

MEMORANDUM
February 3, 2014

To: Members of the Subcommittee on Financial and Contracting Oversight
Fr: Subcommittee on Financial and Contracting Oversight Majority Staff
Re: Hearing: Fraud and Abuse in Army Recruiting Contracts

On Tuesday, February 4, 2014, at 10:00 a.m., the Subcommittee on Financial and Contracting Oversight will hold a hearing entitled, “Fraud and Abuse in Army Recruiting Contracts.”

The purpose of the hearing is to examine reports of pervasive fraud, abuse, and mismanagement in the award and administration of contracts for the Army National Guard’s Recruiting Assistance Program (G-RAP). In particular, the hearing will examine reports that over 1,200 service members received payments at risk for fraud, that the contracts for G-RAP met very few of the requirements of federal procurement law, and that the entire program was illegal.

In preparation for the hearing, this memorandum provides background on G-RAP and the investigations associated with it.

I. BACKGROUND AND SUMMARY

The Army National Guard began its Recruiting Assistance Program (G-RAP) in 2005, a time when the Army was struggling to meet its recruiting numbers due to the wars in Afghanistan and Iraq and the strong economy.¹

The idea of the program was to provide incentives to National Guard soldiers and others to act as informal recruiters. They would tell their peers about the advantages of joining the National Guard, refer them to an Army recruiter, and if the recruit signed up, the referral source—or “recruiting assistant”—got a payment of \$2,000 - \$7,500. The program was run out of the Army National Guard’s Strength Maintenance Division (ASM) and administered by a contractor, Docupak. The recruiting assistants (RAs), who could include National Guard members not on active duty, retirees, their family members, or other civilians, were hired by Docupak as subcontractors.²

¹ Memorandum from U.S. Army Audit Agency to Recruiting Assistance Program Task Force Regarding Audit of Recruiting Assistance Programs – Reserve Components (June 4, 2012) (Report A 2012 0115 IEF), Enclosure 1.

² Department of the Army, Office of the Assistant Secretary of the Army, Financial Management and Comptroller, *Recruiting Assistance Initiatives* (Case No. 12-13) (hereinafter “ADA Report”).

In an important way, the program worked. The National Guard paid over \$300 million for more than 130,000 enlistments, and began meeting its recruiting goals.³ The Active Army and Army Reserve force began their own RAPs (“A-RAP” and “AR-RAP”, respectively) in 2007 and 2008, though they were much smaller.⁴ During the G-RAP program years, almost 40% of National Guard recruits enlisted through G-RAP.⁵

By 2007, the contractor, Docupak, had reported approximately a dozen cases of potential fraud to the Army’s Criminal Investigative Command (CID). After investigating and confirming several individual cases of fraud, CID became concerned that there might be a more widespread problem, and requested a program-wide audit by the Army Audit Agency in 2011.⁶

The fraud found by the auditors was so significant that the auditors informed the Army of their initial findings before the audit report was completed. They reported that more than 1,200 recruiters (the large majority from the Army National Guard) were associated with payments that were at a high or medium risk for fraud, and more than 2,000 recruiter assistants had received payments that might be fraudulent.⁷

Based on the auditors’ initial findings, the Army terminated G-RAP and AR-RAP in January 2012 (A-RAP had been discontinued in 2009 for other reasons). When the Secretary of the Army, John M. McHugh, learned of the Army Audit Agency findings in February 2012, he immediately directed further investigations by multiple different Army components, including investigating all recruiters and affiliated recruiting assistants, reviewing all ongoing incentive programs, conducting a procurement management review of RAP, investigating potential Anti-

³ U.S. Army Audit Agency, *Recruiting Assistance Programs – Reserve Components* (June 4, 2012).

