIX B. SUMMARY OF PROGRAM INTERACTION RULES

The conference report accompanying the FY1993 National Defense Authorization Act required CRS to prepare a report for the House and Senate Armed Services Committees regarding programs which have offsets similar to the offset between military retired pay and veterans' compensation, or other rules restricting or permitting receipt of Federal benefits from multiple programs.⁶⁰ The CRS report evaluated the concurrent receipt rules governing 25 pairs of programs that pay benefits to individuals based on employment or disability. The objective in selecting program combinations for study was to be broadly inclusive to ensure that all relevant programs were considered. Thus, the 25 program combinations identified represented the universe of programs which might set precedents germane to the retired pay/veterans' compensation issue. This Appendix summarizes the findings in the CRS report.

Because CRS was asked to describe and analyze programs with offsets similar to the offset of military retired pay and veterans' compensation. The report did not evaluate all possible justifications for or against concurrent receipt. Neither did it draw any conclusions regarding whether military retired pay and veterans' compensation should or should not be paid concurrently. It described situations in other programs that are relevant to the situation of military retirees eligible for veterans' compensation, and defined the programs and program combinations that are most analogous to the military programs and therefore useful for evaluating whether military retirees/disabled veterans are treated similarly to nonmilitary workers and retirees.

To construct an analytical framework for evaluation of program interaction rules, CRS classified the identified pairs of programs into five categories regarding degrees of concurrent receipt of benefits (i.e., full concurrent receipt; full offsets, partial offsets, or benefit limits; and no concurrent receipt), and according to the period of employment during which the benefits are earned.

The purpose of grouping the programs according to the period of employment during which the benefits were earned was to ascertain if, as a general rule, the employment period is central to the question of whether two benefits can be received concurrently. The hypothesis was that concurrent receipt of full benefits from two programs would be more common when the benefits are earned from *different* periods of employment, and, conversely, that offsets or limits would be more common when benefits are earned from the *same* employment period because the benefits would be more likely to have been "integrated" by design.

The hypothesis that full concurrent receipt is most commonly allowed when benefits are based on *different* periods of employment and payable for different reasons was confirmed, although the background and rationales underlying the rules for those programs vary widely. Programs from which benefits are fully payable concurrently, although derived from the *same* employment (4 pairs of programs), were either explicitly combined by Congress to achieve income adequacy objectives,

⁶⁰ See above, pp. 10-11.

or the interactions were not given much consideration by Congress when the programs were designed.

The second hypothesis, that limits, offsets, or a choice between programs apply most commonly when benefits derive from the same employment, was true in 13 out of the 25 program pairs reviewed. These benefit integration policies are aimed at preventing what the Congress considered to be overly generous benefit packages.

Two generalizations can be made regarding nonmilitary disability benefits and veterans' disability benefits. On the one hand, benefits from *nonmilitary* disability programs are virtually always limited in some way when they are payable with other benefits (e.g., FECA benefits or social security disability). On the other hand, veterans' disability compensation is always payable fully and concurrently with income or benefits from nonmilitary sources because of concern about preserving work incentives for disabled veterans and the long-standing policy that disabled veterans who are able to work in the private economy after separation from military service should not be penalized.

The following section describes briefly the interaction rules governing the 25 pairs of programs studied.

I. Full Concurrent Receipt

Benefits earned during the same period of employment

1. Individuals eligible for benefits under the *veterans' compensation* program may also receive benefits under the *Unemployment Compensation (UC)* program, with no offsets, reductions, or limits.
2. Individuals eligible for *military retired pay* may also receive benefits under the *social security* program, with no offsets, reductions, or limits.
3. Individuals eligible for benefits under the *Federal Employees' Retirement System (FERS)* may also receive benefits under the *social security* program, with no offsets, reductions, or limits.
4. Individuals eligible for survivor benefits under the veterans' *Dependency and Indemnity Compensation (DIC)* program may also receive survivor benefits under the *social security* program, with no offsets, reductions, or limits.

Benefits earned during different periods of employment

5. Individuals eligible for benefits under the *veterans' compensation* program may also receive benefits under the *social security* program, with no offsets, reductions, or limits.
6. Individuals eligible for benefits under the *veterans' compensation* program who are Federal employees may also receive full *Federal civil service pay*, with no offsets, reductions, or limits.

