

**Audit**



**Report**

OFFICE OF THE INSPECTOR GENERAL

**DEFENSE OFFICER PERSONNEL MANAGEMENT ACT  
FOR MEDICAL OFFICER PAY AND ENTITLEMENTS**

Report No. 93-072

March 22, 1993

**Department of Defense**

**The following acronyms are used in this report.**

DOPMA.....Defense Officer Personnel Management Act  
HPSP.....Health Professions Scholarship Program  
JAG.....Judge Advocate General  
OGC.....General Counsel, Department of Defense  
OSD.....Office of the Secretary of Defense  
USUHS.....Uniformed Services University of the  
Health Sciences



INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE  
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March 22, 1993

MEMORANDUM FOR INSPECTOR GENERAL, DEPARTMENT OF THE ARMY  
ASSISTANT SECRETARY OF THE NAVY (FINANCIAL  
MANAGEMENT AND COMPTROLLER)  
ASSISTANT SECRETARY OF THE AIR FORCE (FINANCIAL  
MANAGEMENT AND COMPTROLLER)

SUBJECT: Audit Report on the Defense Officer Personnel  
Management Act for Medical Officer Pay and  
Entitlements (Report No. 93-072)

We are providing this final report for your information and use. It addresses matters concerning the implementation of the Defense Officer Personnel Management Act for medical officer pay and entitlements. Comments on a draft of this report were considered in preparing the final report.

DoD Directive 7650.3 requires that all audit recommendations be resolved promptly. Therefore, the Army, Navy and the Air Force must provide final comments on the unresolved recommendations by May 21, 1993. See the "Response Requirements on Recommendations" section at the end of the finding for the unresolved recommendations and the specific requirements for your comments.

As required by DoD Directive 7650.3, the comments must indicate concurrence or nonconcurrence with the finding and each recommendation addressed to you. If you concur, describe the corrective actions taken or planned, the completion dates for actions already taken, and the estimated dates for completion of planned actions. If you nonconcur, please state your specific reasons for each nonconcurrence. If appropriate, you may propose alternative methods for accomplishing desired improvements.

Recommendations are subject to resolution in accordance with DoD Directive 7650.3 in the event of nonconcurrence or failure to comment. We also ask that your comments indicate concurrence or nonconcurrence with the material internal control weaknesses highlighted in Part I.

The courtesies extended to the audit staff are appreciated. If you have any questions about this audit, please contact Mr. David Funk, Program Director, at (303) 676-7445 (DSN 926-7445) or Mr. Stephen Delap, Project Manager, at (303) 676-7393 (DSN 926-7393). The planned distribution of this report is listed in Appendix F.



Robert J. Lieberman  
Assistant Inspector General  
for Auditing

cc:

Secretary of the Army  
Secretary of the Navy  
Secretary of the Air Force  
Assistant Secretary of Defense (Health Affairs)

Office of the Inspector General, DoD

AUDIT REPORT NO. 93-072  
(Project No. 1FD-8003)

March 22, 1993

**THE DEFENSE OFFICER PERSONNEL MANAGEMENT ACT FOR  
MEDICAL OFFICER PAY AND ENTITLEMENTS**

**EXECUTIVE SUMMARY**

**Introduction.** The Defense Officer Personnel Management Act (the Act) for Medical Officer Pay and Entitlements was passed in December 1980, and was implemented on September 15, 1981. The Act eliminated constructive service credit for pay purposes for students who enrolled in the Uniformed Services University of the Health Sciences (USUHS) and the Armed Forces Health Professions Scholarship Program (HPSP) after September 14, 1981. Constructive service credit was no longer needed for longevity pay purposes because the Act restructured the pay system for military health professionals.

**Objectives.** Our objective was to determine whether the Act was properly implemented for medical officer pay and entitlements. We also evaluated whether the Boards for the Correction of Military and Naval Records (the Boards) acted appropriately in subsequently awarding constructive service credit for pay purposes to the 1985 and 1986 USUHS and HPSP graduates (the first graduating classes to be affected by the Act). Specifically, we determined whether the Boards' actions were within the scope of their authority and were procedurally sound.

**Audit Results.** We found that the Act was properly implemented for medical officer pay and entitlements. However, the Boards partially mitigated its effect when they used inappropriate decisionmaking criteria and administrative procedures in awarding constructive service credit to the 1985 and 1986 USUHS and HPSP graduates. Specifically, the Boards did not require the applicants to prove that injustices had occurred, and used blanket approvals that resulted in claims against the Government from graduates who had not originally applied for the credit. The Boards' actions have already resulted in \$12 million in back payments, and could cost the Government as much as \$193 million in increased active duty and retired pay for medical officers. Until procedural changes are made, the Boards may continue to use inappropriate decisionmaking criteria and procedures.

**Internal Controls.** The material internal control weaknesses that we identified are discussed further in Finding A. Because the Boards had inadequate procedures and guidelines, their actions on the USUHS and HPSP claims were contrary to legal precedents and resulted in claims against the Government. See the Internal Controls section in Part I of the report for additional details.

**Potential Benefits of Audit.** This report contains no potential monetary benefits, but recommends revisions to the Boards' procedures and guidelines to prevent potential abuses of Board authority in the future. See Appendix D for a summary of other benefits resulting from this audit: improved internal controls, increased legal compliance, and more consistent Board procedures.

**Summary of Recommendations.** We recommended that the Secretaries of the Army, the Navy, and the Air Force develop procedures to ensure that applicants provide sufficient evidence that material errors or injustices occurred; that applications are decided on their own merits; that the opinions of the Service Judge Advocates General and the General Counsel, Department of Defense, are considered; and that the Boards, when considering class-action requests, address the relevance of established legal standards, and also address circumstances in which legislative changes may be needed.

