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**CALIFORNIA NATIONAL GUARD BONUS  
REPAYMENT ISSUE**

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HEARING

BEFORE THE

SUBCOMMITTEE ON MILITARY PERSONNEL

OF THE

COMMITTEE ON ARMED SERVICES  
HOUSE OF REPRESENTATIVES

ONE HUNDRED FOURTEENTH CONGRESS

SECOND SESSION

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## **CALIFORNIA NATIONAL GUARD BONUS REPAYMENT ISSUE**

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HOUSE OF REPRESENTATIVES,  
COMMITTEE ON ARMED SERVICES,  
SUBCOMMITTEE ON MILITARY PERSONNEL,  
*Washington, DC, Wednesday, December 7, 2016.*

The subcommittee met, pursuant to call, at 2:18 p.m., in room 2118, Rayburn House Office Building, Hon. Joseph J. Heck (chairman of the subcommittee) presiding.

### **OPENING STATEMENT OF HON. JOSEPH J. HECK, A REPRESENTATIVE FROM NEVADA, CHAIRMAN, SUBCOMMITTEE ON MILITARY PERSONNEL**

Dr. HECK. I will go ahead and call the Military Personnel Subcommittee of the House Armed Services Committee to order. I want to welcome everyone to the subcommittee's hearing on the "California National Guard Bonus Repayment Issue." We are here today to hear from the California National Guard, the National Guard Bureau, and the Office of the Secretary of Defense [OSD], on an issue that we must get right, in fairness to not only the California guardsmen that this affected but for all service members going forward.

Compensation, whether it is a bonus for a service agreement or a regular pay, is an obligation to our service members and their families that they should not have to worry about.

I find it unacceptable that we would place the additional burden of years of concern about the legitimacy of a bonus payment, or student loan repayment, on those who volunteer to serve. The Armed Services Committee has taken action in the 2017 National Defense Authorization Act [NDAA] to address this issue, and this subcommittee is taking every opportunity to thoroughly review and discuss the way forward so that we can prevent such a widespread problem or abuse in the future.

Our purpose today is to gain an understanding from those involved on why this happened and what we can do to prevent it going forward.

Before I introduce our panel, let me offer Congresswoman Davis an opportunity to make any opening remarks.

[The prepared statement of Dr. Heck can be found in the Appendix on page 41.]

**STATEMENT OF HON. SUSAN A. DAVIS, A REPRESENTATIVE  
FROM CALIFORNIA, RANKING MEMBER, SUBCOMMITTEE ON  
MILITARY PERSONNEL**

Mrs. DAVIS. Thank you, Mr. Chairman. And I would also like to welcome our witnesses today. I actually regret that we have to have this hearing to discuss a major pay issue that impacts 17,000 soldiers from one State, from my home State of California. Were it not for the L.A. Times article in October, Congress would not know the extent of this 12-year-old issue, nor would the issue have been elevated to the Department of Defense [DOD].

Our understanding after this was first brought to our attention in 2010 was that a process was in place to adjudicate the issue, but 6 years on, we are still trying to fix it.

Numerous investigations, audits, and briefings have informed us of how we got to this point. My focus today is to ensure through the legislation just passed by the House last week as part of the 2017 NDAA, and updates from the DOD, that we guarantee that those who should keep their bonuses do so, and that the systems and controls are in place to prevent an incident of this magnitude from happening again.

While it is important that we perform oversight of the process moving forward, it is also critically important that we do not forget the service members and their families that have been deeply affected by this. Once these families had encountered financial hardships, we know it could be truly difficult to recover. Even if we return their bonus, we have already upended their lives by creating unnecessary emotional stress and financial instability.

Our military families, as we all know, have a tough enough time without the added burden of having to repay service-related debts that they received in good faith.

On another note, since this is his last hearing with us, I want to thank Dr. Heck for his leadership and his dedication to serving our troops, our families, and retirees over the past 2 years as chairman of the subcommittee. It has been a great privilege to work with him, and he will be missed.

Dr. HECK. Thank you, Ms. Davis. Thank you.

I now ask unanimous consent that non-subcommittee members be allowed to participate in today's hearing after all subcommittee members have had an opportunity to ask questions.

Without objection, so ordered.

We are joined today by two panels. The first from the National Guard. The second will be from the Office of Secretary of Defense and the Army. We will give each witness an opportunity to make opening comments, and each subcommittee member an opportunity to question the witnesses. I respectfully ask the witnesses to summarize to the greatest extent possible the high points of your written testimony in no more than 5 minutes. Your complete written statements will be entered into the hearing record.

We are joined on panel 1 by Lieutenant General Timothy Kadavy, Director of Army National Guard, National Guard Bureau, and Major General David Baldwin, Adjutant General of the California National Guard.

General Kadavy, you are recognized for 5 minutes.

**STATEMENT OF LTG TIMOTHY J. KADAVY, USA, DIRECTOR,  
ARMY NATIONAL GUARD, NATIONAL GUARD BUREAU**

General KADAVY. Thank you. Chairman Heck, Ranking Member Davis, distinguished members of the subcommittee, thank you for the opportunity to discuss the readiness of Army National Guard personnel matters.

On behalf of the Army National Guard, I would like to thank you for your support and commitment to our soldiers, their families, to our veterans, wounded warriors, and those who have made the ultimate sacrifice. For your Army National Guard is today mobilized with more than 11,000 soldiers both abroad and here at home. Our soldiers are our Nation's and our Army's greatest assets, and should be treated that way.

This subcommittee's interest in recruiting retention incentives programs is understandable. In 2008, the California National Guard discovered inaccuracies in a number of incentive contracts awarded and launched an investigation in 2010.

The investigation revealed that the California Guard's incentive program had been grossly mismanaged, and there were instances of fraud which were discovered.

As a result, California took measures to ensure these individuals engaged in the perpetration of fraud were punished. In 2011, the California incentive task force identified more than 17,000 California Army National Guard cases that were potentially linked to the unethical management of the incentives program between 2004 and 2011.

In 2011, the California National Guard, with assistance from the National Guard Bureau, established a soldier incentive assistance center to assist any California National Guard member affected by the mismanagement of the incentives program. Every California National Guard soldier impacted received a formal written letter to inform them of this option. This center will continue to provide assistance to each affected soldier.

As a result of the issues with the California incentives program, the Army National Guard took numerous steps to improve oversight within our incentives process. In 2010, the chief of the National Guard Bureau, then General Craig McKinley, ordered a review of all Army National Guard recruiting and retention incentives programs across all States, territories, and the District of Columbia, which found no systemic fraud.

In 2012, the Army National Guard completed the fielding of the Guard Incentive Management Systems, known as GIMS, to all States, territories, and, again, the District of Columbia, which now provides a centralized oversight program for bonus and incentive payments. In 2016, an external review of the Army—by the Army Audit Agency of GIMS, validated its effectiveness and found the system substantially improved the controls throughout eligibility, monitoring, and payment phases of the incentive process. State adjutant generals have provided annual statements of assurance since 2012 documenting internal controls processes to help prevent similar situations from occurring.

Additionally, based upon reviews and assessments of the entire Army National Guard, fraud in the incentives program is not a nationwide problem.

In November 2016, the United States Property and Fiscal Officers provided additional assurances while reviewing their State incentive programs that there are no issues outside of what we know to be normal.

Currently, Mr. Peter Levine, performing duties as the Under Secretary of Defense for Personnel and Readiness, is chairing a cross-functional team with the National Guard Bureau, the United States Army, the Office of Secretary of Defense general counsel, and the Defense Finance and Accounting Service, DFAS. This team is leading the effort to expeditiously resolve the cases involving the affected California Army National Guard members. I understand you will hear from Secretary Levine a little bit later this afternoon.

Secretary of Defense Carter's guidance is to adjudicate all cases by July 1, 2017. The National Guard continues to support the cross-functional team's process to ensure each soldier's case is fairly and equitably reviewed with due process afforded to each and every soldier.

In closing, I assure you that the National Guard has worked hard to implement appropriate, effective internal controls across the 50 States, the three territories, and the District of Columbia, and to prevent similar systemic fraud from occurring in the future.

Thank you, and I look forward to your questions.

[The prepared statement of General Kadavy can be found in the Appendix on page 42.]

Dr. HECK. Thank you, General.

General Baldwin, you are recognized for 5 minutes.

**STATEMENT OF MG DAVID S. BALDWIN, USA, ADJUTANT  
GENERAL, CALIFORNIA NATIONAL GUARD**

General BALDWIN. Thank you, Mr. Chair, and Ranking Member Davis, and the members of the committee. I do appreciate very much you taking up this important issue to be able to help our soldiers.

As General Kadavy mentioned, in 2010, a whistleblower and a very astute auditor uncovered signs of potential fraud within our incentives programs in the California National Guard. That resulted in a fairly broad investigation by the Federal Department of Justice that went through the course of 3 years. The Governor relieved my predecessor in March of 2011, and recalled me from Afghanistan in April of that year in order to take charge of the disorganization and with a mandate of cleaning up this and some other challenges.

I immediately ordered a full investigation on our side into this matter to do a couple of things: One is, I wanted to see if there are any other cases of fraud that were out there that the Federal Government had not begun to investigate or picked up on.

The second was to hold leaders accountable to find out why did this happen and what—what were the problems. We found that there was a complete lack of internal controls, so we instituted an internal control system in order to prevent these problems from happening again, and then we held the leaders accountable that failed to provide the proper oversight or create a command climate.

In that, we punished within the California National Guard 61 people, including firing 4 general officers and 2 full colonels. The



Feds prosecuted 44 soldiers. Some of those prosecutions continue to go on, and several people were put in jail for the fraud that they had committed.

But as General Kadavy mentioned, we also recognized that there were a lot of soldiers that got caught up in this that, through no fault of their own, had taken money from the Federal Government that they were not necessarily due or couldn't document why they did deserve that money. So we established the Soldier Assistance Task Force in 2011 in order to address those problems.

Because of the fact that we had found a 91 percent error rate in the initial audits that we had done, we were compelled to review every record. There were 17,000 soldiers and about 30,000 records. We were able to get through about 12,000 of the records. Of the 12,000, we found 4,000 soldiers that we were able to help keep their money to the tune of about \$39 million, because they had minor errors or problems in their contracts. And I am very proud of the work that our task force did in order to help those soldiers keep the money that they, in fact, deserved.

Of the remaining soldiers, there were 1,400, only 1,400, that we actually sent to recoupment. Those were soldiers that did not contact our task force for assistance, but also we determined had problems that were probably insurmountable, and we couldn't support an appeal.

We submitted another 1,200 soldiers that did contact us for appeal, because we felt that they—even though there were problems in their contracts or maybe they may not have met the letter of their contract, we felt that they had served honorably and should be able to keep their money. Of those, 400 cases were adjudicated by either the National Guard Board—Bureau or the Army Board for the Correction of Military Records. So 400 soldiers were able to win their appeals, and they were able to keep about \$4 million between those 400 soldiers.

Another 400 soldiers, even with our endorsement to help them keep their money, unfortunately, lost their appeal and have not gotten their money back. They lost about \$3.3 million amongst them. And then, finally, there are 400 cases that are remaining.

We are very encouraged today by the actions of the Congress and the legislation that has gone into the NDAA that we think goes a very long way to help address some of the problems that we face, and the frustrations that we face in trying to help our soldiers get through this. We are also very encouraged by the actions that Secretary Carter and his team at OSD have taken in order to increase the bandwidth to be able to adjudicate cases quickly, fairly, and with standards that err on the side of honoring the soldiers and their service and helping them keep their money.

And, again, thank you very much for the opportunity to discuss this today.

[The prepared statement of General Baldwin can be found in the Appendix on page 47.]

Dr. HECK. Thank you, General Baldwin.

So, first, my first question is for General Kadavy. Concerning the key recommendations and the U.S. Army Audit Agency's [AAA's] follow-up review that was issued in May of this year, they noted that while NGB [National Guard Bureau] had made progress in

implementing many of the control procedures outlined in their prior audit, that not all of the internal controls had been put into place. Can you please give us an update as to where NGB is in implementing the final recommended controls as put forward by the AAA?

General KADAVY. Yes, Chairman. Thanks for the question.

Dr. HECK. Can I just ask you to pull that microphone directly, kind of like a rock star.

General KADAVY. Okay. So there were 15 initial recommendations, of which the 2016 Army Auditing Agency follow-up reported that all 15 initial recommendations were being implemented, and then they recommended 4 new additional recommendations, of which 1 will be fully implemented by the end of this calendar year, by the end of month in December, and the other 3 will be implemented by the end of this fiscal year. It is about running software and updating systems to get at that. Particularly, it is related to officer bonuses and Army medical recruitment of experts to make sure we are tracking their contracts as we do with all others.

Dr. HECK. Great. And I would ask that you keep this subcommittee apprised of the progress in implementing those final four controls.

General KADAVY. We will, Chairman.

Dr. HECK. And while you noted in your testimony that there was no systemic fraud across the National Guard, has there been a review to look at whether or not there is widespread administrative errors? And General Baldwin mentioned 91 percent error rate in what they reviewed in California. So while there may not be criminal fraud taking place, what about the administrative errors that might be more common across the National Guard enterprise?

General KADAVY. So, Chairman, the Chief, National Guard Bureau at the time, General Craig McKinley, asked us to do a survey of the other 53 States, territories, and the District of Columbia, which began late 2010 and completed 2011. And we did identify some—some systemic problems, particularly related to lack of oversight, no separations of duties, inadequate training, outdated regulations, lack of manpower, and no overall tracking. But it said no widespread fraud.

So we were already working on the GIMS system, and we believe GIMS accounted for most of that, as done—as shown through the Army Auditing Agency's follow-on recommendations and where we are at. And I can just give you a quick update.

So on average, we do about 16,000 incentive contracts between 2011 and 2015, the latest year, 2016. We do about 1,200 recoupments on average for normal processes, which is about 7 percent. And you listen to some of the errors that were previously, and we have cut that down significantly. And the majority of those recoupments are for contractual issues, when a soldier leaves before the end of their enlistment.

