

CRS Report for Congress

Received through the CRS Web

Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues

Amy Belasco
Foreign Affairs, Defense and Trade Division

Summary

Instead of including the House or Senate version of concurrent receipt (simultaneous payment) of military retirement and Department of Veterans Affairs (VA) disability benefits in the conference version of the FY2003 National Defense Authorization Act (H.R. 4546), Congress provided new benefits for military retirees whose disabilities stem from combat or combat-related activities. Those eligible would receive these new benefit payments, which match VA disability payments, in addition to retired pay. To qualify, retirees would have to demonstrate either that their disability was caused by an injury for which they received a Purple Heart or that their disability was rated at 60% or higher and resulted from armed conflict, hazardous service, training activities that simulate war, or an “instrumentality of war” (war-related circumstances).

Within 180 days, the Department of Defense (DOD) must prescribe criteria and procedures for determining eligibility for these new benefits. DOD must also fund the new benefits, estimated to cost between \$200 million and \$800 million annually, and about \$10 billion over 10 years. Disability ratings would continue to be made by DOD for military personnel who retire on disability and by the VA for retirees who apply for disability benefits after leaving the military. Although it is difficult to predict the number who would be eligible, some have estimated that about 33,000 retirees could qualify.

Unlike the House or Senate versions of concurrent receipt that the Administration threatened to veto, these new provisions were acceptable to the White House. With hearings by the Senate Armed Services Committee on concurrent receipt promised for next year, this issue is likely to resurface. This report was prepared under the supervision of Gary Pagliano, Specialist in National Defense. It will be updated as warranted.

Eligibility and Cost of New Benefits Enacted

The conference version of the FY2003 DOD Authorization Act (H.R. 4546) that was adopted by voice vote on November 12 in the House and on November 13 in the Senate includes new benefits for military retirees with 20 or more years of service whose disabilities stem from combat or combat-related activities. Until the Defense Department

develops the procedures and criteria for determining eligibility in six months, it will be difficult to know who will qualify or what the annual cost will be. Although no funding was included for these new payments in the FY2003 DOD Appropriations Act (P.L. 107-248), DOD will have to reprogram or transfer funds from other programs or request a supplemental appropriation to cover the annual cost.¹ Since these new provisions establish a new entitlement, DOD will have to continue to fund the cost of the benefit every year.²

The new provisions were hammered out by senior members of the House and Senate Armed Services Committees, Senator Warner and Congressman Hunter, the Office of Management and Budget, and the White House and are designed to compensate those whose disabilities stem from their service in combat or combat-related circumstances.³

This year's compromise of "Purple Hearts plus Others" is unlikely to end the controversy about concurrent receipt. Characterized by Senators Warner and Levin as "a beachhead," and by Congressman Hunter as a compromise that gives priority to those who "put their lives on the line," the concurrent receipt issue is likely to be revisited next year.⁴ Although there is much support in Congress to expand benefits, concerns raised by the Administration about the effect on the deficit and the precedent for other federal benefit programs are also not likely to go away.⁵

Determining Eligibility. Under the new provisions, DOD is responsible for determining whether retirees are deemed to have a disability that stems from a combat or combat-related injury or medical condition. To be eligible, retirees will have to show that the disability resulted from:

- ! an injury for which they received a Purple Heart; or
- ! a service-connected disability of more than 60% that "was incurred
 - ! as a direct result of combat;
 - ! while engaged in hazardous service;
 - ! in the performance of duty under conditions simulating war; or
 - ! through an instrumentality of war."⁶

Retirees will receive compensation for any level of disability that stems from an injury related to a Purple Heart. To determine eligibility, DOD will establish procedures to determine whether particular disability ratings reflect Purple Heart injuries, and retirees can then apply to see if they qualify.

¹ The bill requires the DOD cover the cost. CBO has not yet issued its cost estimate. Senator Warner estimated that about 33,000 would be eligible, see *Congressional Record*, p. S. 10860.

² See provisions in Section 636 of H.R. 4546, FY2003 DOD Authorization; see pp. H8128-H8129, and p. H8460 in the *Congressional Record*, November 12, 2002 or H.Rept. 107-772.

³ See Congressman Hunter's remarks in *Congressional Record*, November 12, 2002, p. H8535.

