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Concurrent Receipt: Background and Issues for Congress

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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 VA 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 time in service, while VA compensation recognizes physical or mental disability incurred while in the service. Opponents have maintained that concurrent receipt is expensive, is not supported by precedent, and could result in the elimination of currently existing, similar offsets between other federal programs.

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

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 Fiscal Year 2003 (P.L. 107-314). Successive legislation since then has added CRDP, extended concurrent receipt to additional eligible populations, and further refined and clarified the program.

Legislation enacted since 2003 has incrementally expanded the eligible population. As of September 2016 there were 529,117 retirees receiving CRDP, with an additional 91,305 receiving CRSC at a total annual cost of $11.3 billion.[1] However, there are still approximately 450,000 military retirees who are receiving VA disability compensation but are not eligible for concurrent receipt. Determining whether to make some or all of this population eligible for concurrent receipt remains a key point of contention in Congress. The Congressional Budget Office (CBO) has estimated that to extend benefits to all veterans who would be eligible for both disability benefits and military retired pay would cost $30 billion from 2015 to 2024. In 2016, CBO estimated that eliminating concurrent receipt would save the government $139 billion between 2018 and 2026.

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. With regard to the two separate and distinct components that are commonly referred to as the Concurrent Receipt program, an eligible retiree cannot receive both Concurrent Retirement and Disability Payments (CRDP) and Combat-Related Special Compensation (CRSC). 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."

Concurrent receipt continues to be an often misunderstood and controversial military retirement issue and one that remains the object of intense public and congressional interest.

[1] DOD Office of the Actuary, "Statistical Report on the Military Retirement System: Fiscal Year 2016," July 2017, p. 199.

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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. 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 September 2016, the Department of Defense (DOD) reported that 529,117 retirees receiving CRDP, with an additional 91,305 receiving CRSC at a total annual cost of $11.3 billion.[2]

Until 2004, the law required that military retired pay be reduced dollar-for-dollar by the amount of any VA disability compensation received.[3] This procedure was generally referred to as an "offset." If, for example, a military retiree 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 only 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. Opponents of concurrent receipt frequently referred to it as "double dipping" because they maintained that it represented two payments for the same condition.

Most of the major changes to these programs have been made through the annual National Defense Authorization Act (NDAA). The FY2003 NDAA (P.L. 107-314) created a benefit known as "Combat Related Special Compensation," or CRSC. CRSC provided, for certain disabled retirees whose disability is combat-related, a cash benefit financially identical to what concurrent receipt would provide them. The FY2004 NDAA (P.L. 108-136) 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 FY2005 NDAA (P.L. 108-375) 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.

Concurrent receipt continues to be an often misunderstood and controversial military retirement issue and one that remains the object of intense public and congressional interest.

[2] DOD Office of the Actuary, "Statistical Report on the Military Retirement System: Fiscal Year 2017," July 2017, p. 199.

[3] 38 U.S.C. §§5304-5304.

Military Retirement and VA Disability Compensation

An understanding of military retirement, VA disability compensation, and the interaction of these two elements is helpful in discussing concurrent receipt.

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.[4] Retired pay accrues at the rate of 2.5% per year of service for those who have entered the service prior to January 1, 2018, and 2.0% for those entering service on or after January 1, 2018. For example, an active component member who retires in 2017 with 20 years of service is entitled to 50% of their computation base (2.5% times 20), 62.5% for 25 years of service, 75% for 30 years of service, and 100% for 40 years of service.[5] An alternative retirement option, known as "Redux," is also available for certain active duty servicemembers, depending on their date of entry.[6]

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.[7] In addition, a reserve component retiree does not usually begin receiving retired pay until reaching age 60.[8]

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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[4] CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck, for a detailed description of active duty retirement.

[5] 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. However, in the FY2015 Carl Levin and Howard P. "Buck" McKeon National Defense Authorization Act. (P.L. 113-291 §622), Congress reinstated a cap on retired pay for general and flag officers at the Executive Level II salary ($183,300 for 2015). This change applies to only years served after December 31, 2014.

[6] 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. To compensate for the reduced annuity and lower COLA rate, members who elect Redux at their 15th year of service receive a taxable $30,000 Career Retention Bonus that can be paid in lump sum or spread over six annual increments.

