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COMMITTEE ON ARMED SERVICES

U.S. House of Representatives

Washington, DC 20515-6035

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16 April 2002

Memorandum for Chairman John M. McHugh and Rep. Vic Snyder

From: Military Personnel Subcommittee Staff

Subject: Preliminary Report of Inquiry into Army National Guard Strength Accounting and Other Matters

This report provides the preliminary findings of the Military Personnel Subcommittee staff regarding a number of issues about Army National Guard strength accounting, senior National Guard leadership selection and oversight, and whistleblower protections.

Attached are materials used in developing the staff findings. These materials, provided to the subcommittee pursuant to requests by the subcommittee's Chairman and Ranking Member, represent input from the Undersecretary of Defense for Personnel and Readiness, the Department of Defense General Counsel, the Chief of the National Guard Bureau, the inspectors general of the Department of Defense, Army and Air Force, and the General Accounting Office (GAO). In addition to reviewing these written materials, the staff conducted a number of briefings and discussions with the personnel from the GAO, the Office of the Secretary of Defense for Reserve Affairs, the National Guard Bureau, and the American Law Division, Congressional Research Service.

PRINCIPAL ISSUES

Army National Guard Strength Accounting and Management

Preliminary Findings: Strength accounting in the Army National Guard has improved significantly over the last several years. Widespread, systemic inflation of unit strengths by unit commanders for the purpose of misleading federal authorities is not evident from

either the General Accounting Office (GAO) analysis of recent trends, or inspector general reports over the last five years. A Department of Defense (DOD) process for further improving Army National Guard strength accounting is underway. Additional staff research may be required to confirm whether the DOD process will identify and correct in a timely way non-participation rates in specific units that significantly exceed established DOD and Army National Guard norms. Continuing oversight by the subcommittee, to include use of the GAO, would help to institutionalize the strength accounting reforms now being implemented.

Supporting Information:

The General Accounting Office (GAO) reported that over the past several years of its examining strength and funding issues in the Army National Guard, there has been a major improvement in Army National Guard strength accounting. The GAO, initially working at the direction of the House Defense Appropriations Subcommittee to analyze the military personnel budget requests of all active and reserve components, not just the Army National Guard, found that:

In fiscal years 2000 and 2001, the Army National Guard overstated its funding requests for personnel and training by a total of \$74.5 million because it used inaccurate military strength and participation rates to develop its projected and actual military force levels, and because it used projected/mathematically derived training participation rates rather than the actual numbers of people being trained.

- Inaccurate military strength figures resulted from inaccurate reporting in the monthly No-Val reports prepared by unit commanders. These reports contained “ghost soldiers” – individuals retained on the rolls in a drilling status (and thus counted in end strength) who were no longer participating in training and who should have been removed from these reports. Using what it considered to be a reasonable standard that permitted a soldier to be retained for seven months in a No-Val status, GAO estimated that 4,048 reservists, or 1.3 per cent of drilling reservists should have been dropped from the end strength in fiscal year 2000, and that 4,254, or 1.4 percent, should have been dropped from the end strength in fiscal year 2001. GAO also reported that if a more rigid standard were used – removal from unit rolls after three months – then 3.7 per cent of the drilling reservists should have been dropped from the end strength in fiscal year 2000, and 2.9 per cent in fiscal year 2001.
- Increased command attention to the accuracy of No-Val reports by DOD, the National Guard Bureau and the Army National Guard has improved strength reporting across the Army National Guard. As a result, GAO found that between October 31, 1999, and December 31, 2001, the number people reported on the No-Val reports as not being paid for training for three or more months declined from about 16,200 to about 9,600.
- Some state commanders are using the No-Val reports effectively to improve strength accounting. For example, GAO noted that between November and

December 2001, the number of assigned drilling personnel in the Army Guard dropped less than 1 per cent, while personnel on the No-Val report declined about 14 per cent. Texas had the largest change, with assigned drilling strength dropping by 6 per cent and the personnel on the No-Val report declining by 70 per cent.

- GAO cautioned that it did not look at strength accounting in individual units, and therefore, could not rule out that some units had high percentages of ghost soldiers. However, given the downward trends in non-participation shown in the statewide No-Val reports, GAO believed that the numbers of units significantly out of tolerance would be small.

With respect to force management and strength accounting in Army National Guard units, the DOD reported its most recent data “indicates a 97 per cent participation rate throughout the Army National Guard with only a 3 per cent non-participation rate....[and the] National Guard’s current objective is a 98 participation rate.” GAO confirmed both statements.

The accuracy of the No-Val reports depends on a commander’s attention to maintaining sound personnel record keeping, and commanders have some limited flexibility under the regulations to excuse soldiers from drills or to modify individual drill schedules. While the National Guard Bureau indicated that commanders use this limited flexibility “liberally,” specific instances of widespread abuse of that discretion, or outright misconduct by commanders in the falsification of unit strength records are not apparent from case summaries provided the subcommittee by the DOD IG. Only nine of the more than 600 case summaries of DOD, Army and Air Force investigations into National Guard matters over a five-year period contained allegations of the falsification of unit strength records. In only one of those nine cases did the IG substantiate the allegation.

With regard to the motivations of commanders to inflate unit strength, the National Guard Bureau’s indicated there is no real incentive for a unit commander to hold a non-productive, non-drilling soldier in the unit because “the budget and force structure distribution process...takes into account actual participation rates.” By definition, the No-Val report summarizes the non-participation by guardsmen in a unit.

DOD acknowledged that a range of improvements should be made to increase the accuracy of the strength accounting and reduce the amount of time National Guard soldiers are carried in a No-Val status. To that end, DOD created a standing working group that has begun to implement a plan for corrective action.

Option for Corrective Action

- Direct the GAO, as part of the National Defense Authorization Act for Fiscal Year 2003, to review the implementation of the DOD corrective action plan for improving strength accounting, to include the process for bringing out of tolerance units into compliance, and report on the plan’s effectiveness.

Selection and Oversight of National Guard Adjutants General

***Preliminary Findings:** Selection as an adjutant general involves both a state-level and federal processes. At present, the federal recognition process is the principal mechanism for measuring the federal qualifications of individuals nominated to be adjutants general. Additional research and information would clarify the various selection processes and factors at work in each of the states. Furthermore, while it does not appear that the federal recognition process is ineffective, additional research may help to clarify where improvements might be made.*

With regard to the effectiveness of both state-level and federal-level oversight of an adjutant general, a central reality is that the National Guard is both a state and federal entity, a separation that has roots in both the Constitution and law. That separation, unless amended by law, entrusts control and oversight of the National Guard in a state status to governors, and does impose limits on direct federal oversight of the National Guard when its units and personnel are in a state status. However, those limits are not absolute. For example, the federal oversight system – particularly the inspectors general of DOD, the Army and the Air Force – appears to be functioning well in its ability to receive and investigate allegations of misconduct of senior National Guard officers in either a state or federal status. In addition, by federal statute the President can convene courts-martial of National Guard personnel in a state status. Other federal statutes provide guidance to the states in the administration of military justice in the National Guard when it is not in federal status. However, based on recommendations made in 1998 by a Secretary of Defense panel, reforms are required to improve the administration of military justice in the National Guard. Using a policy mandate, the Army reaches across that state-federal separation to impose adverse administrative action on National Guard officers in a state status, and the Air Force appears to be able to influence the imposition of adverse administrative action on National Guard general officers in a state status. Nevertheless, given the complex interplay of the shared responsibilities between state and federal authorities for corrective action, more needs to be understood, and a more comprehensive understanding of the process for judicial and administrative corrective actions might be instructive as to areas where the processes could be improved.

Supporting Information

General

As pointed out by the Department of Defense General Counsel's response, the National Guard, with deep roots in the militia clause of the Constitution, remains first and foremost a state instrumentality. As such, the state National Guard is under the command of the governor of the state and the governor's principal deputy for guard administration is the state adjutant general. Only when called or ordered into federal service is the National Guard subject to the authority of the President, the Secretary of Defense and other civilian and military authorities of the federal defense establishment. Thus, under current federal law, federal officials do not have direct control over the actions taken by state officials in administering the guard when it is in a state status.

Selection

In addition to meeting state requirements for appointment, adjutants general must also meet Federal requirements. Federal requirements are imposed through either Army or Air Force regulations, depending on the military service of the nominee. Each nominated adjutant general is also subjected to a federal recognition process – the procedure by which the federal government reviews an officer’s qualifications to determine or recognize the grade at which the individual is qualified to serve. Federal recognition is granted to an individual who has been nominated by a respective governor, recommended by a Federal Recognition Board, approved by the respective service secretary and forwarded by the Secretary of Defense to the President for nomination to the U.S. Senate for confirmation of the appointment to the higher grade. Federal recognition, and with it promotion, is denied if any of these criteria are not met. Thus, of the 54 adjutants general, 38 are federally recognized at the grade of major general – the traditional rank normally held by adjutants general. Eleven are federally recognized at a rank lower than major general, and five adjutants general are serving without federal recognition.

The federal recognition process, “in addition to recommending the removal of officers with serious substantiated allegations from federal recognition or promotion lists,” according to Undersecretary of Defense David Chu, “...routinely returns nominations of officers who have been involved in incidents with potentially serious moral and ethical implications to the Secretaries of the Military Departments for more thorough review.”

State-level oversight

As powerful state officials who operate in a political environment, as the National Guard Bureau’s response noted, not only are adjutants general subject to state law, but also they are “subjected to continuous public and political scrutiny.” Based on the data available to the staff at this point, it is not clear that governors and state legislatures lack the ability or will to discipline, control, or bring to justice adjutants general who act outside the law or administrative parameters established by the state.

Federal-level oversight

Federal fiscal control and oversight of Federal resources at the state level does not rest with the adjutants general. Rather, the United State Property and Fiscal Officers (USPFOs) are the responsible federal agents and they work for the Chief, National Guard Bureau. They are active duty officers (serving in a Title 10, U.S. Code, status), in each state sworn to oversee federal funding and to ensure it is spent for the purposes for which it was provided to the state. Army and Air Force IGs and audit agencies periodically inspect the functioning of the USPFOs.

