

MAJOR RICHARD STAR ACT

—————
JULY 18, 2023.—Committed to the Committee of the Whole House on the State of
the Union and ordered to be printed
—————

Mr. ROGERS of Alabama, from the Committee on Armed Services,
submitted the following

R E P O R T

[To accompany H.R. 1282]

[Including cost estimate of the Congressional Budget Office]

The Committee on Armed Services, to whom was referred the bill (H.R. 1282) to amend title 10, United States Code, to expand eligibility to certain military retirees for concurrent receipt of veterans' disability compensation and retired pay or combat-related special compensation, and for other purposes, having considered the same, reports favorably thereon with an amendment and recommends that the bill as amended do pass.

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The amendment is as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Major Richard Star Act”.

SEC. 2. EXPANSIONS OF ELIGIBILITY TO CERTAIN MILITARY RETIREES FOR CONCURRENT RECEIPT OF VETERANS’ DISABILITY COMPENSATION AND RETIRED PAY OR COMBAT-RELATED SPECIAL COMPENSATION.

(a) INCLUSION OF CHAPTER 61 DISABILITY RETIREES WITH FEWER THAN 20 YEARS OF SERVICE WHO ARE ELIGIBLE FOR COMBAT-RELATED SPECIAL COMPENSATION.—Section 1413a(b)(3) of title 10, United States Code, is amended—

(1) in subparagraph (A), by striking “In” and inserting “Subject to subparagraph (B), in”; and

(2) in subparagraph (B), by striking “In the case of” and all that follows and inserting “The retired pay of an eligible combat-related disabled uniformed services retiree, who is retired under chapter 61 of this title with fewer than 20 years of creditable service, is not subject to reduction under sections 5304 and 5305 of title 38.”

(b) TECHNICAL AND CONFORMING AMENDMENTS.—

(1) SECTION HEADING.—The heading of section 1414 of such title is amended to read as follows:

“§ 1414. Members eligible for retired pay who are also eligible for veterans’ disability compensation: concurrent receipt”.

(2) TABLE OF SECTIONS.—The item relating to such section 1414 in the table of sections at the beginning of chapter 71 of such title is amended to read as follows:

“1414. Members eligible for retired pay who are also eligible for veterans’ disability compensation: concurrent receipt.”

(3) CONFORMING AMENDMENTS REFLECTING END OF CONCURRENT RECEIPT PHASE-IN PERIOD.—Such section 1414 is further amended—

(A) in subsection (a)(1)—

(i) by striking the second sentence; and

(ii) by striking subparagraphs (A) and (B);

(B) by striking subsection (c) and redesignating subsections (d) and (e) as subsections (c) and (d), respectively; and

(C) in subsection (d), as redesignated, by striking paragraphs (3) and (4).

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the first day of the first month beginning after the date of the enactment of this Act and shall apply to payments for months beginning on or after such date.

PURPOSE AND SUMMARY

On March 1, 2023, Representative Gus M. Bilirakis introduced H.R. 1282, a bill to amend title 10, United States Code, to expand eligibility to certain military retirees for concurrent receipt of veterans’ disability compensation and retired pay or combat-related special compensation, and for other purposes. H.R. 1282, the “Major Richard Star Act” was referred to the House Committee on Armed Services, and in addition to the House Committee on Veterans’ Affairs. The Major Richard Star Act would permit certain veterans with qualifying combat-related disabilities who are eligible for military retirement and veterans’ disability compensation to receive the full amount of both of those benefits.

BACKGROUND AND NEED FOR LEGISLATION

H.R. 1282 provides that combat-disabled uniformed services retirees with fewer than 20 years of creditable service may concurrently receive, without reduction, veterans’ disability compensation and retired pay or combat-related special compensation. Currently, the disability retired pay afforded to combat-related medically retired service members is offset dollar for dollar in the amount of the Veterans Affairs (VA) disability pay due to the service member. The service member cannot receive both the VA disability pay and the Department of Defense medical retirement pay in full.