[7] See CRS Report RL30802, *Reserve Component Personnel Issues: Questions and Answers*, by Lawrence Kapp and Barbara Salazar Torreon.

[8] 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. Attempts since then to make this benefit retroactive to September 11, 2001 have not been successful.

Personnel retired due to force management requirements and before completing 20 years of service are generally referred to as "TERA retirees" because the National Defense Authorization Act for Fiscal Year 1993[9] 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 sustained a particular injury or disease, or had a preexisting condition aggravated, while serving in the Armed Forces.[10] 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 direct arithmetic relationship between the amounts of money paid for each step. Each percentage rating entitles the veteran to a specific level of disability compensation.[11] 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[12]

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

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[9] Section 4403, P.L. 102-484, October 23, 1992.

[10] 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 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.*

[11] For 2016, monthly VA disability compensation for unmarried veterans ranged from $133 for a 10% rating to $2,915 for a 100% rating. All VA disability compensation rates are available at http://www.benefits.va.gov/COMPENSATION/resources_comp01.asp.

[12] 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 and Don J. Jansen.

The DOD and VA disability rating systems have much in common, but there are also 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. Studies over the past several years have consistently recommended a single, comprehensive medical examination that would establish a disability rating that could be used by both DOD and the VA.[13]

The National Defense Authorization Act for Fiscal Year 2008 required a joint DOD and VA report on the feasibility of consolidating disability evaluation systems to eliminate duplication by having one medical examination and a single-source disability rating.[14] As a result, DOD and the VA initiated a one-year pilot program, now called the Integrated Disability Evaluation System (IDES), 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. The program was expanded to other sites in 2009 and 2010 and since September 2011, all new disability retirement cases at facilities worldwide have been processed through IDES.[15]

Combat-Related Special Compensation (CRSC)

The FY2003 NDAA,[16] as amended by the FY2004 NDAA,[17] 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[18] 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, or using dangerous materials such as

[13] 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.

[14] Section 1612(a), P.L. 110-181, January 28, 2008.

[15] U.S. Government Accountability Office, *Military Disability System; Improved Monitoring Needed to Better Track and Manage Performance*, GAO-12-676, August 2012.

[16] Section 636, P.L. 107-314, December 2, 2002.

[17] Section 642, P.L. 108-136, November 24, 2003.

[18] The FY2003 NDAA required that the disability be rated at least 60%. This requirement was repealed by the FY2004 NDAA.

explosives; individual training and unit training and exercises and maneuvers in the field; and "instrumentalities of war."[19]

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.

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 are to receive the financial equivalent of concurrent receipt as "special compensation," but the statute states explicitly that it is *not* retired pay *per se.* CRSC payments for military servicemembers are paid from the Department of Defense Military Retirement Fund.[20]

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) during the military drawdown of the early to mid-1990s 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[21] 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 duty military service. The 7,200-point figure was extraordinarily high; it could only have been

[19] Instrumentalities of war include vehicles, vessels, or devices designed primarily for military service, for example combat vehicles, Navy ships, and military aircraft. Injuries associated with instrumentalities of war may also be those associated with, for example, munitions explosions or inhalation of gases or vapors in combat training.

[20] For more on the DOD Military Retirement Fund see CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck.

[21] Section 641, P.L. 110-181, January 28, 2008.

attained by a reservist who had many years of active duty military service in addition to a long reserve career. Initially this law, as enacted, 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

