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Military Retirement: Major Legislative Issues

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CONTENTS

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SUMMARY

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

The proposed change to the system 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." A longer-term issue is whether some military personnel should be entitled to military retired pay with less than 20 years of service and whether many more personnel should serve well past the 20-year point before retiring. A recent DOD legislative proposal would make some changes along these lines for generals and admirals.

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

The FY2003 National Defense Authorization Act authorized DOD payments to certain military retirees, either with (1) a Purple Heart indicating a combat wound and at least a 10% disability; or (2) at least a 60% disability, but not a wound leading to a Purple Heart, if the disability resulted from activity related to actual military operations (i.e., training, exercises, work performed on a military base or in a military environment, whether or not during actual hostilities). The result of the new benefit will be that eligible retirees will receive the financial equivalence of concurrent receipt, but in legal and statutory terms the concurrent receipt ban remains in effect. The new program, entitled "Combat Related Special Compensation," (CRSC), became effective May 31, 2003; information and application forms are available at two DOD websites, listed below.

The FY2004 Congressional Budget Resolution failed to adopt a Senate-passed provision that would have funded partial concurrent receipt, and there were no concurrent receipt related provisions in the initial House and Senate versions of the FY2004 National Defense Authorization Act. However, the Senate opened the bill to reconsideration of amendments, and a floor amendment by Senator Reid authorizing full concurrent receipt was passed on June 4. A discharge petition is being circulated in the House to bring a concurrent receipt bill to the floor. However, most observers think it likely that, as in 2002, the President will be opposed to, and be willing to veto any defense authorization bill containing, concurrent receipt.

Changing the 20-Year Retirement Paradigm. Some argue that requiring military personnel to serve at least 20 years before retiring is inefficient and expensive. Others have argued that it is essential to maintaining a high-quality career force capable of meeting wartime requirements. Some changes along these lines, primarily for general and flag officers, are embodied in the DOD legislative proposal sent to Congress on April 10, 2003, entitled the "Defense Transformation for the 21st Century Act." Only a few of these changes were adopted in either the House or Senate versions of the FY2004 National Defense Authorization Act, however, and report language implies considerable skepticism about them in the Congress.

MOST RECENT DEVELOPMENTS

On June 4, 2003, the Senate passed Senator Reid's floor amendment to the defense authorization bill to authorize full concurrent receipt, identical to similar amendments offered earlier and in past years. It passed by voice vote. (Although the Senate passed its version of the authorization bill on May 22, it reopened it to consideration of several amendments, of which concurrent receipt was one, on June 4.)

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 nation-wide nostalgia and support for the past heroism and current old-age needs of the "greatest generation" of World War II-era veterans, whether retirees or not; (2) concern over problems the military services were having in recruiting and retaining sufficient numbers of qualified personnel, which began in the mid-1990s, and the extent to which actual or perceived inadequacies in retirement benefits may have been contributing to these problems; (3) the impression by many current or former military personnel that the Clinton Administration was not favorably disposed toward the military as an institution, leading to efforts to portray increased retirement benefits as a palliative, and (4) in a reversal of the attitudes toward the Clinton Administration, efforts to obtain more benefits from the Bush Administration because it is perceived as being pro-military. And, since September 11, 2001, there has been a predictably dramatic increase in public and congressional support for the Armed Forces.

In 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 conflicts between DOD and current active duty and reserve military personnel on the one hand, 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 close to $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 FY2002-FY2004.

