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THE MILITARY RETIREMENT SYSTEM: A PROPOSAL FOR CHANGE

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You can always count on Americans to do the right thing—after they've tried everything else.[1]

The credit belongs to the man who is actually in the arena, whose face is marred by dust and sweat and blood; who strives valiantly; who errs, who comes short again and again, because there is no effort without error and shortcoming; but who does actually strive to do the deeds;. . . .[2]

I. Introduction

War. From the rolling fields of Antietam, the trenches of the Marne, the volcanic sands of Mount Suribachi, the jungles of the Ho Chi Minh

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1 WILLIAM B. WHITMAN, THE QUOTABLE POLITICIAN 98 (2003) (quote by Sir Winston Leonard Spencer Churchill (1874–1965)).

2 President Theodore Roosevelt, Citizenship in a Republic, Speech delivered at the Sorbonne, Paris, France (Apr. 23, 1910), *available at* http://design.caltech.edu/erik/Misc/Citizenship_in_a_Republic.pdf.

Trail, and in the mountains of Helmand Province, servicemembers have fought for the ideals of liberty and democracy. These servicemembers stood and faced the dangers of war. With sweat oozing down their faces, hands numb from clutching their muskets, carbines, and M16s, their bodies and minds near or at the point of exhaustion, they have faced this country's enemies. They faced their fears because they trusted in their government to take care of them after it was all over. But today, that trust is in jeopardy.

The economic recession that started in late 2008, the slow recovery that began in late 2009, persistent high unemployment,[3] the growing national debt, the fiscal cliff, and the systematic problems with two key entitlement benefits—social security and Medicare—have made reducing government spending a key issue.[4] In May 2010, Secretary of Defense Robert M. Gates, citing the "current and projected fiscal climate" and its impact on the Department of Defense (DoD) effort to modernize military capabilities, tasked the Defense Business Board (the Board) with providing recommendations on options that would "materially reduce overhead and increase the efficiency" of the DoD's business operations.[5] The military retirement system was one of several issues that the Board identified as an opportunity for budget savings.

The cost of maintaining the retirement system is more than $100 billion a year and has risen steadily over the past ten years.[6] The Board recommended abolishing the twenty-year "cliff" vesting system, which grants an immediate annuity to servicemembers upon retirement, and replacing it with a 401(k)-style system similar to the Thrift Savings Plan

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3 Christopher J. Goodman & Steven M. Mance, *Employment Loss and the 2007–2009 Recession: an Overview*, MONTHLY LAB. REV., Apr. 2011 at 3.

4 Jeanne Sahadi, *National Debt: Why Entitlement Spending Must Be Reined In*, CNNMONEY, Sep. 6, 2011, http://money.cnn.com/2011/09/05/news/economy/national_debt_spending/index.htm.

5 DEF. BUS. BD., REPORT TO THE SECRETARY OF DEFENSE: MODERNIZING THE MILITARY RETIREMENT SYSTEM tab A (Oct. 2011) [hereinafter DEF. BUS. BD.].

6 *See* U.S. DEP'T OF DEF. COMPTROLLER, FISCAL YEAR 2012 MILITARY RETIREMENT FUND AUDITED FINANCIAL REPORT, 1 (Nov. 2012) [hereinafter MILITARY RETIREMENT FUND AUDIT]. Cost is broken down into three components: (1) normal cost payments as part of the Department of Defense (DoD) budget and U.S. Treasury; (2) payment from the U.S. Treasury to cover the unfunded liability; and (3) investment income from the U.S. Treasury in the form of interest earned from bonds. *Id.* In Fiscal Year (FY) 2012 total cost consisted of $21.9 billion from the Defense budget and U.S. Treasury; $70.13 billion from the U.S. Treasury; and $12.5 billion from investment income, also from the Treasury. *Id. See also infra* Part V.C.1 for additional information on the cost of the retirement system and payment to retirees.

for the Uniformed Services (TSP).[7] Further, the Board, while not explicitly supporting the option of immediately transitioning active duty servicemembers into the new plan, estimated that the government would save more than $100 billion in Fiscal Year (FY) 2034 if troops were transitioned into the new system.[8] The Board's recommendations caused an uproar in the servicemembers' retirement community[9] and sparked fear among active duty servicemembers[10] and family members who would see a retirement system that they have depended on abolished.

The military retirement system is a compact between our nation and those who have served faithfully and tirelessly. While the system as currently structured is costly and fails to provide retirement benefits to the vast majority of servicemembers currently serving in the Armed Forces, the Board's proposal to convert the current annuity system into a 401(k)-style plan is extreme, and tramples on the compact between the nation and servicemembers and their families.

Despite the annuity's high cost, it is an investment that the country must make to maintain the best military in the world[11] and servicemembers who exhibit a level of professionalism, skill, and ability unparalleled by any other force.[12] Thus, the challenge is to devise a modernized retirement system that (1) provides retirement benefits to more servicemembers (earlier vesting while providing the DoD tools to

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7 DEF. BUS. BD., *supra*, note 5, at 4–5.

8 *Id.* n.5, at tab C, apps. D, F. Under the current plan, FY2034 cost would be $217 billion. Under the new 401(k)-style system, FY2034 cost would be $112 billion.

9 *See* Andrew Tilghman, *Plan to Cut Retirement Outrages Service Members*, ARMYTIMES, Sep. 1, 2011, http://www.armytimes.com/money/retirement/military-retirement-plan-troops-react-090111w/. *See also* James Dao & Mary Williams Walsh, *Retiree Benefits for the Military Could Face Cuts*, N.Y. TIMES, Sep. 18, 2011, http://www.nytimes.com/2011/09/19/us/retiree-benefits-for-the-military-could-face-cuts.html?_r=0. As a side note, Mr. Dao refers to the health care and military retirement system as a "big social welfare system." It is disappointing for someone to belittle the sacrifice that servicemembers and military family members make in defending this country. After twenty or more years of service, a health care system and retirement benefits are earned, not a result of a social welfare system.

10 *See* Lisa M. Novak, *Military Retirement System Broken, Board Says*, STARS & STRIPES, Aug. 7, 2010, http://www.stripes.com/news/military-retirement-system-broken-board-says-1.113754.

11 *See* Tyrone C. Marshall, *Panetta: U.S. Military Best in World, But Threats Remain*, U.S. DEP'T OF DEF., Jan. 20, 2012, http://www.defense.gov/News/NewsArticle.aspx?ID=66878.

12 *See* Donna Miles, *Obama, Panetta Praise Military Veterans' Service*, U.S. DEP'T OF DEF., Nov. 9, 2011, http://www.defense.gov/News/NewsArticle.aspx?ID=66021.

manage force structure more efficiently); (2) adequately compensates servicemembers for sacrificing twenty or more years serving their country (immediate annuity); and (3) is generous enough to induce high-quality personnel to remain in the military beyond the twenty-year mark (incentivizing servicemembers to serve to thirty years).

This article has four main sections broken down in the following manner: Parts II-IV discuss historical background of the retirement system; Parts V-VII provide analysis that is critical to understanding the current system and proposals for change; Parts VIII and IX address the proposals from the past eight years; and Part X introduces a new proposal—the vesting plan.

This article focuses on reviewing the military retirement system from its inception to its modern form in Part II. The 1948 Hook Commission, a comprehensive review of the military compensation system, established the current retirement system.[13] Further, Part III analyzes the most significant military retirement legislative reforms that have occurred during the past thirty years and how they have affected retention, force management, cost, and efficiency. Analyzing past legislative changes will provide the necessary background on how to properly create a new system.

Part IV of this article highlights and discusses criticism of the current military retirement system. When the Hook Commission proposed the current system, the Commission unwittingly established a system that has proven to be unfair to servicemembers who serve less than twenty years.[14] One of the main arguments against the current system is that it is patently unfair to the majority of servicemembers, many of whom performed combat operations in Iraq and Afghanistan.[15] The DoD estimates that less than 20 percent of servicemembers will become eligible for the military retirement system.[16] Critics also describe the

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[13] ADVISORY COMM'N ON SERV. PAY, CAREER COMPENSATION FOR THE UNIFORMED FORCES A REPORT AND RECOMMENDATION FOR THE SECRETARY OF DEFENSE (Dec. 1948) [hereinafter HOOK COMMISSION].

[14] *See* U.S. DEP'T OF DEF., REPORT OF THE TENTH QUADRENNIAL REVIEW OF MILITARY COMPENSATION, VOLUME II: DEFERRED AND NONCASH COMPENSATION 12 (July 2008) [hereinafter 10TH QRMC].

[15] LAWRENCE J. KORB ET AL., *Reforming Military Compensation*, CTR. FOR AM. PROGRESS, May 2012, at 5.

[16] OFFICE OF THE ACTUARY U.S. DEP'T OF DEF., VALUATION OF THE MILITARY RETIREMENT SYSTEM 24 (Sept. 30 2010).

military retirement system as "unwieldy, ineffective, and expensive"[17] or "inequitable, inflexible and inefficient."[18]

To better grasp the retirement system and its cost, it is important to understand the military personnel compensation part of the defense budget. As stated above, critics tend to focus on the cost of the system as a driving force for change. Part V reviews the three major components that make up personnel compensation in the defense budget—basic pay, Tricare, and retirement—and discusses ways to lower costs. Some of the criticisms have merit and any new proposal must take some of their well-reasoned suggestions into account.

When drafting a new proposal, it would behoove the drafter to consider the Federal Employee Retirement System (FERS) as a possible solution. Indeed, some of the proposals that are discussed later in this article highlight certain aspects of FERS. Part VI reviews the FERS system and compares it to the current military retirement system. In some aspects, the Special Provisions for Law Enforcement Officers and Firefighters under the FERS system would be an improvement to the current military retirement system, but even that system falls short of what servicemembers deserve.

In understanding why previous proposals, if implemented, will break faith with troops, it is imperative to acknowledge the uniqueness of serving in the military. Seldom do critics refer to the many sacrifices that servicemembers make to serve the nation. More importantly, rarely if ever, do critics consider the sacrifices that family members make and the financial and emotional toll that serving in the military takes on both family members and servicemembers. Part VII presents the uniqueness of the military and explains why a modernized retirement system must consider the financial hardship that families endure during a twenty-year career and must compensate them adequately for their sacrifices. Such a system must be more financially generous than what is available to the general public or federal employees.

Past proposals, to include those of the Defense Business Board, have attempted to include changes that will make the new system more efficient, less costly, equitable to most servicemembers and provide the DoD with the tools to manage the force properly. Part VIII discusses

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[17] KORB ET AL., *supra* note 15, at 31.
[18] 10TH QRMC, *supra* note 14, at 12.

these proposals and highlights their key components. Despite some of the advantages of these new proposals, Part IX explores why each would result in a system that ultimately falls short and damages the DoD's ability to retain and recruit qualified servicemembers.

Based on the criticism of the current system, and, more importantly, the need to provide for servicemembers and their dependents, the proposal in Part X is an alternative to the Board's and others' proposals currently under consideration. The vesting plan includes several key concepts. First, for the first time in U.S. history, servicemembers would contribute toward their defined benefit plan at a rate close to that of Social Security—five percent. Second, servicemembers would receive an immediate annuity of 40 percent of pay instead of the traditional 50 percent of pay after twenty years of service. Servicemembers who serve more than ten years would vest into the defined benefit plan and receive a reduced annuity at the age of sixty-two. Third, all servicemembers would enjoy a government match up to ten percent of pay into a TSP account. Servicemembers would vest in the TSP after five years of service. Finally, as a way to better manage force structure, the DoD would have the option of separating servicemembers at the fifteen-year mark. These changes will ensure the financial security that servicemembers and their dependents deserve and will properly reward them for their honorable service to this nation.

II. History of the Military Retirement System

A. The Military Retirement System from the Civil War to World War II

Throughout the nation's history, the military retirement system can best be described as an attempt by the government to provide for the safety and security of those who served the nation and to maintain a young and vigorous force. The first instance of such a pact was an 1855 statute that gave the Secretary of the Navy the right to involuntarily terminate officers who were deemed incapable or unfit for duty, place them on a "reserved list," and provide them with either 50 percent or 75 percent of their pay.[19] The 1861 Act authorized the President to

[19] U.S. DEP'T OF DEF., MILITARY COMPENSATION BACKGROUND PAPERS 685 (6th ed. May 2005) [hereinafter 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS]. The Act of February 28, 1855, ch. 127, § 1, 10 Stat. 616 (1855).

voluntarily retire regular officers of all branches of service after completing forty years of service.[20]

Despite the 1861 Act that treated all branches of service the same, the period between 1855 and 1949 marks differences among the branches regarding when servicemembers could retire voluntarily or involuntarily, compensation upon retirement, and total compensation.[21] Additionally, enlisted members were treated differently from officers, and the first legislative act authorizing voluntary retirement for enlisted personnel came about in 1885.[22] Legislation enacted in 1899 gave the Navy the authority to approve voluntary retirement requests or involuntarily retire certain officers between the pay grades of O-4 and O-6, to ensure that there were sufficient vacancies to enable new promotions.[23] Thus, the system enabled leaders to meet its goal of keeping the force young and vigorous.

The Joint Service Pay Act of 1922[24] resulted in a general pay and allowances readjustment and combined the services under one payscale.[25] Congress felt the change necessary to combat the high number of officer resignations due to lucrative employment opportunities in the private sector.[26] Several modern concepts were introduced as part of this new act, to include: Cost of Living Allowance (COLA); Basic Housing Allowance (BHA) to care for family members; uniform pay

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[20] 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 685. The Act of August 3, 1861, ch. 42, § 15 (officers of the Army and Marine Corps), § 21 (officers of the Navy), 12 Stat. 287, 289, 290 (1961).

[21] 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 685–98.

[22] *Id.* at 695.

[23] *Id.* at 687–88. The pay structure for retired servicemembers also evolved, starting with the 1855 statute. The statute provided pay for separated Navy officers at 75 percent of their sea duty pay. In 1862, Army and Marine Corps officers were entitled to retired pay in the amount of their "pay proper" plus four "rations." In 1871, the system was upgraded from rations to a formula that included base and longevity pay. *Id.* at 685–86. By 1916, the retirement system was standardized among the branches into a pay formula of 2½ percent multiplied by the years of service, up to a maximum of 75 percent. John Christian, *An Overview of Past Proposal for Military Retirement Reform*, RAND NAT'L DEF. RES. INST. 3 (2006).

[24] Joint Service Pay Act of 1922, Pub. L. No. 67-235, 42 Stat. 625 (1922).

[25] *See* ADVISORY COMM'N ON SERV. PAY, CAREER COMPENSATION FOR THE UNIFORMED FORCES A REPORT AND RECOMMENDATION FOR THE SECRETARY OF DEFENSE 7 (Dec. 1948) [hereinafter HOOK COMMISSION APPENDIX].

[26] *Id.* "This act was designed to provide, not pay or allowances for services rendered, but rather a compensation that would allow the officer to maintain himself and his family with reasonable decency under the various conditions of service and at *minimum cost to the government*." *Id.* (emphasis added).

throughout the services; and length of service would determine the rate of pay. The act stated that the purpose of the compensation package was to offer "attractive careers" for young men of character and ability with the enticement of pay.[27]

The Pay Readjustment Act of 1946 gave officers a pay raise between 15 to 20 percent depending on their rank, and enlisted servicemembers also received an increase in pay. The increases in pay were made applicable to retired servicemembers as well.[28] Increases in pay, however, whether to maintain a normal living standard for troops or to keep pace with pay increases in the private sector, have had a profound impact on increasing the cost of the retirement system over time.

B. The Hook Commission

The 1948 Advisory Commission on Service Pay,[29] "colloquially known as the Hook Commission [because it was headed by Charles R. Hook], conducted the first comprehensive review of the military compensation system since 1908."[30] The Commission interviewed experts in the military and in the private sector. It reviewed pay, specialty pay, and allowances and compared them to the private sector to ensure that servicemembers were fairly compensated for their commitment to the nation.[31]

Though the Hook Commission made recommendations to when a servicemember should retire, the seminal piece of legislation on military retirement deviated from that recommendation.[32] The Army and Air

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27 *Id.* at 7–8.
28 *Id.* at 10.
29 *See* HOOK COMMISSION, *supra* note 13.
30 CHARLES A. HENNING, CONG. RESEARCH SERV., RL42087, MILITARY RETIREMENT REFORM: A REVIEW OF PROPOSALS AND OPTIONS FOR CONGRESS 1 n.1 (2011).
31 HOOK COMMISSION, *supra* note 13, at iii, ix.
32 The Hook Commission understood that there was a social compact between the government and servicemembers. In the letter addressed to the Secretary of Defense and attached to the report, Mr. Hook stated that his commission believed this new system was just and reasonable. He further explained that the retirement and survivor benefits were part of a "total career compensation" package provided as inducement, "as a social obligation of the Government to its employees . . . and as a means of keeping the organization vital." *Id.* at iii. The Commission believed it was equally important to provide benefits to the survivors of those who died in the service of their country. *Id.* at 39. More importantly, the Commission understood that the cost associated with their

Force Vitalization and Retirement Equalization Act of 1948 established the modern-day retirement system.[33] The Act established vesting at the twenty-year mark and maintained the 1916 standard of computing retired pay at 2½ percent per year of service.[34] The Hook Commission envisioned a system where servicemembers would retire after thirty years of service. However, the Act made it possible for servicemembers with more than twenty years of service but less than thirty years, to request retirement and have their request approved.[35]

The Commission recommended a noncontributory retirement system with the Government responsible for all cost on a "pay-as-you-go" basis.[36] This was not a new phenomenon; as early as 1855, the government paid retired servicemembers on a "pay-as-you-go basis," but it was the first time that the issue of whether servicemembers should contribute toward their retirement benefit was considered and discarded as being impracticable. In recommending a noncontributory retirement plan, the Hook Commission noted that Congress had the taxing power available to pay for and meet its obligations to current servicemembers' pay and retirees. In contrast, the Commission noted, the private sector had to put aside money in a retirement fund to meet its future obligations to retirees.[37]

Youth and vigor was a key factor in recommending that servicemembers could request retirement after twenty years of service. The Commission believed that upward promotion for younger troops and maintaining a vigorous force were important to the system.[38] The Commission compared the retirement ages for civilians in the private sector, federal employees, and retirees receiving benefits under the Social Security Act and found them inadequate as a basis for the military.[39]

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proposed retirement system would be substantial and that taxpayers would be responsible for meeting the obligation. The Commission also sought protection for retiree dependents when it proposed death benefits at no cost to the servicemember. *Id.*

33 The Army and Air Force Vitalization and Retirement Equalization Act of 1948, Pub. L. No. 80-810, 62 Stat. 1081 (1948).

34 HENNING, *supra* note 30, at 5.

35 HOOK COMMISSION, *supra* note 13, at 43.

36 *Id.* at 39.

37 *Id.* at 40–41.

38 *Id.* at 40.

39 HOOK COMMISSION APPENDIX, *supra* note 25, at 190.

Finally, the Hook Commission's recommendations led to the Career Compensation Act of 1949 and resulted in the current military compensation system for all the services.[40] The Act applied to all military branches and standardized pay for both officers and enlisted members.[41]

C. Modern-Day Military Retirement System (1949–Present)[42]

The modern day retirement system is a non-contributory, defined benefit system that reflects most of the changes the Hook Commission proposed. The main principle of that system is that it is a non-contributory system—servicemembers do not contribute a portion of their salaries toward their retirement benefits.[43] The current system vests for an active duty servicemember after twenty years of service. It is "an all or nothing" system where an active duty servicemember who serves for nineteen years and voluntarily leaves the service will end up with no retirement benefits as a result of that service.[44] The monthly retirement annuity is adjusted annually by a Cost-of-Living Adjustment (COLA) to keep pace with inflation. Military retirees are also entitled to non-monetary benefits, which include exchange and commissary privileges, Space-Available travel on military flights, medical care through TRICARE at minimal cost, and access to Morale, Welfare, and Recreation facilities and programs.[45] Retired pay is subject to federal

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[40] Career Compensation Act of 1949, Pub. L. No. 81-351, 63 Stat. 802.

[41] 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 1058.

[42] The Modern-day military retirement system is codified in various provisions of title 10, U.S. Code.

[43] CHARLES A. HENNING, CONG. RESEARCH SERV., RL34751, MILITARY RETIREMENT: BACKGROUND AND RECENT DEVELOPMENTS 8 (2010).

[44] However, the servicemember may choose to transfer to the Reserve and receive a retirement package based on her reserve status. *See* LAWRENCE KAPP, CONG. RESEARCH SERV., RL30802, RESERVE COMPONENT PERSONNEL ISSUES: QUESTIONS AND ANSWERS (Mar. 14, 2008); *Reserve Retirement*, MILITARYPAY.DEFENSE.GOV, http://militarypay.defense.gov/retirement/reserve.html (last visited Jan. 25, 2013). That same servicemember also has the option of working for the federal government and applying her military service time toward her federal employee retirement time. U.S. OFFICE OF PERS. MGMT., FERS: FEDERAL EMPLOYEES RETIREMENT SYSTEM 5 (Apr. 1998) [hereinafter FERS]. *See* discussion *infra* Parts IV.–A, VI.A.–B. Notably, the system provides survivor benefits for the eligible survivors of deceased retirees. HENNING, *supra* note 30, at 1–2. Active duty members are covered automatically. Though Congress subsidizes part of the cost, retirees must elect and pay. *See* 10 U.S.C. §§ 1447–1460b (2012).

[45] HENNING, *supra* note 43, at 1.

income tax[46] and certain states may tax it as retired income or regular income.[47]

III. Major Legislative Changes to Military Retirement (1980–2007)

In 1965 Congress enacted Section 1008(b) of Title 37, United States Code, which required the President to conduct, at least once every four years, a thorough review of the military compensation system and to submit a detailed report to Congress summarizing the result and any recommendations.[48] In response to 37 U.S.C. §1008(b), President Lyndon B. Johnson convened the first Quadrennial Review of Military Compensation (1st QRMC).[49] Since 1965 there have been eleven iterations of the QRMC. Since the Hook Commission, modifications have been made with an eye toward minimizing the overall cost of the retirement system.[50] This is critical to remember when reviewing key legislative changes over the past thirty years and contemplating the potential impact of any new proposals under consideration.

For active duty servicemembers today, there are three methods of calculating retired pay: the Final Basic Pay (FBP), High-3, and Redux/Career Status Bonus.[51] The applicable retirement calculation is based on the date when the servicemember first entered active duty and his basic pay at the time of retirement, excluding the special calculation

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46 HENNING, *supra* note 30, at 2.

47 Besides the retirement system available for active duty members discussed in this article, there are two other systems: one for the Reserve Component, and another for those who become disabled while serving and have yet to complete twenty years of service. Both the Reserve and disabled retirement systems include a provision for an annual COLA adjustment. HENNING, *supra* note 43, at 2. The Reserve Component retirement system and the disability system will not be discussed in this article. For more information on the Reserve retirement structure, see LAWRENCE KAPP, CONG. RESEARCH SERV., RL30802, RESERVE COMPONENT PERSONNEL ISSUES: QUESTIONS AND ANSWERS (Mar. 14, 2008); RESERVE RETIREMENT, http://militarypay.defense.gov/retirement/reserve.html (last visited Jan. 25, 2013).

48 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 1060.

49 *Id*.

50 HENNING, *supra* note 43, at 2. However, Mr. Charles Henning, a Specialist in Military Manpower Policy with the Congressional Research Service, notes, "past modifications intended to save money have had a deleterious effect on military recruitment and retention." *Id.*

51 HENNING, *supra* note 30, at 3.

for Redux, which will be discussed in Part III.C.[52] Basic pay is the servicemember's monthly pay based on her years of service and rank.[53]

A servicemember's overall pay or Regular Military Compensation (RMC) consists of basic pay, Basic Allowance for Housing (BAH), and Basic Allowance for Subsistence (BAS).[54] When computing a servicemember's retirement pay, only the basic pay is calculated as part of the computation. To say that servicemembers receive 50 percent of their "pay," during retirement without explaining a servicemember's total RMC, as most critics of the retirement system note, is somewhat misleading since the only pay that is considered for retirement purposes is the servicemember's basic pay.[55] In actuality, a servicemember's retirement that is 50 percent of basic pay is in fact approximately 33 percent of her RMC.[56]

A. Final Basic Pay

The first major change to the military retirement system since the Hook Commission occurred as part of the Fiscal Year (FY)1981 Defense Authorization Act.[57] This Act caused servicemembers to split between two different types of retirement pay calculations: FBP[58] and High-3.[59]

Servicemembers who entered military service before September 8, 1980, will retire under the FBP system established under the Hook

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[52] CHARLES A. HENNING, CONG. RESEARCH SERV., RL34751, MILITARY RETIREMENT: BACKGROUND AND RECENT DEVELOPMENTS at 3 n.6 (2008).
[53] HENNING, *supra* note 30, at 3 n.10.
[54] HENNING, *supra* note 52, at 3 n.6. The RMC does not include special pay and bonuses, reimbursements, educational assistance, and any value associated with non-monetary benefits such as Tricare, commissary privileges, access to Morale, Welfare, and Recreation facilities, Space-Available flights, and post exchanges. Basic pay accounts for between 65 to 75 percent of a servicemember's total RMC, depending on individual circumstances. *Id.*; MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 11.
[55] *See* MOMENT OF TRUTH PROJECT, SHARED SACRIFICE: REFORMING FEDERAL RETIREMENT PROGRAMS 4 (Nov. 16, 2011) [hereinafter MOMENT OF TRUTH PROJECT]; DEF. BUS. BD., *supra* note 5, tab C, at 6; Christian, *supra* note 23, at 1.
[56] HENNING, *supra* note 52, at 3 n.6. *See also* HOOK COMMISSION APPENDIX, *supra* note 26, at 190. The Hook Commission calculated the retirement compensation to be between 1¼ to 1⅔ pay of the overall compensation.
[57] HENNING, *supra* note 30, at 6.
[58] 10 U.S.C. § 1406 (2012); HENNING, *supra* note 30, at 6.
[59] 10 U.S.C. § 1407 (2012); HENNING, *supra* note 30, at 6.

Commission.[60] The FBP is the most expensive of the three systems currently active because the retired pay computation is based on the servicemember's final monthly basic pay at the time of retirement multiplied by 2½ percent for each full year of service and prorated by one-twelfth for each complete month less than a full year.[61] Very few, if any, of the servicemembers who entered active duty under this system remain on active duty today.[62]

B. High-3

During the 1970s, private sector pay increases far outpaced military pay raises, which resulted in problems in recruiting, retention, and readiness.[63] To resolve that pay issue, Congress approved an 11.7 percent pay increase for the Armed Forces as part of the FY1981 Defense Authorization Act[64] and a 14.3 percent pay raise as part of the FY1982 Defense Authorization Act.[65] Those increases had consequences for future retirement budget cost and Congress sought to fix this issue by offsetting the added cost of these raises.

As part of the FY1981 Defense Authorization Act, Congress ended the FBP system and instituted the High-3. Congress wanted to offset the added cost of the pay raise and reduce the growing cost of the retirement system.[66] The committee that worked on the final FY1981 authorization act highlighted the increasing cost of military retired pay under the FBP system and the need to increase current basic pay for military personnel while serving on active duty—instead of during their retirement—as key reasons why the committee recommended the change to the High-3 system.[67]

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60 HENNING, *supra* note 30, at 3.
61 *Id.*
62 *See id.* at 4. Oddly enough, one servicemember still under this system is Lieutenant Colonel (promotable) Luis O. Rodriquez, who advised on this article.
63 *Id.* at 6.
64 *Id.* (citing Department of Defense Authorization Act, 1981, Pub. L. No. 96-342, 94 Stat. 1077 (1980)).
65 *Id.* (citing Department of Defense Authorization Act, 1982, Pub. L. No. 97-86, 95 Stat. 1099 (1981)).
66 *Id.* (citing Department of Defense Authorization Act, 1981, Pub. L. No. 96-342, 94 Stat. 1077 (1980)).
67 *Id.* (citing S. REP. NO. 96-826, at 130 (1980)).

The High-3 system includes servicemembers who entered the service between September 8, 1980, and July 31, 1986. High-3 uses the same 2½ percent calculation as the FBP, but computes the base as the average of the highest three years (thirty-six months) of basic pay rather than the final month of pay.[68] Therefore, the retired pay formula under High-3 is 2½ percent multiplied by years of service, times the High-3 average.[69] Thus, using the 2013 pay scale, an E-7 servicemember with twenty years of service would receive $24,828, and an O-4 with twenty years would receive $42,504 in retirement pay.[70] The High-3 also saves money by preventing servicemembers who recently received a pay increase or a promotion to simply use their final monthly basic pay as the calculation when they retire. See Appendix A for retired pay compensation using the High-3 system.