SECTION-BY-SECTION ANALYSIS OF LEGISLATION

Section 1—Short title

This section would cite the short title as the “Major Richard Star Act”.

Section 2—Expansions of eligibility to certain military retirees for concurrent receipt of veterans’ disability compensation and retired pay or combat-related special compensation

This section would make a combat-related disabled uniformed services retiree, who is retired under chapter 61 of this title with fewer than 20 years of creditable service and is eligible for combat-related special compensation, eligible to receive Department of Defense disability retirement pay and Department of Veterans Affairs disability pay that is not subject to reduction under sections 5304 and 5305 of title 38 United States Code.

COMMITTEE POSITION

On June 21, 2023, the committee met in open session and ordered the bill H.R. 1282, as amended, favorably reported to the House by voice vote, a quorum being present.

COMMITTEE VOTES

In accordance with clause 3(b) of rule XIII of the Rules of the House of Representatives, the committee advises that there were no record votes taken during the committee’s consideration of H.R. 1282.

COMMITTEE CORRESPONDENCE

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS’ AFFAIRS,
Washington, DC, July 18, 2023.

Hon. MIKE ROGERS,
*Chairman, Committee on Armed Services,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN ROGERS: I am writing to you concerning H.R. 1282, the “Major Richard Star Act.” As you know, there are provisions in the legislation that fall within the jurisdiction of the Committee on Veterans’ Affairs.

In the interest of permitting your committee to proceed expeditiously to floor consideration of this legislation, I am willing to waive this committee’s consideration of the bill. I do so with the understanding that by waiving consideration of the bill, the Committee on Veterans’ Affairs does not waive any future jurisdictional claim over the subject matters contained in the bill that fall within its jurisdiction. I also request that you urge the Speaker to name members of this committee to any conference committee that may be established to consider such provisions.

Please place this letter into the committee report on H.R. 1282, as amended, and into the Congressional Record during consideration of this legislation on the House floor.

Sincerely,

MIKE BOST,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON ARMED SERVICES,
Washington, DC, July 18, 2023.

Hon. MIKE BOST,
*Chairman, Committee on Veterans' Affairs,
House of Representatives, Washington, DC.*

DEAR CHAIRMAN BOST: Thank you for your letter regarding H.R. 1282, the "Major Richard Star Act". I acknowledge that provisions in the bill fall within the jurisdiction of the Committee on Veterans' Affairs. I agree that your forgoing further action on this measure does not in any way diminish or alter the jurisdiction of the Committee on Veteran's Affairs over the subject matters contained in this bill or similar legislation in the future. In addition, should a conference on this bill be necessary, I would support your request to have the Committee on Veterans' Affairs represented on the conference committee.

I will place copies of this exchange in the committee report on H.R. 1282, as amended, and into the *Congressional Record* during consideration of this legislation on the House floor.

Sincerely,

MIKE ROGERS,
Chairman.

OVERSIGHT FINDINGS

With respect to clause 3(c)(1) of rule XIII and clause 2(b)(1) of rule X, the committee reports that the findings and recommendations of the committee are incorporated in the descriptive portions of this report.

NEW BUDGET AUTHORITY, ENTITLEMENT AUTHORITY, AND TAX EXPENDITURES

Pursuant to clause 3(c)(2) of rule XIII, the Congressional Budget Office estimate included in this report satisfies the requirement for the committee to include an estimate of new or increased budget authority, entitlement authority, or tax expenditures or revenues.