Table 1. DOD Retired Military Personnel and Survivors: Estimated Numbers and Costs, FY2002-FY2004

	Total	Retirees from an Active Duty Military Career	Disability Retirees	Reserve Retirees	Survivor Benefit Recipients
FY2004	2,022,000/ $37.14 billion	1,400,000/ $30.80 billion	91,000/ $1.24 billion	254,000/ $2.91 billion	272,000/ $2.19 billion
FY2003	2,008,000/ $36.16 billion	1,392,000/ $29.98 billion	93,000/ $1.26 billion	251,000/ $2.80 billion	269,000/ $2.12 billion
FY2002	1,993,000/ $35.25 billion	1,384,000/ $29.22 billion	96,000/ $1.28 billion	248,000/ $2.69 billion	265,000/ $2.06 billion

Sources: Office of the Actuary. Department of Defense. *Valuation of the Military Retirement System. September 30, 2001*: 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://dod.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 FY2001 was 42 years old and had 22 years of service; the average officer was 47 years old and had 24 years of service.) A member who retires from active duty is paid an immediate monthly annuity based on a percentage of his or her retired pay computation base. For persons who entered military service before September 8, 1980, the retired pay computation base is final monthly basic pay being received at the time of retirement. For those who entered service on or after September 8, 1980, the computation base is the average of the highest 3 years (36 months) of basic pay. (Basic pay is one component of total Regular Military Compensation, or RMC, which consists of basic pay, housing and subsistence allowances, and the federal tax advantage that accrues because the allowances are not taxable. Basic pay comprises approximately 70% of the total for all retirement eligibles: 75% for 30-year retirees and 66% for 20-year retirees. Thus, the 20-year retiree may get 50% of retired pay computation base upon retirement, but only 33% of RMC. The 30-year retiree will receive 75% of the computation base, but only 56% of RMC. Nor do any of these calculations include any of the many special pays, bonuses or other cash compensation to which many military members are entitled.)

Retired Pay Computation Formula

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

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

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

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

The Redux Formula: Under Age 62 Retirees. Redux is different from the previous formula in two major ways. First, for retirees under age 62, retired pay will be computed at the rate of 2.0% of the retired pay computation base for each year of service through 20, and 3.5% for each year of service from 21-30. Under this new formula, therefore, a 20-year retiree will receive 40% of his or her retired pay computation base upon retirement (20 years of service X 2.0%), and a 25-year retiree will receive 57.5% of the computation base [(20 years of service X 2.0%) + (5 years of service X 3.5%)]. A 30-year retiree, however, will continue to receive 75% of the retired pay computation base [(20 years of service X 2.0%) + (10 years of service X 3.5%)]. The changed formula, therefore, is "skewed" much more sharply in favor of the longer-serving military careerist, theoretically providing an incentive to remain on active duty longer before retiring.

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

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

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

Military Retired Pay and Social Security

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

Modifying 20-Year Retirement

For more than 30 years, the military retirement system, in particular, its central feature of allowing career personnel to retire at any age with an immediate annuity upon completing 20 years of service, has been the object of intense criticism and equally intense support among military personnel, politicians, and defense manpower analysts. Critics of the system have alleged, since its basic tenets were established by legislation enacted in the late 1940s, that it costs too much, has lavish benefits, and contributes to inefficient military personnel management by inducing too many personnel to stay until the 20-year mark and too few to stay beyond the 20-year mark. At present, they say, too few people are willing to make the commitment to stay the full 20 years, causing DOD to lose too many talented people in the 8-12 year range. In addition, the requirement for officers to perform a certain amount of joint (interservice) duty, plus acquiring a well-rounded competence in their own services' capabilities, has created a situation in which 20 years is simply not enough time for an officer to serve in enough jobs to learn all that is needed to prepare for higher command and staff duties. This allegedly shows a need for more officers to serve well past 20 years. In fact, the mandatory joint duty requirements are the only new factor in this issue, which has been an object of controversy since the late 1960s. Many analysts, however, feel that the joint duty requirements have, in connection with other duty required of an officer to attain a sufficient level of competence in his or her grade, simply made a 20-year career incapable of attainment — all of the service requirements cannot be "crammed into" 20 years.