All states have an IG, most of whom are active duty Army officers in the grade of colonel or lieutenant colonel, according to the National Guard Bureau. The National Guard Bureau and Department of the Army IGs oversee the state IGs. State adjutants general, along with all other general officers, are subject to investigation by the DOD IG and the Army or Air Force IGs, not the state National Guard IG. Of the more than 600

IG investigations into National Guard matters conducted by the DOD, Army and Air Force over the last five years, 370 cases involved senior National Guard officers, defined as an officer holding the rank of colonel or above. Allegations in 86 of those cases were substantiated or partially substantiated. Such data suggests that the IG system is an effective mechanism for identifying and substantiating misconduct by senior National Guard officers. Further, neither the DOD IG, nor the Army and Air Force IGs reported any unusual impediments to investigating National Guard matters.

Process for corrective actions

Misconduct by adjutants general can be and is addressed at both the state and federal levels. If the misconduct of the National Guard officer, regardless of rank, takes place while the officer is on federal active duty, then that officer is subject to military prosecution under the Uniform Code of Military Justice (UCMJ), as well as adverse administrative action by the active Army or Air Force. If the misconduct takes place while the National Guard general officer is in a state status, no military prosecution can occur under the UCMJ; however, the active Army and Air Force can accomplish adverse administrative action, albeit by different paths.

Army policy authorizes the Vice Chief of Staff of the Army, following an IG investigation, to take adverse administrative action against National Guard general officers serving in a state status before forwarding the results of the IG investigation to the governor of the appropriate state. Based on the IG investigation, or additional state-level investigation, the governor can take additional adverse action against the officer. By Air Force policy, substantiated allegations against a National Guard general officer serving in a state status are forwarded through the Vice Chief of Staff of the Air Force to the Chief, National Guard Bureau. The Chief of the National Guard Bureau can make recommendations for adverse action before forwarding the case to the governor of the appropriate state.

Title 32 of the United States Code provides authority for the administration of military justice in the National Guard, including the authority of the President to convene courts-martial of National Guard personnel serving in a state status. The National Defense Authorization Act for Fiscal Year 1997 (Public Law 104-201) required the Secretary of Defense to review the various authorities for and the use of those authorities for court-martial and non-judicial punishment for the National Guard when it was not in federal service. The resulting panel, comprised of representatives of the states' adjutants general and attorneys general, as well as DOD representatives, made a number of recommendations in 1998, including the need for a model Uniform Code of Military Justice, as well as model Manual for Courts-martial. Such models could be provided to the states for possible adoption and would serve as a basis for more consistent application of military justice across the states. Only recently has the Department of Defense begun to implement some of the panel's recommendations.

Options for Corrective Action

- Direct the GAO, as part of the National Defense Authorization Act for Fiscal Year 2003, to:
 - Review and assess the effectiveness of the federal recognition process and make recommendations for improvement.
 - Determine and assess the process for and the nature and extent of the administrative and/or judicial corrective action taken in the IG cases (provided to the subcommittee) where the inspectors general substantiated or partially substantiated allegations against senior National Guard officers. The report would increase subcommittee understanding of the system and responsibility for, as well as the nature of and extent to which corrective action is taken in the cases of substantiated allegations against senior National Guard officers, especially adjutants general.
- Require the Secretary of Defense, as part of the National Defense Authorization Act for Fiscal Year 2003, to:
 - Assess and report to Congress on the differing Army and Air Force policies for taking adverse administrative actions against National Guard officers in a state status, and determine whether changes should be made, especially requiring the Air Force to adopt the same policy as the Army.
 - Develop a model State Code of Military Justice and model Manual for Courts-martial applicable to the National Guard not in federal service, and provide them to each state and territory for possible adoption.

Whistleblower Protections

Preliminary Findings: *The IG system provides a means for National Guard personnel to raise allegations of reprisal and have those allegations investigated. That part of the statutory framework for protecting whistleblowers appears to be working. Without more data, however, final conclusions as to whether the federal oversight systems are appropriately disciplining the perpetrators of retaliation, and whether whistleblowers are being adequately protected must be deferred.*

Supporting Information

Congress codified military whistleblower protection in section 1034, Title 10, United States Code. Officers and enlisted members of the National Guard, in either a duty or training status under Title 10 or Title 32, U.S. Code, receive the same military whistleblower protections as members of the active component. However, federal military whistleblower protections do not apply to officers and enlisted members of the National Guard when they are in a state active duty status. Their protections, if any, derive from state law.

According to the DOD General Counsel, “a federal military whistleblower investigation may identify both federal and state remedial actions. The Secretaries of the

Military Departments or the Secretary of Defense may direct appropriate federal remedies but may not direct state action. Remedies requiring state action must be referred to the states for their consideration and action they deem appropriate.”

Section 1034 makes the DOD IG and the military service IGs the focal points for the receipt and investigation of allegations of reprisal against members of the armed forces who make protected communications, which are defined in the law as a complaint of, or disclosure about a violation of law or regulation, or of gross mismanagement, gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety. Reflecting the IGs central role, 140 (or 23 per cent) of the 609 National Guard investigative case summaries that the DOD IG provided to the subcommittee involved allegations of reprisal. The IGs concluded that allegations of reprisal were fully or partially substantiated in 24 (or 17 per cent) of the cases. What the IG case summaries do not provide are the details of the specific corrective actions taken against the perpetrators of the reprisal.

Under section 1034, the remedy available to a person against whom retaliatory action has been taken is to apply to a board for the correction of military records. If the board determines that a prohibited personnel action (e.g., adverse efficiency report, denial of promotion) has taken place, the board can recommend that the appropriate service secretary initiate disciplinary action against the person who committed the prohibited personnel action.

With regard to their ability to investigate allegations of reprisal against whistleblowers, the DOD, Army and Air Force IGs reported no significant difficulties.

Option for Corrective Action

- Direct the GAO, as part of the National Defense Authorization Act for Fiscal Year 2003, to determine the effectiveness of the federal protections for military whistleblowers, and the extent and nature to which corrective action is taken against those in the National Guard who retaliate against whistleblowers. In part, GAO would use the IG cases provided to the subcommittee in which the DOD fully, or in part, substantiated allegations of retribution against whistleblowers.



UNDER SECRETARY OF DEFENSE
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WASHINGTON, D.C. 20301-4000

PERSONNEL AND
READINESS

MAR 12 2002

The Honorable John M. McHugh
Chairman, Subcommittee on Military Personnel
Committee on Armed Services
U.S. House of Representatives
Washington, DC 20515-6035

Dear Mr. Chairman:

This is to follow up on my letter of January 15, 2002, that acknowledged your request of December 18, 2001, for information regarding a series of articles that appeared in *USA Today* alleging force mismanagement and personal misconduct in the National Guard. You specifically requested the written reaction of the National Guard Bureau to the allegations in the articles, assistance in understanding the legal boundaries regarding protecting whistleblowers in the National Guard and summaries of National Guard investigations over the past five years. Enclosed are responses from the National Guard Bureau, the Office of the Department of Defense (DoD) General Counsel, and the Department of Defense and Military Department Inspectors General on those issues.

You will note that the summaries provided by the DoD Inspector General do not include the results of the investigation being conducted by the Defense Criminal Investigative Service into alleged "ghost soldiers in the Arizona Army National Guard" as you requested. That investigation is still open, and therefore it would not be appropriate to release any information concerning the investigation at this time. Once the investigation is complete, we will provide you the findings.

In addressing allegations of force mismanagement, the National Guard Bureau notes that a non-validation of pay report, tracking non-participation in the Guard, was developed almost ten years ago by the Guard to provide leadership at all levels with a tool for gauging drill attendance, managing the force, recording trends and providing oversight, which although not perfect serves as an excellent management tool. The Bureau's response emphasizes that there is no real incentive to hold a non-productive soldier in a unit because budget and force structure allocations with the Guard are based on actual participation rates. The Bureau disputes the assertion that states are gaining some advantage by not discharging personnel. The enclosure from the Bureau also comments on various types of allegations of personal misconduct by The Adjutants General.

In responding to your request for assistance in understanding the legal boundaries between the National Guard and the Department of Defense, the Office of DoD General Counsel states that officer and enlisted members of the National Guard when in either a duty or training status under either title 10 or title 32, United States Code, receive the same military whistleblower protections as regular officers and enlisted members on active duty. However, federal military whistleblower protections do not apply to officer and enlisted members of the National Guard when in state active duty status. Their protections, if any, derive from state law.

The DoD Inspector General's assessment of the effectiveness of IG investigations into National Guard matters is consistent with the views of the Military Department Inspectors General. That is, no unusual or significant impediments to investigative efforts or the effective processing of National Guard complaints have been encountered. Regarding the investigation summaries, the DoD Inspector General cautions that these documents have not been reviewed for public release and may be exempt from release under the Freedom of Information Act and protected under the Privacy Act. All documents are being provided to you in your capacity as the Subcommittee Chairman and should be considered "FOR OFFICIAL USE ONLY."

You also asked for the Secretary's assessment of the allegations and his intended course of action in response to those allegations. First, the Department shares your concern over allegations of force mismanagement and personal misconduct, and takes such allegations very seriously.

With respect to force management, the Department was working closely with the U.S. General Accounting Office (GAO), months before the series of *USA Today* articles appeared, to produce a systematic and accurate comparison of Army Guard strength and pay information for review and to initiate any needed corrective measures. These efforts are continuing. Articles in the *USA Today* on "ghosting" soldiers—delaying removal transactions to inflate State Guard or unit strength—appear to be based principally on anecdotal information from interviews with Guardsmen and former Guardsmen. The Department prefers to base its conclusions on actual data. The most recent data indicates a 97 percent participation rate throughout the Army National Guard with only a 3 percent non-participation rate. This is consistent with the latest GAO information and with the Army National Guard Non-Participation Summary Report included in the National Guard Bureau enclosure. The National Guard's current objective is a 98 percent participation rate.

