

Issue Brief for Congress

Received through the CRS Web

Military Retirement: Major Legislative Issues

Updated December 24, 2002

Robert L. Goldich
Foreign Affairs, Defense, and Trade Division

CONTENTS

SUMMARY

MOST RECENT DEVELOPMENTS

BACKGROUND AND ANALYSIS

Military Retirement: Key Elements and Issues

- Conceptual and Political Setting

- Program Summary

- “Redux”: Its 1986 Enactment and 1999 Repeal

- Entitlement to Retired Pay and Retired Pay Computation Base

- Retired Pay Computation Formula

- Temporary Early Retirement Authority (TERA), 1992-2001 (FY1993-FY2001)

- Military Retired Pay and Social Security

Modifying 20-Year Retirement

Retired Pay and Survivor Benefit COLAs

- What Was the Last COLA and What Will be the Next COLA?

- COLAs for Pre-August 1, 1986 Entrants

- COLAs for Personnel Who Entered Service On or After August 1, 1986

Military Retirement Budgeting and Costs

- Accounting for Military Retirement in the Federal Budget

- Unfunded Liability

- Military Retirement Cost Trends

Concurrent Receipt of Military Retired Pay and VA Disability Compensation

- Military Retired Pay and VA Disability Compensation: Current Situation

- “Special Compensation” For Severely Disabled Retirees

- “Special Compensation” for Certain Disabled Retirees with A Purple Heart or Disability Due to “Combat-Related” Activities

- Prospects for Concurrent Receipt Legislation in the 108th Congress

- Costs of Concurrent Receipt

- Pros and Cons of Concurrent Receipt

Military Retirement: Major Legislative Issues

SUMMARY

The military retirement system includes benefits for retirement after an active or reserve military career, disability retirement, and survivor benefits for eligible survivors of deceased retirees.

The proposed change to the system generating the most current legislative activity involves whether some or all military retirees should be allowed to receive both military retired pay and any VA disability compensation to which they are otherwise entitled; this is referred to as “concurrent receipt.” A longer-term issue beginning to attract some attention is whether some military personnel should be entitled to military retired pay with less than 20 years of service and whether many more personnel should serve well past the 20-year point before retiring.

Concurrent Receipt. Current law provides that military retired pay be reduced by the amount of VA disability compensation. Some maintain this is inequitable and unfair; it has been defended on grounds of cost and of the need to avoid setting a precedent for concurrent receipts of numerous other benefits.

On December 2, 2002, the President signed the FY2003 National Defense Authorization Act. It contains provisions that provide for DOD payments to certain military retirees, either with (1) a Purple Heart indicating a combat wound and at least a 10% disability; or (2) at least a 60% disability incurred as a result of armed conflict, but not a wound leading to a Purple Heart; hazardous duty; field training, exercises, war games, and the like; and injuries incurred due to the operations of combat vehicles, naval vessels, or

military aircraft. The payments will be equal to the amount of VA disability compensation to which the retiree is entitled, but the new legislation does **not** end the requirement that the retiree’s military retired pay be reduced by whatever VA compensation to which the retiree is entitled. Therefore, the eligible retirees will receive the financial equivalence of concurrent receipt, but in legal and statutory terms it will **not** constitute concurrent receipt. This compromise has been approved by the Bush Administration. It is likely that concurrent receipt will be the object of intense legislative activity in the 108th Congress, as the 2002 legislation did not address the fundamental issue of the existing statutory ban on concurrent receipt.

Changing the 20-Year Retirement Paradigm. For more than 30 years, some have argued that requiring military personnel to serve at least 20 years before being eligible for retirement is inefficient and expensive. Others have argued that it is essential to maintaining a high-quality career force capable of meeting wartime requirements. Some Bush Administration senior officials have stated that the 20-year retirement norm should be modified but have also cautioned that such change should not affect those personnel currently serving. Discussion of such changes has been somewhat muted in the aftermath of the September 11, 2001 terrorist attacks. There are rumors, however, that senior DOD officials want to begin some test or pilot programs in 2003 (FY2004) that would modify the 20-year retirement paradigm for some career members in particular services or occupational specialties.

MOST RECENT DEVELOPMENTS

*On December 2, 2002, the President signed the FY2003 National Defense Authorization Act (P.L. 107-314; 116 Stat. 2458). It contains provisions that provide for DOD payments to certain military retirees, either with (1) a Purple Heart indicating a combat wound and at least a 10% disability; or (2) at least a 60% disability incurred as a result of armed conflict (but which may not result in a Purple Heart; i.e., not be a wound), hazardous duty, field training/exercises, or from operations of combat vehicles, naval vessels, or military aircraft. The payments will be equal to the amount of VA disability compensation to which the retiree is entitled, but the new legislation does **not** end the requirement that the retiree's military retired pay be reduced by whatever VA compensation to which the retiree is entitled. Therefore, the eligible retirees will receive the financial equivalence of concurrent receipt, but in legal and statutory terms it will **not** constitute concurrent receipt.*

