



# Concurrent Receipt: Background and Issues for Congress

**Charles A. Henning**  
Specialist in Military Manpower Policy

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## Summary

“Concurrent Receipt” refers to the simultaneous receipt of two types of monetary benefits: military retired pay and Department of Veterans Affairs (VA) disability compensation. Prior to 2004, existing laws and regulations dictated that a military retiree could not receive two payments from federal agencies for the same purpose. As a result, military retirees with physical disabilities recognized by the Veterans’ Administration would have their retired pay “offset” or reduced dollar-for-dollar by the amount of their VA compensation.

Proponents for the concurrent receipt of both military retired pay and VA disability compensation have argued that these pays were for discrete and different purposes: military retired pay is post-service compensation for services rendered while VA compensation recognizes physical or mental disability incurred while in the service. Opponents have maintained that concurrent receipt is expensive, not supported by precedent and could result in similar offsets between other federal programs.

Legislative activity on the issue of concurrent receipt began in the late 1980s and culminated in the provision for Combat-Related Special Compensation (CRSC) in the Bob Stump National Defense Authorization Act for FY2003 (P.L. 107-314). Successive legislation since then has extended concurrent receipt to additional eligible populations and further refined and clarified the program. However, some potential beneficiaries continue to remain excluded from participation.

There are two common criteria that define eligibility for Concurrent Receipt: (1) all recipients must be military retirees and (2) they must also be eligible for VA disability compensation. There are two separate and distinct components that are commonly referred to as the Concurrent Receipt program: (1) Concurrent Retirement and Disability Payments (CRDP) and (2) Combat-Related Special Compensation (CRSC). A retiree cannot receive both CRSC and CRDP benefits. The retiree must choose whichever is most financially advantageous to him or her and may move back and forth between either benefit during an annual “open season”.

This report will address the two primary components of the concurrent receipt program: Combat-Related Special Compensation (CRSC) and Concurrent Retirement and Disability Payments (CRDP). It will also review the possible legislative expansion of the program to additional populations and provide several potential options for Congress to consider.

Most people familiar with military retirement would probably agree that concurrent receipt continues to be one of the most misunderstood and controversial military retirement issues and one that remains the object of intense public and congressional interest.

## Contents

Introduction .....	1
Military Retirement and VA Disability Compensation .....	2
Military Retirement.....	2
VA Disability Compensation .....	3
Interaction of DOD and VA Disability Benefits .....	3
Combat-Related Special Compensation (CRSC).....	4
Original Provisions .....	4
CRSC for Military Disability (Chapter 61) and Active Component TERA Retirees .....	5
CRSC for Reserve Retirees .....	5
CRSC Eligibility Summary .....	6
Concurrent Retirement and Disability Payments (CRDP) .....	6
Original Provisions .....	6
CRDP for Those Rated 100% Disabled .....	8
CRDP for Those Rated 100% Disabled Due to Unemployability .....	9
CRDP for Temporary Early Retirement Authority (TERA) Retirees.....	9
Comparison of CRSC and CRDP .....	10
The “Special Rule” for Disability Retirees.....	10
Background .....	10
The “Special Rule” .....	11
Retroactive Payments.....	12
Issues for Congress .....	13
Extend CRDP to Chapter 61 Disability Retirees .....	13
Eliminate the CRDP Phase-In or Adjust the Completion Date.....	14
Extend CRDP to those with a 40% or less VA Disability Rating.....	14
Combine CRSC and CRDP into a Single Program.....	14
Modify or Eliminate the “Special Rule” .....	14

## Tables

Table 1. Comparison of CRSC and CRDP .....	10
Table 2. Possible Phase-In of CRDP for Chapter 61 Retirees .....	13
Table B-1. CRDP Phase-in, 2005-2014.....	17
Table B-2. CRDP Compound Phase-In Percentages, 2005-2014 .....	18

## Appendixes

Appendix A. Service Contact Information .....	16
Appendix B. Operation of the CRDP Phase-In.....	17
Appendix C. CRSC Calculations for Disability Retirees .....	19

## **Contacts**

Author Contact Information .....	21
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## Introduction

“Concurrent Receipt” refers to the simultaneous receipt of two types of monetary benefits: military retired pay and Department of Veterans Affairs (VA) disability compensation. With several separate programs, varying eligibility criteria and several eligibility dates, most observers find the subject complex and somewhat confusing.<sup>1</sup> There are, however, two common criteria: first, all recipients are military retirees; second, they are also eligible for VA disability compensation. Beyond the basic eligibility criteria there are two separate and distinct components that are commonly referred to as making up the Concurrent Receipt program: (1) Concurrent Retirement and Disability Payments (CRDP) and (2) Combat-Related Special Compensation (CRSC). As of October 31, 2008, the Department of Defense (DOD) reported 241,182 retirees receiving CRDP while an additional 66,315 receive CRSC. Both of these programs are discussed in greater detail below.

Until 2004, the law<sup>2</sup> required that military retired pay be reduced dollar-for-dollar by the amount of any VA disability compensation received. This procedure was generally referred to as an “offset.” If, for example, a military retiree who received \$1,500 a month in retired pay and was rated by the VA as 70% disabled (and therefore entitled to approximately \$1,000 per month in disability compensation), the offset would operate to pay \$500 monthly in retired pay and the \$1,000 in disability compensation. The main advantage for the retiree was that the VA disability compensation was not taxable.

For many years some military retirees and advocacy groups sought a change in law to permit receipt of all, or some, of both payments 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. Opponents of concurrent receipt frequently refer to it as “double dipping” because they maintain that it represents two payments for the same condition.