C. The Military Retirement Reform Act of 1986 (Redux)

The next major change to the retirement system occurred as part of the FY1986 Defense Authorization Act,[71] which required the Secretary of Defense to develop and submit to Congress two alternative options for reforming the nondisability retirement system with a goal of saving $2.9 billion in the military accrual account.[72] Further, the Act grandfathered those currently serving or already retired into either the FBP or the High-3. Additionally, despite taking money "away" from the system, Congress wanted options that would encourage members to remain on active duty beyond twenty years, and enable the military to manage its career force better.[73]

Responding to Congress, the DoD developed two models that met the targeted savings rate, but they informed Congress that they believed those cuts would "severely hamper the military's ability to retain high

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[68] *Id.* at 4.
[69] KORB ET AL., *supra* note 15, at 31.
[70] *2013 Retirement Pay*, ARMYTIMES, Jan. 14, 2013, at 23.
[71] HENNING, *supra* note 30, at 6 (Department of Defense Authorization Act, 1986, Pub. L. No. 99-145, 99 Stat. 583 (1985)).
[72] *Id.* (Department of Defense Authorization Act, 1986, Pub. L. No. 99-145, 99 Stat. 583 (1985)). The Act changed the way the government paid for the military retirement system from a "pay-as-you-go" basis, based on the reasoning under the Hook Commission, to an "accrual accounting" method. The accrual accounting process is discussed in detail below Part V.D.1 as part of the discussion on the cost of the retirement system.
[73] *Id.* at 7.

quality personnel" and would significantly denigrate "future combat readiness."[74] Congress considered the two alternatives and developed a hybrid version of the proposals, thus enacting the Military Retirement Reform Act of 1986 that became known as Redux.[75]

Redux was enacted with the "dual purpose of rewarding longer service and reducing the cost of the military retirement system."[76] In fact, Redux reduced the annual accrual charge of the retirement system by one-third when compared to the pre-1980 system.[77]

Servicemembers who entered service on or after August 1, 1986, became eligible for Redux.[78] To incentivize service beyond twenty years and cut costs, Congress lowered the twenty-year computation base to 2 percent, but increased it by 3½ percent per year for every year beyond the twenty-year mark. Congress also kept the High-3 system of computing the base. As a result, a servicemember who completes exactly twenty years of service will retire with 40 percent of his High-3 monthly basic pay; a servicemember with thirty years of service will retire with 75 percent.[79] Beyond thirty years, however, the computation base increases by an additional 2½ percent per year up to a maximum retirement of 100 percent of the High-3 for forty years of service, similar to the accrual under the High-3 system.[80] Compared with the High-3

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74 *Id.* (citing Chapman B. Cox, the Assistant Sec'y of Def. for Force Mgmt. and Pers. during House Armed Servs. Comm. Hearing 99-40, Defense Department Authorization and Oversight Hearings of H.R. 4428, Committee on Armed Services, Feb. 27 and Mar. 12, 1986). *See also id.* (citing Memorandum from Casper Weinberger, Sec'y of Def., to Thomas P. O'Neill, Jr., Speaker of the House, Nov. 15, 1986). Secretary Weinberger stated, "The Department of Defense is steadfastly opposed to the significant degradation in future combat readiness that would result from the changes required to achieve the mandated reduction. I am particularly concerned about the potential loss of mid-level leadership and technical know-how so vital to the defense mission." *Id*. Specifically, the services argued that a drastic change to the military retirement system, i.e., changing the twenty-year vesting period, would negatively affect force structure. Christian, *supra* note 23, at 14.

75 The Military Retirement Reform Act of 1986, Pub. L. No. 99–348, 100 Stat. 682 (1986); HENNING, *supra* note 30, at 7.

76 *Id.* at 4.

77 REX HUDSON, A SUMMARY OF MAJOR MILITARY RETIREMENT REFORM PROPOSALS, 1976–2006, FEDERAL RESEARCH DIVISION, LIBRARY OF CONGRESS 11 (Nov. 2007). Mr. Henning notes that Congress enacted Redux because they felt that retired pay under the pre-Redux system was "too generous." HENNING, *supra* note 30, at 4.

78 HUDSON, *supra* note 77, at 4.

79 *Id*.

80 *Id*. Very few servicemembers can serve beyond 30 years of service due to mandatory retirement requirement. *But see* FY2007 Defense Authorization Act *infra* Part III.E

method, Redux pays less for twenty to twenty-nine years of service but the same for thirty years of service and beyond.[81]

D. Career Status Bonus and Choice of Retirement System

Before any servicemember could retire under the Redux system, however, Congress repealed Redux as part of the FY2000 National Defense Authorization Act (NDAA).[82] This was a momentous event given that the purpose of Redux was to reduce cost while improving retention. But there were four factors that led Congress to repeal Redux.

Starting in 1997, Congress began to notice potential recruiting and retention problems related to Redux and by 1999, Congress decided to take action.[83] By 1999, nine years after the Cold War drawdown started, the total active force had been reduced from roughly two million servicemembers to fewer than 1.4 million, a reduction of 32%.[84] Additionally, the economy was healthy, military pay lagged behind the private sector, military pilots left the force to join airline companies, and service budgets had been significantly reduced. With fewer troops to go around, a greater share of the deployment burden fell on a concentrated number of units, which resulted in greater stress on units, servicemembers, and their families.[85] The looming Redux military retirement system, according to Mr. Henning, "had lost some of its effectiveness as a retention tool."[86] Advocates for a change to the retirement system argued that servicemembers were beginning to "vote

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(discussing changes to the mandatory retirement service date for very senior servicemembers).

81 HUDSON or Henning?? *Id.* at 8. Congress also reduced the amount of COLA that retirees would receive under Redux. *Id.* at 4. Cost-of-Living Adjustment (COLA) is discussed in greater detail *infra* Part III.F.

82 National Defense Authorization Act for Fiscal Year 2000, Pub. L. No. 106–65, 113 Stat. 512 (1999); HENNING, *supra* note 43, at 4. Those servicemembers who entered active duty under the Redux system would have had thirteen years of service by the time Congress repealed it.

83 *Id*.

84 HENNING, *supra* note 30, at 9.

85 In congressional testimony in 1999, just two years before 9/11, the Chairman of the Joint Chiefs of Staff and the Service Chiefs highlighted a dire situation by noting issues involving "deferred maintenance on military equipment, readiness concerns, and personnel shortages as a main consequence of the services not meeting their recruiting or retention goals." *Id.* at 8.

86 *Id.*

with their feet."[87] Indeed, the services were experiencing low military morale and fewer civilians considered the military a viable career option.[88] By the fall of 1998, the Clinton Administration announced it supported repealing Redux.[89]

In passing the FY2000 NDAA, Congress wanted to keep some of the cost-saving measures under Redux and solve the ongoing crisis of losing members beyond the twenty-year mark. The NDAA allowed post-August 1, 1986, entrants to retire under the High-3 system or opt for the Redux system plus an immediate $30,000 Career Status Bonus (CSB).[90] This was the first time that servicemembers were granted the opportunity to choose their retirement system.[91] In establishing the CSB, Congress sought to solve two critical issues: (1) the ongoing crisis of losing servicemembers between the fifteenth and twentieth year mark who were leaving the military to seek civilian employment; and (2) reducing the number of servicemembers who retired between their twentieth and twenty-fifth year mark.[92]

Servicemembers would elect the CSB upon reaching their fifteenth year. In exchange for choosing the CSB, the servicemember agrees to a five-year commitment that would take her to twenty years.[93] If the servicemember chooses CSB, she forgoes retiring at twenty years and beyond with the right to use the pre-Redux High-3 option.[94] The servicemember would forfeit a portion of the bonus if she fails to complete the five-year commitment.[95] Further, Under the CSB, Congress steadily increased the retirement multiplier from two percent to 2½ percent per year of service, less one percentage point for each year of service less than thirty. Congress wanted to incentivize servicemembers to remain on active duty until their thirtieth year.[96] Thus, at their twenty-fifth year, a servicemember under basic pay or High-3 would receive 62.5 percent (25 x 2.5%), and under Redux would receive 57.5 percent

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87 *Id.*
88 *Id.* at 9.
89 HENNING, *supra* note 43, at 4.
90 *Id.*
91 HENNING, *supra* note 30, at 9.
92 *See* Christian, *supra* note 23, at 11.
93 HENNING, *supra* note 30, at 9.
94 HENNING, *supra* note 43, at 4.
95 *Id.*
96 *Id.* at 5. *But see* Christian, *supra* note 23, at 11 (noting that the "up or out" system would prevent many servicemembers from remaining on active duty up to 30 years even if they wanted to serve).

((25 x 2.5%) minus 5%) of her High-3 monthly basic pay for retirement.[97]

This new Redux formula makes a distinction between retirees who are receiving retirement pay during their second career—those under age sixty-two—and those who are eligible for full retirement—those retirees aged sixty-two and older. For retirees under age sixty-two, the calculation is as described in the previous paragraph. Once a retiree reaches sixty-two, his retired pay will be recomputed based on the High-3 formula with the 2½ percent computation base. Thus, a servicemember who retired under the CSB with twenty years of service would start to get 50 percent of his High-3 monthly basic pay at age sixty instead of the old 40 percent that he received upon retirement. The increase in pay will be reflected as part of the retiree's monthly pay, rather than a one-time lump sum.[98] Additionally, the CSB has different computations for COLA increases, which will be discussed in Part III.F.

Congress also added other benefits, expressing the hope that they would stimulate both recruitment and retention.[99] These included:

1. A 4.8% military pay raise which was 0.5% above the Employment Cost Index (ECI);
2. A commitment to increase basic pay each year through 2006 by 0.5% more than the ECI;
3. A special subsistence allowance for military families eligible for food stamps;
4. Voluntary enrollment of military personnel in the Thrift Savings Plan (TSP) for tax-deferred savings; and
5. A 13% increase in the Montgomery G.I Bill education benefit.[100]

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[97] *Id*.
[98] HENNING, *supra* note 43, at 5.
[99] HENNING, *supra* note 30, at 9.
[100] *Id.* (Unlike the federal civilian TSP program, the government does not provide matching contributions to servicemembers. However, the Secretaries for the sister services are authorized to make TSP contributions if the member is serving in a critical skill and agrees to continued service.) *See also* Christian, *supra* note 23, at 13. The Congressional Budget Office estimated that these benefits would add $18 billion to the defense budget over ten years. *Id.* (citing Sydney J. Freedberg, *Retirement Redux*, GOV'T EXEC. (Apr. 1, 1999), http://www.govexec.com/ magazine/1999/04/retirement-redux/ 5994/).

Unlike the federal civilian TSP program, the government does not provide matching contributions to servicemembers.[101] However, the Secretaries for the services are authorized to make TSP contributions if the member is serving in a critical skill area and agrees to continued service.[102] In 2009, Congress asked the DoD to assess the cost of a new proposal to provide matching TSP contributions to servicemembers.[103] Using a four-percent match, rather than the traditional five percent match that federal civilian workers receive, the DoD estimated that it would cost an additional $2.8 billion per year, assuming 100 percent enrollment and every servicemember contributed five percent of pay.[104]

Statistically, Redux has proven to be the least popular retirement system with less than one percent of eligible members selecting this option.[105] When Congress enacted the CSB in 1999, Congress did not index the CSB to increase with the rate of inflation.[106] As a result, the $30,000 bonus was worth approximately $26,500 in 2005; $23,000 in 2010; and $21,600 in 2012.[107] If the CSB had been indexed to the Consumer Price Index (CPI), it would have risen to approximately $41,600 in 2012.[108] Based on the decrease in purchasing power, taking CSB today would not be a wise choice when compared to the High-3.[109] Both the Navy and Marine Corps have kept records of the number of its officers and enlisted members from 2003 to 2010 who have chosen the CSB as a retirement choice.[110] In 2003, 41 percent of their members

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101 HENNING, *supra* note 30, at 9.
102 Christian, *supra* note 23, at 13.
103 HENNING, *supra* note 30, at 23 (citing the Federal Retirement Reform Act of 2009, Pub. L. No. 111-31, 123 Stat. 1852 (2009)).
104 *Id.* (citing SEC'Y OF DEF., U.S. DEP'T OF DEF., REPORT TO CONGRESS COST AND IMPACT ON RECRUITING AND RETENTION OF PROVIDING THRIFT SAVINGS PLAN MATCHING CONTRIBUTIONS (Feb. 2010), *available at* http://www.tspstrategies.com/wp-content/uploads/2012/04/Cost-and-Impact-on-Recruiting-and-Retention-of-Providing-Thrift-Savings-Plan-Matching-Contributions.pdf).
105 HENNING, *supra* note 43, at 6.
106 HENNING, *supra* note 30, at 5.
107 *Consumer Price Index Inflation Calculator*, BLS.GOV, http://www.bls.gov/data/inflation_calculator.htm (last visited Nov. 14, 2013); U.S. INFLATION CALCULATOR, http://www.usinflationcalculator.com (last visited Nov. 14, 2013).
108 *Consumer Price Index Inflation Calculator*, BLS.GOV, http://www.bls.gov/data/inflation_calculator.htm. The value of 30,000 in November 2012 if indexed to inflation.
109 HENNING, *supra* note 30, at 5, 9. Mr. Henning states that to "aid in deciding whether to select the High-3 or Redux with the Career Status Bonus, the DOD offered a calculator that allows an individual to enter their personal situation and do a comparison of the options. The calculator is available at http://www.dod/militarypay/retirement. The Department of Defense does not officially recommend either the High-3 or Redux/CSB."
110 *Id.* at 9.

selected the CSB; however, by 2010, only 16 percent of their members elected the same choice.[111] Further, while the DoD does not advocate for either retirement choice, it does provide a calculator for servicemembers to see the impact of choosing one over the other.[112]

E. Fiscal Year 2007 National Defense Authorization Act

Before 2007, most military personnel were permitted to serve a maximum of thirty years on active duty and receive their final longevity pay increase at twenty-six years of service.[113] At thirty years of service, the Computation Base was capped at 75 percent. However, the John Warner National Defense Authorization Act of FY2007 extended the military pay table to forty years, allowed additional longevity raises, and provided more retirement credit for service beyond thirty years at the rate of 2½ percent per year. This change was to allow some *very senior* enlisted and officer personnel to be retained and continue serving to forty years.[114] In fact, only a handful of the most senior enlisted members (E-8 and E-9), warrant officers (W-4 and W-5), and officers (O-6 through O-10) may be retained.[115] A servicemember who retires after forty-one years of service would receive 102.5 percent of her final basic pay in retirement (41 years of service X the 2.5% multiplier = 102.5%).[116] While this change ensured that those higher-ranking officers and enlisted

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[111] *Id*. The Marine Corps has made it a point to educate its members as to why choosing the CSB option may not be in their best interest financially. *See* ALINE QUESTER ET AL., *Retirement Choice: 2012*, CNA ANALYSIS SOLUTION (June 2012), *available at* http://www.cna.org/sites/default/files/research/DRM-2012-U-000276-Final.pdf.

[112] *High-3 vs. CSB/REDUX Retirement Comparison*, MILITARYPAY.DEFENSE.GOV, http://militarypay.defense.gov/mpcalcs/Calculators/compare.aspx (last visited Feb. 14, 2013).

[113] HENNING, *supra* note 30, at 3. Longevity pay is an incremental increase in pay to servicemembers for every two years of service. U.S. DEP'T OF DEF., MILITARY COMPENSATION BACKGROUND PAPERS: COMPENSATION ELEMENTS AND RELATED MANPOWER COST ITEMS, THEIR PURPOSES AND LEGISLATIVE BACKGROUNDS 15-17, 35 (7th ed. Nov. 2011) [hereinafter MILITARY COMPENSATION BACKGROUND PAPERS]. The longevity pay ceases to increase when a servicemember has reached a set combination of rank and years of service. *Id. See also Military Pay Tables 1949 to 2013*, DFAS.MIL, http://www.dfas.mil/militarymembers/payentitlements/militarypaytables.html (last visited Feb. 14, 2013).

[114] HENNING, *supra* note 30, at 3–4 (emphasis added).

[115] *Id.* at 4 n.13. *See* the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, 120 Stat. 2083 (2006).

[116] HENNING, *supra* note 43, at 3 (citing the John Warner National Defense Authorization Act for Fiscal Year 2007, Pub. L. No. 109-364, 120 Stat. 2083 (2006)). Section 642 of the act was enacted as 10 U.S.C. § 1409(b).

servicemembers would remain in the force to fight the nation's wars in Iraq and Afghanistan, it increased the overall cost of the retirement system by a few million dollars per year.[117] The cost implications to this subtle change to the system, affecting probably less than one percent of the entire force, will be addressed in the section analyzing the overall cost of the compensation system in Part V.D.

F. Retired Pay and the Cost-of-Living Adjustment

The modern military retirement pay system is statutorily protected against inflation.[118] The Uniformed Services Pay Act of 1963 links adjustments to retirement pay based on increases in the cost of living as measured by the Consumer Price Index (CPI).[119] Before the Act, increases in retired pay would sometimes occur after active duty servicemembers received an increase in pay. Although retirement pay increases were infrequent, they were expensive and Congress sought a new system that would not substantially add to the cost of the military retirement system.[120]

Yearly adjustment to the Cost of Living Adjustment (COLA) for retirees is based on the CPI and whether the servicemember retired under the FBP, High-3, or the Redux/CSB system. For military personnel who first entered military service before August 1, 1986, and those who joined on or after August 1, 1986, but opted to have their retired pay computed based on the pre-Redux (High-3 formula), their COLA adjustment are based on the full CPI increase.[121] Those personnel who

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117 OFFICE OF THE ACTUARY, U.S. DEP'T OF DEF., VALUATION OF THE MILITARY RETIREMENT SYSTEM SEPTEMBER 30, 2006, at ii (Nov. 2007) [hereinafter 2007 VALUATION OF THE MILITARY RETIREMENT SYSTEM].

118 10 U.S.C. § 1401a (2012); HENNING, *supra* note 43, at 9.

119 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 760. The Uniformed Services Pay Act of 1963, Pub. L. No. 88-132, 77 Stat. 210 (1963).

120 *Id.* at 760–61.

> When a retiree reaches age 62, there will be a one-time recomputation of his or her annuity to make up for the lost purchasing power caused by the holding of COLAs to the inflation rate minus one percentage point. After the recomputation at 62, however, future COLAs will continue to be computed annually on the basis of the inflation rate minus one percentage point.

Id.

121 HENNING, *supra* note 43, at 9.

opted for the Redux/CSB formula will have their COLAs held one percentage point below the actual CPI rate.[122] Withholding COLA increases for retired servicemembers under the REDUX/CSB option further illustrate why the CSB is a poor option for servicemembers.

The Bipartisan Budget Act of 2013[123] will reduce COLA payments to retired servicemembers during the second phase of their career—those retirees under the age of sixty-two.[124] According to retired Air Force Col. Michael F. Hayden, director of government relations for Military Officers Association of America, a typical enlisted member retiring at age 40 after 20 years of service can expect to lose $83,000, and an officer retiring at age 42 would lose about $124,000 in retirement pay. Similar to REDUX, this Act reduces COLA payment to second-phase retirees by one-percentage point below inflation.[125] While the Bipartisan Budget Act did not grandfather those already retired and those currently serving, Congress quickly realized the impact and passed legislation to ensure that only troops entering the service after January 1, 2014 would be impacted.[126]

Despite several congressional hearings and legislative acts between 1980 and 2007, Congress has failed to solve the most basic problem with the retirement system—a system that leaves the vast majority of servicemembers with no retirement benefits. Attempts at bringing cost under control have resulted in retention problems for the services. More tellingly, Congress repealed the biggest change to the system before any of its provisions would take effect. Congress's inability or unwillingness to solve the key issues in the retirement system has led to increased criticism. Part IV highlights the main criticisms of the military retirement system.

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[122] *Id.* at 10.
[123] The Bipartisan Budget Act of 2013, Pub L. No. 113-67, 127 Stat. 1165 (2013).
[124] Tom Philpott, *Ryan-Murray Deal Hits Younger, Future Military Retirees*, STARS & STRIPES**,** Dec. 11, 2013, http://www.stripes.com/news/us/ryan-murray-deal-hits-younger-future-military-retirees-1.257099?utm_source=twitterfeed&utm_medium=twitter#.Uq1j4OaESKM.facebook.
[125] *Id*. *See* HENNING, *supra* note 43, at 9.
[126] An Act, Pub L. No. 113-82, 128 Stat. 1009 (2014).

IV. Common Criticism of the Modern-Day Military Retirement System

The military retirement system has traditionally been "viewed as a significant incentive in retaining a professional career military force."[127] Over the past few years, however, criticism of the military retirement system has risen to a fevered pitch, given the state of the U.S. economy and national budget deficit. Common criticism of the modern-day military retirement system is that the system is unable to retain qualified service members beyond twenty years; further, it is considered to be inequitable, inflexible, overly generous, and too costly.[128] The first four criticisms will be addressed in this section; however, cost of the retirement system, as a major component of the overall pay compensation, will be addressed as part of the discussion on the DoD budget in Part V.D.

A. Retirement Inequality

Critics argue that the retirement system is unfair because a majority of servicemembers will end up serving less than twenty years and will receive no retirement benefits upon leaving the service.[129] Currently, only 19 percent of military personnel serve for twenty years or more.[130] According to Defense Department statistics, only 17 percent of enlisted personnel and 49 percent of officers will eventually become eligible for the retirement annuity.[131] The vast majority of enlisted servicemembers, those ground combat troops in the Army and Marines, "the men and women who have borne the brunt of the fighting in Iraq and Afghanistan—are among the least likely to achieve any retirement benefits."[132] Further, the Board notes that the current retirement system does not compensate those who take on the tough assignments, serve combat or hardship duty tours, or spend time away from their families due to service obligations.[133]

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127 HENNING, *supra* note 43, at 1.
128 KORB ET AL., *supra* note 15, at 27, 33; DEF. BUS. BD., *supra* note 5, at 3.
129 KORB ET AL., *supra* note 15, at 27.
130 OFFICE OF THE ACTUARY, U.S. DEP'T OF DEF., VALUATION OF THE MILITARY RETIREMENT SYSTEM 24 (Sept. 30, 2010) [hereinafter 2010 VALUATION OF THE MILITARY RETIREMENT SYSTEM].
131 *Id.*
132 KORB ET AL., *supra* note 15, at 4.
133 DEF. BUS. BD., *supra* note 5, tab C, at 7.

The Center for American Progress (CAP) believes that the military retirement system disproportionately favors officers.[134] As noted above, 49 percent of officers as compared to just 17 percent of enlisted servicemembers serve the twenty years necessary to retire.[135] The CAP argues, "Because officers tend to be vastly better compensated and better educated than most enlisted personnel while in the service, the retirement program fails to take care of the veterans with the highest risk of suffering from poverty, unemployment, or homelessness upon leaving the service."[136]

The main issue with inequality comes down to a system that requires servicemembers to vest after twenty years of service. In marked contrast to the civilian world, most workers in the private sector are eligible for some type of pension or 401(k)-style pension benefit as part of their retirement packages after three or five years of work.[137] In 1974, the Employee Retirement Income Security Act (ERISA) eliminated long-tenure vesting, except for in the military retirement system.[138]

Servicemembers who are involuntarily separated due to no fault of their own, having served honorably for a minimum of six years, are eligible for separation pay.[139] In the rare instances where the military must reduce members, a special retirement program such as the Temporary Early Retirement Authority (TERA) has been authorized.[140]

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[134] KORB ET AL., *supra* note 15, at 33.
[135] 2010 VALUATION OF THE MILITARY RETIREMENT SYSTEM, *supra* note 130, at 24.
[136] KORB ET AL., *supra* note 15, at 34.
[137] BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NATIONAL COMPENSATION SURVEY: EMPLOYEE BENEFITS IN PRIVATE INDUSTRY IN THE UNITED STATES 2005, at 67 (May 2007).
[138] Christian, *supra* note 23, at 8; Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974).
[139] 10 U.S.C. § 1174 (2012); 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 786–97.
[140] HENNING, *supra* note 30, at 1.

> The Temporary Early Retirement Authority (TERA) was included in the FY1992 Defense Authorization Act to provide a drawdown tool for the services during the force drawdown of the 1990s. Selected officers with between fifteen and twenty years of service were permitted to retire with full benefits but with a reduction in their retired pay.

Id. at 1 n.5; The National Defense Authorization Act for Fiscal Year 1993, Pub. L. No. 102-484, 106 Stat. 2315 (1992). In the mid-1990s, in the midst of a strong economic swing, many qualified and experienced servicemembers jumped at the chance to leave the service under TERA while maximizing their income potential in the private sector.

Although a servicemember who decides to leave active duty before vesting will not receive a retirement under the active duty version, she has other ways of capitalizing on her active duty service. The servicemember can join the Reserve Component and serve to 20 years to receive benefits under the Reserve Component.[141] Another option available to servicemembers is to work for the federal government and transfer their military time by paying into the Federal Employees Retirement System (FERS).[142] The ideal option, however, is to revise the military retirement system and allow earlier vesting into a pension system.

While several presidential and congressionally authorized commissions, DoD reviews, and independent research studies have concluded that the system is unfair to those who serve fewer than twenty years, Congress has failed to resolve this issue. Therefore, Congress should revamp the system to allow servicemembers to vest at an earlier date, thereby providing retirement benefits to more servicemembers. Doing so is more efficient and simplifies managing the force.

This drop in quality Servicemembers also played a factor in Redux being repealed. The TERA is again being offered to troops as part of the FY2012 Defense Authorization Act. 10 U.S.C. § 1293 note (2011) (Temporary Early Retirement Authority). However, having learned from the 1990s, the Army announced that only officers and warrant officers who have failed to be selected for promotion twice and noncommissioned officers who have been denied continued service due to the Qualitative Service Program, will be targeted for separation. *See* David Vergun, *Army Offers Early Retirement Opportunity for Soldiers*, U.S. ARMY, Oct. 16, 2012, http://www.army.mil/article/89286/Army_offers_early_retirement_opportunity_for_Soldiers/; *Army Directive 2012-25 (Temporary Early Retirement Authority)*, ARMYPUBS.ARMY.MIL, http://armypubs.army.mil/epubs/pdf/ad2012_25.pdf (last visited Mar. 15, 2013); *Army Directive 281/2012-Temporary Early Retirement Authority (TERA)*, BENNING.ARMY.MIL, http://www.benning. army.mil/garrison/DHR/content/PDF/ALARACT_281_2012_army.mil/garrison/DHR/content/PDF/ALARACT_281_2012_Temporary_Early_Retirement_Authority_(TERA)[1].pdf (last visited Mar. 15, 2013); Jim Tice, *15-Year Retirement Returns QSP Boards Will Choose Which NCOs Will Go Early*, ARMYTIMES, Oct. 22, 2012, at 16.

141 *See* LAWRENCE KAPP, CONG. RESEARCH SERV., RL30802, RESERVE COMPONENT PERSONNEL ISSUES: QUESTIONS AND ANSWERS (Mar. 14, 2008). Reserve component servicemembers do not draw an immediate annuity until age 60, or potentially sooner based on the FY 2008 National Defense Authorization Act.

142 U.S. OFFICE OF PERS. MGMT., FERS: FEDERAL EMPLOYEES RETIREMENT SYSTEM ch. 22 (Apr. 1998). However, servicemembers cannot buy into the special retirement options for federal law enforcement and other specialized duties.

B. Efficiency and Force Management

Force management has been a factor in the retirement debate since the 1970s. In the late '70s, President Jimmy Carter commissioned the President's Commission on Military Compensation (PCMC), also known as the Zwick Commission.[143] The PCMC found that the twenty-year vesting rule made it difficult to separate ineffective personnel because managers were reluctant to separate servicemembers who were close to retirement.[144]

Force management involving servicemembers who have reached the ten-year mark is a critical problem, most observers argue.[145] The Board pointed out that most servicemembers who have reached the ten-year mark are reluctant to leave because they will leave with no retirement benefits and are incentivized to stay until they become eligible for retirement.[146] Similarly, "Pentagon managers are reluctant to separate personnel from the armed forces who have served more than 10 years but less than 20 years, not wanting to leave service members without a job or retirement savings."[147] Where force drawdown occurs due to manning, the Board points out that the DoD must seek special payment authority, like TERA, to ease servicemembers out of the military.[148] Notably, the Board concludes that only seven percent of servicemembers leave the military between their 15th and 20th years of service.[149]

In 2000 the Defense Science Board Task Force on Human Resource Strategy (DSB) conducted an in-depth study on the military compensation system and concluded that the retirement system was "expensive, inefficient, inflexible, and unfair."[150] The DSB found that too many officers were promoted to O-4, between their 10th and 12th years, and remained in the service until they were eligible for retirement at twenty years of service.[151]

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143 Christian, *supra* note 23, at 13.
144 *Id.* at 14.
145 DEF. BUS. BD., *supra* note 5, at 3; KORB ET AL., *supra* note 15, at 34.
146 Novak, *supra* note 10.
147 KORB ET AL., *supra* note 15, at 34.
148 DEF. BUS. BD., *supra* note 5, at 3.
149 *Id.* tab C, at 11.
150 Christian, *supra* note 23, at 7 (quoting U.S. DEF. SCI. BOARD TASK FORCE ON HUMAN RES. STRATEGY, DEFENSE SCIENCE BOARD TASK FORCE ON HUMAN RESOURCES STRATEGY 73 (2000)).
151 *Id.* at 15 (citing U.S. DEF. SCI. BOARD TASK FORCE ON HUMAN RES. STRATEGY, DEFENSE SCIENCE BOARD TASK FORCE ON HUMAN RESOURCES STRATEGY 73 (2000)).