BACKGROUND AND ANALYSIS

Military Retirement: Key Elements and Issues

Conceptual and Political Setting

Congress confronts both constituent concerns and budgetary constraints in considering military retirement issues. The approximately 2.0 million military retirees and survivor benefit recipients have been, and continue to be, an articulate and well-educated constituent group familiar with the legislative process and represented by associations staffed with military retirees with long experience in working with Congress. In recent years, the long-standing efforts by military retirees and their associations to secure more benefits for their members have been buttressed by (1) the outpouring of nation-wide nostalgia and support for the past heroism and current old-age needs of the "greatest generation" of World War II-era veterans, whether retirees or not; (2) concern over problems the military services were having in recruiting and retaining sufficient numbers of qualified personnel, which began in the mid-1990s, and the extent to which actual or perceived inadequacies in retirement benefits may have been contributing to these problems; (3) the impression by many current or former military personnel that the Clinton Administration was not favorably disposed toward the military as an institution, leading to efforts to portray increased retirement benefits as a palliative, and (4) in a reversal of the attitudes toward the Clinton Administration, efforts to obtain more benefits from the Bush Administration because it is perceived as being pro-military. And, since September 11, 2001, there has been a predictably dramatic increase in public and congressional support for the Armed Forces.

In general, in recent years Congress has been more aggressive than the executive branch in responding to the stated concerns of retirees about their benefits. The Department of Defense (DOD) and other executive branch agencies have, over time, tended to regard military retirement benefits as a place where substantial budgetary savings could be made. For instance, as noted below, Congress took the initiative in 1999 to repeal the "Redux" cuts in future military retired pay that was originally enacted in 1986.

Program Summary

In FY2003, total federal budget outlays for military retirement will be an estimated \$38.8 billion and DOD budget outlays will be an estimated \$11.9 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. See the section below on *Cost Data* for a discussion of accrual accounting.) **Table 1** shows the estimated numbers of retirees, and the costs to the federal government of the retired pay they receive, for FY2001-FY2003.

**Table 1. DOD Retired Military Personnel and Survivors:
Estimated Numbers and Costs, FY2001-FY2003**

	Total	Retirees from an Active Duty Military Career	Disability Retirees	Reserve Retirees	Survivor Benefit Recipients
FY2003	2,007,000/ \$38.77 billion	1,376,000/ \$32.47 billion	96,000/ \$1.32 billion	248,000/ \$2.77 billion	287,000/ \$2.21 billion
FY2002	1,991,000/ \$37.71 billion	1,373,000/ \$31.64 billion	98,000/ \$1.32 billion	244,000/ \$2.66 billion	276,000/ \$2.09 billion
FY2001	1,975,000/ \$36.60 billion	1,370,000/ \$30.74 billion	100,000/ \$1.32 billion	240,000/ \$2.59 billion	265,000/ \$1.97 billion

Sources: Office of the Actuary. Department of Defense. *Valuation of the Military Retirement System*. September 30, 2000: K-8, K-10, K-14, K-16, L-2, and L-4; and data furnished by Office of the Actuary via fax, June 10, 2002.

“Redux”: Its 1986 Enactment and 1999 Repeal

Cuts in retired pay for future retirees were enacted in the Military Retirement Reform Act of 1986 (P.L. 99-348, July 1, 1986; the “1986 Act,” now referred to frequently as the “Redux” military retirement system). Although enactment of Redux in 1986 represented a success for those who argued that the pre-Redux system was too generous, the repeal of compulsory Redux in late 1999 by the FY2000 National Defense Authorization Act indicated that, at least in Congress, those who defend the pre-Redux system are again ascendant.

Congress began taking notice publicly of potential problems related to Redux in 1997, well before the executive branch addressed the issue. During the fall of 1998, the Administration announced that it supported Redux repeal. Eventually, the FY2000 National Defense Authorization Act contained provisions for repealing compulsory Redux; it allows post-August 1, 1986 entrants to retire under the pre-Redux system or opt for Redux plus an immediate \$30,000 cash payment(see below).

Entitlement to Retired Pay and Retired Pay Computation Base

A service member becomes entitled to retired pay upon completion of 20 years of service, regardless of age. (The average nondisabled enlisted member retiring from an active duty military career in FY2000 was 42 years old and had 22 years of service; the average officer was 47 years old and had 24 years of service.) 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 being received at the time of retirement. For those who entered service on or after September 8, 1980, the computation base is the average of the highest 3 years (36 months) of basic pay. (Basic pay is one component of total Regular Military Compensation, or RMC, which consists of basic pay, housing and subsistence allowances, and the federal tax advantage that accrues because the allowances are not taxable. Basic pay comprises approximately 70% of the total for all retirement eligibles—75% for 30-year retirees and 66% for 20-year retirees. Thus, the 20-year retiree may get 50% of retired pay computation base upon retirement, but only 33% of RMC. The 30-year retiree will receive 75% of the computation base, but only 56% of RMC. Nor do any of these calculations include any of the many special pays, bonuses or other cash compensation to which many military members are entitled.)

Retired Pay Computation Formula

Military Personnel Who First Entered the Service before August 1, 1986.

