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WAIVER OF CLAIMS

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SUBCOMMITTEE NO. 2

COMMITTEE ON THE JUDICIARY HOUSE OF REPRESENTATIVES

NINETY-FIRST CONGRESS

FIRST SESSION

ON

H.R. 7363

TO AMEND TITLE 10, UNITED STATES CODE, TO AUTHORIZE THE WAIVER, IN CERTAIN CASES OF CLAIMS OF THE UNITED STATES ARISING OUT OF ERRONEOUS PAYMENTS OF PAY OR ALLOWANCES TO A CIVILIAN OFFICER OR EMPLOYEE OF MILITARY DEPARTMENTS AND THE COAST GUARD OR A MEMBER OR FORMER MEMBER OF THE ARMED FORCES, INCLUDING RETIRED OR RESERVE AND NATIONAL GUARD PERSONNEL, AND FOR OTHER PURPOSES

MAY 21, 1969

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WAIVER OF CLAIMS

WEDNESDAY, MAY 21, 1969

HOUSE OF REPRESENTATIVES,
SUBCOMMITTEE No. 2
OF THE COMMITTEE ON THE JUDICIARY,
Washington, D.C.

The subcommittee met at 10 a.m., pursuant to call, in room 2226, Rayburn House Office Building, Hon. Harold D. Donohue (chairman of the subcommittee) presiding.

Present: Representatives Donohue, Mann, and Coughlin.

Staff members present: William P. Shattuck, counsel and Donald Benn, associate counsel.

Mr. DONOHUE. The meeting will be in order.

This morning we have a bill, H.R. 7363 scheduled for hearing. We will hear witnesses representing the Department of Defense and the General Accounting Office. H.R. 7363 is a bill which was drafted to extend to military personnel the same benefits concerning the waiver of erroneous payments which are now provided for civilian employees of the Government.

In the last Congress, Public Law 90-616 provided this waiver authority for civilian employees. The bill, H.R. 7363 would extend this authority to members or former members of the Armed Forces including retired or reserve and National Guard personnel.

(Without objection, H.R. 7363 will be included in the record at this point:)

[H.R. 7363, 91st Cong., first sess.]

A BILL To amend title 10, United States Code, to authorize the waiver, in certain cases of claims of the United States arising out of erroneous payments of pay or allowances to a civilian officer or employee of military departments and the Coast Guard or a member or former member of the armed forces, including retired or reserve and National Guard personnel, and for other purposes

Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled, That (a) chapter 165 of title 10, United States Code, is amended by adding at the end thereof the following new section:

“§ 2774. Claims for overpayment of pay and allowances

“(a) When the collection of a claim of the United States based on an erroneous payment of pay or allowances on or after July 1, 1960, to a civilian officer or employee of a military department or the Coast Guard, or a member or former member of the armed forces, including retired or reserve and National Guard personnel, is against equity and good conscience and not in the best interests of the United States, the claim may be waived in whole or in part by—

“(1) the Comptroller General of the United States; or

“(2) the Secretary of the department concerned when—

“(A) the claim is in an amount aggregating not more than \$500;

“(B) the claim is not the subject of an exception made by the Comptroller General in the account of any accountable official; and

“(C) the waiver is made in accordance with standards which the Comptroller General shall prescribe.

(1)

"(b) The Comptroller General or the Secretary of the department concerned, as the case may be, may not exercise his authority under this section to waive any claim—

"(1) if, in his opinion, there exists, in connection with the claim an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the employee or any other person having an interest in obtaining a waiver of the claim; or

"(2) after the expiration of three years immediately following the date on which the erroneous payment of pay was discovered or three years immediately following the effective date of this section, whichever is later.

"(c) A person who has repaid to the United States all or part of the amount of a claim, with respect to which a waiver is granted under this section, is entitled, to the extent of the waiver, to refund, by the employing agency at the time of the erroneous payment, of the amount repaid to the United States, if he applies to that employing agency for that refund within two years following the effective date of the waiver. The employing agency shall pay that refund in accordance with this section.

"(d) In the audit and settlement of the accounts of any accountable officials, full credit shall be given for any amounts with respect to which collection by the United States is waived under this section.

"(e) An erroneous payment, the collection of which is waived under this section, is deemed a valid payment for all purposes.

"(f) This section does not affect any authority under any other statute to litigate, settle, compromise, or waive any claim of the United States".

(b) The table of contents of chapter 165, "Accountability and Responsibility," of title 10, United States Code, is amended by inserting the following new item immediately below item 2773:

"2774. Claims for overpayment of pay and allowances".

Mr. DONOHUE. This is the initial hearing on this legislation. We have received reports from the Comptroller General suggesting some amendments and it is my understanding that the Department of the Air Force on behalf of the Department of Defense will also submit a report suggesting amendments to improve the bill.

We welcome these suggestions. I am sure the testimony we will receive here today will be of assistance and guidance to our subcommittee.

With that brief explanation, we will call as our first witness Mr. John Burns, Associate General Counsel, General Accounting Office.

STATEMENT OF JOHN BURNS, ASSOCIATE GENERAL COUNSEL, GENERAL ACCOUNTING OFFICE; ACCOMPANIED BY JAMES CAMPBELL, ATTORNEY ADVISER AND MILTON WERTZ, ATTORNEY ADVISER AND JOHN E. GAHAGAN, SUPERVISORY AUDITOR, DEFENSE DIVISION, GENERAL ACCOUNTING OFFICE

Mr. BURNS. Good morning, Mr. Chairman.

Mr. Chairman and members of the committee, we appreciate this opportunity for the General Accounting Office to appear before your committee to present our views on H.R. 7363.

My name is John Burns and I am an Associate General Counsel in GAO. Mr. James Campbell, Mr. Milton Wertz, and Mr. John Gahagan, of our office accompany me.

The introduction of H.R. 7363 was a logical result of the enactment by the 90th Congress of Public Law 90-616, approved October 21, 1968, which might be described, in brief, as a waiver and refund of collection law for civilian employees of the Government exclusive, generally, of employees in the legislative and judicial branches.

H.R. 7363 is almost identical, in language, with Public Law 90-616, except for the provisions describing the classes of persons to be benefited.

Obviously its principal purpose is to provide for members and former members of the Armed Forces substantially identical waiver and refund of collection benefits to those provided by Public Law 90-616 for civilian employees.

As stated in the Comptroller General's report on the bill, the General Accounting Office does not disagree with the view that, in connection with recovery of overpayments, military personnel should be on a par with civilian personnel insofar as practicable.

However, we will mention certain matters to your committee which we believe suggest the desirability of amending H.R. 7363 before it is seriously considered for enactment. Language changes to effect our suggested amendments will be offered after we have discussed the reasons for such amendments.

Our experience, and reports we have received from our divisions and regional offices, indicate that the cases of erroneous payments of pay and allowances to military personnel are much more numerous and involve far greater sums of money than the cases of erroneous payments of pay to civilian personnel.

The Director of our claims division estimates, on the basis of day-to-day observations of the receipt of the so-called administratively uncollectable debt cases in his division over the years, that there have been 8 to 10 times as many such cases involving erroneous payments to military personnel as there have been involving erroneous payments to civilian personnel.

Our Denver regional office has reported that in a 3-year period (fiscal years 1966, 1967, and 1968) collections of erroneous payments have been made from former Air Force members alone of \$4,178,105 on 33,067 debt cases. The Air Force, incidentally, does not have the highest rate of error among the services in paying uniformed personnel.

The military services themselves doubtless could furnish your committee with more complete figures as to volume of overpayments and collections since July 1, 1960.

In addition, the turnover of military personnel is far greater than the turnover of civilian employees. Doubtless a large percentage of the military personnel who were overpaid, and refunded the overpayments involved, between July 1, 1960, and the present time, are no longer in the military service and, if they could be located, would not be justified in asserting that they have an equitable right to refund of the collections so made from them.

Accordingly, we are suggesting that, if your committee feels legislation along the lines of H.R. 7363 should be enacted, the retroactive aspects of the bill should be somewhat different than those of Public Law 90-616.

Under the language changes which we are suggesting, waiver could be made of any erroneous payment of the type covered by the law, regardless of when such payment may have been made, provided its discovery occurs, or has occurred, within 3 years prior to the date of enactment of H.R. 7363 or at any time thereafter.