Dr. HECK. Thank you.

General Baldwin, you listed some of the other numbers of individuals that were either disciplined or charged. Certainly, we have only heard in the open media about the one NCO [noncommissioned officer] that seemed to bear the brunt. Can you, again, just list, for the record, the numbers of individuals other than that one

NCO, who was incarcerated, whether it be administrative reprimand, or other disciplinary procedures?

General BALDWIN. Yes, Mr. Chairman. I will start with the cases that were prosecuted by either the Feds, or, in some cases, some district attorneys took up the fraud cases. That was 44 soldiers in total. Of those, 26 were prosecuted and found guilty and convicted. There was another 15 or so that are pending prosecution, is still ongoing, and then the remainder cases were either dismissed, which is just a handful. I think it was only four that were dismissed or acquitted.

And then on our side within the military, we have two options. We can do UCMJ [Uniform Code of Military Justice] action, which can include up to and including courts-martial or administrative action. We initiated courts-martial on seven personnel. It was six officers and one enlisted soldier. Those cases were dismissed by the military judge, either for lack of jurisdiction, or for lack of evidence.

But we did go after 61 people, both on the receiving side, so people that we had evidence that had committed fraud but didn't rise to the threshold that one of the civilian prosecutors would take—would apply the resources to take the case, so we took the case. And then there were also many, many cases of people that were in the chain of command that we couldn't prove had committed fraud, but as I mentioned before, were lax in their oversight or established a poor command climate that we took action against.

The most common action we took against the senior leaders was to give a formal reprimand and fire them. And that, again, included four general officers and two colonels.

Dr. HECK. And of all the cases that you found scattered across the California Guard, did it seem like these were cases whether—it was up to one individual in a particular unit, or did there seem to be collusion? Like, was this a ring of individuals of all the folks that you mentioned that were actually doing this on purpose, or just happened in units apart from some type of organized activity?

General BALDWIN. So it was state—it was statewide. It was across nearly every unit. And where there were cases of actual fraud, it was a bilateral arrangement between the master sergeant that ended up going to prison and the soldier that was receiving the money. And in those cases, either we or the Federal Government were able to prove and show evidence that there had been collusion where the incentive was offered and one or both parties admitted that they shouldn't be doing it, and it violates the rules of regulations, and they did it anyway.

Dr. HECK. And just real quick, you mentioned there were 1,400 cases that had insurmountable problems. Can you give an example of what some of those might have been that prevented them from going forward on appeal?

General BALDWIN. Sure. Most common would be people that failed to serve the term of their contract egregiously, not falling short just by a few days or months, but by years. People that enlisted and never showed up to basic training. People that we had to throw out for methamphetamine use, incarcerations, those types of problems that are not compatible with military service.

Dr. HECK. And problems that would happen regardless of component, regardless of the California National Guard, things that are not isolated just to issues within the California Guard?

General BALDWIN. That is correct.

Dr. HECK. And then my last question, you said 400 of the cases you reviewed had lost their appeal or their appeal was not approved; is there another step, or is that the end of the line for those individuals?

General BALDWIN. I would defer that question to the second panel. But our request, which we think they are going to honor, is to go back and relook at those cases, because the Secretary is applying new standards, and we are hopeful that many of those people would make it through the process now, too.

Dr. HECK. Thank you.

Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman. Actually, I was going to ask about that as well in terms of those that you actually, in your words, endorsed but did not make it through the process, so we will deal with that later.

You know, one of the things I wanted to just ask you about, because in your written testimony, you stated that Congress should establish a streamlined adjudication process to distinguish between those soldiers who, through no fault of their own, got involved in this, and then others who had failed to meet the condition.

But the California Guard control those records. Is that correct? I mean, that you had control over those records?

General BALDWIN. Yes, ma'am. We would control the initial contract, but then it would go to the United States Property and Fiscal Accounting Officer, who is a representative of the National Guard Bureau in each State, who would actually formally make the payment. So the payment threshold to get approved was by California guardsmen; the payment was made by the Federal representative.

Mrs. DAVIS. Okay. But the incentive assistance center, could they make those—that judgment?

General BALDWIN. The authority to—we didn't—we at the State level do not have the authority to forgive any debts, and we don't have the authority for any of the waivers. They reside at the National Guard Bureau level, at General Kadavy's level now.

And then, further, if cases are not able to get approved for a waiver at the National Guard Bureau level, the recourse is to go to the Army Board for Correction of Military Records. My authority, as the adjutant general, was very, very limited to help soldiers. And the 4,000 soldiers we did help were cases where they may have been just missing one signature or some initials on an otherwise good contract, and that was many of the errors.

Mrs. DAVIS. Had that been different, had you had more authorities—because I—it kept feeling like everybody was passing the buck a little bit. And I am wondering what you see. What is ideal? Because as we look at some of the cases, I really was struck by the long-lasting impact this was having on our military families.

General BALDWIN. So if we had had the authority, we could have—we would have been able to act more quickly. Because by the time we were making an endorsement, instead, it would have been an approval. But I think the way the system is set up now

is appropriate. It is appropriate for the Federal Government to withhold that authority from the States, because after all, it is the Federal Government's money.

In addition, the other substantive changes, the National Guard GIMS system that General Kadavy and the chairman were just discussing earlier has been a very elegant solution to help correct a huge, huge amount of administrative errors and neck it down to a very small number of administrative errors.

And when you have a small administrative error rate, it is a lot easier to root out fraud, because you don't have to sift through tons and tons of documents.

So I think the authorities are where they need to be. I am very encouraged that OSD has increased the bandwidth to be able to adjudicate cases. And under General Kadavy's watch, before he got in, it used to take 9 months to get an exception to policy approved. At his level, they now knock them out in 6 weeks. So that is hugely helpful.

Mrs. DAVIS. General Kadavy, would you want to comment on that in terms of how you see the system working now, and I guess why we didn't change it before?

General KADAVY. Well, I can just speak to the exceptions to policy, which I have authority for, because they were written in Army National Guard policy. So I—I can do an exception to policy on skill, different, you know, infantrymen to an armored crewman, and from one unit to another, if they re-enlisted for a specific bonus to a unit.

I would say just the sheer magnitude of the—the overall problem, I would think, caught us off guard. It took us a while to get back to apply the resources to adjudicate them faster.

But, you know, it is—we follow the policy and directives. And right now, the only thing I have the ability to is to do exceptions to policy, as General Baldwin said, then it moves forward to ABCMR [Army Board for the Correction of Military Records].

I would like to just—you know, to talk about GIMS just a little bit more. It does. It identifies through electronic searches in the database, which we didn't have prior to 2011. So it checks all those administrative data that is required to ensure that a soldier is eligible. So it does that, and it also tracks during an entire period. So when a soldier maybe changes an MOS [military occupational specialty], it flags and sends, you know, a message to the administrative officer or NCO, who then takes action, you know, if it was a directed change, then we do an exception to policy in a timely process.

I think many of the things that are impacting what happened in California between 2004 and 2011, and then looking at the current investigation and work that they are—the California task force has been doing, I think today, we don't see those types of issues anymore. Thank you.

Mrs. DAVIS. Okay. Thank you, Mr. Chairman. I would just follow up, and maybe someone else can ask about what other assistance we are providing. I know there was an issue around credit ratings, and I think we were trying to fix that issue as well.

But, again, I am concerned about how this impacted families, and if there's been sufficient outreach to know that there is help, there is support there, and we hope that they get it. Thank you.

General KADAVY. I will leave the majority of that comment to the next panel. I will just say from my perspective, we have had overwhelming support, partnership, from the Office of the Secretary of Defense, DOD, Army. Everybody wants to get this right for the soldiers.

Mrs. DAVIS. Thank you.

Dr. HECK. Mr. Cook.

Mr. COOK. Thank you, Mr. Chairman.

I want to thank the generals who are testifying today.

And, you know, this goes back a long ways. I was the chair of the Veterans Committee, and Senator Denham, at the time, had the Senate Committee, and it brings back the memories, and I think part of it when we did this was just the shock of what was happening.

And, of course, General Baldwin, I am very, very happy with what you have done since you have taken over. So this is not an inquisition against you or anything else. And we have had a conversation, and where I am coming from is going to be the same thing over and over again. And I am not so worried about the officers so much as the troops.

We have—everybody that's been in the military knows that we have—everybody always says, "recruiters." And because you put your life in the—the hands of the recruiters. You trust them. You trust the Army. You trust the National Guard. You trust whatever service. And people, once they do that, it is like you are giving them your entire life.

So my problems, which I would like you to talk about, are on some of these cases where there have been troops that, through no fault of their own, are suffering the consequences. And maybe I am wrong, but it sounds like we are nitpicking, particularly where some of these people don't have the economic means to repay these things or what. We have got it—you know, it is our fault. Now, I use that word collectively on behalf of all officers that are in positions of authority, we betrayed the trust of the troops, and there is no excuse for that.

And, so, obviously, I am hearing how we are going to change this, and I still don't have a warm and fuzzy feeling about that is being done. I don't want it to be too bureaucratic. And after saying that, I do want to comment, once again, our Guard is so, so important not just to California, but to all the operations that we are doing. And everybody on this committee knows the exercises in Europe and the commitments and the op plans and everything else. We have got to get this right.

So, once again, I am going to ask a very broad question, and—well, in fact, I am going to skip, because I have been ranting and raving, and I do want to yield my time to Congressman Denham before it runs out. But, eventually, if you could comment on the trust issue over and over again.

Jeff, sorry I talked so long.

Mr. DENHAM. Thank you, Colonel Cook. And he and I, while we served in the State legislature together, chair of the Senate Vet-

erans Committee, Assembly Veterans Committee on his behalf, we did work on this issue. I would say that the difference that he and I may have is the difference in how we both—how we first got into the military.

I was 17. I signed a contract that was put in front of me. In fact, at 17, you have to take it home to your mom to have her sign it as well. So for the military to take the position that the soldier is guilty and must prove, a decade later, that there was some fault of their own—I mean, we still continue to have conversations that you have got to still carry your yellow shot records around from decades before because it is not an automated system.

So to presume that the soldier is guilty and, therefore, responsible for a decade-old contract that they signed in good faith and put their life on the line, to me, is—to me, it is a big black mark on our Department of Defense's record.

And I only have a short amount of time, but I would ask you to just respond to both of our statements.

General BALDWIN. Congressman, first, I want to thank both you and Congressman Cook for your leadership role in addressing this, and being very aggressive about it. And we really appreciate the support. And our soldiers, airmen, and families appreciate both of you very, very much.

I would agree wholeheartedly, Congressman Cook, that we do have a problem that we are going to have to re-establish trust with our soldiers, with their families, and with potential recruits. I am very encouraged by—as I mentioned before, by the actions that the Congress have taken. I think that they go a long way to address some of the issues that you just brought up, Congressman Denham, and the steps, again, that OSD are taking in order to be able to show that soldiers—we are going to trust the soldiers up front. And if we have a problem with it, the burden is on us to prove that the soldier did something wrong, rather than the soldier having to prove from their innocence that they are innocent.

Dr. HECK. Thank you. The gentleman's time has expired.

Mr. Walz.

Mr. WALZ. Thank you, Mr. Chairman. And I would like to take a moment, too, to thank you. General Heck's service and integrity and effectiveness to this—not just to this committee, but to our veterans and our citizens. It is something I am proud to have stood beside you as you did it. Oftentimes around here, we talk about my good friend. I certainly mean it this time. And it is—you have set an example of how we understand that our services here are for those that—that we are charged to look out for and our veterans. So I want to thank you, sir, for that.

Thank you both for being here. And I was just discussing with the gentlelady from California. General Baldwin, you made a case of this, and I think we are trying to get at it. And I think the two gentlemen here obviously know this issue very well. But having been involved with this, both receiving bonuses and being part of a group that gives them—also being there when pay errors are made, when I would have to tell my soldiers, you knew you were divorced; you weren't to get that BAQ [Basic Allowance for Quarters], and kept it anyway, so you are going to have to pay it back, because that is the way things work.

I know this is a touchy subject, because when somebody gets paid, all the issues that the ranking member put out is, this has huge impacts on families. It has huge impacts as it goes down the line. Just a couple of questions.

General Baldwin, you talked about this, where people got bonuses. Did I hear you right, even before they went to basic training, they got paid?

General BALDWIN. Yes, Congressman.

Mr. WALZ. How did that happen? Because I am thinking back to me. \$1,500 bonus, I completed basic and AIT [Advanced Individual Training], I got \$750; 2 years later, I got \$375. On the fourth year, I got \$375. That kept me in. When did that change, or how does that authority differ?

General BALDWIN. I don't know when it changed, because when I joined, it was the same as you. You had to serve before you got all or some of your bonus.

Mr. WALZ. Correct.

General BALDWIN. Somewhere around 2006, the National Guard Bureau changed its policy in order to provide a bigger incentive to get massive amounts of troops in, and they would pay the bonuses up front. And that was a very poor business rule that doesn't exist anymore.

Mr. WALZ. Okay. So that—so a lot of these—I shouldn't say a lot. I am trying to get the numbers on this. Many of them fell in that category?

General BALDWIN. That is correct.

Mr. WALZ. But there was a section of these, as you said, that where someone knew they were getting a bad bonus, they colluded with a recruiter, and there was a kickback, basically, to take this bad bonus?

General BALDWIN. That is correct.

Mr. WALZ. Now, could I ask—could you give me these numbers again, the error rate when you went back through and did your audit, the error rate in contracts in general?

General BALDWIN. So there were two—there was an audit done by the Army Audit Agency, and then an inquiry, which was a precursor, as you know, to an investigation that was initiated by my predecessor. First, with the Army Audit Agency that I didn't mention before, they found a 55 percent error rate in the sample that they looked at. I don't know how large that sample was.