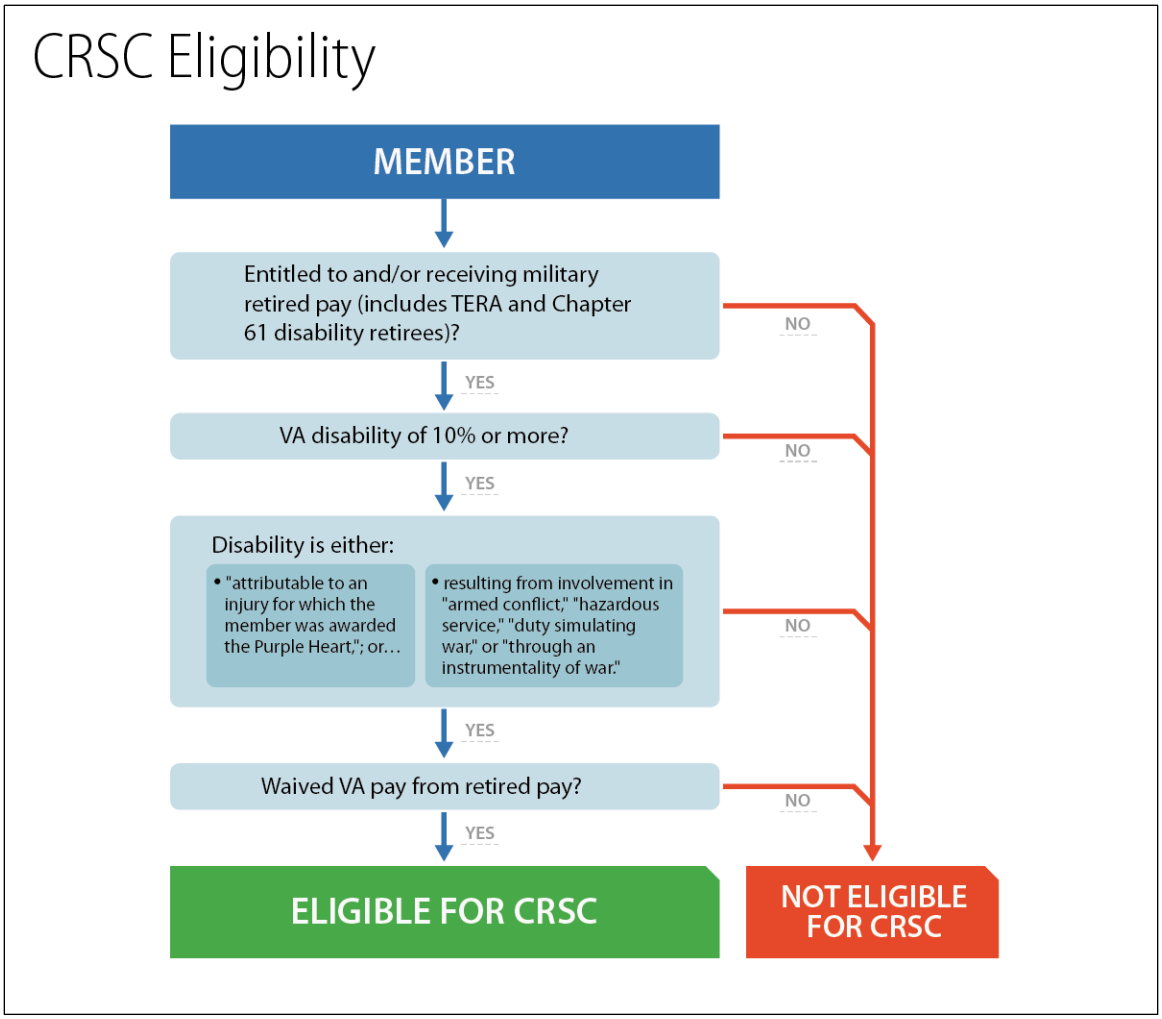
The following populations of military retirees are eligible for CRSC:

- 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, with the exception of reserve component members injured while not in a duty status, all military retirees 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.

Figure 1. CRSC Eligibility



Source: CRS, Title 10 of the United States Code.

Notes: "Member" refers to a retired member of the Armed Forces. Temporary Early Retirement Authority (TERA) retirees are those retired with less than 20 years of service due to force management requirements. Disability ratings are awarded in 10% increments. "VA pay" is veteran disability compensation.

Concurrent Retirement and Disability Payments (CRDP)

The FY2004 NDAA[22] 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 was to be phased in over a 10-year period, from 2004 to 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 was less. This concurrent receipt benefit was available to all members who are entitled to military

[22] Section 641, P.L. 108-136, November 24, 2003.