All military personnel who first entered military service *before* August 1, 1986, have their retired pay computed at the rate of 2.5% of the retired pay computation base for each year of service. The minimum amount of retired pay to which a member entitled to compute his or her retired pay under this formula is therefore 50% of the retired pay computation base (20 years of service X 2.5%). A 25-year retiree receives 62.5% of the computation base (25 years of service X 2.5%). The maximum, reached at the 30-year mark, is 75% of the computation base (30 years of service X 2.5%).

Military Personnel Who First Entered the Service on or after August 1, 1986. Personnel who first enter service *on or after* August 1, 1986, in accordance with the provisions of the FY2000 National Defense Authorization Act, are required to select one of two options in calculating their retired pay within 180 days of reaching 15 years of service:

Option 1: Pre-Redux. They can opt to have their retired pay computed in accordance with the pre-Redux formula, described above, but with a slightly modified COLA formula, which is less generous than that of the pre-Redux formula (see below, under COLAs).

Option 2: Redux. They can opt to have their retired pay computed in accordance with the Redux formula and receive an immediate \$30,000 cash bonus (which can actually be paid in several annual installments if the recipient so wishes, for tax purposes).

The Redux Formula: Under Age 62 Retirees. Redux is different from the previous formula in two major ways. First, for retirees under age 62, retired pay will be computed at the rate of 2.0% of the retired pay computation base for each year of service through 20, and 3.5% for each year of service from 21-30. Under this new formula, therefore, a 20-year

retiree will receive 40% of his or her retired pay computation base upon retirement (20 years of service X 2.0%), and a 25-year retiree will receive 57.5% of the computation base [(20 years of service X 2.0%) + (5 years of service X 3.5%)]. A 30-year retiree, however, will continue to receive 75% of the retired pay computation base [(20 years of service X 2.0%) + (10 years of service X 3.5%)]. The changed formula, therefore, is “skewed” much more sharply in favor of the longer-serving military careerist, theoretically providing an incentive to remain on active duty longer before retiring.

The Redux Formula: Retirees 62 and Older. Second, when a retiree reaches age 62, his or her retired pay will be recomputed based on the old formula — a straight 2.5% of the retired pay computation base for each year of service. Thus, beginning at 62, the 20-year retiree receiving 40% of the computation base for retired pay, according to the new formula, will begin receiving 50% of his or her original computation base; the 25-year retiree’s annuity will jump from 57.5% of the original computation base to 62.5%; and the 30-year retiree’s annuity, already at 75% of the original computation base under both the old and new formulas, will not change. (Note: this change is an increase in monthly retired pay, not a lump sum at age 62.)

Temporary Early Retirement Authority (TERA), 1992-2001 (FY1993-FY2001)

The FY1993 National Defense Authorization Act (Sec. 4403, P.L. 102-484) granted temporary authority (which expired on September 30, 2001) for the services to offer early retirements to personnel with more than 15 but less than 20 years of service. TERA retired pay was calculated in the usual ways except that there is an additional reduction of one percent for every year of service below 20. Part or all of this latter reduction could be restored if the retiree worked in specified public service jobs (such as law enforcement, firefighting, and education) during the period immediately following retirement, until the point at which the retiree would have reached the 20-year mark if he or she had remained in the service.

Military Retired Pay and Social Security

Military personnel do not contribute a percentage of their salary to help pay for retirement benefits. They have paid taxes into the social security trust fund since January 1, 1957, and are entitled to full social security benefits based on their military service. Military retired pay and social security are not offset against each other; military retirees receive full social security benefits in addition to their military retired pay.

Modifying 20-Year Retirement

For more than 30 years, the military retirement system, in particular, its central feature of allowing career personnel to retire at any age with an immediate annuity upon completing 20 years of service, has been the object of intense criticism and equally intense support among military personnel, politicians, and defense manpower analysts. Critics of the system have alleged, since its basic tenets were established by legislation enacted in the late 1940s, that it costs too much, has lavish benefits, and contributes to inefficient military personnel management by inducing too many personnel to stay until the 20-year mark and too few to stay beyond the 20-year mark. At present, they say, too few people are willing to make the commitment to stay the full 20 years, causing DOD to lose too many talented people in the 8-12 year range. In addition, the requirement for officers to perform a certain amount of joint (interservice) duty, plus acquiring a well-rounded competence in their own services' capabilities, has created a situation in which 20 years is simply not enough time for an officer to serve in enough jobs to learn all that is needed to prepare for higher command and staff duties. This allegedly shows a need for more officers to serve well past 20 years.

Others have strongly defended the existing system as essential to recruiting and maintaining sufficient high-quality career military personnel who could withstand the rigors of arduous peacetime training and deployments as well as war. They tend to agree with the statement that "20-year retirement makes up with power what it lacks in subtlety," by providing a 20-year "pot of gold at the end of the rainbow." Without the latter, it is argued, too few personnel would be willing to put up with the great stresses of a military career. At the same time, the incentive to depart soon after reaching the 20-year mark supposedly prevents the armed forces from being saddled with over-age and unfit officers and NCOs, unquestionably a major problem in the early stages of both World Wars. Since 20-year retirement was adopted in the late 1940s, the latter problem has not surfaced when U.S. forces have been in combat. It is also suggested that DOD already has the tools to cope with the problems of insufficient retention of middle-grade personnel and with overloaded officer career patterns: the former by using special pays and bonuses and adequate overall military compensation and the latter by exercising existing discretionary authority in statute to keep more personnel on active duty well past the 20-year mark.

