SEC. ____. CHANGE TO PAYMENT OF CERTAIN RESERVES WHILE ON DUTY.

(a) CHANGE IN PRIORITY OF PAYMENTS FOR RETIRED OR RETAINER PAY.—Subsection (a) of section 12316 of title 10, United States Code, is amended—

(1) in the matter preceding paragraph (1)—

(A) by striking "subsection (b)" and inserting "subsection (c)"; and

(B) by striking "a pension, retired or retainer pay, or disability compensation" and inserting "retired or retainer pay"; and

(2) by amending paragraphs (1) and (2) to read as follows:

"(1) the pay and allowances authorized by law for the duty that he is performing; or

"(2) if he specifically waives those payments, the retired or retainer pay to which he is entitled because of his earlier military service.".

(b) PAYMENTS FOR PENSION OR DISABILITY COMPENSATION.—Such section is further amended—

(1) by redesignating subsection (b) as subsection (c), and in that subsection by striking "(a)(2)" both places it appears and inserting "(a)(1)"; and

(2) by inserting after subsection (a) the following new subsection (b)

"(b) Except as provided by subsection (c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either—

"(1) the pension or disability compensation to which he is entitled because of his earlier military service; or

"(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.".

(c) PROCEDURES.—Such section is further amended by adding at the end the following new subsection:

"(d) The Secretary of Defense shall prescribe regulations under which a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law for the duty he is performing under subsection (a)(2).".

(d) EFFECTIVE DATE.—The amendments made by this section shall take effect 180 days after the date of the enactment of this Act.

Section-by-Section Analysis

This proposal would modify the pay and compensation waiver order provisions of 10 U.S.C. § 12316. Specifically, it would modify the existing priority of payments so that a Reservist of the Army, Navy, Air Force, Marine Corps, or Coast Guard who is entitled to retired or retainer pay and who performs paid reserve duty, would be paid (receive compensation) for their reserve duty unless the reservist elects to waive that compensation to receive the retired or retainer pay. This proposal would also make clear that a Reservist in the circumstances described above may receive either (1) the pension or disability compensation to which they are entitled because of his or her earlier military service; or (2) the pay and allowances authorized by law for the duty the reservist is performing, but not both.

Approximately 500 military retirees perform active or inactive duty with reserve units. When a military retiree performs paid reserve duty, per the existing statute, they are only entitled to receive either (1) the payments to which he or she is entitled because of their earlier military service (such as military retired pay and VA disability compensation); or (2) if he or she specifically waives those payments, the pay and allowances authorized by law for the duty that they are performing. A retired service member receiving compensation due to earlier military service who performs paid reserve duty who wishes to receive the pay for the reserve duty must waive the compensation due from earlier military service for each calendar day on which the reserve duty is performed. In the vast majority of cases (96% based on analysis of CY2019 cases) for these retiree-reservists, the compensation associated with their reserve duty is greater. However, 10 U.S.C. § 12316 requires that unless the service member specifically elects to waive the compensation due from earlier military service in order to receive their reserve duty pay, a retiree is not entitled to pay for reserve duty, which is not usually financially beneficial to the service member. Furthermore, without a timely, affirmative written election by the military retiree in advance of the reserve duty waiving the compensation due from earlier military service, both forms of compensation are often paid, in error, which results in an overpayment that must later be recouped as a debt.

The current process is burdensome to both the military services and military retirees, and at times can financially disadvantage retiree-reservists. There are several reasons why members neglect or affirmatively choose not to make a pay waiver election or pay waiver elections are not processed timely, such as the dynamic and decentralized nature of reserve units, and the reserve member's pay can fluctuate from month to month or day to day making the best election extremely difficult to determine or

update in advance. This proposal would simplify the election process, remove the burden of debt at the end of the fiscal periods by military retirees who continue to serve their country, and reduce the administrative burden associated with these processes for the military services. This is achieved by removing the requirement for an affirmative election to receive the the pay for the reserve duty. Under this proposal, a waiver request would only be required when the retiree prefers to receive the compensation due from earlier military service. In all other cases, the compensation associated with the reserve duty will be paid.

The drafters of this proposal understand that it will impact the Department of Veteran's Affairs. Coordination with VA will occur after DFAS/DoD coordination is complete.

Budget Implications: This proposal has no significant budgetary impact. Resources impacted are incidental in nature and amount, and are included within the Fiscal Year (FY) 2021 President's Budget Request. The yearly cost to process debts for the roughly 500 retiree-reservist is estimated at $3,500 based on an analysis by DFAS Retired and Annuitant pay of the number of debts processed from Dec 2018 – Mar 2019. In total, 360 debts were processed during this period with an average cost of $3.23 per instance.

Changes to Existing Law: This proposal would make the following changes to section 12316 of title 10, United States Code:

§12316. Payment of certain Reserves while on duty

(a) Except as provided by subsection ~~(b)~~(c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to ~~a pension,~~ retired or retainer pay, ~~or disability compensation,~~ and who performs duty for which he is entitled to compensation, may elect to receive for that duty either-

(1) ~~the payments to which he is entitled because of his earlier military service;~~the pay and allowances authorized by law for the duty he is performing; or
(2) if he specifically waives those payments, ~~the pay and allowances authorized by law for the duty that he is performing.~~ the retired or retainer pay to which he is entitled because of his earlier military service.

(b) Except as provided by subsection (c), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension or disability compensation, and who performs duty for which he is entitled to compensation, may elect to receive for that duty either-
(1) the pension or disability compensation to which he is entitled because of his earlier military service; or
(2) if he specifically waives those payments, the pay and allowances authorized by law for the duty that he is performing.

(~~b~~c) Unless the payments because of his earlier military service are greater than the compensation prescribed by subsection (a)(~~2~~1), a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard who because of his earlier military service is entitled to a pension, retired or retainer pay, or disability compensation, and who upon being ordered to active duty for a period of more than 30 days in time of war or national emergency is found physically qualified to perform that duty, ceases to be

entitled to the payments because of his earlier military service until the period of active duty ends. While on that active duty, he is entitled to the compensation prescribed by subsection (a)(~~2~~1). Other rights and benefits of the member or his dependents are unaffected by this subsection.

(d) The Secretary of Defense shall prescribe regulations under which a Reserve of the Army, Navy, Air Force, Marine Corps, or Coast Guard may waive the pay and allowances authorized by law for the duty he is performing under subsection (a)(2).