**Management Comments.** The Secretary of the Army did not provide written comments on the draft report. The Assistant Secretary of the Navy, Manpower and Reserve Affairs, nonconcurred with the audit finding and the recommendation on procedures regarding evidence, but concurred with the other recommendations. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment) made general statements on Board authority and Air Force regulations; these comments were not responsive to the draft report. Since the Army did not provide comments on the draft report, we request that the Army respond to the final report by May 21, 1993. We also request that the Air Force provide comments responsive to each recommendation, and that the Navy reconsider its position on the finding and the one recommendation with which it nonconcurred when responding to the final report. Comments from the Air Force and the Navy are due by May 21, 1993. A discussion of management comments and audit responses is in Part II, and the complete text of management's comments is in Part IV of this report.

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This report was prepared by the Financial Management Directorate, Office of the Assistant Inspector General for Auditing, DoD. Copies of the report can be obtained from the Secondary Reports Distribution Unit, Audit Planning and Technical Support Directorate, (703) 614-6303 (DSN 224-6303).



## PART I - INTRODUCTION

### Background

This audit was made in response to a complaint received on the Inspector General, DoD, hotline. The complaint alleged that the Air Force Board for the Correction of Military Records (the Air Force Board) had awarded constructive service credit for pay purposes to medical officers for time spent in professional training, although they were not entitled to the credit under provisions of the Defense Officer Personnel Management Act (the Act).

Defense Officer Personnel Management Act. The Act eliminated constructive service credit for pay purposes for students enrolled in the Uniformed Services University of the Health Sciences (USUHS) and the Health Professions Scholarship Program (HPSP) after September 14, 1981. Before the Act was implemented, medical officers who graduated from USUHS and HPSP received 4 years of constructive service credit for training. Each medical officer's basic pay was increased by about \$500 per month while he or she was on active duty; the officers also received additional retirement pay. The USUHS and HPSP classes that graduated in 1985 and 1986 were the first to be affected by the Act. The classes of 1982 through 1984 entered on active duty before the Act was implemented; therefore, they received 4 years of constructive service credit for training.

Role of the Boards. The Boards for the Correction of Military and Naval Records (the Boards) were created by Section 207 of the Legislative Reorganization Act of 1946. Section 207, codified at 10 United States Code (U.S.C.) sec. 1552, provide that:

The Secretary of a military department, under procedures established by him and approved by the Secretary of Defense, and acting through boards of civilians of the executive part of that military department, may correct any military record of that department when he considers it necessary to correct an error or remove an injustice.

Regulations implemented by the military departments require that each Board consist of at least three civilians appointed by the Service Secretaries. The Boards have jurisdiction over review and determination of all matters properly brought before them, consistent with existing law. The Boards consider each application to determine whether an error or injustice has

occurred, and make recommendations to the Service Secretaries. The regulations further provide that the Boards may deny an application if the evidence presented to them does not demonstrate the existence of a material error or injustice. Corrections granted by the Boards are final and conclusive unless obtained through fraudulent means.

**Legal opinion.** During the audit, we requested a legal opinion from the General Counsel, Department of Defense (OGC) on the propriety of the Boards' actions. On September 3, 1992, the OGC issued an opinion (see Part II, "Board Procedures").

**Legal counsel.** The Judge Advocates General (JAGs) of the Services have also advised the Boards in matters of authority, jurisdiction, and process. Board procedures require each Board's members to determine whether an applicant has provided sufficient, relevant evidence that a probable error or injustice occurred. Although the Boards requested the JAGs' legal advice in the USUHS and HPSP cases, the advice was not strongly considered by the Boards in reaching their decisions.

### **Objectives and Scope**

Our audit objective was to determine whether the Act was properly implemented for medical officer pay and entitlements. We also evaluated whether the Boards for the Correction of Military and Naval records acted appropriately in subsequently awarding constructive service credit for pay purposes to the 1985 and 1986 USUHS and HPSP graduates (the first graduating classes to be affected by the Act) despite clear Congressional direction that it was no longer proper. Specifically, we determined whether the Boards' actions were within the scope of their authority and were procedurally sound.

We performed field work at the Army Board for the Correction of Military Records (the Army Board), the Board for the Correction of Naval Records (the Naval Board), and the Air Force Board; the Service legal and personnel offices; the Office of the Secretary of Defense; and the Defense Finance and Accounting Service Centers. We reviewed the records of Board proceedings, advisory memorandums from personnel directorates and legal staff, petitioners' applications and supporting evidence, other Board and Act-related documents, and pay records. We also reviewed the history of the Boards as discussed in articles and legal opinions. We obtained a legal opinion from the OGC, DoD, on the Boards' authority, jurisdiction, and scope, and the propriety of actions taken in granting the USUHS and HPSP students' corrections.

We identified all constructive service credit corrections granted to USUHS and HPSP graduates for pay purposes as of March 1992, and the amounts of special claims (back pay) resulting from the

corrections. We estimated the total life-cycle costs of increased active duty and retirement payments to medical officers (see Appendix C). Projections were based on a 25-percent retention rate through retirement, 24 years of credit for active duty service, and a 20-year retirement.

This program audit was performed from September 1991 through March 1992 in accordance with auditing standards issued by the Comptroller General of the United States (the Comptroller General) as implemented by the Inspector General, DoD, and accordingly included such tests of internal controls as were considered necessary. Appendix E lists the activities visited or contacted during the audit.

### **Internal Controls**

The audit identified material internal control weaknesses as defined by Public Law 97-255, Office of Management and Budget Circular A-123, and DoD Directive 5010.38. Specifically, we found that the absence of procedural criteria (standards such as burden of proof, detrimental reliance, or preferential treatment that apply in determining whether an injustice occurred) allowed the Boards to broadly interpret "an injustice requiring remedial action." For example, the Army Board incorrectly determined that inequities between Services and peer groups formed the basis of an injustice. However, none of the Boards required the USUHS and HPSP applicants to provide evidence that an error or injustice had occurred. Also, procedural guidance did not restrict the Army and Air Force Boards from granting blanket approvals, which resulted in the solicitation of claims against the Government.