Secretary of Defense Rumsfeld and other senior defense officials have suggested on several occasions that the existing 20-year retirement paradigm should be modified. In general, though, they have cautioned, however, that they do not want to cause undue alarm, or negate individual career decisions already made, by introducing such changes too abruptly. Discussion about such "reforms"—i.e., cuts—in retired pay entitlements was muted in the aftermath of the September 11, 2001 attacks. However, there have been recent rumors that senior DOD officials want to initiate test or pilot programs that would modify the 20-year retirement paradigm for some particular occupational skills, in particular services, beginning in 2003 (i.e., during consideration of the Department's FY2004 budget). These would possibly include longer terms of service for general and flag officers; allowing some personnel in specialties that require a great deal of training investment to stay on active duty, without being forced out of service, well past the 20-year mark; and providing additional severance-pay type benefits for some personnel whom the services do not need to stay as long as 20 years.

Retired Pay and Survivor Benefit COLAs

Military retired pay is protected against inflation by statute (10 USC 1401a). The Military Retirement Reform Act of 1986, in conjunction with recent changes in the FY2000 National Defense Authorization Act, provides for cost of living adjustments (COLAs) as indicated below. Congress has not modified the COLA formula since FY1996 (1995), although virtually every year since 1982 some COLA modifications—always with the aim of reducing costs, and hence the payments to retirees—have been at least discussed. Therefore, it is probably inadvisable to assume at any time that COLAs will be totally off the table in future Congresses. For further information on COLAs, see CRS Report 98-223, *COLAs for Military Retirees: Summary of Congressional and Executive Branch Action, 1982-2002 (FY1983-FY2003)*.

What Was the Last COLA and What Will be the Next COLA?

The most recent military retirement COLA was **2.6%**, first applied to the retired pay disbursed on **January 1, 2002**. The most recent previous COLA was that of January 1, 2001, of 3.5%. The COLA which will become effective on **January 1, 2003**, will be **1.4%**, the second smallest since COLAs began in 1963 (the smallest were 1.3% in FY1998 and FY1986). For a discussion of proposed and actual COLA changes over the past 20 years, see CRS Report 98-223, *COLAs for Military Retirees: Summary of Congressional and Executive Branch Action, 1982-2002 (FY1983-FY2003)*.

COLAs for Pre-August 1, 1986 Entrants

For military personnel who first entered military service before August 1, 1986, each December a cost-of-living-adjustment (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 example, assume that the Consumer Price Index rises from 400.0 in September 2005 to 412.0 in September 2006, an increase of 12.0 points or 3.0% of 400.0. The monthly retired pay that accrues during December 2006, and will actually be paid to retirees on January 1, 2007, would be increased by 3.0% above that amount paid the previous month.

COLAs for Personnel Who Entered Service On or After August 1, 1986

For those personnel who first entered military service on or after August 1, 1986, the FY2000 National Defense Authorization Act provides that their COLAs will be calculated in accordance with either of two methods, as noted below.

Non-Redux Recipients. Those personnel who opt to have their retired pay computed in accordance with the pre-Redux formula will have their COLAs computed as described above for pre-August 1, 1986 entrants.

Redux/\$30,000 Cash Bonus Recipients. Those personnel who opt to have their retired pay computed in accordance with the Redux formula, and receive the \$30,000 cash bonus, will have their COLAs computed as follows. Annual COLAs will be held to one

percentage point below the actual inflation rate for retirees under age 62. Retirees covered by this new COLA formula would thus receive a 2.0% increase (rather than 3.0%) in their military retired pay under the hypothetical example described in the above paragraph. When a retiree reaches age 62, there will be 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 one percentage point. This recomputation will be applied to the old, generally more liberal retired pay computation formula on which retirees 62 or older will have their annuities computed (see the above subsection entitled *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 one percentage point.

Costs and Benefits of the Two Retirement Alternatives. An analysis of the economic effects for hypothetical retirees indicates that in almost all cases opting for the pre-Redux formula will pay the individual much more over time. A report of the Center for Naval Analyses states that the more liberal retired pay computation formula and COLA formula of pre-Redux far outweighs the short-term benefits of a \$30,000 pre-tax cash bonus. The report did say that it might be possible for an individual investor to “beat” these negative aspects of the bonus by wise investment decisions but that it would be difficult. Naturally, no study can know what an individual’s financial situation is. Preliminary results of the first few months of the Redux option has shown that a very small percentage – less than 5% – of retiring personnel have opted for the \$30,000 lump sum. However, the proportion of military personnel opting for the lump sum has been rising, despite the fact that in virtually all cases it provides less money in the long run.

The FY2002 National Defense Authorization Act (Sec. 620, P.L. 107-107, December 28, 2001) contained a provision that would allow the \$30,000 bonus to be received in installments rather than a lump sum, thus potentially lowering the “tax bite” of the total amount.

