

REPORT TO CONGRESS ON THE REVIEW OF CALIFORNIA ARMY NATIONAL GUARD INCENTIVE PAYMENTS FROM 2004-2010



**Office of the Under Secretary of Defense
for Personnel and Readiness**

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There is no more important responsibility for the Department of Defense than keeping faith with our people. That means treating them fairly and equitably, honoring their service and sacrifice, and keeping our word. Today, in keeping with that obligation, I am ordering a series of steps to ensure fair treatment for thousands of California National Guard soldiers who may have received incentive bonuses and tuition assistance improperly as a result of errors and in some cases criminal behavior by members of the California National Guard.

– Statement by Secretary of Defense Ash Carter, October 26, 2016.

SECTION I – BACKGROUND

A 2008 audit revealed that bonuses and student loan repayments were being improperly paid to numerous California Army National Guard (CA ARNG) Soldiers. The resulting criminal investigation led to the 2011 criminal conviction of Master Sergeant Toni Jaffe, a former CA ARNG Incentive and Benefits Manager, who submitted fraudulent claims for incentive payments on behalf of fellow Soldiers 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, conducted a comprehensive audit of *all* bonus payments and student loan repayments made to Soldiers of the CA ARNG between 2004 and 2010.¹

The CA ARNG/NGB audit identified 17,485 individual Soldiers who had received a bonus or student loan repayment potentially subject to recoupment. The CA ARNG took action to establish and certify a debt² against 1,429 Soldiers identified by the audit. The CA ARNG forwarded the certified debts of these 1,429 Soldiers to the Defense Finance and Accounting Service (DFAS) for recoupment.³

An October 2016 *Los Angeles Times* article criticized “a Pentagon effort to recoup enlistment bonuses improperly paid to thousands of CA ARNG Soldiers a decade ago.”⁴ In the face of burgeoning media and Congressional interest, on October 26, 2016, then-Secretary of Defense Ash Carter ordered the suspension of *all* efforts to recoup these debts from the 1,429 affected CA ARNG Soldiers and directed the Office of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)) to establish, no later than January 1, 2017, a streamlined process to ensure the fair, equitable, and rapid resolution of the cases of all 17,485 Soldiers. The Official Performing the Duties of the USD(P&R) established and led a Cross-Functional Team, including representatives of the Department of Defense (DoD) Office of General Counsel, the

¹ Further uses of the term “audit” in this report should be interpreted to refer to this joint effort of the CA ARNG and NGB.

² For purposes of this report a debt that has been “established and certified” is one in which the alleged debtor has been notified of the debt and accorded due process in accordance with DoD Financial Management Regulations, and the debtor has not exercised the rights listed in the notification letter or, having exercised one or more of those rights, was determined by proper authority to be indebted, after which the debt was referred to the Defense Finance and Accounting Center for salary offset or other form of recoupment.

³ As to the remaining 16,056 CA ARNG Soldiers whose bonus payment or student loan repayment was identified by the audit as requiring additional scrutiny, no debt had yet been established or certified.

⁴ Cloud, David S., Lawmakers Back California Vets: They demand the Pentagon stop its effort to recover enlistment bonuses, *Los Angeles Times*, October 24, 2016, p. A1.

Army, NGB, and DFAS, in developing a plan and process for reviewing and resolving these cases.

In response to the Secretary of Defense's directive to suspend the recoupment of debts from the affected 1,429 CA ARNG Soldiers, DFAS withdrew the existing debt collection actions from its own accounts, and from the Department of the Treasury and private collection agencies, as applicable. DFAS also requested that Treasury, private debt collection agencies, and credit reporting bureaus immediately expunge from their databases all collection records and other adverse information pertaining to these debts. All credit report corrections for affected Soldiers were accomplished in the fall of 2016.

The Official Performing the Duties of the USD(P&R), the Adjutant General of the California National Guard, the Director of the Army National Guard (ARNG), the Director of DFAS, and the Army General Counsel testified about the Department's plan for addressing all CA ARNG cases in a December 7, 2016, open hearing before the House Armed Services Military Personnel Subcommittee. Subcommittee members were satisfied with both the DoD plan and progress.

The Secretary of Defense-directed review of the CA ARNG cases was in progress when the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2017 was enacted on December 23, 2016. Section 671(c) of the NDAA for FY 2017 required DoD to conduct the review already underway.⁵ The new law required the Department to forgive a debt or forego establishment of a debt for any CA ARNG Soldier subject to the ongoing review, unless it made an affirmative determination, by a preponderance of the evidence, that the [Soldier] "knew or reasonably should have known that [he/she] was ineligible" for the bonus payment or student loan repayment he/she had received. The law required the Department to complete its review no later than July 30, 2017, and to submit a report to the Committees on Armed Service of the Senate and the House of Representatives not later than August 1, 2017. This report is submitted in satisfaction of the law's mandate. The specific data required by the NDAA for FY 2017 to be included in the report is set forth in the Appendix.

Over the period of March 21-22, 2017, the Office of the Assistant Secretary of Defense for Manpower and Reserve Affairs, together with representatives of the Army Board for the Correction of Military Records (ABCMR) and the ARNG, briefed Professional Staff of the Senate and House Armed Services Committees on the status of the review. Concurrently, senior representatives of the ARNG briefed Personal Staff of members of the California congressional delegation. All briefings were well received; Staff commended both the Department's approach and progress in resolving this matter.

⁵ Note that the scope of the review conducted by the Department and detailed in this report is more limited than that set forth in the NDAA. The law required the review of all bonus pays, special pays, student loan repayments, and similar special payments paid to members of the National Guard of the State of California over the period beginning on January 1, 2004, and ending on December 31, 2015. The DoD Review detailed in this report was based on an audit conducted by the CA ARNG, with NGB support, of bonuses and student loan repayments paid to members of the CA ARNG between 2004 and 2010. Neither the audit nor the DoD Review addressed special pays, payments made to members of the California Air National Guard, or payments subsequent to 2010.

**SECTION II – INITIAL SCREENING BY THE CROSS-FUNCTIONAL TEAM
OF THE 17,485 SOLDIERS WHOSE CASES WERE IDENTIFIED
BY THE CA ARNG/NGB AUDIT**

The CA ARNG/NGB audit identified 17,485 individual Soldiers who received some sort of bonus or student loan repayment *potentially* subject to recoupment. The cases involving these Soldiers comprised two distinct categories:

- Cases in which the CA ARNG/NGB established and certified a debt and forwarded it to DFAS for recoupment. 1,429 Soldiers were in this category.
- Cases in which a Soldier’s bonus or student loan repayment was identified by the CA ARNG/NGB as requiring additional scrutiny, but in which no debt had yet been established or certified. 16,056 Soldiers were in this second category.

The Cross-Functional Team developed a two-step approach for reviewing both categories of cases.

- STEP 1: apply criteria developed by the Cross-Functional Team to screen out cases in which equitable considerations weighed against recouping a debt or favored foregoing the initiation of debt collection processes, without the need for further review.
- STEP 2: conduct an individual review of the remaining cases—those in which recoupment or the establishment of a debt may be justified—through the ABCMR, acting as a Special Board of Review, in accordance with the NDAA for FY 2017.

**SECTION III -- ARMY REVIEW PROCESS – 1,429 SOLDIERS AGAINST
WHOM THE CA ARNG HAD FORMALLY ESTABLISHED AND CERTIFIED A DEBT**

As to the 1,429 Soldiers’ cases in which the CA ARNG had established and certified debts and referred them to DFAS for recoupment:

- The Army Audit Agency (AAA) reviewed all of the cases and recommended that debt be forgiven for 380 of those Soldiers without further review because:
 - the Soldier had substantially completed the terms of the contract pursuant to which he/she had received a bonus or student loan repayment and the file revealed no indication of fraud or misconduct (262 Soldiers). **NOTE:** A subsequent review by the Department of the Army Office of General Counsel determined that 10 of these cases should be referred for additional screening; or
 - the Soldier had been previously “cleared” of the debt by the CA ARNG, the NGB, DFAS, or the ABCMR (118 Soldiers). No further action was required to waive the debt of Soldiers previously cleared.