In the inquiry that was occurring in the month before I took command, they reviewed, I want to say it was 153 records, and in the case of those records, they found a 91 percent error rate. And that was enough that I felt compelled that we had to continue to look at every single record.

Mr. WALZ. What accounted for that? You know, and having done these before and the detail that went into them—I am still from the old age of carbon paper, and everything had to be exact or it was no good, and they threw them back out. How could you have a 91 percent—I mean, were these small errors, large errors, misinterpretations of the regulations?

General BALDWIN. It was all of that. But the root cause problem was lack of oversight of control, and lack of resources. So they had one person doing incentive managements. And the number of in-



centives had grown very rapidly from just a handful of incentives they would offer for critical MOSs, or bonuses, to a very, very broad pallet of incentives that ranged everything from medical professionals to people that are going to join the band and everything in between.

And at the time, they had one person managing these incentives. She was overwhelmed. She was under tremendous pressure to help meet—get the numbers to disburse the money, and she had no good oversight. Only people pressing on her to get money out, no one checking to see if she needed help, no one checking to see if she was doing things correctly.

Mr. WALZ. Which is a recipe for disaster.

General Kadavy, if I could move to you on this. When you did a systemwide NGB audit of this, if I am reading this correctly, you only found irregular bonus activity to a total of about \$58,000. Is that correct? Am I reading this right?

General KADAVY. Congressman, so when we did the 53 other States, territories, and District of Columbia, we did a sampling of about 9,600 records. We found 689 that had errors across the other 54 for a percent of about 14, and that was actually 2.4 million. Where, you know, General Baldwin mentioned the Army Auditing Agency, they did a sampling of 159 in California. They discovered 97 errors.

Mr. WALZ. See, this one—and if my time is going to come up, but somewhere I would like to come back to this. Most often, when you have an issue like this, I find it systemwide, whether it is the VA [Department of Veterans Affairs] or DOD. This is very odd.

Does that strike—we will come back to it. I know the fraud may be a piece of that, but that is a very interesting statistic. So I will get more when we come back on my time, but thank you.

Dr. HECK. Mr. Knight.

Mr. KNIGHT. Thank you, Mr. Chair. And I have just a brief question, and I am going to yield some time.

I, too, would like to thank Congressman Heck for his leadership. He has been invaluable.

My only question is on the GIMS system, because we are talking about trust. And when I went down and signed when I was 18 years old—I don't know that I was a whole lot smarter than Congressman Denham when he was 17, probably a lot smarter, but, you know, it is kind of a contract that you are going down there and you are trusting and believing what the recruiter is saying is the truth. So I think it is a trust issue that we are trying to build back.

But, General Kadavy, you talked about the GIMS system a little bit. And I am going to give you a little bit of time and tell us how that is going to build back some of the trust that we can have, and how the recruiting process is going to go, and how we can be assured that some of—all of these problems if not—are going to be caught before they become a problem?

General KADAVY. So, Congressman, I think GIMS puts trust back into the system. I think what we are really talking about is trust between leadership and soldiers. And in that—that is earned, and the system isn't going to fix that. And so we do a tremendous amount of training out in our professional education center for all

recruiters. We are not getting our recruiters there in a timely fashion. We are working on that. We provided additional guidance to ensure they are getting the training, and then we have also implemented a program called POSTA [Positions of Significant Trust and Authority]. And I will have to get you the exact name of it.

So the adjutant general has reviewed each and every recruiter to make sure they are ethically, morally, the right folks to be talking to young men and women that potentially could join our Army National Guard. And when there's issues, that they think the soldier's still good, it comes up to me. And I read each and every one of the POSTA requests for any waivers. And I think the time I have been the director, I have approved one. Because you are absolutely right, our very best, most trusted professionals must be the ones that are recruiting our young Americans.

Mr. KNIGHT. Very good.

And Mr. Chair, I am going to yield the balance of my time to Congressman Denham.

Dr. HECK. If the gentleman will suspend. I was informed by staff that subcommittee members cannot give their time to a non-subcommittee member. They have to wait until after all subcommittee members had an opportunity to ask their questions.

Mr. KNIGHT. I am going to keep my time.

So, General Kadavy, on the same kind of vein, I know that Congresswoman Davis was talking us down this road of when the folks of—have been given a bonus, and then they have had to repay the bonus, but under the appeal, they were awarded the bonus. They should have gotten the bonus. They should have kept the bonus. But some of these folks have now paid back a bonus, and maybe their credit approval has been hurt. Some of the things that, because of paying back that bonus, it put them in some hardship. I mean, that is going to be part of the trust issue, too, how we can make those soldiers whole moving forward.

Is that—obviously, that is going to be a big part of what you do. But is that also part of how we can help in this issue?

General KADAVY. Congressman, I can tell you that it is very important to the cross-functional team that Mr. Levine is leading. It is one of the key issues we are looking at. At this point in time, what I am hearing is we think we have all the authorities and the abilities to make a soldier whole, particularly in the instances that you were talking about. But I would say the subject-matter experts on this particular question are probably on panel 2.

Mr. KNIGHT. Okay.

And very good. Mr. Chair, I am going to yield back.

Dr. HECK. Ms. Speier.

All right, then we will go to Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman.

First—so, let me understand this right. So you have got a recruit coming in, and it takes a certain MOS for a certain length of time under the bonus, under—to—in order to get a bonus. That individual is placed, for whatever reason, in a different MOS. Is that—or occupies a different position in a unit that is different from that MOS. Is that individual required to pay back the bonus?

General KADAVY. It depends. So we give bonuses for three reasons; for a skill, a grade, or a unit. It—if that is a critical MOS,

and the soldier elects to change on their own, in general, yes, that is a recoupment. If we direct the change, or, for instance, we just had a number of units that changed their structure from military police to others. That was directed by us. There is no recoupment. And then a soldier, of course, can always provide an exception to policy request, and many have, that indicates if there were some issues—I can't go that far to drill; it is too far of a drive; we take all those considerations, and then a decision is made. But it doesn't necessarily mean that.

But in the GIMS system, there is a flag that goes up, which means it needs to be adjudicated one way or another with exception to policy, or a termination of a contract.

Mr. COFFMAN. Okay. What is the status of these recruiting bonuses to pay others—other soldiers? That practice has stopped, right?

General KADAVY. Yes. That's been stopped for quite some years by my predecessor.

Mr. COFFMAN. What is the status of the bonus structure now for recruiting people, say, first-term enlistees?

General KADAVY. I guess I don't understand the question.

Mr. COFFMAN. What is it—so I assume there is still a bonus structure for first-term enlistees?

General KADAVY. Right. There are enlistment bonuses for certain units, certain skill sets, and then retentions bonuses for certain grades where we don't have enough, for instance, maybe staff sergeants and et cetera.

Mr. COFFMAN. And how dynamic is that process? Because I think it is—it seems like—I know in 2005, it was very tough to fill the ranks of the military across the board, and then, obviously, it is much easier today than it was back then.

General KADAVY. Right. So, Congressman, it is very dynamic today. We are taking a look at it. I think it is almost too dynamic that it gets to be a bit confusing.

You know, I just talked to a few of the adjutant generals that are on the general officer advisory committee. And we are likely going to go to talk to the States, and they provide us where their holes are at the beginning of the year and midyear. We will adjust it if need be, so that it stabilizes and doesn't change the skill sets and the grades in the units on a continual basis that maybe is confusing and causes some of these issues. So we are going to try to—

Mr. COFFMAN. Right. But those enlisted soldiers that sign up for an MOS specialty, and they get moved, are—or they—how is that—I guess they elect to move. Are they—I just want to make sure that they are fully cognizant of—

General KADAVY. No. What I am talking about is initial enlistment—

Mr. COFFMAN. Right.

General KADAVY [continuing]. That you sign. We are going to limit how often we change which skill sets. So we might have a different one every month. And sometimes it gets confusing to recruiters, or a recruit walks in thinking they are going to get a bonus, but they wait to make a decision a couple of months later, and that skill is no longer there as far as a recruiting.

What you talk about is once a soldier signs a contract, GIMS verifies that. And, you know, as long as they live up to that contract, there are no issues. If something changes, GIMS flags it, and we adjudicate it either through an exception to policy, ABCMR, or if the soldier, for instance, doesn't complete a set of training and decides to no longer serve out their enlistment period in the Army National Guard, then, by statute and policy, we must recoup for any unexecuted portion of that contract.

Mr. COFFMAN. Right. When you said if an enlisted soldier elects—first-term enlistment elects to change an MOS, then they would be responsible for recouping, and if it was a critical MOS, how would the command structure allow them to change—to elect to change their MOS?

General KADAVY. Well, you know, I can't speak to every case. But, in general, you know what you signed up for. So in most cases, in my observation, is it is more related to changes in force structure, and force design updates that the Army provides. So you are in an MOS, in a unit, in a location today, and that changes. We do not collect from that particular soldier.

And I don't see that as an issue that is related as much as it was in the past.

Mr. COFFMAN. Sure.

Chairman, I yield back.

Dr. HECK. Thank you.

Mr. Garamendi.

Mr. GARAMENDI. Mr. Chairman, thank you for the privilege of sitting with your committee and now asking a question. I appreciate the information that has been elicited thus far in the testimony.

We now have an NDAA that has a new law—a new section that will eventually become law, and it may affect—is certainly meant to affect those men and women that took a bonus in good faith, carried out their responsibilities, even though it may not have been to the strict MOS or other criteria, and have faced a clawback of their bonus.

I agree with, I think, every member of this panel that that is unconscionable that that could happen, or did happen. But my real question is going forward.

General Baldwin, you gave a bunch of statistics and numbers at the outset. I would like you to quickly review those in the context of how does the new, hopefully soon-to-be new law, in the NDAA, affect those men and women that are under review as a result of the bonus question that has arisen in California? If you could run through that quickly.

And I also understand there is certain criteria that are in the soon-to-be law as well as criteria that you—excuse me—that the Army may use to eliminate from the clawback, or potential clawback. Could we go through that, please?

General BALDWIN. Sure. So for, I think, the important step that is in the law is it—as OSD is putting together their team, and they will discuss it in the next panel that is going to be able to more rapidly adjudicate the cases and review soldiers to find the ones that the many, many, thousands, perhaps, the ones that deserve to keep their money. One of the main things that it does is that it re-

believes the notion that for that targeted group of individuals, that we have to have a presumption of guilt in order to review their case. They are going to review every case that they take before them. So that is very, very encouraging.

The other thing the law does that I think is very, very helpful is that—and as I understand it, this would impact not only the soldiers that are in this population that we are addressing here, but National Guardsmen ostensibly both in the Army and the Air National Guard, from time forward, that if you—if DFAS establishes a debt for a National Guard soldier or airman, prior to this current NDAA, the National Guardsman could not go to DFAS to ask for a sum total financial relief for financial hardship. They could do it in the case if they had loss or damage coming from property, but in the case when they had been overpaid or paid bonus that they weren't due, they couldn't get relief if they were suffering from financial hardship. Title 10 Active Duty personnel could. Title 32 couldn't. The current NDAA corrects that, and we are very, very happy to see that in there.

Mr. GARAMENDI. I understand that there were other criteria that would eliminate from the clawback, certain men, guardsmen, Guards people, could you—is that the case? Are there—is it only this issue of financial hardship or does it have to do with rank, position?

General KADAVY. If I could take this one, Dave?

General BALDWIN. Oh, sure.

General KADAVY. Congressman, as a member of the cross-functional team being led by OSD, we are still reviewing, and the next panel, Mr. Levine can tell you exactly where we are on this. But we are building criteria, and I think, based on the Secretary of Defense's guidance and what is in the NDAA, the intent is to only find those that were ineligible for a bonus and should have, or did know they were ineligible. The intent is not to recoup from soldiers that did not understand what was going on. It was only—it is only to get after those that were ineligible and accepted the bonus knowing they were ineligible.

Mr. GARAMENDI. Will that criteria significantly reduce the number of Guards people that are affected?

General KADAVY. So I have been asked if you could refer that question to the next panel.

Mr. GARAMENDI. I will do so.

Mr. Chairman, I want to thank you, and I want to thank this panel for writing into the NDAA the language that will significantly solve most of the problem, perhaps not all of it. And I would ask that in the future, this panel continue to observe and watch as this plays out. Thank you very much.

Dr. HECK. Ms. Speier.

Ms. SPEIER. Thank you, Mr. Chairman. Let me add my words of praise to you for your service to our country and to this Congress, and thank you as well for bringing this issue to the forefront today.

Let me start with you, General Baldwin. You met with me yesterday, and I appreciated that. You took over in 2011, correct?

General BALDWIN. Yes, ma'am. April of 2011.

Ms. SPEIER. And you took over, in part, because the Governor saw this as a problem, and wanted to relieve the general before you and put you in that position, correct?

General BALDWIN. That is correct.

Ms. SPEIER. All right.

So from 2011 until 2016, the only time this was ranked as an issue, and it was ranked number six, was in 2014 to the foreign—to the Armed Services Committee. And there was no impetus to take this seriously enough to fast-track it. And it was only until the Los Angeles Times did a story that this issue got some traction.

So my question to you is, while you are not responsible for what happened before your watch, you are responsible for what happened after you took over. And why didn't you elevate this to a high enough level in 2012, in 2013, in 2015, and again in this year?

General BALDWIN. So for the first 2 years you mentioned, 2012 and 2013, we weren't aware of the amount of time it was going to take to get through the adjudication process. We first started pushing cases forward after doing a review in late 2012. And since it was taking 2 years for cases to run their course, it wasn't until the end of 2013 to 2014 that we realized the scope of the problem we had based on the amount of time it was taking to get relief for soldiers. That is why in 2014, we first brought—

Ms. SPEIER. Okay. I am going to shortcut this a little bit, because I have a limited amount of time. I just want to make the point that while your—you have made it a priority on a list, you didn't make it a priority to the committee so it wasn't dealt with as it should have been.