Military Retirement Budgeting and Costs

Accounting for Military Retirement in the Federal Budget

All DOD budgets through FY1984 reflected the costs of retired pay actually being paid out to personnel who had already retired. Congress simply appropriated the amount of money required to pay current retirees each year. Since FY1985, 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 that must be set aside and accrued at interest – actually, invested in special, non-marketable U.S. government securities similar in some ways to Treasury bills and bonds – to fund the retired pay to which persons currently in the Armed Forces during that fiscal year, and who ultimately retire, will be entitled in the future. These estimated future retirement costs are arrived at by making projections based on the past rates at which active duty military personnel stayed in the service until retirement, and on assumptions regarding the overall U.S. economy, such as interest rates, inflation rates, and military pay levels. These DOD budget outlays for retirement are computed as a percentage of a fiscal year’s total military pay costs for each

military service. Approximately 35-40% of military basic pay costs must be added to the DOD personnel budget each fiscal year to cover the future retirement costs of those personnel who ultimately retire from the military.

DOD budget outlays in each fiscal year that pay for the estimated cost of future retirees are transferred in a paper transaction to a Military Retirement Fund, located in the Income Security Function of the federal budget. The Military Retirement Fund also receives [paper] transfers from the General Fund of the Treasury to fund the initial unfunded liability of the military retirement system. This is the total future cost of military retired pay that will result from military service performed prior to the implementation of accrual accounting in FY1985. Money is disbursed from this Military Retirement Fund to current retirees. Individual retirees continue to receive their retired pay from DOD finance centers. Technically, however, because this money paid to individuals comes not from the DOD budget, but from the Fund, it is paid out by the Income Security function of the federal budget. Actual payments to current retirees thus show up in the federal budget as outlays from the federal budget as a whole, but not from DOD. Under accrual accounting, therefore, total federal outlays for each fiscal year continue to reflect only costs of payments to military members who have already retired, as was the case before accrual accounting began. Accrual accounting only changes the manner in which the federal government accounts for military retired pay; it does not affect actual payments to individuals in any way.

Unfunded Liability

Current debates over both federal civilian and military retirement have included some discussion of the “unfunded liability” of both. As noted above, the military retirement system’s unfunded liability consists of future retired pay costs incurred before the creation of the Military Retirement Fund in FY1985. These obligations are being liquidated by the payment to the Fund each year of an amount from the General Fund of the Treasury, and will be fully paid, based on current calculations, by FY2043. The unfunded liability at the end of FY2000 was \$516.2 billion; the estimated liability for FY2001 was \$531.4 billion; and the FY2002 estimate was \$546.9 billion.

Some concerns have been voiced about the amount of unfunded liability. However, (1) the hundreds of billions of dollars of unfunded liability is a cumulative amount to be paid to retirees over the next 50 years, not all at once; (2) by the time some persons first become eligible for retired pay under the pre-accrual accounting system, many others will have died; and (3) unlike the private sector, there is no way for employees to claim immediate payment of their future benefits. An analogy would be that most homeowners cannot afford to pay cash for a house, so they get a mortgage. If the mortgage had to be paid in full, almost no homeowners could afford to do so. However, spread out over 30 years, the payments are affordable. Similarly, the unfunded liability of federal retirement programs is affordable when federal retirement outlays are spread over many decades.

Military Retirement Cost Trends

Because military retirement is an entitlement, rather than a discretionary program, its costs to the *total federal budget* (payments to current retirees and survivors) always rise modestly each year, due to a predictable slow rise in the number of retirees and survivors. The cost to DOD (estimated future retirement costs of current personnel) declined after

FY1989 (the beginning of the post-Cold War drawdown), as the size of the force, and therefore the number of people who will retire from it in the future, declined. However, as the drawdown stabilized, so did the DOD budget costs of retirement. **Table 2** indicates the costs of military retired pay in federal budget outlays (payments to current retirees) and Department of Defense accrual outlays (money set aside to fund future retirees).

Table 2. Military Retirement Outlays
(billions of current dollars)

	Total Federal Budget Outlays	Accrual Outlays from DOD Budget
Estimated FY2003*	\$36.4	\$11.9
Estimated FY2002*	35.3	12.5
Actual FY2001*	34.1	11.4
Actual FY2000**	32.9	11.6
Actual FY1999**	31.9	10.4

*FY2003 *Budget of the United States Government*. Appendix: 903.

**FY2002 *Budget of the United States Government*. Appendix: 935.

Concurrent Receipt of Military Retired Pay and VA Disability Compensation

Military Retired Pay and VA Disability Compensation: Current Situation

Most people familiar with military retirement would probably agree that the most controversial military retirement issue that is currently the object of intense congressional interest is that involving concurrent receipt of military retired pay and Department of Veterans' Affairs (VA) disability compensation. Current law requires that military retired pay be reduced by the amount of any VA disability compensation received. For several years some military retirees have sought a change in law to permit receipt of all or some of both, and legislation to allow this has been introduced during the past several Congresses, frequently having co-sponsors well above half of both the House and the Senate. This issue is frequently referred to as "concurrent receipt," because it would involve the simultaneous receipt of two types of benefits. The FY2003 National Defense Authorization Act contains provisions that, for certain severely disabled retirees, provides a cash benefit financially identical to what concurrent receipt would provide them, but does not in any way change the statute that prohibits concurrent receipt itself.