The language of H.R. 7363, in recognition of the fact that military personnel receive basic pay and, much of the time, regular nontravel

allowances which are considered a part of regular military compensation, contains the term pay or allowances notwithstanding that the corresponding term in Public Law 90-616 is simply "pay."

We do not disagree with this approach but believe that since Public Law 90-616 is not considered to apply to allowances, including travel and transportation allowances, consideration might well be given to excluding travel and transportation allowances from the coverage of H.R. 7363.

Since civilian officers or employees of the military departments and of the Coast Guard are covered by, and entitled to, the benefits of Public Law 90-616, we believe that no reference should be made to them in H.R. 7363.

Lastly, it would appear that the coverage of the bill should be extended to commissioned personnel of the Environmental Science Services Administration (Coast and Geodetic Survey) and Public Health Service. This could be done by changing the term "armed forces" in line 4, page 2, to "uniformed services."

If your committee should see fit to adopt the amendments which the General Accounting Office suggests, the first 4 lines on page 2 of the bill would be stricken and the following substituted therefor:

based on an erroneous payment of pay or allowances, other than travel and transportation allowances, made before or after the date of this act to a member or former member of the uniformed services including retired or

And the 14 words on lines 5 and 6, page 3 of the bill which follow the word "discovered" would be stricken.

The adoption of these changes would necessitate some changes in the title of the bill and would make it desirable to add a comma and the words "including a secretary of a military department," at the end of line 10, page 2 of the bill.

For purposes of clarification, we also would substitute for the last word (the word "employee") on page 2 of the bill the words "member or former member" and strike out the words "of pay" in lines 4 and 5, page 3, of the bill.

While the complexity of the laws and the multiplicity of classes of military pay and allowances make difficult the maintenance of a low rate of error in paying uniformed personnel, we nevertheless believe that there is room for considerable improvement by the military services in their fiscal and personnel practices and procedures and that the rate of error in paying military personnel continues to be too high.

We, accordingly, express the hope that, if H.R. 7363 is enacted, the military services will feel that there is a greater need than ever to adopt proper measures to insure that erroneous payments of military pay and allowances are minimized.

If you, Mr. Chairman, or any member of the committee should have any questions we will be happy to try to answer them.

Mr. DONOHUE. Mr. Mann, have you?

Mr. MANN. Yes, Mr. Chairman. Mr. Burns, on the first proposed amendment to subsection (a) here, the one you have set forth the precise language on, in eliminating "other than travel and transportation allowances," aren't we saying there, if we add that in, they may not be waived with regard to travel and transportation allowances?

Mr. BURNS. Yes.

Mr. MANN. I recognize as you indicate this is in the civilian bill, but the term allowance is not in the civilian bill.

Mr. BURNS. It is not in the civilian bill so they don't get the travel or transportation overpayments waived.

Mr. MANN. It is just for the purposes of making it equal to the civilian bill?

Mr. BURNS. As near as we could make it. We recognize that military personnel have regular recurring allowances, almost all military personnel, and they have many other "one-shot," you might call it, allowances such as a reenlistment bonus, severance pay and that sort of thing.

So the military has a great number of different classes of allowances and the civilians have very few allowances, as a matter of fact. The average civilian employee is not concerned with allowances.

When the civilian law was passed, Public Law 90-616, all of the cases that the House Post Office and Civil Service Committee had before it at that time I believe involved straight pay.

They didn't have any travel or transportation allowances for consideration; that is, before the committee at that time, the immediate cases that were considered in connection with it.

Mr. MANN. Fine, you have answered my question with reference to that. Frankly, I am a little bit confused here about the periods of claims and the amendment you propose striking out all three. That confuses me further.

Suppose you try to tell us briefly—

Mr. BURNS. Yes, sir.

Under the civilian law you have this retroactive date of July 1, 1960, so if a payment was made at any time on or after July 1, 1960, it can be waived within 3 years from October 21, 1968, the date of this act.

Now we would hope to cut out a large part of that retroactivity for some of the reasons we have indicated, but to recognize some period of retroactivity and to take the provisions now in the bill and work with them, now in the law, rather, we concluded that as far as the date of the erroneous payment is concerned there are certain cases of military personnel where a man might be overpaid, and civilians, too, but a man might be overpaid for 20 years before they discover it and then he owes a huge sum of money.

That kind of a case you might want to relieve, because the man probably wouldn't be able to pay it back anyway. So as far as the date of payment is concerned we wouldn't have any limit. In other words, that would go back even before July 1, 1960.

However the erroneous payment has to be discovered within the last 3 years in order to be waivable. So under our language if the overpayment was discovered within the last 3 years it could then be waived, regardless of when it was made but we would not have a retroactivity to July 1, 1960, under which erroneous payments made on or after that date could be waived for 3 years after the date of the new law.

Now as far as the refund of the collections is concerned, as I understand it, under Public Law 90-616 everybody from whom a collection has been made who gets a waiver, even though it is already a closed proposition—in other words, he has been charged a certain amount, it is collected from him, and closed as far as he is concerned—he can come along 5 years later if within 3 years after date of Public Law

90-616, get a waiver and then apply for a refund within 2 years and get his money. Of course, with all of these out-of-service military personnel that kind of retroactivity would present a great problem.

As far as applying for the refund of the collection is concerned the military man would have 2 years from the date of the waiver, the same as is provided under the civilian law.

Mr. MANN. I recognize that the civilian law has been in effect less than 6 or 7 months. Let us assume that the person is in the process of repaying and then the Department issues a waiver for the balance, they feel free to do that, don't they?

Mr. BURNS. Yes, I think so.

Mr. MANN. Thereby as a condition of waiving the balance they would not permit him a refund of the amount already paid, do they consider themselves as having that authority in issuing waivers?

Mr. BURNS. Mr. Campbell might have a better idea on that; he has worked with the civilian bill.

Mr. CAMPBELL. The way the law reads an agency may waive all or part of the indebtedness.

Mr. MANN. Is that language in here?

Mr. CAMPBELL. It is in the civilian bill. I think it is in this bill also. So by waiving only part of the indebtedness it would preclude a man from recovering any greater amount than has been waived.

Mr. MANN. I just wanted to make sure that we didn't indicate that they were entitled to a refund if any waiver was effected, even though it might apply to the unpaid balance.

Mr. CAMPBELL. They are entitled to amounts paid in liquidation of any claim which has been waived. But if they waive a portion of a claim they could get recovery on only that portion that is waived.

Mr. BURNS. Generally, as to a partial waiver the same principle would apply to the whole thing.

Of course, there are exceptions and that is why the partial waiver is permitted. I suppose in connection with the average payments the same principle would apply to the whole as applied to any part of it. Wouldn't that be true, Jim?

Mr. CAMPBELL. Yes, you would apply the same criteria.

Mr. BURNS. There would be cases where you might have certain principles applicable to part of the debt and other principles applicable to part of the debt and other principles applicable to the other part.

Mr. MANN. That is all I have.

Mr. DONOHUE. Under the civilian law, Public Law 90-616, that was enacted last October?

Mr. BURNS. Yes, sir.

Mr. DONOHUE. How many waivers have been granted since that date?

Mr. BURNS. I don't know what the departments have done, sir, because we don't have complete statistics on that. For the GAO, our Claims Division, through April 30, I have the papers here. It is somewhere between 200 and 300 cases they have had through April 30, under the civilian bill.

Mr. DONOHUE. Are those 300 cases where the overpayment has been waived?

Mr. BURNS. Yes, sir. That is just GAO.

Mr. DONOHUE. Yes, just GAO.

What reasons are usually advanced for granting the waiver?

Mr. BURNS. Jim, would you care to comment on that?

Mr. CAMPBELL. Under Public Law 90-616 waiver is normally granted unless there is some justifiable reasons for not granting it such as fraud, misrepresentation, fault, or lack of good faith on the part of the employee when he received the payment.

In the absence of any of those conditions the policy has been very liberal and in most cases have been waived. There has been at least one case we have had where the employee could not be said to have been at fault because he did everything he could do to prevent the overpayment from recurring by notifying the paying activities in the office and advising them that they were committing errors. Moreover he was quite prompt in doing that.

However, we didn't waive in that case because we felt that the employee, at the time he received the overpayments, knew they were overpayments and he could not reasonably expect to be permitted to keep and spend those overpayments without paying them back.

Mr. DONOHUE. Wouldn't that be so in most cases where a person received more money than he was entitled to?

Wouldn't he know about it?