⁴ Memorandum from U.S. Army Audit Agency to Director of the Army Staff Regarding Audit of Referral Bonus Programs (Mar. 28, 2013) (Report A 2013 0064 IEF). Under A-RAP, \$5.2 million in electronic payments were made for 2,806 enlistments. Memorandum from U.S. Army Audit Agency to Director of the Army Staff Regarding Audit of Recruiting Assistance Programs – Active Component (Oct. 3, 2012) (Report A 2013 0001 IEF). Under AR-RAP, \$25.9 million in electronic payments were made for 11,893 enlistments. U.S. Army Audit Agency, *Recruiting Assistance Programs – Reserve Components* (June 4, 2012).

⁵ It appears 1.3% of the Active Army recruits during FY2008-2010, 10.4% of the Army Reserve recruits during FY2007-2012, and 38% of National Guard recruits during FY2005-2012 enlisted through the RAP programs. It is important to note, however, that even within these percentages, some of these people would have enlisted during those years anyway, without RAP programs. E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Financial and Contracting Oversight Subcommittee Staff (Jan. 31, 2014).

⁶ Memorandum from U.S. Army Audit Agency to Director of the Army Staff Regarding Referral Bonus Programs (Mar. 28, 2013) (Report A 2013 0064 IEF).

⁷ Memorandum from U.S. Army Audit Agency to Recruiting Assistance Program Task Force Regarding Audit of Recruiting Assistance Programs – Reserve Components (June 4, 2012) (Report A 2012 0115 IEF).

Deficiency Act violations, reviewing any senior official misconduct, and conducting further audits RAP programs and contracts.⁸

Since the first cases were reported to CID, the RAP fraud cases have grown to become one of the largest fraud investigations that CID has ever conducted, both in terms of the sheer volume of fraud and the number of participants.⁹ Approximately 200 CID agents, with the assistance of the Army Audit Agency, have begun a review of all 106,364 individuals who received money from RAP. CID estimates that its investigations will continue until 2016.¹⁰

The Army Auditor General and the Assistant Secretary of the Army (Acquisition, Logistics and Technology) investigated whether the award and administration of the G-RAP contracts met federal procurement standards. They concluded that the G-RAP contracts met very few of the requirements of the Federal Acquisition Regulation (FAR). In addition, the lack of contract management and oversight contributed to the creation of an environment in which widespread fraud could occur.¹¹

Finally, the Army determined that G-RAP violated the Anti-Deficiency Act (ADA) and as a result, was illegal. Because Congress had placed limits on the bonuses the Army could pay to encourage the referral of new recruits, the Army found that payments made through the program violated the ADA. The Army concluded that the total RAP-related ADA violations amounted to \$386 million.¹²

The Army's findings have not previously been made public, or made available to the program's managers or contractor. Each has noted the difficulty of defending G-RAP without knowing fully what has been alleged or investigated. Each has acknowledged fraud in the program, but stated that amounts reported in the media have been exaggerated. Each has also stated that the program was critical to meeting wartime enlistment goals in an extremely

⁸ Memorandum from the Secretary of the Army Regarding Review, Investigation and Corrective Action—Active Army and Army Reserve Component Recruiting Assistance Programs (Feb. 9, 2012).

⁹ Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

¹⁰ Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014); E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Financial and Contracting Oversight Subcommittee Staff (Jan. 7, 2014).

¹¹ Subcommittee on Financial and Contracting Oversight, Interview of Bruce Miller and Suzanne Pierce, U.S. Army Audit Agency (Jan. 16, 2014); Deputy Assistant Secretary of the Army (Procurement), *Procurement Management Review of the National Guard Bureau* (Apr. 22, 2013).

¹² ADA Report.

challenging recruiting environment, and that any flaws with the program should be understood in that context.¹³

II. FRAUD IN THE RECRUITING ASSISTANCE PROGRAMS

The majority of RAP fraud involved Army recruiters. As designed, G-RAP specifically prohibited recruiters from registering as recruiting assistants or receiving payments because recruiting new enlistees was already part of the recruiters' regular duties, and under the RAP programs, a recruiter's role was simply to process the enlistees that recruiting assistants referred to them. However, many recruiters found ways to obtain RAP payments. For example, one scheme involved two recruiters who coerced a subordinate into registering as a recruiting assistant. The recruiters provided the recruiting assistant all the names of the recruits who were coming through their doors, and the recruiters then split the incentive money with the recruiting assistant. Other recruiters simply registered an unwitting person as a recruiting assistant, then substituted their own bank account for the direct deposit incentive payments.¹⁴

Other RAP fraud involved recruiting assistants. Often, the prohibited conduct was using a nominee's personal information without their consent. For example, a school principal or guidance counselor would register as a recruiting assistant and enter large numbers of their students as nominees without their permission.¹⁵ Some recruiters also simply ignored the registration prohibition and just registered themselves as recruiting assistants.