7. Individuals eligible for benefits under the *veterans' compensation* program may also receive benefits under the *Federal civil service retirement* programs (including disability retirement) with no offsets, reductions, or limits.
8. Individuals eligible for benefits under the *veterans' compensation* program or the *military retirement system* may, in general, concurrently receive benefits under the *Federal Employees' Compensation Act (FECA)* with no offsets. If veterans' compensation benefits increase for certain reasons, FECA payments are reduced dollar-for-dollar.
9. Individuals eligible for benefits under the *military retirement system* may also receive benefits under the *Federal Civil Service Retirement System (CSRS)* or *FERS*, with no offsets, reductions, or limits.
10. Individuals eligible for survivor benefits under *CSRS* may also receive survivor benefits under the *social security survivor* program, with no offsets, reductions, or limits.

II. Concurrent Receipt, Limits on Total Benefits

Benefits earned during the same period of employment

11. Individuals eligible for retirement benefits under a *Federal civil service retirement system* (both CSRS and FERS) may concurrently receive a scheduled award under *FECA*, but the FECA scheduled award is limited to a certain amount.
12. Individuals eligible for benefits under *Federal, State, and local disability programs* may concurrently receive benefits under the *social security disability insurance* program, but social security benefits are limited if total benefits exceed 80 percent of pre-disability earnings.
13. Individuals eligible for benefits under *FECA* may concurrently receive survivor benefits under the *judicial survivors' annuity system*, but the FECA benefits are limited if total benefits exceed the current salary for the judicial official's office.

Benefits earned during different periods of employment

14. All individuals eligible to receive *military retired pay* who were first employed by the Federal Government in a civilian status, and who first began receiving military retired pay after January 11, 1979, may concurrently receive their military retired pay and their full *civil service salary*, but their military retired pay is reduced if their combined military retired pay and civil service salary exceed a certain amount. A further restriction is applicable only to regular military officers eligible for military nondisability and noncombat-related disability retired pay. Such officers may receive only a portion of their military retired pay in addition to their full civil service salary.

III. Benefits Reduced or Partially Offset

Benefits earned during the same period of employment

15. Benefits under the *UC* program are reduced by all or a portion (depending on the State) of retirement benefits payable under the *social security* program.
16. *Disability benefits under FERS* are reduced by a portion of benefits payable under the *social security disability insurance* program.
17. Individuals eligible for benefits under the military *Survivor Benefit Plan (SBP)* may also receive survivor benefits under the *social security* program until age 62. SBP benefits are reduced if the survivor is age 62 or over.
18. Individuals eligible for benefits under *CSRS* may also receive retirement benefits under the *social security* program based on active duty military service, but CSRS benefits may be reduced for retirees age 62 or over.

Benefits earned during different periods of employment

19. Individuals eligible for benefits under the *social security program* may also receive benefits under *CSRS*, but a reduced social security benefit formula is used to determine benefits.

IV. Full Offset of One Program Against Another

Benefits earned during the same period of employment

20. *Military retired pay* is reduced by the full amount of benefits from the *veterans' compensation* program.
21. Spouse survivor benefits under the military *SBP* are reduced by the full amount of benefits from the veterans' *DIC* program.
22. Benefits under the *Black Lung Benefits Act (BLBA)* are reduced by the full amount of benefits under *workers' compensation* laws.
23. Individuals eligible for benefits under the *UC* program may not concurrently receive *pension income*, except in certain limited circumstances. Pension income is usually subtracted dollar-for-dollar from UC benefits.

Benefits earned during different periods of employment

No relevant programs were identified.

V. No Concurrent Receipt, Choice of Program

Benefits earned during the same period of employment

24. *Disabled military members* also eligible for *military nondisability retired pay* must choose to have their retired pay calculated according to either the nondisability or disability retired pay formulas, but may not receive both.
25. Individuals eligible for *disability benefits under CSRS* or *FERS* and nonscheduled benefits under *FECA* must choose to receive either disability retirement or FECA benefits, but may not receive both.

Benefits earned during different periods of employment

No relevant programs were identified.

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