Critics point to the "all or nothing" system as the major culprit in the force management issue. The "up or out" system in the military has always been thought to be an effective way of managing personnel.[152] Servicemembers who fail to be promoted after several attempts were involuntarily separated to make room for newly promoted members into that particular rank. Additionally, the normal attrition rate of servicemembers leaving the force, coupled with involuntary separations, was viewed as an effective means of managing the military.[153] To aid in the transitioning of those forced out involuntarily, the member becomes entitled to separation pay.[154] However, as outlined by the Board and past reports on the issue, attrition and involuntary separations have not been effective tools in managing the force.[155]

Critics believe that allowing servicemembers to vest into a defined benefit or contribution plan at five or ten years would incentivize more servicemembers to leave active duty between their tenth and twentieth year.[156] Any plans to tinker with the current system should strongly consider the impact on force management and retention. In the 1990s, although there were high troop deployments, stagnant military wages, and a booming economy, the changes to Redux were cited as a major reason why servicemembers left the force in droves.[157] Thus, if benefits are reduced, then the DoD may have difficulty retaining qualified people.[158]

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152 *See id.* at 13 (citing HOOK COMMISSION, *supra* note 13, at 44).

153 HOOK COMMISSION, *supra* note 13, at 40–41. The Hook Commission rejected the Services' argument that providing an early retirement date, at twenty years, would be an ideal way of managing the force. The Commission pointed out, "Nor is it necessary or desirable, as urged by some in the Services, that the present early retirement privilege be retained so that it may be used as a tool to eliminate undesirable men from the Services. Good management does not need a crutch of this kind to effect separations that are in the interests of the Services." Thus, the Services were to eliminate servicemembers who underperformed, not let them stay until they became eligible for retirement.

154 *See* 10 U.S.C. § 1174 (1980); U.S. DEP'T OF DEF., MILITARY COMPENSATION BACKGROUND PAPERS: COMPENSATION ELEMENTS AND RELATED MANPOWER COST ITEMS, THEIR PURPOSES AND LEGISLATIVE BACKGROUNDS 649 (7th ed. Nov. 2011) ("The Officer Personnel Act of 1947, ch. 5112, Pub. L. No. 80-381, 61 Stat. 795 (1947), required, as part of its 'up-or-out' promotion system, the involuntary discharge of regular officers of any branch of service who failed of selection for promotion and who were not eligible for retirement.").

155 *See* DEF. BUS. BD., *supra* note 5.

156 *See* discussion *infra* Parts VIII.–IX.

157 HENNING, *supra* note 30, at 8.

158 *See id.* at 24. The Pentagon has always used the retirement system as a major retention tool.

C. Retaining Qualified Personnel

Historically, the military retirement system has been viewed as a significant incentive in retaining servicemembers once they have joined the military.[159] However, retention is an issue that has several different layers. While the retirement system may serve as a strong retention tool for servicemembers between the ten-and twenty-year mark, it is not the same for those in years one through ten, or for those who have vested after reaching twenty.[160] The Board highlights that surveys consistently show that the retirement system has little value for recruiting or retaining members during their first ten years of service.[161] But once a servicemember crosses over that ten-year threshold, it appears that for some servicemembers it is a matter of waiting out their time for retirement. As previously noted in the Force Management section,[162] only seven percent of servicemembers leave between the 15th and 20th year of service.[163]

The real retention issue comes from the service's ability to retain members who have crossed over the twenty-year mark. The Board and the CAP believe that the twenty-year vesting system provides a strong incentive for servicemembers to leave once they have reached their twentieth year.[164] 76 percent of servicemembers leave the service between their twentieth and twenty-fifth years of service.[165] This is more important, critics argue, when considering that a servicemember may just be reaching his peak of performance and true expertise in his field when he opts to leave.[166] There is no marginal financial benefit to the

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[159] HENNING, *supra* note 43, at 1.
[160] DEF. BUS. BD., *supra* note 5, tab C, at 7.
[161] *Id. See also* Novak, *supra* note 10.
[162] *See* discussion *supra* Part IV.B.
[163] DEF. BUS. BD., *supra* note 5, tab C, at 11. *See infra* Part VIII. Most of the proposals to reform the current system suggest that if we move to a 401k style system and allow servicemembers to vest between three and ten years in service, and provide them with a series of gate pay and separation pay, that we would see a more gradual and sustainable rate or servicemembers leaving the service between their ten to twenty-year mark.
[164] *Id.* at 3; KORB ET AL., *supra* note 15, at 28, 35 (citing 10TH QRMC, *supra* note 14, at 3).
[165] DEF. BUS. BD., *supra* note 5, tab C, at 11. *But see infra* Part VII.B.–C (highlighting several reasons why servicemembers may leave the service soon after reaching their twentieth year).
[166] MOMENT OF TRUTH PROJECT, *supra* note 55, at 6.

servicemember, the Moment of Truth Project contends, to serve beyond twenty years.[167]

Congress sought to fix the post-twenty-year retention issue by providing servicemembers a choice between the High-3 and Redux with the $30,000 Career Status Bonus (CSB).[168] However, fewer servicemembers are choosing the CSB as a retirement option due to its declining value and services' efforts to educate the troops about its financial impact during retirement.[169] Further, the high number of servicemembers leaving the force after the twentieth year highlights the CSB's lack of success as a retention tool. With an increasing number of servicemembers shunning the CSB and choosing High-3, the retention statistic for post-twenty-year members will continue to be high.

D. Proper Compensation

One of the main drivers of military retirement reform is the belief that the system is overly generous. The Moment of Truth Project notes, "The military retirement system is arguably the best retirement deal around,"[170] not because of its fairness, nor because it takes care of servicemembers, but because it is one of "the most generous retirement system in the country."[171] Both the CAP and the Board support the notion that the military system is too generous.[172] But this generosity has historically been a reflection of the potential retiree serving away from his family for months or years at a time, even placing his life on the line.

The view of excessive generosity developed long ago. In 1965 the first Quadrennial Review of Military Compensation (1st QRMC)[173] viewed the compensation system as being divided into two phases, the active duty phase and the second career phase.[174] They also distinguished the second-career phase from an "old-age phase" where the servicemember would venture into full retirement, typically at or after reaching age sixty-two. The 1st QRMC concluded that the military

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167 *Id.*
168 HENNING, *supra* note 43, at 4–5.
169 *See* HENNING, *supra* note 30, at 9–10. *See infra* Part IV.D.
170 MOMENT OF TRUTH PROJECT, *supra* note 55, at 4.
171 *Id.* at 2.
172 KORB ET AL., *supra* note 15, at 31; DEF. BUS. BD., *supra* note 5, at 2.
173 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 1060.
174 Christian, *supra* note 23, at 4.

retirement system subsidized retirees too generously during the second phase of their careers. They recommended that the retirement benefit be lowered from the range of 50–75%, to 24–51%. Congress did not approve their recommendation.[175] Nonetheless, subsequent reviews and research studies have echoed the charge that the system is too generous.[176]

1. Why the System Is Believed to Be Too Generous

Critics highlight five main reasons why the system is believed to be too generous. First, "the Defense Department essentially pays [retirees] 40 years of retirement for 20 years of service. In addition, for those who receive them, military retirement benefits are 10 times greater than those in the private sector."[177] The average enlisted member is forty-two years old and has twenty-two-and-one-half years of service, and the average officer is almost forty-five years old and has nearly twenty-four years of service at retirement.[178] Second, both the CAP and the Board highlight that the system is outdated since the current retirement system was designed in an era when active duty pay was less than that in the private sector and life expectancies were shorter.[179] Third, the CAP points to the fact that today the vast majority of retirees go on to have second careers while enjoying their military retirement and government health care benefits that far exceed what is available in the private sector.[180] Fourth, the increase in COLA, provided to keep pace with inflation post-retirement, is also argued to be extremely generous when compared to that in the private sector.[181]

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[175] *Id.*

[176] *See id.* at 4–6 (discussing the Interagency Committee on Uniformed Services Retirement and Survivor Benefits (IAC) (1971), U.S. Defense Manpower Commission (1976), and the President's Commission on Military Compensation (PCMC also known as the Zwick Commission) (1978)); KORB ET AL., *supra* note 15, at 31; DEF. BUS. BD., *supra* note 5, at 2. *But see* 10TH QRMC, *supra* note 14, at 21 (citing U.S. DEP'T OF DEF., REPORT OF THE FIFTH QUADRENNIAL REVIEW OF MILITARY COMPENSATION, vol. 1 (1984)). The 5th QRMC in 1984 rejected previous reviews and reports that argued that the system was too generous and concluded that a change to the retirement system would adversely impact retention. *Id.*

[177] KORB ET AL., *supra* note 15, at 32 (citing DEF. BUS. BD., *supra* note 5, at 6).

[178] HENNING, *supra* note 43, at 1 (citing OFFICE OF THE ACTUARY, U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE FISCAL YEAR 2009 DOD STATISTICAL REPORT ON THE MILITARY RETIREMENT SYSTEM 120 (May 2008)).

[179] DEF. BUS. BD., *supra* note 5, at 2; KORB ET AL., *supra* note 15, at 30–31.

[180] KORB ET AL., *supra* note 15, at 31.

[181] MOMENT OF TRUTH PROJECT, *supra* note 55, at 8.

Finally, both the Moment of Truth Project and the Board contend that the military retirement system is based on an outdated assumption that military skills are not transferable to the private sector.[182] They argue that one of the factors in making retirement annuity immediately available to retirees was to counter the lost income that servicemembers would experience once they moved into the private sector because they would earn less compared to their civilian counterparts with similar education and work experience.[183] They also contend that recent research shows that retired servicemembers now earn similar incomes to their civilian counterparts based on the same education and work experience.[184] Thus, servicemembers who retire in their early forties with a military pension also have the option of earning similar incomes to their civilian counterpart, once they leave the military, all the while working for an additional twenty years, which will likely earn them a second pension, or more likely, savings in a 401(k)-style plan.[185]

Despite the Moment of Truth Project's, the Board's, and the CAP's conclusions that the retirement system is too generous, Part VII of this article explains why the system fairly compensates servicemembers and their dependents for their sacrifices and the hardship that they endure during a twenty-plus years of service. Moreover, Part VII explores in greater detail why serving in the military is a unique experience and should be compensated differently than retiring in the private sector, or as a federal or state civilian employee.

2. A Shift from Defined Benefit to Defined Contribution

Perhaps the reason why the military system appears to be "overly generous" is because it is being compared to the private sector that has in general drastically reduced retirement benefits over the past few decades.[186] The civilian sector has moved away from providing pensions

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[182] DEF. BUS. BD., *supra* note 5, at 2; THE MOMENT OF TRUTH PROJECT, *supra* note 55, at 9.
[183] MOMENT OF TRUTH PROJECT, *supra* note 55, at 9.
[184] *Id.* (citing 10TH QRMC, *supra* note 14, at 8; U.S. DEP'T OF DEF., REPORT OF THE TENTH QUADRENNIAL REVIEW OF MILITARY COMPENSATION, VOLUME I: CASH COMPENSATION 35 (Feb. 2008)).
[185] *Id.* at 9.
[186] *Id.* at 2 (pointing to "the growing disparity between government and private sector pension plans").

to their workers while the military has maintained the system.[187] According to the Bureau of Labor Statistics, only nine percent of private employers provide a traditional pension benefit to their workers.[188] In fact, in times of financial hardship, private sector companies choose to discontinue providing matching contributions to their employees as part of 401(k)-style retirement benefits.[189]

Private sector companies now rarely provide defined benefit packages to their employers and have shifted a higher amount of cost to their employees. According to the Bureau of Labor Statistics, only 47 percent of private businesses offer both a defined benefit and a defined contribution package; 45 percent offer defined contribution plans; and only 10 percent (and declining) offer defined benefit plans.[190] Further, less than one-third of the Fortune 100 companies offer some type of a traditional pension plan to new employees.[191] Critics of the military retirement system have seized these statistics as further proof as to why the federal government should abolish the pension system and champion a 401(k)-style system.[192] Moreover, the Defense Business Board points out that no private sector employers provide an immediate annuity payout after twenty years of service.[193] The CAP views private sector employers' move from defined benefit plans toward defined contribution plans as a way for companies to manage personnel costs more effectively.[194] More critically, the Department of Labor notes that over the past ten years, private sector employees have contributed about 45 percent of the cost toward their retirement while their employers contributed about 55 percent.[195] In marked contrast, federal employees contribute less than one percent and servicemembers do not contribute any amount toward their defined benefit plan.[196]

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187 Emily Brandon, *Top Companies Continue to Drop Pensions*, U.S.NEWS & WORLD REP., Oct. 26, 2012, http://money.usnews.com/money/blogs/planning-to-retire/2012/10/26top-companies-continue-to-drop-pensions.
188 *Id.*
189 Christine Dugas, *Most Companies Restore 401(k) Contributions*, USA TODAY, Nov. 30, 2011, http://usatoday30.usatoday.com/money/perfi/retirement/story/2011-11-30/401-k-contributions/51512964/1.
190 MOMENT OF TRUTH PROJECT, *supra* note 55, at 8.
191 Brandon, *supra* note 187.
192 *See generally* KORB ET AL., *supra* note 15.
193 DEF. BUS. BD., *supra* note 5, tab C, at 6.
194 KORB ET AL., *supra* note 15, at 36 (citing DEF. BUS. BD., *supra* note 5, at 23).
195 DAVE KENDALL & JIM KESSLER, FREQUENTLY ASKED QUESTIONS ABOUT FEDERAL RETIREMENT REFORM, THIRD WAY 2 (June 2011).
196 *Id.*

In light of these changes, which are no fault of the individual servicemember or the current military system itself, the military retirement system only appears to be "overly generous" or "the best retirement deal" in the nation.

3. Overly Generous or Just Compensation?

The Hook Commission understood the importance of providing a set of benefits to servicemembers that properly compensated them for their sacrifice and years of service, and be starkly different from what was available to the ordinary citizen in the private sector.[197] One of the goals that Secretary of Defense James Forrestal had for the Hook Commission in 1948 was to devise a compensation system that would attract and retain the best kind of men for all the varieties of jobs within the different services.[198] The Hook Commission acknowledged that the services found it difficult to recruit qualified people, and the services faced a high number of officer resignations due to more lucrative employment opportunities in the private sector.[199] Thus, the system had to be different to retain servicemembers when the government would compete with the private sector to attract and retain qualified people.[200] The Hook Commission expressly believed that the retirement benefit should be immediately available upon retirement. The system should compensate servicemembers because the "up or out" system (the need to keep a young, vigorous and efficient armed forces) would compel servicemembers to retire from the military before they would reach full retirement age.[201]

In 1986, Congress sought to implement changes to the retirement system because they believed it was too generous.[202] Led by Representative Les Aspin, a democrat from Wisconsin, then-Chairman of the House and Armed Services Committee, Congress passed Redux.[203] Representative Aspin strongly believed that the overly generous benefits encouraged servicemembers to leave the service once they passed the

[197] HOOK COMMISSION, *supra* note 13, at 39–41.
[198] *Id.* at vii.
[199] *Id.* at ix; HOOK COMMISSION APPENDIX, *supra* note 25, at 7.
[200] HOOK COMMISSION, *supra* note 13, at ix.
[201] *Id.* at 39–40.
[202] HENNING, *supra* note 30, at 4.
[203] Sydney J. Freedberg, *Retirement Redux*, GOV'T EXEC., Apr. 1, 1999, at 36.

twenty-year mark, and discouraged them to serve to thirty years.[204] Redux, however—the law reducing the "second-career phase" compensation from the traditional 50 percent to 40 percent—depleted the force of the midcareer troops who might have served beyond the twenty-year mark. Those same troops started to leave the service well before they would become eligible under Redux.[205]

When critics declare the retirement system is overly generous, they typically think of the colonel and general who might receive 75 to 100 percent of their pay after serving more than thirty years in military service. The current system may appear to be "generous" for a colonel with twenty-six years of service who will likely retire with a yearly pension worth more than $75,000, but not for an E-6 enlisted member, with twenty-six years of service who would only receive approximately $28,000 annually.[206] Retirees (most with college-aged children) need a second income to provide for their families' future.[207] A reduction in retirement compensation would disproportionately impact enlisted members, furthering the inequality the critics' claim as a factor for advocating a change.

Although military skills may be prized in the private sector, those servicemembers who have served twenty years in the military are at a disadvantage when it comes to joining the private sector. Despite their experience, they will lack seniority in most instances. As the last person being hired, they will likely be the first person fired during difficult economic times. To illustrate, two servicemembers in identical career fields decide to leave the military and enter the private sector at different points in their careers; the first servicemember leaves after ten years and joins a firm, the second leaves after twenty years of service and joins the same firm. Ten years later, the first servicemember now has ten years with the company, will have accumulated seniority and income commensurate with the time that he has spent with the company. The servicemember with twenty years of service will have no seniority and will start from the bottom; his salary would likely be substantially lower than that of the servicemember who joined the firm ten years earlier. This is typically the case for military attorneys who leave the service and

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[204] *Id*.
[205] *Id.*; *see also infra* Part V.D (discussing the repeal of REDUX and the passing of the Career Status Bonus).
[206] *2013 Retirement Pay*, *supra* note 70, at 23; *see* Dao & Walsh, *supra* note 9.
[207] HENNING, *supra* note 30, at 20.

join a firm starting at or near the bottom of the firm ladder; or a doctor or dentist who leaves military service and then builds a practice from scratch. The retirement annuity compensates the second servicemember for sacrificing the time he would have spent in the private sector building seniority and income. By moving to a 401(k)-style system or delayed annuity, there would no longer be a clear incentive for a servicemember to continue serving beyond eight or ten years. As a result, the military would have a higher turnover rate, which would lead to an increase in training and other personnel costs.

While the military system should be modernized to provide some level of benefits to the 81 percent of servicemembers who leave the service before reaching the twenty-year mark, the fundamental premise of providing an immediate annuity after completing twenty years of service must remain in place. The defense budget can and should accommodate this ideal.

V. The Defense Budget

The Defense budget comprises about 20 percent of the overall federal budget.[208] "The United States spends about five times as much on defense as China, the country with the second highest military budget in the world. We spend more than *twice the combined total* of the countries with the four highest military budgets after ours [China, Russia, the United Kingdom, and France]."[209] Shockingly, even when considering Sequestration, the deal that calls for a decrease of $500 billion in defense spending over ten years,[210] the United States still spends "as much on defense as the next 17 countries combined."[211] The

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[208] CONGRESSIONAL BUDGET OFFICE, http://www.cbo.gov/topics/national-security (last visited Dec. 2, 2013); R.M., *Always More, or Else*, ECONOMIST, Dec. 11, 2011, http://www.economist.com/blogs/democracyinamerica/2011/12/defence-spending; *Where Do Your Taxes Go?*, YOURMONEY.BLOGS.CNN.COM, http://yourmoney.blogs.cnn.com/2012/04/20/ (last visited Feb. 17, 2013); *Federal Budget Breakdown*, CNN.COM, http://cnnyourmoney.files.wordpress.com/2012/04/ybl_federal_budget_breakdown.png (last visited Feb. 17, 2013).

[209] David Brodwin, *How to Safely Cut U.S. Defense Spending*, U.S.NEWS.COM, June 21, 2012, http://www.usnews.com/opinion/blogs/economic-intelligence/2012/06/21/how-to-safely-cut-us-defense-spending (emphasis in the original).

[210] Tami Luhb, *Fiscal Cliff Countdown: Automatic Spending Cuts*, CNNMONEY, Nov. 29, 2012, http://money.cnn.com/2012/11/29/news/economy/fiscal-cliff-spending-cuts/index.html.

[211] R.M., *supra* note 208.

U.S. defense budget is made up of three key areas: (1) personnel spending, (2) operation and maintenance, and (3) acquisition of military equipment. While this article is not about the federal budget or the overall defense budget, it is important to note that every line item on the defense budget should be scrutinized when it comes to moving toward a more fiscally responsible budget. This section focuses on reducing personnel cost, the first key area of the defense budget.

A. Background

Speaking at the Wilson Center in October 2011, Defense Secretary Leon Panetta said, "'The fiscal reality facing us means that we have to look at the growth in personnel costs, which are a major driver of budget growth and are, simply put, on an unsustainable course.'"[212] Personnel costs consist of (1) retirement cost; (2) compensation for the troops (basic pay, BAH, BAS, and special pay[213]); and (3) healthcare cost for retirees and dependents.[214] Even if modest changes are made to control the three areas listed above, critics believe that personnel costs will continue to grow and divert funds from training and weapons acquisitions.[215] Reigning in compensation, increasing the premiums that

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212 Arnold Punaro, *Tame the Pentagon's Personnel Costs*, U.S. DEP'T OF DEF., Dec. 5, 2011, http://www.defensenews.com/article/20111205/DEFFEAT05/112050306/Tame-Pentagon-s-Personnel-Costs. Many share Secretary Panetta's belief that personnel cost, if left unchecked, will consume the entire defense budget by 2039. *See* KORB ET AL., *supra* note 15, at 1.

213 MAREN LEED, KEEPING FAITH CHARTING A SUSTAINABLE PATH FOR MILITARY COMPENSATION, CTR FOR STRATEGIC & INT'L STUD. 12–14 (Oct. 2011). Special pay includes special and incentive pays for specific skills and technical expertise, education benefits, unemployment insurance, adoption expenses, death gratuities, transportation subsidies, and pay associated with serving in a combat zone. *Id.* at 12–13. The 10th QRMC includes under the rubric of military compensation the following items: cash (basic pay, housing & subsistence allowance, special incentive pays, tax advantage, and other cash), noncash (health care, education, housing, and other noncash), and deferred (retired pay accrual, health care accrual, veterans affairs-health, veterans affairs-other, and other deferred). 10TH QRMC, *supra* note 14, at 2.

214 *See* KORB ET AL., *supra* note 15, at 1.

215 *Id.* According to Mr. Lawrence Korb of the CAP, "Military personnel costs have nearly doubled since fiscal year 2001 and now consume one-third of the Pentagon's base budget—about $180 billion per year." *Id.* (citing Elisabeth Bumiller & Thom Shanker, *Defense Budget Cuts Would Limit Raises and Close Bases,* N.Y. TIMES, Jan. 26, 2012, http://www.nytimes.com/2012/01/27/us/pentagon-proposes-limiting-raises-and-closing-bases-to-cut-budget.html?pagewanted=all&_moc.semityn. www&_r=0); 10TH QRMC, *supra* note 14, at 1–2 (noting that the federal government spent $173 billion on military compensation). Underlying all the reasons is a desire to drive down personnel cost to

retirees pay for their health care and making adjustments to COLA payments are all viewed as sensible ways that the DoD can reduce costs while keeping faith with those who have served and are now serving in the armed forces.[216]

B. Military Health Care

1. Rising Cost

Military health care represents the single most expansive growth in military compensation cost.[217] According to the CAP, "[b]etween fiscal year 2001 and fiscal year 2012, the military health care budget grew by nearly 300 percent, up from $19 billion in 2001 to $52.8 billion in 2012."[218] The Center for Strategic & International Studies (the Center) points to four causes for the rise in health care cost:

1. Shifts in health care accounting practices;
2. The expansion of benefits and of beneficiary populations;
3. Capped or reduced patient cost shares; and
4. Changes in coverage, utilization, and general medical inflation.[219]

The shift in health care accounting practices has led to an increase in the amount of funds allocated to pay for future retiree military health care in the defense budget. Before 2002, health care cost for Medicare-eligible retirees was paid for by allocating funds in the year in which the services were delivered. Starting in October 2002, however, Congress initiated the Medicare-Eligible Retiree Health Care Fund (MERHCF), requiring the DoD to allocate funds today to cover future costs and to

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ensure that funds can be used to pay for more expensive weaponry. *See generally* KORB ET AL., *supra* note 15, at 28 (noting that "retirement costs will consume an increasing percentage of the defense budget and begin diverting funds away from other key national security priorities such as weapons acquisition or research and development"). *See also* DEF. BUS. BD., *supra* note 5, tab C at 9 ("The cost of military retirement will seriously undermine future military warfighting capabilities").

216 *See* KORB ET AL., *supra* note 15; MOMENT OF TRUTH PROJECT, *supra* note 55.

217 LEED, *supra* note 213, at 17.

218 KORB ET AL., *supra* note 15, at 14 (citing EXEC. OFF. OF THE PRES. OF THE U.S., FISCAL YEAR 2012 BUDGET OF THE U.S. GOVERNMENT, at 61 (Feb. 2011), *available at* http://www.whitehouse.gov/sites/default/files/omb/budget/fy2012/assets/budget.pdf

219 LEED, *supra* note 213, at 17.

create transparency of the future cost of health care on current-year personnel decisions. The Center concludes that this shift in accounting practices "added $10 billion—$7.7 billion for active duty retirees and $2.3 billion for Reserve retirees" to the defense budget.[220]

Several trends have converged to increase the number of beneficiaries using military health care benefits, two of which have emerged as the most prominent trends. First, starting in 2001, Congress expanded the number of servicemembers, family members, and retirees eligible for benefits.[221] This expansion was partly due to fighting two wars and recognizing the sacrifices by active duty and reserve servicemembers and their families. There has also been an increase of injuries, both physical and mental, and life-saving measures that were not available in prior wars.[222] The DoD does not list a separate line item within the budget to show the health care cost associated with expanding the number of beneficiaries and the cost of taking care of specific ailments related to the two wars, which makes it mostly impossible to determine an amount associated with the overall cost of the military health care system.[223] Second, in years past, the number of unemployed servicemembers also played a role in increasing costs, as those servicemembers have sought medical care through the military system.[224] The low cost of fees as compared to those in the private sector has provided a financial incentive for retirees eligible for the military health care system to remain under that care.[225]

With the added increases in the number of beneficiaries, the cost share for those beneficiaries and current retirees has remained stagnant

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220 *Id.* While the change in the accrual accounting method increased the defense budget, expanding the number of beneficiaries also played a significant role. The Center for Strategic & International Studies notes that "[t]hroughout the 2000s, the DoD and Congress created new programs, added new benefits to existing programs, and extended eligibility to new categories of beneficiaries." *Id*.

221 *Id.* at 20; KORB ET AL., *supra* note 15, at 19.

222 LEED, *supra* note 213, at 17; David Wood, *Iraq, Afghanistan War Wounded Pass 50,000*, HUFFINGTON POST, Oct. 25, 2012, http://www.huffingtonpost.com/2012/10/25/iraq-afghanistan-war-wounded_n_2017338.html?view=screen.

223 LEED, *supra* note 213, at 17.

224 *Id.* at 20; Gregg Zoroya, *Veterans' Jobless Rate Falls but Remains High*, USA TODAY, Jan. 6, 2013, http://www.usatoday.com/story/news/nation/2013/01/06/vets-jobless-rate-drops/1812667/ (noting that the jobless rate for veterans has dropped to an annual average of 9.9 percent in 2012 from 12.1 percent in 2011. However, more than 200,000 veterans who served in or during the Iraq and Afghanistan wars are without work).

225 LEED, *supra* note 213, at 20.

from 1994 to 2012. According to the CAP, in 1996 working-age retirees between the ages of forty-two and sixty-five paid 27 percent of their health care cost; today they pay approximately 11 percent.[226] Between 1994 and 2012, retirees eligible for Tricare coverage paid $230 for an individual and $460 for a family, regardless of size.[227] The CAP found that "[h]ad the fees been adjusted to reflect nationwide increases in health care costs, the family enrollment fee would have risen from [$460] in 1995 to something closer to the average U.S. worker contribution in 2011 for an employer-sponsored family plan: $4,129."[228] Retirees who are over the age of 65, on the other hand, enroll without cost in Tricare for Life, a program that augments Medicare coverage.[229] Though the cost to provide this system continues to rise, Congress has repeatedly blocked the DoD's effort to charge an enrollment fee.[230] Even where retirees[231] have access to private sector health care packages, a majority of them choose the military health system because it is much cheaper,[232] saving the retiree thousands of dollars while costing the Pentagon and taxpayers billions.[233]

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226 KORB ET AL., *supra* note 15, at 3 (citing OFFICE OF THE UNDER SEC'Y OF DEF., U.S. DEP'T OF DEF., OVERVIEW FISCAL YEAR 2013 BUDGET REQUEST 45 (Feb. 2012)).

227 LEED, *supra* note 213, at 18, 18 n.26.

228 KORB ET AL., *supra* note 15, at 17 (citing GARY CLAXTON ET AL., THE KAISER FAMILY FOUND., EMPLOYER HEALTH BENEFITS 2011 ANNUAL SURVEY 1 (2011)). There was a typographical error ($520) in the original report, which this author corrected to $460.

229 *Id.* at 14.

230 *Id.* This is likely due to the strong power of the retiree lobbying groups and Congress's attempt to provide free health care to retirees as they were promised when they entered the service. *See generally* Schism v. United States, 316 F.3d 1259, 1262 (Fed. Cir. 2002) (Department of Defense conceding that military recruiters promised free lifetime health care to servicemembers as inducement to join the armed forces). *Id.* The United States Court of Appeals, Federal Circuit ruled that despite this promise, Congress did not authorize the Services to make such promises and the promise for free health could not be enforced. However, the court noted that Congress could take action by providing free health care. *Id.* at 1264. Additionally, the CAP believes that retirees and their dependents account for the majority of the military health care spending. KORB ET AL., *supra* note 15, at 20 (citing DON J. JANSEN, CONG. RESEARCH SERV., RS22402, INCREASES IN TRICARE COSTS: BACKGROUND AND OPTIONS FOR CONGRESS (May 14, 2010)).

231 KORB ET AL.,*supra* note 15, at 19. According to the Center for American Progress, retirees choosing Tricare over their employer health care package includes retirees making six-figure salaries with defense companies and also one member of Congress. *Id.*

232 *Id.* at 14.

233 *Id.* at 19 (citing Elisabeth Bumiller & Thom Shanker, *Defense Budget Cuts Would Limit Raises and Close Bases,* N.Y. TIMES, Jan. 26, 2012, http://www.nytimes.com/2012 01/27/us/pentagon-proposes-limiting-raises-and-closing-bases-to-cut-budget.html?page wanted=all&_moc.semityn.www).