CONGRESSIONAL BUDGET OFFICE ESTIMATE

In compliance with clause 3(c)(3) of rule XIII of the House of Representatives, the cost estimate prepared by the Congressional Budget Office and submitted pursuant to section 402 of the Congressional Budget Act of 1974 is as follows:

At a Glance			
H.R. 1282, Major Richard Star Act			
As ordered reported by the House Committee on Armed Services on June 21, 2023			
By Fiscal Year, Millions of Dollars	2023	2023-2028	2023-2033
Direct Spending (Outlays)	0	4,550	9,750
Revenues	0	0	0
Increase or Decrease (-) in the Deficit	0	4,550	9,750
Spending Subject to Appropriation (Outlays)	0	2,950	7,150
Increases <i>net direct spending</i> in any of the four consecutive 10-year periods beginning in 2034?	> \$2.5 billion	Statutory pay-as-you-go procedures apply? Yes	
		Mandate Effects	
Increases <i>on-budget deficits</i> in any of the four consecutive 10-year periods beginning in 2034?	> \$5 billion	Contains intergovernmental mandate?	No
		Contains private-sector mandate?	No

The bill would:

- Allow certain military retirees with combat-related disabilities to collect the full amount of both their military retired pay and their veterans' disability compensation.

Estimated budgetary effects would mainly stem from:

- Increased net payments from the Department of Defense to military retirees with combat-related disabilities.
- Increased accrual payments by the Department of Defense to account for the future cost of those increased retirement payments.

Areas of significant uncertainty include:

- Estimating the number of service members with combat-related disabilities who will receive disability retirements.

Bill summary: The Major Richard Star Act would permit certain veterans with qualifying combat-related disabilities who are eligible for military retirement and veterans' disability compensation to receive the full amount of both of those benefits.

Estimated Federal cost: The estimated budgetary effects of H.R. 1282 are shown in Table 1. The costs of the legislation fall within budget functions 050 (national defense), 600 (income security), and 950 (undistributed offsetting receipts).

TABLE 1.—ESTIMATED BUDGETARY EFFECTS OF H.R. 1282

	By fiscal year, millions of dollars—												
	2023	2024	2025	2026	2027	2028	2029	2030	2031	2032	2033	2023–2028	2023–2033
Increases in Direct Spending													
Estimated Budget Authority	0	850	900	900	950	950	1,000	1,000	1,050	1,050	1,100	4,550	9,750
Estimated Outlays	0	750	900	900	950	1,050	900	1,000	1,050	1,050	1,200	4,550	9,750
Increases in Spending Subject to Appropriation ^a													
Estimated Author-ization	0	0	700	750	750	750	800	800	850	850	900	2,950	7,150
Estimated Outlays	0	0	700	750	750	750	800	800	850	850	900	2,950	7,150

^a Outlays for accrual payments to the Military Retirement Fund are intragovernmental transactions that have no net effect on federal spending.

Basis of estimate: For this estimate, CBO assumes that the bill will be enacted in late fiscal year 2023 and will apply to military retirement payments beginning in fiscal year 2024. CBO expects that the accrual payments that the Department of Defense (DoD) makes to the Military Retirement Fund will increase as a result of the bill beginning in fiscal year 2025.

Direct spending: Veterans with disabilities connected to their military service can receive compensation from the Department of Veterans Affairs (VA). Since 1890, federal law has prevented veterans from receiving both military retired pay and veterans' disability compensation. Military retirees who are eligible for disability compensation typically have their retired pay offset dollar-for-dollar by the amount of disability compensation that they receive from VA.¹

Beginning in 2002, the Congress enacted exceptions to that restriction by allowing certain retirees to receive both retired pay and disability compensation through two programs:

- Concurrent Retirement and Disability Pay allows retirees to receive the full amount of their retired pay and disability compensation, provided they served at least 20 years and have a VA disability rating of at least 50 percent.
- Combat Related Special Compensation (CRSC) allows retirees with qualifying combat-related disabilities to receive special compensation up to the amount by which the military retired pay is offset for disability compensation, irrespective of their years of service or disability rating.