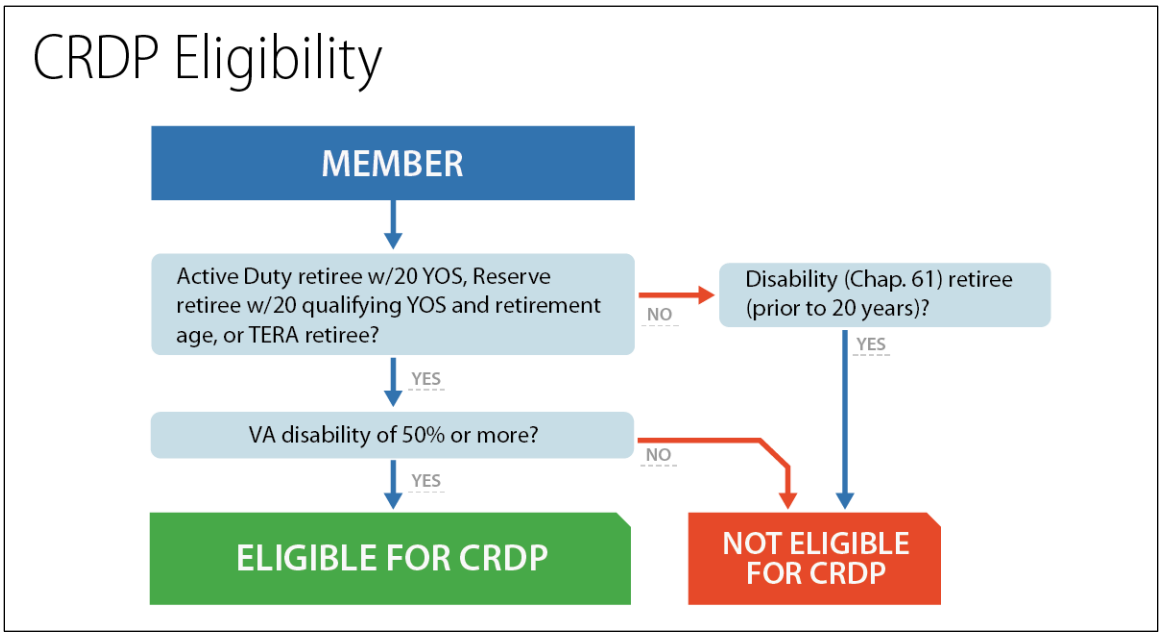
retired pay, except Chapter 61 retirees, who must have 20 years of service for retired pay computation purposes to be eligible for CRDP.

The actual operation of the concurrent receipt benefit is complicated, due to its progressive implementation over several years as was required by law. It used both dollar amounts and percentage amounts and varied in accordance with the degree of disability and by calendar year (*not* fiscal year). Details of the phase-in are in **Appendix A**. In 2014, all offsets ended and military retirees with at least a 50% disability became eligible to receive their entire military retired pay and VA disability compensation.

A retiree cannot receive both CRSC and CRDP benefits. The retiree may choose whichever is more financially advantageous to him or her and may move back and forth between either benefit during an annual "Open Season"[23] to maximize the payments received.

There are currently two groups of retirees who are *not* eligible for CRDP benefits. The first group is 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 includes Chapter 61 disability retirees with service-connected disabilities of 100% or less and with less than 20 years of service.

Figure 2. CRDP Eligibility



Source: CRS, Title 10 of the United States Code.

Notes: "Member" refers to a retired member of the Armed Forces. Temporary Early Retirement Authority (TERA) retirees are those retired with less than 20 years of service due to force management requirements. Disability ratings are awarded in 10% increments.

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

[23] The "open season" typically last for the month of January.

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 result, the original legislation was modified by the FY2005 NDAA,[24] 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),[25] and who therefore received a rating for compensation of 100%. The language in the FY2005 NDAA[26] 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[27] 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,[28] which authorized full concurrent receipt retroactive to December 31, 2004. However, this new benefit was not effective until October 1, 2008. According to DOD officials, payments occurred in two phases. In the first phase, the November 2008 retiree paychecks reflected the full CRDP for these beneficiaries. Soon thereafter, eligible retirees received a lump sum retroactive payment back to the January 1, 2005, effective date.[29]

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 National Defense Authorization Act for Fiscal Year 1993[30] 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 all of this latter reduction could be restored if the retiree worked in specified public

[24] Section 642, P.L. 108-375, October 28, 2004, Ronald W. Reagan National Defense Authorization Act for Fiscal Year 2005.