A. 2011 Audit Indicates Widespread Fraud

In 2011, CID had accumulated enough cases to believe the fraud might be widespread. At CID's request, the Army Audit Agency conducted a program-wide audit of G-RAP and AR-RAP (by this time, A-RAP had been discontinued). To date, the Army Audit Agency and CID have identified 16,480 G-RAP participants and 5,987 AR-RAP participants who are associated with payments that were at a high or medium risk for fraud.¹⁶

¹³ Subcommittee on Financial and Contracting Oversight, Interview of Lt. Gen. Clyde A. Vaughn (ret.) (Jan. 28, 2014); Subcommittee on Financial and Contracting Oversight, Interview of Col. Michael L. Jones (ret.) (Jan. 27, 2014); Subcommittee on Financial and Contracting Oversight, Interview of Philip Crane (Jan. 15, 2014).

¹⁴ Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014); Briefing by U.S. Army Audit Agency to Financial and Contracting Oversight Subcommittee Staff (Jan. 16, 2014).

¹⁵ Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

¹⁶ Memorandum from U.S. Army Audit Agency to Recruiting Assistance Program Task Force Regarding Audit of Recruiting Assistance Programs – Reserve Components (June 4, 2012) (Report A-2012-0115-IEF); E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Financial and Contracting Oversight Subcommittee Staff (Jan. 31, 2014).

“High risk” cases include payments with a very high likelihood of fraud, including payments to recruiters (who were ineligible to participate in the program). “Medium risk” cases include payments which have a strong likelihood of fraud, including payments to recruiting assistants who used nominee’s information without consent.¹⁷ CID estimates the total amount fraudulently paid was over \$29 million, almost 10% of all RAP payments (\$339 million) made at the time of the audit.¹⁸

The Army Audit Agency determined that there were inadequate internal controls to prevent fraud in G-RAP. The Army Audit Agency identified 12 key controls (for example, whether the recruiting assistant was eligible to participate in the program) and took a statistical sample of payments to evaluate the overall effectiveness of these controls. For 88% of the payments sampled, at least one key control was not in place or operating effectively.¹⁹ The Army Audit Agency noted that one control that did work was that no G-RAP payment was made without verifying that an actual person had enlisted.²⁰

B. Ongoing Criminal Investigations

After the audit, CID began a systemic review of all 106,364 individuals who received money from RAP. While CID, with the assistance of the Army Audit Agency, has cleared most of these individuals, they have more than 20,000 individuals still awaiting a preliminary investigation.²¹

CID’s review began with more than 7,621 officers. As of November 2013, more than 7,000 of these officers were still under review and 204 are under investigation. To date, CID has “titled” 110 officers, meaning that it has enough information to believe that they have committed a crime. When a person is titled, all favorable personnel actions are suspended (such as promotion, training, etc.) as well as all security clearances, although it does not appear that

¹⁷ U.S. Army Audit Agency, Recruiting Assistance Programs – Reserve Components (June 4, 2012).

¹⁸ E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Financial and Contracting Oversight Subcommittee Staff (Jan. 30, 2014).

¹⁹ Memorandum from U.S. Army Audit Agency to Recruiting Assistance Program Task Force Regarding Audit of Recruiting Assistance Programs – Reserve Components (June 4, 2012) (Report A-2012-0115-IEF).