For service members who retired based on disability after fewer than 20 years of service, the CRSC payment plus any residual retirement payment (after applying the disability offset) cannot exceed the amount of retired pay they would have received based on their years of service. For retirees who suffered severe combat-related disabilities after a short time in the military, that rule significantly limits the amount they receive from DoD.

H.R. 1282 would eliminate the disability offset altogether for combat-disabled military retirees who served fewer than 20 years, allowing them to receive both the full amount of retired pay they earned and the VA disability compensation to which they are entitled.

DoD makes CRSC payments to slightly more than 50,000 disability retirees who have fewer than 20 years of service. CBO expects that number to increase by about 7,000 by 2033.² The average disability offset for those retirees was just over \$1,900 per month in 2022, almost three times the average CRSC payment of just under \$700 per month. Under H.R. 1282, those disability retirees would instead receive the full amount of their retired pay. Thus, they would receive about \$1,200 more each month in total compensation under the bill than they will under current law. (Both retired pay and disability compensation are adjusted upward

¹ Given the dollar-for-dollar offset, a retiree might choose not to apply for disability compensation. However, because disability compensation is not subject to income tax, whereas military retired pay generally is, receiving disability compensation is generally financially advantageous.

² Disabilities incurred outside of armed conflict can be considered combat related—and therefore establish eligibility for CRSC—if they involve hazardous duty (such as parachute or demolition duty), an instrumentality of war (such as a military vehicle or vessel), or simulated war (such as training with live ammunition). Thus, CBO anticipates service members will continue to become eligible for CRSC over the 2024–2033 period, even absent any new U.S. combat operations.

based on inflation, so CBO projects those monthly amounts would increase over time.) On that basis, CBO estimates that enacting the bill would increase direct spending for compensation to military retirees by \$9.75 billion over the 2024–2033 period.

Spending subject to appropriation: DoD makes annual accrual payments into the Military Retirement Fund. Those payments are the amounts necessary to cover the present value of estimated payments for future retirement benefits—other than concurrent receipt payments—earned during the year.³

Under current law, CBO projects that DoD’s annual accrual payments will climb from about \$24 billion in 2024 to about \$31 billion in 2033. CBO expects that under the bill, DoD’s annual accrual payments would increase by almost 3 percent, as future retirees with combat-related disabilities receive the full amount of their retired pay. On that basis, CBO estimates that implementing H.R. 1282 would increase spending subject to appropriation by \$7.15 billion over the 2025–2033 period; such spending would be subject to the appropriation of the estimated amounts. The accrual payments from DoD are recorded in the budget as offsetting collections in the Military Retirement Fund. Because those transactions are intragovernmental, they have no net effect on federal spending.

Uncertainty: CBO estimates that the number of service members who are retired because of combat-related disabilities will continue to rise over the next decade, albeit at a slower rate than over the past two decades. Costs would differ if the number of retirees changes at a different rate than projected. For example, if the number of CRSC-eligible retirees with fewer than 20 years of service remains at the current level over the next decade, the estimated increase in direct spending under the bill would be about \$0.75 billion less than estimated here.

Pay-As-You-Go considerations: The Statutory Pay-As-You-Go Act of 2010 establishes budget-reporting and enforcement procedures for legislation affecting direct spending or revenues. The net changes in outlays that are subject to those pay-as-you-go procedures are shown in Table 1.

Increase in long-term net direct spending and deficits: CBO estimates that enacting H.R. 1282 would increase net direct spending by more than \$2.5 billion in each of the four consecutive 10-year periods beginning in 2034.

CBO estimates that enacting H.R. 1282 would increase on-budget deficits by more than \$5 billion in each of the four consecutive 10-year periods beginning in 2034.

Mandates: None.

Previous CBO estimate: On June 13, 2023, CBO transmitted a cost estimate for H.R. 1282, the Major Richard Star Act, as introduced in the House of Representatives on March 1, 2023. The text of the bill as introduced is nearly identical to the text of the bill as ordered reported by the House Committee on Armed Services on June 21, 2023. The cost estimates for the two versions are the same.