Mr. CAMPBELL. We think in most cases he probably would not until he was put on notice.

Mr. DONOHUE. Why?

Mr. CAMPBELL. Because of the complexity of the pay laws, the administrative office makes errors in construing them which are subsequently determined to be errors through the decisions of the Comptroller General or audit action of the Agency or the GAO and the man has no reason to believe that the errors have been committed.

They are the type cases that generally are not simply errors in computation. If a man, for instance, just got a substantially larger paycheck one time due to a calculating error I think in that case he would reasonably be expected to know he had received an overpayment.

But where the errors result from constructions of the law and misinterpretations of law he has no reason to believe that he has been overpaid.

Mr. BURNS. But if a man got a bigger paycheck this month than he got last month, considerably bigger, and he could not explain that in any way by any personnel action that had been taken in connection with him, it seems to me the burden would be on him to inquire why is this month's check so much bigger than last month's.

The reasonable man would do this and you would take that into consideration and say since a reasonable man would do it that an erroneous payment would not be waived, if the payee didn't do it.

I heard of a civilian case where the man went in and said I have been overpaid and the administrative office said "No, you haven't; keep the money."

So he did all he could do and he spent the money. Later it turns out that he was overpaid. In that case he did all that he could do. But the principal way that you could administer the present law to keep down the number of waivers would be to apply that reasonable man principle fairly strictly.

In the military services, as I understand, in the Army for example, each time a man gets paid he gets a copy of the voucher with all the entries on it. So, he has something to check there and see what is on it.

If the next month he gets more money or less money and the voucher that he gets accompanying that is different, or if there is a discrepancy between the payment and the voucher then he is going to inquire about it.

It seems to me that a reasonable man would be expected to inquire in those circumstances. As I see it, that would be the one way that you could keep down the number of waivers to within a reasonable area.

Mr. DONOHUE. Is the issuance of these vouchers something new?

Mr. BURNS. In the Army they have had it for 10 years or more—Mr. Gahagan says 7 or 8 years—but the Navy and Air Force don't have it yet. Under the joint uniform military pay system they all would have it. That system is in the process of being perfected and they hope to adopt it within the next year or two.

Mr. DONOHUE. If there was a discrepancy between the previous month's voucher and the one this month, would it be incumbent upon the serviceman to inquire further—would that put him on notice?

Mr. BURNS. I would think so, sir.

Mr. DONOHUE. And if he failed to do anything about it, would that be construed in the opinion of your office as lack of good faith?

Mr. BURNS. Not lack of good faith, necessarily, but you might call it constructive notice. It might not be actually bad faith, but if the reasonable man should have done that and he didn't do it then possibly that would be construed in that way.

Under the civilian cases that have been submitted, I don't believe much of that has come up, sir, so we haven't had much experience in that area up to this point. I don't believe it has, has it, Jim?

Mr. CAMPBELL. No, the majority of the cases that we have had have resulted from misinterpretation of law giving rise to the overpayment. A few cases like the one you just suggested would indicate if a man had constructive notice then he couldn't be said to have received the money in good conscience and equity without notifying someone and it would be a proper basis for refusing to waive.

But I think it is appropriate to point out at this time that each of these cases has to be decided strictly on its own facts and circumstances. They are all a little different.

I would not like to say that we could lay down any general rule that would apply in all these cases because the facts may vary apparently insignificantly, but when you get into it, it may be that the man had no notice.

We have to consider each one individually and decide it on its own basis and set of facts.

Mr. DONOHUE. The number of cases you have considered since last October you say you have invariably granted waivers?

Mr. CAMPBELL. I don't say invariably, sir. I say in a majority of cases I would say we have granted waivers.

Mr. DONOHUE. A majority to what extent?

Mr. BURNS. Here are the figures, Mr. Chairman.

Recapitulation of actions by GAO under Public Law 90-616 as of April 7, 1969, waived, number of individuals, 210, waived in part, 13, waiver denied in whole, nine, or in part, 13, that is total denials of 22 and referred to department or agency, 19, on hand April 7, 113.

Mr. DONOHUE. How many cases have come before you since that date?

Mr. BURNS. The total here, 274 were handled and they had 113 on hand remaining to be handled as of April 7. For the month of April, through April 30, here is the list, No. 31.

Number of cases waived, 18; one case waived in part; and number of cases denied, 12. I asked Mr. Howard, Director of our Claims Division what was the basis for the denial of these denied cases generally and he said generally it was just that the man wasn't under the law, it was just a case that didn't come under the law.

Mr. DONOHUE. In other words, out of the close to 300 cases that came before GAO you only denied waivers to 12?

Mr. BURNS. That was in the month of April.

Mr. DONOHUE. I mean since last October.

Mr. BURNS. There is a little bit of overlap here. This was as of April 7 and this is for the month of April.

Mr. MANN. They had denied only nine out of about 250 and partially denied 13 and granted 210 and the others fell into different categories?

Mr. BURNS. The outside number of cases denied in whole or in part, and I say the outside number because there seems to be a 1-week overlap, that would be 34.

Mr. DONOHUE. Thirty-four were denied.

Mr. BURNS. Right.

Mr. DONOHUE. Out of an overall number of how many?

Mr. BURNS. Out of an overall number of about 270 or 280, 34 were denied.

Mr. DONOHUE. You granted the waivers in a majority of those cases because you felt that the Government was wrong rather than the individuals?

Mr. BURNS. In almost every erroneous payment case there is a mistake on the part of either the personnel people or the finance people of the Government.

Mr. DONOHUE. I was just going to ask you were those people employed by the Government?

Mr. BURNS. Yes, sir, that is right. In practically every case unless there is fraud or something like that, it is just a mistake on the part of the people who make the payments.

Mr. DONOHUE. Prior to the enactment of Public Law 90-616, did you have any discretionary power to waive?

Mr. BURNS. There were a few special situations, for instance under the Dependents Assistance Act, there were special cases that were waivable under that act.

In the Veterans' Administration, we didn't have anything to do with that but the Veterans' Administration has waiver authority under their laws.

The principal other laws that entered into this picture somewhat were the so-called remission statutes that the armed services have. They have had these laws since, I believe, 1928. They had a remissions statute. That statute was passed originally to let them remit the liability for lost property, that is if a soldier lost a gun or drove a truck off a cliff.

Mr. DONOHUE. What I have in mind is the thrust of this bill, pay, travel allowance.

Mr. BURNS. Those remission statutes were not used for this pay for many years but they started using them in erroneous payment cases to some extent 10 or 15 years ago.

Mr. DONOHUE. That is right.

Now, am I correct in understanding that prior to the enactment of Public Law 90-616 all agencies referred these overpayment cases to GAO?

Mr. BURNS. No, sir, under the regulations they were supposed to attempt administrative collection of the overpayments. As to any identified overpayments they had regular procedures that they were to go through and attempt to collect.

Now when they got to a certain point in their collection procedure where for purposes of description they called a claim administratively uncollectable—that doesn't mean it is positively uncollectable as you might know it in a lawsuit but where certain steps have been taken and collection was not made—it was labeled administratively uncollectable.

It was then sent to GAO for further collection action. But a great many of them were handled administratively and collections made administratively.

Mr. DONOHUE. From your office it was referred to the Department of Justice?

Mr. BURNS. If a suit was necessary, they would be referred to the Department of Justice, yes, sir.

Mr. DONOHUE. Once the agencies determined they were administratively uncollectable then they were referred to your office, and would you then have any discretion on your part for waiver?

Mr. BURNS. No, sir, we could not waive.

Under the Collection of Claims Act, of course, there is authority for compromise and suspension and termination of claims by the Government and that might come into the picture to some extent. But that authority is certainly not equal to the authority for waiver.

Mr. DONOHUE. What is the Collection of Claims Act, briefly?

Mr. BURNS. I can probably make it brief by referring to the headings in the standards that they issued under that act. This is under the regulations issued jointly by the Comptroller General and the Attorney General and part 102 is headed, "Standards for the Administrative Collection of Claims," then 103, "Standards for the Compromise of Claims," and they could compromise if certain conditions existed as set out in the regulations; and then they had "Standards for Suspending or Terminating Collection Action," and those were the principal things that could be done.

But the Department generally found that there was still an area that couldn't be taken care of, apparently, the way they wanted to take care of them under the Collection of Claims Act.