The Bob Stump National Defense Authorization Act for FY2003 (NDAA), enacted in 2002, created a benefit known as “combat-related special compensation,” or CRSC. CRSC provides, for certain disabled retirees whose disability is combat-related, a cash benefit financially identical to what concurrent receipt would provide them. The FY2004 NDAA authorized, for the first time, actual concurrent receipt (now referred to as Concurrent Retirement and Disability Payments or CRDP), as well as a greatly expanded CRSC program. The Ronald W. Reagan NDAA for FY2005 further liberalized the concurrent receipt rules contained in the FY2004 NDAA and authorized immediate concurrent receipt for those rated by the VA totaling 100%. The FY2008 NDAA expanded concurrent receipt eligibility to include those who are 100% disabled due to unemployability and provided CRSC to those who were medically retired or retired prematurely due to force reduction programs prior to completing 20 years of service.

Most people familiar with military retirement would probably agree that concurrent receipt continues to be one of the most misunderstood and controversial military retirement issues and one that remains the object of intense public and congressional interest.

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<sup>1</sup> For a detailed discussion of the history of concurrent receipt, early legislative initiatives and potential alternatives, see CRS Report 95-469, *Military Retirement and Veterans’ Compensation: Concurrent Receipt Issues*, by Robert L. Goldich.

<sup>2</sup> 38 U.S.C. 5304-5304.

# Military Retirement and VA Disability Compensation

Any discussion of concurrent receipt requires an understanding of military retirement, VA disability compensation and the interaction of these two elements.

## Military Retirement

An active duty servicemember becomes entitled to retired pay, frequently referred to as “vesting,” upon completion of 20 years of service, regardless of age. A member who retires is immediately paid a monthly annuity based on a percentage of their final base pay or the average of their “high three” years of base pay, depending on when they entered active duty.<sup>3</sup> Retired pay accrues at the rate of 2.5% per year of service. As a result, a servicemember with 20 years of service is entitled to 50% of their computation base, 62.5% for 25 years of service, 75% for 30 years of service, and 100% for 40 years of service.<sup>4</sup>

An alternative retirement option, known as “Redux,” is also available for active duty servicemembers. Redux is a reduction of 1% in the multiplier for each year the retirement is less than 30 years of service. This results in 40% of base pay at 20 years of service, 57 ½ % at 25 years of service, but the full 75% at 30 and 100% for 40 years of service. After retirement, the annual COLA is also reduced by 1% each year but, there is a recomputation at age 62 when both the multiplier and COLA are adjusted to equal the “High Three” system. Members who elect Redux at their 15<sup>th</sup> year of service also receive a taxable \$30,000 Career Retention Bonus that can be paid in lump sum or spread over six annual increments.

Reserve component servicemembers also become eligible for retirement upon completion of 20 years of qualifying service, regardless of age. However, their retired pay calculation is based on a point system that results in a number of “equivalent years” of service.<sup>5</sup> In addition, a reserve component retiree does not usually begin receiving retired pay until reaching age 60.<sup>6</sup>

While retirement eligibility at 20 years of service is the norm for active component members and age 60 for reserve component members, there are some circumstances that result in earlier retirement. Servicemembers found to be unfit for continued service due to physical disability may be retired if the condition is permanent and stable and the disability is rated by DOD as 30% or greater. These retirees are generally referred to a “Chapter 61 retirees,” a reference to Chapter 61 of Title 10 which covers disability retirement.

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<sup>3</sup> See CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Charles A. Henning, for a detailed description of active duty retirement.

<sup>4</sup> The John Warner National Defense Authorization Act for FY2007 (Section 601, P.L. 109-364) extended the military pay table to 40 years of service and provided longevity pay increases beyond 30 years of service for the most senior enlisted, warrant officer and officer pay grades. As a result, a servicemember who retires with 40 years of service could qualify for 100% of base pay in retirement.

<sup>5</sup> See CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp.

<sup>6</sup> Section 614, P.L. 109-163, January 6, 2006 reduced the age for receipt of retired pay for reserve component members by three months for each aggregate of 90 days of certain types of active duty performed after January 28, 2008.

Personnel retired due to force management requirements and before completing 20 years of service are generally referred to as “TERA retirees” because the FY1993 National Defense Authorization Act<sup>7</sup> granted Temporary Early Retirement Authority (TERA) as a manpower tool to entice voluntary retirements during the drawdown of the early 1990s. This authority was in effect from 1992 to 2001. TERA retired pay is calculated in the usual way (2.5% times years of service) but there is a retired pay reduction of 1% for every year of service below 20.

Generally, military retired pay based on longevity is taxable. In certain instances, a portion of disability retired pay may be tax-free as discussed later.

## VA Disability Compensation

To qualify for VA disability compensation, a determination must be made by the VA that the veteran<sup>8</sup> 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.<sup>9</sup> 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 or retirement from service can be examined or reexamined later).

All VA disability compensation is tax-free, which makes receipt of VA compensation desirable, even with the operation of the offset.

As a general rule of thumb, DOD pays for longevity while the VA pays for disability.

## Interaction of DOD and VA Disability Benefits<sup>10</sup>

As veterans, military retirees can apply to the VA for disability compensation. 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. Typical

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<sup>7</sup> Section 4403, P.L. 102-484, October 23, 1992.

<sup>8</sup> While any person who has served in the armed forces of the United States is regarded as a veteran, a military retiree is someone who has generally completed a full active duty military career (almost always at least 20 years of service), or who is disabled in the line of military duty and meets certain length of service and extent of disability criteria, and who is eligible for retired pay and a broad range of nonmonetary benefits from the Department of Defense (DOD) after retirement. A veteran is someone who has served in the armed forces (in most, but not all, cases for a few years in early adulthood), but may not have either sufficient service or disability to be entitled to post-service retired pay and nonmonetary benefits from DOD. *Generally, all military retirees are veterans, but not all veterans are military retirees.*

<sup>9</sup> For 2008, monthly VA disability compensation ranged from \$117 for a 10% rating to \$2,527 for a 100% rating. Additional amounts are payable for special circumstances.