³The Treasury makes an annual accrual payment into the Military Retirement fund to cover the present value of future concurrent receipt payments. The Treasury accrual payment is classified as mandatory and is not subject to appropriation. That annual transaction is intragovernmental and has no net effect on federal spending.

Estimate prepared by: Federal costs: David Rafferty; Mandates: Brandon Lever.

Estimate reviewed by: David Newman, Chief, Defense, International Affairs, and Veterans' Affairs Cost Estimates Unit; Kathleen FitzGerald, Chief, Public and Private Mandates Unit; Christina Hawley Anthony, Deputy Director of Budget Analysis.

Estimate approved by: Phillip L. Swagel, Director, Congressional Budget Office.

GENERAL PERFORMANCE GOALS AND OBJECTIVES

In compliance with clause 3(c)(4) of rule XIII of the Rules of the House of Representatives, the performance goals and objectives of H.R. 1282 is to amend section 1413a(b)(3) of title 10, United States Code to authorize Chapter 61 disability retirees with fewer than 20 years of service who are eligible for combat-related special compensation to receive both Department of Defense disability retired pay, as determined by section 1409(b) of title 10, United States Code and Department of Veterans Affairs disability pay concurrently and not subject to reduction under sections 5304 and 5305 of title 38 United States Code.

DUPLICATION OF FEDERAL PROGRAMS

Pursuant to clause 3(c)(5) of rule XIII, no provision of H.R. 1282 establishes or reauthorizes a program of the Federal Government known to be duplicative of another Federal program, a program that was included in any report from the Government Accountability Office to Congress pursuant to section 21 of Public Law 111–139, or a program related to a program identified in the most recent Catalog of Federal Domestic Assistance.

COMMITTEE COST ESTIMATE

Pursuant to clause 3(d)(2)(B) of rule XIII of the Rules of the House of Representatives, the Congressional Budget Office estimate included in this report satisfies the requirement for the committee to include an estimate by the committee of the costs incurred in carrying out this bill.

HEARINGS

For the purposes of clause 3(c)(6)(A) of House rule XIII, the Committee on Armed Services held no hearings on H.R. 1282.

ADVISORY OF EARMARKS

Pursuant to clause 9(e), 9(f), and 9(g) of rule XXI, the committee finds that H.R. 1282 contains no earmarks, limited tax benefits, or limited tariff benefits.

STATEMENT OF FEDERAL MANDATES

The committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

FEDERAL ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

APPLICABILITY TO THE LEGISLATIVE BRANCH

The committee finds that this legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act (Public Law 104–1).

CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3(e) of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italics, and existing law in which no change is proposed is shown in roman):

TITLE 10, UNITED STATES CODE

* * * * *

SUBTITLE A—GENERAL MILITARY LAW

* * * * *

PART II—PERSONNEL

* * * * *

CHAPTER 71—COMPUTATION OF RETIRED PAY

Sec.

1401. Computation of retired pay.

* * * * *

[1414. Members eligible for retired pay who are also eligible for veterans' disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans' disability compensation.]

1414. Members eligible for retired pay who are also eligible for veterans' disability compensation: concurrent receipt.

* * * * *

§ 1413a. Combat-related special compensation

(a) **AUTHORITY.**—The Secretary concerned shall pay to each eligible combat-related disabled uniformed services retiree who elects benefits under this section a monthly amount for the combat-related disability of the retiree determined under subsection (b).

(b) **AMOUNT.**—

(1) **DETERMINATION OF MONTHLY AMOUNT.**—Subject to paragraphs (2) and (3), the monthly amount to be paid an eligible combat-related disabled uniformed services retiree under subsection (a) for any month is the amount of compensation to which the retiree is entitled under title 38 for that month, de-

terminated without regard to any disability of the retiree that is not a combat-related disability.