²⁰ *Id.*

²¹ Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

military benefits are impacted.²² The most senior officer titled in the RAP investigation was a Major General.²³

The top five recipients of RAP money were all paid over \$100,000. The top recipient, who received \$274,500, is currently being prosecuted. The third highest recipient, who received \$208,500 in RAP payments, pleaded guilty. Investigations into the other top recipients of RAP payments are ongoing.²⁴

As of January 2014, CID's ongoing reviews have resulted in a total of 559 criminal investigations involving 1,219 individuals. 104 of these individuals have been held accountable through either the courts or through administrative action by the Army.²⁵ Under prosecutions by the Department of Justice, at least two of those convicted for G-RAP fraud have been sentenced to up to four years and 9 months in jail.²⁶ Prosecution of the cases has been limited by the five-year statute of limitations for some fraud cases, including that of the Major General mentioned above.²⁷

To date, individuals have been ordered to pay the government a total of \$936,683 in restitution. The actual amount received is not known at this time.²⁸ Outside of criminal

²² E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Financial and Contracting Oversight Subcommittee Staff (Jan. 31, 2014).

²³ Letter from Secretary McHugh to Chairman McCaskill (Nov. 14, 2013), Enclosure 2; Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

²⁴ Letter from Secretary McHugh to Chairman McCaskill (Nov. 14, 2013), Enclosure 2.

²⁵ E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Financial and Contracting Oversight Subcommittee Staff (Jan. 30, 2014).

²⁶ In addition to federal prosecution, some states have also been prosecuting G-RAP fraud cases, although it is spotty and CID is not aware of all of the states that are doing so or the scope of those prosecutions. Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

²⁷ Some prosecutors toll the statute of limitations when the RAP investigation started, others believe it is when the final incentive payment was received, and still others believe it is when Docupak paperwork was submitted for payment in a case. In addition, federal law suggests that the statute of limitations for fraud committed during wartime does not begin to toll until the end of the conflict. In the case of Afghanistan, the conflict is still ongoing. Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

²⁸ E-mail from Office of the Chief Legislative Liaison, Headquarters, Department of the Army to Subcommittee Staff (Jan. 30, 2014).

prosecutions, however, CID is also able to retrieve some of the fraudulently paid money through the Defense Finance and Accounting Services (DFAS), the Army's disbursing office.²⁹

III. G-RAP CONTRACTING ISSUES

The award, management, and oversight of the G-RAP contracts failed to comply with contracting regulations. One auditor told the Subcommittee staff that the G-RAP contracts met almost none of the Federal Acquisition Regulation (FAR) requirements.³⁰ According to auditors, the contract problems resulted in part because the Army National Guard's Strength Maintenance Division (ASM), the organization within the National Guard responsible for G-RAP, exercised undue command influence. ASM directed the contracting office to implement and continue the program rather than follow procurement regulations. Senior Army National Guard officers were able to do so because the organizational structure of the Bureau did not shield contracting officers from such directions and because the contracting officers were overworked and undertrained.³¹

A. G-RAP Contracts Failed to Comply with Law and Regulations

The G-RAP program was administered by a contractor, Docupak, under three separate contracts between its launch in 2005 and termination in 2012. G-RAP began as several task orders in 2005 under an existing marketing services contract. After the program hit its contract ceiling in 2007, it was continued under a relatively brief bridge contract before a new, long-term contract was signed later that year.

The Army Audit Agency and the Office of the Deputy Assistant Secretary of the Army (Procurement) reviewed the G-RAP contracting process's compliance with the FAR and best practices. Each published 50-plus page reports filled with deficiencies in the contracting process for each of these contracts, including the failure to adequately plan, award, manage, and oversee the contracts. The National Guard Bureau also failed to obtain sufficient legal reviews for any of the G-RAP contracts awarded to Docupak. A proper review might have informed the National Guard Bureau that the payment of recruit referral bonuses, according to the Office of the

²⁹ Briefing by U.S. Army Criminal Investigative Command to Financial and Contracting Oversight Subcommittee Staff (Jan. 15, 2014).

³⁰ Briefing by U.S. Army Audit Agency to Financial and Contracting Oversight Subcommittee Staff (Jan. 16, 2014).

