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Military Retirement: Major Legislative Issues

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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.

Concurrent Receipt. The proposed change to the system that has generated the most recent 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.” Until 2004, the law provided that military retired pay had to be reduced by the amount of VA disability compensation. Some maintained this was inequitable and unfair; it was defended on grounds of cost and of the need to avoid setting a precedent for concurrent receipt of numerous other federal benefits.

Starting in 1999 (FY2000), provisions in each year’s annual National Defense Authorization Act (NDAA) authorized payments to comparatively small groups (in the tens of thousands) of military retirees in lieu of concurrent receipt. The program enacted in 2002, in the FY2003 NDAA (P.L. 107-314), is known as “Combat Related Special Compensation” (CRSC), although it applies also to those people injured in military operations and training generally, as distinct from

those whose injuries are unrelated to military service but incurred while in service. CRSC provides for payments that are the financial equivalent of concurrent receipt.

The FY2004 NDAA (P.L. 108-136, November 24, 2003), for the first time provided the concurrent receipt or its practical and financial equivalence to large numbers of military retirees. The law, effective January 1, 2004, (1) authorized the payment of CRSC to *all* otherwise eligible military retirees, regardless of their percentage of disability; (2) authorized a ten-year phase-in of concurrent receipt for all military retirees whose disability is 50% or greater, regardless of the origins of their disability; and (3) included (hitherto almost completely excluded) reserve retirees. The FY2005 NDAA (P.L. 108-375, October 28, 2004; 118 Stat. 1811) expands concurrent receipt eligibility by authorizing the immediate (rather than a 10-year phase in) concurrent receipt for military retirees with a 100% service-connected disability.

The most recent military retirement cost-of-living-adjustment (COLA) was 2.1%, first applied to the retired pay disbursed on January 1, 2004. The next COLA, of 2.7% (announced on October 19, 2004), will first be applied to the retired pay disbursed on January 1, 2005.

MOST RECENT DEVELOPMENTS

On October 19, 2004, it was announced that the FY2005 cost-of-living-adjustment (COLA) for military retirees (and beneficiaries of several other federal retirement programs) would be 2.7%, first effective for the retired pay disbursed on January 1, 2005.

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, and their roughly six to eight million family members, 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 nationwide 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 addition, it can be posited that the policy choices posed by recently-enacted increased benefits for military retirees are an integral part of a larger debate in the United States over the distribution of pension-type resources among younger workers and older retirees. In the defense context, it may take the form of tensions between DOD and current active duty and reserve military personnel, with the responsibility of defending the United States in the present, and retired military personnel, many of whom feel that they are losing benefits to which they assumed they would always have access. On the other hand, it can be argued that, in a defense budget over \$400 billion yearly, benefits that cost the DOD budget only \$7-8 billion yearly are not significant enough to force serious policy choices between current defense capability on the one hand, and, on the other, pensions for those who, despite their patriotic service, are not providing any current defense capability.

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 FY2004, total federal budget outlays for military retirement will be an estimated \$36.7 billion and DOD budget outlays will be an estimated \$12.5 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. These numbers, taken from **Table 2**, below, also differ slightly from those in **Table 1**, immediately below, for purely technical reasons without policy significance.) **Table 1** shows the estimated numbers of retirees, and the costs to the federal government of the retired pay they receive, for FY2003-FY2005.

**Table 1. DOD Retired Military Personnel and Survivors:
Estimated Numbers and Costs, FY2004-FY2006**

	Total	Retirees from an Active Duty Military Career	Disability Retirees	Reserve Retirees	Survivor Benefit Recipients
FY2006 (est)	2,117,000/ \$39.59 billion	1,440,000/ \$32.63 billion	88,000/ \$1.22 billion	290,000/ \$3.36 billion	299,000/ \$2.38 billion
FY2005 (est)	2,093,000/ \$38.39 billion	1,433,000/ \$31.70 billion	90,000/ \$1.23 billion	278,000/ \$3.17 billion	292,000/ \$2.29 billion
FY2004 (actual)	2,070,000/ \$37.33 billion	1,425,000/ \$30.88 billion	93,000/ \$1.25 billion	269,000/ \$3.01 billion	283,000/ \$2.19 billion

Sources: Office of the Actuary. Department of Defense. *Valuation of the Military Retirement System. September 30, 2003:* K-8, K-10, K-14, K-16, L-2, and L-4. Document available online from the Office of the DOD Actuary at [<http://www.defenselink.mil/actuary/>].