[25] 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.

[26] Section 642(a), P.L. 108-375, October 28, 2004.

[27] Section 663, P.L. 109-163, January 6, 2006.

[28] Section 642, P.L. 110-181, January 28, 2008.

[29] Philpott, Tom, *"'VA Retro Pay' Review Set,"* Military.Com, July 24, 2008.

[30] Section 4403, P.L. 102-484, October 23, 1992.

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.

CRSC and CRDP Comparisons and Costs

CRSC and CRDP share some common elements, but are unique benefits. **Table 1** summarizes some of the similarities and differences between CRSC and CRDP.

Table 1. Comparison of CRSC and CRDP

	CRSC	CRDP
Classification	Special compensation	Military retired pay
Qualified disabilities	Combat-linked disabilities	Service-connected disabilities
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
Subject to Division with a Former Spouse	No	Yes
Subject to Garnishment for Alimony and/or Child Support	Yes	Yes

Source: Derived from Defense Finance and Accounting Service (DFAS) chart at http://www.dfas.mil/retiredmilitary/disability/comparison.html.

Note: For more information on division of retired pay with former spouses, see CRS Report RL31663, *Military Benefits for Former Spouses: Legislation and Policy Issues*, by Kristy N. Kamarck.

CRDP and CRSC are paid from the DOD Military Retirement Fund.[31] Costs have been rising every year as a consequence of the phased implementation and a rise in the number of eligible recipients.[32] As of September 2016, 31% of all military retirees collecting retired pay were receiving either CRDP or CRSC.[33]

[31] Although CRSC is paid from the Military Retirement Fund, it is not technically considered retired pay.

[32] The number of veterans eligible for disability pay has been increasing in part due to policy changes that have increased outreach, improved claims processing and designated additional conditions for benefit eligibility. Increases in VA disability claims have also been attributed to the specific types of injuries suffered by veterans of the Iraq and Afghanistan conflicts.

[33] DOD Office of the Actuary, "Statistical Report on the Military Retirement System: Fiscal Year 2016," July 2017, p. 199.

Table 2. Number of Concurrent Pay Recipients and Annual Payments

FY2005-FY2016

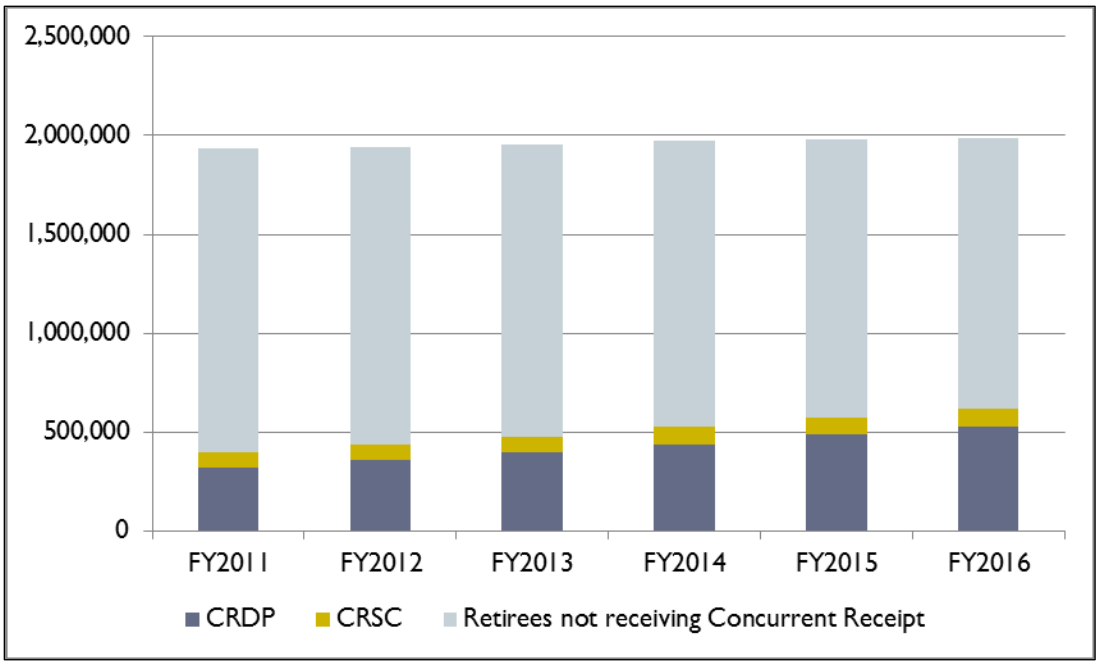
Fiscal Year	CRDP Number of Recipients	CRDP Annual Payments (billions)	CRSC Number of Recipients	CRSC Annual Payments (billions)	% of Total Retirees Receiving Concurrent Pay (CRDP or CRSC)
FY2016	529,117	$10.2	91,305	$1.1	31.2%
FY2015	486,632	$9.2	88,610	$1.1	29.0%
FY2014	438,455	$8.0	86,320	$1,0	26.6%
FY2013	395,143	$7.0	82,929	$1.0	24.4%
FY2012	355.938	$6.1	78,379	$0.9	22.3%
FY2011	318,862	$5.2	76,358	$0.9	20.4%
FY2010	298,865	$4.6	73,890	$0.8	19.4%
FY2009	260,092	$3.9	72,549	$0.8	17.5%
FY2008	235,152	$2.9	65,107	$0.7	16.0%
FY2007	207,052	$2.2	59,187	$0.7	14.3%
FY2006	186,838	$1.6	52,000	$0.6	13.0%
FY2005	168,266	$1.1	40,431	$0.5	11.5%