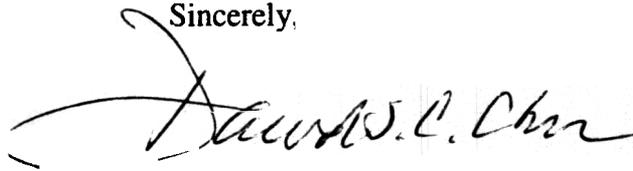
We have examined the potential readiness impact of non-participating soldiers. Even if up to 3 percent of Army National Guard soldiers were listed as non-participants, this would have limited impact on readiness reports—for two reasons. First, because P-level (personnel) threshold bands are separated by margins of about 10 percent, 3 percent (or less) over-reporting of assigned strength has little impact. More significantly, unit commanders have regulatory authority to subjectively upgrade or downgrade, if in their opinion the change more accurately portrays the actual readiness of the unit. This has far more impact on the overall readiness report than a 3 percent shift in assigned strength.

As the National Guard Bureau response notes, there are both acceptable (e.g., medical convalescence) and unacceptable (e.g., unexcused absences) reasons for non-participation. In addition to the various reasons described in the Bureau response, we found some delays in the process for establishing a pay record for new accessions and Guard members moving from active duty back to a drilling status, along with processing delays for members being discharged or transferred from the National Guard. To address these and any related strength accounting problems, a standing DoD working group has developed an action plan that is now being implemented. The plan will involve further evaluation and analysis of non-pay record files and reconciliation of pay and personnel records by all Reserve components. The goal is to improve the timeliness in processing personnel transactions and the accuracy of personnel and strength accounting.

With respect to misconduct, the Department, including the Military Services takes all allegations very seriously as documented in the compendium of the investigations conducted over the past five years. The information contained in the *USA Today* articles concerning specific misconduct cases, while for the most part factual, is dated. This Administration has exercised positive control and oversight through a rigorous federal recognition process and by establishing a very high standard for officers who have been recommended for promotion or federal recognition. The intent is not to deter officers from taking a risk—the “zero defects” mentality—but rather to establish the standard that conduct which does not uphold the highest personal and professional standards of the armed services will not be condoned. In addition to recommending the removal of officers with serious substantiated allegations from federal recognition or promotion lists, this Administration routinely returns the nominations of officers who have been involved in incidents with potentially serious moral and ethical implications to the Secretaries of the Military Departments for more thorough review.

The cadre of our Army National Guard units are professional leaders and soldiers. Our Nation relies increasingly upon our Army National Guard soldiers, as we have seen through their deployment to missions in the Balkans and their roles in homeland defense. The future holds much more for the Army National Guard, as we face future threats to our security. The soldiers of the Army National Guard and their leaders earn the trust, confidence and appreciation of the American people each day—they need our continued support.

Sincerely,

A handwritten signature in black ink, appearing to read "David S. C. Chu". The signature is fluid and cursive, with a large initial "D" and "C".

David S. C. Chu

Enclosures:
As stated



DEPARTMENTS OF THE ARMY AND THE AIR FORCE
NATIONAL GUARD BUREAU
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25 Jan 2002

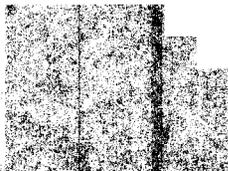
MEMORANDUM FOR THE PRINCIPAL DEPUTY, ASSISTANT SECRETARY OF
DEFENSE FOR RESERVE AFFAIRS

SUBJECT: National Guard Bureau Reaction to Allegations Raised by the *USA Today*

Thank you for giving me the opportunity to respond to issues of force mismanagement and misconduct by National Guard officers that appeared in the December 18, 19 and 20 editions of the *USA Today*. Attached is a detailed discussion of those issues.

We are an institution with a proud history of outstanding service to this nation – a level of service achieved by learning from our past and making improvements on a continuous basis. This understanding and commitment to improvement has enabled us to build an organization based on integrity, excellence and service to the Citizens, Governors and the President. I am profoundly proud of the men and women that serve in the National Guard and their record of excellence when it comes to public service and mission accomplishment. It concerns me deeply that these matters have risen to this level. I believe this response will prove the National Guard's commitment to the obligations we undertake and demonstrate our efforts to be a good steward of the public trust.

If you need to discuss this response, please have your staff contact Mr. Dan Donohue, Chief, Office of Public Affairs and Community Support at 703-607-2540 to make the necessary arrangements. Again, thank you for the opportunity to respond.



RUSSELL C. DAVIS
Lieutenant General, USAF
Chief, National Guard Bureau

Attachment:
Detailed Response to Allegations



National Guard Bureau

January 25, 2002

Response to Allegations of Force Mismanagement and Personal Conduct

➤ Response to Allegations of Force Mismanagement.

Opening

- Our ability to maintain readiness and meet world-wide mission requirements is directly related to having available, qualified soldiers participating in our program. Strength and drill participation is, and always has been, an area of continued emphasis and oversight. It is important to clarify the statutory and regulatory requirements for drill attendance, the reports and actions we have taken in this critical area, and our ongoing initiatives to address the areas in question. In spite of the issues raised in the USA Today series concerning National Guard non-validation reporting, the National Guard Bureau (NGB) has adequate oversight in this area and is working hard to correct any deficiencies that remain.

Drill Attendance Requirement

- The commander of a unit has the responsibility to account for all assigned and attached personnel in the unit and to ensure accounting for personnel and attendance per National Guard Regulation (AR) 680-1. The integrity of the data is as good as the commander's attention to maintaining sound personnel record keeping. The process is as follows: the commander codes soldiers on an automated pay report, DA Form 1379, Unit Record of Reserve Training, which the commander signs certifying the performance categories of soldiers within the unit. Title 32, United States Code 502 requires soldiers to attend 48 drill periods and 15 days of annual training yearly and Title 10 United States Code 12732 requires a soldier to obtain at least 50 points within a year for the year to count for retirement. The 50 points are credited on the following basis: one point for each drill period or equivalent instruction (48 points per year), 15 points a year for being a member in the reserves, a minimum of 15 points for annual training attendance (depending on the duration of annual training), and one point per day of active service performed throughout the year.
- The regulation provides commanders limited flexibility to excuse soldiers from drills, allow for constructive attendance, and allow soldiers to perform the drills prior to, or after the day of the unit's scheduled assembly. Commanders routinely exercise this discretion because of issues unique to the National Guard and selective reserve - call up by the Governor for extended state active duty, schooling, work-related conflicts, etc.
- A number of the performance categories in the Army National Guard (ARNG) do not allow payment to the soldier. Some of these are within the soldier's control

(including excused absence, absent authorized to make-up the drill after the unit's scheduled drill, hospitalized, incapacitated, and equivalent training authorized [not yet conducted]) and are perfectly legitimate. Others are not. Among them: unexcused absence, unsatisfactory performance and under arrest. Soldiers in the process of being discharged, but who have not been taken off the personnel and pay database, are also in a non-pay category.

- There are a number of acceptable reasons why a soldier may be excused from a drill. Relocation to another state (such as cross country employment transfers) sickness, medical convalescence, family hardship, and unscheduled work conflict are just a few. Most absences are short-term in nature, but some are not. Despite the varied reasons, these soldiers are still under contract – and are subject to being called to active duty whether or not they are attending drill at the time. This issue goes to the heart of the readiness argument. We believe the impacts to National Guard readiness by no-val reporting are overstated or misrepresented in the *USA Today* series.
- The leadership selectively manages soldiers who refuse to attend drill, classified as an unexcused absence, as they represent an investment of time and resources. Commanders of soldiers carried in this category, must, by regulation, begin the separation process after nine unexcused absences within a 12-month period. As a part of the separation process, commanders at the unit level take a number of actions to bring soldiers back to a drilling status - certified letters, contact teams, and use of local law enforcement when authorized. Commanders will often exhaust all avenues in order to keep a soldier in the unit. This is because of the training, investment of time and public resources, and the commitment these individuals made when they signed their contracts. When all avenues are exhausted, a commander will then process the soldier for discharge. Given the attention required to bring a soldier back to drilling status and the lack of full time support personnel to develop and process the paperwork for discharge, this process can be lengthy. Soldiers who are discharged for non-attendance are placed in the individual ready reserve, and remain subject to mobilization through the United States Army Reserve.
- When soldiers have not been paid after three consecutive months, regardless of the reason - acceptable or unacceptable, they will be reflected on the non-validation of pay report or no-val report. It should be clarified that no-val means "non-validation for pay" as opposed to a "no value" soldier, as characterized in the *USA Today* series.

Non-Validation (No-Val) of Pay Report

- Over the years, there have been a number of tools developed by National Guard Bureau (NGB) for commanders and leaders to use in their oversight responsibilities for pay and drill attendance. The non-validation of pay report was developed almost a decade ago to provide National Guard leadership at all levels a way to gauge drill attendance and manage the force, record trends, and provide a degree of oversight at the national level. The no-val report must be reviewed and utilized in the framework for which it was developed. "No-val" is the term used for any

bona-fide ARNG member in an active status who has not been paid for three consecutive months or more. There are a number of reasons that a person could be carried as a "no-val" including soldiers who are being separated, experiencing employer support problems or change of employer and other categories that prevent a soldier from attending drill. Basically, there are two categories: Excused absences and unexcused absences.

- There are times when critical review and common sense must be applied to the review process. For example, soldiers activated under the authority of the Governor on prolonged state active duty will not be performing their required drill assemblies, yet may be reflected on the non-validation of pay report.
- The non-validation of pay report is developed by taking the pay data from the Defense Finance and Accounting System (DFAS) and comparing it to the monthly strength tape, which is a roll-up comprised of the soldiers authorized to drill during that time. This identifies soldiers who are required to drill but have not received pay in three months.
- The non-validation of pay report (enclosed as part of this attachment) was developed as an internal tool for the leadership; the target goals are self-imposed and, in fact, we believe other services are looking at how they might track similar data and trends by instituting similar reports. An important point to make; there is no real incentive to hold a non-productive soldier in the unit. This is because the budget and force structure distribution process we utilize today takes into account actual participation rates. The idea that states are somehow gaining an advantage by not discharging personnel is completely fallacious.