<sup>10</sup> For a full discussion of the similarities and differences between the DOD and VA disability rating systems, see CRS Report RL33991, *Disability Evaluation of Military Servicemembers*, by Christine Scott, et al.

examples include hearing loss, some cardiovascular problems and conditions related to exposure to Agent Orange.

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 rating schedule 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. Military disability retired pay, but not VA disability compensation, is usually taxable, unless related to a combat disability.

As a result of the current disability process, a retiree can have both a DOD and a VA disability rating and these ratings will not necessarily be the same percentage. The percentage determined by DOD is used to determine fitness for duty and may result in the medical separation or disability retirement of the servicemember. The VA rating, on the other hand, was designed to reflect the average loss of earning power. Recent studies<sup>11</sup> have consistently recommended a single, comprehensive medical examination that would establish a disability rating that could be used by both DOD and the VA. The FY2008 National Defense Authorization Act<sup>12</sup> requires a joint DOD/VA report on the feasibility of consolidating disability evaluation systems to eliminate redundancy and duplication. However, the current practice of multiple disability ratings continues while DOD and the VA conduct a one-year pilot program to test the viability of a single rating system. This test is being conducted at the Walter Reed Army Medical Center, the National Naval Medical Center at Bethesda and the Malcolm Grove Medical Center at Andrews Air Force Base.

## **Combat-Related Special Compensation (CRSC)**

### **Original Provisions**

The FY2003 NDAA<sup>13</sup>, as amended by the FY2004 NDAA<sup>14</sup>, 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 the VA; *or*
- A disability<sup>15</sup> rating resulting from involvement in “armed conflict,” “hazardous service,” “duty simulating war,” or “through an instrumentality of war.” This liberal definition of “combat-related” encompasses disabilities associated with any kind of hostile force; hazardous duty such as diving, parachuting, using

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<sup>11</sup> The President’s Commission on Care for America’s Returning Wounded Warriors (commonly referred to as the Dole-Shalala commission) and the Independent Review Group on Rehabilitative Care and Administrative Processes at Walter Reed Army Medical Center and National Naval Medical Center both contained similar recommendations concerning disability processing.

<sup>12</sup> Section 1612(a), P.L. 110-181, January 28, 2008.

<sup>13</sup> Section 636, P.L. 107-314, December 2, 2002.

<sup>14</sup> Section 642, P.L. 108-136, November 24, 2003.

<sup>15</sup> The FY2003 NDAA required that the disability be rated at least 60%. This requirement was repealed by the FY2004 NDAA.



dangerous materials such as explosives; 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.

As a result, a retiree who has been awarded a Purple Heart or who has a combat-related disability is eligible for CRSC consideration. Retirees must apply for CRSC to their parent service and the parent service is responsible for verifying that the disability is combat-related. This process is not automatic; it is application-driven. See **Appendix A** for service contact information.

CRSC payments will generally be equal to the amount of VA disability compensation that has been determined to be combat-related. The legislation does *not* end the requirement that the retiree’s military retired pay be reduced by the amount of the total VA disability compensation the retiree receives. Instead, CRSC beneficiaries will receive the financial equivalent of concurrent receipt as “special compensation,” but the statute states explicitly that it is *not* retired pay *per se*.

## **CRSC for Military Disability (Chapter 61) and Active Component TERA Retirees**

Servicemembers with a permanent DOD disability rating of 30% or greater may be retired and receive retired pay prior to completing 20 years of service. These retirees are generally referred to as “Chapter 61” retirees, a reference to Chapter 61, Title 10 which governs disability retirement. In addition to the Chapter 61 retirees with less than 20 years of service, those who voluntarily retired under the Temporary Early Retirement Authority (TERA) also have less than 20 years of service. The original CRSC legislation excluded those active duty members who retired with less than 20 years of service.

However, the FY2008 NDAA<sup>16</sup> expanded CRSC to include Chapter 61 and active duty TERA retirees effective January 1, 2008. Eligibility no longer requires a minimum number of years of service or a minimum disability rating (other than the 30% noted above for disability retirement). A 10% VA rating may qualify if it is combat-related. Eligible retirees must still apply to their parent service to validate that the disability is combat-related.

The FY2008 NDAA included almost all reserve disability retirees in the eligible CRSC population except those retired under 10 U.S.C. 12731b, a special provision which allows reservists with a physical disability not incurred in the line of duty to retire with between 15 and 19 creditable years of service.

## **CRSC for Reserve Retirees**

When CRSC was originally enacted in 2002, it required all applicants to have at least 20 years of service creditable for computation of retired pay. As a result, reserve retirees had to have at least 7,200 reserve retirement “points” to be eligible for CRSC. As noted earlier, a reservist receives a certain number of retirement points for varying levels of participation in the reserves, or active

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<sup>16</sup> Section 641, P.L. 110-181, January 28, 2008.

duty military service. The 7,200 point figure was extraordinarily high—in fact, it could only have been attained by a reservist who had many years of active duty military service in addition to a long reserve career. This initially and effectively denied CRSC to almost all reservists.

However, the CRSC statute in the FY2004 NDAA clarified the service requirement for reserve component personnel. It specified that personnel who qualify for reserve retirement by having at least 20 years of duty creditable for *reserve* retirement are eligible for CRSC. While eligible for CRSC, reserve retirees must be drawing retired pay (generally at age 60) to actually receive the CRSC payment.