2. Suggested Changes

Retirees should contribute a greater share of the cost for their health care. With the change to the accounting method and the number of servicemembers receiving care, by 2015, analysts estimate, the military health care system will account for 28 percent of the budget—about $64 billion.[234] The fear is that health care expenses for retirees will consume a greater share of the defense budget and will begin to divert funds away from other DoD programs.[235] For the first time in eighteen years, Congress approved an increase in the enrollment fee of $2.50 for individuals and $5.00 for families per month, which raised the fees from $230 to $260 a year for an individual, and from $460 to $520 a year for a family, as part of the FY 2012 defense budget.[236] However, these changes will only stem the tide, and will not bring military health care cost under control.

The Pentagon's 2007 Task Force on the Future of Military Health Care, the 10th QRMC, the Congressional Budget Office's analysis of military health care options, and President Barack Obama's Deficit Commission have all identified four basic strategies that Congress and the DoD should adopt to control the rise of military health care cost:

1. Restore a fair cost-sharing balance between taxpayers and beneficiaries;
2. Establish procedures to ensure fair future cost sharing;
3. Limit double coverage for working-age retirees above a certain income level; and
4. Create incentives to reduce the oversuse of Tricare for Life services.[237]

The DoD's FY2013 budget proposed several cost-saving measures to lower overall cost to the military health care system. The proposals include higher enrollment fees and deductibles for working-age retirees; indexing enrollment fees to the National Health Expenditure (NHE)

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[234] *Id.* at 14. Note, however, that the amount allocated from the defense budget to pay for future retirees should decrease as current active duty servicemembers begin to retire and the cost of their care is paid from the Medicare-Eligible Retiree Health Care Fund (MERHCF).
[235] *See id.*
[236] *Id.* at 17–18.
[237] *Id.* at 21.

index, to ensure the long-term fiscal viability of the Tricare program; implementing an enrollment for Tricare for Life recipients; and incentivizing generic and mail-order[238] purchases for prescription drugs. These measures are estimated to save the Pentagon $12.9 billion between FY2013 and FY2017.[239] The CAP concluded, "Should the Pentagon's recommendations be implemented by Congress, military retirees would still contribute just 14 percent of their health care costs, about half of what they did in 1996."[240]

Congress approved some, but not all, of the DoD's request. As part of the FY2013 Defense Authorization Bill, Congress increased the annual enrollment fee for military retirees to $269 for an individual and $538 for a family.[241] The fee increase represents a 3.6 percent increase from 2011.[242] The rise in health care cost, coupled with a rise in basic pay, could mean that funds will eventually have to be diverted from basic pay, retirement pay, or other defense line items to meet the demand.

C. Rise in Base Pay

Paying an all-volunteer standing armed force is expensive. This is especially true considering the military must compete with the private sector to attract the best and the brightest to carry out the nation's strategic military objectives. Where Congress has failed to maintain military wages on par with those in the private sector, servicemembers have left the services for more lucrative careers or have simply not joined the services.[243]

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[238] Retirees who receive their prescriptions from military facilities will continue to use the facilities as an option. *See generally id.* at 15.
[239] *Id.*
[240] *Id.* at 3.
[241] Kelly Lunney, *Military Retirees See Tricare Fee Hike*, GOV'T EXEC., Oct. 2, 2012, http://www.govexec. com/pay-benefits/2012/10/military-retirees-see-tricare-fee-hike/58519/. National Defense Authorization Act for Fiscal Year 2013, Pub. L. No. 112-239, 126 Stat. 1632 (2013).
[242] Lunney, *supra* note 241.
[243] *See* HOOK COMMISSION, *supra* note 13; 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19; HENNING, *supra* note 30. While this article only discusses basic pay and its impact on future retirement cost, it is important to remember that basic pay accounts for 65 to 75 percent of a servicemember's total Regular Military Compensation (RMC). HENNING, *supra* note 52, at 3 n.6; MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 11. Additionally, servicemembers can receive non-cash subsistence in gaining access to the commissary, subsidized childcare or tax exemptions. LEED, *supra* note 213, at 8; KORB ET AL., *supra* note 15, at 9.

1. Congressionally Mandated Increases in Base Pay

About 20 percent of the DoD budget goes toward salaries and allowances for the 2.3 million active duty and Reserve members of the armed forces.[244] "In 2012, the DoD requested $56.6 billion for basic pay for active duty forces, $9.2 billion more than in 2000."[245] The rise in cost cannot be attributed to a greater number of servicemembers (their number have remained relatively constant) or simply because Congress, in 2007, extended the pay table from thirty years to forty years as part of the FY2007 NDAA.[246] Rather, the change has to do with the number of raises that Congress has authorized since 2000—raises that were part of the Redux repeal in 1999, discussed in Part III.D of this article.

Starting with the FY2000 NDAA, Congress began to increase military pay by approving a series of pay increases. This was due to the pay gap between military and civilian pay that occurred for most of the 1990s and the resultant problems the services were experiencing with recruitment and retention.[247] Further, fears about recruitment and retention once the war in Afghanistan started prompted Congress to enact "multiple pay raises between 2002 and 2004 that averaged between 4.2 and 6.9 percent (both across-the-board and targeted at certain pay grades)."[248] Additionally, starting with the 2004 NDAA,[249] Congress mandated that future increases in military basic pay would be tied to civilian salaries, as measured by the Employment Cost Index[250] (ECI).[251] Congress also mandated a pay raise of half a percent above the ECI, from 2004 to 2006, to bring military pay in line with private sector pay.[252]

In 2007, Congress again authorized a half a percent pay increase above and beyond the ECI. The Center believes that Congress chose to

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[244] *See* KORB ET AL., *supra* note 15, at 1.
[245] LEED, *supra* note 213, at 8.
[246] *Id.* at 4, 8.
[247] HENNING, *supra* note 30, at 9; LEED, *supra* note 213, at 8.
[248] LEED, *supra* note 213, at 8.
[249] National Defense Authorization Act for Fiscal Year 2004, Pub. L. No. 108-136, 117 Stat. 1392 (2003).
[250] "The Employment Cost Index (ECI) is a quarterly measure of the change in the price of labor, defined as compensation per employee hour work . . . . The index measures changes in the cost of compensation not only for wages and salaries, but also for an extensive list of benefits." John Ruser, *Employment Cost Index*, MONTHLY LAB. REV. 3 (Sept. 2001), http://www.bls.gov/opub/mlr/2001/09/art1full.pdf.
[251] LEED, *supra* note 213, at 8.
[252] KORB ET AL., *supra* note 15, at 11.

continue the practice as a gesture of reward for the troops fighting on two different war fronts.[253] In fact these raises surpassed what the DoD requested.[254] In 2011, Congress approved a pay raise to the index standard.[255] Even when considering the increases to the housing allowance, due to the rise in housing cost during the height of the housing bubble, basic pay remained the principal driving force of the increase in cost.[256]

2. Potential Solution to Base Pay Raises

The raises authorized by Congress between 2001 and 2012 significantly increased the cost of military compensation.[257] Many believe that the pay increases were unwarranted. Mr. Korb notes that the pay raises that Congress authorized after 2006 were unnecessary since military pay surpassed that of the civilian workforce and because the DoD had, in previous years, met its recruiting and retention numbers.[258] The Board notes that in 2011, military compensation was "higher than that of average civilians with the same level of education."[259] Further, the Board found that enlisted pay ranks in the top quartile of that of high school graduates and officer pay ranks in the top quartile of that of college graduates.[260] However, there are distinctions between the military and the private sector that should warrant a difference in the way servicemembers are compensated.[261]

Critics of the retirement system argue that there are long-term consequences to increasing basic pay above what civilians with similar educational background earn for comparable work in the private sector. Basic pay and cost of living adjustments are the most important factors in the cost of future military retirement pay.[262] Therefore, the pay hike that

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253 LEED, *supra* note 213, at 8.
254 KORB ET AL., *supra* note 15, at 8.
255 *Id.* at 12.
256 LEED, *supra* note 213, at 4, 8.
257 *Id.* at 8.
258 KORB ET AL., *supra* note 15, at 8, 11–12.
259 DEF. BUS. BD., *supra* note 5, at 2.
260 *Id.* tab C, at 4.
261 U.S. DEP'T OF DEF., MILITARY COMPENSATION BACKGROUND PAPERS: COMPENSATION ELEMENTS AND RELATED MANPOWER COST ITEMS, THEIR PURPOSES AND LEGISLATIVE BACKGROUNDS 2–5 (7th ed. Nov. 2011) [hereinafter 2011 DEPARTMENT OF DEFENSE BACKGROUND PAPERS]. Some of those differences are highlighted in Part VII.
262 HENNING, *supra* note 30, at 19.

Congress instituted will trigger higher retired pay as more servicemembers retire.[263]

The theory of shared sacrifice means that pay raises that go beyond the ECI should not be mandated and will become unsustainable.[264] "In its FY2013 budget, the DoD proposes a plan to bring military pay back in line with the Employment Cost Index by implementing reduced pay raises beginning in FY2015, allowing military personnel time to adjust."[265] The DoD believes that slowing pay raises could save the government $16.5 billion over five years.[266] Mr. Korb believes that Congress will likely oppose it.[267] However, the long-term impact on the defense budget, coupled with the impact on future cost of retirement pay for servicemembers, means that Congress should think carefully before providing pay increases above the ECI.[268] But granting pay raise control to the DoD and allowing the DoD to dictate when troops should get a raise and how much, as suggested by the Center, is an avenue that would lead to servicemembers receiving less pay than their civilian counterparts.[269] The plan to reduce troop strength over the next five years should have a significant impact on the overall compensation cost and a direct impact on future retirement cost.[270]

D. Future Retirement Cost

Before discussing how much it costs the government to pay for the retirement system, it is important to note how and where the money comes from. As discussed in Part II.B, the Hook Commission believed that the taxing power of the government would be sufficient to meet its

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263 *Id.*
264 *See* MOMENT OF TRUTH PROJECT, *supra* note 55.
265 KORB ET AL., *supra* note 15, at 9.
266 *Id.*
267 *Id.* at 12–13 (noting that political pressure on Congress would make it difficult for them to approve a plan that resulted in lower pay for servicemembers).
268 *Id.* at 12.
269 *See id.* at 12–13. *See also* LEED, *supra* note 213, at 10–11 (highlighting that the DoD has in the past diverted funds from maintaining housing on military installations, which resulted in sub-standard housing, to pay for other items on the budget). It is likely that the DoD would limit raises and use the funds to pay for other items. *Id.*
270 *See* Elisabeth Bumiller & Thom Shanker, *Defense Budget Cuts Would Limit Raises and Close Bases,* N.Y. TIMES, Jan. 26, 2012, http://www.nytimes.com/2012/01/27/us/pentagon-proposes-limiting-raises-and-closing-bases-to-cut-budget.html?pagewanted=all&_moc.semityn.www.

burden to pay for the yearly cost of the retirement system.[271] Indeed, before FY1984, the government paid retirees by appropriating the funds needed for that year.[272]

1. The Accrual Accounting Method and the Military Retirement Fund

Starting in FY1985, however, Congress, following a recommendation by the Fifth Quadrennial Review on Military Compensation, established the "accrual accounting" concept as part of the DoD Authorization Act of 1984.[273] The concept is that each year the government would allocate an amount that it believed would cover the cost of future retirees.[274] This would ensure that the future cost of retirees would be paid in today's dollars,[275] which has the added benefit of providing "transparency to the DoD budgeting" by explicitly noting how current year personnel decisions would impact future retirement cost.[276]

The money for future retirees is put in the Military Retirement Fund (MRF).[277] However, there is one small drawback. Unlike private-sector companies that contribute to their employees' pension plans and perhaps invest the funds in equities, the money accruing in the MRF is invested in a variety of U.S. Treasury-based instruments such as bills, notes, bonds, Treasury Inflation-Protected Securities (TIPS), and overnight investment certificates.[278] Such investments barely keep pace with inflation. The MRF, the Board points out, is "not able to be invested in higher yielding equities and bonds."[279]

An independent, presidentially appointed Department of Defense Retirement Board of Actuaries (Retirement Board) decides how much the DoD needs to contribute to the MRF each year to cover future retirement cost.[280] The Retirement Board considers factors like

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271 HOOK COMMISSION, *supra* note 13, at 40–41.
272 HENNING, *supra* note 43, at 10.
273 Department of Defense Authorization Act, 1984, Pub. L. No. 98–94, 97 Stat. 614 (1983); Christian, *supra* note 23, at 6.
274 HENNING, *supra* note 43, at 10.
275 *Id.*
276 Christian, *supra* note 23, at 6.
277 10 U.S.C. §§ 1461–1467 (2012); HENNING, *supra* note 43, at 10–11.
278 MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 19.
279 DEF. BUS. BD., *supra* note 5, tab C, at 5.
280 HENNING, *supra* note 30, at 11.

"retirement rates and patterns, life expectancies and mortality rates, future pay levels, and other factors that will determine retirement pay obligations in the future."[281] The DoD then sets aside the amount suggested by the Retirement Board with projected interest earned in the low-yield government bonds *paid from the United States Treasury Department* that the DoD estimates will cover future retirement costs.[282] "Approximately thirty percent of military basic pay costs must be added to the DOD personnel budget each fiscal year to cover the future retirement costs of those personnel who will ultimately retire from the military."[283]

The military retirement system includes both funded and unfunded costs. The unfunded cost includes future retired pay costs incurred before Congress created the MRF in FY1985.[284] Money is allocated from the General Fund of the Treasury, *not from the DoD*, and is transferred to the MRF to pay for the unfunded portion.[285] Money is then disbursed from the MRF to pay current active duty and Reserve retirees, cover disability retirement benefits, and pay out survivor benefits.[286] To meet its obligation to pay for both the funded and unfunded portions, the Fund receives income from three sources: (1) the DoD funds under the accrual method, (2) General Funds from the U.S. Treasury as appropriated by Congress; and (3) investment income from the interest earned from the Treasury Department.[287] But there is something fundamentally wrong with the government appropriating funds, then borrowing money from those funds and paying itself interest, which will have to be paid for by appropriating more funds.[288]

2. All Roads Lead to the Taxpayer

There is good news and bad news in regards to the unfunded portion of the MRF. The good news is that the unfunded portion will be fully

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[281] LEED, *supra* note 213, at 15.
[282] *Id.* at 15 (emphasis added). The government is actually paying itself for keeping funds in its vault. Taxpayers are basically paying twice.
[283] HENNING, *supra* note 43, at 11.
[284] *Id.*
[285] *Id.* (emphasis added).
[286] MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 1.
[287] *Id.*
[288] LEED, *supra* note 213, at 4.

paid by FY2026.[289] This is an actual improvement because the 2010 projection was that the fund would be fully funded by 2033—an improvement of seven years.[290] The bad news is that the unfunded portion is a substantial amount—$1.1 trillion in FY2012.[291] While the unfunded amount is substantial, it is a cumulative amount to be paid to retirees over a 42-year period, which started in 1984 and is due to be paid in full by FY2026.[292] Unlike the private sector, military retirees do not have the option to claim immediate payment of their future benefits, so there is no fear that the unfunded portion will have to be paid all at once.[293] In fact, the DoD comptroller points out that the system is solvent and that they are well capable of meeting expenses now and in the future.[294] This proves the Hook Commision's point that so long as Congress has the taxing power, Congress will continue to meet its obligation. Despite its claim of solvency, it is important to remember that *all* of the funds come from taxpayers.

3. Arguing for Change to the Retirement System

Critics of the retirement system often cite to the ballooning unfunded portion of the system as the main reason why the system should be revamped. Their claim is inaccurate, and somewhat misleading. Both the CAP[295] and the Board[296] cite to the $1.3 trillion unfunded portion without explaining that the amount is not due in 2012, that the entire fund does not come from the Defense budget, or, more importantly, that it will all be "paid" for by FY2026. By highlighting the yearly cost of the retirement system, costing "the federal government more than $100 billion each year" and stating that if changes are not made, then the system will divert funds from "key national security priorities such as weapons acquisition or research and development," the CAP creates the impression that somehow changes to the retirement system would significantly decrease the burden on the defense budget.[297]

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[289] MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 22.
[290] HENNING, *supra* note 43, at 11.
[291] MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 22.
[292] *Id.*
[293] HENNING, *supra* note 43, at 12.
[294] MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 16–17.
[295] KORB ET AL., *supra* note 15, at 28.
[296] DEF. BUS. BD., *supra* note 5, at 3.
[297] KORB ET AL., *supra* note 15, at 28.

Nevertheless, the assumption of such a direct connection is misleading. For example, the CAP rightly points out that only $20 billion of the $100 billion for retirement cost comes from the defense budget.[298] Further, changes to the current system will likely have no impact on either the approximately 2.2 million retirees and annuitants who are currently receiving retirement pay, or on the unfunded portion of the system.[299] The real argument should be to point out that the entire $100 billion—regardless of the accounting method used by Congress or whether the line item comes from the Treasury or Defense—ultimately comes from taxpayers.[300] Further, the cost will continue to rise, increasing the burden on taxpayers, unless the MRF is restructured, allowing the board to invest funds in equities.[301] Additionally, changes to the retirement system—while impacting future cost of retirement for new recruits—will likely not impact retirement costs for those currently serving who may be grandfathered under the current system.

Other notable criticisms are that raises in military basic pay or changes to the compensation system have an immediate impact on future retirement cost. In FY2007, Congress extended the pay table from thirty years to forty years, allowing very senior servicemembers to serve up to forty years, and extended the pay and longevity tables to forty years. "The change increased the unfunded liability by $1.5 billion."[302] Additionally, current pay raises, especially those approved between 2000 and 2006, will impact future retirement costs, as they increase the eligible pay for future retirees.[303] Poor economic conditions may also impact the number of servicemembers who choose to remain on active duty, increasing the number of potential retirees, and may lead to

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298 *Id.*
299 MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 13.
300 *Id.* at 1.
301 For additional information regarding this point, see *infra* Part X.A.2.
302 2007 VALUATION OF THE MILITARY RETIREMENT SYSTEM, *supra* note 117. *But see* KORB ET AL., *supra* note 15, at 31. The Center for American Progress notes, with seeming astonishment, that based on the FY2007 NDAA, "a four-star general or admiral retiring after 43 years of service can receive 100 [sic] percent of his or her salary, up to $272,892 every year for the rest of his or her life." *Id.* When compared to what senior level executives receive in compensation and retirement packages in Fortune 500 companies, the amount above does not shock the conscience. Perhaps Congress struck this bargain to ensure that those higher-ranking officers and enlisted servicemembers would remain in the force to fight the nation's wars in Iraq and Afghanistan. One has to assume that Congress knew the cost, both now and in the future, when they made the choice to pass this law, and can always go back to reduce the maximum years of service at a later date.
303 LEED, *supra* note 213, at 15.

retirement-eligible servicemembers serving longer, which also increases future retirement cost.[304]

The second most significant determinant of the cost of future military retirement is the annual Cost of Living Allowance (COLA) received after retirement.[305] Finally, the rise in life expectancy due to medical advances and rise in inflation will also increase military retirement benefit costs.[306] The Board estimates that each year added to average life expectancy will result in an additional $300 million, and every percentage point added to inflation will result in $3 billion in retirement benefit service cost increase.[307] Thus, increases in pay will definitely have a substantial impact on overall personnel budget and retiree pay in the future.

4. Troop Drawdown as a Potential Solution

There are approximately 2.2 million retirees and annuitants.[308] About two-thirds of them receive funds based on the Final Basic Pay (FBP) system.[309] It is important to note that changes to the retirement system may not impact their retirement pay. Further, the consensus is that any new retirement system would not impact the troops who are already in the service.[310] Thus, any changes with an eye toward reducing cost will take years, if not decades, to be realized.[311] But a crucial way the DoD can save funds is to have a troop drawdown similar to the post-Cold War drawdown.[312] If the DoD decreases the number of troops in

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[304] *Id.* The MRF Board does make yearly adjustments to reflect projected costs based on the retention behavior of the current force. *Id.*

[305] HENNING, *supra* note 30, at 19.

[306] DEF. BUS. BD., *supra* note 5, at 3.

[307] *Id.* tab C, at 9.

[308] MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 13.

[309] HENNING, *supra* note 43, at 6.

[310] Justin Fishel & Jim Crogan, *Panetta: 'You Have to Consider' Military Retirement Reform*, FOX NEWS, Aug. 16, 2011, http://www.foxnews.com/politics/2011/08/16/panetta-have-to-consider-military-retirement-reform/ (noting that Defense Secretary Leon Panetta stated that current troops would be grandfathered into the current system). *But See* KORB ET AL., *supra* note 15, at 30 (arguing for a gradual shift into a new system, while grandfathering those with more than ten years of service).

[311] *See* Sydney J. Freedberg Jr., *DoD Leaders Mull Retirement Sleight of Hand*, AOL DEF., Oct. 3, 2011, http://defense.aol.com/2011/10/03/dod-leaders-mull-retirement-sleight-of-hand/.

[312] HENNING, *supra* note 43, at 12. *See generally* ANDREW FEICKERT & CHARLES A. HENNING, CONG. RESEARCH SERV., R42493, ARMY DRAWDOWN AND RESTRUCTURING:

the next few years, as projected, the costs of future retirement will also decline. More importantly, revising the system as outlined in Part X will reduce the overall burden on taxpayers and the cost of the unfunded portion of the system.

The last two Parts discussed the major criticism of the retirement system. Two key issues—immediate annuity upon retirement and employment during the "second-phase"— could be viewed as being unique to the military, but it is not. The Federal Employee Retirement System (FERS) for law enforcement officers and firefighters also has similar benefits and issues, although they are not discussed as frequently in the media. Critics of the military retirement system—those who want to make subtle changes to the military retirement system—may look to the next Part for inspiration.

VI. Special Provisions Under the Federal Employee Retirement System

The FERS and the Special Retirement Provisions accorded to Law Enforcement Officers, Firefighters, Air Traffic Controllers, and Nuclear Waste Management Personnel is a defined benefits plan in the public sector that approximates the military retirement system.[313] This section reviews the benefits accorded to general federal employees, and those under the Special Retirement Provisions for law enforcement and firefighters,[314] and compares them to the current military system. This is a useful comparison because any revision of the military pension plan should consider not only retirement plan trends in the private sector, but also those in the public sector.

A. Federal Civilian Employees—Details and Benefits of the Plans

Federal employees have two retirement systems available to them. Civilian federal employees who were hired before 1984 are covered by

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BACKGROUND AND ISSUES FOR CONGRESS (2012) (providing an initial look at the potential issues with a troop drawdown).

313 HENNING, *supra* note 30, at 20.

314 *See* U.S. OFFICE OF PERS. MGMT., FERS: FEDERAL EMPLOYEES RETIREMENT SYSTEM ch. 46 (Apr. 1998) [hereinafter SPECIAL RETIREMENT PROVISIONS FOR LAW ENFORCEMENT OFFICERS].

the Civil Service Retirement System (CSRS),[315] and post-1984 employees are covered under the FERS.[316] The FERS is a three-tiered retirement plan consisting of (1) social security; (2) the Basic Benefit Plan (BBP) or pension; and (3) the Thrift Savings Plan (TSP) for federal civilians.[317] The belief is that by using all three components, a retired federal employee will be able to have a strong financial foundation during her retirement years.[318] Under both FERS and CSRS, a worker with thirty years of service can retire between age fifty-five and fifty-seven; a worker with twenty years can retire at age sixty; and a worker with five or more years of service can retire at age sixty-two.[319] The employee may receive reduced benefits if she does not meet certain years of service and age requirements.[320] Under the BBP, employees contribute 0.8 percent of their pay toward their pension. Employees are eligible for the BBP after five years of service.[321]

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[315] KATELIN P. ISAACS, CONG. RESEARCH SERV., 98-810, FEDERAL EMPLOYEES' RETIREMENT SYSTEM: BENEFITS AND FINANCING 2 (2012). Additionally, "Under CSRS, employees do not pay Social Security taxes or earn Social Security benefits." *Id.* However, CSRS employees may contribute to the TSP. *Id.*

[316] *Id.* (citing Federal Employee Retirement System Act, Pub. L. No. 99-335, 100 Stat. 514 (1986)); 5 U.S.C. pt. III, subpt. G, ch. 84 (2012).

[317] FERS, *supra* note 44, at 2. The social security component is not discussed in this article.

[318] *Id.* There is an underlying belief that the individual will take personal responsibility in contributing an amount in her TSP account, during twenty-plus years of working, that will afford her the lifestyle that she desires during retirement.

[319] *Id.* at 6–7; MOMENT OF TRUTH PROJECT, *supra* note 55, at 3. ISAACS, *supra* note 315, at 3 (noting that the minimum retirement age for workers began to increase in 2003 for workers born after 1947).

[320] FERS, *supra*, note 44, at 7.

[321] *Id.* at 5–6. Military veterans can receive credit toward the BBP for their years of service if they meet certain criteria and pay a deposit of three percent of their base pay. *Id.* Upon retirement, employees can receive an annuity based on one percent of their High-3 years of average pay multiplied by the number of years of creditable service or 1.1 percent of the average of their High-3 years multiplied by the number of years they worked if retiring at age sixty-two with twenty or more years of service. (The High-3 means using the average of the last three years of monthly pay to calculate pay for retirement purposes. It is similar to the High-3 system for servicemembers.) *Id.* at 8. "For the average federal worker who earns $80,000 and retires after 30 years, that works out to $26,400 a year." *Pension Reform Goes to Washington-Federal Retiree Benefits Deserve a Scrub,* WALL ST. J., June 6, 2011, http://online.wsj.com/article/SB10001424052748703421204576331531370098682.html. *See* ISAACS, *supra* note 315, at 5 (noting that under FERS an employee with thirty years of service can receive thirty to 33 percent of her High-3 average while under CSRS, the same employee would be eligible for 46 percent of her High-3 average).

Employees under FERS also receive a government match up to five percent of their pay—one percent[322] is automatically deposited into the employee's account notwithstanding any contribution by the employee. Under FERS, the first percent is automatically deposited, the next three percent are matched dollar for dollar, and the next two percent receive $.50 for each dollar contributed—totaling a five percent match. Employees' contributions and the government match are automatically vested; however, the one percent automatic contribution is the employee's after three years of service.[323] Retirees begin to receive COLA adjustments starting at age sixty-two.[324] They also are eligible for a Special Retirement Supplement if they meet the minimum retirement age and have thirty years of service or are aged sixty with twenty years of service. The supplement is paid until the age of sixty-two and is slightly lower than the Social Security benefit that they will receive starting at age sixty-two.[325]

B. Federal Law Enforcement Officers and Firefighters

The FERS Special Retirement Provisions (FERS-SRP) benefit package for Law Enforcement Officers, Firefighters, Air Traffic Controllers, and Nuclear Waste Management Personnel is slightly different from those of the general federal employee and has several components that mirror the military retirement system. This special group of retirees contributes 1.3 percent of their pay toward their pension rather than the traditional 0.8 percent.[326] They are eligible for retirement at age fifty with twenty years of service or at any age with twenty-five or more years of service. Like the military retirement system, they can receive their monthly annuity immediately, without invoking a reduction in their annuity for retiring before age sixty-two, as is typically the case with regular federal employees. Also akin to the military system, they begin receiving COLA adjustments immediately upon retirement.[327] Under FERS-SRP, this special group accrues benefits at the rate of 1.7

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[322] The 1 percent contribution could be considered a payment back to the employee for the 0.8 percent contribution to the pension.
[323] FERS, *supra* note 44, at 13–14.
[324] *Id.* at 11.
[325] *Id.* at 8; ISAACS, *supra* note 315, at 5. However, if they have earned income that exceeds the social security annual exemption amount, then their supplement would be reduced or stopped.
[326] FERS, *supra* note 44, at 17.
[327] *Id*.

percent per year for each year of service for their first twenty years of service and one percent for each year thereafter.[328] They are also eligible for a Special Retirement Supplement up to age sixty-two that is slightly lower than the social security benefit that they will receive starting at age sixty-two.[329]

Law enforcement officers and firefighters who retire at age fifty with twenty years of service or before age fifty after serving twenty-five or more years of service face the same issues of a "second career" or the "second phase" of their lives prior to full retirement. Part of the Special Retirement Provision is the supplemental income that they receive if they are not gainfully employed. They face the same dilemma that most military members face after retiring—finding employment until they can fully retire.[330] A law enforcement officer who retires at age fifty will likely face between ten and fifteen more years of work, to add to his current retirement savings, before he can retire. Appendix B offers a quick-view comparison of the two FERS systems and the current military retirement system.[331]

C. Criticism of the Federal Employee Retirement System

The FERS benefit package is not without its critics. The Moment of Truth Project believes that it is one of the most generous retirement systems available.[332] Critics point to the fact that federal government employees receive both a pension and up to five percent matching contributions to their TSP accounts. The Wall Street Journal notes that private workers typically make do with just a three percent match and

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[328] ISAACS, *supra* note 315, at 5. However, under CSRS, those same employees would accrue benefits at the rate of 2½ percent per year for each year of service for their first twenty years of service and 2 percent for each year thereafter. *Id.* Thus CSRS employees could enjoy a replacement rate of 75 percent after thirty years of service, while under the FERS-SRP those same employees would receive just 44 percent. *Id.*

[329] FERS, *supra* note 44, at 17. However, if they have earned income that exceeds the Social Security annual exemption amount, then their supplement would be reduced or stopped. *Id.*; ISAACS, *supra* note 315, at 5. Additionally, military service cannot be credited under the special provisions for law enforcement and firefighters. SPECIAL RETIREMENT PROVISIONS FOR LAW ENFORCEMENT OFFICERS, *supra* note 314, at 23.