Mr. SHATTUCK. Was not the difficulty that in administering the Collection of Claims Act it was held that it had to be determined that the indebtedness was in fact not collectable?

Mr. BURNS. Pretty nearly.

Mr. CAMPBELL. That is about it, as I understand it. If there is no practical means of effectuating the collection then it could be compromised or abandoned under the Collection of Claims Act.

Mr. Chairman, I might point out, too, that in connection with a lot of these waiver cases in the civilian area a good percentage of those cases involved employees who were named in private relief bills which were presently or had been pending in at least the House Judiciary Committee.

The bill involving the greatest number of employees was one that related to overpayments made at Kelly Air Force Base. I think there were approximately 183 employees involved in that single bill.

We granted waivers in all of those cases. You must remember that during the initial period under the civilian law you could expect a substantially large number of cases that come in which you would not ordinarily have because of the retroactive effect of the act.

Now as normal operations proceed and you get on a current basis I don't suspect that there will be any large volume of overpayments at all that would be considered for waiver. But this thing goes back nearly 10 years now to July 1, 1960, on the civilian side. I think that accounts maybe for a considerable portion of the volume that we have had to date.

Mr. BURNS. What Mr. Campbell is saying is that we wouldn't expect that there would be a continuing volume of civilian cases. But we would expect, if this law were extended to the military, that there would be a very large volume of military cases requiring consideration for waiver.

Mr. DONOHUE. Having that in mind, in your statement you referred to a situation that developed in your Denver regional office.

Mr. BURNS. That was just an example, sir.

Mr. DONOHUE. And that same condition prevails in other regions?

Mr. BURNS. Yes, sir, to maybe an even greater extent.

Mr. DONOHUE. Over a 3-year period your office or some office collected \$4,178,105 because of overpayments?

Mr. BURNS. Yes, sir.

Mr. DONOHUE. Now if the same criteria was applied and you granted waivers in most of those cases it would result in the Government having to pay back over \$3 million, wouldn't it?

Mr. BURNS. Yes, sir.

Mr. DONOHUE. That only applies so far as the Denver region?

Mr. BURNS. This was the Air Force.

Mr. SHATTUCK. You do not intend to infer that this group of overpayments would all be waived?

Mr. BURNS. It doesn't mean they would all be waived but they would be subject to consideration for waiver and it would depend on how the standards were applied and how strict it worked out.

That would be a matter of trial and error as to how it worked out.

Mr. DONOHUE. If the same standards were applied to military personnel that have been applied as far as civilian personnel are concerned, it would result in over \$3 million being paid back to those that were working within the Denver region?

Mr. BURNS. My guess is, sir, that it might be, but I would not say positively because the situation in the military—

Mr. DONOHUE. How many regions are there in the country?

Mr. BURNS. This regional office in Denver has under it the Air Force Accounting and Finance Center so that is the whole Air Force and then you would have Indianapolis for the Army and Cleveland for the Navy and Kansas City for the Marine Corps, and I guess, Washington for the Coast Guard and if you applied it to uniformed services that would be Coast and Geodetic Survey and Public Health Service in Washington.

Now this for the Air Force figure this was just an example for a 3-year period that they came up with. We didn't have that comparable figure from Indianapolis and Cleveland or Kansas City. But undoubtedly the military services can give you much more complete figures than that.

We simply were trying to point that out as an example. For instance on the retroactivity if you wanted to project that 3 years back to July 1, 1960, and then brought into the picture not only the former Air Force personnel but the present Air Force personnel then you would have much larger figures, I suppose, both as to money and number of cases and you would have a comparable situation, I suppose, for the Army, Navy, Marine Corps, and Coast Guard.

Mr. DONOHUE. I might conclude that it would run into millions and millions of dollars?

Mr. BURNS. My guess would be, yes, sir.

Mr. DONOHUE. And I think in your statement you suggested that the retroactive features should not go back to July 1, 1960, but there should be some retroactive provision in there?

Mr. BURNS. If the committee decided to have no retroactivity we certainly would not have any argument with that.

Mr. DONOHUE. In other words, it wouldn't go back beyond the effective date of the law should it be so defined. Further, this legislation is merely permissive; that is, it would just say you may do it. It isn't mandatory that you do it?

Mr. BURNS. When you have a statute which says you may and the people meet the criteria then you would be arbitrary if you didn't meet the criteria then you would be arbitrary if you didn't take some action so I don't know that the fact that it is permissive would make that much difference because it seems to me that you would be under an obligation to consider cases for waiver if you had the authority to do it and if it looked like the case might meet the criteria for it.

Mr. DONOHUE. Is there any such thing or has it ever been the practice of the military to exact a bond of people handling financial matters to take care of administrative errors?

Mr. BURNS. I think they are under bond, yes, sir. They are under bond.

Mr. MANN. Only for fraud.

Mr. BURNS. Yes, only for fraud.

Mr. DONOHUE. Do you have any questions, Mr. Coughlin?

Mr. COUGHLIN. I have a couple of questions on the \$500 ceiling in connection with waiver by the Secretary of a department. If there were a \$2,000 claim, does that mean they could waive the first \$500?

Mr. BURNS. No, sir, it would come to GAO for consideration of waiver.

Mr. COUGHLIN. Any claim for an excess of \$500 would have to go to GAO?

Mr. BURNS. Yes, sir. I understand a great majority of the claims would be for less than \$500.

Mr. COUGHLIN. Do you have any feeling for what percentage are for less than \$500?

Mr. BURNS. This is just based on my recollection, maybe some of the other people have some better idea. When we talked about this before,

various guesses were made, let us say, and I think as I recall they figured it in the neighborhood of maybe 80 percent would be less than \$500. Mr. Gahagan, do you have any different view on that?

Mr. GAHAGAN. I believe it would be nearer 90 percent.

Mr. BURNS. Our answer would be that it would be 80 to 90 percent, very likely, or our guess would be that it would be 80 to 90 percent of the cases that would be under \$500.

Mr. COUGHLIN. Mostly these overpayments are because of difference in interpretation of the particular administrative provision?

Mr. BURNS. Not necessarily.

Mr. Gahagan is in our Defense Division and he might have a better idea as to the answer to that question.

Mr. GAHAGAN. Would you please repeat the question, sir?

Mr. COUGHLIN. Whether the majority of the overpayments were caused by the difference in interpretation.

Mr. GAHAGAN. Yes, I would say due to a misinterpretation of the law or the regulations issued pursuant to the law.

Mr. COUGHLIN. This is a difference in interpretation between the GAO and the service themselves?

Mr. BURNS. No, sir. Most of the time, not, no.

It would not be a difference between GAO and the service. It would be a misapplication of the regulation.

Mr. GAHAGAN. By the clerks that make up the payrolls.

Mr. COUGHLIN. A mathematical misinterpretation?

Mr. GAHAGAN. Generally a misapplication of the regulations. I would say relatively very few errors occur strictly as mechanical errors due to an error in multiplication or addition or things of that kind. Most of the errors that occur are due to misinterpretation or misapplication of regulations due to unfamiliarity with them by personnel clerks that are preparing pay actions.

Mr. COUGHLIN. Where is this picked up?

Mr. GAHAGAN. It is picked up in postaudits mostly by the administrative audit of the Department or by GAO audit.

Mr. DONOHUE. Do you have any further questions?

Mr. MANN. No, sir. Thank you.

Mr. DONOHUE. What is meant by subsection (b) starting on line 14 of page 2?

Mr. BURNS. That simply would exclude the Secretary of the Department concerned from waiving a claim that had been the subject of an exception—that means of a suspension of credit in the disbursing officer's account—made by the Comptroller General.

In other words, if the exception is taken by the GAO this simply would exclude the Secretary from acting on that kind of a case and let the GAO finish with the case that it had started.

Mr. DONOHUE. What would be the basis for the exception?

Mr. BURNS. The exception would be issued if they found an erroneous payment. That means they just took an exception to the erroneous payment.

Mr. MANN. It would also cover those where there is some possibility of liability or misconduct involved in the account?

Mr. BURNS. That could happen: yes, sir.

Mr. MANN. By the accounting officials?

Mr. BURNS. Yes, sir.

Mr. DONOHUE. Is it incumbent upon the Secretary of each of these departments to report to you when he waives the pay grant at their level?

Mr. CAMPBELL. Under the civilian records, yes; they have to keep a record of what they grant.