➤ Response to Allegations of Personal Misconduct.

Leadership Qualifications

- The Adjutants General (TAGs) must meet state and Federal requirements for appointment.
- State requirements are normally a function of state law and vary from state to state.
- Federal requirements are imposed through either Army or Air Force regulations.
- The Federal recognition process is the procedure to which each TAG nomination is subjected prior to granting federal recognition at the grade for which the individual is qualified.
- Many states require the Governor to nominate and the state legislature to confirm the state appointment as the Adjutant General.
- Federal recognition is granted to an TAG after being nominated by a respective Governor, recommended by a Federal Recognition Board, approved by the respective Service Secretary, and forwarded by the Secretary of Defense to the President of the United States for nomination to the U.S. Senate for confirmation of their appointment in the higher grade. Federal recognition is denied (no promotion) if any of these criteria are not met.
- Appropriate corrective action was taken in every case cited by the articles.

TAG Pay

- Federal pay of an Adjutant General is based upon federal military pay rates at the federally recognized grade of the respective officer.
- TAGs are paid at their federally recognized grade/years of service.
- TAGs receive federal pay only for days on which federal duties are performed.
- TAG state salaries are established in state law and vary by jurisdiction.
- Federal pay records are public documents.

Nepotism/Cronyism

- Training, selection and promotion policies and procedures are designed to offer equal opportunity to all.
- Procedures ensure each soldier/airman is treated with respect and is able to avail himself/herself of every opportunity to succeed and grow.
- Allegations of nepotism and cronyism are promptly investigated.

Reprisals

- National Guardsmen, like other members of the Armed Forces, are protected against reprisal under the DOD Directive 7050.6 (Military Whistleblower Protection) for preparing and or making a protected communication.

Fiscal Management

- National Guard funding is approximately 95% federal and 5% state.
- There are a series of fiscal control, discipline and audit policies and procedures to ensure responsible resource stewardship.
- The Army National Guard budget execution by the respective states this year was within one percent of the Army's priorities.
- United States Property and Fiscal Officers (USPFOs) are the responsible federal agents (serving in a Title 10 U.S.C. status) in each state sworn to oversee federal funding and to ensure it is spent for the purpose for which it was provided to the state.
- The National Guard has a continual fiscal audit process to include oversight by appropriate DOD and service agencies.
- The National Guard Bureau, the CONUSA Inspector General and/or the gaining Air Force Major Command, and the Army Audit Agency and/or the Air Force Audit Agency make periodic inspections of the USPFO offices.

Inspectors General

- TAGs, along with all other general officers, are subject to investigation by the DOD and respective service Inspectors General, not the state National Guard Inspector General.
- TAGs subscribe to being held to the highest levels of accountability by both state and federal government.
- Inspector General (IG) investigations are conducted on TAGs; the results of the investigations are provided to the respective Governors for appropriate action. If substantiated, Army National Guard general officers are subject to administrative disciplinary action by the Vice Chief of Staff, U.S. Army. Air National Guard TAGs are subject to disciplinary action by their respective Governors.
- All states have an IG; most are active duty Army officers. All are authorized an active Army officer as an IG (either a Colonel or Lieutenant Colonel) depending on the force structure within the state.

- State level IGs investigate matters within the respective state National Guard as directed by the state leadership (or NGB) in response to complaints.
- General officer investigations, to include TAGs, are conducted by the Departments of the Army, Air Force, or DoD respectively.
- The state IG program is overseen by the Department of the Army IG and the National Guard Bureau IG. To date, this is one of the most successful integration efforts by the Army.

Political Appointments

- TAGs are appointed by the Governors (except elected by popular vote in South Carolina, elected by the legislature in Vermont and appointed by the President in the District of Columbia).
- Like the Chairman of the Joint Chiefs, Service Chiefs and all other officers on active duty as well as the Cabinet secretaries and deputies nominated and appointed by the commander-in-chief, the President; the Adjutant General is appointed by the state commander-in-chief of the National Guard in a respective jurisdiction, the highest elected official in the state—the Governor.
- After appointment, by the Governor, and confirmation by the state legislature as appropriate, a TAG's nomination is forwarded to the DOD for review and approval and then forwarded to the President of the United States for U.S. Senate confirmation.
- Like an active duty general officer, a National Guard officer must be qualified, have the trust of the elected civilian leadership, be supported through the nomination process, and successfully gain confirmation.
- Because of the National Guard's unique state/federal status an officer in the National Guard is subjected to the process at both the state and federal level.
- Typically, as a cabinet level appointee of the Governor, the TAG is accountable at both state and federal level.
- There are politics in state government just as there are in the federal government.
- TAGs are highly visible state officials and unlike active duty officers residing on and working at active duty installations, are subjected to continuous public and political scrutiny.
- TAGs work in the "court of public opinion" every day.

Partisan Political Activity

- TAGs may not participate in partisan political activity when on federal duty, in a federal uniform, or using federal funds.
- State law applies to the TAGs at all other times.
- TAGs may exercise their personal political preferences; make contributions as private citizens, and vote as their conscience dictates.
- TAGs are subject to the federal joint ethics regulation, and corresponding states rules governing a wide range of conduct including political activity.

Unit Vacancy Promotions

- The unit vacancy promotion system as authorized by Congress recognizes the delicate balance that must be maintained between the civilian job, community obligations and National Guard duty.
- Unlike the active force, the National Guard is a community-based organization.
- Members work at their civilian jobs in the communities where they reside and pursue their National Guard duty in that community.
- The unit vacancy promotion system is designed to select the fully qualified enlisted and officer members to fulfill more senior positions and responsibilities.
- The readiness of the National Guard, its worldwide performance and the diversity of its missions is proof of the efficacy of the unit vacancy promotion system.

National Guard Bureau

- All National Guard members assigned to the National Guard Bureau are on federal active duty and are subject to the UCMJ.
- All National Guard members on federal active duty at the National Guard Bureau are subject to the same rules, regulations and procedures as apply to any other service member on federal active duty.

Readiness

- The National Guard has demonstrated it's more ready than at any other time in its history.
- Readiness is determined using the identical standards established by the respective active components of the services.
- National Guard personnel and units must meet the same standards as the active forces.

- The National Guard is deployed worldwide. Last year the Guard deployed to more than 60 countries in support of the respective geographical and unified Commanders-in-Chief's (CINCs) American interests.
- Every day of the year, the National Guard averages approximately more than 3,700 members deployed to the warfighting CINCs, 3,000 people supporting law enforcement in the war on drugs, more than 1,200 a day conducting youth programs, 715 members a day in support of our state mission and more than 81,000 a day preparing the National Guard for its full range of federal missions.
- Since September the 11th, the National Guard has responded to every mission tasked by both the President and the respective Governors. Those missions to date have included: Airport Security, Combat Air Patrol Missions over our nation, protecting high-value assets from coast to coast, providing trained and ready forces to Operation ENDURING FREEDOM, patrolling "no-fly zones" in northern Iraq, keeping the peace in Bosnia, training the nation's fighting forces in mountain warfare, or responding to a natural disaster.

Army National Guard Non-Participation Summary Report

State	DEC			NOV			DELTA		
	Strength	NVP	PCT	Strength	NVP	PCT	Strength	NVP	PCT
AK	1756	101	5.75%	1756	113	6.44%	0	-12	-0.68%
AL	13107	339	2.59%	13123	353	2.69%	-16	-14	-0.10%
AR	8223	237	2.88%	8322	255	3.06%	-99	-18	-0.18%
AZ	3952	67	1.70%	3954	66	1.67%	-2	1	0.03%
CA	16132	518	3.21%	16128	526	3.26%	4	-8	-0.05%
CO	3192	76	2.38%	3229	107	3.31%	-37	-31	-0.93%
CT	3957	254	6.42%	3972	282	7.10%	-15	-28	-0.68%
DC	1454	59	4.06%	1458	57	3.91%	-4	2	0.15%
DE	1667	41	2.46%	1680	39	2.32%	-13	2	0.14%
FL	10130	291	2.87%	10129	308	3.04%	1	-17	-0.17%
GA	8325	211	2.53%	8262	212	2.57%	63	-1	-0.03%
GU	769	7	0.91%	771	8	1.04%	-2	-1	-0.13%
HI	2976	63	2.12%	2975	58	1.95%	1	5	0.17%
IA	7450	152	2.04%	7473	170	2.27%	-23	-18	-0.23%
ID	2802	44	1.57%	2801	48	1.71%	1	-4	-0.14%
IL	10072	329	3.27%	10013	331	3.31%	59	-2	-0.04%
IN	11395	388	3.41%	11487	520	4.53%	-92	-132	-1.12%
KS	5905	205	3.47%	5887	227	3.86%	18	-22	-0.38%
KY	6359	103	1.62%	6387	103	1.61%	-28	0	0.01%
LA	10079	174	1.73%	10106	163	1.61%	-27	11	0.11%
MA	7499	190	2.53%	7520	221	2.94%	-21	-31	-0.41%
MD	6371	215	3.37%	6358	221	3.48%	13	-6	-0.10%
ME	2251	62	2.75%	2242	61	2.72%	9	1	0.03%
MI	8773	245	2.79%	8732	256	2.93%	41	-11	-0.14%
MN	9731	262	2.69%	9728	254	2.61%	3	8	0.08%
MO	8085	233	2.88%	8236	271	3.29%	-151	-38	-0.41%
MS	9407	108	1.15%	9404	127	1.35%	3	-19	-0.20%
MT	2420	62	2.56%	2398	66	2.75%	22	-4	-0.19%
NC	10202	389	3.81%	10192	427	4.19%	10	-38	-0.38%
ND	3210	22	0.69%	3222	21	0.65%	-12	1	0.03%
NE	3189	43	1.35%	3166	37	1.17%	23	6	0.18%
NH	1677	21	1.25%	1674	22	1.31%	3	-1	-0.06%
NJ	6984	397	5.68%	7013	497	7.09%	-29	-100	-1.40%
NM	3143	154	4.90%	3129	145	4.63%	14	9	0.27%
NV	1743	40	2.29%	1759	48	2.73%	-16	-8	-0.43%
NY	11573	427	3.69%	11592	451	3.89%	-19	-24	-0.20%
OH	10367	140	1.35%	10265	152	1.48%	102	-12	-0.13%
OK	7361	177	2.40%	7332	174	2.37%	29	3	0.03%
OR	5860	106	1.81%	5849	121	2.07%	11	-15	-0.26%
PA	16341	480	2.94%	16314	496	3.04%	27	-16	-0.10%
PR	8634	229	2.65%	8587	227	2.64%	47	2	0.01%
RI	2310	70	3.03%	2353	83	3.53%	-43	-13	-0.50%
SC	9283	234	2.52%	9253	218	2.36%	30	16	0.16%
SD	3348	45	1.34%	3340	47	1.41%	8	-2	-0.06%
TN	10831	220	2.03%	10825	235	2.17%	6	-15	-0.14%
TX	16031	361	2.25%	16810	1249	7.43%	-779	-888	-5.18%
UT	5007	170	3.40%	4966	169	3.40%	41	1	-0.01%
VA	7500	204	2.72%	7522	233	3.10%	-22	-29	-0.38%
VI	714	20	2.80%	714	23	3.22%	0	-3	-0.42%
VT	2929	104	3.55%	2918	101	3.46%	11	3	0.09%
WA	5704	229	4.01%	5704	228	4.00%	0	1	0.02%
WI	7460	210	2.82%	7511	185	2.46%	-51	25	0.35%
WV	4080	52	1.27%	4079	72	1.77%	1	-20	-0.49%
WY	1408	47	3.34%	1419	49	3.45%	-11	-2	-0.12%
TOTAL	351128	9627	2.74%	352039	11138	3.16%	911	-1508	-0.42%



DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600

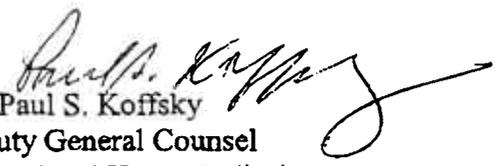


March 1, 2002

MEMORANDUM FOR PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE
FOR RESERVE AFFAIRS

SUBJECT: The National Guard and Whistleblower Protection under Federal Law

Attached is the information you requested to assist in preparing your responses to
Congressmen John McHugh and Vic Snyder.


Paul S. Koffsky
Deputy General Counsel
(Personnel and Health Policy)

Attachment





DEPARTMENT OF DEFENSE
OFFICE OF GENERAL COUNSEL
1600 DEFENSE PENTAGON
WASHINGTON, DC 20301-1600



March 1, 2002

INFORMATION PAPER

SUBJECT: The National Guard and Whistleblower Protection under Federal Law

- The militia clause of the U. S. Constitution (clause 16, section 8 of article I) reflects our founding fathers' original concept of the militia as a part time, non-professional, local military force under the exclusive authority of state officials. In this status, the Guard is under the command of the governor of the state and his principal deputy for Guard administration, the state adjutant general.
- In 1933, Congress vested the National Guard with dual status. In continuation of its original status, the Guard remained first and foremost a state instrumentality as a state militia. Simultaneously, Congress vested the National Guard with federal status as one of the elements of the reserve components of the armed forces of the United States.
- Federal status is operative only when the Guard is called or ordered into federal service. When so called or ordered, it is known as the National Guard of the United States and is subject to the authority of the President, the Secretary of Defense and other authorities, civilian and military, of the federal defense establishment.
- One byproduct of this organizational arrangement is that federal officials do not have direct control over actions taken by state officials in administering the Guard when it is in state status. This organizational arrangement also means that there is a limit on the extent to which current Federal law may be relied upon to protect National Guard personnel who are substantiated whistleblowers.
- Congress has codified military whistleblower protection at section 1034 of title 10, United States Code. The Department of Defense has implemented this statute in Department of Defense Directive 7050.6, "Military Whistleblower Protection."
 - Section 1034 applies to members of the armed forces. The Directive defines members of the armed forces as "All Regular and Reserve component officers (commissioned and warrant) and enlisted members of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a Military Service in the Navy) on active duty; and Reserve component officers (commissioned and warrant) and enlisted members in any duty or training status (includes officers and enlisted members of the National Guard)."



- Officers and enlisted members of the National Guard when in either a duty or training status under either title 10 or title 32, United States Code, receive the same military whistleblower protections as regular officers and enlisted members on active duty.
- Federal military whistleblower protections do not apply to officer and enlisted members of the National Guard when in state active duty status. Their protections, if any, derive from state law.
- A federal whistleblower protection investigation may identify both federal and state remedial actions. The Secretaries of the Military Departments or the Secretary of Defense may direct appropriate federal remedies but may not direct state action. Remedies requiring state action must be referred to the states for their consideration and action they deem appropriate.

Office of the DoD General Counsel
(Personnel and Health Policy)



INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
400 ARMY NAVY DRIVE
ARLINGTON, VIRGINIA 22202-4704

JAN 22 2002

MEMORANDUM FOR PRINCIPAL DEPUTY ASSISTANT SECRETARY OF DEFENSE
(RESERVE AFFAIRS)

SUBJECT: Investigations into National Guard Matters

This is in response to your memorandum of January 2, 2002, that requested summaries of investigations conducted over the last 5 years by this office and the Service Inspectors General (IGs) into National Guard matters. In addition, you requested assessments of the effectiveness in conducting those investigations and a summary of any legal or other barriers encountered.

Attached at Tab 1 are summaries of three closed investigations completed by the Defense Criminal Investigative Service (DCIS). Your memorandum specifically requested the results of the DCIS investigation into alleged "ghost soldiers in the Arizona Army National Guard." That investigation is still open and therefore it would be inappropriate to release any information concerning it at this time.

The remaining attachments provide single-sheet summaries of all investigations into National Guard matters that were conducted by this office or by the Service IGs over the past 5 years. Investigations that were conducted by local IGs (that is, State IGs or IGs at National Guard installations) with no higher level involvement are not included. The following additional explanation is provided:

- At Tab 2 are summaries of all investigations into National Guard matters that were processed through our DoD Hotline data base. These include investigations that were conducted by this office as well as investigations into National Guard matters that were conducted by the

Service IGs in response to a referral from our office.¹ At a minimum, the single-sheet summaries provide a description of the allegations and the result of the investigation. ("NS" indicates that none of the allegations were substantiated. "SU" indicates that all allegations were substantiated, while "PS" indicates that some but not all of the allegations were substantiated.)

- At Tab 3 are summaries of investigations involving senior National Guard officials that were initiated and conducted by the Army or Air Force IGs. We provide oversight on such investigations and maintain a separate data base for them.
- Tab 4 contains summaries of all Army investigations into National Guard matters that were not included under Tabs 2 and 3. Please note that the Army could not provide information on "not-substantiated" cases completed before September 30, 1998. The Army cover letter also provides an assessment of investigative effectiveness.
- Tab 5 is a similar response from the Air Force IG.

Our assessment of the effectiveness of IG investigations into National Guard matters is consistent with views expressed by the Service IGs (Tabs 4 and 5). We have not encountered any unusual impediments. Occasionally issues may arise concerning the applicability of Federal statutes to National Guard members because of their dual Federal-state role. However, we are aware of no instance where the dual-status of National Guard members has significantly impeded investigative efforts.

Because some of the attached documentation may be exempt from public release under the Freedom of Information Act and the Privacy Act, all attachments should be considered "FOR OFFICIAL USE ONLY." While the attachments can be provided to the Chairman and Ranking Member of the Subcommittee on Military Personnel, House Armed Services Committee, as the Subcommittee possesses the legal jurisdiction, it is requested that the transmittal of the attachments to the Subcommittee contain an

¹ We conduct an investigation into alleged misconduct by senior National Guard officers or allegations of military reprisal when the nature of the allegations or the seniority of the subject require our direct involvement. We receive and review investigations conducted by the Service IGs as part of our oversight responsibilities.

advisement that the materials have not been reviewed for public release and may contain names and other privacy protected information.

If you have any questions regarding this matter, please contact me or Mr. John R. Crane, Director, Office of Congressional Liaison, at (703) 604-8324.

A handwritten signature in black ink, reading "Robert J. Lieberman". The signature is written in a cursive style with a large, prominent "R" at the beginning.

Robert J. Lieberman
Deputy Inspector General

Attachments



DEPARTMENT OF THE ARMY
OFFICE OF THE INSPECTOR GENERAL
1700 ARMY PENTAGON
WASHINGTON DC 20310-1700



REPLY TO
ATTENTION OF

SAIG-AC (20-1b)

14 January 2002

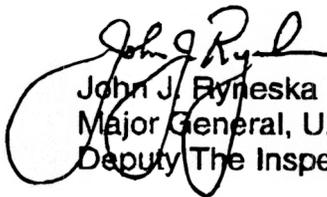
MEMORANDUM FOR Inspector General, Department of Defense, ATTN: Office of Departmental Inquiries (Mr. Broome), 400 Army Navy Drive, Arlington, VA 22202-4704

SUBJECT: Request for Information Concerning Allegations into National Guard Matters

1. Attached are Department of the Army Inspector General (DAIG) summaries concerning investigations into National Guard matters.
2. Single sheet summaries are provided in most instances. However, on several occasions, the summary sheet is longer than one page, due to the number of allegations and/or the magnitude of the investigation. Additionally, no summary is provided for investigations completed 30 September 1998 and earlier in which the findings were 'Not Substantiated' or 'Neither Substantiated Nor Refuted;' these categories of cases have been purged from our database.
3. We consider our investigative actions of National Guard matters to be very effective. Although corrective actions for 'Substantiated' allegations are a command responsibility, we conduct follow up as part of case closure in accordance with our policies and procedures.
4. You may contact Captain Zimmerman at (703) 601-1055 with any questions.