(2) **MAXIMUM AMOUNT.**—The amount paid to an eligible combat-related disabled uniformed services retiree for any month under paragraph (1) may not exceed the amount of the reduction in retired pay that is applicable to the retiree for that month under sections 5304 and 5305 of title 38.

(3) **SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.**—

(A) **GENERAL RULE.**—**[In]** *Subject to subparagraph (B), in the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.*

(B) **SPECIAL RULE FOR RETIREES WITH FEWER THAN 20 YEARS OF SERVICE.**—**[In the case of an eligible combat-related disabled uniformed services retiree who is retired under chapter 61 of this title with fewer than 20 years of creditable service, the amount of the payment under paragraph (1) for any month may not, when combined with the amount of retired pay payable to the retiree after any such reduction under sections 5304 and 5305 of title 38, cause the total of such combined payment to exceed the amount equal to the retired pay percentage (determined for the member under section 1409(b) of this title) of the member's years of creditable service multiplied by the member's retired pay base under section 1406(b)(1) or 1407 of this title, whichever is applicable to the member.]** *The retired pay of an eligible combat-related disabled uniformed services retiree, who is retired under chapter 61 of this title with fewer than 20 years of creditable service, is not subject to reduction under sections 5304 and 5305 of title 38.*

(c) **ELIGIBLE RETIREES.**—For purposes of this section, an eligible combat-related disabled uniformed services retiree referred to in subsection (a) is a member of the uniformed services who—

(1) is entitled to retired pay (other than by reason of section 12731b of this title); and

(2) has a combat-related disability.

(d) **PROCEDURES.**—The Secretary of Defense shall prescribe procedures and criteria under which a disabled uniformed services retiree may apply to the Secretary of a military department to be considered to be an eligible combat-related disabled uniformed services retiree. Such procedures shall apply uniformly throughout the Department of Defense.

(e) **COMBAT-RELATED DISABILITY.**—In this section, the term “combat-related disability” means a disability that is compensable under the laws administered by the Secretary of Veterans Affairs and that—

(1) is attributable to an injury for which the member was awarded the Purple Heart; or

(2) was incurred (as determined under criteria prescribed by the Secretary of Defense)—

(A) as a direct result of armed conflict;

(B) while engaged in hazardous service;

(C) in the performance of duty under conditions simulating war; or

(D) through an instrumentality of war.

(f) COORDINATION WITH CONCURRENT RECEIPT PROVISION.—Subsection (d) of section 1414 of this title provides for coordination between benefits under that section and under this section.

(g) STATUS OF PAYMENTS.—Payments under this section are not retired pay.

(h) SOURCE OF PAYMENTS.—Payments under this section for a member of the Army, Navy, Air Force, Marine Corps, or Space Force shall be paid from the Department of Defense Military Retirement Fund. Payments under this section for any other member for any fiscal year shall be paid out of funds appropriated for pay and allowances payable by the Secretary concerned for that fiscal year.

(i) OTHER DEFINITIONS.—In this section:

(1) The term “service-connected” has the meaning given such term in section 101 of title 38.

(2) The term “retired pay” includes retainer pay, emergency officers’ retirement pay, and naval pension.

§ 1414. [Members eligible for retired pay who are also eligible for veterans’ disability compensation for disabilities rated 50 percent or higher: concurrent payment of retired pay and veterans’ disability compensation] *Members eligible for retired pay who are also eligible for veterans’ disability compensation: concurrent receipt*

(a) PAYMENT OF BOTH RETIRED PAY AND COMPENSATION.—

(1) IN GENERAL.—Subject to subsection (b), a member or former member of the uniformed services who is entitled for any month to retired pay and who is also entitled for that month to veterans’ disability compensation for a qualifying service-connected disability (hereinafter in this section referred to as a “qualified retiree”) is entitled to be paid both for that month without regard to sections 5304 and 5305 of title 38. **[During the period beginning on January 1, 2004, and ending on December 31, 2013, payment of retired pay to such a qualified retiree is subject to subsection (c), except that payment of retired pay is subject to subsection (c) only during the period beginning on January 1, 2004, and ending on December 31, 2004, in the case of the following:]**

[(A) A qualified retiree receiving veterans’ disability compensation for a disability rated as 100 percent.

