United States General Accounting Office

GAO

Testimony before the Subcommittee on Personnel, Committee on Armed Services, U.S. Senate

For Release on Delivery
Expected at 2:30 p.m. EST
Thursday, March 27, 2003

MILITARY AND VETERANS' BENEFITS

Observations on the Concurrent Receipt of Military Retirement and VA Disability Compensation

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GAO-03-575T

March 2002

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Highlights

Highlights of GAO-03 -575T, testimony before the Subcommittee on Personnel, Committee on Armed Services, U.S. Senate

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Why GAO Did This Study

Because pending legislation would modify current law, which requires that military retirement pay be reduced by the amount of VA disability compensation benefit received, the Subcommittee asked GAO to discuss the treatment of concurrent benefit receipt in other programs. GAO was also asked to discuss its broader work on federal disability programs.

What GAO Found

Three factors are important to weigh in deliberations on the merits of modifying the military offset provision. First, many benefit programs use offset provisions when individuals qualify for benefits from more than one program. Generally, the provisions are designed to treat beneficiaries of multiple programs fairly and equitably in relation to all other program beneficiaries, consistent with the program's purpose. Moreover, eliminating the military retirement offset provision could establish a precedent for other federal benefit programs that could prove costly.

Examples of Offset Provisions in Benefit Programs

Social Security benefits may be offset by
Social Security retirement or disability benefits based on own record (reduces spousal or dependent benefits)
Government pension based on non-Social Security-covered employment
Workers' compensation
Disability benefits from non-Social Security-covered employment
Black Lung benefits
Federal Employees Retirement System benefits may be offset by
Eligibility for federal workers compensation
Social Security disability benefits
Workers' Compensation benefits may be offset by
Social Security benefits
Unemployment compensation benefits may be offset by
Social Security and private pension benefits
Private disability insurance may be offset by
Social Security benefits

Source: GAO analysis of Congressional Research Service and GAO Reports

Second, the proposed modifications to the concurrent receipt provisions in the military retirement system would have implications not only for the Department of Defense's retirement costs but would also increase the demand placed on the Department of Veterans Affairs' (VA) claim processing system. This would come at a time when the system is still struggling to correct problems with quality assurance and timeliness.

Third, such increased demand would come at a time when the VA disability program compensation, along with other federal disability programs, is facing the need for more fundamental reform. Modifying the concurrent receipt provisions adds to the current patchwork of federal disability policies and programs at a time when transformation and modernization are needed. While we are not taking a position on whether military retirement should be modified, as the Congress and other policymakers deliberate this issue, it would be appropriate to consider how modifying the offset would affect the pursuit of more fundamental reforms.

www.gao.gov/cgi-bin/getrpt?GAO-03-575T.

To view the full report, including the scope and methodology, click on the link above. For more information, contact Cynthia A. Bascetta at (202) 512-7101.

Mr. Chairman and Members of the Subcommittee:

Thank you for inviting me to discuss issues involved with the concurrent receipt of military retirement pay from the Department of Defense (DOD) and disability compensation from the Department of Veterans Affairs (VA). Pending legislation would modify current law, which requires that military retirement pay be reduced by the amount of VA disability compensation benefit received. You asked us to discuss the treatment of concurrent benefit receipt in other programs as well as our broader work on federal disability programs.

To help you in your deliberations on this matter, I will explain the use of offset provisions in other federal benefit programs as well as in state and private sector programs. I will also discuss some of the implications of modifying the concurrent receipt provisions for the VA disability compensation program. In addition, I will address the more fundamental problems facing VA's disability program. My statement is based on a review of GAO reports on Workers' Compensation, Social Security, and VA benefit programs and other literature relating to DOD retirement and VA disability compensation. I will also draw on our broader work on federal disability programs, which we recently designated as high-risk because they are not well positioned to provide meaningful and timely support to Americans with disabilities (see Related GAO Products). Our work for this testimony was conducted in March 2003, in accordance with generally accepted government auditing standards.

