

# CRS Issue Brief for Congress

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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 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 10-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) expanded 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 significant military retirement issue Congress dealt with in 2005 was whether military retirees with a 100% VA *unemployability* rating, but less than a 100% *disability* rating, should be entitled to full concurrent receipt as was provided to 100% disability retirees in 2004. The House version of the FY2006 NDAA would have granted such retirees full concurrent receipt effective October 1, 2009, rather than the January 1, 2014 date currently in effect; the Senate version would have allowed immediate concurrent receipt for this population. The House version prevailed in the Conference Committee.

The most recent military retirement cost-of-living-adjustment (COLA) was 4.1%, first applied to the retired pay disbursed on January 1, 2006. The next regularly scheduled COLA will be applied on January 1, 2007.

## MOST RECENT DEVELOPMENTS

As the 109<sup>th</sup> Congress begins its second session, the FY2006 National Defense Authorization Act (NDAA) has been enacted. However, with the recruiting and retention challenges being faced by the military (especially the Army and Marine Corps), it is anticipated that military personnel benefits, to include retirement, will continue to be advanced and advocated by the Department of Defense (DOD) and veteran's organizations. It is further anticipated that the reserve retirement age (the age at which a retired reservist begins receiving retired pay) will remain an issue for the 109<sup>th</sup> Congress.

## 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 2.1 million military retirees and survivor benefit recipients, and their roughly 6 million to 8 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 who have 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 have been exacerbated by ongoing military operations in Iraq and Afghanistan, 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. Some assert that rapidly increasing retiree-related benefits, although they reward those whose patriotic service is unquestionable, are "crowding out" defense resources that could go to maintaining and improving current defense capabilities. On the other hand, it can be argued that, in a defense budget of about

\$450 billion yearly, these benefits are not significant enough to really detract from current defense capability, and that a \$12 trillion GDP is more than adequate to finance both benefits for military retirees and current defense requirements if the political will to do so is present.

In general, since the late 1990s, Congress has been more aggressive than the executive branch in responding to the stated concerns of retirees about their benefits. 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, and Congress has enacted major increases in military health care benefits for retirees (TRICARE for Life) and authorized partial concurrent receipt of military retired pay and VA disability compensation, both over DOD objections.

## Program Summary

In FY2006, total federal budget outlays for military retirement will be an estimated \$40.9 billion and DOD budget outlays will be an estimated \$13.1 billion. (The differing figures for total federal and DOD outlays result from the use of the accrual method in accounting for the costs of military retirement. See the section below on *Budgeting and Costs* for a discussion of accrual accounting. These numbers, taken from **Table 2**, also differ slightly from those in **Table 1** 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 FY2005-FY2007.

**Table 1. DOD Retired Military Personnel and Survivors:  
Estimated Numbers and Costs, FY2005-FY2007**

| <u>FY</u>              | Total                         | Retirees from an Active Duty Military Career | Disability Retirees       | Reserve Retirees            | Survivor Benefit Recipients |
|------------------------|-------------------------------|--|---------------------------|-----------------------------|-----------------------------|
| <b>FY2007 (est)</b>    | 2,135,000/<br>\$42.18 billion | 1,442,000/<br>\$34.32 billion                | 84,000/<br>\$1.26 billion | 308,000/<br>\$3.72 billion  | 300,000/<br>\$2.88 billion  |
| <b>FY2006 (est)</b>    | 2,110,000/<br>\$40.50 billion | 1,439,000/<br>\$33.18 billion                | 87,000/<br>\$1.27 billion | 292,000/<br>\$3.447 billion | 293,000/<br>\$2.61 billion  |
| <b>FY2005 (actual)</b> | 2,088,000/<br>\$38.80 billion | 1,434,000/<br>\$32.07 billion                | 89,000/<br>\$1.28 billion | 280,000/<br>\$3.21 billion  | 284,000/<br>\$2.24 billion  |

**Sources:** Office of the Actuary. Department of Defense. *Valuation of the Military Retirement System. September 30, 2004:* K-8, K-10, K-14, K-16, L-2, and L-4. Document available 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 servicemember 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 FY2004 was 41 years old and had nearly 22 years of service; the average officer was 45 years old and had nearly 24 years of service.)<sup>1</sup> 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 cost

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<sup>1</sup> DOD Office of the Actuary. *Fiscal Year 2004 DOD Statistical Report on the Military Retirement System*. September 30, 2004, pp. 90, 105.

of living adjustment (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 was used as a manpower tool to entice voluntary retirements during the drawdown. 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 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, 1982-2004 (FY1983-FY2005)*, by Robert L. Goldich. (Hereafter CRS Report 98-223.)