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

Secretary of Defense Rumsfeld and other senior defense officials have suggested on several occasions that the existing 20-year retirement paradigm should be modified. In general, though, they have cautioned, however, that they do not want to cause undue alarm, or negate individual career decisions already made, by introducing such changes too abruptly. Discussion about such "reforms" — that is, cuts — in retired pay entitlements was muted in the aftermath of the September 11, 2001 attacks. However, the proposed "Defense Transformation for the 21st Century Act," a legislative proposal sent to the Congress by DOD in late April 2003, included, for the first time, provisions to allow the services to lengthen the maximum years of service of general and flag officers and be more flexible in their assignments. Specifically, the proposed Act would:

- extend the age limits for retirement of general/flag officers from the current 62 to 68, waiveable to 72 in some cases;

- eliminate mandatory retirement of general and flag officers after the current 30, 35, 38, and 40 years of service for, respectively, brigadier generals/rear admirals (lower half) (one-star officers; pay grade 0-7); major generals/rear admirals (two stars; pay grade 0-8); and lieutenant generals/vice admirals (three stars; pay grade 0-9); and full generals/admirals (four stars; pay grade 0-10);

- allow general and flag officers with more than 30 years of service to receive retired pay that is more than the current maximum of 75% of their retired pay computation base;

- eliminate a cap on the retired pay of general/flag officers, which results from the operation of laws that restrict active duty military basic pay; and

- reduce the number of years an officer in various grades would have to serve before being allowed to retire in that grade, for both general/flag officers and officers in grades 0-5 (lieutenant colonel/Navy commander) and 0-6 (colonel/Navy captain).

The net effects of these provisions would be to prevent the mandatory retirement of skilled high-level officers who might otherwise want to stay on active duty; give DOD and the military services more flexibility in managing the senior uniformed leadership of the services; allow generals and admirals to serve longer tours of duty and minimize too-frequent rotation of assignments; and provide greater compensation incentives related to the greater lengths of service. However, some opposed to them are concerned about longer terms for generals and admirals resulting in excessive stultification and stodginess in the senior uniformed leadership; an excessive slowing of promotions, as more people stay on active duty in the same grade for longer periods of time; and, combined with other measures in the proposed bill, a greater alignment of the senior generals and admirals with the senior appointed political leadership of DOD, and, hence, the Administration and political party in power.

Only one of the categories of military personnel management changes noted above that were contained in this "Defense Transformation" legislative proposal was adopted in either the House or Senate versions of the FY2004 National Defense Authorization Act — specifically, the reduction in years in grade before an officer is allowed to retire in that grade.

Retired Pay and Survivor Benefit COLAs

Military retired pay is protected against inflation by statute (10 USC 1401a). The Military Retirement Reform Act of 1986, in conjunction with recent changes in the FY2000 National Defense Authorization Act, provides for cost of living adjustments (COLAs) as indicated below. Congress has not modified the COLA formula since FY1996 (1995), although virtually every year since 1982 some COLA modifications, always with the aim of reducing costs and hence the payments to retirees, have been at least discussed. Therefore,

it is probably inadvisable to assume at any time that COLAs will be totally off the table in future Congresses. For further information on COLAs, see CRS Report 98-223, *COLAs for Military Retirees: Summary of Congressional and Executive Branch Action, 1982-2002 (FY1983-FY2003).*

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

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

COLAs for Pre-August 1, 1986 Entrants

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

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

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

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

Redux/$30,000 Cash Bonus Recipients. Those personnel who opt to have their retired pay computed in accordance with the Redux formula, and receive the $30,000 cash bonus, will have their COLAs computed as follows. Annual COLAs will be held to one percentage point below the actual inflation rate for retirees under age 62. Retirees covered by this new COLA formula would thus receive a 2.0% increase (rather than 3.0%) in their military retired pay under the hypothetical example described in the above paragraph. When a retiree reaches age 62, there will be a one-time recomputation of his or her annuity to make up for the lost purchasing power caused by the holding of COLAs to the inflation rate minus one percentage point. This recomputation will be applied to the old, generally more liberal retired pay computation formula on which retirees 62 or older will have their annuities computed (see the above subsection entitled *Retired Pay Computation Formula*),

compounding, for most retirees, the size of this one-time annuity increase. After the recomputation at 62, however, future COLAs will continue to be computed on the basis of the inflation rate minus one percentage point.