The specific internal control weaknesses and recommendations are presented in Part II, Finding A. We could not determine the monetary benefits to be realized by implementing the recommendations. Recommendations A.1. through A.4., if fully implemented, will correct the weaknesses. Copies of the final report will be provided to the senior officials responsible for internal controls in the Departments of the Army, Navy, and Air Force.

### **Prior Audit Coverage**

No prior audits had been conducted; however, the Comptroller General ruled in 1982 that Public Health Service medical officers who enrolled in the HPSP after September 14, 1981, were not entitled to constructive service credit. The Comptroller General ruled that the Act clearly and unambiguously stated the provisions of the law, and that erroneous advice to the contrary did not entitle the officers to the credit.

## PART II - FINDING AND RECOMMENDATIONS

### IMPLEMENTATION OF THE ACT

The Boards for the Correction of Military and Naval Records used inappropriate decisionmaking criteria and administrative procedures in awarding constructive service credit to 1985 and 1986 graduates of the USUHS and HPSP. The awards have already resulted in \$12 million in back payments, and could cost the Government as much as \$193 million in increased active duty and retirement pay for medical officers. Until procedural changes are implemented, the Boards may continue to use inappropriate decisionmaking criteria and procedures.

### DISCUSSION OF DETAILS

#### Background

The Defense Officer Personnel Management Act (the Act) was passed in December 1980 and was implemented on September 15, 1981. Previously, medical officers who graduated from the USUHS and HPSP had received 4 years of constructive service credit for pay purposes for time spent in training. This increased each medical officer's basic pay by about \$500 per month while he or she was on active duty. However, the Act eliminated the constructive service credit for students who enrolled in the USUHS and HPSP after September 14, 1981.

**Graduates affected.** The first medical officers affected by the Act were 1,908 Army, Navy, and Air Force members of the 1985 and 1986 classes of the USUHS and HPSP. As of December 1991, 1,204 graduates had been awarded constructive service credit, including 148 USUHS and 1,056 HPSP students. The remaining 704 graduates had not requested constructive service credit.

#### Implementation Efforts

The Services properly implemented the Defense Officer Personnel Management Act. The Army and the Air Force revised their USUHS and HPSP program service agreements to inform applicants who enrolled after September 14, 1981, that they would not receive constructive service credit for time spent in training. Navy agreements included a statement that a Federal statute could change an applicant's commissioned officer status. However, USUHS and HPSP recruiting literature was not revised, and some recruiting personnel were not told that the law had been changed.

**Execution of the Act.** On three occasions, the Services had opportunities to report to Congress on any adverse effects of executing the Act. Public Law 97-22, the "DOPMA Technical Corrections Act," June 25, 1981, allowed the Services to recommend corrections to the Act, but did not restore

constructive service credit for USUHS and HPSP students. In August 1983, the Senate asked DoD to report on the implementation of the Act. The resulting "OSD Report on Award of Service Credit," January 1984, did not identify any concerns with the Act's effect on USUHS and HPSP students. In 1984, DoD considered a USUHS-sponsored bill to restore constructive service credit to USUHS and HPSP medical students. DoD did not support the bill because the Assistant Secretary of Defense (Health Affairs) did not endorse it.

### **Board Actions**

After DoD implemented the Act, the Boards for the Correction of Military and Naval Records used inappropriate decisionmaking criteria and administrative procedures in awarding constructive service credit for pay purposes to 1,204 medical officers who were not entitled to it. The Boards based their awards on miscounseling of students and inequities between the Services. The audit disclosed, however, that the Boards did not require the individuals to provide evidence that they had suffered through detrimental reliance on the counseling given. In fact, where the Boards granted blanket approvals based on review of a small number of applications, no evidence pertaining to the majority of the individuals was presented. (See Appendix A for a chronological listing of events pertaining to DOPMA and Board actions.)

### **Boards' Decisionmaking Criteria**

The USUHS and HPSP applications to the Boards did not provide evidence to demonstrate the existence of material errors or injustices. Instead, all three Boards approved the claims based on alleged miscounseling and inequities between the Services after the Air Force Board approved its initial USUHS applications for constructive service credit based on miscounseling.

**Air Force Board Actions.** In March 1985, the Air Force Board approved its USUHS applicants' petitions based on miscounseling and a recommendation from the Directorate of Personnel Plans. However, the applicants were not required to provide evidence that they would not have entered the program without the constructive service credit, and they did not provide evidence to deny the program service agreements they had signed.

In October 1990, the Air Force Board gave blanket approval to its HPSP applicants, based on miscounseling and the inequity created after the Army Board approved its HPSP applications in October 1988. The Air Force Board reviewed 30 cases and asked the Air Force JAG for an opinion. The Air Force JAG disagreed with the Surgeon General of the Air Force, who had said that an injustice occurred if Air Force physicians were not compensated equally with their peers in the Army who entered the Service on

the same date and with the same level of education. The Air Force JAG stated that it is not unusual for the Services to compensate members differently, even though individuals may enter their respective Services on the same date and with the same level of education. The Air Force JAG stated that the Air Force Board did not have the authority to change the law, and that the use of miscounseling as grounds for approving the USUHS and HPSP petitions was contrary to the grandfathering provisions of the law. The Air Force JAG did not believe the Board should grant relief to the applicants based on inequity.

**Naval Board actions.** In October 1985, the Naval Board approved its USUHS applicants' petitions on the basis of an April 1985 memorandum from the Assistant Secretary of Defense (Manpower, Installations and Logistics). The memorandum did not direct that the applications be approved, but called for "a prompt and consistent approach to the matter." The memorandum was issued shortly after the Air Force Board had approved its USUHS applications, and was seen as directing the Naval Board to approve its applications on the basis of miscounseling. In April 1986, the Naval Board began approving its HPSP applications on a case-by-case basis when the applicant could provide a written statement from his or her recruiter to verify that miscounseling had occurred. However, petitioners from the Navy, as well as the Air Force and the Army, did not provide evidence that they relied on miscounseling and would not have entered the programs without constructive service credit. Also, the program service agreements they had signed were not challenged.