Mr. BURNS. As to records of waiver, the regulations issued under Public Law 90-616 provides that "Each executive agency shall maintain a register which shall show the disposition of each claim of the United States for erroneous payment of pay considered for waiver under the provisions of these regulations, which register together with the written record as described in section 202.6 of these regulations shall be available for review by the General Accounting Office."

Mr. SHATTUCK. Since the regulation authorization language is the same in this bill as it is in Public Law 90-616, wouldn't it be reasonable to assume you would have the same regulation for the military?

Mr. CAMPBELL. I would think a comparable regulation, yes.

Mr. DONOHUE. Do I understand that the person to whom the overpayment was made must request the waiver of repayment within a certain period after it is discovered?

Mr. BURNS. Within 2 years.

Mr. CAMPBELL. That is not exactly the way it works.

They may request it but the Comptroller General or the head of an agency on his own initiative may waive the indebtedness. But there is a requirement that once the indebtedness is waived then if the man wants a refund he must come within 2 years and make a request to the employing agency making the overpayment for refunds of any amounts he has paid in liquidation of the erroneous payment.

Mr. DONOHUE. Let us assume this case, that an individual is notified that he has been overpaid and some effort is made on the part of the agency involved or on the part of your office to make a demand upon him for the overpayment and he permits a certain amount of time to go by before making a request for a waiver.

Is there any time limit within which he should make that request for the waiver?

Mr. BURNS. Three years.

Mr. CAMPBELL. It is not necessarily on him. An agency can't waive after the expiration of 3 years from the date of discovery of the error.

Mr. DONOHUE. Which amounts to the same thing.

Are there any further questions of these gentlemen?

If not, we want to thank you for appearing here before us this morning.

Before you leave, counsel has a question.

Mr. SHATTUCK. Just pursuing the question posed by the chairman concerning the exception made by the GAO, under the subsection 2(b), if in the course of an audit, a postaudit by the GAO you uncover a misinterpretation of the regulations causing overpayments in many cases, those cases may be a subject of waiver by the GAO only and not by the Department?

Mr. BURNS. Yes.

Mr. SHATTUCK. So in those cases, as perhaps Kelly Air Force Base situation, I am not quite sure whether that was uncovered in a GAO audit, but if that were the case then it only could come to you?

Mr. BURNS. Yes, sir.

Mr. CAMPBELL. John, I think it may require more than just an informal inquiry.

Mr. MANN. Notice of an exception.

Mr. CAMPBELL. In the case of the Kelly Air Force Base I think what happened is that we may have taken the exception in five, six, or 10 cases, and then on the basis of errors that we found it was suspected that there were errors which were common to a number of other cases so then the Air Force itself made an administrative audit and found that there were similar overpayments in a large number of other cases and they took administrative action to correct them.

We were not involved in them at all. In connection with the waiver action, since there was a bill involved and in view of the time lag between the date of the passage of Public Law 90-616 and the date the standards were issued and the time it would take the Air Force to get started on waiver action we decided it would be an appropriate case for the Comptroller General to exercise the waiver of authority granted under the act.

So we exercised it with respect to all employees covered under the bill regardless of the amount involved whether it was more than \$500 or less than \$500, so we could wrap the entire matter up in one package.

Mr. SHATTUCK. And the GAO was free to do this?

Mr. CAMPBELL. Yes, sir.

Mr. DONOHUE. We will now hear from Mr. Swanson, Deputy Chief, Pay Examination Division of the Air Force Accounting and Finance Center.

STATEMENT OF AGNAR SWANSON, DEPUTY CHIEF, PAY EXAMINATION DIVISION, DIRECTORATE OF EXAMINATION AND SETTLEMENT, AIR FORCE ACCOUNTING AND FINANCE CENTER, DENVER, COLO., ACCOMPANIED BY MAJ. JAMES R. LOVE, CHIEF OF PAY AND TRAVEL DIVISION, FINANCE AND ACCOUNTING, COMPTROLLER OF THE ARMY; MARTHA BEALL, LEGAL ASSISTANT TO JUDGE ADVOCATE, AIR FORCE ACCOUNTING AND FINANCE CENTER; JAMES M. BAYLES, LEGISLATIVE ATTORNEY, OFFICE OF JUDGE ADVOCATE GENERAL, USAF

Mr. SWANSON. I have Miss Martha Beall, Major Love and Mr. Bayles to assist me here, sir.

I am Agnar E. Swanson, Deputy Chief, Pay Examination Division, Directorate of Examination and Settlements, Air Force Accounting and Finance Center.

I appreciate the opportunity to appear before you today to testify on behalf of the Department of Defense on H.R. 7363, 91st Congress.

H.R. 7363 would provide uniform authority to relieve military and civilian personnel of the Armed Forces, the Reserves, Coast Guard and, National Guard of liability to repay claims of the United States arising from erroneous payments of pay and allowances under certain conditions.

The bill follows closely the language in section 5584, title 5, United States Code, enacted by Public Law 90-616, which authorizes the waiver of claims against employees of the Federal Government.

The bill would permit waiver of claims when it is against equity and good conscience and not in the best interest of the United States to require collection. Waiver would not be authorized if there is an indication of fraud, misrepresentation, fault, or lack of good faith on the part of the member or the employee or any other person having an interest in obtaining a waiver of the claim.

The bill would apply to payments made on or after July 1, 1960. The waiver authority must be exercised within 3 years after the erroneous payment was discovered or 3 years after the bill is enacted.

Under Comptroller General standards, the Secretary would be authorized to waive claims not exceeding \$500 and which are not the subject of a Comptroller General exception. Only the Comptroller General could waive claims exceeding \$500 or those which are the subject of a Comptroller General exception.

A person who has repaid a claim which is waived would be entitled to a refund if application is filed within 2 years of the date of the waiver.

The Department of the Air Force, on behalf of the Department of Defense, supports the purpose of H.R. 7363. It is recommended, however, that the amendment to title 10, United States Code, apply only to claims against members of the uniformed services (including former and retired members and members of the Reserves and Coast Guard) and that title 32, United States Code, be amended with respect to the National Guard. Both amendments would apply to claims arising from erroneous payments made before or after the effective date of the bill; however, waiver would not be authorized on claims arising from erroneous payments discovered more than 3 years prior to the date the bill is enacted.

It is also recommended that any change to the authority to waive claims against civilian employees be accomplished by an amendment to title 5, United States Code, to apply to employees of all executive departments.

A draft bill to implement these recommendations has been furnished your committee.

The legislative history of the bill enacted as Public Law 90-616 pointed out that laws governing the compensation system of Federal employees were extremely complex.

Administrative errors in interpreting and applying these laws resulted in erroneous payments which employees received in good faith, unaware they were erroneous.

Collection of these payments was often against equity and good conscience and not in the best interest of the United States. It was concluded that a policy should be established to permit the waiver of claims arising from erroneous payments when the employee was without fault and when his only avenue for relief from repayment was the uncertain path of private relief bills introduced in Congress.

The justification for enactment of Public Law 90-616 is equally applicable, and perhaps more pertinent, to erroneous payments made to members of the Armed Forces. The Comptroller General, in a 1963 report to Congress, stated that the military compensation structure was considerably more complicated than that for civilian employees since military compensation consists of many items of pay and allowances.

He concluded that the number, variety, and complexity of military pay, allowances, and travel benefits provided by law, with voluminous rates and transitory factors, were the primary cause of numerous and recurring errors and erroneous payments.

Under current law, the Secretary may remit indebtedness of enlisted members on active duty if he considers it to be in the best interest of the United States.

Erroneous payments made under the Dependents Assistance Act and in the administration of pay accounts of missing members may be waived under certain conditions. This authority is exercised with extreme care, each case being considered on its own merits.

Except for this authority, there is no authority to administratively relieve members of the Armed Forces of liability to repay erroneous payments regardless of the circumstances under which the payments were made or received.

Based on experience under existing law, we believe the use of the authority in the proposed legislation would be limited but it would make it possible, in meritorious cases, to waive claims against members of the uniformed services under the same conditions that claims against civilian employees may be waived.

The law authorizing waiver of claims arising from erroneous payments of pay made to civilian employees does not define the term "pay."

The Comptroller General standards implementing this law define the term, generally, as basic pay or payments computed on basic pay.

Specifically excluded are payments of expenses for travel and transportation and transportation of household goods. In a recent decision, the Comptroller General held that living quarters allowances constitute allowances as distinguished from pay and could not be waived under the law. This decision is construed as excluding from pay, for waiver purposes, any payments of allowances.