“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 FY2003 was 43 years old and had 22 years of service; the average officer was 48 years old and had 24 years of service.)¹ 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 three 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).

¹ DOD Office of the Actuary. *Fiscal Year 2003 DOD Statistical Report on the Military Retirement System*. July 2004: 84, 99.

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.

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 When Will Be the Next COLA?

The most recent military retirement COLA was 2.1%, first applied to the retired pay disbursed on January 1, 2004. The next COLA, of 2.7% (announced on October 19, 2004), will first be applied to the retired pay disbursed on January 1, 2005. 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, 1982-2003 (FY1983-FY2004)*.

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.² Naturally, no study can know what an individual’s financial situation is. At first, only a fairly small percentage of personnel opted for the \$30,000 lump sum.³ However, the number appears to have been rising. Since the bonus option first became available in 2001, 50% of eligible Marine Corps enlisted retirees, 40% of warrant officers, but only 13% of commissioned officers have taken it,⁴ suggesting the attractiveness of the immediate cash payment to the lower-paid members of the career force.

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 from investment in special, non-marketable U.S. government securities similar in some ways to Treasury bills and bonds. This interest funds 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

² Crawley, Vince. “Report: Taking Redux Bonus Is ‘Loan’ Against Retirement.” *Marine Corps Times*, May 21, 2001: 10.

³ Crawley, Vince. “Which Pays Best...The Bonus or the Egg?” *Army Times*, Apr. 22, 2002: 14; “How the Choices Compare.” *Army Times*, Apr. 22, 2002: 15.

⁴ Brinkley, C. Mark. “Skip ‘Redux’ bonus, former top enlisted Marine warns: Retired-pay cut not worth it, sergeant major says.” *Marine Corps Times*, August 2, 2004: 25.

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 FY2033. The unfunded liability at the end of FY2003 was \$628.3 billion; the estimated liability for FY2004 was \$648.3 billion; for FY2005, \$666.1 billion; and for FY2006, \$684.2 billion.⁵ These figures are between \$83 and \$92 billion higher than the estimated unfunded liability for the same years at the end of FY2003. This increase is due almost entirely to the enactment of concurrent receipt-related retirement benefits, both actual concurrent receipt and Combat-Related Special Compensation (CRSC), discussed below.

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 deemed affordable when federal retirement outlays are spread over many decades.

⁵ *Valuation of the Military Retirement System as of September 30, 2003*. Department of Defense Office of the Actuary: ii, 9, 15, 25. Available online at [<http://www.dod.mil/actuary/>].

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). (As noted above, these figures differ slightly from the figures for the same fiscal years cited in Table 1 for purely technical reasons.)

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

	Total Federal Budget Outlays	Accrual Outlays from DOD Budget
Estimated FY2005*	\$38.3	\$13.3
Estimated FY2004*	37.2	14.8
Actual FY2003*	35.6	13.7
Actual FY2002**	35.1	12.9
Actual FY2001**	34.1	11.4

*FY2005 *Budget of the United States Government*. Appendix: 927.

**FY2004 *Budget of the United States Government*. Appendix: 903.

Cost Concerns about Recent Retiree Benefit Increases

The cost of concurrent receipt of military retired pay and VA disability compensation (discussed immediately below) is frequently cited in the context of other benefits to retired military personnel and their families that have been created, or expanded, since the late 1990s. DOD and others have argued that such retiree benefits are becoming increasingly costly and do not “leverage readiness” by applying directly to active duty or reserve military personnel and their families. They suggest that the money being used for these purposes should be channeled into active duty or reserve benefits that directly relate to recruitment or career retention not retiree compensation, whose relationship to actual or potential personnel shortages is tenuous and difficult to establish.

The two benefits most often included in this category are concurrent receipt and CRSC, and TRICARE for life (extending, to Medicare-eligible military retirees, DOD health care insurance for care obtained from civilian sources). Others would include in this list repeal of the Redux cuts in military retirement (discussed above). In addition, concerns have been voiced about retiree benefit increases that have not been enacted but that are under active debate and consideration in Congress, including eliminating the reduction in Survivor

Benefit Plan annuities that takes place at age 62 (when Social Security eligibility is reached) and lowering the age at which reserve retirees can first receive retired pay from 60 to 55.