Now, you had mentioned to me that some of the largest bonuses went to physicians, the 40-, the 50-, the \$60,000 bonuses. And in those cases, they have not—they committed to 6 years, served, in some cases, less than 2 years, got the bonus up front.

Now, that decision to offer that bonus up front before you had committed the 6 years seems like a no-brainer. Why would anyone do that in an administrative role when the likelihood of someone skipping is pretty high?

General BALDWIN. Yes. So that was—that is a great example, because those cases, because the dollar amount were amongst the most egregious. The way that the program for benefits—for incentives for medical professionals worked at the time is they could actually get up to an \$80,000 bonus, and it was paid out in tranches, so every couple of years as they served more time, they would get paid part of the bonus. And that was in accordance with the regulation.

What happened is the incentive manager, though, would just push the button to pay the whole lump sum in 1 year, or maybe after 2 years. So if they had made a 6-year commitment, that medical professional served 2 years, got their 60-, \$80,000, whatever it was, and then—

Ms. SPEIER. Okay. So I want to go on record that those medical professionals that got those bonuses with a commitment to serve 6 years and only served 2, that we should claw back every single dime.

Now, for those—you also told me that you were under the impression that for noncommissioned personnel, that are list—who

were—who were enlisted, that, for the most part, especially if they were over 10 years in length, that that is going to be waived, and that requirement for enlisted will not be clawed back? Is that true?

General BALDWIN. So that—I think that is one of the business rules that they are going to discuss in the next panel, that for certain ranks and for certain time in service, for more junior people, they are going to apply some rules that are more forgiving for people that may have been more senior, or perhaps worked in recruiting that should have known the rules.

Ms. SPEIER. Okay. I have always had a problem with this “should have known,” because if you received it, you didn’t know that you weren’t supposed to receive it, but you should have known, and it is 10 years past. That is, I think, an expectation that we should not require those individuals to pay it back, particularly if they committed to a contract and served for the requisite period of time.

And with that, I yield back.

Dr. HECK. Mr. Aguilar.

Mr. AGUILAR. Thank you, Mr. Chairman. I don’t serve on this panel. Thank you for allowing me the opportunity to ask a few questions, and thank you for—it’s been a pleasure to serve with you on the full committee as well.

General Baldwin, can you explain—again, maybe this is getting into the should-have and did-know that you mentioned. Can you explain the process that was gone through to determine whether the incentive pay or the student loan needed to be recouped, and then immediately thereafter, once that decision was made and the notification was given, what were the next few steps along the process?

General BALDWIN. Sure. So I will address those cases where we did not find fraud or suspect fraud. So for the preponderance of the soldiers, what we would do is overlay the paperwork that they had that showed, here is their contract, here is what the regulation says in order for them to receive that certain benefit, in order for them to establish an eligibility, what other documents are required, and whether they—or not they had all that paperwork.

By the rules that were in place on time—at that time, if someone was missing one of those elements, it voided the contract, and that forced us to then send them to the National Guard Bureau for an exception to policy, which we, again, sent with the ones that we did send where we are working with the soldiers we sent with endorsements recommending approval.

If they did not get approved—if their exception to policy got approved by the National Guard Bureau, that was then within General Kadavy’s predecessor to allow them to keep the money, and then we were done.

If the National Guard Bureau did not or could not approve the exception to policy, it did give us the ability to help the soldier go to the Army Board of Corrections of Military Records, where the case would then go and get reviewed by an administrative law judge that would then make a determination of whether or not they would approve it. We have about a 50 percent success rate.

I will give you one concrete example of a fairly common problem that we found was for soldiers that were first-term enlistees, as with the case of Congressman Denham, where you can join the Na-

tional Guard or the military when you are only 17 years old, a lot of these soldiers hadn't graduated from high school when they enlisted. For the National Guard, you could do that. You could join the National Guard before you graduate from high school. However, in order to be eligible for the bonus, you have to produce a high school diploma.

And in many cases, the soldier served and served well, but we just didn't have a high school diploma in their records, and in that case, we were—we had to take action. And those are cases that were fairly easy for us to go back to either exception to policy, or up to the ABCMR to get relief.

Mr. AGUILAR. What kind of time period were they given in order to correct the document side, the deficiency that you saw, whether it was a high school diploma or whether it was any other document?

General BALDWIN. So the only soldiers that we sent to recoupment were the soldiers that did not contact us. So the soldier contacted us, we worked with them and have continued to work with them, and to my knowledge, have not sent any soldier to recoupment for any benefit that we could assist them on.

Mr. AGUILAR. General Kadavy, do you want to talk a little bit about that from a process perspective, those that came through, you know, within that flowchart, those that came through that your office and your predecessor reviewed, you know, what did—that did that look like from the documentation standpoint? That is what I am concerned about are those folks that were dinged because of the lack of documentation but met the criteria for the bonus.

General KADAVY. Yes. So I believe, I can't really speak for my predecessor, but our guidance, our intent is to work as hard as we can for an exception to policy for each and every soldier, and quite honestly, if they had served the term and met the agreements, an exception to policy was almost always provided.

Mr. AGUILAR. Okay. I appreciate it. I will yield back, Mr. Chairman.

Dr. HECK. Ms. Graham.

Ms. GRAHAM. Thank you, Mr. Chairman.

I think you touched on this. I will direct my question to General Kadavy. Did I pronounce your name correctly?

General KADAVY. Kadavy.

Ms. GRAHAM. Kadavy, okay. It was one way or the other. I picked the wrong way. But you discussed in your initial—in your opening comments that you have not seen wide—this concern widespread across the country. It is limited to California.

I am from Florida, and reached out to our National Guard as soon as I heard of this to just see where they thought that they were with any challenges with bonus recoupment with our National Guard, and we have about 12,000 in Florida. I just want to confirm that you don't see any—any of these concerns in Florida that have come to the attention of those here regarding California?

General KADAVY. Well, specifically related to the fraud, we have given no guidance to any other State, district or the territory, or District of Columbia or any of the territories to do any audits or any inspections. As I said, through GIMS, we always have ongoing



recoupments for generally those that don't meet the term of their enlistment.

So specifically, I can't talk specifically to Florida and what is going on in Florida, but we have not directed any type of work, and we have not discovered any type of systemic problem related to fraud that we are aware of.

Ms. GRAHAM. Well, that answer kind of concerns me because I thought in the beginning that you stated that there weren't concerns across the country, that this was limited to California. Could this be something that the wonderful men and women that serve in our National Guard in Florida have to be worried about, because I certainly, as I think the only representative from Florida here, want to give them some assurances that that will not be the case.

General KADAVY. Well, I—

Mr. LEVINE. Congresswoman, we have conducted audits for the—

Dr. HECK. State your name.

Mr. LEVINE. I perform the duties of Under Secretary of Defense for Personnel and Readiness, Peter Levine, and I apologize. I am on the next panel.

Ms. GRAHAM. No, thank you for stepping in.

Mr. LEVINE. I apologize for jumping on this, but because we have done some reviews and we have identified zero cases in Florida, I thought it would be helpful for me just to mention that.

General KADAVY. Right.

Ms. GRAHAM. Zero cases is very good. Thank you. Thank you very much. So I will take, from your testimony, that the men and women that serve on our National Guard in Florida do not have to be worried about this same concern.

Thank you. I appreciate that, and I yield back, Mr. Chairman. Thank you.

Dr. HECK. Mr. Johnson.

Mr. JOHNSON. Thank you, Mr. Chairman, and thank you, gentlemen, for being here today. I am troubled. Between 2006 and 2008, National Guard senior noncommissioned officers improperly provided student loan repayments and bonuses to numerous California National Guard members, and one person, sergeant, master sergeant—female, Toni—I can't come up—

General KADAVY. Toni Jaffe.

Mr. JOHNSON. Toni Jaffe was the only person to be criminally sanctioned. But dozens of personnel, including senior leaders and general officers were punished by the California National Guard for this illegal activity. Is that correct?

General BALDWIN. That is correct, Congressman, but an additional 43 soldiers were charged and prosecuted by the—either the Federal Government or district attorneys for fraud also. Master Sergeant Jaffe is not the only person that served jail time. She served far more time in prison than anyone else that did jail time, but there were other officers and some noncommissioned officers that were given sentences that included some jail time.

Mr. JOHNSON. All right. Thank you. What was the highest ranking official to be found to have engaged in this misconduct?

General BALDWIN. So on the receiving side or the people that we actually had evidence that committed fraud or colluded to commit

fraud, I believe it was a captain was the highest ranking individual that received money. Higher ranking officers weren't eligible for the bonuses.

Mr. JOHNSON. Yeah. Actually, I am getting at those who were responsible for initiating the payments, not those who received them.

General BALDWIN. So the only person held responsible for initiating the payments was Master Sergeant Jaffe. I held many, many people responsible, though, for their failure to provide proper oversight or leadership. That included three two-star generals, one two-star general, and one colonel that was in the California National Guard, and then the National Guard Bureau fired a colonel that was working for the National Guard Bureau.

Mr. JOHNSON. Why were not the others charged criminally? It appears that the master sergeant may have been made the fall guy from a criminal standpoint.

General BALDWIN. You would have to ask the U.S. attorney that question, Congressman, because they did those prosecutions, and they actually had seized all of the evidence related to that case. So if there was any evidence that senior leaders had actually colluded, I haven't seen that evidence. If I was presented with evidence like that, I would take the appropriate action.

Mr. JOHNSON. What was it about the sergeant major's case that made it actionable from a criminal standpoint whereas others were not?

General BALDWIN. I don't know the details of the case. As I understand it, they had physical evidence, whether it was copies of contracts or it was emails where—or some forms of conversations which they can prove that she had actually colluded with officers and enlisted people to do this.

Mr. JOHNSON. All right. The criminal cases now, is criminal prosecution—has the criminal investigation ended, or is it still ongoing?

General BALDWIN. I don't know. Again, you would have to ask the U.S. attorney that question.

Mr. JOHNSON. Did you—did your office make any recommendations as to who or who would not be prosecuted? Who should or should not be prosecuted?

General BALDWIN. They did not have that conversation with us. And again, they seized all the evidence, so any recommendation that we did have would have to be based on the evidence. They seized all that evidence before I came back from Afghanistan.

Mr. JOHNSON. Major General Baldwin, in your testimony, you stated that the—that service members—you stated service members that should be required to repay their bonuses should be made to do so.

Can you describe in more detail in what cases would service members actually have to repay the bonuses that they have received, especially since in most cases it seems they got the bonuses through no fault of their own?

General BALDWIN. It would be in those cases where the service member egregiously violated the contract for which they said that they would serve. For example, they signed up and they never went to basic training, or they signed up for 6 years and only performed 2 years of Guard duty and then either went AWOL [absent without leave] or left the Guard for some reason.

Mr. JOHNSON. Do you have the numbers?

Dr. HECK. The gentleman's time is expired.

Mr. JOHNSON. Thank you.

Dr. HECK. Mr. Denham.

Mr. DENHAM. Thank you, Mr. Chair. General Baldwin, annually, you put together a list of priorities through your office; that is something you do every year?

General BALDWIN. That is correct.

Mr. DENHAM. When do you start working on that?

General BALDWIN. Generally, we start working in the late fall, early spring, in order that we can present those legislative priorities to the Congress around the March timeframe so they are ahead of the mark.

Mr. DENHAM. And I have got here in front of me your list from fiscal year 2015, so you would have started this in spring of 2014, address Congress later that year?

General BALDWIN. We would have presented it in the spring of 2014 and started working on it in the fall of 2013.

Mr. DENHAM. So you got your fiscal year 2015—I just want to be clear. Fiscal year 2015 NDAA priorities, you present that to Congress when?

General BALDWIN. Around March of—it would have been around March of 2014.

Mr. DENHAM. 2014. So you start working on that in 2013?

General BALDWIN. That is correct.

Mr. DENHAM. And this year, in particular, fiscal year 2015, you list as priority number 6, your final priority, service member debt relief equity, that is the issue that we have now—I introduced legislation on this issue. We have now included it in the NDAA this year, but I was surprised to see that in fiscal year 2016, your list of priorities, it wasn't in here. You have got six priorities, and this debt repayment was not one of them. Why did it fall off of the list?

General BALDWIN. So it fell off because in 2014, the item had been scored by the CBO [Congressional Budget Office] and we weren't successful in getting it through because of the cost that was involved. It was a tough sequestration year. In 2015—

Mr. DENHAM. We are still under a tough sequestration year.

General BALDWIN. I understand that, Congressman. I regret not including it in the 2016—in the 2016 year. I am very encouraged that the committee, again, with your leadership assisting, is helping to get this legislation passed.

Mr. DENHAM. Why wasn't it included in 2017? You would have started working on that 2 years ago, correct?

General BALDWIN. That is correct. Again, we—we felt that we had asked. We were not able to take that ball across the goal line, so we directed our time and energy towards trying to help the soldiers that we could influence. In retrospect, in hindsight, you are right, I should have continued to make this a priority.

Mr. DENHAM. Is that a—your list of priorities, is that at your sole discretion or does the Governor weigh in on that?

General BALDWIN. Ultimately, it is my list, and I take responsibility for the list.

Mr. DENHAM. In the language that we have now included in the NDAA, we have resolution to this. My concern has been—as a

Member of Congress, I don't get a list from the DOD on who has—who they are going after for this debt forgiveness. I don't get a—any idea of who is having to repay this, who has been harassed, until they call my office. So somebody who has now repaid their debt, how do they go about filing to resolve this issue going forward?

General BALDWIN. So——

Mr. DENHAM. What is the process? How does the process work to make somebody financially whole that has now taken a second out on their house and repaid a debt that they didn't owe?

General BALDWIN. I think the second panel will be able to address much of that. We have—still have our financial—our soldier assistance team in place. There is a 1-800 number that we have posted on our web page that people can call that have been in this so that we can get to work, that if they have suffered from this, or they are on the list of people that potentially may have or had a problem with it, that we can then refer them to the lawyers and the people, whether it is in California or at the Army or at OSD to get help.