**Army Board actions.** In October 1985, the Army Board approved its USUHS applications on the basis of miscounseling and inequities created between the Services after the Air Force Board approved its applications. In June 1985, the Army JAG had given its opinion to the Army Board, stating:

The action should be based upon examination of the facts with respect to each of the 55 applications individually . . . . There must be actual reliance, i.e., the USUHS students would not have attended USUHS but for their expectation that the time at USUHS would count for longevity pay purposes. It does not appear that any of the students have alleged, much less established, actual reliance, although they have alleged they were misinformed.

In October 1988, the Army Board granted blanket approval to its HPSP applications after a formal hearing of only two cases, based on miscounseling and the inequities created between the Services.

**Related denial.** HPSP graduates in the Public Health Service had also tried to obtain constructive service credit based on miscounseling about the Act. In June 1982, the Comptroller General ruled that erroneous advice or miscounseling about the Act did not provide grounds for awarding constructive service credit to Public Health Service medical officers, since:

. . . The United States is not bound by the advice or promises of service recruiters concerning pay and entitlements, if that advice does not conform to the governing provisions of statute.

**OGC opinion.** An opinion from the OGC, DoD, issued on September 3, 1992, in response to our request stated that in granting relief to the USUHS graduates, the Boards based their decisions on what they believed were actual injustices. The Boards determined that the USUHS students presented sufficient evidence to establish that an injustice to them had occurred before they were commissioned; at that time, they were given inaccurate information and were miscounseled regarding their eligibility for constructive service credit. In making these determinations that an injustice had occurred, the Boards were not guided by any legal standard of adjudication. Under legal standards, because the contracts signed by the students were correct, adherence to the terms of the contract would not be considered an injustice. Regardless of this standard, the Boards exercised their authority to change the records of these applicants so that they would receive constructive service credit, based on a perceived injustice.

### **Blanket Approvals and Solicitation of Claims**

The Army and Air Force Boards' use of blanket approvals resulted in the solicitation of claims from HPSP graduates who had not previously applied for constructive service credit. After the Air Force Board approved claims for 30 HPSP graduates, the Air Force Military Personnel Center prepared applications for the medical officers and mailed the applications to them for signatures. After the Army Board approved two HPSP cases, the Surgeon General of the Army notified the HPSP graduates by letter, saying:

Since you have already been approved by the Army Board of Correction of Military Records to have your entry date into the Army HPSP changed to 14 September 1981 (pre-DOPMA), you are eligible to receive the appropriate increase in your monthly pay in addition to the appropriate back pay owed you.

The Army Surgeon General's letter told the HPSP graduates who to contact to have their records corrected and receive back pay. While the Boards did not direct these solicitations, the procedures used were without precedent and amounted to the Government soliciting claims against itself.

**Individualized determinations of injustice.** The OGC opinion of September 3, 1992, stated that the Service Secretaries require the Boards to make an individualized determination of injustice before authorizing a correction of records. The Boards may correct only the records of those who apply to them for relief, even if they are members of a class that has been affected by an injustice.

The Army and Air Force Boards' decisions to correct the records of HPSP students so that the students could receive constructive service credit for time spent in medical school were unconnected to any legal standard for identifying injustices. When the Army and Air Force Boards granted blanket relief to HPSP students, their decision was not based on a finding that the applicants had presented sufficient, relevant evidence to demonstrate that that injustices had occurred. Instead, the Boards' decisions were based on considerations of equity that ran contrary to Congressional intent as set out in the Act.

### **Board Procedures**

The Secretaries of the Services did not give the Boards criteria for what constituted sufficient, relevant evidence of a probable material error or injustice. While Board procedures state that the Boards may deny a claim due to insufficient relevant evidence, the procedures do not state the criteria upon which such a determination should be made (e.g., burden of proof, detrimental reliance, preferential treatment, etc.). The procedures also do not cover the use of blanket approvals and the solicitation of claims against the Government.

**OGC opinion.** In an opinion issued on September 3, 1992, the OGC, DoD, stated that the Boards had acted within their authority in awarding constructive service credit to USUHS and HPSP graduates. The OGC, DoD, stated that the Boards have extraordinary authority, including the power to allow exceptions

to the normal application of statutory requirements when the Boards determine that such an application would cause an injustice. Although there is no clear definition of an injustice, the Boards' view of injustice in these cases was unconnected to any established legal standards of adjudication. The OGC, DoD, concluded that the Boards' practices and procedures should be reexamined to ensure that the Boards take great care in exercising their broad statutory authority.

### Summary of Current and Future Costs

As a result of the Boards' actions to grant constructive service credit, a total of 1,204 Army, Navy, and Air Force medical officers have already received about \$12 million in back pay (see Appendix B). These actions could cost the Government as much as \$193 million in increased active duty and retirement pay.

For example, an HPSP graduate entering on active duty as a captain (O-3) with 4 years of creditable service for time spent in school would initially earn about \$500 per month (\$6,000 per year) more than a captain without the 4 years of creditable service. Assuming 3.4 percent inflation, the HPSP graduate would earn about \$139,000 more in active duty pay until retirement. He or she would also receive more than \$458,000 in additional retirement pay during a 20-year retirement.

The actual and potential cost of the Boards' actions do not include back pay or life-cycle costs for the 704 medical officers from the 1985 and 1986 classes who had not requested the constructive service credit. In addition, 1,239 graduates of the 1987 HPSP and USUHS classes may also benefit. At the time of our audit, the Army and Naval Boards had reviewed some applications from the 1987 graduates, but had denied relief; the Air Force Board had approved an application from one 1987 graduate. However, those applicants who are denied could apply for reconsideration or appeal the ruling, since they may have been miscounseled.

### RECOMMENDATIONS FOR CORRECTIVE ACTION

We recommend that the Secretaries of the Army, Navy, and Air Force develop consistent procedures for the Boards for the Correction of Military and Naval Records to ensure that:

1. Applicants are required to provide sufficient, relevant evidence that probable material errors or injustices actually occurred.
2. Individual cases are reviewed and decided on their own merits, and blanket approvals are not used.