The arguments in favor of these benefit increases have been equally strong. Proponents suggest that even if they do not directly affect active duty or reserve military personnel, by strengthening the broad range of benefits available to military retirees, they provide a strong career retention incentive. In particular, they argue that although most of the U.S. Army, and a substantial part of the Marine Corps, is at war in Iraq and Afghanistan and repetitive tours of duty in those two theaters of combat operations are a likely prospect for active duty personnel and reserve personnel, now is the time to be buttressing the “pot of gold at the end of the rainbow” — the benefits available to military personnel who are willing to undergo the hardships of a military career in return for liberal retirement benefits after 20 years of service.

Concurrent Receipt of Military Retired Pay and VA Disability Compensation

Military Retired Pay and VA Disability Compensation: Overview

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. Until 2004, the law required that military retired pay be reduced by the amount of any VA disability compensation received. For many years some military retirees had 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 referred to as “concurrent receipt,” because it would involve the simultaneous receipt of two types of benefits. In 1999, legislation was enacted to provide “special compensation” to certain severely disabled military retirees who would be eligible for concurrent receipt if concurrent receipt were ever enacted. This legislation was amended in 2000, 2001, and 2002 to increase the amount of benefits. Also, in 2002, further legislation, known as “combat-related special compensation,” or CRSC, was enacted. It provides, for certain seriously disabled retirees, a cash benefit financially identical to what concurrent receipt would provide them. Neither type of “special compensation” removed the statutory prohibition on actual concurrent receipt.

The FY2004 National Defense Authorization Act (NDAA) authorized, for the first time, actual concurrent receipt as well as a greatly expanded CRSC program, including further liberalization of concurrent receipt rules contained in the FY2005 NDAA; this is discussed in greater detail below. For a detailed description of the existing concurrent receipt and CRSC programs, including a sample application form, see a web page of the Military Officers Association of America (MOAA) at [http://www.moaa.org/Legislative/Retirement/CR_CRSC_AddInfo.asp].

The George W. Bush Administration (and the Clinton Administration before it) has been consistently opposed to concurrent receipt. However, although the Administration

threatened vetoes of concurrent receipt in 2002 and earlier in 2003, no such actions appeared to have even been contemplated, let alone actually occurring, regarding the FY2004 NDAA the President signed on November 24, 2003.

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 retirees can also apply to the VA for disability compensation. This can be advantageous to retirees who have a DOD disability rating because, although offset, 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. The DOD and VA disability rating systems have much in common as well as significant differences. 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*.

Repeal of "Special Compensation" For Severely Disabled Retirees

The FY2004 NDAA repealed certain specific monthly payments for severely disabled military retirees which had been authorized by the FY2000, FY2001, and FY2002 National Defense Authorization Acts. These benefits were, in effect, *de facto* concurrent receipt, known in statute as "special compensation," for those retirees with at least a 60% VA disability, if the disability rating was received from the VA within four years of retiring from military service. They were limited to retired personnel with at least 20 years of service.

“Combat Related Special Compensation” (CRSC): Enacted in 2002 and Expanded in 2003

The FY2004 NDAA (Sec. 642) repealed the 60% minimum disability requirement for CRSC contained in the FY2003 NDAA, enacted in 2002. Effective January 1, 2004, CRSC is now available to *any* retiree who meets the other eligibility criteria (at least 20 years of service; a Purple Heart; and/or injuries sustained while performing military duty in a combat situation, or with military equipment, or during military training, as described below in more detail). In 2002, the FY2003 NDAA (Sec. 636, P.L. 107-314; 116 Stat. 2458) authorized “Combat Related Special Compensation,” or CRSC for military retirees who have at least 20 years of service and who have *either*:

- 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*
- At least a 60% disability rating from either DOD or the VA, 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.

Note that these criteria remain identical in 2004; the only change is the repeal of the 60% rating limit.

CRSC 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, CRSC beneficiaries 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*. For online applications and information, see [<https://www.dmdc.osd.mil/crsc>] or [<http://www.dior.whs.mil/forms/DD2860.PDF>]. Retirees may also phone the retirement services offices of their service for the necessary information.