In summary, three factors are important to weigh in your deliberations on the merits of modifying the military retirement offset provision. First, many benefit programs use offset provisions when individuals qualify for benefits from more than one program. The use of offset provisions in numerous benefit programs is a common method for dealing with the consequences of beneficiaries qualifying for more than one benefit program. The rationales for these offset provisions vary, but they are generally designed to treat beneficiaries of multiple programs fairly and equitably in relation to all other program beneficiaries, consistent with the program's purpose. Moreover, eliminating the military retirement offset provision could establish a precedent for other federal benefit programs that could prove costly. Second, the proposed modifications to the concurrent receipt provisions in the military retirement system would have implications not only for DOD's retirement costs, but would also increase the demand placed on VA's claims processing system. This would come at a time with this system is still struggling to correct problems with quality assurance and timeliness. Third, the VA disability compensation

program, along with other federal disability programs, is facing the need for more fundamental reform. Modifying the concurrent receipt provision would add to the current patchwork of federal disability policies and programs at a time when transformation and modernization should be considered. While we are not taking a position on whether the military retirement offset provision should be modified, as the Congress and other policymakers deliberate this issue, it would be appropriate to consider how modifying the offset would affect the pursuit of more fundamental reforms.

Background

Generally, DOD provides longevity retirement pay to military service members upon completion of 20 creditable years of active duty service. DOD also provides disability retirement pay to eligible servicemembers who are determined unfit for duty–that is, unable to perform their military duties. To qualify for military disability retirement, the servicemember's disability must have been determined by DOD medical personnel to be permanent and the servicemember must have (1) at least 20 years of creditable service or (2) an evaluation board determination that the servicemember has a physical disability rating of at least 30 percent,[1] and either at least 8 years of creditable service or a disability resulting from active duty. Nearly 1.5 million retired servicemembers received retirement and disability retirement pay in fiscal year 2002. In fiscal year 2000, the average disability retiree who had been an officer received about $2,022 per month, while the average enlisted disability retiree received about $698 per month.

VA provides monthly disability compensation to veterans who have service-connected disabilities to compensate them for the average reduction in earnings capacity that is expected to result from injuries or diseases incurred or aggravated by military service. The payment amount is based on a disability rating scale that begins at 0 for the lowest severity and increases in 10-percent increments to 100 percent for the highest severity. Many veterans claim multiple disabilities, and veterans can reapply for higher ratings and more compensation if their disabilities worsen. For veterans who claim more than one disability, VA rates each claim separately and then combines them into a single rating. About

[1]A disability rating is essentially an indication of medical severity of an impairment: the more severe the medical condition, then the higher the percentage of the disability rating, which can range from 0 to 100 percent.

65 percent of compensated veterans receive payments based on a rating of 30 percent or less and about 8 percent are rated at 100 percent. Average monthly compensation payments in 2002 ranged from about $100 for a 10-percent rating to over $2,100 for a 100-percent rating.

Military retirees with disabilities incurred during their military service may receive military retirement pay (based on either longevity or disability, whichever is more financially advantageous to the servicemember) from DOD and disability compensation from VA. For example, a servicemember who incurs a disability may still be fit for duty, depending on the nature and severity of the impairment. If that servicemember completes 20 years of creditable service, he or she may retire based on longevity and also qualify for VA disability compensation for the same impairment or a different impairment that is also service-connected. Similarly, a servicemember who incurs a disability and is found unfit for duty may receive military retirement pay based on disability if he or she meets additional eligibility requirements. This servicemember may also qualify for VA disability compensation for the same impairment or a different impairment that is also service-connected.

Current law requires that military retirement pay be reduced ("offset") by the amount of VA disability benefits received. In 1891, Congress passed legislation to prohibit what it regarded to be dual compensation for either past or current service and a disability pension. Despite the reduction in military retirement pay, it is often to a retiree's advantage to receive VA disability compensation in lieu of military retirement pay. These VA benefits provide an after-tax advantage because they are not subject to federal income tax, as military retirement pay generally is. In addition, the disability compensation VA pays can be increased if medical reevaluation of the retiree's condition is found by VA to have worsened. Because VA disability compensation is based on the severity of the disability and not on actual earnings (as is military retirement pay), the VA benefit may, in some instances, be larger than the amount of military retirement pay.