[330] *See generally* HENNING, *supra* note 30, at 20.

[331] 10TH QRMC, *supra* note 14, app. A, at 135. 10th QRMC's Appendix A provides a comparative view of cities that provide special retirement provisions to their police and firefighters.

[332] MOMENT OF TRUTH PROJECT, *supra* note 55, at 6.

pensions are going the way of the dinosaurs.[333] Their main point of contention, however, is that federal employees contribute less than one percent of their pay toward their pension or 1.3 percent for law enforcement and firefighters. According to the Wall Street Journal, House Republicans want to increase the employee contribution amount to six percent, saving the federal government $51 billion through 2020.[334] The Third Way, a left-leaning think tank, estimates even greater savings in the neighborhood of $117 billion over the next decade and $300 billion in twenty years.[335]

The Debt Reduction Task Force proposes calculating pension benefits using the average of an employee's highest five-year earnings average rather than the current system of highest three consecutive years of earnings.[336] The task force estimated that from 2020 to 2040, this change would save the government $49 billion.[337] While those proposals would result in modest savings individually and could make a significant change if implemented as a whole, a more draconian measure advocated by Republican Senators Tom Coburn of Oklahoma and Richard Burr of North Carolina would eliminate completely the defined-benefit component for new hires.[338]

Due to recent fiscal crises facing the nation, there will always be critics who seek ways to reduce the deficit by either increasing the required employee contribution amount or advocating for outright abolishment of the defined benefit component. While asking employees to contribute more toward their pensions has merit, abolishing the pension system altogether as a cost-saving measure is unwarranted and

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[333] *Pension Reform Goes to Washington*, *supra* note 321.

[334] *Id*. Based on estimates from the Moment of Truth: Report of the National Commission on Fiscal Responsibility and Reform, produced in 2010. In 2012, those seeking to raise the contribution amount won a small victory with the passing of the Middle Class Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), which resulted in an increase of 2.3 percent in the employee contribution rate for most federal employees newly hired or rehired with less than 5 years of service. ISAACS, *supra* note 315, at 15-16. This same law also lowers the benefit accrual rate from 1.7 percent for the first twenty years of service to just 1 percent for Members of Congress and congressional staff who are hired or rehired with less than five years of service. *Id.* at 16.

[335] KENDALL & KESSLER, *supra* note 195, at 2.

[336] PETE DOMENICI & ALICE RIVLIN, THE DEBT REDUCTION TASK FORCE RESTORING AMERICA'S FUTURE 111 (Nov. 2010).

[337] *Id.*

[338] *Pension Reform Goes to Washington*, *supra* note 321.

would make attracting and retaining highly qualified personnel to serve as public servants more difficult.

Critics who believe the current military system is unfair and costly should consider revamping the system to match what is offered under the FERS-SRP benefit package. Mr. Henning believes that the FERS-SRP could be considered as a viable choice given that law enforcement, firefighters, and military personnel perform physically demanding, hazardous duty.[339] The 10th QRMC considered the FERS-SRP package and other state police and firefighter plans and found them to be inadequate for the military environment.[340] The 10th QRMC concluded that these systems failed to provide the flexibility and manning levels that the military needs at a reasonable cost.[341]

Although the FERS-SRP system could be strongly considered, there are special circumstances that would make such a move inadequate as fair compensation for the sacrifices and hazardous nature of military life for servicemembers and their families. While law enforcement officers and firefighters do face peril every day, they go home at the end of their shift, and may receive overtime pay for time spent beyond their forty-hour workweek. More importantly, they live in the same neighborhood for most of their lives if they so desire, their children grow up with the same set of friends, their spouses work in the same community, and they are not subject to deployments that last months. This next section discusses why, despite its high cost, an immediate annuity after twenty years of service should be part of a compensation package for servicemembers.

VII. Military as a Unique Institution

The credit belongs to those who sacrifice their lives daily to protect our nation. While the general public may appreciate the sacrifice that servicemembers make, few share in that sacrifice. About one-half of one percent of American adults have served in the military since 9/11.[342] This statistic only exacerbates the growing divide between civilians and

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339 HENNING, *supra* note 30, at 20.
340 10TH QRMC, *supra* note 14, at 24.
341 *Id.*
342 *The Military-Civilian Gap: Fewer Family Connections*, PEW RESEARCH SOCIAL & DEMOGRAPHIC TREND, Nov. 23, 2011, http://www.pewsocialtrends.org/2011/11/23/the-military-civilian-gap-fewer-family-connections/.

the military. A Pew Research Center study showed that a majority of the public does not understand the problems that servicemembers face in the military.[343] Retired Navy Admiral Mike Mullen, former Chairman of the Joint Chiefs of Staff, believed there was a "worrying disconnect" between civilians and the military.[344] Admiral Mullen told the 2011 graduating class at the U.S. Military Academy at West Point, "I fear [civilians] do not know us. I fear they do not comprehend the full weight of the burden we carry or the price we pay when we return from battle."[345] For a nation that asks so much of a selected few, when it comes to providing a retirement system worthy of their sacrifice, a lack of understanding of the hardship that servicemembers and their family members endure may lead to a system that is inadequate.

The DoD and supporters of the retirement system cite several reasons why servicemembers should maintain their current retirement system, to include the following: (1) The need for a "socially acceptable" level of payment for servicemembers during their old age; (2) a system that is comparable to what is available to the private and federal service sectors; (3) a system that would allow retired servicemembers to return to active duty seamlessly; and last, but most important, (4) a means to keep the force "young and vigorous thereby ensuring promotion opportunities for younger members."[346] Additionally, the DoD notes that servicemembers are subject to recall[347]

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[343] Donna Miles, *Survey Shows Growing Gap Between Civilians, Military*, U.S. DEP'T OF DEF., Nov. 28, 2011, http://www.defense.gov/News/NewsArticle.aspx?ID=66253.

[344] *Id.*

[345] *Id*. In the 2012 Military Family Lifestyle Survey of military family members, 95 percent of respondents agreed with the statement, "The general public does not truly understand or appreciate the sacrifices made by service members and their families." VIVIAN GREENTREE ET AL., DEP'T OF RES. & POL'Y, BLUE STAR FAMILIES, *2012 Military Family Lifestyle Survey* 8 (May 2012).

[346] 2011 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 261, at 571.

[347] The Center for American Progress notes that the Defense Department pays retirees for forty years after completing twenty years of service. KORB ET AL., *supra* note 15, at 32. However, the Defense Department highlights the retainer of troops as a major reason why servicemembers are paid a retirement income. 2011 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 261, at 571. In 2002, the Defense Department started to accept retirees onto active duty to assist with Operation Enduring Freedom in Afghanistan. Jeff Schweers, *Military Retirees Volunteer for Active* Duty, USA TODAY, Feb. 17, 2010, http://usatoday30.usatoday.com/news/military/2010-02-17-oldsoldiers_N.htm. By 2004, then-Secretary of Defense Donald Rumsfeld authorized mobilizing up to 6,500 Individual Ready Reserve soldiers to fill vacancies in units mostly bound for Iraq and Afghanistan. *Id.* Since 9/11 3,077 U.S. Army, 300 Marines, 386 Air Force, and 378 Navy retirees have returned to active duty. *Id*. As of February 2010, Mr. Schweers notes that two recalled retirees have lost their lives while serving in Iraq and Afghanistan,

to active duty and are subject to the Uniform Code of Military Justice while retired.[348] Retired servicemembers are also limited on the type of employment that they can take after retiring.[349] Supporters of the system highlight that servicemembers are being compensated "for a career of arduous, and frequently hazardous, service and sacrifice for the nation."[350] With only half of one percent of Americans bearing the brunt of the nation's wars[351] by serving in the military, the military retirement system should reflect the sacrifices that the very few are making for the rest of the U.S. population.

A. Hazardous Duty

Serving in the military is not a safe career choice. Since 9/11, more than 4,600 servicemembers have died during combat operations.[352] Those numbers are low compared to Vietnam or the Korean War because of the more advanced medical treatment that troops now receive on the battlefield.[353] As a result of the strides made medically, more than 50,000[354] servicemembers have been wounded in Iraq and Afghanistan and have survived their physical wounds.[355] Notably, 16,000 of those 50,000 wounded servicemembers would likely have died on the battlefield a generation ago but for new medical procedures, protective

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respectively. *Id.* *See also* the Defense Officer Personnel Management Act, Pub. L. No. 96-513, 94 Stat. 2835 (1980); 10 U.S.C. § 688 (2012) (establishing that retired members of regular components of the armed forces could be recalled to active duty at any time).

348 2011 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 261, at 571.

349 HUDSON, *supra* note 77, at 13.

350 HENNING, *supra* note 30, at 1.

351 Andrew Bacevich, *Reducing Military Benefits Unfair to Those Who Served*, ATL. J. CONST., Aug. 23, 2011, http://www.ajc.com/news/news/opinion/reducing-military-benefits-unfair-to-those-who-ser/nQK53/.

352 *Department of Defense U.S. Casualty Status*, U.S. DEP'T OF DEF., http://www.defense.gov/news/casualty.pdf (last visited Mar. 12, 2014). This website provides daily updates on the number of U.S. military, civilian casualty and those wounded in action.

353 David Wood, *Iraq, Afghanistan War Wounded Pass 50,000*, HUFFINGTON POST, Oct. 25, 2012, http://www.huffingtonpost.com/2012/10/25/iraq-afghanistan-war-wounded_n_2017338.html?view=screen.

354 *Department of Defense U.S. Casualty Status*, U.S. DEP'T OF DEF., http://www.defense.gov/news/casualty.pdf (last visited Mar. 12, 2014).

355 Luis Martinez & Amy Bingham, *U.S. Veterans: By the Numbers*, ABCNEWS, Nov. 11, 2011, http://abcnews.go.com/Politics/us-veterans-numbers/story?id=14928136# ("In the decade since the Sept. 11, 2001, terrorist attacks on the World Trade Center, 2,333,972 American military personnel had been deployed to Iraq, Afghanistan or both, as of Aug. 30,2011. Of that total, 1,353, 627 have since left the military and 711,986 have used VA health care between fiscal year 2002 and the third-quarter fiscal year 2011.")

gear, and faster medical evacuations.[356] An unknown number of servicemembers suffer from Post-Traumatic Stress Disorder (PTSD) or Traumatic Brain Injury (TBI) due to their combat experience in those two conflicts. According to DoD statistics, more than 43,000 servicemembers have been diagnosed with TBI, but many more may have gone undiagnosed. During 2012, the Department of Veterans Affairs took in 4,000 new cases of veterans with PTSD each month.[357] Linda Bilmes, a Harvard economist, estimates that caring for the wounded could cost half a trillion dollars over the next few decades.[358]

Every servicemember knows that when he is volunteering to serve, he may have to make the ultimate sacrifice, or, as is most likely to occur given our medical advances, be lucky enough to survive an attack but lose a limb in the process. Families, too, take the same risks, for they would bear the brunt of the loss when their spouses, fathers, or mothers die or return from war disfigured or with scars unseen by the naked eye.

Another devastating issue is the rate of suicidal death by servicemembers. In the first 155 days in 2012, the Pentagon reported 154 suicidal deaths in the military.[359] In 2012, there were 349 suicides in the military, more than the number of servicemembers who died during combat in Afghanistan—295.[360] More troubling, however, is the fact that in 2008 there is evidence to believe that the Department of Veterans Affairs downplayed the number of completed and attempted suicides by

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[356] Wood, *supra* note 353.

[357] *Id. But see* Terri Tanielian & Lisa H. Jaycox eds., *Invisible Wounds of War*, RAND CTR. FOR MIL. HEALTH POL'Y RES., at xxi (2008) ("Assuming that the prevalence found in this study is representative of the 1.64 million servicemembers who had been deployed for OEF/OIF as of October 2007, we estimate that approximately 300,000 individuals currently suffer from [Post-Traumatic Stress Disorder] PTSD or major depression and that 320,000 individuals experienced a probable [Traumatic Brain Injury] TBI during deployment.").

[358] Wood, *supra* note 353. *See VA Budget Request Tops $140 Billion for Veterans Programs*, OFFICE OF PUB. & INTERGOVERNMENTAL AFF., U.S. DEP'T OF VETERANS AFF., Feb. 13, 2012, http://www.va.gov/opa/pressrel/pressrelease.cfm?id=2263 (noting that the Department of Veterans Affairs (VA) estimates that more than 1 million active duty servicemembers will become veterans in the next five years and will join the 22 million veterans now receiving benefits from the VA).

[359] Robert Burns, *Military Suicide Rate Surges to Nearly One Per Day This Year*, HUFFINGTON POST, June 7, 2012, http://www.huffingtonpost.com/2012/06/07/military-suicide-surges-_n_1578821.html.

[360] Bill Chappell, *U.S. Military's Suicide Rate Surpassed Combat Deaths In 2012*, NPR, Jan. 14, 2013, http://www.npr.org/blogs/thetwo-way/2013/01/14/169364733/u-s-militarys suicide-rate-surpassed-combat-deaths-in-2012.

veterans.[361] The CAP notes, "The deployment of men and women without sufficient time at home has resulted in higher incidence of mental problems, domestic violence, alcoholism, and suicide."[362] This is the toll of war and a consequence of serving in the military. But even outside of war, servicemembers still face hardship.

B. Military Hardship

Serving in the military means sacrifice. While there may be jobs with similar titles in the civilian world like nurse, doctor, or lawyer,[363] the similarities end there because of the extrinsic requirements of serving in the military. There are few jobs in the world that require a person to leave his family for a year or eighteen months at a time. "Civilians likely take for granted waking each morning to see their baby boy grow a little larger, whereas someone in the military might leave an infant on assignment, and come back to a walking, talking toddler."[364] Servicemembers pay a special price whenever they are deployed and miss a birth, a child's birthday, a graduation, or a wedding. For servicemembers, those circumstances when they are apart from family can never be repaid. Petty Officer 1st Class Ethan Gurney notes, "The continuous deployments, living conditions, remote and hazardous duty stations are unique to the military."[365] Both the Defense Business Board and the CAP recognize the arduous nature of military life when they advocate for increased deferred compensation for servicemembers serving hardship duty tours, deployed, or those serving away from their families.[366]

The military is unique because of the demands placed on the servicemember. Servicemembers learn very quickly during basic training, officer candidate school, or at the Academy, that the military has total control over every critical decision they will make. Civilians take for granted that they can simply wake up one morning and decide to take a day off simply because they feel like it. That is virtually

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361 Gene Gomulka, *Saving Military Families*, MILITARY REV., Jan.–Feb. 2010, at 111.
362 KORB ET AL., *supra* note 15, at 40.
363 *See* 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 6.
364 Jennifer Wright, *Military Life Vs. Civilian Life: Advantages and Disadvantages*, YAHOO VOICES, May 3, 2008, http://voices.yahoo.com/military-life-vs-civilian-life-advantages-disadvantages-1404623.html?cat=9.
365 Novak, *supra* note 10.
366 DEF. BUS. BD., *supra* note 5, at 12–13, 15; KORB ET AL., *supra* note 15, at 36.

impossible in the military. Civilians take for granted that they can quit their jobs today and travel the world; in the military, that would be considered AWOL, or absence without leave. While those things may seem minor, military life is not for them. This realization is a major factor why only 19 percent of new recruits will serve long enough to retire in the military.[367]

C. Loss of Spousal Income

The critical issue that most families endure during an extended period of service in the military is handling the family finances through constant relocation. A number of those who oppose the current military retirement system believe it to be overly generous.[368] However, few considers the lost income and, ultimately, the lost retirement income of a spouse who follows the servicemember from location to location as the servicemember pursues a military career, as part of the compensation package.[369]

More than half of all active duty personnel are married.[370] Military spouses[371] are ten times more likely to move across state lines than their civilian counterparts.[372] Typically, a military family will stay on a military installation between one to three years.[373] If a family averages two and one-half years per location, then the typical military member would move an average of eight times during a twenty-year period. Consider the fact that on average a working military spouse loses six to nine months of employment per relocation.[374] Thus, a spouse may lose

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[367] 2010 VALUATION OF THE MILITARY RETIREMENT SYSTEM, *supra* note 130, at 24.
[368] HENNING, *supra* note 30, at 19.
[369] *See* JAMES HOSEK ET AL., RAND NAT'L DEF. RESEARCH INST., MARRIED TO THE MILITARY 1 (2002).
[370] U.S. DEP'T OF TREASURY & U.S. DEP'T OF DEFENSE, SUPPORTING OUR MILITARY FAMILIES: BEST PRACTICES FOR STREAMLINING OCCUPATIONAL LICENSING ACROSS STATES LINES 6 (Feb. 2012) [hereinafter SUPPORTING MILITARY FAMILIES].
[371] *See id.* (noting that 95 percent of military spouses are woman).
[372] *Id.* at 7.
[373] REPORT BY THE U.S. CONGRESS JOINT ECONOMIC COMMITTEE CHAIRMAN'S STAFF, STRENGTHENING MILITARY HOUSEHOLDS BY DECREASING THE BARRIERS TO WORK 2 (Aug. 2012) [hereinafter STRENGTHENING MILITARY HOUSEHOLDS].
[374] Letter from Mark B. Souci, Office of the Deputy Assistant Sec'y of Def. (Military Cmty. and Family Policy) to Idaho State Legislature-House Veterans Affairs Committee (Aug. 30, 2012) [hereinafter Souci Memorandum], *available at* http://www.leg.state.or.us /committees/exhib2web/2011interim/HVETS/09122012meetingmaterials/DSLO%20Lett er%20to%20OR%20House%20VACmtAug12.pdf. Major Adam W. Kersey, *Ticket to*

one-third of her working time being unemployed at each duty station.[375] Over a twenty-year period, that equates to four to six years of lost income, not to mention the loss of retirement income and the difficulty spouses have in finding employment overseas or while their military spouses are deployed.

The frequent moves required of military families interferes with the military spouse's and the family's ability to save toward retirement. If a spouse averages between two to three years at each location, that spouse will seldom stay long enough to vest into a 401(k) matching contribution system that requires three or more years of employment, and will likely never vest in any retirement pension system that requires a minimum of five years of service.[376] Moreover, the average company requires a worker to be employed with the company between nine to twelve months before becoming eligible to contribute to a 401(k) plan.[377] This is assuming that a spouse who moves every two to three years will be able to find a job once the family has settled into the new area. It also assumes that an employer will take on the risk of hiring someone who could move only a few months after being fully trained and proficient at a new job.[378] Melissa Rothenburg, a pediatric nurse and military spouse who moved from Washington, D.C., to California said, "I didn't want to say that I was military, even though I'm very proud, just because a lot of people don't want to hire somebody who's only going to stay for two or three years."[379]

Ride: Standardizing Licensure Portability for the Military Spouse, 218 MIL. L. REV. 115 (2013).

375 *Id.*

376 Also consider the scarcity of those pension plans being available and the chances of working toward a pension from an organization that offers such a plan dwindles even more.

377 Hilery Z. Simpson, *How Does Your 401(k) Match Up?*, BUREAU OF LAB. STATISTICS, U.S. DEP'T OF LAB., May 26, 2010, http://www.bls.gov/opub/cwc/cm20100520ar01p1.htm.

378 *See generally* GREENTREE ET AL., *supra* note 345, at 33 (noting "One common theme is that employers frequently hesitate or even resist hiring military spouses due to the likelihood that they will move within two to four years").

379 Neil Demause, *Move. Certify. Repeat.,* USAA MAG. 17 (Winter 2012). Even where the spouse was able to find a job at their new location, that spouse may have to take a pay cut or take on a job where there are no retirement benefits. In 2010, the unemployment rate for military wives was 50 percent compared to just over seven percent for civilian wives. STRENGTHENING MILITARY HOUSEHOLDS, *supra* note 373, at 3. Frequent moves make it difficult for military spouses to build their careers, and makes building seniority almost impossible. *See id.* at 2.

D. Retirement Compensation as Supplemental Income

During the 1950s and 1960s, having the servicemember as the sole breadwinner in the family was a sufficient way of carving out a living for most military members.[380] The cost of living in the 1950s was far less than it is today and retired servicemembers could possibly survive with their retirement check. Today that is a different story. For a majority of retired servicemembers, finding employment during the "second-phase" of their lives is absolutely necessary to adequately provide for their family.[381]

Wages have remained stagnant over the past twenty or more years[382] and American families have coped with the decline in income by relying heavily on both spouses working.[383] The military family is no different. In fact, "many military families rely on two incomes to maintain financial stability."[384] But when you consider that for a majority of a servicemember's military career that their spouse will likely suffer long periods of unemployment and thus an inability to save for retirement, you begin to see that the retirement income is just compensation for the many years of lost income (unemployed or underemployed) endured during the twenty or more years of military service. By taking away the immediate annuity as an option, critics will force families to consider whether having one primary wage earner, who will be responsible for saving for retirement for both spouses, saving toward their children college education, a down payment on a home, or other items of interest, will be the right move financially. Perhaps one of the reasons why so many servicemembers decide to leave after reaching the twenty-year mark is because they can now stop, get a regular job, have their spouses work alongside them so that they can start "getting ahead."[385]

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380 *Id.*
381 *See* HENNING, *supra* note 30, at 20.
382 Annalyn Censky, *How the Middle Class Became the Underclass*, CNNMONEY, Feb. 16, 2011, http://money.cnn.com/2011/02/16/news/economy/middle_class/index.htm; Ray Sanchez, *Will Middle Class America Ever See a Real Raise Again?*, ABCNEWS, Aug. 6, 2010, http://abcnews.go.com/Business/strangling-middle-class-america/story?id=11325933&page=2.
383 *See* STRENGTHENING MILITARY HOUSEHOLDS, *supra* note 373, at 2.
384 *Id.*; SUPPORTING MILITARY FAMILIES, *supra* note 370, at 6.
385 Getting ahead means using the retirement income, servicemember's new job, and the spouse's job to save towards buying a new home, saving for college, and preparing financially for retirement. It is important to remember that for a servicemember retiring after twenty years of service, her retirement pay is slightly more than a third of her active duty income. MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 11. Retiring

Most critics of the retirement system point out that servicemembers tend to leave the services upon reaching the twenty-year mark. They underscore that 76 percent of servicemembers leave the service between twenty and twenty-five years.[386] What they fail to realize is that after more than twenty years of hardship and sacrifice, most servicemembers and family members are worn down and exhausted.[387] Family members are also tired of moving every few years; kids are tired of leaving their friends and making new friends;[388] parents start to think of places where they want to settle so that their children can have a stable high school experience and set up residency so that their kids can apply for in-state tuition for colleges; and the thought of yet another deployment also looms in the back of their minds. All those issues, coupled with the military's spouse ability to continue a career, play a factor in deciding whether to leave the military.

The military is incomparable to any institution in the private sector and as such deserves a retirement system that is different from what is available to the general public or the federal civilian workforce. An immediate annuity upon retirement provides both financial security and adequately rewards those who endure a life-long commitment to the nation—doing the job that very few have chosen. The twenty-year retirement date is an important milestone that honors those who have served and those who have fallen while serving the country. Make no mistake, however, there should be revisions to the system to make it fairer to those who serve fewer than twenty years, while maintaining the twenty-year vesting of an immediate annuity for those who have persevered.

Additionally, such a plan should incentivize mid-level enlisted members and officers to remain in the service between years ten and

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Ssrvicemembers may find it difficult to find a job that pays them as much as they received in the latter stages of their military career when factoring in the tax advantages of the housing and food allowances.

386 KORB ET AL., *supra* note 15, at 35.

387 *See generally* Robert L. Goldich, *A Few Words About Military Retirement 'Reform' and Social Class in America*, FOREIGN POL., Sept. 6, 2011, http://ricks.foreignpolicy.com/posts/2011/09/06/a_few_words_about_military_retirement_reform_and_social_class_in_america.

388 *See generally* GREENTREE ET AL., *supra* note 345, at 14 (citing CTR. FOR NAVAL ANALYSIS (CNA), *Educational Experiences of Military Children Presentation, Workshop on the Scientific Study of Military Children* (Nov. 16, 2011) (noting that on average military children transfer schools between six and nine times during primary and secondary educational years).

twenty, and once they have reached twenty years, reward them with additional incentives to remain for an additional five to ten years. Incentivizing servicemembers to remain in the service beyond twenty years would decrease the talent drain that occurs once a member has reached the twenty-year milestone and now can start their second careers.[389] These requirements set up the backdrop on how to properly judge the past proposals from 2005 to 2012.

VIII. Past Proposals to Reform the Military Retirement System

From the First Quadrennial Review of Military Compensation (1st QRMC) that took place from 1967 to 1969, presidential and congressionally authorized commissions, DoD reviews, and independent research studies have called for substantial changes to the military retirement system. Between 1967 and 2000, the majority of those studies focused on two main ideas: eradicating the inequality inherent in the retirement system by allowing servicemembers to vest into the retirement system after ten years of service coupled by delaying payouts until sometime after age sixty as a way to lower cost.[390] The analysis in this section focuses on the most prominent reports that have tackled the issue of military retirement reform over the past eight years. Starting with the Defense Advisory Committee on Military Compensation (DACMC) in 2005, and ending with the CAP, most major reviews of the military retirement system have recommended moving from the current system of a defined benefit plan to a 401(k)-style system. Specific recommendations from these reports are tabulated at Appendix C as a comparison guide.

A. The Defense Advisory Committee on Military Compensation

On March 14, 2005, then-Secretary of Defense Donald H. Rumsfeld chartered the Defense Advisory Committee on Military Compensation (DACMC) to identify ways to balance the military pay and benefits while sustaining recruitment and retention of highly qualified

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389 *See* MOMENT OF TRUTH PROJECT, *supra* note 55, at 6.
390 10TH QRMC, *supra* note 14, at 20; HUDSON, *supra* note 77, at 4-8.

servicemembers, as well as suggested improvements on cost-efficiency and a ready military force.[391]

Admiral Donald L. Pilling, U.S. Navy (Retired), headed the committee. The Committee noted the same criticisms described in Part IV of this article, mainly that the system is inefficient, inflexible, and unfair to the majority of servicemembers who do not retire.[392] The Committee highlighted three main changes that would address the issues plaguing the current system: (1) early vesting of some components within the system; (2) lesser compensation during the "second career" phase, but increasing compensation once the servicemember has fully withdrawn from the labor force; and (3) greater flexibility in managing the force.[393]

Based on the criticism of the system and the suggested changes, the Committee made several recommendations. First, early vesting of government contributions to the Thrift Savings Plan (TSP) no later than the ten-year mark, but not sooner than the fifth year. Second, a defined benefit pension that would begin at age sixty, and would also vest at the tenth year.[394] At age sixty the servicemember would receive an annuity similar to the High-3 formula, and would allow servicemembers to receive 100 percent of their basic pay after serving for forty years.[395] Providing the annuity starting at age sixty also aligned the active duty retirement system with that of the Reserve retirement system.[396] Third, the Committee concluded that the lifetime annuity provided a large amount in deferred compensation that could be rectified by giving servicemembers either separation pay or transition pay at certain points of their career, or additional pay at key years of service milestones—at

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391 REPORT OF THE DEF. ADVISORY COMM. ON MILITARY COMP., THE MILITARY COMPENSATION SYSTEM: COMPLETING THE TRANSITION TO AN ALL-VOLUNTEER FORCE app. F, at 137 (Apr. 2006) [hereinafter DACMC].

392 *Id.* at 22. Each review, report, or study has highlighted the same issues and thus will not be discussed in this part of the article. This section of the article deals with the recommendations from each of the reports.

393 *Id.* at 27.

394 *Id.* at 34–35.

395 *Id*. This is similar to the legislation that was passed as part of the FY2007 defense budget that extended the basic pay tables to forty years and allowed senior officers and enlisted members to serve beyond forty years. The key difference with the Defense Advisory Committee on Military Compensation (DACMC) recommendation is that it would allow fewer senior servicemembers to serve beyond thirty years and would require changes to the "up and out" force management style. *Id.*

396 *Id.* at 33.