- The remaining 1,059⁶ Soldiers were referred to the Army Review Boards Agency (ARBA) for more comprehensive follow-on screening by specially designated staff, applying criteria established by the Cross-Functional Team:
 - On completing its screening process, ARBA referred cases in which the available evidence suggested that recoupment was *not* warranted to the Army Waiver Authority, with a recommendation that the Soldier’s debt be waived or forgiven in its entirety.⁷ 693 Soldiers’ cases were in this category. These cases included those in which the files lacked adequate documentation or otherwise indicated the presence of equitable considerations that militated against recoupment, such as those in which: the Soldier had deployed, had already completed his/her service commitment, or would not be expected to have known that he/she was ineligible for a bonus (e.g., because of the Soldier’s junior rank or lack of prior service); the Soldier had received payments of less than \$10,000 or incurred the debt more than 10 years prior to the DoD Review (i.e., prior to January 1, 2007); and the Soldier was deceased, a Purple Heart recipient, receiving combat disability compensation, or had received a sole survivorship discharge.
 - ARBA referred the cases of the remaining 366 Soldiers to the ABCMR for individual review in accordance with the Special Board of Review process detailed in SECTION V, below. These cases included Soldiers who were identified as potentially involved in fraud, had been separated for Absence Without Leave (AWOL), failed to show up for basic training, or who had been separated from the CA ARNG for drug use or other misconduct.
- In total, the cases of 945 Soldiers⁸ in whose cases debt had been previously established and certified were referred to the Army Waiver Authority for final review and action. Because the CA ARNG had previously established and certified a debt and referred it to DFAS for recoupment in these cases, affirmative action by the Army Waiver Authority was required to waive or cancel the debt, and/or to refund any amounts previously recouped from the Soldier in repayment of the debt. After a review of each individual case, to which he applied the “knew or reasonably should have known” standard established by Congress in the NDAA for FY 2017, the Army Waiver Authority:

⁶ This number is the difference between the 1,429 cases in which CA ARNG had originally established and certified debt, MINUS the 380 cases determined by AAA not to require further review, PLUS the 10 AAA-reviewed cases determined by the Office of the Army General Counsel to require additional screening.

⁷ The Secretary of the Army appointed the Army Deputy Chief Management Officer, who was also Performing the Duties of the Under Secretary of the Army, as the Army Waiver Authority.

⁸ This number is comprised of the 252 Soldiers who had substantially completed the terms of the contract pursuant to which each received a bonus or student loan repayment and whose file revealed no indication of fraud or misconduct (262 Soldiers as determined by the AAA MINUS the 10 AAA-reviewed cases determined by the Office of the Army General Counsel to require additional screening) and the 693 Soldiers whose debts were recommended for waiver or forgiveness by the ARBA screening team. Recall that no further action was required to dispose of the cases of the 118 Soldiers determined by AAA to have been previously “cleared” of their debt by the CA ARNG, the NGB, DFAS, or the ABCMR.

- waived debt for 928 of these Soldiers. The NGB and DFAS were notified of the waiver decisions in these Soldiers' cases. The NGB⁹ subsequently notified the Soldier by letter. In addition, a copy of the letter was placed in each Soldier's permanent military personnel file. As to Soldiers who already may have repaid their debt, in whole or in part, prior to the Secretary of Defense's October 2016 suspension of recoupment actions, DFAS automatically undertook to refund to the Soldier any amount that he/she had repaid, including fees¹⁰; no further action on the part of the individual Soldier was required to ensure receipt of a refund.¹¹ The NGB provided DFAS with a line of accounting from which such refunds to Soldiers would be paid, in accordance with section 671(c)(5) of the NDAA for FY 2017.
- declined to waive the debts of 17 Soldiers and referred their cases to the ABCMR for individual review in accordance with the Special Board of Review process detailed in SECTION V, below.

SECTION IV – ARMY REVIEW PROCESS – 16,056 SOLDIERS WHOSE CASES WERE IDENTIFIED BY THE CA ARNG/NGB AUDIT AS REQUIRING ADDITIONAL SCRUTINY, BUT AGAINST WHOM NO DEBT HAD BEEN ESTABLISHED OR CERTIFIED

Bonus payments and/or student loan repayments to 16,056 Soldiers were identified by the CA ARNG/NGB audit as requiring additional scrutiny, but no debt had yet been established or certified in these cases.

- Because no debt had yet been established or certified in these cases, the Department had the ability to review and adjudicate these cases without having to resort to a formal debt waiver and forgiveness process.¹²
- Applying the criteria established by the Cross-Functional Team, AAA and ARBA reviewed the cases of all 16,056 Soldiers and determined that:
 - the cases of 15,703 Soldiers required no further action. The names of these Soldiers were provided to NGB. The NGB worked with the CA ARNG to notify each of these 15,703 Soldiers by letter that no debt would be established in their

⁹ The Chief of the National Guard Bureau serves as the Department of Defense's official channel of communication to the Governors and State Adjutants General on all matter pertaining to the National Guard.

¹⁰ For purposes of this report, fees include interest, penalties, and administrative fees assessed.

¹¹ Some of these Soldiers owed *other* debts to the Department of Defense, not related to the instant matter. Following standard financial management accounting practices, DFAS applied any monies, including fees, previously recouped from such Soldiers for bonus payments or student loan repayments received from the CA ARNG, to satisfy these *other* debts. Accordingly, a limited number of Soldiers in this category did not receive a refund from DFAS or received only a partial refund.

¹² Because no debt had ever been established or certified against these Soldiers, their cases had never been referred to DFAS and no money had ever been recouped from them.

cases and that the Department considered the matter closed. A copy of the letter was placed in each Soldier's permanent military personnel file.

- the cases of 353 Soldiers should be referred to the ABCMR Special Board of Review process for individual review.

SECTION V – THE ABCMR “SPECIAL BOARD OF REVIEW” PROCESS – 736 SOLDIERS WHOSE CASES WERE REFERRED FOR INDIVIDUAL REVIEW

- 736 Soldiers' cases¹³ were referred to the ABCMR “Special Board of Review” process for individual review.
- Given the volume of cases to be addressed, the ABCMR established several review panels, each constituting a Special Board of Review. Each Special Board of Review was comprised of three senior civilian employees of the Department of the Army, in grades GS-13 through GS-15, all of whom were currently serving members of the ABCMR. Prior to reviewing any cases, all board members received specialized training specific to the unique legislative and policy requirements applicable to consideration of these CA ARNG cases.
- Except as specifically stated below, each Special Board of Review applied the same process to its individual review of each of the cases assigned to it.
- Each of the 736 Soldiers received a personal, individualized letter from the ABCMR, advising the Soldier that his/her case would be considered by an ABCMR Special Board of Review and inviting the Soldier to submit additional documents and information to support the review.
 - The ABCMR letter also advised each Soldier of his/her right to “opt out” of the Special Board of Review process. The ABCMR made personal contact with the small number of Soldiers who replied that that they were considering “opting out” and explained to each Soldier the benefits of participating in the Special Board of Review process—a process that would apply standards favorable to the Soldier, as mandated by the NDAA for FY 2017. Ultimately, *all* of the Soldiers contacted decided to participate in the Special Board of Review process.
- The ABCMR established teams of subject matter experts (SMEs) to prepare each individual case for review by a Special Board of Review.