Mr. DENHAM. And what if there is an individual that is still serving that either in the Guard or Reserves that is being asked to repay a debt, but in their chain of command, they are asking them not to go to a legislator or a Member of Congress, what would you—what your opinion of that be?

General BALDWIN. That violates—that violates the policies that are in place that are both OSD policies and policies that I have within the military department. No one can interfere with an individual's right or ability to make a protected communication between themselves and their elected officials.

Mr. DENHAM. Thank you. I look forward to following up with you on that as we resolve this issue for a constituent.

One final question, and you and I had a discussion about this earlier. I have a big concern with—when somebody takes a government document, a private email, and puts that out for the press to see, my concern in this case wasn't about the legislation itself. My concern is with the issue with recruitment and retention that it has now had on the Department of Defense, and even the VA in this case. I would like to follow up with you on this release of emails from your subordinates to get a further clarification on why they felt a need to go outside their chain of command on this issue as well.

General BALDWIN. I look forward to that, Congressman, and if there is anyone in the California military department that violated any laws, rules, policies, or regulations, we will take the appropriate action.

Mr. DENHAM. Thank you.

Dr. HECK. I would like to thank both of you for taking the time to be here today to review this important issue, and at this time, we will switch out the panels, and we will hear from representatives from the Office of Secretary of Defense.

I would now like to introduce our second panel. We have Mr. Peter Levine performing the duties of the Under Secretary of Defense for Personnel and Readiness from the Department of Defense, Ms. Alissa Starzak, general counsel for the Department of the

Army, and Ms. Teresa McKay, director of the Defense Finance and Accounting Service.

Mr. Secretary, you are recognized for 5 minutes.

**STATEMENT OF HON. PETER LEVINE, PERFORMING THE DUTIES OF UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS, ACCOMPANIED BY ALISSA M. STARZAK, GENERAL COUNSEL, DEPARTMENT OF THE ARMY, AND TERESA A. McCAY, DIRECTOR, DEFENSE FINANCE AND ACCOUNTING SERVICE**

Mr. LEVINE. Mr. Chairman, Ranking Member Davis, first of all, thank you for holding this hearing, and I really appreciate the discussion that I heard with the first panel. It shows some serious engagement on what is really an important issue.

I would also like to join your colleagues, Mr. Chairman, in thanking you for your service. You have been very good to the Department of Defense. Your focus on these personnel and readiness issues has been really important to us and really helpful to us, so thank you.

I can't also—I would also like to, if I may, thank Chairman Thornberry for being here and for continuing to listen, on occasion, to my good friend, Mr. Simmons, who I see also on the back row there. You have my written statement, and I won't read any of it, but there are a few points that I would like to focus on, some of which have already been discussed but I think deserves some attention.

First of all, recoupment is an ordinary fact of life in the military. Our pay systems aren't as perfect as we would like them to be, and we have run into any number of issues, from the person we heard about earlier, who might be divorced and still getting a BAH [Basic Allowance for Housing] as if they were married, to somebody who has got the wrong paycheck or fails to pay a bill, fails to pay a travel bill. We are recouping against as many as a 100,000 soldiers, sailors, airmen, and marines at any given time, civilians as well.

The California Army National Guard cases are a particular—particularly the ones that have been in the press, have been reported in the press are particularly egregious set of cases, but I wouldn't want members of the committee to think that this is the nature of recoupment and that we always have this problem with recoupment.

There are a number of reasons why these cases are particular—the cases we read about in the press are particularly troublesome. One is that many of them are based just on a technical deficiency. We have heard about wrong MOS cases where, also where the soldier may have been misled as to whether that wrong MOS mattered, whether they needed to have a high school diploma. Technical absence of paperwork, which seems like a pretty minor reason for recoupment, particularly in the case—in cases like this where we have service members who made a commitment on the basis of a bonus, and then served out that commitment. So when we come in later after somebody has fulfilled their commitment and then question on a technical ground why they received a bonus in the first place, that is a particular hardship.

What I hope you will understand is, that that is not all the cases that we are dealing with even with the California National Guard. We heard about some of the medical professionals who may have received bonuses and then not served out their commitment. We have a significant number of other cases in this pile of recoupment cases where we had service members make a commitment and receive a bonus on the basis of commitment, and then not fulfill that commitment.

So as a matter of basic fairness to those who did serve out their commitment, we need to take a very close look at those cases, and those would tend to be cases in which we would expect to uphold—in most cases, uphold the recoupment if the service member didn't fulfill the terms of the commitment, the terms of the contract.

The second point I would like to focus on briefly is just how the process of recoupment sets up. We read in the press that the Pentagon ordered recoupment; the Pentagon means a lot of different things to a lot of people. It could mean the Secretary or OSD, or people in Washington, or could mean the entire Department of Defense.

The way we work on these kinds of issues, and it is not just limited to recoupment issues or pay issues. We have an auditor come in and look at an issue, an auditor identifies a problem, and they have standards to which they work to identify those problems, but auditors do not make decisions for the Department of Defense. Auditors do not determine that we are going to recoup or not going to recoup. Auditors make recommendations.

So if you are in a contract matter, an auditor would make a recommendation to a contracting officer and the contracting officer would make a decision.

In this case, the auditor would make a recommendation to the property and financial accounting official who is technically an employee of the National Guard Bureau but is appointed by the California National Guard and is—a California National Guard member appointed by the California National Guard, but then serves as a Federal role because they are activated when they are appointed to that position.

As we look at the way these cases set up, we had the Army Audit Agency do an audit and make a recommendation with regard to a limited number of cases and found an error rate, I think we heard, of 50-something percent. California National Guard looked at that. We have—when we look at these things, we have discretion, we have enforcement discretion. We don't have to say, "Yes, the auditor said to do this; we are going to do every one of these things."

Before we get to the point of establishing a debt, we can determine whether it is in our interest to establish a debt or not. So as we have looked at other States where we had smaller numbers and lower error rates, we see that some of the other States with the National Guard where you had 8 cases, only 2 of them were sent for recoupment; or 10 cases, only 3 were sent for recoupment; or 40 cases, only 5 were sent for recoupment. Some States sent all the cases for recoupment. They make those judgments.

What California did, and it was within their discretion, and given that they said that they did another review and found a 91 percent error rate, I can't say it is wrong for them to do this, but

they not only referred all the cases that they had for recoupment, but they also said, "We are going to do 100 percent review of everybody else." So we are not only going to refer for recoupment those cases that were in our sample, we are going to go to the rest of the universe, which brought in about 17,000 more individuals.

I think that what the California National Guard discovered over a period of years after they did that was that they didn't have the bandwidth to deal with those cases. And so they dealt with some of those cases and put some of them into recoupment. Some of them should have put into—they should have put into recoupment, some of them maybe not, but they left thousands of other cases hanging out there with the threat of recoupment over them, which I think adds to the unfairness of this process.

Now, I have to say, we have oversight over the California National Guard. Army—Army has audit—has oversight, the National Guard Bureau has oversight. We were not aware of this until we read it in the newspaper, and that is on us. We missed this. But when we became aware of this, the Secretary specifically directed me to go in and address this, do this, do this fairly, do this expeditiously, get it done by next summer.

So we are going through a process where we are going to be looking at—we are going to be looking at these cases to figure out which ones should be subject to recoupment, and we are going to do it as expeditiously as possible. As your legislation requires, we are going to favor the soldier wherever possible, but we are going to—we are going to account for the differences in different types of cases.

Now, we have two basic categories of cases that we have to deal with. One is those cases that were already determined to have a debt and sent to DFAS for recoupment. DFAS is just sort of the receiver here. They get the cases. They implement it. Somebody else tells them that they are supposed to recoup. So we have about 1,400 cases in that category.

Then we have a second category of cases that were essentially put under suspicion or threat of recoupment, about 16,000 more cases in that category. For those cases that are in recoupment, we have the question of, are we going to dismiss the case? Are we going to forgive the debt? Are we going to repay the soldier if we decide it was improper?

We are—we are—we put those through a screening process. We have already had the Army Audit Agency look at all 1,400 cases through a preliminary screen. Through that preliminary screen, we think that we can eliminate about a quarter of them, which we will be able to recommend for forgiveness without further action.

We are going to go through a second review, which is going to get us into a more detailed review to look at those cases. It is my hope that we can pare those cases down to—by about half before we put the remainder in front of a further review process, which I will describe in a moment.

So it is my hope we get from 1,400 down to about 1,700 before we—just based on our reviewing the paperwork without involving the soldier at all and tell half of them you are off the hook. That is a goal. I don't know what exact numbers we get to.

Turning to the second category, the 15,000, the larger category, in that case, we have greater discretion because we haven't yet established the debt. So we have our enforcement discretion at this point, and so we are going to establish a number of rules of thumb, which were referred to earlier, and these will be my recommendations. It will be up to the Secretary of the Army to accept those recommendations, but I expect that he is going to have the same objective that I do and the Secretary of Defense does, which is that we want to pare these cases down to the most serious ones.

So we are going to screen out cases that are more than 10 years old. That is consistent with your legislation. I expect we are going to screen out cases with some exceptions—we are going to have to be careful about soldiers who have gone AWOL or have other kinds of problems—but we are basically going to try to screen out cases with a debt of \$10,000 or less.

We are going to screen out cases with—we are going to try to screen out most of the cases with enlisted members and lower ranking members, members without prior service on the basis that it is unlikely that they would have a basis to know that they were going to be—to read and understand their contract. This was an issue that came up earlier.

So as we go through those screens, I think we will get—from that second universe of 16,000 or so cases, I expect to reduce that by about 90 percent, so we get down to about 10 percent of those. So about something between—something on the order of 2,000—1,500 to 2,000 cases. We will then put that universe through the kinds of screens, substantive screens, substantive review of that, and I hope to get that down further.

It is my hope that by the end of the year, we will have—we will have something between 1,000 and 2,000 cases total out of the total universe of 17,000 that are subject to review. Those are the cases that we will then put in front of BCMRs [Boards for the Correction of Military Records] and allow soldiers to come in and make their case that they shouldn't be subject to recoupment.

But the objective is to find the easy ones first, get rid of those, tell people we are not pursuing you, so we don't have to tell you you have to come into a BCR [Board for Correction of Records] or you can come into a BCMR. We are telling you you are off the hook, we are done with you, and do that on the basis of paper so that we can focus our resources on those cases that are most significant where we really need to understand the facts better.

The Army has already staffed up the BCMRs, they have identified the people who will be serving in this role, so we are going to add resources. They are in the training process. We expect to be up and running by beginning of the year, and that the staffing numbers that they have established, we believe, are sufficient so that if we have 2,000 cases, we will be able to handle that number of cases by the July 1 deadline that was set by the Secretary.

That concludes my testimony, Mr. Chairman. I would be happy—we would all be happy to answer any of your questions.

[The prepared statement of Mr. Levine can be found in the Appendix on page 51.]



Dr. HECK. Ms. Starzak, Ms. McKay, do you have any opening comments? No. Great. Thank you. And thank you, Mr. Secretary, for taking time to be here and running us through the process.

So one of the questions that I asked General Baldwin, which he deferred to the second panel, was of those 400 who they had recommended being relieved but lost, did not get—seek—I guess were not granted relief, do they have another appeal avenue, or is that it? They are done—

Mr. LEVINE. Let me say two things: First, I don't necessarily tracked all of General Baldwin's numbers. Not that his numbers are wrong, but we are trying to develop our own database and go through the numbers in our own way, so I can't identify necessarily those 400 cases.

What I can say is we will provide an avenue for everybody here. In the cases of those who have been committed—who have already been convicted of fraud, that may be a narrower avenue, but we will provide an avenue for everybody.

Dr. HECK. And then my only other question is for those that are in collections, let's say, and they are having wages or something garnished by the IRS [Internal Revenue Service] or who may have been turned over to a credit agency, whose—you know, where is the rose getting pinned to make sure that the IRS stops taking money or that we help get credit ratings restored?

Mr. LEVINE. This is a DFAS function, and we believe that has already been taken care of in terms of stopping action. Ms. McKay may want to respond to that in greater detail.

Ms. MCKAY. That is correct. When the Secretary asked us to stop the recoupment, we were able to do that within a week for the cases that had been identified to us by the California National Guard.

That included the cases that we had internal to DFAS where we were recouping from their military pay as well as any voluntary repayments that were underway, as well as any cases that we had turned over to the Treasury for recoupment, and that would include the category of private collection agencies.

We also took action to rescind any reporting to the credit reporting bureaus, and so those—those—for those cases that were identified by the California National Guard to us, those credit ratings have been restored as if these debts never occurred.

Dr. HECK. Thank you. Thank you very much.

Mr. LEVINE. The one thing I would like to add, Mr. Chairman, is in terms of the 1 week, there are a handful of cases that lagged the 1 week, only because we had trouble identifying the individual involved. We had erroneous Social Security numbers and things like that that we have been trying to clean up as we went along.

Dr. HECK. All right. Thank you. Mrs. Davis.

Mrs. DAVIS. Thank you, Mr. Chairman, and thanks for being here. Of all the changes that have been suggested, and some are in the legislation and that you have been working on, is there an area that you have seen, by virtue of correspondence from guardsmen or women or others that is still hanging out there, still an issue that you are not sure that you could tell me confidently that you have resolved?

Mr. LEVINE. Congresswoman, I am confident that we have the authority that we need to clean up this situation. We need to put the resources into it that we are now putting into it, and we will address this, I think, in a way that is fair to everybody.

The—we would, of course, always prefer to see legislation before it goes into law because we can help head off unintended side effects, but we believe that we can work with the legislation that you have enacted and do what we need to do.

Mrs. DAVIS. Anybody else have a concern?

Okay. One of the issues, and we had the opportunity to see a number of pieces of correspondence from those who were really affected by this, some from California, not necessarily all, and certainly our offices had had several inquiries and we had casework around this, but minimally so that there wasn't a sense that this was anything systemic at that particular time, and I think the issue over, you know, whether or not, you know, it was number six on a list of issues that the Guards were looking at, but we do have a number—you know, quite a bit of correspondence, I think, that you all have received over the course of time that suggests to me that perhaps it wasn't followed through on a number of occasions.