## **CRSC Eligibility Summary**

The following populations of military retirees are eligible for CRSC:

- Former active component members who are Purple Heart recipients or those with combat-related disabilities compensable by the VA.
- Former reserve component members receiving retired pay who are Purple Heart recipients or those with a combat-related disabilities compensable by the VA.
- Disability retirees (Chapter 61) who are Purple Heart recipients or those with a combat-related disability compensable by the VA.
- Those retired under the Temporary Early Retirement Authority (TERA) and who are Purple Heart recipients or those with combat-related disabilities compensable by the VA.

Essentially, all military retirees, except reserve component members injured while not in a duty status, who have been awarded a Purple Heart or have combat-related disabilities compensable by the VA are eligible for CRSC.

Military retirees with service connected disabilities which are not combat-related as defined by the statute are not eligible for CRSC, but may be eligible for CRDP as discussed below.

## **Concurrent Retirement and Disability Payments (CRDP)**

### **Original Provisions**

The FY2004 NDAA<sup>17</sup> 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 became entitled to immediate concurrent receipt effective January 1, 2005. Depending on the degree of disability, the initial amount of retired pay that the retiree could have restored would vary from \$100 to \$750 per month, or the actual amount of the offset, whichever is less. By 2014, the offset in retired

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<sup>17</sup> Section 641, P.L. 108-136, November 24, 2003.

pay will be totally eliminated. This concurrent receipt benefit is available to all members who are entitled to military retired pay, except Chapter 61 retirees who must have 20 years of service for retired pay computation purposes to be eligible for CRDP.

The actual operation of the concurrent receipt benefit is complicated, due to its progressive implementation over several years as required by law. 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 current baseline offset (which is the lesser of VA disability compensation and the retired pay earned for years of service) 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

#### **2005**

In calendar year 2005, with the exception of 100% disabled retirees, military retirees entitled to VA disability compensation were entitled to any such amounts received in 2004, as noted above, and an additional 10% of the offset that remained in 2004.

#### **2006**

In calendar year 2006, the same procedure as in 2005 applied, but the retirees affected got an additional 20% of their remaining offset from 2005.

#### **2007**

In 2007, the same procedure applies but with affected retirees receiving an additional 30% of their remaining offset from 2006.

#### **2008**

In 2008, the same procedure applies but with affected retirees receiving an additional 40% of their remaining offset from 2007.

## 2009-2014

- 2009- An additional 50% of their remaining offset from 2008.
- 2010- An additional 60% of their remaining offset from 2009.
- 2011- An additional 70% of their remaining offset from 2010.
- 2012- An additional 80% of their remaining offset from 2011.
- 2013- An additional 90% of their remaining offset from 2012.
- 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 compounded percentage of the remaining offset for that year. Thus, a retiree who first retires in, say, 2006, with an 80% disability and \$1,319 in VA offset to his retired pay, will begin receiving an additional \$621 monthly of his or her retired pay (the \$350 that an 80% disabled retiree is entitled to, as noted above, plus the additional 28% of the remaining offset amount of \$969 (\$1,319 - \$350) or \$271, specified for 2006).

Because of the high initial amounts provided to severely disabled retirees and the compound nature of the offset restoral percentage, this 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. An example of the CRDP phase-in is at **Table B-1** in **Appendix B**. The impact of “front-loading” is demonstrated in **Table B-2** of **Appendix B**.

**A retiree cannot receive both CRSC and CRDP benefits.** The retiree may choose whichever is most financially advantageous to him or her and may move back and forth between either benefit during an annual “Open Season”<sup>18</sup> to maximize the payments received.

There are currently two groups of retirees who are **not** eligible for CRDP benefits. The first group is approximately 450,000 non-disability military retirees with service connected disabilities (not combat-related) that have been rated by the VA at 40% or less. The second group is Chapter 61 disability retirees (approximately 100,000) with service connected disabilities of 100% or less and with less than 20 years of service.

## CRDP for Those Rated 100% Disabled

The FY2004 NDAA provided concurrent receipt for those with service-connected disabilities (not Chapter 61) of 50% or greater as rated by the VA and phased-in this entitlement over a 10-year period. Those rated as 100% disabled were also included in the original phase-in requirement. However, many of the early legislative initiatives concerning concurrent receipt had focused on those who were 100% disabled as being most deserving of relief from the offset. Some observers felt that inclusion of this group in the phase-in process represented a potential inequity. As a

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<sup>18</sup> The “open season” typically last for the month of January.

result, the original legislation was modified by the FY2005 NDAA<sup>19</sup> which repealed the phase-in of concurrent receipt for those with 100% service-connected disabilities and provided full concurrent receipt effective January 1, 2005.

## **CRDP for Those Rated 100% Disabled Due to Unemployability**

After the enactment of the FY2005 NDAA, an issue arose about whether the authorization of full concurrent receipt for 100% disabled retirees should also apply to retirees with a physical disability rating of less than 100%, but with what the VA terms “Individual Unemployability” (IU)<sup>20</sup>, and therefore received a rating for compensation of 100%. The language in the FY2005 NDAA<sup>21</sup> stated that the immediate payment of full concurrent receipt applied to retirees “receiving veterans’ disability compensation for a disability rated at 100%....” The law did not mention the IU concept. According to individuals familiar with the issue, during the conference on the FY2005 NDAA, language explicitly including the 100% due to unemployability (with less than a 100% physical disability rating) was kept out of the final legislation on cost grounds.