CRSC for Reserve Retirees. The revised CRSC statute in the FY2004 NDAA clearly states that personnel who qualify for reserve retirement by having at least 20 years of duty creditable for reserve retirement purposes are eligible for CRSC. When CRSC was enacted in 2002, DOD interpreted the law as requiring reserve retirees to have at least 7,200 reserve retirement “points” to be eligible for CRSC. A reservist receives a certain number of retirement points for varying levels of participation in the reserves, or active duty military service. The 7,200 point figure was extraordinarily high — in fact, it could only have been attained by a reservist who had at least 20 years of *active duty* military service. Hence, the original law effectively denied CRSC to reservists.

Concurrent Receipt for Retirees with 50% or Greater Disability

In addition to greatly expanding CRSC, the FY2004 NDAA (Sec. 641) authorizes, for the first time, actual concurrent receipt for retirees with at least a 50% disability, regardless of the cause of disability. However, the amount of concurrent receipt will be phased in over a 10-year period, from 2004 to 2013, **except** for 100% disabled retirees, who will be entitled to immediate concurrent receipt effective January 1, 2005 (this provision is in the FY2005 NDAA; see below). Depending on the degree of disability, the initial amount of retired pay that the retiree could receive would vary from \$100 to \$750 per month, or the actual amount, whichever is less. By 2014, the decrease in retired pay would be totally eliminated. As with the revised CRSC, this concurrent receipt benefit is also available to those reservists with at least 20 years of service creditable for reserve retirement purposes.

The actual operation of the new concurrent receipt benefit is complicated, due to its progressive implementation over several years as required by law [10 USC 1414 (c), as enacted by Subsection 641(a), P.L. 108-136, November 24, 2003; 117 Stat. 1511]. It uses both dollar amounts and percentage amounts and varies in accordance with the degree of disability and by calendar year (*not* fiscal year) as follows:

2004. In calendar year 2004, military retirees entitled to VA disability compensation will be entitled to receive, in addition to that part of their military retired pay which is greater than the total VA compensation to which they are entitled, the following additional amounts of retired pay:

100% disability:	Up to \$750 per month additional retired pay
90% disability:	Up to \$500 per month additional retired pay
80% disability:	Up to \$350 per month additional retired pay
70% disability:	Up to \$250 per month additional retired pay
60% disability:	Up to \$125 per month additional retired pay
50% disability:	Up to \$100 per month additional retired pay

Example. Assume a retiree with 100% disability (i.e., up to \$750 per month as described above) is entitled to \$1,500 per month in military retired pay and \$1,000 per month in VA disability compensation. Until now, due to the ban on concurrent receipt, the retiree would receive only \$500 per month in military retired pay, because the remaining \$1,000 per month of retired pay was offset by the retiree's \$1,000 in VA compensation. However, in 2004, this hypothetical retiree's military retired pay would increase to \$1,250 per month (the \$500 unaffected by the VA compensation and an additional \$750 per month, for a total of \$1,250). However, \$250 of the \$1,000 in monthly VA compensation would still be offset.

2005. In calendar year 2005, with the exception of 100% disabled retirees, military retirees entitled to VA disability compensation will be entitled to any such amounts received in 2004 and an additional 10% of the offset that was remaining in 2004. However, beginning on January 1, 2005, and thereafter, 100% disabled retirees will be entitled to **all** of their military retired pay in addition to **all** of their VA disability compensation.

2006. In calendar year 2006, the same procedure as in 2005 would apply, but the retirees affected would get an additional 20% of their remaining offset from 2004. Full concurrent receipt for 100% disabled retirees will continue.

2007-2014. Full concurrent receipt for 100% disabled retirees will continue.

2007-	An additional 30%
2008-	An additional 40%
2009-	An additional 50%
2010-	An additional 60%
2011-	An additional 70%
2012-	An additional 80%
2013-	An additional 90%
2014-	All offsets would end; military retirees with at least a 50% disability would be allowed to receive their entire military retired pay and VA disability compensation.

For those retirees who retire after 2004, their initial amounts will be the dollar amount prescribed for each percentage of disability (the range listed above between \$100 and \$750, depending on degree of disability), plus the additional percentage of that dollar amount for that year. Thus, a retiree who first retires in, say, 2006, with an 80% disability will begin receiving an additional \$420 monthly of his or her retired pay (the \$350 that an 80% disabled retiree is entitled to, as noted above, plus the additional 20% of \$350, or \$70, specified for 2006).