And so, to what extent do you take another look at some of that correspondence and see what was happening in the lives of the men and women who were writing, why they weren't getting any response whatsoever, whether the hotline or either the—and the assistance center wasn't responding? Why was that?

Mr. LEVINE. Honestly, I don't know the answer to that. I have been asked by the Secretary to take a forward look and clean this thing up going forward. I have not been asked to go back and retrace the history of how we got to where we are today. I agree with you that we—and that is why I pointed out that we have an oversight role here. I think that we should have seen this before now, and I don't know why we didn't.

Mrs. DAVIS. Thank you. So I guess, going forward, because I am for that as well, I think that that is what is really important. We don't want this to happen again. But I am a little concerned that we have these cases, and do you—do you receive inquiries on the part of the men and women for additional assistance, whether it is mental health or financial assistance, whatever that may be? I mean, does there seem to be that—a group of individuals who clearly, this made a difference in their lives?

Mr. LEVINE. So we obviously have all sorts of mechanisms through the Department of Defense for receiving complaints. There were any number of avenues of appeal for these soldiers that are established avenues of appeal; appeal to DFAS, appeal to the Secretary of the Army, appeal to BCMR, those are official channels they can go through. In addition, we have, obviously, abilities to complain to Members of Congress, ability to go to hotlines. We have—we have pressure valves for those kinds of things. I can't tell you why those pressure valves didn't raise this case to a higher level before now. I just don't know.

Mrs. DAVIS. I think what I am wondering about is going forward, and as this law changes, and we can be grateful that at least in the numbers that we have seen, we are not going to see this kind of occurrence, I hope, again, but we still have all these cases out

there that, in fact, perhaps people really could have used some assistance and can still use assistance. How do we deal with that?

Mr. LEVINE. So going forward, I think that the Guard really has—the National Guard Bureau really has taken important steps in instituting this automated system, which will—which should automatically pop up places where we have improper payments and instituting a double-check system so you don't have the one person who can sign off on something and get in the kind of problems we had in California there.

So while I can't be 100 percent confident that we are going to avoid any problems, I think we are much more likely to identify these kind of payment errors early, and I think the big problem here was not that we had the payment errors. It is that we made these errors and then let somebody sit—serve out their service and then came back to them after they served out their service and said, "Oh, by the way, we made a mistake, we want our money back."

Mrs. DAVIS. Right. Yeah.

Mr. LEVINE. If we identify that problem in a timely manner, then as a matter of—then at that point, I think it is much more appropriate to recoup than it is when you come back 5 years later and say I want my money back.

Mrs. DAVIS. Right. Because I think as we look at the timeframe, and even the timeframe from 2011 until 2016, under the general's command, I think that there are a lot of cases there that people were hurting, and I don't know whether there is also a mechanism within the Guard, there should be, to check up on people just the same way that we check up on people that are going through transition and have returned and do not request the assistance of a mental health provider or any kind of health provider, that there is a sense that they have—we have to check up on them.

Mr. LEVINE. I appreciate that. That is part of a commander's responsibility.

Mrs. DAVIS. Okay. Well, let that—and I think, going forward, I suspect that the committee is going to want to have another opportunity really to talk about this perhaps in 6 months, and see how everybody is doing, okay. Thank you very much.

Dr. HECK. Mr. Coffman.

Mr. COFFMAN. Thank you, Mr. Chairman. Mr. Levine, and if anybody else wants to answer this, but I am surprised, from members of the National Guard, that we would go for these, and let's just call it deficiencies, or whatever you want to call it, that we were going after them civilly and affecting the credit union. Does that affect Active Duty people as well when there is a mistake on a bonus?

Mr. LEVINE. So again, this is a fairly unique case because we were going after people on technical grounds. Some people, at least on technical grounds years after this technical mistake was made when they had already served out. We refer cases for recoupment all the time. As I indicated, there are probably 100,000 cases under recoupment at any given time. We pursue them.

They are large cases and small cases. I think that the numbers show that most of them are relatively small cases. I mean, we could have recoupment cases for lost or damaged equipment. We

could have recoupment cases because you failed to pay for your travel. We could have recoupment cases because you were getting—you are getting aviation incentive pay when you weren't a pilot, you know, any number of different kinds of reasons we could have recoupment cases.

When the debt is certified, I—in this case, the property and financial officer for the National Guard out in California, when the debt is certified, it goes to DFAS, and I believe DFAS would follow the same procedures in each case. So I would defer to Ms. McKay to speak to that.

Ms. MCKAY. Yes, sir. You asked specifically about Active Duty. So as long as the—when a debt is established on an Active Duty member, it is handled within the military pay system. Debts are recouped against the payments going to the military members at a predetermined statutory rate, and so it would come out of their Active Duty pay.

As long as an account is not delinquent, and in these cases, there will be active collections against the debt, they are not considered delinquent, there wouldn't be any credit reporting against them.

Mr. COFFMAN. Mr. Levine, in your testimony you address the comparative recoupment amounts between California and other States as \$11 million in California alone and a total of only \$2 million between all of the States. I understand that a special audit team was sent to the State of Colorado, Washington, Texas, and the territory of Puerto Rico to check 100 percent of the records in each of those States and territories. The records check revealed that the automated systems' internal controls were not working as intended, resulting in management of the system being brought to the National Guard Bureau level as a short-term solution.

Would you describe for us how those systems were not working as intended, and what the results of that were in each of those States, particularly perhaps for the State of Colorado?

Mr. LEVINE. So I am unable to answer the question as to the specific internal control deficiencies in the State of Colorado. We did have the Triple A [Army Audit Agency] and the National Guard Bureau conduct reviews across the States. They did determine that there were internal weaknesses, lack of oversight, lack of multiple signoff, the kinds of weaknesses that we discovered in California. What we didn't discover was the kind of exploitation of the weaknesses or systematic problems of weaknesses, where in California they determined that there was fraud involved.

With regard to Colorado, I am interested by the 100 percent review because, again, as with Florida, I have—I asked the National Guard Bureau and the Triple A to look at whatever cases we had elsewhere, and I have got a rack-up of those, which is what the \$2 million comes from. I show the same thing for Colorado that I do for Florida, which is no cases of recoupment.

So if you have something different on that on Colorado recoupment, I would be very interested in seeing that. I can't guarantee that I have got 100 percent accurate information, but I would certainly like to know if there is a significant number of recoupment cases in Colorado, because I don't show any based on the information we have been able to gather at this point.

Mr. COFFMAN. On the recruiting bonus side, we do.

Mr. LEVINE. Okay. I would be—if you have information on that, I—

Mr. COFFMAN. Sure.

Mr. LEVINE [continuing]. Would appreciate it if you share it with us so we can go back to the National Guard Bureau and the Triple A and see where that fell through the cracks.

Ms. STARZAK. Actually, I would like to distinguish between the two. The recruiting bonuses are a different issue—

Mr. COFFMAN. Okay.

Ms. STARZAK [continuing]. Than this enlistment bonus issue. So when Triple A looked at those questions, it did do an audit of several States. I think it was Missouri—

Mr. COFFMAN. Okay.

Ms. STARZAK [continuing]. Indiana, Pennsylvania, and a couple of others potentially. They did not find systemic problems. They did identify some concerns with internal controls. The National Guard Bureau also had sent audit teams out to different States and they asked their internal folks to audit. Those came out with some results, but again, there was no—there was no finding of the type of systemic problems that they had in California.

Mr. LEVINE. Having said that, the numbers that I got from Triple A and National Guard Bureau are supposed to cover both of those reviews, so if you have something else, I would really appreciate seeing it.

Mr. COFFMAN. Absolutely.

Mr. LEVINE. Thank you, Congressman.

Mr. COFFMAN. Thank you. Oh, and I just—before I yield back, I just want to thank you, Mr. Chairman. Thank you so much for your service to this committee. It has been a privilege to work with you, despite the fact that you greatly outrank me in terms of being in the military.

Dr. HECK. Ms. Speier.

Ms. SPEIER. Thank you again. The issue of counseling those who now have issues around their credit and the like, is that something that is going to be undertaken by the Guard or by a separate office?

Mr. LEVINE. We do financial counseling for members, for service members generally. We provide that as a service. My expectation would be it would be done through the National Guard Bureau, but we would have to check that for you.

Ms. SPEIER. All right. Because the National Guard indicated to me that they feel that since they are in close proximity to them, that they would like to pursue providing that counseling.

Mr. LEVINE. It would be my expectation that in the normal course of events, that it would be the California National Guard that would counsel California National Guard soldiers, but again, we will have to check that for you.

[The information referred to can be found in the Appendix on page 63.]

Ms. SPEIER. All right. When the general was kind of running through those that were prosecuted and pending cases, most of them from the U.S. attorney, when he referenced the court-martials, seven of them, six officers, one enlisted, I guess, he made the statement that both because of lack of evidence and just the

UCMJ itself, prevented them from pursuing court-martials of those individuals. What would have to be changed in the UCMJ in order to allow the military justice system to work?

Mr. LEVINE. The military justice system has the same presumption of innocence that the civilian justice system does, and so we have the same issues of proof that we have in the civilian justice system, and often, they are cases which we might have a suspicion that somebody did something wrong, but when we have prosecutors look at the case, they say there is just not enough here to pursue it, to pursue it to trial.

I think that given the way our justice system works, that is to be expected, and I don't think that we are in—that any of us want to change the fundamental premises of our justice system.

Ms. SPEIER. Oh, no, no, but I just wondered based on what you said whether there was something within the UCMJ that we needed to look at.

Mr. LEVINE. I don't think there is anything unique to the UCMJ that I would look to. I would look to the difficulty of prosecuting cases where there is tough evidentiary questions, which we run into in general.

Ms. SPEIER. All right. And then, I guess, finally, I am still somewhat confused by the fact that this was a California-only problem, and it appears that the National Guard chose to distribute these bonuses in a manner that was inconsistent with other National Guards in an effort to, I guess, get their numbers up, but to somehow offer a recruitment bonus that is given 100 percent at the beginning of the tour as opposed to in increments seemed quite foolish. Should there be more uniformity among the various National Guards?

Mr. LEVINE. So the way I would describe it is that we had a system at that time that was vulnerable to abuse, and that system was vulnerable to abuse not only in California, but in other States, too. It was in California that they identified abuse and that they went after it, pursued it for that reason. It is not that the other States didn't have the same system, it is that they didn't find that same evidence of abuse that led into this 100 percent audit and review that they did in California.

Ms. SPEIER. I see. So, but moving forward, that is not going to be able—that abuse cannot take place?

Mr. LEVINE. I can never tell you that we won't have mistakes or problems in the Department of Defense. I think we have addressed this one, but where we will make a mistake the next time, I can't tell you.

Ms. SPEIER. All right. Well, thank you all for your service, and I yield back.

Dr. HECK. Thank you. Thank you, Mr. Levine and Ms. Starzak and Ms. McKay for being here. I know it is a very difficult issue but one we want to make sure we get our hands around to ensure that we take care of the guardsmen and women in California and make sure we don't have any similar issues across the defense enterprise, so we appreciate you being here.

Before we adjourn, I just want to take a moment of personal privilege, as this is my last subcommittee hearing, and one—I thank my ranking member, Mrs. Davis, for all of her help over the

last 2 years. You know, when we set out an agenda for this Congress, what we were going to accomplish in this subcommittee, we had quite a few major issues, and people said we were crazy for thinking we could get even one of them done. Whether that be UCMJ reform, retirement reform, healthcare reform, commissary reform, and due to your support, the hard work of all of the committee members, and the incredible staff, we got all four of them done, and that would not have happened had it not been for the great working relationship that we all have.

I also, although he is not here, want to thank the Sergeant Major, Mr. Walz. We know standing beside every officer is an NCO making sure he gets the job done right, and Mr. Walz was that person for me. And I really want to thank the staff, everybody who made the last 2 years as successful as it has been. It has been a great honor to serve, and it shows this committee's commitment to taking care of our men and women in uniform, their families, our retirees, and our survivors. There being no further business, the hearing is adjourned.

[Whereupon, at 4:05 p.m., the subcommittee was adjourned.]





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# **A P P E N D I X**

DECEMBER 7, 2016

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**PREPARED STATEMENTS SUBMITTED FOR THE RECORD**

DECEMBER 7, 2016

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**Opening Remarks – Chairman Heck**  
**Military Personnel Subcommittee Hearing**  
**California National Guard Bonus Repayment Issue**  
**December 7, 2016**

I want to welcome everyone to the Military Personnel Subcommittee's hearing on the California National Guard Bonus Repayments Issue.

We are here today to hear from the California National Guard, the National Guard Bureau and the Office of the Secretary of Defense on an issue that we must get right, in fairness to not only the California Guardsmen that this affected but for all service members going forward.

Compensation, whether it is a bonus for a service agreement or regular pay, is an obligation to our service members and their families that they should not have to worry about. I find it unacceptable that we would place the additional burden of years of concern about the legitimacy of a bonus payment or a student loan repayment on those who volunteer to serve.

The Armed Services Committee has taken action in the 2017 NDAA to address this issue and this subcommittee is taking every opportunity to thoroughly review and discuss the way forward so that we can prevent such a widespread problem or abuse in the future.

Our purpose today is to gain an understanding from those involved on why this happened and what we can do to prevent it going forward.

Before I introduce our panel, let me offer Congresswoman Davis an opportunity to make any opening remarks.