For certain retirees with serious disabilities, the National Defense Authorization Act of 2000 provides a cash benefit that is less than what they would have received through concurrent receipt of their military retirement pay and VA disability compensation. The statute states that these special compensation payments are not military retirement pay. As such, they are not subject to the offset provisions, and the legislation did

not change the statute that prohibits concurrent receipt. The special compensation payments were reauthorized in 2001 and 2002. [2]

In addition, the 2003 National Defense Authorization Act (P.L. 107-314) authorized a new category of "special compensation" for retirees with disabilities, including those who received a Purple Heart or have a disability due to "combat-related" activities. Under the new law, eligible retirees would now be able to receive the financial equivalent of concurrent receipt, although, again, the legislation did not repeal the statute prohibiting concurrent receipt.[3] Military retirees may become eligible for this special compensation if (1) their disability is attributable to an injury for which the member was awarded the Purple Heart, and is not rated less than a 10-percent disability by DOD or VA; or (2) they receive a disability rating of at least 60 percent from either DOD or VA for injuries that were incurred due to involvement in "armed conflict," "hazardous service," "duty simulating war" and through an instrumentality of war.[4] Retirees who are eligible under this new special compensation category will no longer be entitled to the special compensation payments first enacted in 2000. The Congressional Budget Office (CBO) estimated that this new special compensation would cost about $6 billion over 10 years. Table 1 shows the 2003 monthly payments amounts of the special compensation enacted in 2000 as well as the monthly payment amounts for the new category of special compensation.

[2]The monthly dollar amounts of "special compensation" at each disability level of 70 percent or more will increase by $25 per month on October 1, 2004.

[3]As before, the statute states that these special compensation payments are not military retirement pay. As such, they are not subject to the offset provisions.

[4]To date, regulations have not been promulgated to implement this provision, including definitions for these terms.

Table 1: Special Compensation Monthly Payment Amounts for Service-Connected Disabilities in Addition to Military Retirement Pay

VA disability rating	2003 payment amounts for special compensation enacted in 2000	2003 payment amounts for new category of special compensation[a]
60%	$50	$790
70%	$100	$995
80%	$125	$1,155
90%	$225	$1,299
100%	$325	$2,163

Source: Congressional Research Service and Department of Veterans Affairs.

[a]Payment is equivalent to the base amount of the VA disability compensation for each rating category. Amounts do not reflect allowances for eligible family members. The table does not reflect payment amounts for eligible Purple Heart recipients with disability ratings of less than 60 percent.

Current proposals before Congress pertaining to concurrent receipt would, if enacted, expand the number of those eligible to simultaneously receive the equivalent of their full retirement pay and compensation for a disability beyond the 2003 National Defense Authorization Act. CBO estimated that an earlier version of these proposals would cost about $46 billion over 10 years. Over a longer time horizon, the additional financial liability would be of even greater significance because of mounting concerns about the long-term fiscal consequences of federal entitlements.

Many Programs Use Offset Provisions When Individuals Are Eligible for Benefits from More than One Program

Among the programs that provide benefits to individuals based on their previous work experience or their inability to continue working because of disability, many use offset provisions when an individual qualifies for benefits under more than one program. The specific rationales for these offset provisions vary, but they generally focus on restoring equity and fairness by treating beneficiaries of more than one program in a similar manner as beneficiaries who qualify for benefits under only one of the programs. Table 2 provides examples of benefit programs that include offset provisions. (See app. I for a description of these programs.)

Table 2: Examples of Offset Provisions in Benefit Programs

Social Security benefits may be offset by
• Receipt of social security retirement or disability benefits based on own record (reduces spousal or dependent benefits)
• Government pension based on non-Social Security-covered employment
• Workers' compensation
• Disability benefits from non-Social Security-covered employment
• Black Lung benefits
Railroad Retirement benefits may be offset by
• Social Security benefits
• Workers' compensation
• A husband or wife's own railroad retirement or disability benefits (reduces their spousal benefits)
• A government pension based on non-Social Security-covered employment
Black Lung benefits may be offset by
• Workers compensation
• Unemployment insurance
Federal Employees Retirement System benefits may be offset by
• Eligibility for federal workers compensation
• Social Security disability benefits
Workers' Compensation benefits may be offset by
• Social Security benefits
Unemployment compensation benefits may be offset by
• Social Security and private pension benefits
Private disability insurance may be offset by
• Social Security benefits

Source: GAO analysis of Congressional Research Service and GAO reports.