### What Was the Last COLA and When Will Be the Next COLA?

The most recent military retirement COLA was 4.1%, first applied to the retired pay disbursed on January 1, 2006. The next COLA has not been announced but will be applied to the retired pay disbursed on January 1, 2007. For a discussion of proposed and actual COLA changes over the past 20 years, see CRS Report 98-223.

### COLAs for Pre-August 1, 1986 Entrants

For military personnel who first entered military service before August 1, 1986, each December a COLA equal to the percentage increase in the Consumer Price Index (CPI) between the third quarters of successive years will be applied to military retired pay for the annuities paid beginning each January 1. For example, assume that the CPI 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.<sup>2</sup> 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.<sup>3</sup> 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,<sup>4</sup> 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

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

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

<sup>4</sup> Brinkley, C. Mark. “Skip ‘Redux’ Bonus, Former Top Enlisted Marine Warns: Retired-pay Cut Not Worth It, Sergeant Major Says.” *Marine Corps Times*, Aug. 2, 2004, p. 25.

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 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.<sup>5</sup> 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;

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

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.

## 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 FY2006* | \$40.9                       | \$13.1                          |
| Estimated FY2005* | 39.1                         | 15.1                            |
| Actual FY2004*    | 37.2                         | 14.1                            |
| Actual FY2003**   | 35.6                         | 13.7                            |
| Actual FY2002**   | 35.1                         | 12.9                            |

\* FY2006 *Budget of the United States Government*. Appendix, pp. 953-954.

\*\*FY2005 *Budget of the United States Government*. Appendix, p. 927.

## 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 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. The FY2003 National Defense Authorization Act (NDAA), enacted in 2002, created a benefit known as “combat-related special compensation,” or CRSC. CRSC provides, for certain seriously disabled retirees, a cash benefit financially identical to what concurrent receipt would provide them. The FY2004 NDAA authorized, for the first time, actual concurrent receipt, as well as a greatly expanded CRSC program. The FY2005 NDAA further liberalized the concurrent receipt rules contained in the FY2004 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/controller.asp?pagename=lac\\_factsheets\\_retired\\_1](http://www.moaa.org/controller.asp?pagename=lac_factsheets_retired_1)].

**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*, by Robert L. Goldich.

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

The FY2003 NDAA (Section 636, P.L. 107-314; 116 Stat. 2458), as amended by the FY2004 NDAA Section 642, P.L. 108-136, 117 Stat. 1392, authorized “Combat Related Special Compensation” (CRSC). Military retirees with at least 20 years of service and who meet either of the following two criteria are eligible for CRSC:

- 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*
- A 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.

(The 2003 legislation limited the latter criterion to retirees with at least a 60% disability; the 2004 legislation repealed the 60% 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>]. Retirees may also phone the retirement services offices of their service for the necessary information.

**CRSC for Reserve Retirees.** The 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

The FY2004 NDAA (Section 641) authorized, 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 2004-2013, **except** for 100% disabled retirees, who will be entitled to immediate concurrent receipt effective January 1, 2005 (this provision was added 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 will 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 were 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 that in 2004, a retiree with 100% disability (i.e., up to \$750 per month as described above) had been entitled to \$1,500 per month in military retired pay and \$1,000 per month in VA disability compensation. Before the 2003 legislation authorizing concurrent receipt, the retiree could have receive only \$500 per month in military retired pay, because the remaining \$1,000 per month of retired pay would have been offset by the retiree's \$1,000 in VA compensation. However, in 2004, this hypothetical retiree's military retired pay would have increased 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 have been offset.