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**STATEMENT BY**

**LIEUTENANT GENERAL TIMOTHY J. KADAVY**

**DIRECTOR, ARMY NATIONAL GUARD**

**BEFORE THE**

**U.S. HOUSE ARMED SERVICES COMMITTEE**

**SUBCOMMITTEE ON PERSONNEL**

**SECOND SESSION, 114<sup>TH</sup> CONGRESS**

**ON**

**7 DECEMBER 2016**

NOT FOR PUBLIC DISSEMINATION  
UNTIL RELEASED BY  
THE U.S. HOUSE ARMED SERVICES COMMITTEE

Chairman Heck, Ranking member Davis, distinguished Members of the Subcommittee, thank you for the opportunity to discuss the readiness of Army National Guard personnel matters.

On behalf of the Army National Guard, I would like to thank you for your support and commitment to our Soldiers, their families, to our veterans, wounded warriors, and to those who have made the ultimate sacrifice. Your Army National Guard is mobilized today with more than 11,000 Soldiers both abroad and here at home. Our Soldiers are our greatest asset.

The subcommittee's interest in Recruiting and Retention incentives programs is understandable. In 2010, the California National Guard discovered inaccuracies in the number of incentives contracts awarded and launched an investigation. The investigation revealed that the California Guard's incentives program had been grossly mismanaged and instances of fraud were discovered. As a result, California took measures to ensure those individuals engaged in the perpetration of fraud were punished. In 2011, the Army Audit Agency conducted an audit of more than 14,000 California National Guard cases that were potentially linked to the unethical management of the incentives program between 2004 and 2011. In 2011, the California National Guard, with assistance from the National Guard Bureau, established a "Soldier Incentive Assistance Center" to assist any California National Guard member affected by the mismanagement of the incentives program. Every California National Guard soldier impacted received a formal written letter to inform them of this option. This center will continue to provide assistance to each affected Soldier.

**Background**

As a direct result of the issues with the California incentives program, the Army National Guard

took numerous steps to improve oversight within our incentives processes. In 2010, the Chief of the National Guard Bureau, General McKinley, ordered a review of all National Guard Recruiting and Retention incentives programs across all the states and territories which found no systemic fraud. In 2012, the Army National Guard began fielding the Guard Incentive Management System (GIMS) to provide a centralized oversight program for bonus and incentive payments. In 2015, the National Guard Bureau implemented a nationwide Fiscal Stewardship Comprehensive Plan comprised of three entities: The National Guard Executive Management Council, which is comprised of the Chief and Vice Chief of the National Guard Bureau, the Directors of the Army and Air National Guards, and state Adjutants General; the Senior Assessment Team, which includes senior personnel from the Joint staff, as well as Army and Air; and, State Management Councils in order to provide further oversight on the incentive program.

In 2016, an external review by the Army Audit Agency of GIMS validated its effectiveness and found the system substantially improved the controls throughout eligibility, monitoring, and payment phases of the incentive process. State Adjutants General have provided annual Statements of Assurance since 2012 documenting internal control processes to help prevent similar situations from occurring. Additionally, based upon reviews and assessments of the entire Army National Guard, fraud in the incentives program is not a nationwide problem. In November 2016, the U.S. Property and Fiscal Officers provided additional assurance, after reviewing their state incentive programs, that there are no issues outside what is normal.



**Current efforts and Way Ahead**

Currently, Mr. Peter Levine, performing duties of the Under Secretary of Defense for Personnel and Readiness is chairing a cross-functional team with the National Guard Bureau, Army, OSD Office of General Counsel, and the Defense Finance and Accounting Service (DFAS). This team is leading the effort to expeditiously resolve the cases involving affected California National Guard members; I understand you will hear from Secretary Levine later this morning.

Secretary of Defense Carter's guidance is to adjudicate all cases by July 1, 2017. The National Guard continues to support the cross-functional team's process to ensure each Soldier's case is fairly and equitably reviewed, with due process afforded to every Soldier.

**Conclusion**

In closing, I assure you that the National Guard has worked hard to implement appropriate, effective internal controls across the 50 states, three territories and the District of Columbia, and to prevent similar systemic fraud from occurring in the future.

**Lieutenant General Timothy J. Kadavy**  
**Director, Army National Guard**

Lieutenant General Timothy J. Kadavy assumed duties as the Director, Army National Guard, National Guard Bureau, Washington, District of Columbia on 27th March 2015. As Director, he guides the formulation, development and implementation of all programs and policies affecting the Army National Guard; a force of over 350,000 Soldiers in the 54 States, Territories and the District of Columbia.

Prior to his current assignment, General Kadavy served as the Special Assistant to the Vice Chief, National Guard Bureau, where he was responsible for representing the National Guard at key meetings and work sessions at the Department of Defense, Joint Staff and Inter-Agency level. General Kadavy also served as Commander, Combined Joint Inter-Agency Task Force – Afghanistan where he was responsible for coordinating and directing the effects for Counter/Anti-Corruption, Counter Narcotics, Counter Threat Financing. Prior to his deployment to Afghanistan, General Kadavy served as Deputy Director, Army National Guard and the Adjutant General of Nebraska.

General Kadavy received his commission from the University of Nebraska - Lincoln, Army Reserve Officers Training Corps on 12 May 1984. He has commanded at the Troop, Squadron and Task Force Level. He commanded Bravo Troop, 1st Battalion 167th Cavalry, First Squadron, 1st Battalion 167th Cavalry and the Northern United States Task Force - Stabilization Forces 13 (Task Force Huskers) in Operation Joint Forge, Bosnia Herzegovina. General Kadavy deployed to Iraq in 2006 and served as the Senior Reserve Component Advisor to the Commander Multi-National Corps - Iraq.

**STATEMENT BY**

**MAJOR GENERAL DAVID S. BALDWIN  
THE ADJUTANT GENERAL, CALIFORNIA NATIONAL GUARD**

**BEFORE THE  
U.S. HOUSE ARMED SERVICES COMMITTEE  
SUBCOMMITTEE ON PERSONNEL**

**SECOND SESSION, 114<sup>TH</sup> CONGRESS**

**ON**

**7 DECEMBER 2016**

NOT FOR PUBLIC DISSEMINATION  
UNTIL RELEASED BY  
THE U.S. HOUSE ARMED SERVICES COMMITTEE

Chairman Heck, Ranking member Davis, distinguished Members of the Subcommittee, thank you for this opportunity to testify in front of the committee to ensure we provide relief to Soldiers who received improper Army enlistment and reenlistment incentives through no fault of their own. The requirement for many of these Soldiers and veterans to repay money given to them years ago has resulted in severe hardships for them and their families.

The circumstances that led to this committee hearing began in 2004 when thousands of Soldiers enlisted or extended their service commitment during a time of war. In 2010, the California National Guard discovered inaccuracies in a number of incentives contracts and launched an investigation. The investigation found gross mismanagement and fraud within the California Army National Guard incentives program. As a result, dozens of personnel, including senior leaders and general officers, were punished by the California National Guard. The California National Guard also worked closely with the California Attorney General and the U.S. Attorney's office to ensure that personnel who committed state and federal crimes were investigated and prosecuted.

In March 2011, the previous Adjutant General was relieved of her duties and I was recalled from Afghanistan and appointed by the Governor with a mandate to fix the problems that allowed the incentives fraud to take place and implement measures to ensure it never happened again.

During that same year, the Army directed the California National Guard to audit over 14,000 cases that were linked to the unethical management of the incentives program between 2004 and 2011.

The California National Guard does not have the authority to adjudicate erroneous or inappropriate bonuses, nor do we have the authority to forgive debt. So to balance the need for fiscal accountability and Soldier care, I established the Soldier Incentives Assistance Center to conduct the audits and assist individual Soldiers in using the federal adjudication process to resolve their incentive cases. I also implemented state-level internal control measures to ensure that all future incentives contracts were correct and proper.

From the beginning, the federal incentives adjudication process has been unnecessarily complex and resource intensive. Despite this fact, the Soldier Incentives Assistance Center has helped hundreds of Soldiers have their debts forgiven or their records corrected to enable them to comply with the terms of their incentive contracts.

However, more needs to be done. The Department of the Defense, in coordination with Congress, must install a streamlined adjudication process that quickly distinguishes between those Soldiers that received an inappropriate incentive through no fault of their own; and those Soldiers who failed to meet the conditions of their contracts. Those that deserve debt relief or repayment should get it quickly. Those that should be required to repay their bonuses should be made to do so.

Thank you again for your support for our men and women in uniform. The California National Guard stands ready to support and assist the Army in implementing a solution that provides timely relief to deserving Soldiers and their families.

**MG David Baldwin**  
**The Adjutant General, California National Guard**

Major General David S. Baldwin was appointed as the 46th Adjutant General on 16 April 2011. Governor Edmund G. Brown Jr. recalled General Baldwin from his second deployment to Afghanistan, where he served as Deputy Commander of the 101st Airborne Division Tactical Command Post and Senior Mentor to the Commanding General of the 201st Afghan Army Corps, to assume command of the California National Guard. As the Adjutant General, he leads the largest, most tasked National Guard force in the United States, with an authorized strength of 23,000 personnel. He is responsible for the operation of the State Military Department which consists of the California Army and Air National Guard, State Military Reserve, and California Youth Programs.

General Baldwin enlisted as a medic in the California Army National Guard in 1982. He was commissioned through the Reserve Officer Training Corps (ROTC) in 1984. His military assignments include Rifle Platoon Leader, Company Executive Officer, and Scout Platoon Leader. He commanded a rifle company that deployed to the Los Angeles Riots in 1992. He served as aide-de-camp for the Commander, California Army National Guard before being assigned as the Operations Officer and then Executive Officer of 1st Battalion, 184th Infantry. General Baldwin commanded that same battalion when it deployed troops to Kuwait in the fall of 2001 in support of Operation DESERT SPRING. Following his assignment as a student at the Army War College, General Baldwin deployed to Afghanistan where he served as the Civil-Military Operations Officer and then the Executive Officer of Combined Forces Command. In January 2007, General Baldwin assumed command of the 79th (previously 40th) Infantry Brigade Combat Team, California Army National Guard. General Baldwin's full-time assignments on State Active Duty include Emergency Plans and Operations Officer, Legislative Liaison Officer, and Director, J3. From 2009 until he deployed in early 2010, General Baldwin served as the Chief of Staff of the California National Guard's Joint Staff.

General Baldwin's military education includes the Infantry Officer Basic Course, Armor Officer's Advanced Course, Combined Arms and Services Staff School, Command and General Staff College, and the Army War College. His civilian education includes a Baccalaureate of Science Degree in Medical Microbiology from Stanford University in 1985, a Master of Public Administration from the University of Southern California in 1996, and a Master of Strategic Studies Degree from the United States Army War College in 2003.

General Baldwin's military awards and decorations include the Legion of Merit, Bronze Star with two Bronze Oak Leaf Clusters, Meritorious Service Medal with Oak Leaf Cluster, Army Commendation Medal with Oak Leaf Cluster, Army Achievement Medal with Oak Leaf Cluster, National Defense Service Medal with Bronze Star, Combat Action Badge, and the Parachutist Badge.

NOT FOR PUBLICATION UNTIL RELEASED BY COMMITTEE

**STATEMENT**  
**OF**  
**HONORABLE MR. PETER LEVINE**  
**PERFORMING THE DUTIES OF UNDER SECRETARY OF DEFENSE FOR**  
**PERSONNEL AND READINESS**

**BEFORE THE**  
**HOUSE ARMED SERVICES COMMITTEE**  
**SUBCOMMITTEE ON MILITARY PERSONNEL**  
**HEARING**  
**ON THE**  
**CALIFORNIA NATIONAL GUARD BONUS REPAYMENT ISSUES**  
**DECEMBER 7, 2016**

NOT FOR PUBLICATION UNTIL RELEASED BY COMMITTEE

Chairman Heck, Ranking Member Davis and distinguished members of the Committee, we appreciate the opportunity to appear before you to discuss the California National Guard Recoupment Cases.

The Department respects and honors the service of our National Guard members and continues to rely on the Guard to meet national security mission requirements. In particular, the California Army National Guard (CA ARNG ) has over one hundred years of experience in serving the Nation, from World Wars I and II, the Korean War, and Vietnam, to the current conflicts in Iraq and Afghanistan, to name but a few. The Department's Special and Incentive Pay program, the bonus program, is essential to ensuring successful recruiting and retention in the Active Force, the Reserves, and the Guard, and we appreciate the Congress' past and present support of this vital program. It is the administration of the bonus program by the California National Guard, at a time when the wars in Iraq and Afghanistan were at a peak, that we are here to address.

In 2008, an auditor for the CA ARNG discovered that student loan repayments and bonuses were being improperly paid to numerous CA ARNG Soldiers. This discovery led to a criminal investigation into fraudulent activities and the 2011 conviction of Master Sergeant Toni Jaffe, a former CA ARNG Bonus and Incentive Manager, who admitted submitting false and fictitious claims for incentive payments on behalf of fellow Service members who she knew were not eligible to receive such payments. Based on the results of the audit and criminal investigation, the CA ARNG, with National Guard Bureau (NGB) support, established a Task Force to conduct a broad audit of Service member student loan repayments and bonuses paid in California from fiscal years 2004 through 2010. This review identified thousands of bonus and student loan repayments to potentially ineligible Service members. The California National Guard identified approximately 1,400 of these cases to be sent to the Defense Finance and Accounting Service (DFAS) for recoupment and notified thousands of other Service members that they might have to repay their bonuses. It is those actions that bring us here today.

I understand that those who administered the program in the CA ARNG were under tremendous pressure to enlist and retain sufficient numbers of Soldiers. However, that pressure



in no way excuses criminal conduct or intentional abuse of the system. The Department believes, as you do, that the vast majority of the CA ARNG Soldiers accepted a bonus and/or student loan repayment in good faith. We also believe that any member of the CA ARNG who received an incentive payment in good faith and served out his or her commitment should not be subject to recoupment.

Secretary Carter has directed me to address this issue on a priority basis, and to lean in favor of our Service members as I review bonus and student loan payments. I have established a cross-functional team, with members from the NGB, the Army, the Office of General Counsel, and DFAS, for this purpose. I believe that the Secretary's guidance to me, and the effort that our team is undertaking, are consistent with the legislation that you have just passed and will be forwarded to the President for signature in the near future.