¹³ 736 Soldiers' cases were referred to the Special Board of Review process for individual review. These cases comprised 366 Soldiers in whose cases debt had been previously established and certified and who had been referred to the Special Board of Review process by the AAA and ARBA screening teams; 17 Soldiers in whose cases debt had been previously established and certified and who had been referred to the Special Board of Review process by the Army Waiver Authority; and 353 Soldiers whose cases had been identified for further scrutiny by the CA ARNG/NGB audit, but against whom debt had *not* been established, who had been referred to the Special Board of Review process by the AAA and ARBA screening teams.

- The SME teams began by reviewing the file in each individual case. The case file was comprised of documents and information that had been provided by the CA ARNG and other administrative records generated as the case had proceeded through the screening process.
- Concurrently, the SME team requested that the NGB provide an advisory opinion that would document the NGB's views as to the Soldier's eligibility for the bonus payments and/or student loan repayments he/she had received. The advisory opinion also provided NGB's recommendation as to the appropriate disposition of the case (i.e., recommending either recoupment or waiver/forgiveness of the debt, in cases in which debt had been previously established and certified; or, in cases in which debt had *not* been previously established and certified, recommending either the establishment of a debt or no further action). The NGB applied the standards established by the NDAA for FY 2017 in rendering these advisory opinions. The ABCMR forwarded the NGB advisory opinion, in its entirety, to the affected Soldier, who was again offered the opportunity to provide any additional documents and information in support of the review process.
- The ABCMR SME team crafted a "Record of Proceedings" for each individual case. The Record of Proceedings summarized the totality of the documents and information available to the Special Board of Review assigned to consider and make final recommendations in the case, including documents and information received from the CA ARNG, the NGB, and, if applicable, the individual Soldier.
- The SME team completed its work by organizing the case file in a standard format, so that all of the documents and information could be easily accessed by the Special Board of Review to which the case was assigned.
- A Soldier's completed case file was then referred to a Special Board of Review. Each Special Board of Review was charged to review the case files assigned to it and make its recommendation as to the disposition of each case in accordance with the provisions of a Memorandum of Instruction (MOI) crafted by the attorney assigned to support the ABCMR. The MOI implemented the unique review requirements and standards applicable to CA ARNG cases, as established by the NDAA for FY 2017. The MOI emphasized that the Special Board of Review would follow standard ABCMR policies and procedures as to matters unaffected by the unique requirements of the NDAA for FY 2017. The governing MOI differed depending on whether the case was one in which debt had been previously established and certified, or one in which debt had *not* been previously established and certified—reflecting the somewhat different circumstances associated with each category of case. Each board member reviewed a case file thoroughly, in accordance with the training he/she had received and the MOI, before deliberating with the other members. The ABCMR SME team and ABCMR lawyer were available on-site to answer any questions posed by any member of the Special Board of Review.

- Each member of the Special Board of Review was charged to render a recommendation in the case, using a standardized vote sheet. Each member was permitted to submit a comment explaining his/her recommendation. The Board’s final recommendation in a case was determined by the majority vote of at least two of the three members. Once the Special Board of Review had made its recommendation in a case, the case was forwarded to the Director of the ABCMR.
 - In cases in which the recommendation of the Special Board of Review was unanimous in favor of the Soldier and granted the Soldier full relief from all debt or potential debt, the Director of the ABCMR issued a letter promulgating the final decision in the case and notified NGB of the outcome. Upon receipt of notification from the Director of the ABCMR, NGB notified CA ARNG, which then notified DFAS (in cases in which a debt had previously been established and certified). A separate letter documenting the decision was provided to the Soldier and a copy filed in the Soldier’s permanent military personnel file.
 - If the case was one in which the Soldier’s debt had been previously established and certified, DFAS automatically undertook to refund to the Soldier any amount that he/she had previously repaid, including fees¹⁴; no further action on the part of the individual Soldier was required to ensure receipt of a refund.¹⁵ DFAS paid the Soldier’s refund from a line of accounting provided by NGB in accordance with section 671(c)(5) of the NDAA for FY 2017.
 - In cases in which the recommendation of a Special Board of Review was not unanimous, not in concert with the advisory opinion rendered by the NGB, granted a Soldier only partial relief (e.g., a finding that some, but not all of a previously-established debt should be waived, or that action should be taken to establish some, but not all of a potential debt), or granted no relief, the ABCMR Director conducted a separate substantive review of the case, made an independent recommendation as to disposition of the case, and forwarded the case to the Deputy Assistant Secretary of the Army for Review Boards (DASA(RB)), a member of the Senior Executive Service, for final decision.
- If, after reviewing the case and applying the “knew or reasonably should have known” standard established by Congress in the NDAA for FY 2017, the DASA(RB) granted the Soldier full relief from all debt or potential debt, the Director of the ABCMR issued a letter promulgating the final decision in the case and notified NGB of the outcome. Upon receipt of notification from the Director of the ABCMR, NGB notified CA ARNG, which then notified DFAS (in cases in which a debt had

¹⁴ For purposes of this report, fees include interest, penalties, and administrative fees assessed.

¹⁵ Some of these Soldiers owed *other* debts to the Department of Defense, not related to the instant matter. Following standard financial management accounting practices, DFAS applied any monies, including fees, previously recouped from such Soldiers for bonus payments or student loan repayments received from the CA ARNG, to satisfy these *other* debts. Accordingly, a limited number of Soldiers in this category did not receive a refund from DFAS or received only a partial refund.

previously been established and certified). A separate letter documenting the decision was provided to the Soldier and a copy filed in the Soldier's permanent military personnel file.

- If the case was one in which the Soldier's debt had been previously established and certified, DFAS automatically undertook to refund to the Soldier any amount that he/she had previously repaid, including fees¹⁶; no further action on the part of the individual Soldier was required to ensure receipt of a refund.¹⁷ DFAS paid the Soldier's refund from a line of accounting provided by NGB in accordance with section 671(c)(5) of the NDAA for FY 2017.
- If, after consideration of a case by a Special Board of Review, the Director of the ABCMR, and the DASA(RB), applying the "knew or reasonably should have known" standard established by the NDAA for FY 2017, it was determined that the available evidence did not support a grant of full relief, the Soldier's case was entered into the appeals process, detailed in SECTION VI, below.
- The ABCMR completed the Special Board of Review process for all 736 Soldiers' cases on Friday, July 21, 2017:
 - Full relief was granted in 343 Soldiers' cases: in 203 of these cases, debt had been previously established and certified; in 140 of these cases, debt had *not* been previously established and certified.
 - Relief was not granted, or granted only in part, in 393 Soldiers' cases: in 181 of these cases, debt had been previously established and certified; in 212 of these cases, debt had *not* been previously established and certified. These cases typically involved a Soldier's receipt of an incentive in exchange for an enlistment of a certain length, which was subsequently curtailed by the Soldier's own misconduct. The most common types of misconduct were AWOL of lengthy duration and substance abuse. Each of these 393 Soldiers was entered into the appeals process, detailed in SECTION VI.

SECTION VI – THE APPEALS PROCESS – 393 SOLDIERS IN WHOSE CASES THE AVAILABLE EVIDENCE DID NOT SUPPORT A GRANT OF FULL RELIEF

- Each of the 393 Soldiers entered into the appeals process was notified by letter, and offered the chance to make a personal appearance before an appellate Special Board of Review.

¹⁶ For purposes of this report, fees include interest, penalties, and administrative fees assessed.

¹⁷ Some of these Soldiers owed *other* debts to the Department of Defense, not related to the instant matter. Following standard financial management accounting practices, DFAS applied any monies, including fees, previously recouped from such Soldiers for bonus payments or student loan repayments received from the CA ARNG, to satisfy these *other* debts. Accordingly, a limited number of Soldiers in this category did not receive a refund from DFAS or received only a partial refund.