10-, 15-, 20-, 25- and 30-year marks.[397] As a result of the Committee's recommendations, the twenty-year immediate annuity would be abolished.[398] Lastly, the Committee noted that the first two recommendations would be consistent across all the services while the separation and transition pay would allow each service to tailor them for greater flexibility and management needs.[399]

By providing separation pay and transition pay at different stages of the servicemembers' careers, the Committee hoped that those payments would result in the DoD being able to separate servicemembers more efficiently between the ten- to twenty-year mark and provide greater incentives for servicemembers to serve beyond the twenty-year mark.[400] The Committee also believed that their system would save money by abolishing the twenty-year immediate annuity which would free funds to pay for the TSP matching contributions, gate pay, and separation pay.[401] Finally, the Committee recommended that current servicemembers be grandfathered in to the current system or be allowed to transition into their proposal, provided servicemembers agree to an additional service obligation.[402]

B. 10th Quadrennial Review of Military Compensation

In August 2005, President George W. Bush commissioned the tenth Quadrennial Review of Military Compensation (10th QRMC). Brigadier General Jan D. (Denny) Eakle, U.S. Air Force (Retired), headed the review and formed a senior advisory board and two working groups that focused on compensation and health professionals.[403] The Compensation Working Group that focused on making recommendations about the military retirement system included twenty-six members, representing all the services, the office of the Secretary of Defense, and the Joint Staff.[404] As a starting point for its analysis, the 10th QRMC evaluated the DACMC's conclusions and "carefully considered each of its

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397 *Id.* at 24, 35.
398 *Id.* at 31.
399 *Id.* at 35.
400 *Id.* at 35–36.
401 *Id.* at 31.
402 *Id.* at 36.
403 HENNING, *supra* note 30, at 11.
404 *Id.* at 11–12.

recommendations for change."[405] Further, the working group used previous reports, starting with the 1st QRMC through the DACMC, as a foundation for its own analysis.[406] The 10th QRMC submitted the final portion of its report in July 2008.[407]

1. Defined Benefit and Defined Contribution Plan

The 10th QRMC believed that its recommendations would result in a more flexible, equitable, and efficient retirement system.[408] To that end, they recommended earlier vesting of the defined benefit plan, but delaying when servicemembers could receive payment. The defined benefit plan would be the same as the current High-3 system but would vest at ten years of service and not be payable until age sixty for those who retired with fewer than twenty years of service or at age fifty-seven for those with twenty or more years of service.[409] Retirees could opt to receive the retirement annuity immediately upon retirement but the annuity would be reduced by five percent for each year under age fifty-seven.[410] Using 2013 pay figures, an O-5 with twenty years of service who retires at age forty-five and makes the decision to receive an immediate annuity would be penalized by having his annuity reduced by 60 percent (12 YRS X 5%) and would receive $18,845 per year.[411] In contrast, that same retiree would receive $47,112 under the High-3 system.[412]

The reduced annuity is an even worse proposition for enlisted members who tend to retire, on average, between the age of thirty-eight and forty. An E-7 enlisted member who retires at age forty would have his annuity reduced by 85 percent and receive $3,724; such a result should shock the conscience.[413] In contrast, that same retiree would receive $24,828 under the High-3 system.[414] However, the 10th QRMC

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405 10TH QRMC, *supra* note 14, at x.
406 *Id.* at 19.
407 HENNING, *supra* note 30, at 12.
408 10TH QRMC, *supra* note 14, at 7.
409 *Id.* at 28–29.
410 *Id.* at 29. *See* ISAACS, *supra* note 315, at 4 (reducing retirement benefits by a multiple of 5 percent is similar to the reduced benefits offered to federal employees who retire without the proper combination of the minimum retirement age and years of service).
411 *2013 Retirement Pay*, *supra* note 70, at 23.
412 *Id*.
413 *Id.*
414 *Id.*

recommended providing separation pay to retirees who serve at least twenty years of service.

The 10th QRMC also recommended government contributions of up to five percent into the servicemember's TSP.[415] The contribution would start at two percent for those with two years of service and increase incrementally until it reached five percent for those with five or more years of service. This plan would also vest at ten years of service and begin payout at age sixty.[416] The defined benefit and defined contributions plans would be standard across the services.

2. Gate Pay and Separation Pay

The next two items recommended by the 10th QRMC—gate pay and separation pay, both current compensation incentives—would be left to the Services to fashion as a way to enhance force management flexibility and efficiency.[417] Gate pay is like a bonus paid to a servicemember as she reaches specified years-of-service milestones. Payments would be made regardless of whether the servicemember decides to leave the service after reaching the milestone.[418] Servicemembers would also be eligible for separation pay either as a form of incentive to leave the service or as a reward for serving more than twenty years.[419] The Services would determine whether their particular organizations would provide one or both to their servicemembers. Separation Pay would be calculated in the following manner: monthly basic pay multiplied by years of service and a (undetermined) multiplier.[420] The QRMC noted, "The years of service necessary to qualify for these pays—as well as pay amounts—would depend on retention patterns and force-shaping needs of the individual services. It is expected, therefore, that the requirements

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415 10TH QRMC, *supra* note 14, at 29.
416 *Id.*
417 *Id.* at 30.
418 *Id.* at 29.
419 *Id.* at 31. Currently, servicemembers who are discharged involuntarily under 10 U.S.C. § 1174 for failing to be promoted, substandard performance, misconduct, or for the good of the service may receive separation pay in the following manner: "ten percent of the product of the member's years of active service and 12 times terminal monthly basic pay or 50 percent of that amount, as determined by the Secretary of the member's military department." 2011 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 261, at 653 (citing 1991 National Defense Authorization Act for Fiscal Year 1991, Pub. L. No. 101-510, § 501(b), 104 Stat. 1549-1550 (1990)).
420 10TH QRMC, *supra* note 14, at 29.

would vary across the services and by occupation."[421] However, for the system of gate and separation pays to work effectively, the services would have to learn and be willing to adjust how they use them as a tool to manage the force.

As an example of how the services could manage gate pay and separation pay to reach the desired force structure, the 10th QRMC modeled a plan in which servicemembers would receive gate pay at a rate of 40 percent of annual basic pay at years 12, 14, 16, or 18; and separation pay at a rate of 175 percent of monthly basic pay multiplied by years of service, starting after twenty years of service. Based on the 2013 military basic pay chart, an E-6 with twelve years of service would receive $16,777; an E-7 $18,603; an O-3 $29,235; and an O-4 $32,894 in gate pay.[422] Similarly, the same group, after being promoted to the next rank, would receive the following in separation pay after twenty years of service (175% of monthly basic pay x 20): E-7 $151,494; E-8 $169,670; O-4 $254,930; O-5 $291,858.[423]

Despite the separation pay, servicemembers would earn less under the 10th QRMC than they would under the High-3 system. For example, an E-7 with twenty years of service who retires at age forty would receive $151,494 in separation pay and either opt to receive the reduced annuity and be penalized by losing 85 percent and receive just $3,724, or simply wait until age fifty-seven and receive the full amount of $24,828 (likely more due to inflation).[424] Under the current High-3 system, the same servicemember would receive $24,828 after retiring, and something slightly higher due to COLA adjustments every year thereafter.[425] Without adjusting for COLA, by age fifty-seven, that same servicemember would have received $422,076, a difference of $270,582 when compared to simply receiving the separation pay under the 10th QRMC.[426] As illustrated in Appendix D, the QRMC proposal would drastically reduce what a servicemember would receive as total

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[421] *Id.* at 30.

[422] *Defense Finance and Accounting Services, Military Pay Tables 1949–2013*, DFAS.MIL, http://www.dfas.mil/militarymembers/payentitlements/militarypaytables.html (last visited Feb. 7, 2014) [hereinafter *Military Pay Tables*]; *2013 Retirement Pay*, *supra* note 70, at 14.

[423] *2013 Retirement Pay*, *supra* note 70, at 14; *Military Pay Tables*, *supra* note 422.

[424] *2013 Retirement Pay*, *supra* note 70 at 14, 23; *Military Pay Tables*, *supra* note 422.

[425] *2013 Retirement Pay*, *supra* note 70, at 23.

[426] *Id.* at 14, 23; *Military Pay Tables*, *supra* note 422. The difference is $207,274, if the servicemember opts to receive the reduced annuity for the next seventeen years.

compensation post retirement when compared to the current High-3 system.

3. The Personal Discount Rate and the Impact on Retirement Compensation

A driving factor in the 10th QRMC's analysis of gate and separation pay is the belief that military members value current compensation in the form of bonuses and basic pay more than deferred compensation, even where they would receive more at a later time.[427] This process is referred to as the "personal discount rate," that is, "the rate at which individuals or organizations, such as the government, compare the value and cost of money over time. *For individuals, it is the rate at which they are willing to trade current dollars for future dollars.*"[428] The 10th QRMC provided an example where an individual with a discount rate of 15 percent would choose to receive $100 today rather than wait a year from now and receive $115.[429]

Conversely, someone with a discount rate of less than 50 percent would choose to wait a year and receive the $115. This theory is a driving force in the 10th QRMC's decision to provide separation pay and gate pay at a rate that is anywhere from 15 percent to 40 percent of what servicemembers would receive had they received the deferred amount at retirement. Thus, the 10th QRMC concludes that servicemembers would be happy to take the gate pay and separation pay because they value the cash on hand more than the deferred retirement benefit, which would cost the government substantially more.[430]

The discount rate theory explains why so many servicemembers jumped at the opportunity to get the $30,000 bonus that was offered as part of Redux when it was first introduced in 1999. But more tellingly, the discount rate also explains why servicemembers continue to take the bonus today, though the numbers have shrunk considerably, despite the bonus's declining dollar value and available information explaining why taking the bonus is not the best move financially.[431] Moreover, although

[427] 10TH QRMC, *supra* note 14, at 17.
[428] *Id.* (emphasis added).
[429] *Id*.
[430] *Id.* at 17–18.
[431] HENNING, *supra* note 30, at 5, 9.

not explicitly stated in the Defense Business Board's analysis, the personal discount rate also explains the drive to give servicemembers a 16.5% contribution rate as compensation to be used in the TSP. Younger servicemembers tend to value the cash on hand (16.5%) more than what they would have received twenty years down the road.[432]

Lastly, the 10th QRMC believes that the active and Reserve components should receive the same type of retirement benefits. The logic behind providing the same retirement system for both active and Reserve component servicemembers stems from the viewpoint that the Reserve component deployed more frequently to Afghanistan and Iraq and had taken on more of an operational role than originally envisioned.[433]

Despite its thoroughness in reviewing past proposals and modeling aspects of the proposals to see how each would impact force retention and management, the 10th QRMC failed to answer some basic questions. First, the report does not make clear whether current servicemembers would be grandfathered in to the current system.[434] Next, the report does not address the cost impact of COLA in the current system and how its proposals would lower cost. Lastly, the 10th QRMC does not explain whether retirees who wait to receive their pay at age fifty-seven or become eligible at sixty-two would be paid based on their monthly basic pay at the time of retirement/left the service, or based on the pay scale at the time they begin receiving their annuity—the difference in pay is substantial.[435] Nonetheless, as a credit to the 10th QRMC, they recommend that the DoD conduct a multiyear demonstration project of their proposals to see the impact on force structure, retention, recruitment, vesting, and cost before implementing the new system fully.[436]

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[432] 10TH QRMC, *supra* note 14, at 17–19.
[433] *Id.* at 14, 30; HENNING, *supra* note 30, at 12.
[434] *But see* HENNING, *supra* note 30, at 13 (noting that current servicemembers would be grandfathered).
[435] *See* 10TH QRMC, *supra* note 14, at 10. The 10th QRMC notes that under the Reserve retirement system, Reservist receive their retired pay based on the pay table in effect at the time the retired pay begins. *Id.*
[436] *Id.* at 38.

C. Debt Reduction Task Force

On January 25, 2010, the Bipartisan Policy Center established the Debt Reduction Task Force and asked former chairman of the Senate Budget Committee Pete V. Domenici and Dr. Alice M. Rivlin, Senior Fellow at the Brookings Institute and former Vice Chair of the Federal Reserve Board, to head the Task Force.[437] The goal of the Task Force was to "develop a long-term plan to reduce the debt and place our nation on a sustainable fiscal path."[438] One of the many issues that the Task Force analyzed was reforming the military retirement system.

The Task Force proposed a gradual shift of the current military system into one modeled after the Federal Employees Retirement system (FERS).[439] Under FERS, federal employees receive a defined benefit plan pension and a defined contribution plan with government match. The Task Force recommended that servicemembers with more than fifteen years of service be grandfathered in to the current system. All other servicemembers would transition in to the new system. Moreover, servicemembers would vest in the pension system after ten years of service. Servicemembers with twenty or more years of service could receive their benefits starting at age fifty-seven.[440] Mr. Henning notes that the Task Force "would retain a defined benefit equal to 2.5 percent times years of service but the pay base would be High-5 rather than High-3."[441] The Task Force also suggested making modest changes to the way COLA is calculated by using the Consumer Price Index for All Urban Workers (CPI-U) rather than the current method of using the Consumer Price Index for Urban Wage Earners (CPI-W).[442] The Task Force estimated that from 2020 to 2040, this new system, excluding the changes made to COLA, would save $131 billion.[443] Finally, the Task Force recommended an increase in current pay and separation pay to incentivize servicemembers to remain in the service.[444]

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437 DOMENICI, *supra* note 336, at 2–3.
438 *Id.* at 2.
439 *Id.* at 112.
440 *Id.*
441 HENNING 2011, *supra* note 30, at 16–17. *See* DOMENICI, *supra* note 336, at 111.
442 DOMENICI, *supra* note 336, at 118. CPI-U is also referred to as the "chain-weighted CPI. *Id.*
443 *Id.* at 112.
444 *Id*.

D. Defense Business Board

The Secretary of Defense, under the provision of the Federal Advisory Committee Act (FACA) of 1972, established the Defense Business Board (the Board) to provide independent advice and recommendations on critical matters concerning the DoD.[445] In May 2010, Secretary of Defense, Robert M. Gates, asked the Board to recommend ways to modernize the military retirement system.[446] In response to the Secretary's request, the Board established a Task Group to assess the military retirement system, and develop potential alternatives with the dual purpose of remaining fiscally sustainable while recruiting and retaining the highest performing personnel required for our Nation's defense. The Task Group reviewed past studies and recommendations from both the private and government sectors on the military retirement system over the past thirty years.[447] The Board approved the Task Group's findings and recommendations on July 21, 2011.

1. Recommendations

Under the Board's new system, the immediate annuity after twenty years of service would be abolished. In its place, the board recommended that the DoD establish a defined contribution plan for all servicemembers modeled after the TSP. The government would contribute an amount at a rate to support retention and force structure. The Task Group believed that contribution should be at a percentage level comparable to the highest end of the private sector pension plans.[448] While the Board did not pick a specific rate amount, they used 16 percent of annual base pay for modeling purposes. They contended that 16 percent represented twice the amount of annual contribution in the private sector. Servicemembers could also contribute to the same account. Upon leaving the military, servicemembers could transfer their account out of the TSP.[449]

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445 *The Defense Business Board Charter*, DBB.DEFENSE.GOV, http://dbb.defense.gov/charters.shtml (last visited Jan. 10, 2013). The Board is made up of twenty-five members from the private sector who are experienced in leading Fortune 500 companies. *Id.* Federal Advisory Committee Act of 1972, Pub. L. NO. 92-463, 86 Stat. 770 (1972)/

446 DEF. BUS. BD., *supra* note 5, tab A.

447 *Id.* at 1.

448 *Id.* tab C, at 13.

449 *Id.* at 5.

The Board pointed out that the services should be able to set different contributions limit based on the needs of the services to shape the force. For example, deployed service-members or servicemembers within certain career fields could receive a higher contribution amount.[450] The Task Group found that the current system does very little to reward those who take on high-risk situations such as combat duty, hardship tours, or separation from family).[451] Similar to the 10th QRMC, this new defined contribution plan would apply equally to the active and reserve component.

The Board did not make specific recommendations as to vesting and payout dates but suggested that a servicemembers could vest upon completing their first service obligation and could withdraw funds at age sixty, sixty-two, or sixty-five. The plan could allow for partial withdrawals or loans to cover education, healthcare, or other specified unplanned events or emergencies. To transition servicemembers out of the military, the Board recommended separation pay for those servicemembers eligible for retirement.[452] However, the Board failed to define "retirement." Finally, the Board did not make specific recommendations as to whether current troops should be grandfathered in to the current system or transferred to the new system.[453] They did note, however, that a rapid transition to the new system would save the government the most money.[454]

2. Cost Savings

The government would save a substantial amount under the Board's proposal. The difference between the amount that a servicemember would receive over forty years under the High-3 system and what the government contributes over a twenty-year period is the amount that the government saves from the retirement system. Under the Board's proposal and if all current servicemembers transitioned into the new

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[450] *Id.* tab C, at 12.
[451] *Id.* tab C, at 7. Arnold Punaro, a senior Defense Business Board member and retired U.S. Marine Corps Major General, told board members the current system "encourages our military [members] to leave at 20 years when they are most productive and experienced, and then pays them and their families and their survivors for another 40 years." Novak, *supra* note 10.
[452] DEF. BUS. BD., *supra* note 5, at 5.
[453] *Id.* at 6.
[454] *Id.* tab C, at 14–15.

plan, the government could save between $200 and $300 billion by FY2034.[455]

Lastly, the Board believed that the retirement system would create a more effective way for leaders to shape the force. They maintained that mid-career servicemembers between years ten and twenty would leave voluntarily or would be involuntarily separated without the services having to provide separation pay because the new system would provide sufficient funds to compensate them.[456] Granted, the current separation pay package for early retirement is more like a severance package.

E. Center for American Progress[457]

The CAP modeled their recommendations after the work of the 10th QRMC and the Defense Business Board.[458] They believed that the DoD would manage the troops more efficiently and lower cost more effectively if it transitioned to a 401(k)-style system as recommended by the Board.[459]

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455 *See* Tilghman, *supra* note 9; Carmen Gentile & Gregg Zoroya, *Proposed Changes in Military Benefits Worry Troops*, USA TODAY, Sep. 8, 2011, http://www//usatoday 30.usatoday.com/news/military/story/2011-09-07/Proposed-changes-in-military-benefits-have-troops-worried/50305324/1. The Board does not provide an estimate for total savings; however, they do project that the Military Retirement Trust fund liability would decrease from $2,720.3 trillion to $1,800 trillion. On the one hand, Mr. Tilghman notes in his article that the plan would save $300 billion over ten years. Tilghman, *supra* note 9. On the other hand, Ms. Gentile projects savings of $250 billion over twenty years. Gentile & Zoroya, *supra*. It is fair to say that the amount will be substantial. Appendices F & G provide tables to illustrate the different contribution amounts for both an enlisted and officer member over a twenty-year period. An E-7 who retires at age thirty-eight after twenty years of service would earn $993,120 over a forty-year period. Under the Board's plan and assuming a 16.5% contribution, the government would only contribute $125,085. The difference of $868,034 is what the government saves over the lifetime of one servicemember.

456 DEF. BUS. BD., *supra* note 5, tab C.

457 *See Center for American Progress*, AMERICANPROGRESS.ORG, http://www.american progress.org /about/mission/ (last visited Feb. 6, 2014). The Center for American Progress describes itself as a "nonpartisan research and educational institute dedicated to promoting a strong, just, and free America that ensures opportunity for all." *Id.* Its stated goal is to find "progressive and pragmatic solutions to significant domestic and international problems and develop policy proposals." *Id.*

458 *Id.* at 29.

459 *Id.* at 36.

After adopting the Board's recommendations, the CAP added the following items. The CAP recommended that the government contribute 16 percent, as the starting point, of each servicemember's base pay to the new TSP retirement account. Servicemembers would be vested in the new system sometime between three and five years. Their benefits would become payable between ages 60 and 65.[460] The CAP also supported the proposal that servicemembers who are on hardship tours, in combat, or in certain specialties receive an increase in their government match.[461] The CAP further recommended, similar to the 10th QRMC, that the DoD institute compensation incentives such as gate pay and separation pay to assist with force shaping.[462]

The CAP advocated a gradual shift to the new system. Servicemembers with more than ten years of service would have the option to transition to the new system or remain under the old system. Servicemembers with fewer than ten years of service would have the option of transitioning to the new system or vest at ten years into a transitional system that would provide them with an annuity worth 40 percent of their base pay, at twenty years of service, payable upon reaching the age of sixty.[463] Upon leaving the military, servicemembers could transfer their TSP accounts to the private sector, and their benefits would become payable between ages sixty and sixty-five.[464]

With a new system, the CAP notes that Congress might decide to grandfather the current troops in to the old system. However, such a move, the CAP believed, would ensure that a vast majority of them would exit the military with no retirement system, since 83 percent of troops end up with no retirement benefits under the old system.[465] Therefore, they advocate that the DoD transition troops based on their recommendation.[466] The CAP believed that implementing their proposals would enable annual savings of up to $13 billion in the near term and as much as $70 billion annually by the mid-2030s.[467]

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460 *Id.* at 37.
461 *Id.* at 36.
462 *Id.* at 29.
463 *Id.* at 30.
464 *Id.* at 37.
465 *Id.* at 38 (citing DEF. BUS. BD., *supra* note 5, at 39).
466 *Id.* at 39.
467 *Id.* at 30.

IX. Advantages and Criticism of Past Proposals

The DACMC, 10th QRMC, the Board, and the CAP proposals have several advantages. First, early vesting would ensure that a greater number of servicemembers receive some type of retirement benefit. Setting the vesting date for government contributions in the defined contribution plan (TSP-style plan) at three or five years, as suggested by the Board and the CAP, would bring the military to the standard of the private sector and solve one of the inequality issues that plagues the current system.

Another advantage to the past proposals is the increase in current compensation to servicemembers. Providing servicemembers contributions under the Board's or the CAP's proposals, or matching contributions under the DACMC and the 10th QRMC proposals, would allow troops greater current compensation, albeit towards their eventual retirement.

The DACMC and the 10th QRMC proposals to allow servicemembers to vest into a defined benefit plan after ten years of service is also a major improvement. Most servicemembers will want to vest in the defined benefit plan at the three or five-year mark, similar to the defined contribution plan; however, allowing earlier vesting would substantially increase cost without providing any added benefit to the services in retention or force management. While most private sector employees vest in their pension systems at the five-year mark and current law requires all civilians to vest by the seven-year mark,[468] the military is a unique institution that the services should continue to be exempt from an earlier vesting requirement.

Another clear advantage for the government in moving from the current system into a delayed pension or defined contribution plan is overall savings. From the outset, the government would realize a significant decrease in cost of the retirement system if Congress implemented the Board's defined contribution plan immediately. Grandfathering some and transitioning others, as the CAP suggests, would still lead to significant savings. On the other hand, the 10th QRMC and the DACMC plans would result in moderate savings,

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[468] *Id.* at 13; Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974).

particularly if separation pay and gate pay were instituted as part of the new system.

Despite these advantages, particularly cost savings, the disadvantages of the plans far outweigh their benefits.[469] If the proposals above were to be implemented, the services would find it difficult to recruit and retain qualified individuals; servicemembers would lose the immediate annuity, which would lead to mid-career servicemembers leaving the force before they reached fifteen or twenty years; and, military family finances would take a major blow. The crux of the problem has to do with whether abolishing the immediate annuity in exchange for receiving gate pay and separation pay with either (1) higher government contributions towards a defined contribution plan or (2) a delayed pension benefits until age fifty-seven, sixty, or sixty-two is a fair exchange for the sacrifices that servicemembers and their families make. It is very likely that servicemembers would answer with leaving the force.

A. Proposals Benefit Younger Soldiers

With any change to a system, there will likely be those who benefit and those who will not fare as well. Under the Board's or the CAP's proposals, servicemembers who would normally not save toward their retirement, particularly younger troops, would have a substantial advantage over their civilian peers. On the other hand, providing young troops with matching contributions may lead to a fair number not taking advantage of the match because of a variety of reasons—especially financial issues. In the private sector, for example, 30 percent of employees who are eligible to receive a match fail to take full advantage of the opportunity.[470] Nonetheless, under any of the proposals that provide funds toward the TSP, those servicemembers who planned to serve more than three to five years but less than twenty stand to benefit the most.

Particularly younger enlisted servicemembers who have borne the brunt of the two wars and are more likely to leave the service by the end

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[469] Based on the analysis above, the 10th QRMC proposal provides the best options for servicemembers because of its combination of a defined benefit plan and a defined contribution coupled with gate pays and separation pay as current compensation.
[470] Dugas, *supra* note 189.

of their second term would be the biggest winners.[471] Conversely, the Board's and the CAP's proposals to abolish the immediate annuity would adversely impact officers who on average tend to remain in the service until retirement—49 percent of officers serve until retirement age.[472] Enlisted members, who tend to retire on average five years before officers, would do slightly better than officers under the Board or the CAP's plan, but will still receive less than under the High-3 system.[473]

Though the numbers may appear to be close at first glance, it is important to remember that under the Board or the CAP's plan, servicemembers will lose the income that they would have received between their military retirement date to age sixty-five when they can withdraw the funds without penalty (or age 59 and a half under current Internal Revenue Code-though there are a number of exceptions).[474] Therefore, the O-5 officer would have lost $942,240, and the E-7 enlisted member would have lost $670,356 in retirement income. According to Robert L. Goldich, formerly senior military manpower analyst for the Congressional Research Service, the enlisted member depends far more

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471 Andrew Tilghman, *Hatching a New Nest Egg*, ARMYTIMES, Sept. 18, 2011, http://www.armytimes.com/money/retirement/military-retirement-overhaul-091411w/; *see generally* KORB ET AL., *supra* note 15. Under the Board's or the CAP's proposals to provide servicemembers with 16.5% in TSP contributions, an enlisted member who makes it to the E-3 paygrade and then leaves after four or five years will depart the military with about $21,000 in retirement savings, and if properly invested and averaging five percent return yearly, it could grow to more than $170,000 by age sixty-five. *See infra* Appendix E for results and figures. *See also* Tilghman, *supra* note 471 (noting a similar analysis resulting in $100,000 in total investment at sixty-five years old).

472 MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 24. For example, an O-5 officer retiring after twenty years of service, at the age of forty-five could receive approximately $942,240 by age sixty-five in retirement benefits under the High-3 system; and would receive approximately $1.9 million after forty years of receiving benefits. *Id.* Under the Board's or the CAP's proposals, assuming 16.5% contributions over a twenty-year period and a five percent investment return, that same officer would receive approximately $400,000 after twenty years, and would have an account valued at $1,130,347.06 when that officer reaches age sixty-five. *See infra* Appendix F (providing results and figures).

473 Under the High-3 system, an E-7 enlisted member who retires at age thirty-eight with twenty years of service would receive approximately $670,356 by the age of sixty-five. *2013 Retirement Pay*, *supra* note 70, at 23. The estimate is based on the 2013 retirement pay chart and is not adjusted for future inflation. *See* Appendix G. After forty years of retirement benefits, the estimated value is $993,120. Under the Board's or the CAP's proposals, assuming 16.5% contributions over a twenty-year period and a five percent investment return, that same E-7 would have $215,119 after twenty years of service, and $827,481.89 at the age of sixty-five.

474 I.R.C. § 72 (2012); INTERNAL REVENUE SERV., U.S. DEP'T OF TREASURY, PUB. 590: INDIVIDUAL RETIREMENT ARRANGEMENTS (IRAS) 55–58 (Jan. 2013).

on retirement pay as a supplemental income.[475] Enlisted members tend to earn less than their officer counterparts once they leave the service.

B. Immediate Annuity vs. Thrift Savings Plan Contributions

Servicemembers sacrifice greatly during a twenty-year career, and expect to receive due compensation at the end of their journey. Critics who advocate abolishing the immediate annuity are extolling cost savings measures while shortchanging the future financial security of servicemembers as well as sacrificing the need for professional, career servicemembers. By moving from a defined benefit plan to a defined contribution plan, the government shifts the burden of providing retirement security from the federal government to the individual servicemember.[476] Kevin Wagne, a senior retirement consultant at Towers Watson, argues that the shift from defined benefit plans to defined contributions plans has led to the next generation of retirement-age workers being unable to retire when they would like.[477] The end result of a move to a 401(k)-style system is that servicemembers will be on their own, and ultimately responsible for how much savings they are able to generate by the time they are ready to retire without the safeguard of a steady income in the form of an annuity from the federal government.

Under the Board's or the CAP's plans, there is no way of knowing how much a servicemember will receive after twenty years of service. Under the current retirement system, servicemembers can project what they will receive upon retirement based on their rank and years in service. This new version will depend largely on the performance of the stock market.[478] A servicemember could very well serve twenty years and have very little to show for it because of poor allocation, poor performance in the stock market, improper use of loans, or a combination

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475 Robert L. Goldich, *A Few Words About Military Retirement 'Reform' and Social Class in America*, FOREIGN POL'Y, Sept. 6, 2011, http://ricks.foreignpolicy.com/posts/2011/09/06/a_few_words_about_military_retirement_reform_and_social_class_in_america.

476 *See* Susan J. Stabile, *Is It Time to Admit the Failure of an Employer-Based Pension System?*, 11 LEWIS & CLARK L. REV. 305, 306 (2007).

477 Brandon, *supra* note 187.

478 *See* HENNING, *supra* note 30, at 21–22 (citing Robert Hiltonsmith, *Cuts, Fees Can Drain Even the Best Retirement Plans*, POLITICO, Dec. 17, 2010, http://www.politico.com/news/stories/1210/46491.html.

of all the above.[479] Moreover, investors who invested their funds in a Standards and Poors (S&P) 500 fund or similar between 2000 and 2010 saw no real gain during that period.[480] Additionally, it takes fortitude not to pull money out when the stock market tumbles 100, 200, or 500 points during a single session, or perhaps a steady decline over several weeks. By moving from a defined plan to a 401(k)-style plan, the government is divesting itself of any responsibility to provide for those who have provided for the nation over an extended period of time. By choosing such a system, the federal government is asking servicemembers to trust not in them, but in future performances in the stock market. In light of the financial meltdown of 2008, servicemembers might be hesitant to place their trust in such a system. While civilians bear these kinds of risks, the government should not ask servicemembers to share those same risks after endangering their lives on the battlefield.[481]

C. Impact on Retention

To put it bluntly, a move to a 401(k)-style system that abolishes the immediate annuity would annihilate the service's ability to retain mid-career servicemembers—those needed to train and mold young recruits, and lead in fighting the nation's wars.[482] Major David Eastburn, with twelve years in the service, voiced to USA Today what a majority of mid-career servicemembers felt about the Board's proposal: "I love the military, and I love my job, but right now, if the new plan [the Defense Business Board's proposal] goes into place, there is no financial incentive for me to stay in."[483]

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[479] *See* Robert Schmansky, *A Lost Decade? Not The Case For All Investors,* FORBES, Aug. 21, 2012 http://www.forbes.com/sites/feeonlyplanner/2012/08/21/a-lost-decade-not-the-case-for-all-investors/; Stablile, *supra* note 476, at 312–13.