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

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 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 FY2001 was $539.6 billion; the estimated liability for FY2002 was $555.2 billion; for FY2003, $570.1 billion; and for FY2004, $586.7 billion.

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

Military Retirement Cost Trends

Because military retirement is an entitlement, rather than a discretionary program, its costs to the *total federal budget* (payments to current retirees and survivors) always rise modestly each year, due to a predictable slow rise in the number of retirees and survivors. The cost to DOD (estimated future retirement costs of current personnel) declined after FY1989 (the beginning of the post-Cold War drawdown), as the size of the force, and therefore the number of people who will retire from it in the future, declined. However, as the drawdown stabilized, so did the DOD budget costs of retirement. **Table 2** indicates the costs of military retired pay in federal budget outlays (payments to current retirees) and Department of Defense accrual outlays (money set aside to fund future retirees).

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

	Total Federal Budget Outlays	Accrual Outlays from DOD Budget
Estimated FY2004*	$36.7	$12.5
Estimated FY2003*	35.9	12.1
Actual FY2002*	35.1	12.9
Actual FY2001**	34.1	11.4
Actual FY2000**	32.9	11.6

**FY2004 Budget of the United States Government*. Appendix: 859.
***FY2003 Budget of the United States Government*. Appendix: 903.

Concurrent Receipt of Military Retired Pay and VA Disability Compensation

Military Retired Pay and VA Disability Compensation: Current Situation

Most people familiar with military retirement would probably agree that the most controversial military retirement issue that is currently the object of intense congressional interest is that involving concurrent receipt of military retired pay and Department of Veterans' Affairs (VA) disability compensation. Current law requires that military retired pay be reduced by the amount of any VA disability compensation received. For several years some military retirees have sought a change in law to permit receipt of all or some of both, and legislation to allow this has been introduced during the past several Congresses, frequently having co-sponsors well above half of both the House and the Senate. This issue is frequently referred to as "concurrent receipt," because it would involve the simultaneous receipt of two types of benefits. 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; in 2002, further legislation, known as "combat-related special compensation," or CSRC, was enacted that 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 George W. Bush Administration (and the Clinton Administration before it) has been consistently opposed to concurrent receipt. The Bush Administration had threatened to veto the FY2003 National Defense Authorization Act if the Act included a concurrent receipt provision. It did agree, obviously, to the quasi-concurrent receipt provision of the FY2003 National Defense Authorization Act, signed by the President on December 2, 2002 (see below).

VA Disability Compensation. To qualify for VA disability compensation, a determination must be made by the VA that the veteran sustained a particular injury or disease, or had a preexisting condition aggravated, while serving in the Armed Forces. Some

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

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

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

"Special Compensation" For Severely Disabled Retirees

The **FY2000, FY2001, and FY2002 National Defense Authorization Acts** authorized what was, in effect, *de facto* concurrent receipt for severely disabled military retirees, known in statute as "special compensation." In FY2003, monthly payments of $50 are authorized for retirees, both disability and nondisability, with 60% VA disability; $100 for 70% disabled retirees; $125 for 80%; $225 for 90%; and $325 for 100% VA disabled retirees, if the

disability rating was received from the VA within 4 years of retiring from military service. This compensation is limited by its statute to retired personnel with at least 20 years of service. It therefore is not available to retirees who retired with less than 20 years of service in accordance with the Temporary Early Retirement Authority (TERA) in effect during 1992-2001 (FY1993-FY2001) or with any disability retiree with less than 20 years of active duty. [10 USC 1413(c)(1)].

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

"Combat Related Special Compensation" (CSRC) for Certain Disabled Retirees

On December 2, 2002, the President signed the FY2003 National Defense Authorization Act (P.L. 107-314; 116 Stat. 2458). This followed the House and Senate approval, on November 12, 2002, of the conference report (H.Rept. 107-436) on this Act. Section 636 of the conference bill contains concurrent-receipt-generated provisions. Section 636 provides for a new category of DOD "special compensation" for certain military retirees. This benefit, entitled "Combat Related Special Compensation," or CRSC, by DOD, is available to 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.