- If a Soldier who had been notified of the right to make a personal appearance before an appellate Special Board of Review failed to respond within a period of 10 days, the prior decision of the DASA(RB) was deemed final.¹⁸ The Director of the ABCMR issued letters to the Soldier and the NGB, promulgating the final decision in the case. Upon receipt of notification from the Director of the ABCMR, NGB notified CA ARNG, which then notified DFAS (in cases in which a debt had previously been established and certified).
- To ensure the fairness of the appeals process, the appellate Special Board of Review before which the Soldier appeared was comprised of members who had not previously participated in the review of the Soldier's case. Although a few Soldiers appeared in person, most Soldiers who elected a personal appearance appeared before an appellate Special Board via video-teleconference or teleconference from California or another long-distance location.
- If, based on the Soldier's personal appearance, the appellate Special Board of Review recommended full relief, the Director of the ABCMR issued a letter promulgating the final decision in the case and notified NGB of the outcome. Upon receipt of notification from the Director of the ABCMR, NGB notified CA ARNG, which then notified DFAS (in cases in which a debt had previously been established and certified). A separate letter documenting the decision was provided to the Soldier and a copy filed in the Soldier's permanent military personnel file.
 - If the case was one in which the Soldier's debt had been previously established and certified, DFAS automatically undertook to refund to the Soldier any amount that he/she had previously repaid, including fees¹⁹; no further action on the part of the individual Soldier was required to ensure receipt of a refund.²⁰ DFAS paid the Soldier's refund from a line of accounting provided by NGB in accordance with section 671(c)(5) of the NDAA for FY 2017.
- If the appellate Special Board of Review determined that the available evidence did not support a grant of full relief, notwithstanding the Soldier's personal appearance, the Soldier would be advised by letter of his/her option to submit a final appeal to the Secretary of the Army.²¹

¹⁸ In each of these Soldiers' cases, the DASA(RB) had previously determined that the available evidence did not support a full grant of relief.

¹⁹ For purposes of this report, fees include interest, penalties, and administrative fees assessed.

²⁰ Some of these Soldiers owed *other* debts to the Department of Defense, not related to the instant matter. Following standard financial management accounting practices, DFAS applied any monies, including fees, previously recouped from such Soldiers for bonus payments or student loan repayments received from the CA ARNG, to satisfy these *other* debts. Accordingly, a limited number of Soldiers in this category did not receive a refund from DFAS or received only a partial refund.

²¹ Although the process authorizing a final appeal to the Secretary of the Army has been established, as of the date of this report, the process has not been utilized.

- If a Soldier who had been notified of the right to make final appeal to the Secretary of the Army were to fail to respond within a period of 10 days, the decision of the appellate Special Board of Review would be deemed final. The Director of the ABCMR would issue letters to the Soldier and the NGB, promulgating the final decision in the case. Upon receipt of notification from the Director of the ABCMR, NGB would notify CA ARNG, which would then notify DFAS (in cases in which a debt had previously been established and certified).
- To ensure the fairness of the appeals process, a Soldier who elected to appeal to the Secretary of the Army would be advised to submit his/her written appeal, together with any additional documents or information he/she wished to be considered by the Secretary, to the Deputy Assistant Secretary of the Army for Military Personnel and Quality of Life (DASA(MPQ)) in the Office of the Assistant Secretary of the Army for Manpower and Reserve Affairs. The DASA(MPQ) has had no prior involvement in the Special Board of Review process conducted by the ABCMR, or with the DASA(RB)'s review of these cases.
 - The DASA(MPQ) would review the Soldier's appeal, made a recommendation thereon, and submit the complete case file to the Secretary of the Army for decision.
- Once the Secretary rendered his decision, the case file would be returned to the DASA(MPQ), who would issue a letter promulgating the final decision in the case.
 - If the Secretary of the Army granted the Soldier full relief, the DASA(MPQ) would notify NGB of the outcome. Upon receipt of notification from the DASA(MPQ), NGB would notify CA ARNG, which then would notify DFAS (in cases in which a debt had previously been established and certified). A separate letter documenting the decision would be provided to the Soldier and a copy filed in the Soldier's permanent military personnel file.
 - If the case was one in which the Soldier's debt had been previously established and certified, DFAS would automatically undertake to refund to the Soldier any amount that he/she had previously repaid, including fees²²; no further action on the part of the individual Soldier would be required to ensure receipt of a refund.²³ DFAS would pay the Soldier's refund from a line of accounting provided by NGB in accordance with section 671(c)(5) of the NDAA for FY 2017.

²² For purposes of this report, fees include interest, penalties, and administrative fees assessed.

²³ Some of these Soldiers owed *other* debts to the Department of Defense, not related to the instant matter. Following standard financial management accounting practices, DFAS applied any monies, including fees, previously recouped from such Soldiers for bonus payments or student loan repayments received from the CA ARNG, to satisfy these *other* debts. Accordingly, a limited number of Soldiers in this category did not receive a refund from DFAS or received only a partial refund.

- If the Secretary of the Army determined that the available evidence did not support a grant of full relief, notwithstanding the Soldier's appeal, the DASA(MPQ) would notify the Soldier and NGB, by letter, of the Secretary's decision. Upon receipt of notification from the DASA(MPQ), NGB would notify CA ARNG, which would then notify DFAS (in cases in which a debt had previously been established and certified).
- As of the date of this report, the status of the 393 Soldiers' cases entered into the appeals process is as follows.
 - As to the 181 Soldiers' cases in which debt had been previously established and certified:
 - In 171 cases, the Soldiers were notified of their right to make a personal appearance before an appellate Special Board of Review, but failed to respond within the 10-day period allowed. Accordingly, the prior decision of the DASA(RB) that the available evidence did not support a grant of full relief, has been deemed final.²⁴ The Soldier, NGB, and CA ARNG have been notified of this final decision. CA ARNG will notify DFAS.
 - In 4 cases, the Soldiers have been notified of their right to make a personal appearance before an appellate Special Board of Review, but the 10-day response period has not yet expired.
 - In 6 cases, the affected Soldiers made a personal appearance before an appellate Special Board of Review. The appellate Board granted full relief to 2 of the 6 Soldiers. The cases of the remaining 4 Soldiers remain under consideration.
 - As to the 212 Soldiers' cases in which debt had *not* been previously established and certified.
 - In 29 cases, the Soldiers were notified of their right to make a personal appearance before an appellate Special Board of Review, but failed to respond within the 10-day period allowed. Accordingly, the prior decision of the DASA(RB) that the available evidence did not support a grant of full relief, has been deemed final.²⁵ The Soldier, NGB, and CA ARNG have been notified of this final decision. CA ARNG will notify DFAS.
 - In 182 cases, the Soldiers have been notified of their right to make a personal appearance before an appellate Special Board of Review, but the 10-day response period has not yet expired.

²⁴ In each of these Soldiers' cases, the DASA(RB) had previously determined that the available evidence did not support a full grant of relief.

²⁵ In each of these Soldiers' cases, the DASA(RB) had previously determined that the available evidence did not support a full grant of relief.

- One Soldier has requested and is scheduled for a personal appearance before an appellate Special Review Board over the period of September 12-13, 2017. The Soldier's personal appearance was delayed until September in response to the Soldier's request for additional time to prepare his case.
- As of the date of this report, 191²⁶ of the 393 Soldiers entered into the appeals process have not yet exhausted their appellate opportunities. Not later than September 30, 2017, the DoD will provide the Congress with the final results of the appellate process.