3. The opinions of the Service Judge Advocates General and the General Counsel, Department of Defense, relative to the Boards' authority and the legal soundness of Board actions, are fully considered during the Board decisionmaking process.

4. When the Boards consider class-action requests for exceptions to statutory requirements, the following issues are addressed:

a. the relevance of established legal standards for evaluating claims of injustice; and

b. potential circumstances in which legislative changes should be proposed, rather than using the Boards' authority.

#### MANAGEMENT COMMENTS

The Secretary of the Army did not provide written comments on the draft report by the date requested. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN [M&RA]) nonconcurred with the finding and Recommendation 1. and concurred with Recommendations 2., 3., and 4. The Assistant Secretary of the Air Force (Manpower, Reserve Affairs, Installations and Environment) (the Assistant Secretary of the Air Force) made general statements on Board authority and Air Force regulations; these comments were not responsive to the draft report.

Navy comments. The ASN (M&RA) nonconcurred with the finding, stating that the OGC's opinion did not apply to the Navy's situation because the Navy USUHS and HPSP contracts did not give correct information about constructive service credit. The ASN (M&RA) maintained that the Board panels that decided the cases required substantial evidence from applicants that an injustice occurred, and stated that the Boards were aware of established legal standards and principles. The ASN (M&RA) also stated that opinions from the Navy JAG were solicited and carefully considered in acting on these cases.

The ASN (M&RA) also nonconcurred with Recommendation 1. and stated that current Board procedures were adequate.

Air Force comments. The Assistant Secretary of the Air Force stated that it was inappropriate for the auditors to reevaluate the merit of cases already decided by the Board, since Board decisions are final and conclusive on all officers of the United States. The Assistant Secretary of the Air Force responded to Recommendations 1. through 4. by providing a general overview of Board authority and conduct.

## AUDIT RESPONSE

The Secretary of the Army and the Assistant Secretary of the Air Force did not comply with the requirements of DoD Directive 7650.3. The Secretary of the Army provided no written comments, and the response from the Assistant Secretary of the Air Force did not concur or nonconcur with the finding or any of the recommendations, give specific reasons for nonconcurrences, describe corrective actions taken or planned, or provide completion dates for any actions taken or planned. We also disagree with the ASN (M&RA)'s nonconcurrency with the finding and Recommendation 1. of the report; we consider the finding and recommendation valid. We request that the Army respond to the final report and that the Air Force provide comments responsive to each recommendation. We also request that the Navy reconsider its position on the finding and Recommendation 1. when responding to the final report.

**Audit response to Navy comments.** The opinion was relevant to the Naval Board's decision. Although the Navy USUHS and HPSP contracts did not clearly explain the change in the Act, the contracts stated that Federal statutes could change the students' status as commissioned officers. While the Naval Board required the applicants to prove that the alleged miscounseling took place, the Board did not require the applicants to provide evidence that they had detrimentally relied upon the miscounseling and would not have entered the programs without constructive service credit. If the panels were aware of established legal standards for detrimental reliance when deciding these cases, the auditors should have been shown documentation demonstrating that the applicants would not have accepted medical school scholarships and entered the programs without the award of constructive service credit for time spent in school. The ASN (M&RA)'s statement that Navy JAG opinions were solicited and carefully considered is misleading, since it implies that the Navy JAG considered the Board's USUHS and HPSP decisionmaking criteria to be legally sufficient. On the contrary, the audit showed that a Navy JAG opinion issued on February 14, 1985, recommended that the Naval Board deny the USUHS claim. Another Navy JAG opinion dated May 13, 1986, interpreted the Act as providing relief to some students as a matter of entitlement, not Board intervention.

On Recommendation 1., we disagree with the ASN (M&RA)'s statement that the current Board procedures are adequate. The ASN (M&RA) stated that the Board consists of personnel without any formal legal education or experience. We believe this supports a change to procedures to make Board staff and panel members aware of legal standards that could apply to cases and require JAG assistance. While the current procedures state that the Board may deny a claim on the basis that insufficient relevant evidence was provided, the procedures do not identify the legal standards

that constitute such evidence. If legal standards (e.g., detrimental reliance, preferential treatment, or burden of proof) were included in the procedures, Board staff and panel members could use these standards as a guide in considering cases. Legal standards, consistently applied, would not restrict Board decisionmaking, but would ensure that such standards are considered and documented. If panel members determined that a compelling rational basis existed, legal standards would not restrict the Board from ruling accordingly.

Accordingly, we request that the ASN (M&RA) reconsider his position on the finding and Recommendation 1. when responding to the final report.

**Audit response to Air Force comments.** The comments from the Assistant Secretary of the Air Force were not responsive to our finding and recommendations. The Assistant Secretary of the Air Force stated that it was inappropriate for the auditors to reevaluate the merit of the USUHS and HPSP cases. Although Board decisions are final and conclusive on all officers of the United States with respect to overturning the decisions, this does not prevent us from procedures and practices which may affect future decisions. Our recommendations were made to prevent future Boards from acting without due consideration of the law and without sufficient advice.

The Assistant Secretary of the Air Force did not respond to the specific details of the Air Force Board's actions. He agreed that class actions were clearly not provided for by applicable law or regulation. However, he did not explain how the preparation and mailing of the HPSP application forms to claimants did not constitute a class action. Instead, the Assistant Secretary of the Air Force stated that the Board was striving for consistency. We believe that the Board's action was the equivalent of a class action and was without legal basis. Further, if the Board had required individual applicants to provide evidence of actual injury resulting from detrimental reliance on miscounseling by recruiters, the multiple applications, which the Assistant Secretary of the Air Force said were acceptable, would not have been possible.

