

NOT FOR PUBLICATION UNTIL RELEASED BY COMMITTEE

STATEMENT

OF

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

BEFORE THE

HOUSE ARMED SERVICES COMMITTEE

SUBCOMMITTEE ON MILITARY PERSONNEL

HEARING

ON THE

CALIFORNIA NATIONAL GUARD BONUS REPAYMENT ISSUES

DECEMBER 7, 2016

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

OTHER STATE CASES

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

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