Some programs use offset provisions to ensure that the total benefits received from two programs do not exceed the total income received while working. For example, the Social Security Disability Insurance (DI) program provides benefits to insured persons to replace the income lost when they are unable to work because of physical or mental impairments. In addition to DI benefits, some individuals may also be eligible for workers' compensation (WC) if the illness or injury is work-related. WC benefits are designed to replace the loss of earnings resulting from work-related illnesses or injuries. Each state and the District of Columbia generally requires employers operating in its jurisdictions to provide WC insurance for their employees.[5] The Social Security Administration (SSA)

[5]These programs established a mechanism to pay injured workers predictable levels of compensation without delay. Although WC programs exist in all states, the programs are not federally mandated, administered, or regulated. Rather, they evolved throughout the 20th century under state laws with the support of labor and management.

generally requires that DI benefits be reduced for persons who also receive WC.[6] This offset applies when combined DI and WC benefits exceed 80 percent of the injured worker's average current earnings. The reduction can apply even if the DI and WC benefits are for unrelated injuries or illnesses. In 1971, the Supreme Court validated the WC offset provision stating that it was intended to provide an incentive for injured employees to return to work because the Congress did not believe it was desirable for injured workers to receive disability benefits that, in combination with their WC benefits, exceeded their preinjury earnings.[7]

Some programs use offset provisions to adjust benefit computation formulas that were not originally designed to account for individuals or their dependents working under more than one retirement system. An example is Social Security's Government Pension Offset (GPO) provision, enacted in 1977 to equalize the treatment of workers covered by Social Security and those with government pensions not covered by Social Security. The Social Security Act requires that most workers be covered by Social Security benefits.[8] In addition to paying retirement and disability benefits to covered workers, Social Security also generally pays benefits to spouses of retired, disabled, or deceased workers. Although state and local government workers were originally excluded from Social Security, today about two-thirds of state and local government workers are covered by Social Security.[9] Prior to 1977, a spouse receiving a pension from a government position not covered by Social Security could receive a full pension benefit and a full Social Security spousal benefit as if he or she were a nonworking spouse. The GPO prevents spouses from receiving a

[6]SSA cannot offset disability benefits if the state WC program allows the insurers to reduce the amount of WC benefits they would normally pay to an injured worker when the worker also receives Social Security DI benefits. In 1981, the Congress limited recognition of such exceptions to the 14 states that had established them by Feb. 18, 1981.

[7]Richardson v. Belcher, 404 U.S. 78 (1971).

[8]Workers contribute to Social Security through payroll taxes.

[9]Starting in the 1950s, state and local governments had the option of selecting Social Security coverage for their employees or retaining their noncovered status. In 1983, state and local governments in the Social Security system were prohibited by law from opting out of it.

full spousal benefit in addition to a full pension benefit earned from noncovered government employment.[10]

Offset provisions are also used by state governments. For example, 29 states and the District of Columbia permit insurers to reduce WC cash payments when the beneficiary also receives other types of benefits, such as those from Social Security retirement, survivor, or disability programs or from government or private pension plans. In addition, as required by federal law, states must deduct from unemployment compensation the value of pensions, retirement pay, or annuities based on previous work in certain situations. The purpose of this offset is to reduce the incentive for retirees who receive pensions to file for unemployment compensation and increase their incentive to seek work.

Private sector insurers also use offsets. Our study of three large private disability insurers[11] found that nearly two-thirds of those receiving private long-term disability benefits from the three private insurers also received DI benefits.[12] In such cases, the private disability benefit payments were generally reduced by the amount of the DI benefit payment.

Modifying the Concurrent Receipt Provisions Has Implications for the VA Disability Compensation Program

In addition to the cost of the benefits, allowing concurrent receipt would have implications for VA program management. Allowing concurrent receipt of military retirement pay and VA disability compensation could provide new incentives for military retirees to file for VA compensation or to seek increases in their disability ratings for VA compensation that they are already receiving. These new claims could further tax VA's claims processing system. We recently reported that VA faces long-standing challenges to improve the timeliness and quality of disability claims decisions. In addition to creating delays in veterans' receipt of entitled benefits, untimely, inaccurate, and inconsistent claims decisions can negatively affect veterans' receipt of other VA benefits and services, including health care, because VA's assigned disability ratings help

[10]If both spouses worked in positions covered by Social Security, each may not receive both the benefits earned as a worker and a full spousal benefit; rather each member of the couple would receive the higher amount of the two.