The FY2006 NDAA<sup>22</sup> contained a partial step toward inclusion of the 100% due to unemployability (or 100% IU) by authorizing full concurrent receipt beginning on October 1, 2009, over four years earlier than the phase-in date of January 1, 2014 that was in the original law. The issue was addressed again in the FY2008 NDAA<sup>23</sup> which authorized full concurrent receipt retroactive to December 31, 2004. However, this new benefit would not be effective until October 1, 2008. According to DOD officials, payments will occur in two phases. In the first phase, the November 2008 retiree paychecks will reflect the full CRDP for these beneficiaries. Soon thereafter, at a date to be determined, the retirees will receive a lump sum retroactive payment back to the January 1, 2005 effective date.<sup>24</sup>

The retroactive lump sum payment, as a restoration of taxable military retired pay, represents taxable income in the year that it is received. As a result, amended tax returns are not an option.

## **CRDP for Temporary Early Retirement Authority (TERA) Retirees**

The FY1993 National Defense Authorization Act<sup>25</sup> 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 post-Cold War drawdown. TERA retired pay was calculated in the usual way except that there is an additional reduction of 1% for every year of service below 20. Part or

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<sup>19</sup> Section 642, P.L. 108-375, October 28, 2004, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

<sup>20</sup> The Individual Unemployability rating results from a VA decision that a service-connected disability makes a veteran unemployable even though an average person with a similar impairment could remain gainfully employed. The evaluation process also considers individual circumstances such as education, employment experience and other factors.

<sup>21</sup> Section 642(a), P.L. 108-375, October 28, 2004.

<sup>22</sup> Section 663, P.L. 109-163, January 6, 2006.

<sup>23</sup> Section 642, P.L. 110-181, January 28, 2008.

<sup>24</sup> Philpott, Tom, “‘VA Retro Pay’ Review Set,” *Military.Com*, July 24, 2008.

<sup>25</sup> Section 4403, P.L. 102-484, October 23, 1992.

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.

TERA retirees are eligible for both CRSC and CRDP even though they have less than 20 years of service. The “special rule” for disability retirees (discussed below) does not apply to TERA retirees since TERA was not a disability retirement, but rather a regular retirement but for those with less than 20 years of service.

## Comparison of CRSC and CRDP

CRSC and CRDP are somewhat similar but also unique and different. The table below summarizes some of the similarities and differences between CRSC and CRDP.

**Table 1. Comparison of CRSC and CRDP**

	CRSC	CRDP
Concurrent Receipt	Essentially full concurrent receipt for disabilities determined to be combat-related	Partial concurrent receipt until completion of the phase-in (2014)
Enrollment	Must apply to parent service for verification that disability is combat-related	Automatic—initiated by DFAS
Type of Compensation	Special compensation (not retired pay)	Restored retired pay
Tax Liability	Non-taxable	Taxable
Court Ordered Liability	Court ordered division does not apply	Court ordered division applies
Subject to Garnishment for Alimony and/or Child Support	Yes	Yes

**Note:** DFAS is the Defense Finance and Accounting Service.

## The “Special Rule” for Disability Retirees

### Background

In 1891 Congress first prohibited payment of both military retired pay and a disability pension since it represented dual or overlapping compensation for the same purpose. The original law was modified in 1941 and the present system of VA disability compensation offsetting military retired pay was adopted in 1944. Under this system, retired military personnel are required to waive a portion of their retired pay equal to the amount of VA disability compensation, a dollar-for-dollar offset.<sup>26</sup>

<sup>26</sup> For a detailed explanation of the original and later laws, see CRS Report 95-469, *Military Retirement and Veterans' Compensation: Concurrent Receipt Issues*, by Robert L. Goldich.

Today, servicemembers determined to be unfit for continued service and who have a permanent and stable disqualifying condition may qualify for disability retirement, commonly referred to as a Chapter 61 retirement. Disability retirement eligibility is based on having a DOD disability rating of 30% or greater and at least eight years of creditable service *or* a disability resulting from active duty or in the line of duty.<sup>27</sup> As a result, some disability retirees are retired before becoming eligible for longevity retirement while others have completed 20 or more years of service.

A servicemember retired for disability may select one of two available options for calculating their monthly retired pay:<sup>28</sup>

1. Longevity Formula. Retired pay is computed by multiplying the years of service times 2.5% and then times the pay base.
2. Disability Formula. Retired pay is computed by multiplying the DOD disability percentage by the pay base.

The maximum retired pay calculation under either formula cannot exceed 75% of base pay.<sup>29</sup> The retired pay computed under the disability formula is fully taxed unless the disability is the result of a combat-related injury. Since the disability percentage method usually results in higher retired pay, it is most commonly selected.

### **The “Special Rule”**

As noted earlier, an individual cannot receive two separate lifelong government annuities from federal agencies for the same purpose or qualifying event, i.e. disability retired pay and VA disability compensation. To preclude this, the “special rule” states that:

the amount of the payment ... for any month shall be reduced by the amount (if any) by which the amount of a member’s retired pay under Chapter 61...exceeds the amount equal to 2 ½ percent of the member’s years of creditable service multiplied by the member’s retired pay base...<sup>30</sup>

Application of the “special rule” therefore caps the concurrent receipt payment at the level to which the retiree could have qualified based solely on years of service or longevity. In some instances, the “special rule” could limit or completely eliminate the concurrent receipt payment. In other instances, application of the rule may not result in any changes. Each situation is unique (rank, years of service, DOD and VA disability ratings, and the disability percentage attributable to combat) and requires independent calculations.

It appears that those most vulnerable to the reduction of CRSC due to the “special rule” will be active duty servicemembers with significantly less than 20 years of service and a high VA disability rating. Others potentially impacted would be reserve members with little active duty.

Several examples of an CRSC calculations for disability retirees are included at **Appendix C**.

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<sup>27</sup> 10 U.S.C. 1201.

<sup>28</sup> 10 U.S.C. 1401.

<sup>29</sup> 10 U.S.C. 1401.