⁴ See *Congressional Record*, November 13, 2002, p. S10859 and S10864, and *Congressional Record*, November 12, 2002, p. H8535.

⁵ Statement of Administration Policy on FY2003 DOD Authorization bills, S. 2514, the Senate-reported bill; see [<http://www.whitehouse.gov/omb/legislative/>].

⁶ Title X, Chapter 71, (e)(2)(A) in Section 636 of H.R. 4546, FY2003 DOD Authorization Act; see *Congressional Record*, November 12, 2002, p. H8128.

To determine whether service-connected disabilities of 60% or more are related to combat, DOD can build on current statutes and regulations because military personnel who retire on disability do not need to pay income taxes on their retired pay if their disabilities fall into one of the four categories above of combat-related disabilities.⁷

According to those regulations, “armed conflict” includes wars, guerilla actions or other hostile actions as well as prisoner of war experiences, and “hazardous duty” includes activities like flight, diving, or parachute duty. Disabilities due to “conditions simulating war” could be incurred in activities like war games, practice alerts, or exercises. Disabilities due to an “instrumentality of war” would be injuries or medical conditions caused by circumstances peculiar to war such as being exposed to gases or injured by explosions, or caused by being on military equipment or platforms, such as a falling on the deck because of the pitching of a ship.⁸

For those military personnel who collect regular retirement, DOD will need to establish criteria and procedures to determine whether disabilities developed after they leave the military service stem from combat or combat-related categories. VA will continue to determine disability ratings after military personnel retire. VA medical records may include documentation that DOD may use to determine if disabilities are due to combat or combat-related activities.

Funding the New Benefit. According to the new provisions, DOD is responsible for covering the cost for current beneficiaries. This practice follows the precedent set in the special compensation benefit enacted in FY2000 that provides additional payments to those retirees who are determined to have disabilities greater than 60% within 4 years of leaving the military. These payments, however, are only about one-tenth as large as the VA disability amounts. If those receiving special compensation qualify for these new combat-related benefits, they can opt for those payments instead.

Uncertainties about Eligibility and Cost. Until DOD develops the regulations to determine eligibility, it will not be clear who will qualify; nor will the cost be known. For example, during floor debate, Congressman Hunter suggested that disabilities due to Agent Orange or Gulf War syndrome would be considered to be caused by “instrumentalities of war.” Ultimately DOD’s regulations will set out the types of circumstances that are covered and the documentation required to demonstrate eligibility.

Budget Issues Posed by Concurrent Receipt

Resolving the issue of concurrent receipt proved to be one of the most difficult issues in the FY2003 National Defense Authorization Act. The President threatened to veto the entire bill if either version of concurrent receipts was included because of concerns about

⁷ See 26 USC, Section 104 and DOD Instruction 1332.38, p. 42-45. Disability retirees who are eligible for this new benefit would only be eligible for retirement based on longevity.

⁸ See *DOD Instruction 1332.38*, November 14, 1996, pp. 43-45; available on the DOD web site at [http://www.dtic.mil/whs/directives/corres/pdf/i133238_111496/i133238p.pdf].

cost and creating a precedent that could lead to costly increases in other federal benefit programs.⁹

Under current law, military retired pay is reduced or offset dollar-for-dollar for any VA disability benefits a retiree receives.¹⁰ Proponents of concurrent receipt believe that “retirees are entitled to receive both retired pay for which they contributed years of faithful service and the VA compensation for a service-connected disability intended to recognize a lifelong limitation on earning potential.”¹¹ Opponents of concurrent receipt, popularly referred to as “double-dipping,” describe concurrent receipt as “two pays for the same event,” and argue that VA benefits are intended to compensate disabled veterans who had to leave the military, and whose later earnings were affected.¹²

Coverage and Cost of Previous Versions Considered This Year. As reported, the House version of concurrent receipt in H.R. 4546 was more restrictive and less costly than that of the Senate.

Comparison of Eligibility. On an annual basis, the House version would have covered about 110,000 retirees with disability ratings of 60% or higher and cost about \$2.7 billion while the Senate version would have covered about 710,000 retirees with disability ratings of 10% or above and cost about \$6.0 billion (see **Tables 1 and 2**).¹³

Average Benefit Level. Because the House bill targeted those with ratings of 60% or above, the average payment was higher (see **Table 1**). The broad coverage in the Senate bill reduced average benefit payments because benefits are lower for those with lesser disabilities.¹⁴ About 75% of military retirees have disability ratings below 60%.