³¹ U.S. Army Audit Agency, *Contracts for the Guard Recruiting Assistance Program*, (Aug. 1, 2013) (Report A-2013-0128-MTH) (hereinafter "Army Audit Agency G-RAP Contract Audit"); Department of the Army, Office of the Deputy Assistant Secretary of the Army (Procurement), *Procurement Management Review of Recruiting Assistance Programs* (Dec. 4, 2012) (hereinafter "Procurement Management Review of RAPs").

Assistant Secretary (Manpower and Reserve Affairs) is an inherently governmental function, and could not be outsourced to a contractor.³²

Other major deficiencies with the contracts include:

Deficiencies in G-RAP Procurement Planning and the 2005 Contract

- There is no evidence that the National Guard Bureau conducted any market research before contracting with Docupak to run G-RAP, even though approximately 15 other companies performed similar types of “lead generator” services.³³
- The National Guard awarded the G-RAP work to Docupak as a task order under an existing contract for marketing services, which was not permissible under the scope of the contract.³⁴
- The National Guard Bureau failed to negotiate the contractor’s fee. Instead, the National Guard Bureau simply accepted Docupak’s billing of \$345 for each referral, which amounted to a 16.5% fee for the contractor.³⁵ This was a carryover from the existing marketing contract’s 16.5% “material handling fee,” even though no materials were involved in the G-RAP program. As a result, the National Guard Bureau inappropriately paid \$9,276,630 to the contractor.³⁶

Deficiencies in the 2007 ‘Bridge’ Contract

- The National Guard waited until March 2007 to solicit, evaluate and award a new, \$450 million contract for G-RAP, despite knowing that they were running out of money under the 2005 task order.³⁷
- Faced with a pause in G-RAP, the National Guard Bureau improperly awarded a “bridge” contract to Docupak without competition.³⁸

³² Memorandum from Deputy Assistant Secretary of the Army (Force Management, Manpower and Resources) to the Deputy Assistant Secretary of the Army (Military Personnel) (May 18, 2012); *see also* Army Audit Agency G-RAP Contract Audit.

³³ Procurement Management Review of RAPs.

³⁴ Army Audit Agency G-RAP Contract Audit.

³⁵ *Id.* Had the National Guard Bureau followed proper procedures for using a cost-plus-fixed-fee contract, a statutory cap on the fee amount of 10 percent of the contract’s cost would have applied. *Id.*

³⁶ *Id.*

³⁷ *Id.*

³⁸ The Federal Acquisition Regulation does not permit insufficient planning as a justification for using a sole-source contract. *Id.*

Deficiencies in the 2007 G-RAP Contract

- The National Guard Bureau permitted Docupak to both assist with the development of the Statement of Objectives for the 2007 G-RAP contract and bid (and win) the contract.³⁹
- The Statement of Objectives for the 2007 G-RAP contract improperly included criteria that focused on objectives for choosing a contractor, rather than objectives for the program. By focusing on past-performance and familiarity with G-RAP, the Statement of Objectives likely deterred other contractors from bidding on the contract.⁴⁰
- The Source Selection Evaluation Board evaluated bid proposals against criteria that weren't disclosed in the solicitation, creating an unfair advantage for Docupak. The Board also only included personnel from the ASM division on the board, also likely creating an unfair advantage for Docupak.⁴¹
- The National Guard Bureau's Principal Assistant Responsible for Contracting (PARC) and the Head of Contracting Activity (HCA) failed to conduct the required reviews before the contract was awarded.⁴²

The former National Guard contracting officer who signed the 2005 contract, Kay Hensen, is now an employee of Docupak.⁴³ While Army investigators have not identified any wrongdoing by Docupak, they do not dispute that in many cases, Docupak should have been aware of the contracting irregularities.⁴⁴

B. Lack of Management and Oversight

Lack of management and oversight of the contract contributed to the creation of an environment in which widespread fraud could occur and continue. First, according to the auditors, National Guard Bureau officials were aware of the significant risk for fraud related to the program. Despite that fact, neither ASM nor the contracting officials implemented the required quality assurance plans for any of the three contracts.⁴⁵

³⁹ Procurement Management Review of RAPs.