The Assistant Secretary of the Air Force's statement that the Board may request advisory opinions from any Air Force activity, and that these opinions and the applicants' related comments are considered by the Board and made a part of the record of proceedings, was misleading. The Assistant Secretary of the Air Force did not explain why the Air Force Board requested the Air Force JAG opinion, then dismissed it. In that opinion, the Air Force JAG challenged both the Board's authority to act and the use of equity as the basis for the decision. Although the fact that the Board requested and received a legal opinion would not necessarily bind the Board to act accordingly, the opinion would

provide a legal basis for acceptance or denial of the applications. However, we found no documentation to show that the Board had ever attempted to resolve these issues with the Air Force JAG.

We request that Assistant Secretary of the Air Force provide comments responsive to each recommendation.

RESPONSE REQUIREMENTS ON RECOMMENDATIONS

Responses to the final report are required from the addressees shown for the items indicated with an "x" in the chart below.

<u>Response Should Cover:</u>					
<u>Number</u>	<u>Addressee</u>	<u>Concur or Nonconcur</u>	<u>Proposed Action</u>	<u>Completion Date</u>	<u>Related Issue</u> <sup>1/</sup>
1.	Army, Navy, Air Force <sup>2/</sup>	x	x	x	IC
2.	Army, Air Force <sup>3/</sup>	x	x	x	IC
3.	Army, Air Force	x	x	x	IC
4.a.	Army, Air Force	x	x	x	IC
4.b.	Army, Air Force	x	x	x	IC

<sup>1/</sup> IC = internal controls  
<sup>2/</sup> Secretaries of the Army, Navy, and Air Force  
<sup>3/</sup> Secretaries of the Army and Air Force



**PART III - ADDITIONAL INFORMATION**

APPENDIX A - Sequence of Events

APPENDIX B - Costs of Back Pay

APPENDIX C - Life-Cycle Cost Summary and Assumptions  
of Active Duty and Retirement Pay with  
Constructive Service Credit

APPENDIX D - Summary of Potential Benefits Resulting  
from Audit

APPENDIX E - Activities Visited or Contacted

APPENDIX F - Report Distribution



## APPENDIX A. SEQUENCE OF EVENTS

<u>Date</u>	<u>Event</u>
June 1981	Technical Corrections Act enacted; does not restore constructive service credit.
September 1981	Defense Officer Personnel Management Act implemented.
August 1983	Senate requests DoD report on constructive service credit.
January 1984	DoD report on award of construction service credit released without mention of constructive service credit for USUHS or HPSP.
March 1984	USUHS-sponsored legislation introduced by DoD for restoration of constructive service credit for USUHS and HPSP training.
December 1984	USUHS-sponsored legislation dropped after Assistant Secretary of Defense (Health Affairs) disagrees with the proposal.
March 1985	Air Force Board grants USUHS application for relief on the basis of miscounseling.
April 1985	Assistant Secretary of Defense (Manpower, Installations and Logistics) memorandum calls for prompt, consistent resolution of USUHS issue.
August 1985	Naval Board grants USUHS applications.
October 1985	Army Board grants USUHS applications.
April 1986	Naval Board grants HPSP applications on a case-by-case basis.
October 1988	Army Board grants blanket approval to HPSP applicants after a formal hearing on two cases from HPSP classes of 1985 and 1986.

**APPENDIX A: SEQUENCE OF EVENTS** (cont'd)

<u>Date</u>	<u>Event</u>
April 1988	Air Force Board denies HPSP claims, stating that the law should be enforced as intended by Congress unless changed or appealed.
October 1990	Air Force Board grants blanket approval to HPSP applicants after reviewing 30 cases.

**APPENDIX B. COSTS OF BACK PAY**

<u>Service</u>	<u>Corrections Granted</u>	<u>Corrections With Back Pay</u>	<u>Costs of Back Pay (\$ in millions)</u>	<u>Average Back Pay</u>
Army	378	323	\$3.8	\$11,800
Navy*	229	159	2.3	14,200
Air Force	<u>597</u>	<u>434</u>	<u>5.9</u>	<u>13,500</u>
Totals	<u>1,204</u>	<u>916</u>	<u>\$12.0</u>	<u>\$13,000</u>

\* The Board for the Correction of Naval Records processed HPSP claims on an individual basis and required the claimant to provide evidence through his or her recruiter that miscounseling occurred. Unless evidence was provided, the HPSP claim was denied. As a result, the Naval Board approved fewer cases than either the Army or Air Force Boards. The Army and Air Force Boards gave blanket approvals by soliciting claims.



**APPENDIX C. LIFE-CYCLE COST SUMMARY AND ASSUMPTIONS OF ACTIVE DUTY AND RETIREMENT PAY WITH CONSTRUCTIVE SERVICE CREDIT**

Life-Cycle Cost Summary

<u>Recipient and Type of Cost</u>	<u>Estimated Costs (\$ in millions)</u>			<u>Total Estimated Costs</u>
	<u>Army</u>	<u>Air Force</u>	<u>Navy</u>	
HPSP				
Active Duty	\$17.3	\$29.7	\$ 9.7	\$ 56.7
Retirees	<u>36.7</u>	<u>63.2</u>	<u>20.6</u>	<u>120.5</u>
Subtotal	<u>54.0</u>	<u>82.9</u>	<u>30.3</u>	<u>177.2</u>
USUHS				
Active Duty	3.2	2.6	2.9	8.7
Retirees	<u>2.5</u>	<u>2.2</u>	<u>2.4</u>	<u>7.1</u>
Subtotal	<u>5.7</u>	<u>4.8</u>	<u>5.3</u>	<u>15.8</u>
Total	<u>\$59.7</u>	<u>\$97.7</u>	<u>\$35.6</u>	<u>\$193.0</u>

Life-Cycle Cost Assumptions

o As of February 29, 1992, 1,204 corrections had been made for 1,056 HPSP students and 148 USUHS students.

o The life-cycle cost period began in 1986 and ended in 2029 (years are inclusive), and assumed 24 years of active service and 20 years of retirement.

o Life-cycle cost figures used the actual pay rates from 1986 through 1991. We added a 3.4-percent inflation factor to the 1991 pay rates for each year that followed.

o Medical officer promotions are based on 6-year intervals and pay grade 0-6 for retirees.

o 25 percent of students in the graduating classes will serve until retirement. 50 percent will separate upon completion of their obligated service, and 25 percent will separate by their 10th year of service.