[480] Schmansky, *supra* note 479. After leaving the TSP system, Servicemembers could also see their savings disappear due to fraudulent, unscrupulous financial planners, or even simple negligence on their part. There will be servicemembers who are savvy enough to handle investing their portfolio; however, there will be some who will fall victim.

[481] *See* ISAACS, *supra* note 315, at 1 (noting "An important difference between the two types of retirement plans is that in a defined benefit plan it is the *employer* who bears the risk, whereas in a defined contribution plan it is the *employee* who bears the financial risk") (emphasis in original).

[482] *See* Tilghman, *supra* note 9.

[483] Gentile & Zoroya, *supra* note 455.

The Pentagon will likely oppose a move to a defined contribution plan. Similar to 1986 when Congress passed Redux, should Congress consider the Board's or the CAP's plans, the services will likely argue that abolishing the immediate annuity would severely hamper the Pentagon's ability to retain high-quality personnel and would significantly denigrate future combat readiness.[484] Moreover, in the mid-1980s, the Fifth QRMC conducted "modeling exercises that showed a decrease in enlisted career force strengths" if there was a switch to a defined contribution retirement package.[485]

Veterans and veteran groups also oppose the Board's plan and will likely oppose the CAP's plan due to their similarities. Retired Vice Admiral Norbert Ryan, president of the Military Officers Association of America, an outspoken retiree group that represents the interest of retired officers, believes that without the option of early retirement, leadership will suffer as mid-career troops leave.[486] Critics of the Board's proposal believe there will be a shortage of troops willing to serve twenty or more years.[487] The American Veterans (AMVETS), and the American Legion (the nation's largest veteran organization with 2.4 million members) also oppose the Board's plans.[488] Although the delayed annuity is slightly better than the Board's option, servicemembers and affiliated groups find it inadequate.

The DACMC and the 10th QRMC proposals of providing a delayed annuity will have a negative impact on retention. If servicemembers had to wait until age fifty-seven or sixty-two to receive their annuity, then there would be less incentive to serve to twenty or thirty years. Mr. Steven P. Strobridge, retired Air Force colonel and Director of Government Relations for the Military Officers Associations of America

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[484] *See generally* HENNING, *supra* note 30.
[485] Christian, *supra* note 23, at 12 (citing U.S. DEP'T OF DEF., REPORT OF THE FIFTH QUADRENNIAL REVIEW OF MILITARY COMPENSATION, VOLUME I, X-5 (1984)); HUDSON, *supra* note 77, at 9.
[486] Gentile & Zoroya, *supra* note 455; *Pentagon Considering Scrapping Traditional Pensions in its Proposed Retirement Program Overhaul*, FOXNEWS.COM, Aug. 15 2011, http://www.foxnews.com/politics/2011/08/15/pentagon-scraps-traditional-pensions-in-its-proposed-retirement-program/.
[487] Gentile & Zoroya, *supra* note 455.
[488] *Id.* Retired Major General Bob Scales, a military analyst for Fox News, called the proposal "a bad deal." Fishel & Crogan, *supra* note 310. He explained, "We reward those who sacrifice when they're young. And the reward is when they retire, they are given a decent retirement pay to carry them over the time they leave the service, and this of course would just remove that." *Id.*

(MOAA), said, "The whole reason military people are willing to pursue a career is because after 20, 30 years of extraordinary sacrifice, there is a package commensurate with that sacrifice upon leaving service."[489] Delaying retirement benefits until age fifty-seven also means that enlisted members who typically retire between age thirty-eight and forty-three would lose between fourteen and nineteen years of post-retirement income. Officers, who tend to retire between age forty-five and fifty, would lose between seven to twelve years of income. While the proposed separation pay would help cover some of the lost income, the difference is substantial.

Moreover, there is no real incentive for servicemembers to risk their lives an additional ten years for just three years of additional retirement pay based on the DACMC & 10th QRMC proposals. Their proposals suggests that servicemembers who serve ten years or more could vest starting at ten years and receive retirement pay at age sixty. On the other hand, those serving more than twenty years could receive benefits starting at age fifty-seven. However, there is no clear incentive for troops to serve longer than ten years, even considering gate pay and separation pay. Indeed, the plans fail to consider why servicemembers would risk their lives and put their family's future in jeopardy for just three additional years of retirement benefit.[490]

D. Spousal Income & Retention

Spousal employment and the level of retirement compensation play a factor in the DoD's ability to retain qualified and experienced servicemembers. The only thing that separates the military retirement system and the private sector pension system is the ability to retire after twenty years and receive an immediate annuity. If Congress was to take away the immediate annuity, then both systems would be about the same or the military could still be viewed as slightly better. But is "slightly better" enough to make servicemembers serve twenty or thirty years in this type of hazardous profession?[491]

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[489] Dao & Walsh, *supra* note 9.

[490] Dan, Comment on article by Lisa M. Novak, *Military Retirement System Broken, Board Says*, STARS & STRIPES, Aug. 7, 2010, (Nov. 29, 2010, 7:42 PM), http://www.stripes.com/news/military-retirement-system-broken-board-says-1.113754.

[491] In a survey of military families, 31 percent of respondents listed changes to retirement benefits as their top military family life issue. GREENTREE ET AL., *supra* note 345, at 9.

The issue becomes more problematic when considering the hardship that spouses face with maintaining a career while their military spouses relocate every two to three years. "A major part of a servicemember's decision to stay in the military is whether his or her family is able to thrive in the military setting."[492] More than two-thirds of married service members reported that their decision to re-enlist was largely or moderately affected by their spouses' career prospects.[493] For military families, a change in the retirement system would mean financial upheaval.

Servicemembers will have to weigh the difference in retirement benefits between the private sector (typically 6 to 8% match) with what the Board has proposed (16.5% match) and decide whether the additional eight to ten percent match is worth moving every few years, uprooting their children from their homes and friends, spending countless years away from family members, and the other turmoil that are consistent with military life. A decision to stay in the military oftentimes hinges on the servicemember convincing the spouse that the retirement annuity, after twenty years of service, will be worth the loss in income and wealth that they could have enjoyed in the private sector. It is a trade-off. By moving to a 401(k)-style system or a delayed pension system, a servicemember loses that bargaining chip with the spouse and makes the spouse's demand to leave the military more problematic. It is very likely that some servicemembers will forego the military as a long-term career option thereby robbing the services of valuable and experienced personnel.

E. Criticism of Separation Pay and Gate Pay

Servicemembers should be highly skeptical that promises to provide gate pay and separation pay will ever come to pass if left to the DoD or the Services' discretion. In the past, the DoD has failed to take care of troops by allowing servicemembers' pay levels to fall well below what civilians make in the private sector.[494] In the 1980s and 1990s, the DoD neglected to expend the necessary funds to maintain adequate on-post

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The survey was conducted soon after the Defense Business Board released its proposals and media coverage was at its peak on the issue of military retirement. *Id.* at 12.

492 STRENGTHENING MILITARY HOUSEHOLDS, *supra* note 373, at 4.

493 SUPPORTING MILITARY FAMILIES, *supra* note 370, at 6.

494 *See* HENNING, *supra* note 30, at 6, 8–9.

housing, resulting in sub-standard housing for servicemembers on many installations.[495] Congress gave the Secretaries of each service the power to grant government-matching contributions in the TSP; however, the majority, if not 100 percent, of servicemembers have not received matching contributions.[496] Even at the height of fighting two wars, retention and recruitment problems plaguing the force, fifteen-month deployments or multiple twelve-month deployments within a three year period, the Services failed to use government matching contributions as a retention, recruitment, or reward tool for servicemembers. The flexibility to mold the force by using these payments could potentially lead to low morale, less trust in the DoD, and less control over the servicemember's financial future.[497] Statistics show that very few servicemembers serve to twenty years, despite the "overly generous" retirement benefits.[498] Changing the retirement structure so radically would mean that fewer still would choose to serve to twenty years, robbing the Services of valuable and experienced servicemembers.[499]

Although the past proposals would reduce cost and solve the inequality issue, they fail to keep faith with the servicemembers and their families for their sacrifices. Part X of this article discusses an alternative plan to the current system and the past proposals. This plan would save the government money while keeping faith with servicemembers and their families.

X. An Alternative Plan[500]

This alternative plan, also referred to as the vesting plan, strikes a balance between being generous enough to be worthy of the sacrifice that servicemembers and their families make during a prolonged commitment

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495 LEED, *supra* note 213, at 10–11.

496 *See* HENNING, *supra* note 30, at 22-23 (citing OFFICE OF THE SEC'Y OF DEF., U.S. DEP'T OF DEF., REPORT TO CONGRESS: COST AND IMPACT ON RECRUITING AND RETENTION OF PROVIDING THRIFT SAVINGS PLAN MATCHING CONTRIBUTIONS (Feb. 2010)).

497 Freedberg, *supra* note 311.

498 10TH QRMC, *supra* note 14, at 12–13.

499 Dao & Walsh, *supra* note 9. Mr. Korb acknowledges, "When the war in Iraq was in terrible shape, it was hard to get people to join the military, and no one wanted to touch any military benefits." His statement highlights the quandary that Congress faces if they pass the Board's or the CAP's proposals. In the midst of war, it would be the worst time to find out that we no longer have the qualified troops to fight because servicemembers decided to leave due to an inadequate retirement system. *Id.*

500 *See infra* Appendix H.

to our country, but not so generous that it encourages servicemembers to leave as soon as they are eligible for an immediate annuity.[501] The vesting plan focuses on providing proper compensation, fixing the inequality that forms the cornerstone of the current system, and solving the retention issue that the services experience after a servicemember has reached the twenty-year mark. Moreover, it reduces cost by introducing three new concepts: (1) servicemember contributions; (2) reforming the Military Retirement Fund (MRF) investment structure;[502] and (3) means-testing COLA for servicemembers who retire between years twenty and twenty-nine. Lastly, and the most important feature, this plan retains the twenty-year immediate annuity, albeit at 40 percent rather than the traditional 50 percent.

A. Defined Benefit Plan Details

Servicemembers will be eligible to receive a defined benefit plan and vest at their ten-year mark. With the cost of initial training for enlisted members, educating officers either through the academies, colleges, or universities, and the number of combat arms training and qualifications that servicemembers go through during the first five or six years of their careers, the military needs a longer period of commitment from servicemembers to recoup the cost of accession. As such, the vesting date is set at ten years rather than the traditional five or seven years, as is common in the private sector.[503]

The vesting plan will provide servicemembers different benefits at various stages of their careers. Upon vesting at ten years, a servicemember will be eligible to receive a pension based on his pay at the time of leaving the service and at a rate of 20 percent of her High-3 at age sixty-two. The percentage will increase by 2.5% for every year of service thereafter. At the fifteen-year mark, a servicemember will be eligible to receive 30% of pay, based on his High-3 pay at the time of leaving the service, starting at age fifty-seven. Upon reaching twenty years of service, the servicemember will receive 40 percent of pay upon retirement; twenty-five years will result in 50 percent; thirty years at 75

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[501] Freedberg, *supra* note 311.
[502] *See supra* Part V.D.1.
[503] BUREAU OF LABOR STATISTICS, U.S. DEP'T OF LABOR, NATIONAL COMPENSATION SURVEY: EMPLOYEE BENEFITS IN PRIVATE INDUSTRY IN THE UNITED STATES 2005, 67 (May 2007); Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974).

percent; and forty years at 100 percent.[504] Though servicemembers will be eligible to receive 100 percent of their pay at forty years, the pay will be capped at $200,000 and indexed to inflation. Servicemembers who are sentenced to a bad-conduct discharge or worse, despite being vested, will be ineligible to receive benefits under the defined benefit plan.

1. Servicemember Contributions

The defined benefit aspect of the vesting plan requires servicemembers to contribute five percent of their base pay towards their retirement until their twentieth year in the service. This concept is new in the sense that no one in the past thirty years has suggested that servicemembers contribute to their military retirement.[505] The Hook Commission noted, "No previous retired pay arrangements for members of the Armed Forces have been on the basis of requiring contributions."[506] The Hook Commission considered the idea and dismissed it based on how difficult it would be to manage such a fund.[507] The Commission concluded that the expenses to manage the fund would outweigh any savings from having servicemembers contribute to the fund.[508] However, the 1st QRMC, in 1969, recommended that members contribute 6½ percent of their base pay toward their retirements.[509] Federal employees also contribute to their defined benefit plan, albeit less than one percent for federal employees and less than 1.5% for law enforcement and firefighters.[510] On average, civilians in the private sector contribute far more to their defined benefit plans—sometimes as

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504 10TH QRMC, *supra*, note 14, at 20. "The [3rd] QRMC also recommended reduced retirement pays for members who retire with fewer than 30 years of service, and a graduated retirement pay multiplier that increased with years of service." *Id.* The benefit structure in the defined benefit plan is somewhat similar to the CSB/Redux; the Defense Advisory Committee on Military Compensation (DACMC); and the 10th QRMC. *See supra* Parts IV.C.–D, IX.A., B.

505 *See* HUDSON, *supra* note 77, at 2.

506 HOOK COMMISSION APPENDIX, *supra* note 25, at 190.

507 HOOK COMMISSION, *supra* note 13, at 39.

508 Christian, *supra* note 23, at 12.

509 10TH QRMC, *supra* note 14, at 20; Christian, *supra* note 23, at 12. *See also* 2005 DEPARTMENT OF DEFENSE BACKGROUND PAPERS, *supra* note 19, at 777-84 (discussing the idea that military pay is lower as a way to pay for the military retirement system, and concluding that military pay has not been lowered).

510 *See supra* Part VII.A.–B; ISAACS, *supra* note 315, at 15–16 (noting recent change in 2012 legislation affecting new hires and rehires with less than five years of service that increases the contribution amount to 3.1 percent for FERS and 3.6 percent for FERS-SRP).

much as 45 percent.[511] A five-percent contribution is a modest amount and will ensure that servicemembers continue to receive a defined benefit plan.

The purpose of the contribution is to lower retirement cost and to have servicemembers share in the sacrifice of putting the United States on a fiscally responsible path. Paying for a benefit is not a foreign concept to military members. Servicemembers pay into the Montgomery GI Bill,[512] Tricare Dental program for dependents,[513] the Servicemembers' Group Life Insurance Program,[514] and for their family life insurance coverage. The servicemembers' contribution will be suspended during deployments, hardship tours, and duties resulting in family separation. This is not an attempt to pay for the federal deficit by forcing servicemembers to take less in retirement and contribute more than they have ever done before. Instead, this is based on the belief of shared sacrifice; that is, everyone takes a bit less and contributes a bit more.[515] By contributing a small amount toward the retirement fund, it ensures the solvency of the system, lessens the burden on taxpayers, and puts the country onto a better financial path.

2. Investing Contributions for Solvency

Congress should pass legislation allowing the MRF to invest funds in higher-yielding equities and bonds.[516] The government has to *invest* funds into the marketplace to ensure growth and sustainability.[517] Today the fund generates its income from a variety of U.S. Treasury-based instruments such as U.S. Treasury Inflation-Protected Securities (TIPS), bills, notes, bonds, and overnight investment certificates.[518] Moreover,

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[511] *See* KENDALL & KESSLER, *supra* note 195, at 2.
[512] 38 U.S.C. § 3011 (2008).
[513] 10 U.S.C. § 1076a (2011).
[514] 38 U.S.C. § 1969 (2012).
[515] Congress should also consider increasing the amount that current federal employees pay into their defined benefit plan. *See* ISAACS, *supra* note 315, at 16–18 (discussing pending legislation to increase FERS employee contribution amounts).
[516] DEF. BUS. BD., *supra* note 5, at 5.
[517] ISAACS, *supra* note 315, at 14. "Many state and local government pension funds invest in stocks, bonds, mortgages, real estate and other private assets." *Id.* "The Railroad Retirement and Survivors' Improvement Act of 2001, Pub. L. No. 107-90 [115 Stat. 878 (2001)], authorizes the Railroad Retirement Trust Fund to acquire corporate stocks, bonds, and other assets to fund railroad retirement benefits. *Id.* at 14 n.24.
[518] *See* MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 19.

the income is generated from the U.S. Treasury.[519] The MRF receives oversight from the DoD Investment Board,[520] and sets up investment objectives and policies for the fund.[521] Congress should direct the Investment Board to invest in equities and bonds.

The Investment Board should invest funds from the MRF and servicemember contributions in a diversified portfolio to ensure growth while avoiding steep declines during a market downturn. The Investment Board can invest the funds in the fund family that makes up the TSP.[522]

B. Defined Contribution Plan

The second major benefit of the retirement package is a defined benefit plan. Servicemembers will also receive a government match to their TSP. Between years one and fifteen, servicemembers will be entitled to a five-percent match; from years sixteen to nineteen an eight-percent match; and a five-percent automatic contribution and an eight-percent match starting at their twentieth year. The increase in match

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519 *See id.* at 15, 19; ISAACS, *supra* note 315, at 14.

> A bond is an I.O.U.—that is, a promise to pay. An I.O.U. received from someone else might be considered an asset, provided that the issuer is willing and able to pay the debt when it is due, but writing an I.O.U. to oneself does not create an asset. This analogy applies to the U.S. Treasury bonds held by the federal government's trust funds: they are I.O.U.s issued by one agency of the U.S. government and held by another agency of the same government. Both the issuer and holder are part of the same entity: the U.S. government.

520 MILITARY RETIREMENT FUND AUDIT, *supra* note 6, at 18. The DoD Investment Board consists of the Defense Finance and Accounting Service Director, the Office of the Under Secretary of Defense (Comptroller) Deputy Chief Financial Officer, and a senior military member.

521 *Id.*

522 *Thrift Savings Plans Fund Comparison Matrix*, TSP.GOV, https://www.tsp.gov/investmentfunds/fundsoverview/comparisonMatrix.shtml (last visited Feb. 8, 2014). The TSP has the G fund (non-marketable U.S. Treasury security); the F fund (government, corporate, and mortgage-backed bonds); C fund (stocks of large and medium-sized U.S. companies); S fund (stocks of small to medium-sized U.S. companies (not included in the C Fund)); I fund (International stocks of 21 developed countries); and the L fund (Invested in the G, F, C, S, and I Funds). *Id.* *See* ISAACS, *supra* note 315, at 7 (citing Thrift Savings Plan Act of 1996, Pub. L. No. 104-208, 110 Stat. 3009-314, 3000-372, 3009-374 (1996)).

rewards servicemembers for their longevity and commitment to the country. Servicemembers will vest in their fifth year. Further, the government will provide a ten-percent automatic contribution to servicemembers' TSP accounts during deployments, hardship tours, and duties resulting in family separation—rewarding servicemembers who are at greater risk. Servicemembers who are sentenced to a bad-conduct discharge or worse, despite being vested, will forfeit their government matching and automatic contributions and any gains associated with the contributions.

The defined benefit and defined contribution package will initially increase the cost of the retirement system. However, the collective funds from servicemembers, properly invested, should yield a greater return, which will lower the overall appropriation that Congress will make to cover retirement payments. Additionally, there will likely be a number of servicemembers who contribute toward the pension plan but fail to take advantage of the government match due to a variety of reasons, or voluntarily or involuntarily separate before they can vest, and therefore receive no benefits.

C. Cost of Living Adjustments

Servicemembers will be eligible to receive COLA. Servicemembers who served more than thirty years are eligible to receive COLA upon retiring. Servicemembers who served more than twenty years but less than thirty years are eligible to receive COLA at age fifty-seven. All other servicemembers who have vested in the pension system are eligible to receive COLA at age sixty-two.

The goal of the retirement benefit package is to compensate servicemembers for their sacrifice and the lost income that they experience once they transfer to civilian life. The purpose of COLA is to protect the purchasing power of the annuity from rising inflation.[523] Additionally, under this new plan, COLA will be used as an income supplement to assist servicemembers in transitioning to the private sector. Servicemembers who served twenty or more years are eligible for COLA adjustments if their earned income coupled with their retirement pay does not exceed their Regular Military Compensation

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[523] HENNING, *supra* note 43, at 2. ISAACS, *supra* note 315, at 6. "COLAs do not raise the real value of income. They merely prevent the real value of income from falling." *Id.*

(RMC)[524] by 25 percent, also taking into account the tax advantages of military pay as part of the calculation.[525] The calculation will be indexed to inflation. An E-7 servicemember who retires at twenty years would have to earn a combined income of less than $107,000 (earned income and retirement income) to be eligible for COLA adjustments.[526]

Delaying yearly COLA adjustments to servicemembers who serve between twenty and twenty-nine years will save a substantial amount. Most retirement-eligible servicemembers retire between twenty and twenty-five years.[527] Thus, the majority of the COLA payments go to them. However, if those servicemembers do not qualify for COLA under the special provision described above, the government will save—and the savings should be substantial.

D. Transition

Troops who are in the military and have served more than three years will be grandfathered in to receive either the High-3 or Redux/CSB. However, current troops who would like to take advantage of the opportunity to vest into a pension benefit at ten years or fifteen years will have to contribute into the defined benefit plan and receive benefits under the High-3, and the two and one-half computation base. The contribution rate toward the pension should be phased in over three

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524 The RMC includes monthly basic pay, basic allowance for housing and basic allowance for subsistence. *See supra* Part III.

525 *Office of the Sec'y of Defense, Military Compensation Tax Exempt Allowances*, MILITARYPAY.DEFENSE.GOV, http://militarypay.defense.gov/pay/tax/01_allowances.html (last visited Feb. 5, 2014).

526 *See infra* Appendix I. Results are based on the *Office of the Secretary of Defense, Military Compensation Tax exempt allowances Calculator*, MILITARYPAY.DEFENSE.GOV, http://militarypay.defense.gov/mpcalcs/Calculators/RMC.aspx (last visited Feb. 5, 2014). The calculation is based on the Basic Allowance for Subsistence rate from the Washington, D.C., area. Servicemembers who served more than twenty years but less than thirty can receive COLA under a special provision. Servicemembers who believe they are eligible under the special provision will forward a copy of their W-2, wage and tax statement, and their tax return to the Defense Finance and Accounting Services (DFAS) to receive COLA payments from the previous year. Once they have filed for payment and have been approved, servicemembers can file an affidavit stating they do not expect their income to go above the 25 percent rate and DFAS will send monthly COLA payments as part of their retirement checks. Servicemembers will have to file yearly W-2 and tax returns while continuing to receive monthly payments.

527 DEF. BUS. BD., *supra* note 5, tab C, at 11 (noting that 76 percent of servicemembers leave the service between their twentieth and twenty-fifth years of service).

years. All current servicemembers wishing to vest in the pension system and receive benefits at ten or fifteen years must provide contributions for five years. All servicemembers with fewer than three years of service and new recruits will be transferred to the new system.

E. Retention and Force Management

The alternate plan discussed above focuses on retaining career servicemembers and those with twenty years or more. The main retention issue facing the Services now has to do with the high number of servicemembers who leave the military between years twenty and twenty-five.[528] The plan focuses on retaining those servicemembers by providing them with additional compensation. Servicemembers with twenty or more years of service no longer have to provide contribution to the retirement fund (a savings of five percent) and receive a five percent automatic contribution above the government match. This is a net increase of ten percent of pay. Further, servicemembers who serve thirty years or more are entitled to COLA upon retirement. Most servicemembers who are focusing on saving for a house, paying for their children's college tuition, and saving for retirement will consider the ten percent increase as a major incentive to remain in the force while also increasing the percentage of annuity that they will receive upon retirement.

The plan discussed above also aids the services in managing the force. Each of the services can target troops who have been passed over for promotion or are in over-strength areas and separate them at the fifteenth year mark. An extensive severance payment will not be necessary for troops who are involuntarily separated between years ten and twenty due to the defined benefit plan and the government matching contribution. Poor performers can be retrained or involuntarily separated without supervisors feeling that they are ending a career without providing them any retirement benefits.

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[528] *Id.* at 11 (noting that 76 percent of servicemembers leave the service between their twentieth and twenty-fifth years of service).

F. Criticism

The number one issue that critics might highlight is the fact that the plan proposes having servicemembers contribute to their retirement. Moreover, the plan requires servicemembers to pay far more than what federal civilian workers pay into FERS. Servicemember lobbying groups and veterans groups such as the American Veterans, the Military Officers Association of America, and the American Legion, to name just a few, will likely view it as breaking faith with our servicemembers.[529] However, the goal has always been to protect the immediate annuity and to provide benefits to more servicemembers. Though those organizations may oppose the plan in the beginning, it is very likely that they will come to appreciate the protection that it provides to servicemembers at all stages of their career.

A fair criticism of the alternative plan might be its emphasis on deferred compensation. The 10th QRMC, the Board, and the CAP advocate for current compensation by providing a series of gate pay and separation pay to servicemembers. Adding gate pay and separation pay under the plan above would substantially increase the cost of the retirement system. The plan above does provide some current compensation by providing matching contributions to the TSP, but it is much smaller than under the Board or the CAP's proposal or the series of gate and separation pay. Regardless of the plan, there will always be some winners, losers, and those who find fault with its proposals.

XI. Conclusion

For more than 150 years, the government has provided an immediate retirement annuity to retired servicemembers. Today that system is in jeopardy. While the current retirement system is plagued with problems, a new system should honor the history, meaning, and prestige that embodies the term "retired military." The Hook Commission understood the importance of the shared sacrifice that servicemembers endured during their military careers. Perhaps that is why they sought advice from individual service personnel of all ranks and grades before making their recommendations.[530] Servicemembers should have a voice

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[529] *See generally* Gentile & Zoroya, *supra* note 455.
[530] HOOK COMMISSION, *supra* note 13, at iii. The Defense Business Board sought advice from all the Services Chiefs and some prominent members of the Services, but they did

in shaping the new retirement system. They too are patriots and taxpayers who understand the current fiscal dilemma that the United States faces. They understand that the DoD must strike a balance between new weapon systems and personnel cost, and ensure that retirees and survivors are properly cared for and compensated for their sacrifices. The current proposals represent a broad shift to what servicemembers have grown accustomed to over the past 60 years. Any new system should include input from all ranks and grades.

After servicemembers have toiled to preserve and protect the American way of life, the government should take care of them by providing them a sound retirement system worthy of their sacrifice. Too many servicemembers with multiple deployments have left the service with no retirement benefits. Congress and the Department of Defense can no longer wait for additional studies to tell them that the system is broken. Congress must act now and use the model established in Part X of this article as a starting point.

Twenty years of service to the nation is a benchmark that few achieve; it is a testament to the sacrifice of the individual and their family members who endured the sometimes heavy burden of serving their country. To take that away from servicemembers would be a gross injustice. No plan can ever be perfect; there will always be inequity with any plan. But Congress must act to solve the inequality that plagues the current system—failing to act only means that the cost will only grow greater and might eventually use up defense resources for training, maintenance, and new weapon systems. Those who willingly risk their lives to fight and win the nation's wars, regardless of political or ideological differences, deserve a system that fairly compensates them for that sacrifice.

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not survey the ranks. There is a high likelihood that a majority of servicemembers, given the choice between the Defense Business Board system and a system that maintains a version that ensures some type of recognition for twenty-plus years of service would choose the latter to maintain the history and lore of the military system.

Appendix A[531]

High-3 Computation

Rank	Monthly Annuity	Yearly Retirement Pay	Age 40-57	Age 58-62	Age 63-80	40-year total
E-7	2,069	24,828	422,076.00	124,140.00	446,904.00	993,120.00
E-8	2,263	27,156	461,652.00	135,780.00	488,808.00	1,086,240.00

Officer Member

Rank	Monthly Annuity	Yearly Retirement Pay	Age 45-57	Age 58-62	Age 63-85	40-year total
O-4	3,542	42,504	510,048.00	212,520.00	977,592.00	1,700,160.00
O-5	3,926	47,112	565,344.00	235,560.00	1,083,576.00	1,884,480.00

[531] *2013 Retirement Pay Chart*, THE ARMY TIMES, Jan. 2013, at 23. In the example above, the enlisted member retires at age forty with twenty years in service and the officer retires at age forty-five with twenty years of service. These future calculations do not reflect increases in Cost of Living Adjustments.

Appendix B[532]

Comparative View of FERS and the Military Retirement System

Features	FERS General Employees	Military Retirement System under High-3	Law Enforcement & Firefighters
Retirement Eligibility Age	Must meet a combination of age and years of service (YOS)	After 20 YOS.	Age 50 with 20 YOS or Any age with 25 YOS
Subject to reduction in retirement pay if retiring before age 62; or 60 with 20 years of service	Yes	No	No
Pension Formula	1% (of high-3 yrs) x YOS or If age 62 with 20+ YOS 1.1% (of high-3 yrs) x YOS	2.5% (of high-3 YOS) x YOS	1.7% (of high-3 YOS) x YOS of service + 1% (of high-3) x YOS served beyond 20 YOS
Pension Vest	5 YOS	20 YOS	5 YOS
Employee Pension Contribution	.80%	None	1.3%
TSP Government Match	Up to 5%	None	Up to 5%
TSP Vesting Automatic Contributions	3 YOS	N/A	3 yrs
COLA	Age 62	Upon retirement	Upon retirement
Special Retirement Supplement	Must serve 30 YOS and retire before age 62 or retire at 60 with 20 YOS	N/A	Upon retirement

[532] *See generally* FERS, *supra* note 44.