[(B) A qualified retiree receiving veterans’ disability compensation at the rate payable for a 100 percent disability by reason of a determination of individual unemployability.]

(2) **QUALIFYING SERVICE-CONNECTED DISABILITY.**—In this section, the term “qualifying service-connected disability” means a service-connected disability or combination of service-connected disabilities that is rated as not less than 50 percent disabling by the Secretary of Veterans Affairs.

(b) **SPECIAL RULES FOR CHAPTER 61 DISABILITY RETIREES.**—

(1) **CAREER RETIREES.**—The retired pay of a member retired under chapter 61 of this title with 20 years or more of service otherwise creditable under section 1405 of this title, or at least 20 years of service computed under section 12732 of this title, at the time of the member’s retirement is subject to reduction under sections 5304 and 5305 of title 38, but only to the extent that the amount of the member’s retired pay under chapter 61 of this title exceeds the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member’s service in the uniformed services if the member had not been retired under chapter 61 of this title.

(2) **DISABILITY RETIREES WITH LESS THAN 20 YEARS OF SERVICE.**—Subsection (a) does not apply to a member retired under chapter 61 of this title with less than 20 years of service otherwise creditable under section 1405 of this title, or with less than 20 years of service computed under section 12732 of this title, at the time of the member’s retirement.

[(c) **PHASE-IN OF FULL CONCURRENT RECEIPT.**—During the period beginning on January 1, 2004, and ending on December 31, 2013, retired pay payable to a qualified retiree that pursuant to the second sentence of subsection (a)(1) is subject to this subsection shall be determined as follows:

[(1) **CALENDAR YEAR 2004.**—For a month during 2004, the amount of retired pay payable to a qualified retiree is the amount (if any) of retired pay in excess of the current baseline offset plus the following:

[(A) For a month for which the retiree receives veterans’ disability compensation for a disability rated as total, \$750.

[(B) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 90 percent, \$500.

[(C) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 80 percent, \$350.

[(D) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 70 percent, \$250.

[(E) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 60 percent, \$125.

[(F) For a month for which the retiree receives veterans’ disability compensation for a disability rated as 50 percent, \$100.

[(2) **CALENDAR YEAR 2005.**—For a month during 2005, the amount of retired pay payable to a qualified retiree is the sum of—

- [(A) the amount specified in paragraph (1) for that qualified retiree; and
 [(B) 10 percent of the difference between (i) the current baseline offset, and (ii) the amount specified in paragraph (1) for that member's disability.
- [(3) CALENDAR YEAR 2006.—For a month during 2006, the amount of retired pay payable to a qualified retiree is the sum of—
 [(A) the amount determined under paragraph (2) for that qualified retiree; and
 [(B) 20 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (2) for that qualified retiree.
- [(4) CALENDAR YEAR 2007.—For a month during 2007, the amount of retired pay payable to a qualified retiree is the sum of—
 [(A) the amount determined under paragraph (3) for that qualified retiree; and
 [(B) 30 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (3) for that qualified retiree.
- [(5) CALENDAR YEAR 2008.—For a month during 2008, the amount of retired pay payable to a qualified retiree is the sum of—
 [(A) the amount determined under paragraph (4) for that qualified retiree; and
 [(B) 40 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (4) for that qualified retiree.
- [(6) CALENDAR YEAR 2009.—For a month during 2009, the amount of retired pay payable to a qualified retiree is the sum of—
 [(A) the amount determined under paragraph (5) for that qualified retiree; and
 [(B) 50 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (5) for that qualified retiree.
- [(7) CALENDAR YEAR 2010.—For a month during 2010, the amount of retired pay payable to a qualified retiree is the sum of—
 [(A) the amount determined under paragraph (6) for that qualified retiree; and
 [(B) 60 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (6) for that qualified retiree.
- [(8) CALENDAR YEAR 2011.—For a month during 2011, the amount of retired pay payable to a qualified retiree is the sum of—
 [(A) the amount determined under paragraph (7) for that qualified retiree; and
 [(B) 70 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (7) for that qualified retiree.