FOR THE INSPECTOR GENERAL

Encls


John J. Byneska
Major General, U.S. Army
Deputy The Inspector General

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DEPARTMENT OF THE AIR FORCE
OFFICE OF THE INSPECTOR GENERAL
WASHINGTON DC

15 JAN 2002

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF DEFENSE

FROM: SAF/IGQ
1140 Air Force Pentagon
Washington DC 20330-1140

SUBJECT: Request for Information Concerning Investigations into National Guard Matters

As requested, summaries of investigations on Air National Guard (ANG) matters are attached. SAF/IGQ deals with IG matters for subjects at the GS-15, colonel or below level. AFI 90-301, *Inspector General Complaints*, requires that only certain findings be reported to SAF/IGQ. These include findings in 10 USC 1034 and mental health cases, investigations in which the ranks listed above are involved as subjects, and high-level inquiries. As requested in your memorandum, investigations already reported to IG, DoD are omitted.

Your memorandum also asked us to comment on the effectiveness of the investigations process into Air National Guard complaints. Since 1998, SAF/IGQ has provided oversight on all Air National Guard complaint matters involving the special categories listed above pursuant to Air Force Instruction 90-301. Although there are exceptions, most ANG investigations have proceeded in a timely manner. When IG involvement was not warranted, our ability to assist or refer complainants to the appropriate agencies has been extremely effective. We are aware of no impediments to our ability to effectively process Air National Guard complaints.

If you have any questions or concerns, please feel free to contact me (703.588.1558) or Colonel Stephanie Walsh, the ANG Advisor to the Inspector General (703.588.1559).



JAMES N. WORTH, Colonel, USAF
Director, Inquires Directorate

Attachment:
Report Summaries

FOR OFFICIAL USE ONLY



G A O

Accountability • Integrity • Reliability

**United States General Accounting Office
Washington, DC 20548**

March 20, 2002

The Honorable John McHugh
Chairman
The Honorable Vic Snyder
Ranking Member
Military Personnel Subcommittee
Committee on Armed Services
House of Representatives

Subject: Military Personnel Strengths in the Army National Guard

The accuracy of reported personnel strength and training participation rates has a direct impact on the reliability of the Army National Guard's budget and the allocation of funds to individual states. If either the reported strength levels or the participation rates for a given fiscal year are more or less than the actual numbers, the funds required to pay Guard personnel will be either overstated or understated. Congressional concerns about the reported military personnel strengths of the Army National Guard have emerged as a result of recent media coverage of the Guard's so-called ghost soldiers.¹

As a result of those concerns, you asked us to provide information on (1) the Guard's personnel strength levels and training participation rates and (2) the Guard's efforts to improve the accuracy of reported strength levels and participation rates. To respond to your request, we drew on findings from our annual review of the Department of Defense's military personnel budget requests and the Army National Guard's military personnel data for fiscal years 2000 and 2001 and the first quarter of fiscal year 2002. The scope and methodology for our review is discussed on page 5.

Results in Brief

The Army National Guard's fiscal years 2000 and 2001 funding requests were overstated by \$42.9 million and \$31.6 million, respectively, because the Guard used inaccurate military strength and participation rates to develop its projected and actual military force levels. Additionally, to develop its training budget needs, it used a mathematically derived training participation rate based on expected program costs rather than on the actual number of personnel being trained. By using these inaccurate figures, the Guard overstated its overall military personnel strength and

¹ "Ghost soldier" is a slang term used for soldiers who remain on strength reports but who are, in fact, no longer participating in training and who should be removed from these reports.

**RESTRICTED--Not to be released outside the
General Accounting Office unless specifically
approved by the Office of Congressional
Relations.**

the amount of its annual funding requests to Congress.

The Army National Guard is currently taking steps to correct these overstatements. It is placing more emphasis on an existing personnel database reporting system that identifies the personnel who are assigned to a unit but have not been paid for inactive duty training for 3 months or more. By doing this, the Guard can ensure that unit commanders remove these personnel from unit strength reports if they are no longer determined to be drilling reservists.² The Guard has also improved the method it uses to calculate inactive duty training participation rates, now basing the rate on the number of people who have actually been paid for training.

Personnel Strength Figures and Training Participation Rates Were Overstated

Our analyses of the Army National Guard's military strength projections for fiscal years 2000 and 2001 showed that the Guard overstated its personnel strength because it relied on inaccurate military personnel strength data, which included individuals who should not have been considered in the calculation of strength numbers for inactive duty training. As a result, we estimated that the budget requests for those two fiscal years were overstated by \$42.9 and \$31.6 million, respectively.

The Guard can remove an individual from strength reports after 3 months if it determines that the person is no longer in the program. In order to help commanders identify these individuals, the Guard publishes a monthly Non-Validation of Pay Report (NO-VAL). Unit commanders review the status of individuals on this report and determine if they should be excused, removed, or reclassified to a non-drilling status in the Guard's strength reports. Because each personnel action is unique, there is little guidance as to how long a unit commander's review and the processing of paperwork should take. We used the 7-month rather than the 3-month period to estimate the accuracy of reported strength for drilling personnel because there are a number of circumstances that would cause a person not to be paid for more than three months and still be included in unit strength figures. These reasons include their movement from one unit to another, their inability to perform training for medical reasons, and their being paid late for training performed. Guard officials agreed that it would be reasonable to expect unit commanders to adjust unit strength if an individual has not been paid for at least 7 months or more.

Our analysis of the Army National Guard's military personnel database used to develop the NO-VAL showed that about 4,048, or 1.3 per cent, of the 301,140 drilling reservists should have been dropped from the fiscal year 2000 end strength and about 4,254, or 1.4 per cent, of the 296,430 drilling reservists should have been removed from the fiscal year 2001 end strength. Enclosure I shows the number of personnel,

² An individual required to perform 2 weeks of annual training and weekend drills (inactive duty training).

by state, who were not paid for 3 and 7 or more consecutive months as of the end of fiscal years 2000 and 2001.

In looking at the Army National Guard's method for calculating its inactive duty training participation rates, we found that in the past the rates were inaccurate because they did not correctly identify the actual number of personnel who were, in fact, in training. Instead, the Guard relied on a mathematically derived participation rate, which was based on expected program costs, estimated training costs, and military strength figures, to come up with a total number of military personnel who were expected to train. This method resulted in inactive duty training participation rates that were higher than they should have been. For example, when we examined the Guard's fiscal year 2001 budget, we found that the Guard had determined—using mathematically derived rates from fiscal year 1999 numbers—that about 91 percent of its officers and 84 percent of its enlisted personnel would participate in inactive duty training. However, when we compared the number of personnel who had actually been paid for inactive duty training in 1999 with the mathematically derived numbers, we found that 88.7 percent of officers and 81.3 percent of enlisted personnel had actually trained.

Steps Underway to Improve the Accuracy of Military Personnel Strengths and Training Participation Rates

The Army National Guard's methods of determining military personnel strength and inactive duty training participation rates have improved.

In the course of our budget work we made a number of suggestions on how the Army National Guard could improve its budget formulation methods. As a result, the Guard has changed the method it uses to calculate inactive-duty training participation rates and is now basing them on the number of people who have actually been paid for training. In addition, the Guard has placed more command attention on the accuracy of reported military personnel strength and the number of NO-VAL personnel retained in the reporting system. Between October 31, 1999, and December 31, 2001, the number of individuals reported on the Guard's NO-VAL report has declined from 16,264 to 9,627. Enclosure II shows this trend.

Our review of the December 2001 military personnel database indicates that some state commanders are using the NO-VAL report to identify inaccuracies in reported personnel strength. For example, between November and December 2001, the number of assigned drilling personnel was reduced from 297,846 to 297,226, or less than 1 percent, while personnel on the NO-VAL report declined from 11,133 to 9,627, or about 14 percent. The state of Texas had the largest decrease in both strength and NO-VAL personnel. Its assigned drilling personnel strength numbers fell from 14,522 to 13,695, about 6 percent, and its personnel on the NO-VAL report declined from 1249 to 361, a 70 percent reduction.

Scope and Methodology

To provide information on the Guard's personnel strength and participation rates, we drew on our prior work and analyzed DOD's military personnel budgets, comparing requests for fiscal years 2000 and 2001 to actual personnel data for October 1999 to December 2001. In addition, we obtained and analyzed the database used to produce the monthly NO-VAL reports for fiscal years 2000 and 2001. We also discussed our observations with Army National Guard officials at the headquarters level and officials at the Office of the Secretary of Defense, Reserve Affairs. Additionally, although we utilized the Guard's data in our analyses, we did not test this data to ascertain its accuracy.

Agency Comments

We discussed a draft of this letter with Army National Guard officials. They generally agreed with our observations and stated that, in the past, reported personnel strength levels might have been unintentionally overstated. The Guard stressed that it has recognized the problems it had in calculating participation rates and in adjusting military personnel strength levels and is taking action, as discussed above, to correct both.

The Office of the Secretary of Defense, Reserve Affairs, generally agreed with our observations. We will continue to work with the Guard and the Office of the Secretary of Defense, Reserve Affairs, to improve the accuracy of reported strength and participation rates used in the budget formulation process.

As arranged with your office, unless you announce its contents earlier, we plan no further distribution of this report until 30 days after the date on this letter. At that time, we will make copies of this letter available to other appropriate congressional committees and place a copy on GAO's home page at <http://www.gao.gov>. If you have any questions concerning the information provided, please call me on (202) 512-5559 or R. L. Furr on (202) 512-5426.