Because of the high initial amounts provided to severely disabled retirees, this new concurrent receipt benefit is “front-loaded”; that is, most retirees will be able to concurrently receive most of their military retired pay within a few years of enactment of the law.

A retiree cannot receive both CRSC and concurrent-receipt benefits. The retiree may choose whichever is most financially advantageous to him or her and may move back and forth between either benefit to maximize the payments received as often as desired.

Concurrent Receipt and CRSC: Eligibility of Military Disability Retirees

The question is frequently asked if military disability retirees can concurrently receive VA disability compensation, or receive CRSC, under the new law. The Military Officers Association of America (MOAA) website at [<http://www.moaa.org/Legislative/Retirement/CRQA.asp>] describes such entitlement:

....[disability] retirees who are also eligible for longevity retirement (20 years of service or more for retirement purposes) will be eligible. However, their CRSC or concurrent receipt entitlement will be calculated as if they had received a non-disability retirement. They will not be reimbursed to the level of their service-awarded disability retirement [if that was greater than the non-disability calculation].

Congressional Action on Concurrent Receipt in 2004 (FY2005)

On May 18, 2004, Senator Harry Reid, who has been in the forefront of attempts to enact concurrent receipt, introduced an amendment to the FY2005 NDAA (S. 2400) to repeal the requirement, contained in the FY2004 NDAA, that concurrent receipt be limited to those retirees with a 50% disability or greater. It was not approved by the full Senate. On June 18, another amendment of Senator Reid's to allow immediate (rather than a 10-year phase in period) concurrent receipt for military retirees with a 100% service-connected disability passed the Senate by voice vote. The Senate passed its version of the FY2005 NDAA on June 23. The House version of the FY2005 NDAA (H.R. 4200) contained no concurrent receipt provisions. The final FY2005 NDAA (Sec. 642, P.L. 108-375, October 28, 2004; 118 Stat. 1811 *et seq.*, H.Rept. 108-767, H.R. 4200, conference version reported on October 8, 2004), includes the Senate provision which authorizes full concurrent receipt for 100% disabled retirees effective January 1, 2005.

100% "Unemployability" Ratings and Concurrent Receipt. The authorization of full concurrent receipt for 100% disabled retirees does not apply to retirees with a disability rating of less than 100%, even if they have a full, or 100%, VA "unemployability" rating. The language in Subsection 642(a) of the FY2005 NDAA explicitly states that the immediate payment of full concurrent receipt will apply to retirees "receiving veterans' disability compensation for a disability rated at 100 percent" There appears to be a consensus among parties and analysts involved in military retirement issues that this language excludes those retirees with only a 100% unemployability rating, and that it is not feasible for DOD to interpret the existing language as allowing concurrent receipt payments to them. To do so would almost certainly require legislation, included, if the Congress eventually so desires, in the FY2006 NDAA when it is enacted in 2005.

Costs and Numbers of Beneficiaries of Concurrent Receipt/CRSC

FY2004 NDAA Provisions. The Congressional Budget Office (CBO) has estimated that the costs of payments to individual retirees — hence, the costs to the total federal budget — for the concurrent-receipt related provisions in the FY2004 NDAA will be about \$700 million in FY2005; \$4.5 billion during FY2005-FY2009; and \$16.3 billion during FY2005-FY2014. The costs to the DOD budget for paying accrual costs to the Military Retirement Fund are estimated to be \$1.4 billion in FY2005; \$7.3 billion in the five-year period FY2005-FY2009; and \$15.7 billion during the ten years FY2005-FY2014. For further discussion of the differentiation of these two completely different figures (and figures that should not be added together to comprise "total" costs), see the section above entitled *Military Retirement Budgeting and Costs*, especially the subsection on *Accounting for Military Retirement in the Federal Budget*.