**SECTION VII – FOLLOW-ON ACTIONS BY THE CA ARNG AND DFAS –
SOLDIERS IN WHOSE CASES THE AVAILABLE EVIDENCE
DID NOT SUPPORT A GRANT OF FULL RELIEF**

- Soldiers' cases in which the final decision is that the available evidence does not support a grant of full relief will be referred by the NGB to the CA ARNG for further review and action, as appropriate. As described above, referral of such a final decision to the CA ARNG may occur several different points in time, depending on the appellate opportunities of which the Soldier choose to avail himself/herself.
- As to those cases referred to the CA ARNG in which debt had been previously established and certified, the CA ARNG will notify DFAS to reinitiate action to recoup from the Soldier any amounts for which relief was not granted. In cases in which a Soldier received a grant of partial relief, the amounts at issue will be less than the debt originally established and certified. Because all prior recoupment and collection actions were terminated, DFAS will again afford the Soldier the opportunity to make a lump sum repayment or to enter into an agreement for a payment plan. Provided the Soldier adheres to the payment plan and makes timely payments, the matter will not be referred to the Department of Treasury, a credit reporting bureau, or private collection agency.
- As to those cases in which debt had *not* been previously established and certified, that the final decision rendered was that the available evidence did not support a grant of full relief should not be interpreted as an affirmative finding that the Soldier's potential debt was valid and should be recouped. Rather, such a determination reflects only that the evidence available in the Soldier's case did not meet the criteria

²⁶ This number is comprised as follows: As to cases in which debt had been previously certified, 8 Soldiers have not yet exhausted their appellate opportunities (4 Soldiers have been notified of their right to make a personal appearance before an appellate Special Board of Review, but the 10-day response period has not yet expired; 4 Soldiers who have made personal appearances, but whose cases remain under consideration). As to cases in which debt had *not* been previously certified, 183 Soldiers have not yet exhausted their appellate opportunities (182 Soldiers have been notified of their right to make a personal appearance before an appellate Special Board of Review, but the 10-day response period has not yet expired; 1 Soldier has requested a personal appearance, but requested a delay until September). 8 Soldiers in whose case debt had been previously certified PLUS 183 Soldiers in whose cases debt had *not* been previously certified EQUALS 191 Soldiers.

for waiver established by the Cross-Functional Team and the legal standards established by the NDAA for FY 2017.

- As to each case returned to the CA ARNG for further review and action, as appropriate, in which debt had *not* been established previously, the CA ARNG has the full range of options available to it—from no further action, to the initiation of debt establishment and certification processes against the Soldier for any amounts for which relief was not granted. The Office of the USD(P&R) and the Department of the Army will work closely with the NGB and CA ARNG as each of these remaining cases is addressed.
- Any Soldier against whom the CA ARNG elects to initiate debt establishment and certification processes for any amounts for which relief was not granted, will have available to him/her all of the due process guaranteed by law and DoD Financial Management Regulations, as well as the ability to appeal to the ABCMR for review. **NOTE:** An ABCMR Special Board of Review already will have considered the Soldier’s case and determined that the available evidence did not support a grant of relief under the standards established by the Cross-Functional Team and the NDAA for FY 2017. Accordingly, the Soldier will no longer be eligible for “special review” by the ABCMR under provisions of the NDAA for FY 2017, but *will be* eligible for review in accordance with the ABCMR’s long-standing statutory authority under title 10, U.S. Code, section 1552.

SECTION VIII – LOOKING FORWARD –ENSURING APPROPRIATE AND ACCOUNTABLE MANAGEMENT AND OVERSIGHT OF ARMY NATIONAL GUARD BONUS AND STUDENT LOAN REPAYMENT PROGRAMS

In response to the fraud and error that adversely affected CA ARNG incentive programs from 2004-2010, the ARNG undertook to standardize management and oversight of bonus and student loan repayment programs in all National Guard elements across the 54 States and U.S. Territories, as follows:

In 2011, the CA ARNG was one of the first to adopt the Guard Incentive Management System (GIMS); by June 2012, it was in use in all 54 States and U.S. Territories. Since June 2012, the ARNG has relied on GIMS for global management and oversight of incentive payments. To the extent possible, electronic files stored in the previous incentive management system, some of which dated back to 1996, were transferred into GIMS when the system became operational.

GIMS is designed to ensure that bonuses and student loan repayments are awarded and paid only to those Service members who are eligible to receive them at initiation, and who remain eligible for the duration of their agreed upon service commitment. The GIMS system operates on a four phase incentive lifecycle: Issuance, Establishment, Monitor, and Payment.

The *Issuance* phase begins prior to award of an incentive, with the generation of an addendum to a Soldier's enlistment contract or accession documents. GIMS will generate an incentive addendum only if the Soldier "passes" all of the controls built into the system. The addendum documents the terms of the incentive (e.g., payment amount, payment schedule, service obligation) the Soldier will receive for enlisting, affiliating, or extending his/her service commitment. Once the addendum has been generated, the addendum and all supporting documents are reviewed by the unit Incentive and Benefits Manager. Subsequently, all documents will be scanned and uploaded into GIMS for submission to State level for review. This ends the *Issuance* phase and begins the *Establishment* phase.

If State personnel, in concert with GIMS automated controls, deem the Soldier eligible for the incentive, the complete file is forwarded electronically to the ARNG Incentive Support Team, which conducts a manual quality control review in GIMS. Each Soldier's eligibility for the designated incentive is validated individually, after which, a random sample of 30 percent of the files comprising a "batch", are selected for further quality control checks. Once a Soldier's eligibility for the incentive is determined and the incentive addendum deemed complete and valid, the ARNG Incentives Branch verifies that the funding available supports payment of the incentive, and opens an account with DFAS in the Soldier's name, ensuring payments are made only if DFAS is tracking the incentive. This ends the *Establishment* phase.

GIMS then moves into the *Monitor* phase for the life of the incentive. GIMS features built-in safeguards that minimize erroneous payments or over-payments to Soldiers by allowing for identification and correction of ineligibility or errors *before* any payment is made. During monitoring, GIMS conducts automated, daily eligibility checks of every Army National Guard incentive addendum. Through a constant review of Soldiers' personnel information, provided via a series of feeds from Army databases, GIMS identifies situations in which a Soldier's eligibility for a bonus or student loan repayment may have changed over time. GIMS flags the situation, places a "hold" on future payments, and submits the case for review by a human expert.

The same three-level review again applies: unit Incentive and Benefits Manager, State, and the ARNG Incentives Branch team. If the human reviewers determine that the Soldier remains eligible for the incentive, the system flag is lifted and the *Payment* phase is initiated. GIMS generates the payment file electronically and transfers it to DFAS, facilitating on-time and accurate payments and ensuring an auditable record.

If the Service member is deemed no longer eligible for the incentive, the pending bonus or student loan repayment is terminated. Because the system does not allow a payment to occur if there is an eligibility issue, the chance of an erroneous payment is significantly reduced. In the few rare cases in which monitoring fails and ineligibility or error is identified only *after* payment, the unit is directed to notify the Soldier that his/her incentive payments have been terminated. Termination may result in a requirement to recoup all or part of a bonus payment or student loan repayment already made. GIMS works in real time, however, minimizing the length of time that elapses between the date an erroneous payment is made and the date on which recoupment may be initiated.

A Soldier whose incentive payments have been terminated can use GIMS to appeal the decision and request an exception to policy. GIMS permits a Soldier to submit information and documentation in support of the Soldier's assertion that he/she was entitled to the incentive payment and/or should not be subject to recoupment. The authority to grant such an exception to ARNG policy is vested in the G-1 of the ARNG, for all Soldiers in the 54 States and U.S. Territories. In the event the cause for termination of the incentive is based in law or a DoD-level policy, the Soldier may submit his/her case for consideration by the ABCMR.

GIMS can provide any reviewer, at any time, the precise reason as to why a Soldier did or did not receive a particular incentive payment. If a Soldier leaves his/her position with the National Guard in one state and moves to another National Guard position in another state, the GIMS record remains intact and accessible to the gaining unit.

GIMS embeds management controls that ensure compliance with all applicable laws, regulations, and policies, as well as with AAA and Government Accountability Office (GAO) recommendations. Through a system of authorized user roles and permissions, GIMS ensures separation of duties and authorities. Every system action is tracked; GIMS monitors and records every action that every user takes inside the system—each and every time it is accessed—even if the user is merely opening a tab or reviewing a data element. User history can be retrieved with ease.