Source: DOD Office of the Actuary Statistical Reports on the Military Retirement System.

Notes: Some retirees may be eligible for both CRSC and CRDP but can only receive one or the other. Annual payments are made from the DOD Military Retirement Fund.

Figure 3. Total Military Retirees with CRSC and CRDP Recipients

FY2011 – FY2016



Source: DOD Office of the Actuary, Statistical Reports on the Military Retirement System.

The "Special Rule" for Disability Retirees

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.[34]

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.[35] 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:

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.[36]

The maximum retired pay calculation under either formula cannot exceed 75% of base pay.[37] 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, for example, disability retired pay and VA disability compensation. To preclude this, there is "special rule" for Chapter 61 disability retirees. Application of the "special rule" 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" would be active duty servicemembers with a disability retirement, significantly less than 20 years of service, and a high VA disability rating. Others potentially impacted would be reserve members with little active duty.

[34] 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.

[35] 10 U.S.C. §1201.

[36] 10 U.S.C. §1401.

[37] 10 U.S.C. §1401.

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

Issues and Options for Congress

Advocacy groups have continued to lobby for changes to the concurrent receipt programs. Some of the factors that Congress might consider regarding potential changes include program costs, program efficiencies, individual eligibility requirements, and interaction with other servicemembers' and veterans' benefits and programs. Below are some options to change concurrent receipt programs that have been proposed or considered.

Eliminate or Sunset Concurrent Receipt Programs

The Congressional Budget Office has estimated that eliminating the CRDP program would save the government $139 billion between 2018 and 2026.[38] While achieving significant cost savings, eliminating or sunsetting concurrent receipt programs could be unpopular among servicemembers, veterans, and their families. Previous efforts to reduce benefits to servicemembers have typically included a "grandfather clause" that would allow all current servicemembers and retirees to maintain existing benefits while the law would only apply to those who joined the service after a specific date.

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 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.[39]

Extend CRDP to Those with a 40% or Less VA Disability Rating

At present, 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. In 2014, CBO estimated that to extend benefits to all veterans who would be eligible for both disability benefits and military retired pay would cost $30 billion from 2015 to 2024.[40]

Modify or Eliminate the "Special Rule"

With the extension of CRSC to Chapter 61 disability retirees, the "special rule" factors 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

[38] Congressional Budget Office, *Options for Reducing the Deficit: 2017 to 2026: Option 11, Eliminate Concurrent Receipt of Retirement Pay and Disability Compensation for Disabled Veterans*, Washington, DC, December 8, 2016.