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

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

Military *nondisability* retirees (those who do not retire from DOD based on any disability) may be eligible for this combat-disability special compensation, if they receive a VA disability rating [see subsection 1413a (e)(1)(B)(ii) of title 10, as enacted in the new law]. As noted above, the VA and the DOD disability determination processes are independent of each other. Military *disability* retirees will be entitled to this new combat-disability special compensation under specific circumstances. If they were retired for disability but were also entitled to have their retired pay computed on the basis of the nondisability formula (i.e., had at least 20 years of service in most cases), they will be entitled to any amount of the new special compensation to which the VA disability determination would entitle them, with one important exception. This latter exception would apply to retirees whose disability was so severe that having their retired pay computed in accordance with the percentage of disability would actually give them more money than if it were computed on the basis of their 20 years or more of service. For these retirees, their special compensation would be reduced by the difference between the two formulas. This is done on the assumption that to give them the extra due to disability, together with the VA disability compensation, would in fact be doing what the opponents of concurrent receipt have argued: giving a person two types of compensation for the same disability. The determination as to whether a retiree's disability is "combat-related" in accordance with the new statute will be made by DOD.

According to news reports, DOD has decided on a preliminary basis that the CSRC payments should *not* be subject to federal income tax.

This new entitlement became effective May 31, 2003, just meeting the deadline of 180 days after enactment contained in the FY2003 Act; i.e., June 2, 2003. DOD had to wrestle with the complex issues involved in defining exactly what kind of disabilities meet the criterion of combat-related other than those that can be directly attributed to receipt of a Purple Heart. According to DOD, "Payments for qualified retirees will accrue beginning June 1 [2003] with first payments possible on July 1 [2003]." Retirees will be "grandfathered" regarding the legislation; individuals who are already retired will be allowed to apply for the new benefit. Applications and information are available on two DOD web sites: [https://www.dmdc.osd.mil/crsc] or [http://web1.whs.osd.mil/ichome/ddeforms.htm]. Retirees may also phone the retirement services offices of their service for the necessary information.

Certain aspects of the CSRC may receive legislative attention in the 108th Congress. First, DOD has interpreted the new law as requiring the payment of the special compensation based on the disability compensation received by a veteran without regard to the veteran's dependents. The rate for a disabled veteran with a spouse, dependent child, and/or dependent parents is higher. Hence, the continued prohibition on actual concurrent receipt will require the "with dependents" rate to be deducted from the military retiree's DOD retired pay, but the CSRC will replace this loss with only the lesser rate for a veteran without dependents.

Second, DOD has interpreted the law as requiring reserve retirees to have at least 7,200 reserve retirement "points" to be eligible for CSRC. A reservist receives a certain number of retirement points for varying levels of participation in the reserves, or active duty military service. This is an extraordinarily high point level — in fact, it could only be attained by a reservist who had at least 20 years of *active duty* military service. However, the CSRC statute authorizes CSRC to be paid only to retirees with at least 20 years of service; hence, DOD feels it has no choice to require the equivalent of 20 years from reservists. The reserve and National Guard community may well seek to have this aspect of CSRC modified.

Concurrent Receipt Legislation in the 108th Congress

108th Congress Concurrent Receipt Action Now Seems Unlikely. It seemed virtually certain at the end of 2002 that concurrent receipt would be the object of intense legislative interest in the 108th Congress. The organized military retiree community had stated its dissatisfaction with the new "special compensation" enacted in the FY2003 National Defense Authorization Act, arguing that it provides a small benefit to a small number of retirees and, perhaps more importantly, leaves the statutory ban on concurrent receipt intact. At the same time, there was, and is, no indication that the Administration would be inclined to drop its strong opposition to repealing the concurrent receipt ban, up to and including a veto threat, as was the case with the FY2003 bill. However, the Iraq war and the concern over related military benefit matters appears, to a considerable degree, to have "crowded out" military compensation legislation not more related to active duty military and the reserve components, although efforts are under way to force concurrent receipt to the floor of both the House and Senate.