[(9) CALENDAR YEAR 2012.—For a month during 2012, the amount of retired pay payable to a qualified retiree is the sum of—

[(A) the amount determined under paragraph (8) for that qualified retiree; and

[(B) 80 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (8) for that qualified retiree.

[(10) CALENDAR YEAR 2013.—For a month during 2013, the amount of retired pay payable to a qualified retiree is the sum of—

[(A) the amount determined under paragraph (9) for that qualified retiree; and

[(B) 90 percent of the difference between (i) the current baseline offset, and (ii) the amount determined under paragraph (9) for that qualified retiree.

[(11) GENERAL LIMITATION.—Retired pay determined under this subsection for a qualified retiree, if greater than the amount of retired pay otherwise applicable to that qualified retiree, shall be reduced to the amount of retired pay otherwise applicable to that qualified retiree.]

[(d)] (c) COORDINATION WITH COMBAT-RELATED SPECIAL COMPENSATION PROGRAM.—

(1) IN GENERAL.—A person who is a qualified retiree under this section and is also an eligible combat-related disabled uniformed services retiree under section 1413a of this title may receive special compensation in accordance with that section or retired pay in accordance with this section, but not both.

(2) ANNUAL OPEN SEASON.—The Secretary concerned shall provide for an annual period (referred to as an “open season”) during which a person described in paragraph (1) shall have the right to make an election to change from receipt of special compensation in accordance with section 1413a of this title to receipt of retired pay in accordance with this section, or the reverse, as the case may be. Any such election shall be made under regulations prescribed by the Secretary concerned. Such regulations shall provide for the form and manner for making such an election and shall provide for the date as of when such an election shall become effective. In the case of the Secretary of a military department, such regulations shall be subject to approval by the Secretary of Defense.

[(e)] (d) DEFINITIONS.—In this section:

(1) RETIRED PAY.—The term “retired pay” includes retainer pay, emergency officers’ retirement pay, and naval pension.

(2) VETERANS’ DISABILITY COMPENSATION.—The term “veterans’ disability compensation” has the meaning given the term “compensation” in section 101(13) of title 38.

[(3) DISABILITY RATED AS TOTAL.—The term “disability rated as total” means—

[(A) a disability, or combination of disabilities, that is rated as total under the standard schedule of rating disabilities in use by the Department of Veterans Affairs; or

[(B) a disability, or combination of disabilities, for which the scheduled rating is less than total but for which a rating of total is assigned by reason of inability of the dis-

abled person concerned to secure or follow a substantially gainful occupation as a result of disabilities for which veterans' disability compensation may be paid.

[(4) CURRENT BASELINE OFFSET.—

[(A) IN GENERAL.—The term “current baseline offset” for any qualified retiree means the amount for any month that is the lesser of—

[(i) the amount of the applicable monthly retired pay of the qualified retiree for that month; and

[(ii) the amount of monthly veterans' disability compensation to which the qualified retiree is entitled for that month.

[(B) APPLICABLE RETIRED PAY.—In subparagraph (A), the term “applicable retired pay” for a qualified retiree means the amount of monthly retired pay to which the qualified retiree is entitled, determined without regard to this section or sections 5304 and 5305 of title 38, except that in the case of such a retiree who was retired under chapter 61 of this title, such amount is the amount of retired pay to which the member would have been entitled under any other provision of law based upon the member's service in the uniformed services if the member had not been retired under chapter 61 of this title.]

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