⁹ See “Hill, White House Still Fighting over Retirement Pay,” *Army Times*, Sept. 30, 2002. See also CRS Issue Brief IB85159, *Military Retirement: Major Legislative Issues*, by Robert L. Goldich, August 29, 2002; CRS Report 95-469, *Military Retirement and Veterans’ Compensation: Concurrent Receipt Issues*, by Robert Goldich, April 7, 1995, and *Concurrent Receipt of Military Retired Pay and Veterans’ Compensation: Analogies and Issues*, by Carolyn L. Merck and Robert L. Goldich, May 5, 1993 (available through the CRS authors).

¹⁰ Military retirees typically accept the offset because VA benefits are tax-exempt and military retirement is not. For example, if a retiree is eligible for \$100 in retired pay and \$20 in VA disability benefits and wants to collect both benefits, he would receive a total of \$100 including \$80 in taxable retired pay (\$100 - \$20 offset) plus \$20 in untaxed VA benefits. See Title 38, U.S. Code, Sections 5404 and 5405 for the relevant provisions.

¹¹ H.Rept. 107-436, (May 3, 2002) p. 320.

¹² Armed Forces Press Service, “Double-Dip Retirement Measure May Become a Law,” American Forces Information Service, September 25, 2002.

¹³ CRS selected FY2007 to reflect full implementation of the House bill’s provisions. Both bills cover only retirees who leave after twenty years of service. See Section 641 (Title X, Section 1414 (b) (2) in H.R. 4546 as passed by the House on May 9, 2002 and as Section 641 (Title X, Section 1414 (c) as passed by the Senate on June 27, 2002.

¹⁴ To be conservative, CRS calculated annual rates from VA Compensation Rate Table for “veteran alone;” retirees with spouse and dependents collect more. Ratings reflect conditions ranging from large hemorrhoids to heart disease. See VA Compensation Rate Table on [<http://www.vba.va.gov/bln/21/Rates/comp01.htm>] and DOD, “Schedule for Veterans Affairs System for Rating Disabilities (VASR-D).”

Table 1. Number Eligible and Average Payments under House and Senate Versions of Concurrent Receipt in FY2007

Number Eligible and Average Annual Benefit	Current Payments to Severely Disabled	House: Partial Concurrent Receipt	Senate: Full Concurrent Receipt
Number eligible	40,300	111,000	712,000
Non-disabled retirees	Not applicable	87,000	679,000
Disabled retirees	Not applicable	24,000	33,000
Average new benefit	\$1,700	\$18,000	\$6,400
Non-disabled retirees	Not applicable	\$20,000	\$5,700
Disabled retirees	Not applicable	\$13,500	\$8,900

Sources: CBO, *Updated cost estimate for Senate-passed FY 2003 DOD Authorization bill*; CBO, *Cost Estimate for H.R. 4546, May 3, 2002*, CBO, *Cost Estimate for S.170, Retired Pay Restoration Act of 2001, May 22, 2001*; see cost estimates under [<http://www.cbo.gov>].

Notes: CRS selected FY2007 when both the House and Senate versions of concurrent receipt would be fully implemented. Special compensation provisions would be eliminated in both bills; current levels are shown for comparative purposes.

Income Levels of Those Eligible for Concurrent Receipt. Permitting concurrent receipt would substantially increase the income of military retirees. As illustrative examples, **Table 2** below shows the effect on retired pay of concurrent receipt for an O-5 and an E-7, the most common rank of those who retire with 20 or more years of service.¹⁵

Table 2. Change in Annual Benefits with Concurrent Receipt for an O-5 and E-7 By Disability Level

Disability Level	Conc. Rect. Benefit ^a	Retired Pay for O-5	Percent Inc. for O-5	Retired Pay for E-7	Percent Inc. for E-7
20%	\$2,400	\$35,600	7%	\$14,900	16%
40%	\$5,300	\$35,600	15%	\$14,900	35%
60%	\$9,500	\$35,600	27%	\$14,900	64%
80%	\$13,900	\$35,600	39%	\$14,900	93%
100%	\$26,000	\$35,600	73%	\$14,900	174%

Sources: CRS calculations of annual rate from VA Compensation Rate Table; see [<http://www.vba.va.gov/bln/21/Rates/comp01.htm>].