[11]In 1997, these three companies covered about half of the long-term U.S. private disability insurance market.

[12]U.S. General Accounting Office, *SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts*, GAO-01-153 (Washington, D.C.: Jan. 12, 2001).

determine eligibility and priority for these benefits.[13] While the cost of these new benefits and VA's administrative challenges in processing the claims may not provide sufficient bases to retain the offset, they warrant consideration in weighing this matter.

VA Disability Programs Face Fundamental Problems

While VA has had difficulty making decisions in a timely and consistent manner, VA's disability programs also face more fundamental problems. Our concerns about the long-standing challenges that VA faces in claims processing contributed to our recent decision to place federal disability programs, including VA's programs, on our high-risk list of programs that need urgent attention and transformation to ensure that they function in the most economical, efficient, and effective manner possible.[14] This designation was based in part on our finding that these programs use outmoded criteria for determining disability. For example, VA's disability ratings schedule is still primarily based on physicians' and lawyers' judgments made in 1945 about the effect service-connected conditions had on the average individual's ability to perform jobs requiring manual or physical labor. Although VA is revising the medical criteria for its Schedule for Rating Disabilities, the estimates of how impairments affect veterans' earnings have generally not been reexamined. As a result, changes in the nature of work that have occurred over the last half-century—which potentially affect the extent to which disabilities limit one's earning capacity—are overlooked by the program's criteria. For example, in an increasingly knowledge-based economy, one could consider whether physical impairments such as the loss of an extremity still reduce earning capacity by 40 to 70 percent.[15]

[13]U.S. General Accounting Office, *Major Management Challenges and Program Risks: Department of Veterans Affairs*, GAO-03-110 (Washington, D.C.: Jan. 2003).

[14]U.S. General Accounting Office, *High-Risk Series: An Update*, GAO-03-119 (Washington, D.C.: Jan. 2003)

[15]GAO-03-110. VA recognizes that there have been significant changes in the nature of work, but does not believe that these changes need to be reflected in the disability ratings. VA contends that the disability rating schedule, as constructed, represents a consensus among Congress, VA, and the veteran community, and that the ratings generally represent an equitable method to determine disability compensation. We continue to believe, as we have said in the past, that the current estimates of the average reduction in earning capacity should be reviewed. Further, we believe that updating disability criteria is consistent with the law. U.S. General Accounting Office, SSA and VA Disability Programs: *Re-Examination of Disability Criteria Needed to Help Ensure Program Integrity*, GAO-02-597 (Washington, D.C.: Aug. 9, 2002).

These outdated concepts persist despite scientific advances and economic and social changes that have redefined the relationship between impairments and the ability to work. Advances in medicine and technology have reduced the severity of some medical conditions and have allowed individuals to live with greater independence and function in work settings. Moreover, the nature of work has changed as the national economy has become increasingly knowledge-based. Without a current understanding of the impact of physical and mental conditions on earnings given labor market changes, VA and other agencies administering federal disability programs may be overcompensating some individuals while undercompensating or denying benefits to other individuals because of outdated information on earning capacity. At the same time, the projected slowdown in growth of the nation's labor force makes it imperative that those who can work are supported in their efforts to do so.

In reexamining the fundamental concepts underlying the design of federal disability programs, approaches used by other disability programs may offer valuable insights. For example, our prior review of three private disability insurers shows that they have fundamentally reoriented their disability systems toward building the productive capacities of people with disabilities, while not jeopardizing the availability of cash benefits for people who are not able to return to the labor force. As we previously reported, to fully incorporate scientific advances and labor market changes into the disability programs would require more fundamental change, such as revisiting the programs' basic orientation from incapacity to capacity. Reorienting programs in this direction would align them with broader social changes that focus on building and supporting the work capacities of people with disabilities. Such a reorientation would require examining complex program design issues such as beneficiaries' access to medical care and assistive technologies, the benefits offered and their associated costs, and strategies to return beneficiaries to work. Moreover, reorientation of the federal disability programs would necessitate the integration of the many programs and policies affecting people with disabilities, including those of DOD and VA.