Appendix C[533]

Comparison Guide

	DACMC	10 TH QRMC	CURRENT SYSTEM	Defense Business Board	New Alternative	The Center for American Progress (CAP)	FERS-for Law Enforcement	Debt Reduction
TSP Enrollment	Automatic	Automatic	Voluntary	Automatic	Voluntary	Automatic	Automatic	Automatic
TSP Rate	Gov't match of up to 5%	2% <2 YOS; 3% at 3 YOS; 4% at 4 YOS; 5% for those with 5+ YOS	NONE	16% (or more depending on additional factors)*	5% match (1-15 YOS); 8% (16-19 YOS); 5% automatic and 8% match at 20+ YOS	16% (more for those who serve in hardship tours, in combat, or in certain specialties)	1% automatic rate, Gov't match of up to 5%	1% automatic rate, Gov't match of up to 5%
TSP Vesting	Vest between 5-10 Years of Service (YOS)	Vests at 10 YOS	N/A	Vest between 4-6 YOS	Vests at 5 YOS	Vest between 3-5 YOS	Fully vested after 3 YOS	Not Specified, will likely adopt FERS.
TSP Withdrawal age	No specified date;	Age 60	Consistent with IRS rules.	Between ages 60-65	Consistent with IRS rules.	Between age 60-65	Consistent with IRS rules.	Not specified, will likely adopt IRS rules.
Offering a defined Benefit Plan (DB)	YES	YES	YES	NO	YES	NO	YES	YES
DB Vesting	Vests at 10 YOS	Vests at 10 YOS	Vests at 20 YOS	N/A	Vests at 10 YOS	N/A	Vests at 5 YOS	Vests at 10 YOS
DB Withdrawal age	Age 60	Age 57 w/20+ YOS; Age 60 with <20 YOS; or Immediate annuity with 5% penalty x year under age 57.	Annuity available upon Retirement	N/A	Age 62 at 10 YOS; Age 57 at 15 YOS; Immediate annuity with 20+ YOS	N/A	Age 50 with 20 YOS; or any age with 25+ YOS	Range between ages 57-62 depending on YOS, although not specified.
DB Annuity Base	High-3	High-3	High-3 or REDUX	N/A	High-3	N/A	High-3	High-5
DB Annuity base calculations	2.5% x YOS x High-3	2.5% x YOS x High-3	2.5% x YOS x High-3	N/A	2% x 20 YOS; 2.5% x YOS thereafter.	N/A	1.7% x 20 YOS; 1% x YOS thereafter.	2.5% x YOS x High-5
DB Annuity based on years of service	Up to 100% at 40 YOS	Up to 100% at 40 YOS	Up to 100% at 40 YOS	N/A	20 % at 10 YOS; 30% at 15 YOS; 40% at 20 YOS; 50% at 25 YOS; 75% at 30 YOS; 100 at 40 YOS;	N/A	Up to 54% at 40 YOS	Up to 100% at 40 YOS

*16% (more depending on the needs of the services, such as larger contributions at certain retention gates, specific Military Occupational Specialty, or other demands to assist in force shaping.)

533 *See* DEF. BUS. BD., *supra* note 5, at 5.

Comparison Guide (Special Provisions)

	DACMC	10 TH QRMC	CURRENT SYSTEM	Defense Business Board	New Alternative	The Center for American Progress (CAP)	FERS-for Law Enforcement	Debt Reduction
Cost of Living Adjustment (COLA)	Not addressed, would likely stay consistent with current system.	Not addressed, would likely stay consistent with current system.	Available upon Retirement	N/A	Immediate COLA with 30+ YOS; Optional COLA for 20-29 YOS All other servicemembers who have vested in the defined benefit plan can receive COLA starting at age 62.	N/A	YES	YES
Gate Pay	10, 15, 20, 25 & 30 YOS (Base Pay x YOS)	Milestones YOS determined by Service (Base Pay x YOS)	NONE	NONE	NONE	Milestones YOS determined by Service-no specific formula	None	Not addressed.
Separation Pay	Payable after 10 YOS (Pay grade x YOS)	Determined by Service (Base Pay x YOS x Multiplier determined by Service)	N/A for regular retirees	May be eligible for certain servicemembers eligible for "retirement"	NONE	Milestones YOS determined by Service-no specific formula	None	YES-no specific formula, however. May adopt the 10th QRMC formula.
Transition	Grandfathered, but with option to convert (may have to agree to additional service obligation)	Grandfathered	N/A	No specific recommendation	3+ YOS are grandfathered with option to convert; less than 3 YOS and new recruits will convert in to new system	10+ YOS are grandfathered with option to convert; <10-option to convert with reduced benefits; New recruits will have new system	N/A	SM with 15+ YOS are grandfathered; everyone else will transition into new system
Special Provision	Once vested in TSP, Servicemember (SM) can opt to receive gov't contribution in cash in lieu of the TSP contribution.		N/A	N/A	SM contribution of 5%-suspended during specific duties.	N/A	Current employees contribute 1.3%; new hires contribute 3.6% toward their pension. Also entitled to special retirement supplement	N/A

Appendix D[534]

10th QRMC Breakdown

Based on the 2013 military basic pay chart, an E-6 with 12 years of service would receive $16,777; an E-7 $18,603; an O-3 $29,235; and an O-4 $32,894 in continuation pay. Similarly, the same group, after being promoted to the next rank, would receive the following in separation pay after twenty years of service: E-7 $151,494; E-8 $169,670; O-4 $254,930; O-5 $291,858. Assuming the servicemember received an annuity under the High-3 system and retired at age forty for the enlisted members and forty-five for officers, the total income they would have received by age fifty-seven would be the following: E-7: $422,076, (a difference of $270,582); E-8 $461,652 (a difference of $291,982); O-4 $510,048 (a difference of $255,118); and O-5 $565,344 (difference of $273,486). Also note that enlisted members tend to lose a greater amount than the officers; that is because they tend to retire, on average, five years earlier.[535]

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[534] *See generally* 10th QRMC, *supra* note 14; *see supra* Part VIII.B.
[535] *See generally* HENNING 2010, *supra* note 43, at 1 (citing OFFICE OF THE ACTUARY, U.S. DEP'T OF DEF., DEPARTMENT OF DEFENSE FISCAL YEAR 2009 DOD STATISTICAL REPORT ON THE MILITARY RETIREMENT SYSTEM 120 (May 2008)).

Appendix E[536]

16.5% Contribution to an E-1 to E-5

Yr 1 E2=20,397; @ 16.5%=3,365.60
Yr 2 E2=same 3,365.60
Yr 3 @ E3 over 3= (2,014.80 x12x16.5%)=3,989.30
Yr 4 @ E3 over 4=(2,014.80 x12x16.5%)=3,989.30
Yr 5 @ E3 over 5=(2,014.80 x12x16.5%)=3,989.30 total contributions 18,699.11
Average monthly investment over 5 yrs: 311.65 @ 5% growth
5-YEAR VALUE: **$21,282.42**[537]

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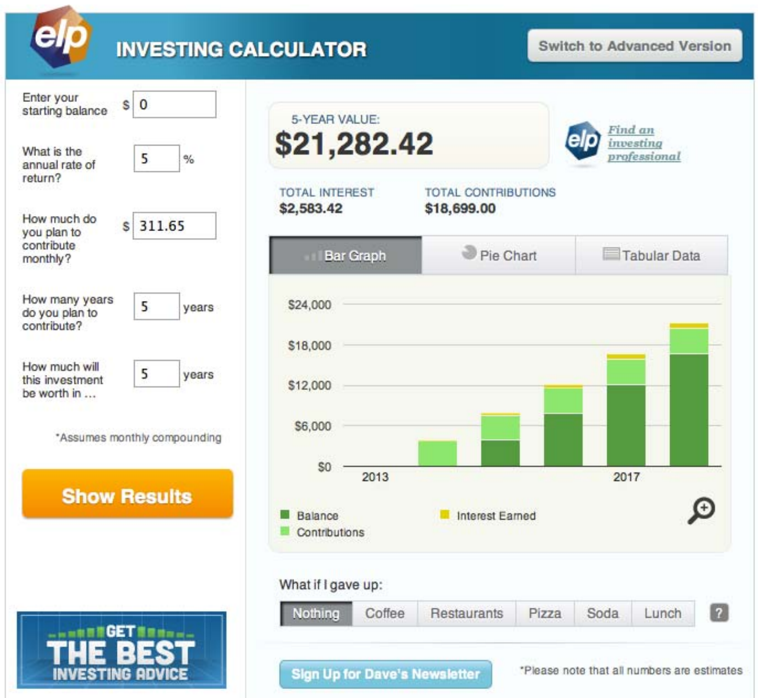
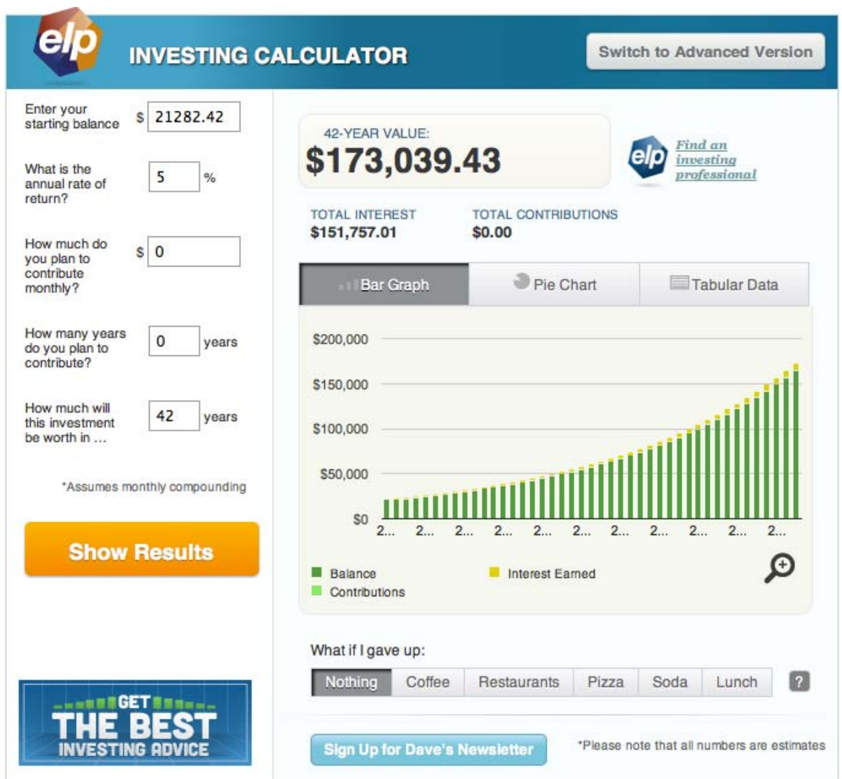
[536] *See generally Tilghman, supra* note 475 (noting a similar analysis resulting in $100, 000 in total investment at sixty-five years old).

[537] *Investing Calculator*, DAVERAMSEY.COM, http://www.daveramsey.com/article/investing-calculator/lifeandmoney_investing/#/entry_form.



INVESTING CALCULATOR
Switch to Advanced Version
Enter your starting balance $ 0
What is the annual rate of return? 5 %
How much do you plan to contribute monthly? $ 311.65
How many years do you plan to contribute? 5 years
How much will this investment be worth in … 5 years
*Assumes monthly compounding
Show Results
GET THE BEST INVESTING ADVICE
5-YEAR VALUE:
$21,282.42
Find an investing professional
TOTAL INTEREST
$2,583.42
TOTAL CONTRIBUTIONS
$18,699.00
Bar Graph
Pie Chart
Tabular Data
$24,000
$18,000
$12,000
$6,000
$0
2013
2017
Balance
Contributions
Interest Earned
What if I gave up:
Nothing
Coffee
Restaurants
Pizza
Soda
Lunch
?
Sign Up for Dave's Newsletter
*Please note that all numbers are estimates

Value at age 65 for an E-1 to E-5



Value at age 65 assuming servicemember is 23 years old at the time he invests the money and invests it for the next 42 years until age 65, and assumes a 5% average return.

VALUE at age 65: **$173,039.43**[538]

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[538] *Investing Calculator*, DAVERAMSEY.COM, http://www.daveramsey.com/article/investing-calculator/lifeandmoney_investing/#/entry_form.

Appendix F[539]

Retirement Income for O-5 Retiree Under High-3

Calculation for an O-5 officer after twenty years of service using High-3 annuity. These numbers are based on the 2013 retirement pay chart. These calculations assume that the officer retires at age 45 with twenty years of service.

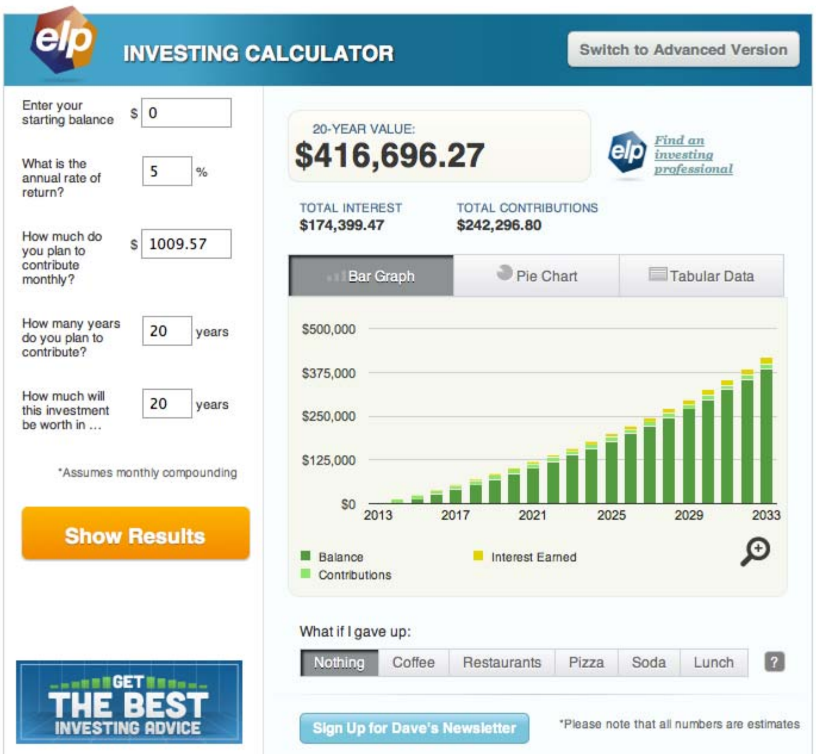
MONTHLY: $3,926
YEARLY: $3,936 X12= $47,112
OVER 20 YRS: $47,112 X 20= $942,240
OVER 40 YRS: $47,112 X 49= $1,884,480

[539] *See generally Tilghman, supra* note 475 (noting a similar analysis resulting in $100, 000 in total investment at sixty-five years old); *Investing Calculator*, DAVERAMSEY.COM, http://www.daveramsey.com/article/investing-calculator/lifeandmoney_investing/#/entry_form.

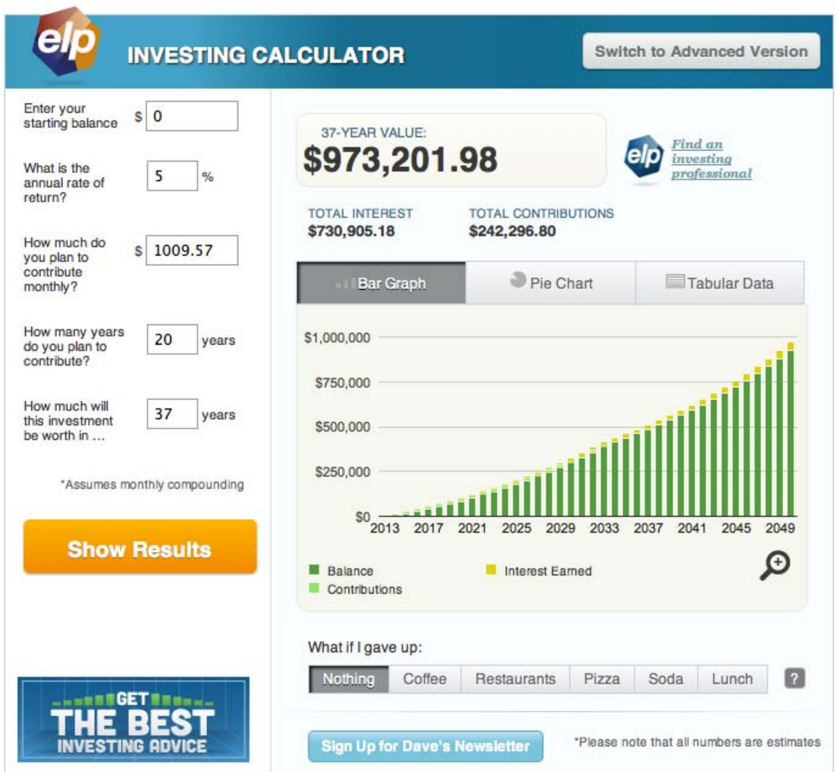
Alternate Contributions Amounts for an O-1 to O-5 for 20 Years

Year in Service	Rank	Monthly	Yearly Salary	2%	3%	5%	8%	10%	16%	16.50%
1	O-1	2876.40	34516.80	690.34	1035.50	1725.84	2761.34	3451.68	5522.69	5695.27
2	O-1	2876.40	17258.40	345.17	517.75	862.92	1380.67	1725.84	2761.34	2847.64
2	O-2	4347.00	26082.00	521.64	782.46	1304.10	2086.56	2608.2	4173.12	4303.53
3	0-2	4347.00	52164.00	1043.28	1564.92	2608.20	4173.12	5216.4	8346.24	8607.06
4	O-2	4493.70	53924.40	1078.49	1617.73	2696.22	4313.95	5392.44	8627.90	8897.53
5	O-3	5116.50	61398.00	1227.96	1841.94	3069.90	4911.84	6139.8	9823.68	10130.67
6	O-3	5361.60	64339.20	1286.78	1930.18	3216.96	5147.14	6433.92	10294.27	10615.97
7	O-3	5361.60	64339.20	1286.78	1930.18	3216.96	5147.14	6433.92	10294.27	10615.97
8	O-3	5630.70	67568.40	1351.37	2027.05	3378.42	5405.47	6756.84	10810.94	11148.79
9	O-3	5630.70	67568.40	1351.37	2027.05	3378.42	5405.47	6756.84	10810.94	11148.79
10	O-3	5804.70	69656.40	1393.13	2089.69	3482.82	5572.51	6965.64	11145.02	11493.31
11	O-4	6527.70	78332.40	1566.65	2349.97	3916.62	6266.59	7833.24	12533.18	12924.85
12	O-4	6852.90	82234.80	1644.70	2467.04	4111.74	6578.78	8223.48	13157.57	13568.74
13	O-4	6852.90	82234.80	1644.70	2467.04	4111.74	6578.78	8223.48	13157.57	13568.74
14	O-4	7078.80	84945.60	1698.91	2548.37	4247.28	6795.65	8494.56	13591.30	14016.02
15	O-5	7078.80	84945.60	1698.91	2548.37	4247.28	6795.65	8494.56	13591.30	14016.02
16	O-5	7895.10	94741.20	1894.82	2842.24	4737.06	7579.30	9474.12	15158.59	15632.30
17	O-5	7895.10	94741.20	1894.82	2842.24	4737.06	7579.30	9474.12	15158.59	15632.30
18	0-5	8118.00	97416.00	1948.32	2922.48	4870.80	7793.28	9741.6	15586.56	16073.64
19	O-5	8118.00	97416.00	1948.32	2922.48	4870.80	7793.28	9741.6	15586.56	16073.64
20	O-5	8338.80	100065.60	2001.31	3001.97	5003.28	8005.25	10006.56	16010.50	16510.82
TOTAL CONTRIBUTION				29,517.77	44,276.65	73,794.42	118,071.07	$147,588.84	236,142.14	243,521.59
AVERAGE				122.99	184.49	307.48	491.96	614.9535	983.93	1014.67

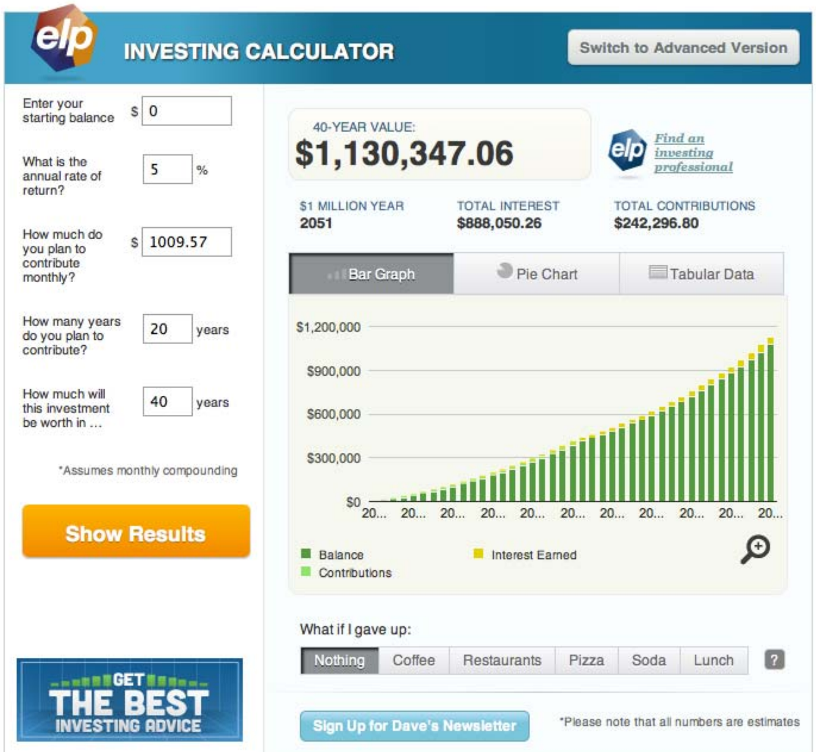
Value of Contributions at 20 Years for O-5



This calculation assumes that the servicemember enters the service at age twenty-five and invests the funds continuously until retirement at age sixty-two.



Value of Contributions at 40 Years for O-5



Appendix G

Retirement Income for E-7 Retiree Under High-3

Calculation for an E-7 enlisted member after twenty years of service using High-3 annuity. These numbers are based on the 2013 retirement pay chart. These calculations assume that the enlisted member retires at age thirty-eight with twenty years of service.

MONTHLY: $2,069

YEARLY: $2,069 X12= $24,828

BY AGE 65: 24,828 X 27= $670,356

OVER 40 YRS (an additional 13 years): 24,828 X 40= $993,120

Alternate Contributions Amounts for an E-1 to E-7 for 20 Years

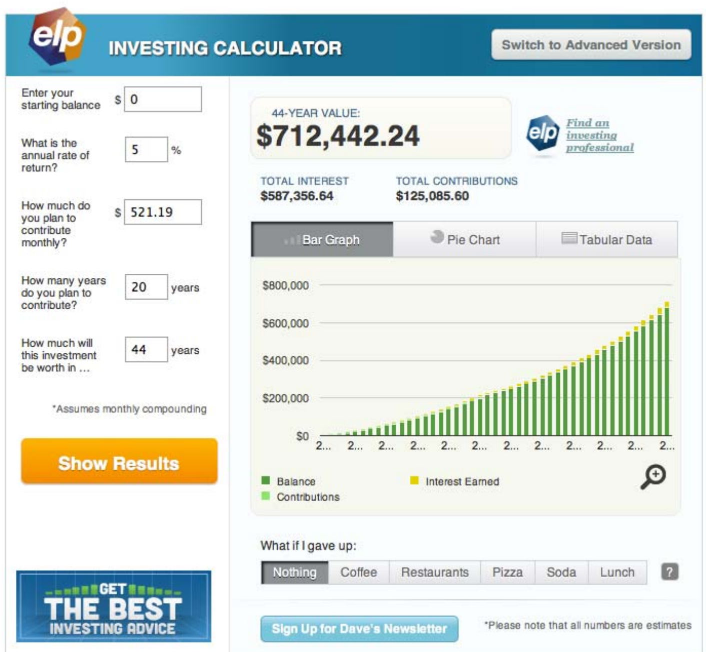
Year in Service	Rank	Monthly	Yearly Salary	2%	3%	5%	8%	10%	16%	16.50%
1	E-1	1516.20	18194.40	363.89	545.83	909.72	1455.55	1819.44	2911.10	3002.08
2	E-2	1699.80	20397.60	407.95	611.93	1019.88	1631.81	2039.76	3263.62	3365.60
3	E-3	2014.80	24177.60	483.55	725.33	1208.88	1934.21	2417.76	3868.42	3989.30
4	E-4	2304.90	27658.80	553.18	829.76	1382.94	2212.70	2765.88	4425.41	4563.70
5	E-5	2529.90	30358.80	607.18	910.76	1517.94	2428.70	3035.88	4857.41	5009.20
6	E-5	2707.50	32490.00	649.80	974.70	1624.50	2599.20	3249	5198.40	5360.85
7	E-5	2707.50	32490.00	649.80	974.70	1624.50	2599.20	3249	5198.40	5360.85
8	E-5	2893.50	34722.00	694.44	1041.66	1736.10	2777.76	3472.2	5555.52	5729.13
9	E-5	2893.50	34722.00	694.44	1041.66	1736.10	2777.76	3472.2	5555.52	5729.13
10	E-6	3298.50	39582.00	791.64	1187.46	1979.10	3166.56	3958.2	6333.12	6531.03
11	E-6	3298.50	39582.00	791.64	1187.46	1979.10	3166.56	3958.2	6333.12	6531.03
12	E-6	3495.30	41943.60	838.87	1258.31	2097.18	3355.49	4194.36	6710.98	6920.69
13	E-6	3495.30	41943.60	838.87	1258.31	2097.18	3355.49	4194.36	6710.98	6920.69
14	E-6	3555.60	42667.20	853.34	1280.02	2133.36	3413.38	4266.72	6826.75	7040.09
15	E-6	3555.60	42667.20	853.34	1280.02	2133.36	3413.38	4266.72	6826.75	7040.09
16	E-7	4158.60	49903.20	998.06	1497.10	2495.16	3992.26	4990.32	7984.51	8234.03
17	E-7	4158.60	49903.20	998.06	1497.10	2495.16	3992.26	4990.32	7984.51	8234.03
18	E-7	4281.00	51372.00	1027.44	1541.16	2568.60	4109.76	5137.2	8219.52	8476.38
19	E-7	4281.00	51372.00	1027.44	1541.16	2568.60	4109.76	5137.2	8219.52	8476.38
20	E-7	4328.40	51940.80	1038.82	1558.22	2597.04	4155.26	5194.08	8310.53	8570.23
TOTAL CONTRIBUTION				15,161.76	22,742.64	37,904.40	60,647.04	75,808.80	121,294.08	125,084.52
AVERAGE				63.17	94.76	157.94	252.70	315.87	505.39	521.19

Value of Contributions at 20 Years for an E-7

Value of Contributions at 40 Years for an E-7

Value of Contributions at Age 62 for an E-7

This calculation assumes that the servicemember enters the service at eighteen years old and invests the funds continuously until retirement at age sixty-two.



Appendix H

Alternate Plan Features

Defined Benefit Plan

- Vest at 10 years of service with a 20% annuity payable at age 62;
- Vest at 15 years of service with a 30% annuity payable at age 57;
- Vest at 20 years of service with a 40% annuity payable upon retirement;
- Payments will be based on the pay scale in existence at the time the member leaves the service.

Defined Contribution Plan

- A government match of five percent from accession to 15 years of service;
- A government match of eight percent from 16–19 years of service;
- An automatic government contribution of five percent and a government match of eight percent starting at 20 years of service.
- Vest after 5 years of service.

COLA Adjustment

- Servicemembers with 30 or more years of service will automatically receive COLA;
- Servicemembers with 20 years of service but less than 30 may apply for COLA if they meet the income requirements;
- All other servicemembers who have vested in the defined benefit plan can receive COLA starting at age 62.

Special Provisions

- Servicemembers will forfeit their defined benefits if they receive a bad-conduct discharge or worse; and forfeit both their defined benefit and government matching contributions if they receive a dismissal or dishonorable discharge. Funds will be forwarded to the Military Retirement Fund.
- Servicemembers will contribute five percent of their base pay toward the Military Retirement Fund. The contribution will be suspended when a servicemember is deployed, on a hardship tour, or performing duty resulting in family separation.

Appendix I

COLA Adjustment

Regular Military Compensation Calculator

Your Results	Monthly	Annual
Basic Pay	$4,189.20	$50,270.40
BAS	$325.04	$3,900.48
BAH	$1,785.00	$21,420.00
Cash Total	$6,299.24	$75,590.88
Tax Advantage	904.30	10,851.63
Regular Military Compensation	7,203.54	86,442.51

Total Annual Family Income: $75,590.88
Total Annual Allowances: $25,320.48
Total Annual Taxable Income: $40,770.40
Total Tax Rate: 0.30

If you wish, you can change your information below and resubmit by clicking the "Calculate" button.

Enter your Information

Grade:	E-7
Years of Service:	20
Location: If OCONUS, select overseas OHA will not be included in the results	DC – WASHINGTON, DC METRO AREA
Family Size:	1
Itemized Deduction Estimate: Enter 0 to accept standard deduction	$ 0
State Marginal Tax Rate:	5%
Spousal or Other Income (monthly):	$ 0

Calculate