Payment of allowances is authorized under a variety of circumstances as reimbursement for expenses incurred in connection with an employee's duty assignment. These payments and payments of pay are subject to the same administrative errors in determining entitlement, proper rate, and accurate computations.

It follows that the conditions which make collection of an erroneous payment of pay against equity and good conscience and not in the best interest of the United States would apply to erroneous payments of allowances.

We recommend, therefore, that section 5584, title 5, United States Code, be amended to permit the waiver of claims arising from erroneous payments of allowances made to employees of any executive department.

Enactment of the proposed legislation would make more uniform (except for the retroactive coverage) the authority to waive recovery of claims arising from erroneous payments made to members of the uniformed services and to civilian employees of the executive departments.

The need for uniformity has become increasingly apparent with enactment and implementation of Public Law 90-616. A civilian employee may be administratively relieved of liability to repay an errone-

ous payment but a member of the uniformed services is required to repay such a payment regardless of the circumstances under which it was made or recovery effected.

Therefore, the Department of the Air Force, on behalf of the Department of Defense, recommends the proposed legislation be enacted.

It has been a pleasure to appear before this committee today. I will be happy to answer any question you may have.

Mr. DONOHUE. Mr. Mann.

Mr. MANN. The point was made that the Air Force does not yet issue a voucher along with its green check?

Mr. SWANSON. Yes, sir.

Mr. MANN. Would you agree that a serviceman in the Army receiving this voucher detailing the payment, showing the overpayment, showing the error, would, as a matter of equity, be put on notice that an error had been made and thereby depriving him of the right of waiver, whereas his counterpart in the Air Force would be spending that money in good faith?

Mr. SWANSON. Sir, I don't think that the Army man will be always aware that an error is shown on his voucher. There is a comparison situation, that is true, but as to a small amount he might not be aware of the reason for some of these changes.

They return from overseas, their allowances change if they are on different entitlements.

The Air Force member of course receives a pay change slip each time he has a change in his pay. Other than that it is assumed to be the same. So the Air Force does have a system whereby they are notifying him of a change in his pay.

Mr. MANN. Any difference in his check from the month before would be explained by a slip?

Mr. SWANSON. Yes, sir, if there is a change in his pay there should be a pay change slip furnished.

Mr. MANN. And that gives enough information to show the basis for the change?

Mr. SWANSON. Generally it does, yes, sir.

Mr. MANN. I am concerned to some extent about the accountability of the persons responsible for the overpayment. We know that in the military generally an officer is accountable for property, has a hard time not paying for it when it disappears.

On the other hand, here we have a finance officer or a clerk who is dealing in money and because this sometimes, I will admit, comes to amounts that he is unable to repay, we are forgiving him, by the terms of the bill.

We are forgiving the accountability. I admit by service regulation you can impose accountability, I would think, but by the terms of this act we permit the Air Force, for example, to get full credit for mistakes which have been waived under this section in its accounts.

Now I realize this is a bridge we haven't gotten to yet, but what generally is the accountability situation in the Air Force now for finance officers that make errors?

Mr. SWANSON. He is covered by a bond, generally speaking. A disbursing officer is protected by the bond. There is a blanket bond the Air Force has for all their people that are required to make disbursements

so he is not personally held to them unless fraud or negligence is involved and relief is granted for erroneous disbursements by approval of the General Accounting Office.

So he is covered in the general disbursement as a person responsible for disbursements. That is in addition to collection from each of these individuals receiving an overpayment, of course.

But if they waive the individual's overpayment that relieves that finance officer from any accountability for that particular disbursement.

Mr. MANN. This is really what disturbs me to some extent.

The existence of the waiver procedure is, of course, going to reduce the pressure on the person who made the mistake because everybody has written it off and everybody is happy, there is no static coming from anywhere.

Mr. SWANSON. According to the determination and the guidelines put out by the Comptroller General, I don't think there are too many that are going to meet this situation of equity and good conscience. I think that is a determination that will be a factor that will limit the number of occasions that will fit these cases.

There are many disbursements made that will probably never come close to this situation where they will be waived.

Mr. MANN. I hope that is the case. I am impressed by the GAO figures to the contrary.

Mr. SWANSON. Those millions of dollars that are collected will probably still continue to be collected because not very many will qualify for the waiver situation there. There are many different types, each one under its own merits has to be considered to see whether it will meet this condition.

Mr. SHATTUCK. The reason for this waiver or the accountable officer as I recall is that the person primarily liable is the person that got the money, and when you relieve the person that got the money the accounting officer would be secondarily liable but you remove the ability he had to recover from the person primarily liable.

So this was the situation. However, it does not go to the point of relieving the liability of the accounting officer if he has been negligent or fraudulent in any way. As to the point you make concerning the part played by the GAO, could you enlarge on that just a little bit, I think that is significant.

Mr. SWANSON. Maybe the General Accounting Office people could tell me more about that. But I know we have the situation where it is presented to the General Accounting Office to waive his liability as a disbursing officer for these disbursements and in the absence of fraud or gross negligence they are generally waived. I believe Mr. Gehagan is generally familiar with that type of situation there.

Is there any other point?

Miss BEALL. To get back to the accounting and finance officer, the disbursing officer, the Air Force maintains a continuing program to improve the disbursements, to prevent erroneous payments. We have a system whereby we check the payments made, we publish constantly papers and instructions to correct erroneous payments.

This will continue even with a waiver statute. This would not be eliminated. I don't believe a waiver statute would affect the number of erroneous payments which are actually made.

Mr. MANN. I don't want to get too detailed but we are having a lot of private bills based on errors in the computation of longevity, usually based on the interpretation of whether or not certain prior service of an enlisted or academy or some odd-ball status counts on longevity.

Now such computations are usually based upon a statement of service filed by the individual and if not on that, then by, well, it has to be on that, I guess, and how that statement of service is interpreted by the finance agency that calculates his longevity.

Now this human error involved here, I won't say it is based on intentional willful misrepresentation, but it is misrepresentation of one sort or another.

More often than not the person receiving the payment suspects that he is getting a break somewhere along the line. I may be overstating it when I say more often than not, but a lot of cases we have seen I strongly suspect that he knew or should have known.

Now I know that there will be no one better prepared to evaluate that knowledge that he might or might not have had than the service itself.

For example, in the Navy we have a lot of private bills coming up here where an officer has been given credit for his midshipman rating or time to which he is not entitled to longevity payment and no one is going to convince me that from the scuttle-butt around the wardroom and whatnot that he is not aware of the fact that the midshipman's service doesn't count. He complains about it every month or so.

But he takes the money and comes in here and wants us to waive the claim when it bounces back against him. I am just talking now. I am not asking much of a question.

But what is your experience or viewpoint with reference to this longevity problem and how it might be handled by the Air Force?

Mr. SWANSON. We see a lot of longevity adjustments and write them up. We have had a special project at the Air Force for many years where the headquarters for our personnel activities does provide statements of service. We don't have much trouble with the officers any more. We had a program in 1955 or 1956 where we adjusted pay dates for the reserve officers.

I am aware of the problem with the midshipmen. Lots of those officers were told that was good time. If they were an enlisted man before they went in, it is possible they were in a status that could carryover. I would say that they are not all aware of the fact that it is doubtful time.

By now it is probably pretty well-known. Most of our errors are found in the enlisted area now and there we have a question of lost time and the man thought he was in the reserve or he might have been in the National Guard for a time and breaks in enlistments have sometimes accounted for a change in pay dates. That is an area in which we find a considerable lot of adjustments being made.

Here each individual case would have to be looked at to see whether or not there is something wrong.

I recall one officer against whom we wrote an exception and he told us that his mother had destroyed the papers, for example, and we went back and said tell us which National Guard you were in and he told us one State and we checked out that State and he wasn't there and he

said he would give us another State. A man like that was a little suspect where he switches States on us. We do everything we can to give the benefit of the doubt to their entitlements in such cases.

Then we have an officer that is still convinced he was in the Reserve. He is still getting affidavits from people he rode the bus with to get to drills and hospital checkup. He is in a real tough situation to establish this as his papers are lost. I think each individual case is going to be established on its own and I think the guidelines as proposed with the reasonableness a part of it will be enough to deter any thoughts that there will be a loss of a considerable amount of revenue.