The George W. Bush Administration (and the Clinton Administration before it) has been consistently opposed to concurrent receipt. The Bush Administration had threatened to veto the FY2003 National Defense Authorization Act if the Act included a concurrent receipt provision. It did agree, obviously, to the quasi-concurrent receipt provision of the FY2003 National Defense Authorization Act, signed by the President on December 2, 2002 (see below).

VA Disability Compensation. To qualify for VA disability compensation, a determination must be made by the VA that the veteran sustained a particular injury or disease, or had a preexisting condition aggravated, while serving in the Armed Forces. Some exceptions exist for certain conditions that may not have been apparent during military service but which are presumed to have been service-connected. The VA has a scale of 10 ratings, from 10% to 100%, although there is no special arithmetic relationship between the amount of money paid for each step. Each percentage rating entitles the veteran to a specific level of disability compensation. In a major difference from the DOD disability retirement system, a veteran receiving VA disability compensation can ask for a medical reexamination at any time (or a veteran who does not receive disability compensation upon separation from service can be reexamined later). All VA disability compensation is tax-free, which makes receipt of VA compensation desirable, even with the operation of the offset.

Interaction of DOD and VA Disability Benefits. Military disability retirees, as well as retirees not determined disabled by DOD, can also apply to the VA for disability compensation. This can be advantageous to retirees who have a DOD disability rating. For instance, a retiree whose retired pay is offset by the retiree's VA compensation nonetheless receives some advantage because the VA compensation is totally tax-free. Also, a retiree may (1) apply for VA compensation any time after leaving the service and (2) have his or her degree of disability changed by the VA as the result of a later medical reevaluation, as noted above. Many retirees seek benefits from the VA years after retirement for a condition that may have been incurred during military service but that does not manifest itself until many years later.

Military Disability Retirement. To qualify for military disability retirement, a military member must be certified as permanently disabled by a DOD medical examination. The individual must have (1) at least 20 years of service, **or** (2) a disability of at least 30% *and* have a disability incurred on active duty. That is, personnel with a disability rated at 30% or more by DOD, but who have less than 20 years of service, can be retired on disability (there is no minimum limit). Similarly, personnel with disability of less than 30% can be retired on disability as long as their disabling condition was incurred while on active duty. Disability retired pay is computed on the basis of one of two formulae, whichever is more advantageous to the individual: (1) the non-disability formula described above, or (2) the retired pay computation base multiplied by the percentage of disability. DOD makes a determination of eligibility for disability retirement only once, at the time the individual is separating from the service. Although DOD uses the VA schedule of types of disabilities to determine the percentage of disability, DOD measures disability, or lack thereof, against the extent to which the individual can or cannot perform military duties, rather than his or her ability to perform post-service civilian work. A military retiree, regardless of his or her DOD disability status immediately upon retirement, can apply for VA disability compensation at any time after leaving active military duty. Military disability retired pay is usually taxable, unless related to a combat disability. For further discussion of these and other relevant issues, see CRS Report 95-469, *Military Retirement and Veterans' Compensation: Concurrent Receipt Issues*.

“Special Compensation” For Severely Disabled Retirees

The **FY2000, FY2001, and FY2002 National Defense Authorization Acts** authorized what was, in effect, *de facto* concurrent receipt for severely disabled military retirees, known

in statute as “special compensation.” In FY2002, monthly payments of \$50 are authorized for retirees, both disability and nondisability, with 60% VA disability; \$100 are authorized for military retirees, both disability and nondisability, with 70% or 80% VA disability; \$200 for 90% VA disabled retirees; and \$300 for 100% VA disabled retirees, if the disability rating was received from the VA within 4 years of retiring from military service. This compensation is limited by its statute to retired personnel with at least 20 years of service. It therefore is not available to retirees who retired with less than 20 years of service in accordance with the Temporary Early Retirement Authority (TERA) in effect during 1992-2001 (FY1993-FY2001) or with any disability retiree with less than 20 years of active duty. [10 USC 1413(c)(1)].

On **January 1, 2003**, the amounts will rise to \$125 for 80%, \$225 for 90%, and \$325 for 100%. On **October 1, 2004**, the dollar amounts will rise further to \$125 for 70%, \$150 for 80%, \$250 for 90%, and \$350 for 100%. (Sec. 658 of the FY2000 Act, Sec. 657 of the FY2001 Act, and Sec. 641 of the FY2002 Act). Eligible personnel need not apply for the pay; their eligibility is identified by DOD and VA computers automatically. About 20,000 retirees qualified for these special payments as defined in the FY2000 and FY2001 laws; it is not yet clear how many additional individuals will be added to the roll of eligibles by the FY2002 Act, although it will be no more than 23,000 (the current number of 60% disabled retirees). The “quasi-concurrent receipt” provisions contained in the FY2003 defense authorization act, discussed in detail below, do not effect this special compensation, except that retirees will not be allowed to receive both types of special compensation; they will be allowed to pick whichever one they find most financially advantageous.