<sup>30</sup> 10 U.S.C. 1413a(b)(3) for CRSC and 10 U.S.C. 1414 for CRDP.

## Retroactive Payments

Responsibility for making payments under the original Concurrent Receipt legislation was assigned to the Defense Finance and Accounting Service (DFAS) in coordination with the Department of Veterans' Affairs (VA). However, because of statutory changes, difficulties in policy development, incompatible automated systems, and the timing of the CRSC and CRDP programs, a large number of retirees became entitled to retroactive payments between April 2004 and August 2006. The situation was further exacerbated by retirees whose disability rating was changed (increased or decreased) and by retirees who migrated between CRDP and CRSC as combat-related status was approved by the services or during an annual Open Season that permitted some retirees to select between CRDP and CRSC. For retirees whose disability rating was increased, the higher payment is retroactive to the date that they applied for reevaluation. Ex-spouse pay entitlements have also complicated pay calculations for those receiving retroactive CRDP payments. As a result of these difficulties, in September 2006, DFAS initiated a "Retro Project" to address the timeliness in fully compensating these retirees.

An existing DFAS contract with Lockheed Martin was expanded to include the processing of retroactive payments. The original intent was to fully automate the process but the software that was developed had an error rate of 17% and could not be used.<sup>31</sup> As a result, processing resorted to manual calculations, many of which were lengthy, complex, and time consuming. The processing was accomplished on a "first in, first out" basis so even some of the more straightforward cases were delayed while earlier, but complicated, cases were processed. In other instances, required information was located in VA Regional Offices rather than a central repository and took time to retrieve and forward to DFAS.

When the Retro Project began in September 2006, it was estimated that the population of potentially eligible retirees was approximately 133,000. As the program progressed, an additional 85,000 additional retirees were identified for a total population in excess of 215,000.<sup>32</sup> This population could be owed back payments from DOD, VA or both. In other cases, no additional payments were due.

Since the originally projected completion date of November 15, 2007, the Retro Project experienced persistent missed deadlines and failed to adequately communicate with the affected retiree population even though a Hotline and website were established to respond to inquiries. Many retirees waited for months or even years for their long-awaited retroactive payments. It is estimated that 8,700<sup>33</sup> retirees died while awaiting their retroactive payments and the payment will now go to their surviving spouses or the retiree's estate.

A recent investigation into the Retro Project by the House Oversight and Government Reform Subcommittee on Domestic Policy revealed significant program delays and poor performance. The subcommittee report<sup>34</sup>, released in conjunction with a hearing on the Retro Project, found

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<sup>31</sup> Philpott, Tom, "VA Retro Pay: A Deadline Missed," Military.Com, November 30, 2007.

<sup>32</sup> William H. McMichael, "Report Questions Retro-Pay Denials," Army Times, July 28, 2008.

<sup>33</sup> Military Officers' Association of America, "Congressional Report Blasts VA Retro Program," July 31, 2008.

<sup>34</sup> Staff Report of the Domestic Policy Subcommittee Majority Staff, Oversight and Government Reform Committee, "Die or Give Up Trying": How Poor Contractor Performance, Government Mismanagement and the Erosion of Quality Controls Denied Thousands of Disabled Veterans Timely and Accurate Retroactive Retired Pay Awards, July 15, 2008. The report is available at <http://domesticpolicy.oversight.house.gov/documents/20080715083250.pdf>.



that approximately 60,051 payments and over 28,000 retiree notifications that denied Retro Pay were made without a required quality assurance review. The review had been circumvented in an effort to expedite payments and eliminate the backlog. At the hearing, DFAS officials committed to a complete quality assurance review of all of these cases.

According to the DFAS website,<sup>35</sup> all retroactive accounts had been processed by July 20, 2008 and DFAS had paid out over \$149 million in entitlements. However, another cycle of retroactive payments may be required by the recent extension of concurrent receipt to those rated as 100% due to unemployability by the VA. This legislation requires that payments commence on October 1, 2008 but will be retroactive to December 31, 2004.

It appears that there will always be some level of retroactive payment activity required due to the time it takes the VA to process disability claims. In these instances, payments are generally made retroactive to the date of application.

## Issues for Congress

### Extend CRDP to Chapter 61 Disability Retirees

As previously discussed, the FY2008 NDAA extended CRSC eligibility to Chapter 61 retirees who retired due to combat-related physical disability prior to completing 20 years of service. However, Chapter 61 retirees with service-connected disabilities rated less than 50% or with less than 20 years of service are not eligible for concurrent receipt (CRDP). Congress could expand the CRDP provision to include this cohort. This option would extend CRDP eligibility to approximately 100,000 additional disability retirees at an estimated 10-year cost of \$5.8 billion.

It appears that the FY2010 President's Budget may recommend extending CRDP to Chapter 61 retirees, a population that is currently excluded. While the actual budget documents have not yet been released, the Office of Management and Budget (OMB) has stated that, "(T)he budget also contains a proposal to expand receipt of military pay and Veterans' Disability Compensation to all retirees receiving disability retired pay."<sup>36</sup> This suggests that CRDP may be extended to Chapter 61 retirees through a 5-year phased program:

**Table 2. Possible Phase-In of CRDP for Chapter 61 Retirees**

Year	Eligible Population
2010	VA disability rating of 90-100%, including 100% unemployables
2011	VA disability rating of 70% or greater
2012	VA disability rating of 50% or greater
2013	VA disability rating of 30% or greater
2014	Any VA disability rating

<sup>35</sup> <http://www.dfas.mil/retiredpay/retroactivepayment.html>.

<sup>36</sup> Office of Management and Budget, *A New Era of Responsibility: Renewing America's Promise*, February 26, 2009.