I don't think there is going to be the loss that is in the millions of dollars, at least in our opinion it would not be that way.

Mr. MANN. That is all I have.

Mr. DONOHUE. Mr. Coughlin.

Mr. COUGHLIN. I share some of your concerns here.

In one way your testimony seems to be sort of self-contradictory. You said there would be a limited number of claims, or the uses would be limited of the waiver and at the same time you said it wouldn't be used for fraud and misrepresentation. That would indicate that a majority of the claims would be fraud or misrepresentation.

Mr. SWANSON. I didn't intend that in the same answer. It is because they won't fall into the category where they can be logically waived.

In other words, the fact that the man may be a reasonable man and would know that he is getting too much pay, equity, and good conscience would determine whether it should be waived and the type of the allowance. For example, in excess leave, too, most people know their leave situation. We couldn't be expected to waive every erroneous payment in leave cases.

Most of them know their own leave balance. Occasionally something might administratively enter into it and then, of course, they would have a reason for consideration.

Mr. COUGHLIN. You think that perhaps the availability of the waiver might give the disbursing officer the tendency to interpret high?

Mr. SWANSON. No, sir; I don't think that will change our looking at our disbursements. I think our desire to make proper payments will not be changed thinking we have something to fall back on, because that wouldn't be in agreement with our desire to do an accurate job in making our disbursements.

As Miss Beall mentioned, we make a monthly analysis of the errors we discover. We advise the commands that these are the major areas in which mistakes are found and we use that to identify and improve the quality of the product of disbursing officers.

Mr. COUGHLIN. You say the Secretary already has the power to remit indebtedness of enlisted members if he considers it would be in the best interests of the United States?

Mr. SWANSON. Yes, sir; that is the remission.

Mr. COUGHLIN. Why would he be in this position?

Mr. SWANSON. Remission is based on the best interest of the United States to salvage a man. In other words, if the man is a value to the Air Force, which has many thousands of dollars invested in him as far as training and his ability and they want to keep him; that will all be considered in the remission.

Mr. COUGHLIN. Why do we need this in addition to that if you already have that power?

Miss BEALL. This applies only to enlisted members, not to officers or out of service or retired members, only to enlisted members on active duty.

Mr. SWANSON. In this remission area we had very few in the calendar year 1968; the Air Force only had 228 cases in the whole calendar year in which the remission authority was exercised. The volume wasn't very great in this.

Mr. COUGHLIN. Is there any consideration to the possibility of providing for a waiver for claims under \$500 where the person has since left the service where it might be very difficult to collect but not applying that where they are still in the service where it can be collected from withholding, is there a difficulty of collection criteria here?

Miss BEALL. Those who are out of service we can consider under the Federal Claims Collection Act, Public Law 89-508.

If he is out of service and he does not have the financial ability to make repayment we can compromise or terminate or suspend collection under that law.

So in all probability many of those would be out-of-service types, and would be for consideration under Public Law 89-508.

Mr. SWANSON. That is the financial ability to pay.

Miss BEALL. Right.

Mr. SWANSON. A financial statement has to be filed and they consider all the circumstances.

Mr. COUGHLIN. So you have to take some costly proceedings before you can compromise the claim?

Mr. SWANSON. There is paperwork involved, yes, sir.

Mr. COUGHLIN. Going back, why not just amend the remission statute to cover officers?

Miss BEALL. That has been tried.

Mr. SWANSON. There is a bill up for consideration now to cover remission for officers, yes, sir.

Mr. DONOHUE. Remissions are existing under the present law?

Mr. SWANSON. Yes, sir; for enlisted men only. It is only the amount that has not been repaid. Once he has paid a debt then it cannot be remitted. It has to be exercised while he is in service.

Mr. DONOHUE. How do you differentiate between a waiver and a remission?

Miss BEALL. The net result is the same, the man doesn't have to pay. Remission is a cancellation of the debt, as if it never existed. A waiver is just that you waive the recovery of the overpayment.

Mr. DONOHUE. You well point out the end result is the same?

Miss BEALL. That is right.

Mr. COUGHLIN. Do most of the present instances here have to do with enlisted men for whom we have remission status?

Miss BEALL. Right.

Mr. DONOHUE. In other words, remissions are not granted to an officer?

Mr. SWANSON. That is right, sir.

Mr. COUGHLIN. Right, but most of the mistakes don't involve officers, too?

Mr. SWANSON. There is a variety of mistakes but generally it is more in the enlisted area.

Mr. DONOHUE. How do you rationalize that, not granting a remission privilege to officers? Does not the Government have a greater investment in them?

Mr. SWANSON. I don't know the foundation. If you go way back to the twenties the remission statute was enacted to try to retain an enlisted man who was faced with a horrible debt and yet he probably was a good man and it was a one-time situation and they didn't want to lose his worth to the service.

Mr. DONOHUE. Would you care to comment on the statement that was made by the gentleman, Mr. Burns, from the General Accounting Office, the Denver regional office—

Mr. SWANSON. Yes, we work right next door to the General Accounting Office.

Mr. DONOHUE. He has reported that in the 3-year period, fiscal years 1966, 1967, and 1968, collection of erroneous payments have been made from former Air Force members alone \$4,178,105 on 33,067 debt cases.

Now what were those overpayments based on? Those are only the collections. What was the overall amount due?

Mr. SWANSON. Sir, I do not have the specific figures for total number of accounts receivable that have been written up each year, which is another term for the claims due the United States. In our examination efforts we perform a variety of examinations which do establish these overpayments.

If it is out of service, of course, collection goes through one channel and if members are in service we take our internal collection actions. So our audit and examination do cover both aspects of that.

I have no dispute with the figures. They probably are correct. We have an extensive collection procedure, we have aggressively gone after this. They do use the Public Law 89-508 on the compromise.

For example, I do have a few figures here for the month of April. In that month, we did establish about \$252,000 worth of claims, but 1 month is not always representative.

I am sure I could gather additional figures together to show the extent of our examination activity that would be accumulative for a given period if you desire it for your committee.

Mr. DONOHUE. If the \$4,178,105 is the amount that you collected, would you guess as to how much was still outstanding?

Mr. SWANSON. No, sir. Not really. We can obtain that. The total amount that was established in a given period would be a factor against the amount outstanding. I have heard from 20 to 40 percent collection effectiveness, for example. That varies somewhat maybe under different times.

Mr. DONOHUE. This would represent 20 to 40 percent of the outstanding amount?

Mr. SWANSON. Based on my present information, yes, sir. That just represents our service, of course. The other services I am sure have other statistics we could obtain if you need them, sir.

Mr. MANN. The \$252,000 you mentioned that would be both in-service and outservice?

Mr. SWANSON. This would be out of service only.

Mr. MANN. That is what you are using, the 20 to 40 percent.

Mr. SWANSON. Yes, sir, we have a good effectiveness in service. Mr. MANN. Are your collection procedures so sophisticated that you can cross over and get the IRS to put a lien on an income tax refund?

Mr. SWANSON. I know we have a tax levy service, yes.

Miss BEALL. But not in reverse. We cannot file a claim against a tax refund.

Mr. SWANSON. Oh, no, sir, we collect for IRS but we don't collect from them.

Mr. DONOHUE. Why I am dwelling on this figure is that it represents just the collections made in 3 years as a result of errors made someplace along the lines. Wouldn't you say that is a lot of money outstanding as a result of errors someplace?

Mr. SWANSON. Yes, sir.

Mr. DONOHUE. And that only represents 20 to 40 percent of those who have left the service.

Mr. SWANSON. Collectively it is a large amount of money, yes, sir, but it is a small percentage of total disbursements made by the Department of Defense in the pay appropriations.

It is not very often that you look at a statistical figure about the total disbursements in the billions compared to the overpayments. Of course, it does come down to a small amount that is actually overpaid in this particular situation.

Mr. DONOHUE. As I understand this figure it doesn't represent what your Air Force is paying out currently. It is what is paid out in the past, isn't that correct?

Miss BEALL. That is correct.

Mr. SWANSON. Payments they have discovered in the past, yes, sir.

Mr. MANN. People getting out of the service this month or something like that.

Mr. DONOHUE. But the money is being paid by those out of the service?

Mr. SWANSON. Yes, sir.

Mr. DONOHUE. Are there any further questions?

Thank you very much, Mr. Swanson.

Mr. COUGHLIN. I am sorry, Mr. Chairman.