“Special Compensation” for Certain Disabled Retirees with A Purple Heart or Disability Due to “Combat-Related” Activities

On December 2, 2002, the President signed the FY2003 National Defense Authorization Act (P.L. 107-314; 116 Stat. 2458). This followed the House and Senate approval, on November 12, 2002, of the conference report (H.Rept. 107-436) on this Act. Section 636 of the conference bill contains concurrent-receipt-generated provisions. Numerous aspects of the bill language are not necessarily clear upon reading and may well require substantial administrative interpretation and extensive further analysis to support implementation of the law. Section 636 provides for a new category of DOD “special compensation” for certain military retirees who:

- ! Have a disability that is “attributable to an injury for which the member was awarded the Purple Heart,” and is not rated as less than a 10% disability by DOD or the VA; **or**
- ! Have at least a 60% disability incurred due to involvement in “armed conflict,” “hazardous service,” “duty simulating war,” and “through an instrumentality of war.” This appears, in lay terms, to encompass combat with any kind of hostile force; hazardous duty such as diving, parachuting, using dangerous materials such as explosives, and the like; individual training and unit training and exercises and maneuvers in the field; and “instrumentalities of war” such as accidents in combat vehicles or, if due to training-related activities, aboard naval vessels or military aircraft, and

accidental injuries due to occurrences such as munitions explosions, injuries from gases or vapors related to training for combat, and the like.

- ! The payments will be equal to the amount of VA disability compensation to which the retiree is entitled, but the new legislation does *not* end the requirement that the retiree's military retired pay be reduced by whatever VA compensation to which the retiree is entitled.

Under the new law, therefore, the eligible retirees will receive the financial equivalence of concurrent receipt, but in legal and statutory terms it will *not* constitute concurrent receipt, and the statute also states that it explicitly is *not* retired pay *per se*. In addition, the law provides that any retiree eligible for this new special compensation will not be entitled to the existing special compensation first established in 2000 for potentially concurrent-receipt eligible retirees.

It would appear – but it is not at all explicitly clear in the statute – that military *nondisability* retirees (those who do not retire from DOD based on any disability) may be eligible for this combat-disability special compensation, if they receive a VA disability rating [see subsection 1413a (e)(1)(B)(ii) of title 10, as enacted in the new law]. As noted above, the VA and the DOD disability determination processes are independent of each other.

Military *disability* retirees will be entitled to this new combat-disability special compensation under specific circumstances. If they were retired for disability but were also entitled to have their retired pay computed on the basis of the nondisability formula (i.e., had at least 20 years of service in most cases), they will be entitled to any amount of the new special compensation to which the VA disability determination would entitle them, with one important exception. This latter exception would apply to retirees whose disability was so severe that having their retired pay computed in accordance with the percentage of disability would actually give them more money than if it were computed on the basis of their 20 years or more of service. For these retirees, their special compensation would be reduced by the difference between the two formulas. This is done on the assumption that to give them the extra due to disability, together with the VA disability compensation, would in fact be doing what the opponents of concurrent receipt have argued—giving a person two types of compensation for the same disability. The determination as to whether a retiree's disability is “combat-related” in accordance with the new statute will be made by DOD.

This new entitlement will become effective 180 days after enactment of the Act. Several additional aspects of the Act are noteworthy. There may well be considerable administrative and legal problems in defining exactly what kind of disabilities meet the criterion of combat-related other than those that can be directly attributed to receipt of a Purple Heart. It is not clear if retirees will be “grandfathered” regarding the legislation—that is, the extent to which individuals who are already retired will be allowed to claim the new benefit. A determination as to such eligibility may not be feasible for many retirees based on existing methods and procedures for immediate pre-retirement physical examinations; such procedures may need to be changed to conform to the new legislation. Of potentially greater administrative significance, if hundreds of thousands of retirees wish to attempt to obtain the new special compensation, even if most of them are eventually denied, the burden on the military services' medical systems could be substantial.

The FY2003 VA-HUD-Independent Agencies Appropriations Act. On October 10, 2002, the House Appropriations Committee reported its version of the FY2003 VA-HUD-Independent Agencies Appropriations Act (H. R. 6505; H.Rept. 107-740). This bill would prohibit the VA from spending money on processing disability claims filed after its enactment if concurrent receipt was enacted. This provision results from a stated concern that enactment of concurrent receipt [of military retired pay and VA disability compensation] would cause a massive increase in the claims awaiting adjudication, contributing to an even longer wait between filing and a decision. There are currently almost 500,000 such cases backlogged; the VA has estimated that an additional 700,000 claims could be filed if concurrent receipt were enacted, although other estimates are much less. Some opponents of this measure suggest that it would be illegal and possibly unconstitutional, because it would deny some retirees the right to benefits that they have been authorized by law to receive. Because this provision, as with all other unenacted legislation, died with the adjournment of the 107th Congress, it is moot at this point, although it could clearly be attached to any further action on FY2003 appropriations in the early stages of the 108th Congress.