Because of the phased approach to this implementation, the cost may be lower than noted above.

## **Eliminate the CRDP Phase-In or Adjust the Completion Date**

As noted earlier, the CRDP phase-in from 2004 to 2014 was “front loaded” so that most retirees would receive most of their restored retired pay within a few years of enactment of the original legislation in 2004. As demonstrated by the CRDP calculations at **Appendix B**, savings beyond 2009 are incremental, at best. This suggests that the phase-in could be eliminated early at relatively low cost. According to a DOD estimate, the phase-in could be eliminated in 2011, three years earlier than the current schedule, at a cost of \$40 million. This option would impact approximately 160,000 retirees.

## **Extend CRDP to those with a 40% or less VA Disability Rating**

At present, only those military retirees with service-connected disabilities rated at 50% or greater are eligible for CRDP. Congress could revise the concurrent receipt legislation to include the entire population of military retirees with service-connected disabilities. This option would extend CRDP to approximately 450,000 additional retirees at an estimated 10-year cost of \$22.3 billion.<sup>37</sup>

## **Combine CRSC and CRDP into a Single Program**

With five years remaining for the CRDP phase-in and only two eligible populations still excluded from concurrent receipt benefits, Congress could combine both programs (CRSC and CRDP) into a single, comprehensive program. If this were done, any military retiree, retired for longevity or disability, with a VA disability rating would be eligible. A combined program such as this would be equitable, reduce confusion, eliminate redundant administration and minimize errors through total automation of the process. It would also obviate the need for an application process (CRSC) and potentially eliminate the need for an annual Open Season.

## **Modify or Eliminate the “Special Rule”**

With the extension of CRSC to Chapter 61 disability retirees, the “special rule” may soon begin to factor significantly into the concurrent receipt calculations. For those whose CRSC payment is limited or eliminated by the “special rule”, there may be a perceived inequity between CRSC recipients with 20 or more years of service (longevity retirees) and Chapter 61 (disability retirees who generally have less than 20 years of service) retirees, especially for disability retirees from Operation Iraqi Freedom (OIF) and Operation Enduring Freedom (OEF).

To resolve this potential issue, Congress could modify or eliminate the “special rule” or limit its application to specific military operations. However, some observers may note that eliminating or modifying the “special rule” would result in paying for the same disability twice, by DOD and by

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<sup>37</sup> Cost estimates in this section were provided by the Comptroller, Office of the Secretary of Defense.

VA. It might also complicate future initiatives to simplify and streamline post service compensation whereby DOD would only compensate for years of service and the VA would only compensate for disability, as recommended by Dole/Shalala.<sup>38</sup>

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<sup>38</sup> “Serve, Support, Simplify: Report of the President’s Commission on Care for America’s Returning Wounded Warriors”, co-chaired by Bob Dole and Donna Shalala, July 2007.

## **Appendix A. Service Contact Information**

The services have each established websites and toll-free phone numbers to assist retirees with their Concurrent Receipt concerns.

### **Army**

U.S. Army Human Resources Command  
Attn: AHRC-DZB-CRSC  
200 Stovall Street  
Alexandria, VA 22332-0470  
Phone: 1-866-281-3254  
website: <http://www.crsc.army.mil/>

### **Navy and Marine Corps**

Secretary of the Navy  
Council of Review Boards  
Attn: CRSC Branch  
720 Kennon Street SC, Suite 309  
Washington Navy Yard, D.C. 20374-5023  
Phone: 1-877-366-2772  
website: <http://www.hq.navy.mil/ncpb/CRSCB/combatrelated.htm>

### **Air Force**

U.S. Air Force  
Disability Division (CRSC)  
HQ AFPC/DPPDC  
550 C Street West, Suite 6  
Randolph AFB, TX 78150-4708  
Phone: 1-800-616-3775  
website: [http://ask.afpc.randolph.af.mil/main\\_content.asp?prods3=285&prods2=66&prods1=56](http://ask.afpc.randolph.af.mil/main_content.asp?prods3=285&prods2=66&prods1=56)

## Appendix B. Operation of the CRDP Phase-In

Assume that in 2004 a 20-year military retiree with a 50% VA-rated disability is entitled to \$1,250 a month in retired pay and \$728 per month in disability compensation. With the offset in effect, the retiree would have received \$522 per month in retired pay (\$1,250 minus \$728) and \$728 per month from the VA for a monthly total of \$1,250.

With CRDP, the individual would receive an additional \$100 per month in retired pay restoration (the rate for 50% disabled) in 2004 for a monthly retired pay of \$622 ( \$522 plus \$100 for the 50% disability) and \$728 per month from the VA.

The remaining offset of \$728 would be phased-in between 2005 and 2014 as follows:

**Table B-1. CRDP Phase-in, 2005-2014**

Year	Percentage Increase	Added to Retired Pay Of	Adjusted Retired Pay
2005	+10% of (728-100) + 100 = 163	\$522	\$685
2006	+20% of (728-163) + 163 = 276	\$522	\$798
2007	+30% of (728-276) + 276 = 411	\$522	\$933
2008	+40% of (728-411) + 411 = 538	\$522	\$1,060
2009	+50% of (728-538) + 538 = 633	\$522	\$1,155
2010	+60% of (728-633) + 633 = 690	\$522	\$1,212
2011	+70% of (728-690) + 690 = 717	\$522	\$1,239
2012	+80% of (728-717) + 717 = 726	\$522	\$1,248
2013	+90% of (728-726) + 726 = 728	\$522	\$1,250
2014	Phase-In Complete. Retiree would receive \$1,250 per month in retired pay and \$728 per month in disability compensation for a total of \$1,980 when he/she had been receiving only \$1,250 prior to CRDP.		