[39] This cost estimate was provided by the Comptroller, Office of the Secretary of Defense.

[40] Congressional Budget Office, *Veterans' Disability Compensation: Trends and Policy Options*, Washington, DC, August 2014.

with 20 or more years of service (longevity retirees) and Chapter 61 (disability retirees who generally have less than 20 years of service) retirees.

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 VA. It might also complicate future initiatives to simplify and streamline post service compensation whereby DOD would only compensate for years or service and the VA would only compensate for disability, as recommended by the Dole/Shalala commission.[41]

Concurrent Receipt and Blended Retirement System Lump Sum Payments

The Blended Retirement System (BRS), effective for all servicemembers joining on or after January 1, 2018, and optional for those with 12 or fewer years of service on that date, offers servicemembers the option to select a lump sum payment of a portion of their military retired pay in lieu of a monthly annuity.[42] If a member retiring under the BRS is eligible for CRDP and elects the lump sum payment of retired pay, the individual will continue to receive a monthly VA disability payment. If the member electing the lump sum payment is not eligible for CRDP (i.e., the retired pay offset applies), the VA will withhold disability payments until the sum of the amount withheld over time equals the gross amount of the lump sum payment.[43] Policies and procedures for those who elect lump sum payments and are also eligible for CRSC have not been finalized.[44]

[41] The 2007 Report of the President's Commission on Commission on Care for America's Returning Wounded Warriors recommended that in all cases DOD annuity payments should be "based solely on rank and length of service," while the VA should "assume all responsibility for establishing disability ratings and for all disability compensation and benefits programs." *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.

[42] For more information on the BRS, see CRS Report RL34751, *Military Retirement: Background and Recent Developments*, by Kristy N. Kamarck.

[43] Deputy Secretary of Defense, Department of Defense, "Implementation of the Blended Retirement System," memorandum, January 27, 2017, http://militarypay.defense.gov/Portals/3/Documents/BlendedRetirementDocuments/FINAL_BRSImplementationGuidance.pdf?ver=2017-02-27-084532-740.

[44] DOD Office of the Actuary, "Statistical Report on the Military Retirement System: Fiscal Year 2016," July 2017, p. 199.

Appendix A. CRDP Phase-In

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 that was greater than the current baseline offset,[45] 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.

2007-2014

This phase-in continued through 2014 as below, and affected retirees received:

- 2007: An additional 50% of their remaining offset from 2006.
- 2008: An additional 50% of their remaining offset from 2007.
- 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 were scheduled to end and 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 retired *after* 2004, their initial amounts were 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 retired in, say, 2006, with an 80% disability and $1,319 in VA offset to his retired pay began receiving an additional

[45] The baseline offset was the lesser of VA disability compensation and the retired pay earned for years of service.

$621 monthly of his or her retired pay.[46] Because of the high initial amounts provided to severely disabled retirees and the compound nature of the offset restoral percentage, this concurrent receipt benefit was "front-loaded"; that is, most retirees were able to concurrently receive most of their military retired pay within a few years of enactment of the law. 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.

Phase-in Operation

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 A-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.

The formula for this calculation is:

__% x (Current Baseline Offset-Prior Year CRDP) + Prior Year CRDP = 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:

((Current Baseline Offset – 2004 Base) x Phase-in %) + 2004 Base = CRDP, thus

(($728 - $100) x 69.76%) + $100 = CRDP,

[46] The total of $350 that an 80% disabled retiree is entitled to, plus the additional 28% of the remaining offset amount of $969 ($1,319-$350) or $271, specified for 2006.

($628 x 69.76%) + $100 = CRDP,

$438 + $100 = $538 = CRDP for 2008

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

Year	Compound Percentage Amount
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 B. 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).[47]

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):[48]

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 (gross retired pay) - $900 (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 (gross retired pay) or $900 (combat-related VA disability compensation) = $720 (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

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).

[47] 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.

[48] 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.

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 years x 2.5% = 20% x $2500 pay base = $500.

or

2. Disability Retired Pay. 70% (DOD disability rating) x $2,500 (pay base) = $1,750.

Second, determine the retired pay after the offset:

$1,750 (gross retired pay) - $1,500 (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 (gross retired pay) or $1,500 (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.

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