Are you going to provide us with figures that would indicate the \$4,178,000 which is collections only and not only that but collections only from former employees and not only that but only from Air Force?

Can you give us figures that would indicate the total amount from the other services, collections and claims from both former and present for those 3 years?

Mr. SWANSON. It would be difficult for the present. Could we confine it to the former? A member staying in the service, I don't think, is in quite the same category as the former member. There is terrific difference on collection effectiveness between inservice and out of service.

Mr. COUGHLIN. It is the total amounts we are looking at here. That would involve inservice.

Mr. MANN. I agree as far as collection information is concerned this would not matter, but the waiver act applies to those in the service, too, and therefore the extent of overpayments would be of interest to us. Your collection figures are not for inservice.

Mr. SWANSON. That would be consideration for possible waiver.

Mr. DONOHUE. In those cases where a person is still in the service and drawing pay and you discover that he has been overpaid in the past is there some accounting system where you deduct a certain amount of that overpayment?

Mr. SWANSON. Yes, sir, we try to make arrangements with the individual not to disrupt his normal routine too much so that he can pay it back, yes.

Now the enlisted man can apply for remission and if the circumstances justify, the debt can be remitted if he has not paid it back.

Mr. DONOHUE. Do you understand that if we pass the bill before us now and the waivers are granted that a refund will be made to those that have been paying this money to you in the past?

Mr. SWANSON. Yes, sir; up to the last 3 years of discovery, yes.

Mr. DONOHUE. Thank you very much, Mr. Swanson.

Just a moment, counsel has a question.

Mr. SHATTUCK. You have given us a suggested redraft or revision of the bill. So has the General Accounting Office. The one difference I see is that you retain the language "pay and allowances" whereas the General Accounting Office has suggested we retain the word "allowances" but modify it by eliminating them to "allowances other than travel and transportation allowances."

Mr. SWANSON. Yes, sir.

Mr. SHATTUCK. Would you care to comment on this difference or do you agree with the exclusion of travel and transportation allowances?

Mr. SWANSON. No, sir. We agree with the GAO that it is usually a one-time payment and an intermittent type payment but, however, there is possibility of administrative error in this travel area, too.

It is where a man is misinformed as to his rights or what his entitlements may be. We feel in these individual cases there should be a provision whereby a waiver would be possible. It is real sad when you have to write a collection letter and revert back to the phrase, "No matter how inexcusable the acts on the part of the Government we must insist that you pay this."

Very often we do fall back on that to try to point that out. There is a responsibility to pay. However, this bill would provide an avenue of relief under circumstances that are very, I would say, very limited.

There would not be too many of this particular type. One I can think of might be the wrong dependents, some sister-in-law went along on the trip and it said, "Space required" and it should have been "Space available."

The member was assured that was the way the person could go at no cost. You would have to weigh the circumstances of each case to see whether it was really right to collect.

This liability to repay I think should be open to the same avenue of relief because of the best interests to the United States and the equity and good conscience approach so that it could be applied to the travel area as well.

Mr. SHATTUCK. I take it you agree with the retroactive features proposed, in substance, in that the new law would speak as of the date of enactment and this retroactivity would be limited to 3 years immediately following the date in which the erroneous pay in allowance was discovered.

Mr. SWANSON. Three years, yes, we are aware of that and I believe we are aware of the uncertainties of cost and the volume that might be involved and the paperwork incidental to this particular period so that 3 years is the agreeable date with us in this particular instance, yes.

Mr. SHATTUCK. This is relevant to the discussion by the chairman and by Mr. Coughlin concerning the repayments. You don't want to reopen this whole area of repayments over the years all the way back to 1960?

Mr. SWANSON. That is our position; yes, sir.

Mr. SHATTUCK. The inclusion of 1960 was placed in the bill because it was in the other bill. We thought we were following a general scheme.

Mr. SWANSON. It is better to have uniformity as much as possible between civilian and military when they are in like duties and counterparts. That was one of the original concepts of this, yes; but we are agreeable to this position now.

Mr. SHATTUCK. Do you believe an amendment to title 32 with parallel language would be preferable to including National Guard in title 10?

Mr. SWANSON. Yes; just to keep the same information under the Guard provision of title 32; yes.

Mr. SHATTUCK. You would suggest an amendment to the bill also to refer to uniformed services rather than Armed Forces to take into account the coverage for other uniformed services?

Mr. BAYLES. That would bring in the commissioned personnel of ESSA and Public Health Service.

Mr. SHATTUCK. They are not regarded as civilians under Public Law 90-616 at the present time?

Mr. BAYLES. Not the commissioned personnel.

Mr. SHATTUCK. I understand there is a proposal by GAO to make the same amendment. You refer to a definition in 101(3) of title 37 which I assume is a workable definition that you prefer to utilize?

Mr. BAYLES. That defines uniformed services.

Mr. SHATTUCK. Thank you, Mr. Chairman.

Mr. DONOHUE. Thank you again. You are excused.

Now we will hear from Maj. James R. Love, Chief of Pay and Travel Division, Finance and Accounting, Comptroller of the Army.

Major LOVE. Sir, I was with Mr. Swanson.

Mr. MANN. Do you have anything you want to tell us?

Major LOVE. No, sir.

Mr. SHATTUCK. Mr. Burns, I raised a question concerning the General Accounting Office statement. Would you like to comment further on that phrase on travel and transportation?

Mr. BURNS. We agree that some of the elements of equity and so on probably are common to the travel and transportation and the other types of allowances.

We started off first on the premise that since Congress passed this civilian bill last October this was a very recent expression of the whole body of Congress and that we should stick as closely to that as possible.

They saw fit in the civilian bill to provide only for pay. We recog-

nized that you couldn't say just pay in the military bill because the military has a different kind of a setup and we agree you have to say pay or allowances.

But we tried to find some way to make the military provisions as nearly comparable to the civilian bill as we could and we decided if we exclude travel or transportation allowances it will come as close as we can reasonably come.

In a sense, by excluding travel and transportation allowances we actually broaden the term allowances in the pay or allowances part, because when you say pay or allowances other than travel or transportation you then make it pretty clear that any kind of an allowance of any description, whether it is regular recurring allowance or a one-shot allowance would come under the term allowances if it is not a travel or transportation allowance.

If the Congress saw fit to pass this present bill you would then have an across-the-board waiver for military and civilian personnel. In other words, for all personnel you would have a waiver proposition. This would be an innovation—something new for the Government.

Mr. SHATTUCK. I might observe it isn't from lack of effort on our part.

Mr. BURNS. No, sir, but nevertheless it is an innovation and the civilian bill has been on the books such a short time you haven't had much opportunity to observe how that will operate. On the travel and transportation allowances, since it is a one-shot proposition, we would think that there would be more cases of that kind where the person should be on notice of overpayment. If it was a small error he might overlook it and they might not pick it up anyway or if it was small enough they might take an exception if they did pick it up.

But if there were a substantial overpayment on the travel voucher—and this is a one-time thing—he knows he has made this trip, he has a fair idea how much money he has coming and if he has been overpaid considerably on that voucher he should be on constructive notice of being overpaid.

Another feature of this thing—in line with this innovation idea I mentioned—is that until you have a period of operation under the law you don't know how the law is going to operate and if you exclude travel and transportation allowances you will then have an area not waivable and you can have some basis for comparison of what happens in that area with what happens in your pay and nontravel allowance area for purposes of seeing whether or not the law is working the way it should or whether it should be extended or otherwise changed at some later time.

If you do not exclude travel and transportation allowances, the word "allowances" in the phrase "pay or allowances" might be so ambiguous that a definition of allowances would be desirable in this bill. It might be difficult to formulate a completely satisfactory definition of "allowances" especially since new allowances are added from time to time.

A few years ago Congress created this family separation allowance which was a brandnew thing in the military. You have a whole long list of classes of allowances, both travel and nontravel, but especially a lot of classes nontravel allowances.

You have also a long list of kinds of pay that you don't have in the civilian situation. So the military has so many more types of classes of pay and allowances that it might be if you just say pay or allowances that there would be such ambiguity in what that would encompass that you might want to clarify that.

But we thought if you say pay or allowances other than travel and transportation allowances that would resolve much of that ambiguity.

Mr. SHATTUCK. Thank you.

Mr. DONOHUE. Thank you very much.

The hearing is now closed.

Thank you again for coming.

(Whereupon, at 12 o'clock the subcommittee adjourned.)