In 2012, AAA reviewed GIMS and published the findings of its audit in report A-2012-0040-FMF, *Controls Over the Incentive Program in the Army National Guard*. AAA made 15 recommendations to address weaknesses in the ARNG incentives program. In 2016, AAA conducted a follow-up audit of GIMS (A-2016-0094-FMF). AAA found that the ARNG had implemented all of the prior recommendations, commenting, "GIMS substantially improved the controls throughout [the] eligibility, monitoring, and payment phases of the incentive process of the bonus and loan repayment programs." The second report identified four new recommendations related to the implementation of additional internal controls. One of these recommendations already has been addressed, with the remaining three scheduled for completion by December 2017.

In addition, AAA has routine access to GIMS and can conduct system "spot checks" at any time. In late 2015, AAA executed a review of GIMS for purposes of assessing its compliance with the Federal Financial Management Improvement Act (FFMIA). AAA determined GIMS to be FFMIA compliant, a prerequisite to designation of GIMS as a "pay feeder" system, which enables the submission of individual pay transactions directly to the DFAS server. As directed by the NDAA for FY 2016, GAO is currently auditing the GIMS system, with a report of findings due in December 2017.

The Department believes that GIMS, in operation in the CA ARNG since 2011, has and will continue to significantly enhance the quality of ARNG incentive management and oversight, to the benefit of DoD, the U.S. Army, the ARNG, and the individual Soldier.

SECTION IX – CONCLUSION

Between October 2016 and July 30, 2017, the Department conducted a multi-level review of the cases of 17,485 individual Soldiers who had received a bonus or student loan repayment associated with their service in the CA ARNG, from 2004 through 2010. The Department applied a two-step process to the conduct of its review: AAA and ARBA applied criteria developed by a Cross-Functional Team to screen out cases in which equitable considerations weighed against recouping a debt or favored foregoing the initiation of debt collection processes, without the need for further review; subsequently, the ABCMR, acting as a Special Board of Review in accordance with the NDAA for FY 2017, conducted an individual review of the remaining cases.

17,092 of these cases—the overwhelming majority—were resolved in favor of the individual Soldier. In these cases, the Soldier received a full grant of relief, pursuant to which the entirety of an existing debt was waived (as to those cases in which a debt had previously been established and certified), or a determination was made that no debt would be established (as to those cases in which debt had *not* been previously established and certified). Official documentation recording this full grant of relief has been filed in each affected Soldier's permanent personnel file, from which it can be retrieved readily, should questions about this matter arise in the future.

The Department entered only 393 Soldiers, in whose cases the available evidence did not support a full grant of relief, into its robust appeals process, designed to maximize each Soldier's opportunities for relief. As of the date of this report, the cases of 202 of these 393 Soldiers have been finalized. In 200 of these cases, the Soldiers were notified of their right to make a personal appearance before an appellate Special Board of Review, but failed to respond within the 10-day period allowed. Accordingly, the prior decision of the DASA(RB) that the available evidence did not support a grant of full relief, has been deemed final. These 200 cases have been referred to the NGB and CA ARNG for review and action, as appropriate, and CA ARNG will notify DFAS. In 2 cases, the appeals process resulted in a grant of full relief for the affected Soldier.

As of the date of this report, 191 of the 393 Soldiers entered into the appeals process have not exhausted their appellate opportunities. Not later than September 30, 2017, the DoD will provide the Congress with the final results of the appellate process.

Looking forward, the Department believes that GIMS, in operation in the CA ARNG since 2011, has and will continue to significantly enhance incentive management and oversight.

APPENDIX

The following specific data and information is provided as required by section 671(c) of the NDAA for FY 2017:

1. The total amount of bonus pays, special pays, student loan repayments, and other special pays paid to members of the National Guard of the State of California during the period beginning September 1, 2001, and ending on December 31, 2015.

Neither CA ARNG nor DFAS was able to provide data dating prior to January 1, 2004.

The remaining pertinent data are summarized in Figure 1 and Table 1, below.

FIGURE 1

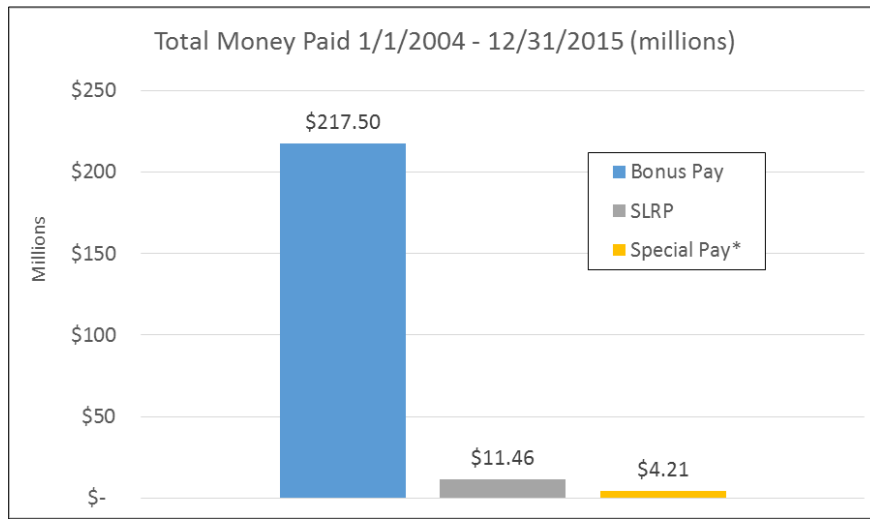


Figure 1 graphically depicts the total amounts paid by the CA ARNG for bonus pays and student loan repayments from January 1, 2004 through December 31, 2015. **The time period covered by Figure 1 exceeds the period covered by the DoD Review, which addressed bonuses and student loan repayments paid to members of the CA ARNG from 2004 through 2010.**

* Special pay data retrievable for this report included only Foreign Language Proficiency Pay (FLPP) and Special Duty Assignment Pay (SDAP) (e.g., for the performance of duty as a recruiter) paid between January 1, 2007, and December 31, 2015.

TABLE 1

Type	Amount	Years	\$ / Year
Bonus Pay	\$ 194,663,989	2004-2010	\$ 27,809,141
Bonus Pay	\$ 22,834,413	2011-2015	\$ 4,566,883
SLRP	\$ 6,443,619	2004-2010	\$ 920,517
SLRP	\$ 5,019,228	2011-2015	\$ 1,003,846
Special Pay*	\$ 4,210,550	2007-2015	\$ 467,839
Total	\$ 233,171,799		

Table 1 depicts in tabular form the total amounts paid by the CA ARNG for bonus pays and student loan repayments from January 1, 2004, through December 31, 2015. **The time period covered by Table 1 exceeds the period covered by the DoD Review, which addressed bonuses and student loan repayments paid to members of the CA ARNG from 2004 through 2010.**

* Special pay data retrievable for this report included only FLPP and SDAP paid between January 1, 2007, and December 31, 2015.

Noteworthy is the decrease in annual bonus pays beginning in 2011—subsequent to the CA ARNG’s removal of a corrupt Incentive and Benefits Manager and implementation of GIMS.

2. The number of bonus pay and special pay contracts reviewed in the DoD Review and the amounts of such pays paid under each such contract.