**APPENDIX D. SUMMARY OF POTENTIAL BENEFITS RESULTING FROM AUDIT**

<u>Recommendation Reference</u>	<u>Description of Benefits</u>	<u>Amount and/or Type of Benefits</u>
A.1.	Compliance with laws and improved internal controls through revision of Board procedures.	Nonmonetary.
A.2.	Compliance with laws and improved internal controls through revision of Board procedures.	Nonmonetary.
A.3.	Compliance with laws and improved internal controls through revision of Board procedures.	Nonmonetary.
A.4.a.	Compliance with laws, improved internal controls, and more consistent Board procedures.	Nonmonetary.
A.4.b.	Compliance with laws, improved internal controls, and more consistent Board procedures.	Nonmonetary.



**APPENDIX E. ACTIVITIES VISITED OR CONTACTED**

Office of the Secretary of Defense

Office of the Assistant Secretary of Defense (Health Affairs),  
Washington, DC  
General Counsel, Department of Defense, Washington, DC

Department of the Army

Board for the Correction of Military Records, Washington, DC  
The Surgeon General, Washington, DC  
U.S. Total Army Personnel Command, Alexandria, VA  
The Judge Advocate General, Washington, DC

Department of the Navy

Assistant Secretary of the Navy (Manpower and Reserve  
Affairs), Washington, DC  
General Counsel for the Secretary of the Navy, Washington, DC  
Office of the Judge Advocate General, Washington, DC  
Board for the Correction of Naval Records, Washington, DC  
Bureau of Naval Personnel, Arlington, VA

Department of the Air Force

Board for the Correction of Military Records, Washington, DC  
Office of the Judge Advocate General, Washington, DC  
Air Force Military Personnel Center, San Antonio, TX

Other Defense Organizations

Defense Finance and Accounting Service Center, Cleveland, OH  
Defense Finance and Accounting Service Center, Denver, CO  
Defense Finance and Accounting Service Center, Indianapolis, IN



## APPENDIX F. REPORT DISTRIBUTION

### Office of the Secretary of Defense

General Counsel, Department of Defense  
Assistant Secretary of Defense (Health Affairs)  
Comptroller of the Department of Defense  
Director, Defense Finance and Accounting Service  
President, Uniformed Services University of the Health Sciences

### Department of the Army

Secretary of the Army  
Assistant Secretary of the Army (Financial Management)  
Inspector General of the Army  
Deputy Chief of Staff for Personnel

### Department of the Navy

Secretary of the Navy  
Assistant Secretary of the Navy (Financial Management)  
Assistant Secretary of the Navy (Manpower and Reserve Affairs)  
Comptroller of the Navy

### Department of the Air Force

Secretary of the Air Force  
Assistant Secretary of the Air Force (Financial Management  
and Comptroller)  
Deputy Chief of Staff for Personnel

### Non-DoD Federal Organizations

Office of Management and Budget  
U.S. General Accounting Office, NSIAD Technical Information  
Center

Chairmen and Ranking Minority Members of the following  
Congressional Committees:

Senate Committee on Appropriations  
Senate Subcommittee on Defense, Committee on Appropriations  
Senate Committee on Armed Services  
Senate Committee on Governmental Affairs  
House Committee on Appropriations  
House Subcommittee on Defense, Committee on Appropriations  
House Committee on Armed Services  
House Committee on Government Operations  
House Subcommittee on Legislation and National Security,  
Committee on Government Operations



**PART IV - MANAGEMENT COMMENTS**

Department of the Navy: Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)

Department of the Air Force: Assistant Secretary of the Air  
Force (Manpower, Reserve Affairs, Installations and  
Environment)



# DEPARTMENT OF THE NAVY



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON D C 20350 1000

6 JAN 1993

MEMORANDUM FOR THE DEPARTMENT OF DEFENSE INSPECTOR GENERAL

Subj: DRAFT ON THE AUDIT OF THE DEFENSE OFFICER PERSONNEL  
MANAGEMENT ACT FOR MEDICAL OFFICER PAY AND ENTITLEMENTS  
(PROJECT No. 1FD-8003) - ACTION MEMORANDUM

Ref: (a) DODIG Director of Financial Management Directorate  
undated memo

Encl: (1) DON Response to Draft Audit Report

1. I am responding to the Draft Audit Report, forwarded by reference (a), concerning actions by the Boards for Correction of Military and Naval Records relative to implementation of the Defense Officer Personnel Management Act for Medical Officer Pay and Entitlements.

2. The Department of the Navy response is provided at enclosure (1). We do not agree with the Draft Audit Report findings and recommendations as indicated in the enclosed comments. Specifically, current Board for Correction Naval Records procedures, as published in 32 CFR 723, provide adequate guidance. The Correction Board Statute confers broad discretion on the service secretaries, acting through the civilian correction boards, to correct errors and injustices. Imposing strictly legalistic standards on the correction boards would interfere with the service secretaries' discretion and be inconsistent with the Correction Board Statute. Moreover, adequate safeguards are already in place. In this regard, the Navy Correction Board has a highly knowledgeable and experienced staff, and all significant cases are reviewed by the Navy's Office of the General Counsel. In addition, the Navy Correction Board does not grant "blanket relief." Under these circumstances, changes in the Correction Board's procedures are not warranted.

A handwritten signature in cursive script, reading "Barbara S. Pope", is positioned above the typed name and title.

BARBARA SPYRIDON POPE  
Assistant Secretary of the Navy  
(Manpower and Reserve Affairs)



DEPARTMENT OF THE NAVY  
OFFICE OF THE SECRETARY  
WASHINGTON D C 20350 1000

Navy Comments  
on  
DODIG DRAFT REPORT (UNDATED)  
ON  
The Audit of the Defense Officer Personnel  
Management Act for Medical Officer Pay and Entitlements  
Project No. 1F0-8003

Summary of OIG, DOD Findings

The report found that the Boards for Correction of Military and Naval Records used inappropriate administrative procedures in awarding constructive service credit for pay purposes to the 1985 and 1986 USUHS graduates who were not entitled to it under the provisions of the Defense Officer Personnel Management Act (DOPMA). The Boards based their recommendations for approval on miscounseling and perceived inequities between the services, and did not require the applicants to prove that errors or injustices had occurred. The Boards also granted blanket approvals based on a small number of applications.