The DoD team I lead has gathered the available data files, audits, and case files from the CA ARNG to determine the scope of the problem. We are conducting our own review independent of the analysis previously conducted by the CA ARNG to determine the appropriate treatment of each Soldier involved.

The total universe of cases that the CA ARNG identified comprises approximately 17,000 individuals. Within this universe, we have two distinct categories of cases:

- 1) Those cases in which the CA ARNG identified a debt to be sent to DFAS for recoupment. Approximately 1,400 individuals are in this category.
- 2) Those cases in which a debt has not been established at this time and which has not been sent to DFAS for recoupment. Approximately 16,000 individuals are in this category.

For those cases in the first category, DFAS has suspended all active recoupment actions, whether collection was by DFAS, the Department of the Treasury, or a private collection agency. Each affected Soldier has been sent a letter by the NGB explaining that the recoupment against them has been temporarily suspended and that DFAS has set up a single "1-800 number" for those Soldiers to call with immediate questions. The Army Audit Agency is reviewing, in detail, the records of the individuals whose cases were sent to DFAS for recoupment. On our first

review, we are finding that approximately one fourth of the recoupment cases were initiated based exclusively on technical problems, such as cases in which the Soldier's military occupational specialty (MOS) was not one of those authorized to receive a bonus or the Soldier had neglected to provide a required document to complete the bonus payment package. We expect to be able to forgive most of these types of debts. We are conducting a second, more in-depth review of the other three-fourths of the recoupment cases and hope to be able to forgive many of these debts as well. However, a number of this latter group of cases appear to involve Service members who failed to serve out their commitments. Absent extenuating circumstances, it is a matter of fairness that those who fail to meet their service commitments do not deserve the same treatment as those who serve out their commitments in good faith. That is why we routinely recoup bonuses and other payments from those who fail to meet their service commitments and why we expect to continue to do so.

For those cases in the second category, the approximately 16,000 cases in which CA ARNG did not establish a debt, the Department must determine whether it is appropriate to attempt to establish a debt. At this time, we do not plan to pursue any cases in this category that are more than 10 years old, consistent with the provision included in this year's NDAA. Consistent with other statutory requirements we also do not intend to pursue establishment of debt against a Soldier who is deceased, is a Purple Heart recipient, received a sole survivorship discharge, or is receiving combat related disability compensation. Finally, with the exception of cases of Soldiers who were AWOL, were separated for drug abuse, failed to show up for basic training, or committed similar violations, we do not plan to pursue cases in which the incentive amount received was \$10,000 or less, or cases in which we expect that a Soldier would not have known she or he was entitled to the incentive, such as Soldiers serving in the rank of E-4 and below; or who had no service prior to receiving the incentive.

It is our hope that in applying these exclusions, we can reduce the number of cases requiring further review to about 2,000 out of the approximately 16,000 in this category. We will then apply the same review process to these 2,000 remaining cases that we are already applying to the approximately 1,400 cases in which a debt was certified by the CA ARNG, to identify additional cases in which no further action is merited. Once we have applied all of our screens

and reduced the number of cases to those in which a debt can be clearly established and are most likely to merit recoupment—those cases in which the Service member failed to meet a service commitment, there is reason to believe that the Service member knew that the payment was improper, or there was some other kind of misconduct—we will apply applicable laws and processes to determine the amount of debt and whether recoupment is warranted. For those for whom recoupment appears warranted, we will provide an opportunity to make their case to a special panel of the Army Board for the Correction of Military Records (ABCMR) and explain why their debts, too, should be forgiven. As required by the Secretary's direction and by the legislation that you have just passed, we will lean in favor of the Service member where there is doubt about whether recoupment is justified.

The Army is currently training additional team members to handle this temporary increase to the ABCMR case load and to adjudicate these cases as expeditiously as possible. The Secretary of Defense directed us to place as little burden as possible on soldiers who may have received improper payments through no fault of their own, and to resolve cases in favor of the Soldier in all cases where it makes sense. We will do just that. We will not recoup bonuses or student loan repayments because of a missing piece of paper when the Soldier fulfilled his or her service commitment, but we believe it is appropriate to continue to recoup in those cases in which the Soldier failed to meet the terms of the contract and the Soldier did not remain in service for the required time.

The Department also intends to use existing authorities to address situations, as necessary, in which the Soldier has already repaid some of all of the debt. When warranted, DFAS will notify the consumer reporting agencies and the Department of the Treasury that the debt was never valid, and pay back any amount already repaid, plus any interest accrued on that amount. Additionally, the Department will endeavor to assist the Soldier, to the extent practicable, in addressing any financial hardships incurred as a result of the debt recoupment.

OTHER STATE CASES

On November 3, 2016, *Stars and Stripes* reported that "Tens of thousands of Army National Guard soldiers outside California might have been required to repay re-enlistment and education bonuses ..." This report was inaccurate. In 2010, the NGB reviewed a sample of the 107,000 bonuses paid in States other than California under these incentive programs. While the NGB review found some internal control problems, they assessed that there was no evidence in other States of the kind of systemic fraud that was found in California. The NGB took action to correct the internal control weaknesses it had identified by centralizing and automating the incentive payment approval process to ensure greater accountability for bonus payments going forward. For perspective, in California, we understand that recoupment was initiated for approximately \$11M in bonuses; in all other states together we have been able to identify a total of only \$2M in bonuses for which recoupment was initiated. A 2016 U.S. Army Audit Agency audit of the new controls and automated systems added by NGB since 2011 gives us reason to believe that we have reduced, if not eliminated, the risk of California-like abuses in the future.

We thank the Congress for your continued support of our National Guard and their families. We especially thank you for your support as we work through this difficult issue. We regret any harm that has been done to our Service members, and will continue to work to resolve this matter as quickly and fairly as possible.

**Peter Levine**  
**Performing the Duties of the Undersecretary of Defense for Personnel & Readiness**

Peter Levine is Performing the Duties of Undersecretary of Defense for Personnel and Readiness. In this capacity, he serves as principal assistant and advisor to the Secretary and Deputy Secretary of Defense on readiness; National Guard and Reserve component affairs; health affairs; training; and personnel requirements and management, including equal opportunity, morale, welfare, recreation, and quality of life.

Prior to assuming this role, Mr. Levine served from May 2015 to April 2016 as the Deputy Chief Management Officer of the Department of Defense. As DCMO, he served as the senior advisor to the Secretary of Defense and the Deputy Secretary of Defense on business transformation and led the Department's efforts to streamline business processes and achieve greater efficiencies in management, headquarters, and overhead functions.

Prior to his appointment as DCMO, Mr. Levine served on the staff of the Senate Armed Services Committee from August 1996 to February 2015, including two years as Staff Director, eight years as General Counsel, and eight years as minority counsel. Throughout this period, Mr. Levine was responsible for providing legal advice on legislation and nominations, and advised members of the Committee on acquisition policy, civilian personnel policy, and defense management issues affecting the Department of Defense. Mr. Levine played an important role in the enactment of the Military Commissions Act of 2009, the Weapon Systems Acquisition Reform Act of 2009, the Acquisition Improvement and Accountability Act of 2007, the Detainee Treatment Act of 2005, and numerous defense authorization acts.

Mr. Levine served as counsel to Senator Carl Levin of Michigan from 1995 to 1996, and as counsel to the Subcommittee on Oversight of Governmental Management of the Senate Committee on Governmental Affairs from 1987 to 1994. In this capacity, Mr. Levine played a key role in the enactment of the Lobbying Disclosure Act of 1995, the Federal Acquisition Streamlining Act of 1994, and the Whistleblower Protection Act of 1989.

Mr. Levine was an Associate at the law firm Crowell and Moring from 1983 to 1987. He received a Bachelor of Arts degree summa cum laude from Harvard College and a Juris Doctor degree magna cum laude from Harvard Law School.

**Alissa M. Starzak**  
**General Counsel of the Department of the Army**

Ms. Alissa M. Starzak was appointed as the 21st General Counsel of the Department of the Army by President Obama on December 23, 2015, after confirmation by the Senate. As General Counsel of the Army, she is the primary legal counsel to the Secretary of the Army and the Army's chief legal officer. In addition, she serves as the Army's designated agency ethics official and is responsible for management and oversight of the worldwide Army Ethics Program.

Ms. Starzak graduated from Amherst College (magna cum laude) and the University of Chicago Law School (with honors). In law school, she served as a Comment Editor of the University of Chicago Law Review. Upon graduation, she clerked for The Honorable E. Grady Jolly, U.S. Court of Appeals for the Fifth Circuit.

After her clerkship, Ms. Starzak joined the law firm of O'Melveny & Myers LLP. While at O'Melveny, she handled internal investigations relating to compliance with laws and regulations on money laundering, bribery, and export control, as well as litigation on a diverse array of subjects.

In 2005, Ms. Starzak joined the CIA as an Assistant General Counsel in the Litigation Division of the Office of General Counsel. In 2007, Ms. Starzak accepted a position as Counsel to the Senate Select Committee on Intelligence under Chairman John D. Rockefeller, IV. After Senator Dianne Feinstein assumed the Chairmanship of the Committee in 2009, Ms. Starzak remained as Counsel to the Committee until May 2011. During her time at the Committee, Ms. Starzak conducted oversight of all elements of the Intelligence Community, focusing on legal issues relating to intelligence collection and covert action.

From May 2011 until her appointment as General Counsel of the Army, Ms. Starzak served as the Deputy General Counsel (Legislation) of the U.S. Department of Defense. In this position, Ms. Starzak advised the General Counsel of the Department of Defense on legal issues with a legislative or congressional component. She also provided legal advice to the Assistant Secretary of Defense for Legislative Affairs, managing an office of attorneys responsible for developing the Department of Defense legislative program.

Ms. Starzak is a member of the District of Columbia Bar, the California Bar, and the bars of various Courts of Appeals.

**Ms. Teresa (Terri) McKay**  
**Director, Defense Finance and Accounting Service**

Ms. Teresa (Terri) McKay was sworn in as the Director of the Defense Finance and Accounting Service (DFAS) on September 15, 2008.

Mrs. McKay leads the day-to-day accounting and finance activities of the Department of Defense (DoD). Each year, the agency disburses over \$579 billion by processing 161.8 million pay transactions for 6.6 million military personnel, federal civilian employees, military retirees and annuitants; 10.3 million commercial invoices; and 6 million travel vouchers and settlements. Responsible for 1,232 active DoD appropriations, DFAS is the trust fund manager for \$403 billion in foreign military sales and \$700 billion in military retirement and health benefit funds. DFAS employs about 12,000 DoD civilian and military personnel at 10 locations throughout the United States, Europe and the Pacific.

Mrs. McKay has served in a variety of previous assignments providing her a strong foundation for her current role. Mrs. McKay served as the DFAS Principal Deputy Director from August 2006 until she became the agency's director. While a military spouse, she was also a DFAS customer serving with the Defense Commissary Agency. In addition, Mrs. McKay was a DFAS employee in Columbus, Ohio and Arlington, Virginia, as well as a policymaker for DoD while serving as the Defense Department's Deputy Chief Financial Officer, the principal advisor to the Under Secretary of Defense Comptroller)/ Chief Financial Officer for accounting and finance matters.

A Certified Public Accountant, a Certified Government Financial Manager and a Certified Management Accountant, Mrs. McKay earned her bachelor's degree from Ferris State University and her master's degree in business administration from Auburn University at Montgomery.

Mrs. McKay is a leader committed to improving financial management through improved business processes and incorporating accounting, finance and internal control requirements for strong DoD end-to-end business processes. Mrs. McKay epitomizes the DFAS motto of Proudly Serving America's Heroes.





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**WITNESS RESPONSES TO QUESTIONS ASKED DURING  
THE HEARING**

DECEMBER 7, 2016

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#### **RESPONSE TO QUESTION SUBMITTED BY MS. SPEIER**

Mr. LEVINE. Currently, Soldiers are directly contacting the Soldier Incentives Assistance Center (SIAC), which is part of the California National Guard created to assist affected soldiers, to access the following four types of trained and certified financial counseling resources listed below. Indeed, it is the primary contact point for affected Soldiers to be directed to the most suitable and available of the four types of counseling resources. The counselors receive Office of the Secretary of Defense (OSD)-approved training and meet fiduciary standards (i.e., best interests of member).

1. Personal Financial Management (PFM) Services: The Military Services provide full-time PFM services at active duty installations to meet the long-term financial readiness needs of Service members. National Guard (NG) members and families may utilize PFM services.

2. Personal Financial Counselors (PFCs): OSD provides accredited PFCs by request to meet the financial readiness needs of the active and reserve component. "On demand" PFCs are available for short-term requirements of 3 days or less. "Surge" PFCs are available for 30 to 90 days. "Rotational" PFCs are available for medium-term requirements of 180 days to 365 days. PFCs provide in-person counseling only.

3. Military OneSource: Military OneSource (MOS) provides a referral service to all Service members and family members (any status) to in-person, telephone, or online (chat) financial counseling. Additionally, MOS maintains a database of all counseling resources nationwide (i.e., PFM and PFC), which users can search by zip code to find the nearest counselor.

4. Community Partners: National Guard State Family Program Directors (SFPDs) and Airman and Family Readiness Program Managers (AFRPMs) sustain referral networks of financial professionals willing to donate time or reduce fees to counsel NG members and families. These community partners comply with DODI 1344.07, "Personal Commercial Solicitation on DOD Installations," rules and requirements.

Additionally, The California Army National Guard (CAARNG) is working directly with the California Franchise Tax Board to provide assistance based on pending legislation.

The Army National Guard (ARNG) is experienced in handling the entire spectrum of Soldier financial issues. Typically, the majority of phone calls taken by our Family Assistance Centers (FACs) involve financial issues. The 17 FACs in California assist Soldiers in finding local resources for everything from paying the rent and buying groceries to long-term debt and credit management. [See page 33.]

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