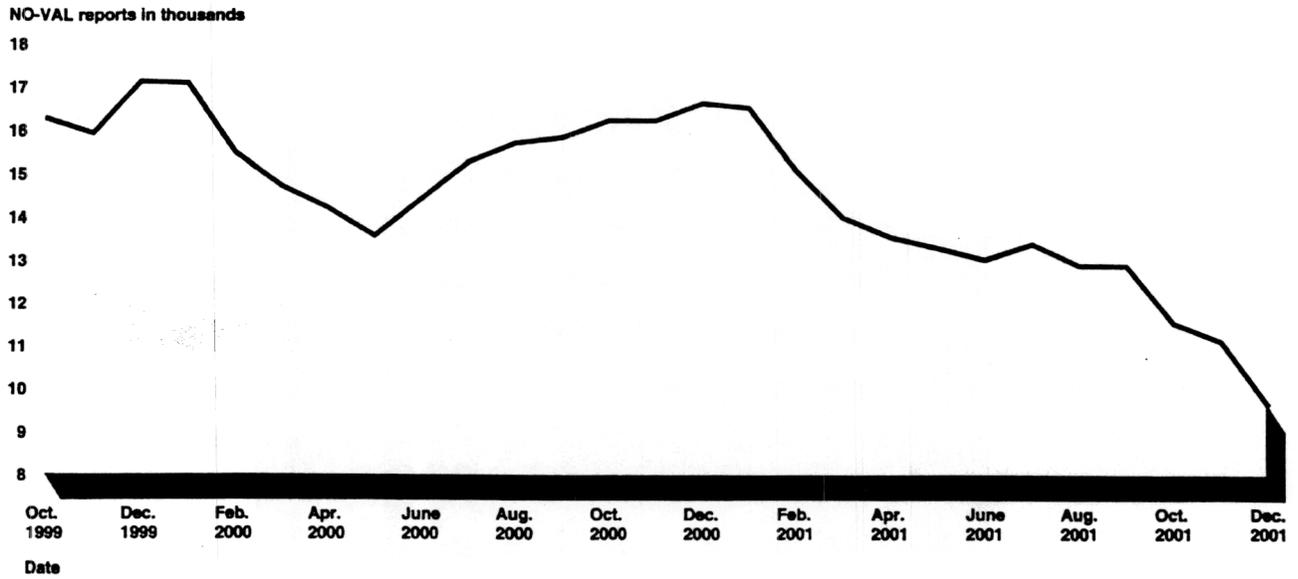
Derek B. Stewart
Director, Defense Capabilities
and Management

Enclosures – 2

Number of Army National Guard Members Not Paid for 3 and 7 or More Consecutive Months										
State	September 30, 2000					September 30, 2001				
	Assigned ^a	3 months	%	7 months	%	Assigned ^a	3 months	%	7 months	%
Alabama	11,837	368	3.1	132	1.1	11,184	274	2.4	132	1.2
Alaska	1,457	179	12.3	77	5.3	1,356	107	7.9	65	4.8
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Florida	8,564	382	4.5	178	2.1	8,485	276	3.3	142	1.7
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Illinois	8,439	326	3.9	115	1.4	8,162	242	3.0	116	1.4
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Maine	1,931	36	1.9	4	0.2	1,930	43	2.2	16	0.8
Maryland	5,434	261	4.8	100	1.8	5,249	195	3.7	100	1.9
Massachusetts	6,534	245	3.7	82	1.3	6,145	150	2.4	62	1.0
Michigan	7,404	190	2.6	68	0.9	7,441	172	2.3	77	1.0
Minnesota	8,145	177	2.2	30	0.4	8,000	123	1.5	47	0.6
Mississippi	8,015	140	1.7	50	0.6	7,840	98	1.3	42	0.5
Missouri	6,574	227	3.5	78	1.2	6,614	198	3.0	90	1.4
Montana	2,099	44	2.1	16	0.8	1,989	35	1.8	15	0.8
Nebraska	2,835	142	5.0	41	1.4	2,643	21	0.8	8	0.3
Nevada	1,389	46	3.3	7	0.5	1,466	21	1.4	5	0.3
New Hampshire	1,455	22	1.5	6	0.4	1,431	19	1.3	8	0.6
New Jersey	6,170	682	11.1	282	4.6	5,984	659	11.0	437	7.3
New Mexico	2,562	89	3.5	22	0.9	2,601	103	4.0	27	1.0
New York	10,368	460	4.4	172	1.7	9,831	262	2.7	103	1.0
North Carolina	8,572	393	4.6	132	1.5	8,580	379	4.4	216	2.5
North Dakota	2,753	16	0.6	5	0.2	2,728	17	0.6	7	0.3
Ohio	8,124	132	1.6	31	0.4	8,594	110	1.3	25	0.3
Oklahoma	6,184	192	3.1	81	1.3	6,055	132	2.2	42	0.7
Oregon	5,046	182	3.6	82	1.6	4,915	100	2.0	52	1.1
Pennsylvania	13,748	349	2.5	140	1.0	13,719	362	2.6	204	1.5
Puerto Rico	7,471	149	2.0	72	1.0	7,497	148	2.0	68	0.9
Rhode Island	2,198	110	5.0	38	1.7	2,018	63	3.1	29	1.4
South Carolina	8,279	397	4.8	208	2.5	7,826	159	2.0	87	1.1
South Dakota	2,917	34	1.2	8	0.3	2,859	32	1.1	12	0.4
Tennessee	9,422	236	2.5	107	1.1	9,310	167	1.8	99	1.1
Texas	14,546	1,259	8.7	505	3.5	14,138	865	6.1	490	3.5
U.S. Virgin Islands	640	36	5.6	18	2.8	606	25	4.1	16	2.6
Utah	4,005	117	2.9	30	0.7	3,923	105	2.7	39	1.0
Vermont	2,689	136	5.1	58	2.2	2,555	99	3.9	48	1.9
Virginia	6,339	225	3.5	92	1.5	6,256	165	2.6	95	1.5
Washington State	4,728	227	4.8	62	1.3	4,680	175	3.7	82	1.8
West Virginia	3,404	66	1.9	18	0.5	3,407	50	1.5	22	0.6
Wisconsin	6,418	104	1.6	29	0.5	6,228	152	2.4	54	0.9
Wyoming	1,243	46	3.7	18	1.4	1,193	28	2.3	14	1.2
Total	301,140	11,025	3.7	4,048	1.3	296,430	8,701	2.9	4,254	1.4

^aAssigned includes only Army National Guard members required to perform 2 weeks of annual training and weekend drills.

Army National Guard Monthly
NO-VAL Reports on Individuals Not Paid for Inactive Duty Training
for 3 Months or More
(October 31, 1999 to December 31, 2001)



Note: The graph shows a decline from 16,264 in October 1999 to 9,627 in December 2001.

Source: U.S. Army National Guard monthly NO-VAL reports.

- (A) Army Emergency Relief.
- (B) Air Force Aid Society, Inc.
- (C) Navy-Marine Corps Relief Society.
- (D) Coast Guard Mutual Assistance.

(3) An entity described in this paragraph is an entity that is not operated for profit and is any of the following:

(A) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).

(B) An entity that regulates international athletic competitions.

(C) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(D) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the armed forces may serve if authorized under subsection (a).

(E) An entity that, operating in a foreign nation where United States military personnel are serving at United States military activities, promotes understanding and tolerance between such personnel (and their families) and the citizens of that host foreign nation through programs that foster social relations between those persons.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of a member of the armed forces to participate in the management of such an entity, shall be published in the Federal Register.

(d) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added P.L. 105-85, § 593(a)(1), Nov. 18, 1997, 111 Stat. 1762; amended P.L. 106-65, § 583, Oct. 5, 1999, 113 Stat. 634.)

§ 1034. Protected communications; prohibition of retaliatory personnel actions¹

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.—(1) No person may

¹Section 843 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102-190; 105 Stat. 1449) provides:

SEC. 843. WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF THE ARMED FORCES.

(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

(c) [omitted].

restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITATION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization; or

(iv) any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (3).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Depart-

ment of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(4) Neither an initial determination under paragraph (3)(A) nor an investigation under paragraph (3)(D) is required in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(5) The Inspector General of the Department of Defense, or the Inspector General of the Department of Transportation (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A) or (B) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast

Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(g) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(h) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

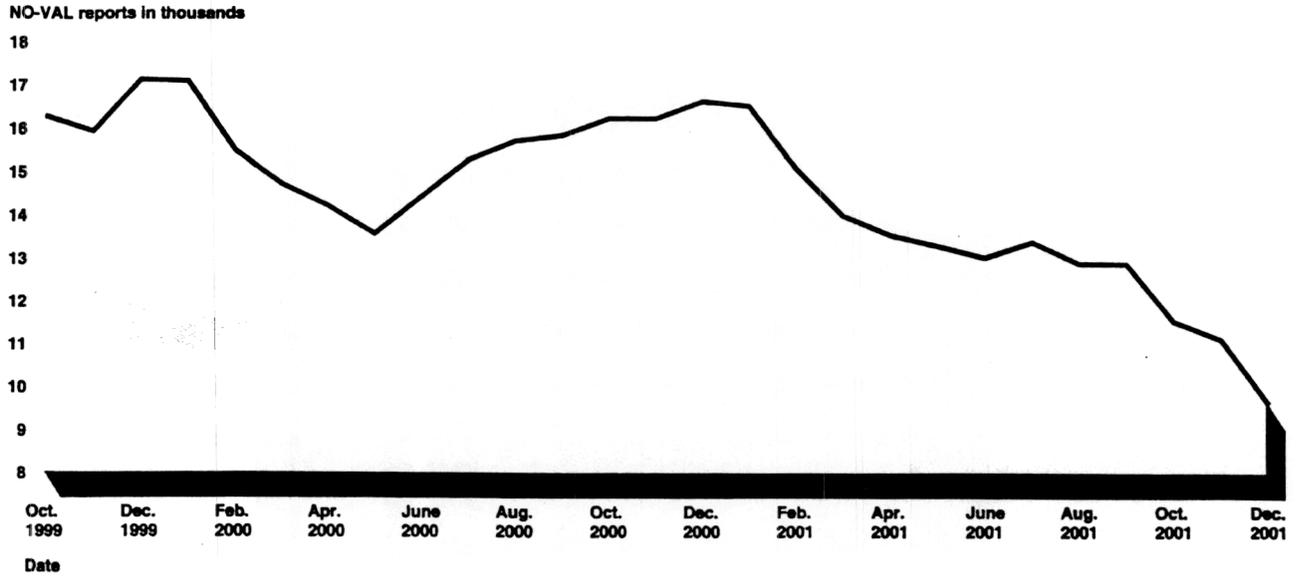
(i) DEFINITIONS.—In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