Prospects for Concurrent Receipt Legislation in the 108th Congress

It is virtually certain that concurrent receipt will be the object of intense legislative activity in the 108th Congress. The organized military retiree community has stated its dissatisfaction with the new “special compensation” enacted in the FY2003 National Defense Authorization Act, arguing that it provides a small benefit to a small number of retirees and, perhaps more importantly, leaves the statutory ban on concurrent receipt intact. At the same time, there is no indication that the Administration would be inclined to drop its strong opposition to repealing the concurrent receipt ban, up to and including a veto threat, as was the case with the FY2003 bill.

The incoming chairman of the Senate Armed Services Committee, Senator John Warner, has committed himself to holding hearings on the concurrent receipt issue. Such hearings, whether held by the House or Senate Armed Services Committees, will probably revisit the fundamental pros and cons of the matter. However, it may well be that by the late winter and spring of 2003, when any such hearings are held, that the administrative complexities of implementing the new special compensation, described above, will also be the object of congressional oversight. Also, it is possible that if an examination of concurrent receipt issues involves VA costs, programs, statutes, and regulations, some of these oversight matters could involve the Veterans Affairs Committees.

Finally, if the United States becomes involved in a major war with Iraq – even one both swift and victorious – matters such as concurrent receipt might well be postponed.

Costs of Concurrent Receipt

Overall cost estimates for concurrent receipt in general have varied, depending on the extent of concurrent receipt allowed, from an annual level of about \$50 million (allowing concurrent receipt for people who are rated by the VA as 100% combat-disabled) to over almost \$6 billion (allowing concurrent receipt for all individuals eligible for military retired pay and VA disability compensation, with no qualifications—which is far more extensive than the legislation currently being debated).

According to Congressional Budget Office (CBO) estimates, the House version of the FY2003 National Defense Authorization Act's concurrent receipt would cost \$1.1 billion in FY2003 and \$25 billion over the period FY2003-FY2012; the Senate version, \$4.3 billion and \$61 billion respectively. The House version would cover 110,000 retirees and the Senate, 700,000.

Costs of "Special Compensation" for Severely Disabled Retirees Enacted in 1999-2001 (FY2000-FY2002). The "special compensation" enacted in the FY2000-2002 defense authorizations have annual estimated costs of \$83 million-\$125 million. No cost estimates have been issued yet about the expansion of these costs in the FY2002 defense authorization.

Costs of the New "Special Compensation" for Combat-related Disability Enacted in 2002 (FY2003). Initial cost estimates for the new "quasi-concurrent receipt" special compensation benefit vary widely. Some sources believe that as few as 10,000 individuals will be eligible for the new special compensation. The most common figure cited by persons familiar with the conference process is an additional 33,500 people. However, assuming that the FY2003 Act allows all previous retirees to apply for the new benefit, other analysts assert that several hundred thousand individuals could eventually be eligible. Cost estimates reflect this enormous range of estimates of possible beneficiaries; they vary from FY2004 one-year costs of \$200-\$400 million or \$1 billion, and 10-year costs of \$4 billion to \$9 billion.

See CRS Report RS21327, *Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues*, for a detailed analysis of concurrent receipt costs.

Pros and Cons of Concurrent Receipt

These are only the most frequently cited positions on the issue. See CRS Report 95-469, *Military Retirement and Veterans' Compensation: Concurrent Receipt Issues*, for more arguments pro and con concurrent receipt.

Major Arguments IN FAVOR of Concurrent Receipt.

(1) Military retired pay, was earned for length of service; the VA disability compensation, for disability. They were therefore for two different things and did not constitute a duplication of benefits.

(2) If cost was an issue, partial concurrent receipt should be allowed for those most severely disabled, with combat disability, or whose benefits or total income are the least.

(3) VA disability compensation beneficiaries are entitled to other federal benefits; why not military retired pay?

(4) People receiving VA disability compensation can receive pensions from a wide variety of other sources without any offset; why target military retirees?

Major Arguments AGAINST Concurrent Receipt.

(1) The cost of full, or nearly full, concurrent receipt would be enormous — some estimates say almost \$5 billion yearly. (See CRS Report RS21327, *Concurrent Receipt of Military Retirement and VA Disability Benefits: Budgetary Issues*.)

(2) Eliminating or reducing this offset would “be sticking the camel’s nose into the tent,” setting a precedent for the reduction or elimination of all kinds of similar offsets of one or more federal payments, possibly costing billions of dollars (a CRS study identified at least 25 such offsets; see pp. 43-47 of CRS Report 95-469, *Military Retirement and Veterans’ Compensation: Concurrent Receipt Issues*).

(3) Concurrent receipt could result in some individuals getting a new VA medical evaluation, resulting in a higher disability rating and hence eligibility for concurrent receipt benefits, or getting a VA evaluation when they had hitherto not done so. Both results would lead to more people getting VA compensation for the first time or higher amounts of it.

(4) Although some federal programs do not have an offset against VA disability compensation, there are no such offsets involving disability and retirement from the same job and agency where the disability occurred.

(5) VA disability compensation is supposedly authorized much more liberally than military disability retired pay, and a VA disability can be certified many years after a person leaves active military service. Concurrent receipt could lead to a windfall for people whose VA disability might have had a tenuous connection with their military service.

(6) Concurrent receipt was never promised to those asking for it.