FIGURE 2

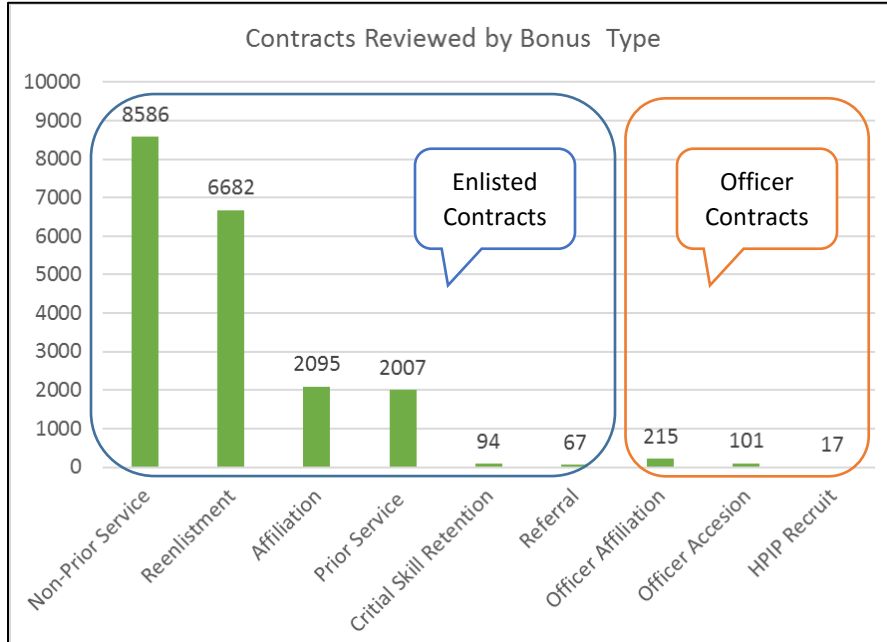


Figure 2 incorporates data from the totality of the DoD Review of CA ARNG cases involving 17,485 Soldiers.

FIGURE 3

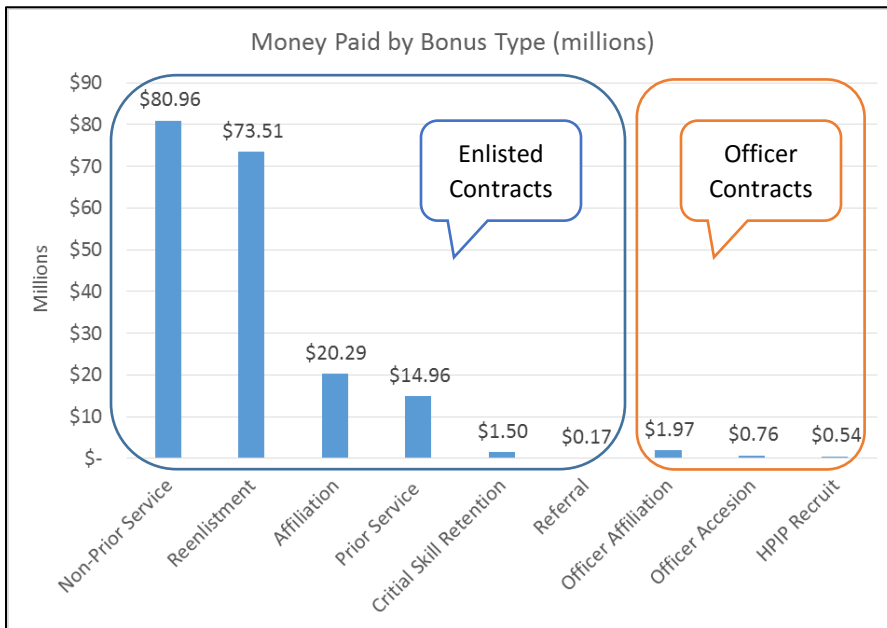


Figure 3 incorporates data from the totality of the DoD Review of CA ARNG cases involving 17,485 Soldiers.

KEY:

Incentives for enlisted personnel include:

- Non-Prior Service—may be awarded on the enlistment of an individual who has never served in the military.
- Reenlistment—may be awarded on the reenlistment of a currently serving Soldier.
- Affiliation—may be awarded to an individual who leaves active duty military service and affiliates with the Selected Reserve (in either the National Guard or Reserves).
- Prior Service—may be awarded to an individual who enlists having served previously in the military.
- Critical Skills Retention—may be awarded to an individual with a critical skill, as determined by the Military Department concerned.
- Referral—may be awarded to one Soldier for the referral of a non-Service member who enlists in the military. This incentive is no longer used.

Incentives for officers include:

- Officer Affiliation—may be awarded to an officer who leaves active duty military service and affiliates with the Selected Reserve (in either the National Guard or Reserves).
- Officer Accession—may be awarded upon the accession of an officer.
- Health Professions Incentive Program Recruit—may be awarded to an individual in the health professions who joins the military.

NOTES:

Total Number of Bonus Contracts Reviewed by the DoD Review in its Entirety = 19,864. Because a Soldier may legitimately contract for multiple incentives, the number of contracts reported above as subject to review exceeds the number of individual Soldiers or “cases” reviewed, as referenced in the base report.

Total Dollar Amount of Bonus Contracts Reviewed by the DoD Review in its Entirety = \$194.6M.

DoD did not review special pays as part of the overall CA ARNG incentive contracts review. Special pays are not awarded a Soldier by virtue of a contractual service agreement. Rather, a Soldier receives special pay when he/she performs official duty that entitles him/her to same. Examples of special pays include FLPP and SDAP (e.g., for the performance of duty as a recruiter). Special pays are paid in “arrears”, that is, they are disbursed only after a review of the

Soldier’s personnel records confirm that he/she filled the requisite duty position and performed the “special” duty during the past pay period. As a consequence, special pays are not as susceptible to administrative irregularities or intentional abuse as are contract-based incentives like bonuses and student loan repayments. Indeed, there is no indication that any special pays were affected by the misconduct that generated the audit into the CA ARNG’s use of bonuses and student loan repayments. Moreover, it is quite difficult to qualify for special pay, and payment amounts are generally quite low for members of the ARNG who, under ordinary circumstances, drill for only two days in a given month and train for only two weeks annually. Special pays are not authorized in the Reserve Component to the same extent as in the active force; special pay disbursements were less than 5 percent of all CA ARNG incentive payments.

No bonus contracts entered into before 2004 or after 2010 were reviewed by DoD. The CA ARNG/NGB audit on which the DoD Review was based reviewed only those contracts in effect from 2004 through 2010.

No bonus contracts pertaining to members of the California Air National Guard were reviewed by DoD. The CA ARNG/NGB audit on which the DoD Review was based reviewed only Army National Guard contracts.

3. The number of student loan repayment contracts reviewed and the amounts of such payments made pursuant to each such contract.

TABLE 2

Type	Contracts	Individuals	\$ Amount	Years
SLRP	630	630	\$6,201,511	2004-2010
HPLRP	27	27	\$ 226,691	2004-2010
CLRP	3	3	\$ 15,417	2004-2010
Total	660	660	\$6,443,619	

Table 2 incorporates data from the totality of the DoD Review of CA ARNG cases involving 17,485 Soldiers.

KEY:

- SLRP—Student Loan Repayment Program.
- HPLRP—Health Professions Loan Repayment Program.
- CLRP—Chaplains Loan Repayment Program.

NOTES:

Total Number of Student Loan Repayment Contracts Reviewed by the DoD Review in its Entirety = 660.

Total Dollar Amount of Student Loan Repayment Contracts Reviewed by the DoD Review in its Entirety = \$6.4M

No student loan repayment contracts entered into before 2004 or after 2010 were reviewed by DoD. The CA ARNG/NGB audit on which the DoD Review was based reviewed only those contracts in effect from 2004 through 2010.

No student loan repayment contracts pertaining to members of the California Air National Guard were reviewed by DoD. The CA ARNG/NGB audit on which the DoD Review was based reviewed only Army National Guard contracts.

4. The number of other special pay payments reviewed and the amounts of such payments made to each particular member so paid.