FY2004 Congressional Budget Resolution. The conference report on the FY2004 congressional budget resolution, reported on April 11, 2003, did *not* include a Senate provision allotting money for partial concurrent receipt in FY2004. The lack of provision in the budget resolution for any kind of concurrent receipt was a first indication, based on congressional action, of the probable lack of significant movement toward congressional action on concurrent receipt during 2003.

Previously, on March 25, the Senate had approved a floor amendment to its version of the FY2004 budget resolution offered by Senator Harry Reid, which would fund partial concurrent receipt for the period FY2004-FY2013. The "partial" nature of the concurrent receipt assumed in the amendment was twofold: it would have been limited to military retirees with at least a 60% service-connected disability; and it would have been phased in over the three-year period calendar year 2004 through calendar year 2006. In 2004, only 40% of the retired pay to which the beneficiaries would otherwise be entitled would have been paid out; in 2005, 60%; in 2006, 80%, and 100% only in calendar year 2007. Another amendment by Senator Reid that would have funded full concurrent receipt was submitted for printing on March 20, 2003 (S.Amdt. 342), but never actually proposed.

FY2004 National Defense Authorization Act/Armed Services Committees. On May 9 and May 14, 2003, the Senate and House Armed Services Committees, respectively, released their versions of the FY2004 National Defense Authorization Act. Neither bill, in a significant departure from recent previous years, contained any provisions related to concurrent receipt. On May 22, 2003, both houses passed their versions of the Act, with no change in the authorizing committees' lack of concurrent receipt provisions.

However, the Senate reopened the authorization bill for amendments on June 4, and on that date, Senator Reid's floor amendment to authorize full concurrent receipt, identical to similar amendments offered earlier and in past years, was passed by voice vote. In addition, a discharge petition is being circulated in the House to bring to bring to the House floor H.R. 303, which would authorize full concurrent receipt on a basis identical to that of Senator Reid's floor amendment.

However, most observers feel that, as was the case in 2002 during consideration of the FY2003 National Defense Authorization Act, the President will state his intention to veto any defense authorization bill that contains a concurrent receipt provision. This eventually forced Congress to abandon attempts to enact actual concurrent receipt in 2002 and, instead, create the CRSC. There is no way of knowing at this time how the issue may be resolved in 2003.

Costs of Concurrent Receipt

According to the most recent Congressional Budget Office (CBO) estimates, full concurrent receipt would 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 will be eligible in FY2004.

Costs of "Special Compensation" for Severely Disabled Retirees Enacted in 1999-2001 (FY2000-FY2002). CBO estimates that the "special compensation" enacted in the FY2000-2002 defense authorization acts would cost approximately $710 million over the period FY2003-FY2012. About 36,000 retirees are currently eligible.

Costs of the New "Combat Related Special Compensation (CRSC)" Enacted in 2002 (FY2003). Cost estimates for the CRSC vary widely, because estimates of the number of eligible beneficiaries and variables that will have to be settled by DOD's implementing regulations also vary. The most recent estimates of the cost during its first full year of operation, FY2004, vary considerably. CBO estimates $265 million (18,000 eligibles); the Office of Management and Budget (OMB), $269 million (no eligibles estimate); and DOD, $326 million (33,300 eligibles). Long-term cost estimates over the period FY2003-FY2012 vary as well. CBO projects about $6.0 billion; DOD, $3.7 billion; and OMB, $2.7 billion.

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

Pros and Cons of Concurrent Receipt

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

Major Arguments IN FAVOR of Concurrent Receipt.

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

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

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

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

Major Arguments AGAINST Concurrent Receipt.

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

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

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

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

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

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