Estimates of the numbers of eligible beneficiaries of the concurrent receipt-related provisions in the FY2004 NDAA vary considerably. The *Army Times*, an unofficial, but often regarded as authoritative, newspaper serving the military community, in 2003 reported that "it appears that of the estimated 645,000 military retirees who have their retired pay reduced [by the amount of VA compensation they now receive], about 295,000 would get full retired and disability checks within five years under the plan. Only about 85,000 of the 460,000 military retirees with disabilities rated at 40 percent or less are expected to qualify

for full concurrent receipt because their disabilities are combat- or training-related.”⁶ Other *Army Times* articles have quoted governmental and nongovernmental sources as estimating that up to 500,000 retirees could be eligible for the liberalized CRSC.⁷ A rough indication of the numbers and costs involved can be obtained by the numbers of beneficiaries and costs incurred during the first full month of CRSC payments. As noted above, about 147,000 retirees have already begun receiving CRSC; their payments for March 2004 cost about \$55 million, or an average of \$374 monthly for each retiree.⁸

Costs and Numbers of Beneficiaries for Full Concurrent Receipt if Enacted. According to CBO, full concurrent receipt, if it had been enacted in time for FY2004 to begin, would have cost approximately \$3 billion in FY2004, rising to \$5 billion by FY2013, and totaling \$41 billion over the ten-year period FY2004-FY2013. Almost 700,000 retirees would have been eligible for full concurrent receipt in FY2004. (At the other extreme, some of the very restrictive concurrent receipt options considered, such as limiting it to 100% combat-disabled retirees, would apply to only a few thousand retirees and would have annual costs of a few tens of millions of dollars.)

Disability Benefits Commissions

Veterans Disability Benefits Commission Established by the FY2004 NDAA. Title XV of the FY2004 NDAA (Sections 1501-1507) established a Veterans Disability Benefits Commission to “carry out a study of the benefits provided under the laws of the United States that are provided to compensate and assist veterans and their survivors for disabilities and deaths attributable to military service.” [Subsection 1502(a).] The motivation for this study appears to have been the attention that the concurrent receipt issue has drawn to the current range of benefits for disabled veterans and their survivors. The existing panoply of such benefits has grown piecemeal over the past two centuries, leading to complicated interaction among the different types of payments, of which concurrent receipt is only one such example.

The Commission will have 13 members, of which two will be appointed by the Speaker of the House and two by the House minority leader, and two by the Senate majority and two by the Senate minority leader. The five remaining members will be appointed by the President. One of the two members in each of the four congressional categories, and three of the five presidential appointees, must be veterans who have received any of the following military decorations: Medal of Honor; Distinguished Service Cross (the Army’s “Cross” decoration), Navy Cross (also awarded to members of the Marine Corps and Coast Guard), and Air Force Cross; or the Silver Star. The Commission is required to hold its first meeting within 30 days after a majority of its 13 members has been appointed and must present its

⁶ Neils C. Sorrells. Veterans Call ‘Concurrent Receipt’ Deal a Good First Step, Vow Further Action.” *Congressional Quarterly Weekly*, October 18, 2003: 2579; Rick Maze, “Lawmaker: Framework Set for Concurrent Receipt Deal.” *Army Times*, October 20, 2003: 40.

⁷ Tice, Jim. “Many Retired Soldiers Eligible for Special Pay.” *Army Times*, February 9, 2004: 28. Two weeks earlier, the figure of 200,000 was quoted in *Army Times*. Crawley, Vince. “Retirees may face long waits to receive additional money.” January 26, 2004: 26.

⁸ Crawley, “DFAS Paying Concurrent Retired, Disabled Benefits for Combat-injured.”

report to the President no later than 15 months after its first meeting. The Commission's report will include recommendations "for revising the benefits provided by the United States to veterans and their survivors for disability and death attributable to military service." [Subsection 1503(2).]

Service-Connected Disability Benefits Study in the FY2005 NDAA. Section 666 of the conference version of the FY2005 NDAA H.R. 4200, H.Rept. 108-767) directs DOD to study the "totality of all current and projected disability benefits that are available to disabled members and former members of the Armed Forces for service-connected disabilities and, on the basis of the results of such study, determine the adequacy of those benefits." The study is to compare existing service-connected disability benefits with private sector disability benefits; be coordinated with the VA and with the Veterans Benefits Disability Commission noted above; and recommend legislation to remedy any deficiencies in existing disability benefits that it identifies. This DOD report is due within 150 days after enactment of the FY2005 NDAA.

The FY2005 NDAA also directs the Government Accountability Office (GAO) to conduct a study comparing federal, state, and local government civilian employee disability benefits, with special attention to benefits for civilian employees in hazardous jobs that are analogous to military service, and to complete the study by November 1, 2005.