Note:^a Benefit levels for a veteran alone with no dependents.

Because most military personnel retire in their early to mid-forties after 20 years of service and work after retirement, most have income in addition to their retired pay.¹⁶ For example, the average family income of those with disability levels of 60% or less is about \$63,000, including about \$33,000 in retiree earnings. That income level is about \$1,000 below the income level of those retirees with no disability rating. With family income of

¹⁵ About one-third of all officers retire as O-5s (lieutenant colonel or Navy commander) and about 40% of enlisted personnel retire as E-7s (sergeants, chief petty officers); see DOD, Office of the Actuary, "Number of Military Retirees Receiving and Not Receiving Retired pay from DOD as of Sept. 30, 2000."

¹⁶ A 1996 survey showed that over 75% of retirees under the age of 65 with disability ratings below 70% work, and about half of those with higher disability levels work.

about \$59,000, those with disability ratings of 70% or higher are likely to have family incomes and earnings that are lower than retirees without disability ratings.¹⁷

Comparison of Costs. The House version of concurrent receipt was less costly than the Senate version because fewer retirees would be eligible and benefits would phase in over 5 years rather than being available immediately as in the Senate version (see **Table 3** below).¹⁸ Over 10 years, CBO estimated the cost of the House bill at \$24.5 billion compared to \$61 billion for the Senate bill. The Administration's estimates of 10-year costs are higher than CBO estimates: \$29 billion for the House bill and \$74 billion for the Senate bill.¹⁹ If more military retirees applied for benefits or disability levels grow, then costs would be higher.²⁰

Table 3. Estimates of First, Five, and Ten-Year Costs of House and Senate Versions of Concurrent Receipt in H.R. 4546

(Dollars in billions)

Fiscal Years and Type of Spending	Payments to Severely Disabled Retirees	House: Partial Concurrent Receipt	Senate: Full Concurrent Receipt
TOTAL COST, FY2003 including:	0.1	1.1	4.3
Direct spending for current retirees	0.1	0.5	3.2
Accrual payments for workforce	NA	0.6	1.1
Total Cost, FY2007 including:	0.1	2.7	6.0
Direct spending for current retirees	0.1	2.0	4.5
Accrual payments for workforce	NA	0.7	1.5
FY2003-FY2007 including:	0.3	8.8	26.0
Direct spending for current retirees	0.3	5.8	19.5
Accrual payments for workforce	NA	3.0	6.5
FY2003-FY2012 including:	0.7	24.8	61.2
Direct spending for current retirees	0.7	17.8	45.8
Accrual payments for workforce	NA	7.0	15.4

Sources: CBO, Cost estimate, H.R. 4546, Bob Stump National Defense Authorization Act for FY2003, May 3, 2002; reported version is the same as House-passed; CBO, updated estimate for Senate-passed bill.

Note: Includes beneficiaries from DOD, Coast Guard, Public Health Service and NOAA.

¹⁷ DOD," Tables 2B, 4B, and 5B, "Earnings of Disabled Veterans," *1996 Survey of Disabled Military Retirees*, 2002.

¹⁸ The House version of H.R. 4546 provides that VA benefits increase each year until by FY2007, retirees receive the full amount of both benefits. For example, the annual VA benefit for a retiree with 60% disability would rise from \$1,500 in FY 2003 to \$10,200 in FY 2007.

¹⁹ For example, a severely disabled retiree with a 60% disability today receives \$600 a year but would receive \$9,480 under the House or Senate bills. See OMB, *Statement of Administration Policy for S. 2514* for Administration's estimates of costs.

²⁰ *Ibid*; see Mark Dye and Patrick Mackin, SAG Corporation, *Prohibition on Concurrent Receipt of Military Retired Pay and Veterans Disability Compensation, A Review*, March 25, 2002, p. 23ff. Although DOD evaluates military retirees only once for disabilities when they leave military service, retirees can be evaluated and re-evaluated by VA anytime during their lifetime.