⁴⁰ Army Audit Agency G-RAP Contract Audit.

⁴¹ *Id.*

⁴² *Id.*

⁴³ Subcommittee on Financial and Contracting Oversight, Interview of Kay Hensen (Jan. 27, 2014).

⁴⁴ Briefing by U.S. Army Audit Agency to Financial and Contracting Oversight Subcommittee Staff (Jan. 16, 2014).

⁴⁵ Army Audit Agency G-RAP Contract Audit; Procurement Management Review of RAPs.

The auditors also found no evidence that the contracting officer's representatives (CORs) at ASM performed any oversight, or even knew how to monitor contractor performance or conduct inspections. Most of the CORs told auditors that they thought oversight was the contractor's responsibility.⁴⁶

In addition, no contracting official ever learned that there were reports of fraud occurring in the program until after the Army audit. Although the contractor, CID, and ASM were aware of the reports of fraud, none of these entities informed the contracting office.⁴⁷

C. Undue Command Influence and Ineffective Organizational Structure

The primary reason for the breakdowns during the procurement process was inappropriate influence by senior leaders in the National Guard Bureau. According to the auditors, these breakdowns were "attributable to ASM leadership using undue command influence to direct the contracting office to implement and continue G-RAP, using methods that didn't comply with acquisition policy."⁴⁸

Contracting officials described significant pressure from the ASM deputy division chief and division chief to implement the program (Colonel Michael L. Jones (ret.), held each position successively). Although some contracting officers voiced concerns to ASM about meeting procurement standards, these concerns were not shared by ASM leadership.⁴⁹

For example, one of the deficiencies auditors identified among the G-RAP contracts was the improper award of a sole-source contract to Docupak in 2007. The contracting official at the time (a different officer than the one who later worked for Docupak) resisted, but stated that "the generals didn't want work to stop" and that ASM leadership's response to her concerns about acquisition regulations was "I don't care, get it done."⁵⁰ The consensus of all the officials that the contracting officers interviewed was that "National Guard Bureau's leadership personally supported and promoted G-RAP and the contracting division needed to do whatever was necessary to ensure that it continued."⁵¹

⁴⁶ Army Audit Agency G-RAP Contract Audit; Procurement Management Review of RAPs.

⁴⁷ Army Audit Agency G-RAP Contract Audit.

⁴⁸ *Id.*; see also Briefing by Department of the Army, Office of the Deputy Assistant Secretary of the Army (Procurement), to Financial and Contracting Oversight Subcommittee Staff (Jan. 14, 2014).

⁴⁹ Army Audit Agency G-RAP Contract Audit; Briefing by Department of the Army, Office of the Deputy Assistant Secretary of the Army (Procurement), to Financial and Contracting Oversight Subcommittee Staff (Jan. 14, 2014).

⁵⁰ Army Audit Agency G-RAP Contract Audit.

⁵¹ *Id.*

Because of the organizational structure of procurement offices in the National Guard Bureau, officials who might have countered this influence were not in a position to do so.⁵² The office that should have shielded contracting officers from undue command influence from ASM was the Principal Assistant Responsible for Contracting (PARC). The PARC was also supposed to provide oversight to ensure that the contracting officials were properly trained and that their contract actions complied with the law. One reason that the PARC failed to do so was because organizationally, PARC was parallel to, rather than above, the contracting office. Since the audit, the contracting division has been aligned under PARC.⁵³

Army investigators noted that the sense of urgency for G-RAP should be understood in the context of an extremely challenging environment for recruiting. And while G-RAP proponents, including ASM, acknowledged that the program was a priority, they denied any undue command influence and rejected that any contracting official was asked to disregard procurement regulations. Additionally, one G-RAP contracting official the Subcommittee interviewed disagreed that certain FAR requirements weren't met. However, neither contracting officials, ASM officials nor other G-RAP proponents had previous access to the G-RAP contract audit.⁵⁴