Mr. Chairman, this concludes my prepared remarks. I would be happy to answer any questions that you or the other Subcommittee members might have.

Contacts and Acknowledgments

For further information regarding this testimony, please contact me at (202) 512-7101 or Carol Dawn Petersen at (202) 512-7215. Suit Chan, Beverly Crawford, and Shelia Drake also contributed to this statement.

Appendix I. Benefits and Eligibility Requirements for Programs Containing Offset Provisions

Program	Benefits provided	Eligibility
Social Security benefits	Cash benefits to workers and their dependents who qualify as beneficiaries under the Old-Age Survivors, and Disability Insurance (OASDI) programs of the Social Security Act. OASDI replaces a portion of earnings lost as a result of retirement, disability, or death.	The worker and his/her eligible family members must meet different sets of requirements for each type of benefit. An underlying condition of payment of most benefits is that the worker has contributed to Social Security for the required period of time.
Social Insurance for Railroad Workers (Railroad retirement benefits)	Cash benefits to retired or disabled railroad workers, their dependents and survivors. Railroad workers may also receive sickness and unemployment benefits.	Railroad worker must have had at least 120 months of creditable railroad service or 60 months of creditable railroad service if such service was performed after 1995.
Coal Mine Workers' Compensation (Black Lung benefits)	Cash benefits to coal miners who have become totally disabled due to coal workers' pneumoconiosis, and to widows and other surviving dependents of miners who have died of this disease	Coal miner must have worked in the nation's coal mines or a coal preparation facility and become totally disabled from pneumoconiosis.
Federal Employees Retirement System	Cash benefits to retired or disabled federal employees, and survivors of federal employees and retirees.	Federal employees whose initial federal employment began after December 31, 1983, or who voluntarily switched from Civil Service Retirement System (CSRS) to FERS. The worker must have at least 5 years of creditable civilian service. Survivor and disability benefits are available after 18 months of civilian service
Workers' Compensation	Various cash and medical benefits to workers injured while working or who have occupational diseases.	Specific eligibility requirements and benefit amounts vary from state to state.
Federal-State Unemployment Insurance Program (Unemployment compensation)	Temporary financial assistance to eligible workers who are unemployed through no fault of their own and are actively engaged in job search.	Worker must meet the state requirements for wages earned or time worked during an established period of time, and be determined unemployed through no fault of his/her own, and meet other eligibility requirements of his/her state law.
Private disability insurance	Short- or long-term disability insurance, or both, to replace income lost by employees because of injuries and illnesses.	Specific eligibility requirements vary from plan to plan.

Source: GAO analysis of Congressional Research Service and GAO reports.

Related GAO Products

Social Security: Congress Should Consider Revising the Government Pension Offset "Loophole." GAO-03-498T. Washington, D.C.: February 27, 2003.

Major Management Challenges and Program Risks: Department of the Veteran Affairs. GAO-03-110. Washington, D.C.: January 2003.

High-Risk Series: An Update. GAO-03-119. Washington, D.C.: January 2003.

Veterans' Benefits: Claims Processing Timeliness Performance Measures Could Be Improved. GAO-03-282. Washington, D.C.: December 19, 2002.

Veterans' Benefits: Quality Assurance for Disability Claims and Appeals Processing Can Be Further Improved. GAO-02-806. Washington, D.C.: August 16, 2002.

SSA and VA Disability Programs: Re-Examination of Disability Criteria Needed to Help Ensure Program Integrity. GAO-02-597. Washington, D.C.: August 9, 2002.

Veterans' Benefits: Despite Recent Improvements, Meeting Claims Processing Goals Will Be Challenging. GAO-02-645T. Washington, D.C.: April 26, 2002.

Workers' Compensation: Action Needed to Reduce Payment Errors in SSA Disability and Other Programs. GAO-01-367. Washington, D.C.: May 4, 2001

SSA Disability: Other Programs May Provide Lessons for Improving Return-to-Work Efforts. GAO-01-153. Washington, D.C.: January 12, 2001.