**Note:** This example does not reflect annual Cost-of-Living Allowance (COLA) increases to retired pay or increases in VA disability compensation. Calculations have been rounded to whole dollar amounts.

a. The formula for this calculation is:

$$\text{___\%} \times (\text{Current Baseline Offset-Prior Year CRDP}) + \text{Prior Year CRDP} = \text{Annual Retired Pay Increase}$$

Using the above example and the following table, the amount of retired pay can be computed for any year without first having to compute all prior years from 2004 to date, as done above. For instance, the amount of retired pay in 2008 would be found from the formula:

$$((\text{Current Baseline Offset} - 2004 \text{ Base}) \times \text{Phase-in \%}) + 2004 \text{ Base} = \text{CRDP, thus}$$

$$((\$728 - \$100) \times 69.76\%) + \$100 = \text{CRDP,}$$

$$(\$628 \times 69.76\%) + \$100 = \text{CRDP,}$$

$$\$438 + \$100 = \$538 = \text{CRDP for 2008}$$

**Table B-2. CRDP Compound Phase-In Percentages, 2005-2014**

<b>Year</b>	<b>Compound Percentage Amount</b>
2005	10.00%
2006	28.00%
2007	49.60%
2008	69.76%
2009	84.88%
2010	93.95%
2011	98.18%
2012	99.64%
2013	99.96%
2014	100%

**Source:** Comptroller, Office of the Secretary of Defense

**Note:** This example does not reflect the annual Cost-of-Living Allowance (COLA) increases to retired pay or increases in VA disability compensation

## Appendix C. CRSC Calculations for Disability Retirees

Several examples of the CRSC calculations that demonstrate the effect of the “Special Rule” would include the following:

**Example 1:** Private First Class (E3); four years of service; \$1,800 pay base; 40% DOD disability rating; 60% VA disability rating (\$900 per month).<sup>39</sup>

Prior to concurrent receipt, this disabled retiree would have received \$720 per month in disability retired pay based on disability percentage (\$1,800 pay base x 40%) that would have been totally offset by \$900 in VA compensation and therefore would have received only the \$900 per month in VA disability pay.

However, once the parent service has confirmed that all of the VA disability rating is combat-related the member would be entitled as follows:

First, determine the most advantageous retirement formula (longevity or disability):<sup>40</sup>

1. Longevity. 4 years x 2.5% (annual retirement accrual) = 10% x \$1,800 pay base = \$180 per month.

*or*

2. Disability Retired Pay. 40% (DOD disability rating) x \$1,800 (pay base) = \$720 per month.

Second, determine the retired pay after the offset:

$$\$720 \text{ (gross retired pay)} - \$900 \text{ (VA disability compensation)} = \$0.$$

Third, determine the maximum CRSC amount (the lesser of gross retired pay and VA disability compensation determined to be combat-related):

$$\$720 \text{ (gross retired pay)} \text{ or } \$900 \text{ (combat-related VA disability compensation)} = \$720 \text{ (maximum CRSC).}$$

Finally, apply the disability “Special Rule”:

Reduce the maximum CRSC amount (\$720) by the amount the gross retired pay exceeds the longevity retired pay (this amount represents that amount paid by DOD strictly for disability):

$$\$720 - (\$720 - \$180) = \$720 - \$540 = \$180$$

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<sup>39</sup> Amounts for the pay base and VA disability compensation closely resemble the rates in effect for 2008 but have been rounded for the sake of simplicity.

<sup>40</sup> 10 U.S.C. 1401(b) allows the individual to select the formula that is most advantageous to them. For the purpose of these examples, it is assumed that the formula that yields the highest monthly retired pay is the one chosen.

With CRSC, this disabled retiree would receive \$0 from DOD in retired pay, \$180 in CRSC and \$900 in VA disability compensation or a total of \$1,080 per month, an increase of \$180 per month.

**Example 2:** Sergeant (E5); eight years of service; \$2,500 pay base; 70% DOD disability rating; VA disability rating of 90% (\$1,500 per month).

Prior to concurrent receipt, this disabled retiree would have received \$1,750 per month in disability retired pay that would have been offset by \$1,500 in VA disability pay for net retired pay of \$250 plus \$1,500 in VA disability compensation.

However, once the parent service has confirmed that all of the VA disability rating is combat-related the member would be entitled as follows:

First, determine the most advantageous retirement formula (longevity or disability):

1. Longevity.  $8 \text{ years} \times 2.5\% = 20\% \times \$2500 \text{ pay base} = \$500$ .

*or*

2. Disability Retired Pay.  $70\% \text{ (DOD disability rating)} \times \$2,500 \text{ (pay base)} = \$1,750$ .

Second, determine the retired pay after the offset:

$\$1,750 \text{ (gross retired pay)} - \$1,500 \text{ (VA disability compensation)} = \$250$ .

Third, determine the maximum CRSC amount (the lesser of gross retired pay and VA disability compensation determined to be combat-related):

$\$1,750 \text{ (gross retired pay)} \text{ or } \$1,500 \text{ (combat-related VA disability compensation)} = \$1,500$  (maximum CRSC).

Finally, apply the disability “Special Rule”:

Reduce the maximum CRSC amount (\$1,500) by the amount gross retired pay exceeds the longevity retired pay (this amount represents that amount paid by DOD strictly for disability):

$\$1,500 - (\$1,750 - \$500) = \$1,500 - \$1,250 = \$250$ .

With CRSC, this disabled retiree would receive \$250 from DOD in retired pay, \$250 in CRSC and \$1,500 in VA disability compensation or a total of \$2,000 per month, an increase of \$250.



## **Author Contact Information**

Charles A. Henning  
Specialist in Military Manpower Policy  
chenning@crs.loc.gov, 7-8866