IV. G-RAP PAYMENTS VIOLATED ANTI-DEFICIENCY ACT

The Army found that, because Congress had placed limits on the bonuses the Army could pay to encourage the referral of new recruits, payments made under G-RAP were violations of the Anti-Deficiency Act (ADA). The Army also determined that a number of other aspects of G-RAP violated federal law. According to investigators, the ADA violations are significantly higher than any violations previously committed by the National Guard Bureau and rank in the top ten Army-wide ADA violations.⁵⁵

In 2012, a preliminary report of the Assistant Secretary of the Army (Financial Management and Comptroller) found that all expenditures made through the RAP program, a total of \$385.7 million, violated ADA requirements. G-RAP payments violated the ADA in two different respects. First, the Army concluded that G-RAP referral payments were bounties, which are prohibited under federal law.⁵⁶ Second, the Army concluded that Congress had

⁵² *Id.*; Procurement Management Review of RAPs.

⁵³ Army Audit Agency G-RAP Contract Audit; Procurement Management Review of RAPs.

⁵⁴ *See, e.g.*, Subcommittee on Financial and Contracting Oversight, Interview of Lt. Gen. Clyde A. Vaughn (ret.) (Jan. 28, 2014); Subcommittee on Financial and Contracting Oversight, Interview of Col. Michael L. Jones (ret.) (Jan. 27, 2014); Subcommittee on Financial and Contracting Oversight, Interview of Philip Crane (Jan. 15, 2014).

⁵⁵ Subcommittee on Financial and Contracting Oversight, Interview of Michael Anglemeyer, Program Manager for Anti-Deficiency Act Investigations (Jan. 15, 2014) (hereinafter "Anglemeyer Interview").

⁵⁶ ADA Report ("[T]his report concluded the \$313,159,240 of GRAP payments made to RAs...were bounties; and as such, violated Title 10, USC, 514(a).").

limited permissible payments to \$1,000, half of the minimum payment of \$2,000 obtainable through G-RAP.⁵⁷ The Army also concluded that the National Guard violated other federal laws because it did not properly coordinate G-RAP with other Army and Department of Defense offices before launching the program.⁵⁸

Some of these issues were considered by National Guard Bureau attorneys at the time of G-RAP's creation. Their legal review determined that the G-RAP referral payments were not bounties because they were not paid directly to soldiers, as the payments were technically to Docupak to provide leads on recruits. The National Guard Bureau also determined that RAP was not precluded by payment restrictions under NDAA, but was "another tool in the toolbox" that Congress had explicitly provided for other recruiting initiatives. A later legal consideration of the program by Army attorneys in 2007 (when the Active Army was beginning A-RAP) did not contradict the Guard's legal opinion.⁵⁹

Majority Subcommittee staff have been unable to determine whether the National Guard Bureau requested legal assistance related to the ADA issue or involved fiscal attorneys in discussions regarding RAP.⁶⁰ According to the Army, the National Guard Bureau suffers from a system-wide lack of expertise and training in fiscal law. (Although the Army now requires every operating agency to identify key certifiers who have fiscal law training, this requirement has been only been in place for the last two years.⁶¹)

The final ADA investigation report, expected in October 2014, will likely discuss the lack of management attention to RAP and a culture inside the National Guard Bureau that allowed "shortcuts" to occur in the program approval process.⁶²

V. WITNESSES

Panel I

Lieutenant General William T. Grisoli
Director of the Army Staff
U.S. Army

Major General David E. Quantock
Commanding General
U.S. Army Criminal Investigation Command and Army Corrections Command

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *See* Anglemyer Interview.

⁶¹ *Id.*

⁶² *Id.*

Joseph P. Bentz
Principal Deputy Auditor General
U.S. Army Audit Agency

Panel II

Lieutenant General Clyde A. Vaughn (Ret.)
Former Director
Army National Guard

Colonel Michael L. Jones (Ret.)
Former Division Chief
Army National Guard Strength Maintenance Division

Philip Crane
President
Docupak

Lieutenant Colonel Kay Hensen (Ret.)
Contracts Manager
Docupak
Former Contracting Officer
National Guard Bureau