**2005.** In calendar year 2005, with the exception of 100% disabled retirees, military retirees entitled to VA disability compensation are entitled to any such amounts received in 2004, as noted above, and an additional 10% of the offset that remained in 2004. However, beginning on January 1, 2005, and thereafter, 100% disabled retirees are 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 will apply, but the retirees affected will 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% of their remaining offset from 2004.  |
| 2008- | An additional 40% of their remaining offset from 2004.  |
| 2009- | An additional 50% of their remaining offset from 2004, plus those who are rated at 100% unemployable by the VA.   |
| 2010- | An additional 60% of their remaining offset from 2004.  |
| 2011- | An additional 70% of their remaining offset from 2004.  |
| 2012- | An additional 80% of their remaining offset from 2004.  |
| 2013- | An additional 90% of their remaining offset from 2004.  |
| 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, in the section on calendar year 2004, 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 whether 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/controller.asp?pagename=serv\\_benefits\\_pay\\_crsc\\_eligibility](http://www.moaa.org/controller.asp?pagename=serv_benefits_pay_crsc_eligibility)] 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 2005**

**100% “Unemployability” Ratings and Concurrent Receipt.** After the enactment of the FY2005 NDAA in late 2004, an issue arose about whether the authorization of full concurrent receipt, effective January 1, 2005, for 100% disabled retirees applied to retirees with a disability rating of less than 100%, but with what the VA terms an “Individual Unemployability” (IU) rating of 100%. The language in Subsection 642(a) of the FY2005 NDAA states that the immediate payment of full concurrent receipt will apply to retirees “receiving veterans’ disability compensation for a disability rated at 100 percent....” That is, the law does not mention the IU concept. According to individuals familiar with the issue, during the conference on the FY2005 NDAA, in 2004, language explicitly including the 100% unemployables with less than a 100% disability rating was kept out of the final legislation on cost grounds.

Since the FY2005 NDAA was enacted in late 2004, there have been differing rumors and predictions about whether the existing language could be interpreted by DOD to include the 100% unemployables, removing any need for legislation to do so. As of this writing, DoD has not made such an interpretation.

The House version of the FY2006 NDAA (H.Rept. 109-89, passed House May 25, 2005), contained a partial step toward inclusion of 100% unemployables. The House would authorize full concurrent receipt for 100% unemployables beginning October 1, 2009, over four years earlier than the date of January 1, 2014 in current law (the date of full concurrent receipt for all retirees, regardless of disability rating). The Senate version would have authorized immediate concurrent receipt for all those with a 100% unemployability rating. The House version was accepted by the Conference Committee.

**Other Concurrent Receipt Legislation in the 109<sup>th</sup> Congress.** Three other bills are representative of existing congressional concerns about concurrent receipt:

**H.R. 303.** This bill received considerable interest in early 2005. It would (1) allow immediate concurrent receipt, rather than phasing it in between now and 2014; and (2) repeal the requirement that only military retirees with a 50% disability rating can qualify for concurrent receipt, allowing it for any retiree with a service-connected disability. Given the substantial costs of this legislation, and the intense deliberations which went into the compromise concurrent receipt legislation enacted in 2004 as part of the FY2005 NDAA, it seems unlikely that H.R. 303 will be enacted as introduced.

**H.R. 1366.** This bill would expand CRSC entitlement to combat-disabled military retirees who were retired on disability before reaching 20 years of service. This legislation, if enacted, would represent a major change in concurrent receipt-related entitlements, and, arguably, the justification for them. The key argument in favor of concurrent receipt has been that, for those members retired with at least 20 years of service, their military retired pay derived from one requirement (their service of at least 20 years) and their VA disability compensation another (their disability). Hence, proponents have argued, it was not fair to offset one benefit against the other when they were being received for two separate purposes. However, if under-20-year disability retirees were allowed to receive CRSC, they would be receiving two benefits which were both based on one purpose — their disability.

**H.R. 2076.** This bill, in addition to its 100% unemployable-related provisions noted above, would also expand concurrent receipt entitlement to retirees with less than a 50% disability — i.e., all disabled retirees. H.R. 2076 would, however, unlike H.R. 303, preserve the 10-year phase-in of full concurrent receipt for retirees with less than 100% disability. It thus represents a middle-ground between current law and H.R. 303.

**S. 2385.** This bill, introduced on March 8, 2006 is identical to H.R. 1366.