Number of Army National Guard Members Not Paid for 3 and 7 or More Consecutive Months										
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Mississippi	8,015	140	1.7	50	0.6	7,840	98	1.3	42	0.5
Missouri	6,574	227	3.5	78	1.2	6,614	198	3.0	90	1.4
Montana	2,099	44	2.1	16	0.8	1,989	35	1.8	15	0.8
Nebraska	2,835	142	5.0	41	1.4	2,643	21	0.8	8	0.3
Nevada	1,389	46	3.3	7	0.5	1,466	21	1.4	5	0.3
New Hampshire	1,455	22	1.5	6	0.4	1,431	19	1.3	8	0.6
New Jersey	6,170	682	11.1	282	4.6	5,984	659	11.0	437	7.3
New Mexico	2,562	89	3.5	22	0.9	2,601	103	4.0	27	1.0
New York	10,368	460	4.4	172	1.7	9,831	262	2.7	103	1.0
North Carolina	8,572	393	4.6	132	1.5	8,580	379	4.4	216	2.5
North Dakota	2,753	16	0.6	5	0.2	2,728	17	0.6	7	0.3
Ohio	8,124	132	1.6	31	0.4	8,594	110	1.3	25	0.3
Oklahoma	6,184	192	3.1	81	1.3	6,055	132	2.2	42	0.7
Oregon	5,046	182	3.6	82	1.6	4,915	100	2.0	52	1.1
Pennsylvania	13,748	349	2.5	140	1.0	13,719	362	2.6	204	1.5
Puerto Rico	7,471	149	2.0	72	1.0	7,497	148	2.0	68	0.9
Rhode Island	2,198	110	5.0	38	1.7	2,018	63	3.1	29	1.4
South Carolina	8,279	397	4.8	208	2.5	7,826	159	2.0	87	1.1
South Dakota	2,917	34	1.2	8	0.3	2,859	32	1.1	12	0.4
Tennessee	9,422	236	2.5	107	1.1	9,310	167	1.8	99	1.1
Texas	14,546	1,259	8.7	505	3.5	14,138	865	6.1	490	3.5
U.S. Virgin Islands	640	36	5.6	18	2.8	606	25	4.1	16	2.6
Utah	4,005	117	2.9	30	0.7	3,923	105	2.7	39	1.0
Vermont	2,689	136	5.1	58	2.2	2,555	99	3.9	48	1.9
Virginia	6,339	225	3.5	92	1.5	6,256	165	2.6	95	1.5
Washington State	4,728	227	4.8	62	1.3	4,680	175	3.7	82	1.8
West Virginia	3,404	66	1.9	18	0.5	3,407	50	1.5	22	0.6
Wisconsin	6,418	104	1.6	29	0.5	6,228	152	2.4	54	0.9
Wyoming	1,243	46	3.7	18	1.4	1,193	28	2.3	14	1.2
Total	301,140	11,025	3.7	4,048	1.3	296,430	8,701	2.9	4,254	1.4

^aAssigned includes only Army National Guard members required to perform 2 weeks of annual training and weekend drills.

Army National Guard Monthly
NO-VAL Reports on Individuals Not Paid for Inactive Duty Training
for 3 Months or More
(October 31, 1999 to December 31, 2001)



Note: The graph shows a decline from 16,264 in October 1999 to 9,627 in December 2001.

Source: U.S. Army National Guard monthly NO-VAL reports.

- (A) Army Emergency Relief.
- (B) Air Force Aid Society, Inc.
- (C) Navy-Marine Corps Relief Society.
- (D) Coast Guard Mutual Assistance.

(3) An entity described in this paragraph is an entity that is not operated for profit and is any of the following:

- (A) An entity that regulates and supports the athletic programs of the service academies (including athletic conferences).
- (B) An entity that regulates international athletic competitions.

(C) An entity that accredits service academies and other schools of the armed forces (including regional accrediting agencies).

(D) An entity that (i) regulates the performance, standards, and policies of military health care (including health care associations and professional societies), and (ii) has designated the position or capacity in that entity in which a member of the armed forces may serve if authorized under subsection (a).

(E) An entity that, operating in a foreign nation where United States military personnel are serving at United States military activities, promotes understanding and tolerance between such personnel (and their families) and the citizens of that host foreign nation through programs that foster social relations between those persons.

(c) PUBLICATION OF DESIGNATED ENTITIES AND OF AUTHORIZED PERSONS.—A designation of an entity under subsection (b), and an authorization under subsection (a) of a member of the armed forces to participate in the management of such an entity, shall be published in the Federal Register.

(d) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation in the case of the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(Added P.L. 105-85, § 593(a)(1), Nov. 18, 1997, 111 Stat. 1762; amended P.L. 106-65, § 583, Oct. 5, 1999, 113 Stat. 634.)

§ 1034. Protected communications; prohibition of retaliatory personnel actions¹

(a) RESTRICTING COMMUNICATIONS WITH MEMBERS OF CONGRESS AND INSPECTOR GENERAL PROHIBITED.—(1) No person may

¹Section 843 of the National Defense Authorization Act for Fiscal Years 1992 and 1993 (P.L. 102-190; 105 Stat. 1449) provides:

SEC. 843. WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF THE ARMED FORCES.

(a) REGULATIONS REQUIRED.—The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

(b) VIOLATIONS BY PERSONS SUBJECT TO THE UCMJ.—The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

(c) [omitted].

restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) PROHIBITATION OF RETALIATORY PERSONNEL ACTIONS.—(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing—

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted; or

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to—

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization; or

(iv) any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications.

(2) Any action prohibited by paragraph (1) (including the threat to take any action and the withholding or threat to withhold any favorable action) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection.

(c) INSPECTOR GENERAL INVESTIGATION OF ALLEGATIONS OF PROHIBITED PERSONNEL ACTIONS.—(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (3).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting sexual harassment or unlawful discrimination.

(B) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(3)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Depart-

ment of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(4) Neither an initial determination under paragraph (3)(A) nor an investigation under paragraph (3)(D) is required in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(5) The Inspector General of the Department of Defense, or the Inspector General of the Department of Transportation (in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

(d) INSPECTOR GENERAL INVESTIGATION OF UNDERLYING ALLEGATIONS.—Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A) or (B) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) REPORTS ON INVESTIGATIONS.—(1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast

Guard is not operating as a service in the Navy) and shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3) If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense (or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) and to the member making the allegation a notice—

(A) of that determination (including the reasons why the report may not be submitted within that time); and

(B) of the time when the report will be submitted.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) CORRECTION OF RECORDS WHEN PROHIBITED ACTION TAKEN.—(1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1), a correction board—

(A) shall review the report of the Inspector General submitted under subsection (e)(1);

(B) may request the Inspector General to gather further evidence; and

(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing.

(3) If the board elects to hold an administrative hearing, the member or former member who filed the application described in paragraph (1)—

(A) may be provided with representation by a judge advocate if—

(i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);

(ii) the Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case; and

(iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(g) REVIEW BY SECRETARY OF DEFENSE.—Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(h) REGULATIONS.—The Secretary of Defense, and the Secretary of Transportation with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(i) DEFINITIONS.—In this section:

(1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.

(2) The term “Inspector General” means any of the following:

(A) The Inspector General of the Department of Defense.

(B) The Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy.

(C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term “unlawful discrimination” means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80; Oct. 19, 1984, P.L. 98-525, § 1405(19), 98 Stat. 2622; revised in its entirety P.L. 100-456, § 846(a), Sept. 29, 1988, 102 Stat. 2027; P.L. 101-225, § 202, Dec. 12, 1989, 103 Stat. 1910; P.L. 103-337, § 531(a)-(g), Oct. 5, 1994, 108 Stat. 2756-2758; P.L. 105-261, § 933, Oct. 17, 1998, 112 Stat. 2107; P.L. 106-398, § 1[903], Oct. 30, 2000, 114 Stat. 1654, 1654A-224.)

§ 1035. Deposits of savings

(a) Under joint regulations prescribed by the Secretaries concerned, a member of the armed forces who is on a permanent duty assignment outside the United States or its possessions may deposit during that tour of duty not more than his unallotted current pay and allowances in amounts of \$5 or more, with any branch, office, or officer of a uniformed service. Amounts so deposited shall be deposited in the Treasury and kept as a separate fund, and shall be accounted for in the same manner as public funds.

(b) Interest at a rate prescribed by the President, not to exceed 10 percent a year, will accrue on amounts deposited under this section. However, the maximum amount upon which interest may be paid under this subsection to any member is \$10,000, except that such limitation shall not apply to deposits made on or after September 1, 1966, in the case of those members in a missing status, during the Vietnam conflict, the Persian Gulf conflict, or a contingency operation. Interest under this subsection shall terminate 90 days after the member's return to the United States or its possessions.

(c) Except as provided in joint regulations prescribed by the Secretaries concerned, payments of deposits, and interest thereon, may not be made to the member while he is on duty outside the United States or its possessions.

(d) An amount deposited under this section, with interest thereon, is exempt from liability for the member's debts, including any indebtedness to the United States or any instrumentality thereof, and is not subject to forfeiture by sentence of a court-martial.

(e) The Secretary concerned, or his designee, may in the interest of a member who is in a missing status or his dependents, initiate, stop, modify, and change allotments, and authorize a withdrawal of deposits, made under this section, even though the member had an opportunity to deposit amounts under this section and elected not to do so. Interest may be computed from the day the