DoD did not review special pays as part of the overall CA ARNG incentive contracts review. Special pays are not awarded a Soldier by virtue of a contractual service agreement. Rather, a Soldier receives special pay when he/she performs official duty that entitles him/her to same. Examples of special pays include FLPP and SDAP (e.g., for the performance of duty as a recruiter). Special pays are paid in “arrears”, that is, they are disbursed only after a review of the Soldier’s personnel records confirm that he/she filled the requisite duty position and performed the “special” duty during the past pay period. As a consequence, special pays are not as susceptible to administrative irregularities or intentional abuse as are contract-based incentives like bonuses and student loan repayments. Indeed, there is no indication that any special pays were affected by the misconduct that generated the audit into the CA ARNG’s use of bonuses and student loan repayments. Moreover, it is quite difficult to qualify for special pay, and payment amounts are generally quite low for members of the ARNG who, under ordinary circumstances, drill for only two days in a given month and train for only two weeks annually. Special pays are not authorized in the Reserve Component to the same extent as in the active force; special pay disbursements were less than 5 percent of all CA ARNG incentive payments.

5. The number of bonus pay and special pay contracts, student loan repayments and other special pay payments that were determined pursuant to the review to be paid in error, and the total amount, if any, recouped from each member concerned.

TABLE 3

	Certified Debt Cases	No Debt Certified Cases
Total Cases Reviewed	383	353
Total Contracts Reviewed	448	367
Individuals Paid in Error*	231	126
Bonus Pays Paid in Error	214	132
Bonus Amounts Paid in Error	\$ 2,372,932	\$ 1,683,144
SLRP Paid in Error	49	6
SLRP Amounts Paid in Error	\$ 449,092	\$ 70,088
Recoupments from Individuals Paid in Error**	\$ 638,070	\$ 0

Table 3 differs from all prior Figures and Tables in that it incorporates data from ONLY the cases of the 736 Soldiers referred for individual review by the ABCMR acting as a Special Board of Review in accordance with the NDAA for FY 2017.

In determining which Soldiers were “paid in error” and the amounts of any such erroneous payments, the ABCMR applied the criteria established in section 671(c)(2)(A)(i)-(iii) of the NDAA for FY 2017: (1) was the Soldier eligible for the bonus or student loan repayment for which he/she contracted; and (2) did the Soldier’s contract for the bonus or student loan repayment accurately specify the amount of pay for which the Soldier was eligible. An answer of “no” to either question resulted in a determination that the bonus or student loan repayment at issue had been “paid in error” to the affected Soldier. These “paid in error” findings were tabulated and included in Table 3.

It is important to note that a finding that a particular bonus or student loan repayment had been “paid in error” to an affected Soldier, and the inclusion of this information in Table 3, IS NOT indicative of the final disposition of the Soldier’s case. Application of the “knew or reasonably should have known” standard established by the NDAA for FY 2017, resulted in grants of relief to many Soldiers who had been “paid in error”.

* Reflects individual Soldiers with one or more contracts “paid in error”.

** This amount reflects recoupments from Soldiers prior to October 26, 2016, when then-Secretary of Defense Ash Carter ordered the suspension of *all* efforts to recoup these debts. A finding that a particular bonus or student loan repayment had been “paid in error” to a Soldier, and the inclusion of this information in Table 3, IS NOT indicative of the final disposition of the Soldier’s case. Application of the “knew or reasonably should have known” standard established by the NDAA for FY 2017, resulted in grants of relief to many Soldiers who had been “paid in

error”. When full relief was granted in a case in which the Soldier’s debt had been previously established and certified, DFAS would automatically undertake to refund to the Soldier any amount that he/she had previously repaid, including fees. Accordingly, it is highly likely that all or part of the total “Recoupments from Individuals Paid in Error” recorded in Table 3 were subsequently refunded to affected Soldiers, without regard to the fact that a Soldier may originally have been “paid in error”.

NOTES:

DoD did not review special pays as part of the overall CA ARNG incentive contracts review. Special pays are not awarded a Soldier by virtue of a contractual service agreement. Rather, a Soldier receives special pay when he/she performs official duty that entitles him/her to same. Examples of special pays include FLPP and SDAP (e.g., for the performance of duty as a recruiter). Special pays are paid in “arrears”, that is, they are disbursed only after a review of the Soldier’s personnel records confirm that he/she filled the requisite duty position and performed the “special” duty during the past pay period. As a consequence, special pays are not as susceptible to administrative irregularities or intentional abuse as are contract-based incentives like bonuses and student loan repayments. Indeed, there is no indication that any special pays were affected by the misconduct that generated the audit into the CA ARNG’s use of bonuses and student loan repayments. Moreover, it is quite difficult to qualify for special pay, and payment amounts are generally quite low for members of the ARNG who, under ordinary circumstances, drill for only two days in a given month and train for only two weeks annually. Special pays are not authorized in the Reserve Component to the same extent as in the active force; special pay disbursements were less than 5 percent of all CA ARNG incentive payments.

6. Any additional fraud or other ineligibility identified in the course of the review in the payment of bonus pays, special pays, student loan repayments, and other special pays paid to the members of the National Guard of the State of California during the period beginning on September 1, 2001, and ending on December 31, 2015.

The DoD considered 17,485 cases of Soldiers and former Soldiers who received bonus payments and/or student loan repayments as members of the CA ARNG between 2004 and 2010. The Department’s review did not identify additional cases of fraud.

17,092 of these cases—the overwhelming majority—were resolved in favor of the individual Soldier. In these cases, the Soldier received a full grant of relief, pursuant to which the entirety of an existing debt was waived (as to those cases in which a debt had previously been established and certified), or a determination was made that no debt would be established (as to those cases in which debt had *not* been previously established and certified).

Applying the “knew or reasonably should have known” standard mandated by the NDAA for FY 2017, the ABCMR, acting as a Special Board of Review, determined that in the cases of 393 Soldiers, the available evidence did not support a full grant of relief.

The Department entered these 393 Soldiers into its robust appeals process, designed to maximize each Soldier’s opportunities for relief. As of the date of this report, the cases of 202 of these 393

Soldiers have been finalized. In 200 of these cases, the Soldiers were notified of their right to make a personal appearance before an appellate Special Board of Review, but failed to respond within the 10-day period allowed. Accordingly, the prior decision of the DASA(RB) that the available evidence did not support a grant of full relief, has been deemed final. These 200 cases have been referred to the NGB and CA ARNG for review and action, as appropriate, and CA ARNG will notify DFAS. In 2 cases, the appeals process resulted in a grant of full relief for the affected Soldier.

As of the date of this report, 191 of the 393 Soldiers entered into the appeals process have not exhausted their appellate opportunities. Not later than September 30, 2017, the DoD will provide the Congress with the final results of the appellate process.

DoD did not review special pays as part of the overall CA ARNG incentive contracts review. Special pays are not awarded a Soldier by virtue of a contractual service agreement. Rather, a Soldier receives special pay when he/she performs official duty that entitles him/her to same. Examples of special pays include FLPP and SDAP (e.g., for the performance of duty as a recruiter). Special pays are paid in “arrears”, that is, they are disbursed only after a review of the Soldier’s personnel records confirm that he/she filled the requisite duty position and performed the “special” duty during the past pay period. As a consequence, special pays are not as susceptible to administrative irregularities or intentional abuse as are contract-based incentives like bonuses and student loan repayments. Indeed, there is no indication that any special pays were affected by the misconduct that generated the audit into the CA ARNG’s use of bonuses and student loan repayments. Moreover, it is quite difficult to qualify for special pay, and payment amounts are generally quite low for members of the ARNG who, under ordinary circumstances, drill for only two days in a given month and train for only two weeks annually. Special pays are not authorized in the Reserve Component to the same extent as in the active force; special pay disbursements were less than 5 percent of all CA ARNG incentive payments.

No bonus contracts entered into before 2004 or after 2010 were reviewed by DoD. The CA ARNG/NGB audit on which the DoD Review was based reviewed only those contracts in effect from 2004 through 2010.

No bonus contracts pertaining to members of the California Air National Guard were reviewed by DoD. The CA ARNG/NGB audit on which the DoD Review was based reviewed only Army National Guard contracts.