DON POSITION:

Non-concur. It is the Navy's position that the Board for Correction of Naval Records (BCNR) acted within the scope of its authority and used appropriate decision making criteria and administrative procedures in awarding constructive service credit to the 1985 and 1986 USUHS and HPSP graduates. Specifically BCNR required individual applicants to prove, by substantial evidence, that an injustice probably had occurred. No "blanket" approvals were ever undertaken by BCNR. To the contrary each case was decided on its own merits. The opinion of the Judge Advocate General of the Navy was solicited and carefully considered in acting on these cases. Further the recommendations for corrective action in these cases were reviewed and approved by the Assistant Secretary of the Navy (Manpower and Reserve Affairs) after extensive staffing.

It is considered that the current published procedures of BCNR are more than adequate to cover the concerns voiced in the recommendation of the Draft Audit Report. BCNR's procedures have been revised several times since 1947. Each time they have been scrutinized and approved by the Judge Advocate General of the Navy for legal sufficiency before submission to the Secretary of Defense for approval. The current procedures were revised in 1977 as part of a joint service effort to comply with the stipulated settlement in the Urban Law case. The revised

MANAGEMENT COMMENTS: ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) (cont'd)

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procedures of BCNR, as well as those of the Army and Air Force BCMRs, were carefully examined for consistency and legality not only by the various service Judge Advocate Generals and the Officer of General Counsel, DOD but also by the U.S. Attorney's Office for the District of Columbia.

The memorandum opinion from the Office of General Counsel, DOD, upon which the recommendations of the Draft Audit Report appear to rely, concludes, at page 39, that "the Boards were not guided by established legal standards on detrimental reliance." The opinion specifically notes that the contracts signed by the USUHS students "clearly included correct information regarding constructive service credit." This is not true in the case of the Navy USUHS students nor the Navy HPSP students. The agreements signed by the Navy students did not contain the correct information. Furthermore because BCNR's powers are equitable in nature it is not considered appropriate that the strict legalistic standards of contract law be rigorously applied. It is important to note that the BCNR panels deciding the cases in question were aware of the established legal standards and principles of contract law, as well as the Comptroller General's opinion cited at page 12 of the Draft Audit Report.

Recommendation 1:

We recommend that the Secretaries of the Army, Navy and Air Force develop consistent procedures for the Boards for the Correction of Military and Naval Records to ensure that: 1. Applicants are required to provide sufficient relevant evidence that probable material errors or injustice actually occurred.

DON POSITION:

Non-concur. It is considered that the present procedures provide appropriate and adequate guidance. ASN, M&RA is charged with ensuring the adequacy of BCNR procedures. Under current BCNR procedures the applicant need only establish by "substantial evidence" the existence of probable material error or injustice. Numerous federal court decisions have enunciated this as the appropriate standard to be applied. Neither BCNR nor the other correction boards operate as courts of law, nor were they ever intended to serve such a role, which can be readily seen in the informal and nonadversarial nature of their proceedings. Federal court decisions have consistently held that BCNR powers are equitable in nature and that corrections can be made to correct injustices which do not amount to legal error. It is also clear that Congress did not intend any narrow or technical meaning of the terms "error" or "injustice", since it placed the determination of the existence of such probable "error" or "injustice" in the hands of the civilian boards with no requirement that the members of these boards have any formal legal education or experience. Consequently the courts require nothing more than that the corrections boards have a "rational basis" in law or fact for their decision to grant or deny relief.

**MANAGEMENT COMMENTS: ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) (cont'd)**

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Recommendation 2:

Cases are reviewed and decided on their own merits and blanket approvals are not used.

DON POSITION:

Concur. BCNR procedures currently provide for review and decisions on a case by case basis. Blanket approvals per se are not used.

Recommendation 3:

The opinions of the Service Judge Advocates General and the General Counsel, Department of Defense are considered for relevance to the Board's authority and the legal soundness of Board actions.

DON POSITION:

Concur. BCNR requests advisory opinions from the Judge Advocate General of the Navy in those cases involving unusually complex legal issues. Specifically advisory opinions were requested and received pertinent to the cases involving the USUHS and HPSP graduates in question. These opinions clearly stated that the corrections requested were within the authority of BCNR if an error or injustice was found. The opinions deferred to BCNR on the issue of whether or not an "injustice" had occurred as a matter properly within its discretion. Cognizant officials within the Department of Defense were consulted by DON personnel regarding these cases before and after the memorandum of April 1985 cited at page 11 of the draft report.

Recommendation 4:

When the Boards consider class-action requests for exceptions to statutory requirements, the following issues are addressed:

- a. the relevance of established standards for evaluating claims of injustice; and
- b. potential circumstances in which legislative changes should be proposed, rather than using the Boards' authority.

DON POSITION:

Concur. a. While BCNR does not consider class-action requests as such, it would consider the relevant legal standards, as it presently does, in granting or denying the individual applications of persons similarly situated bearing in mind that the case law relating to correction board actions clearly indicates that corrections can be made under the boards' equitable powers even though the "injustice" does not amount to legal error.

Concur. b. In the event a similar situation arises legislative changes will be pursued vice BCNR authority. However, as is noted on page 9 of the Draft Audit Report,

**MANAGEMENT COMMENTS: ASSISTANT SECRETARY OF THE NAVY (MANPOWER AND RESERVE AFFAIRS) (cont'd)**

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proposed legislative changes which would have obviated the necessity of BCNR action did not receive OSD support. Further private relief bills for the correction of military or naval records are specifically precluded by Section 131 of the Legislative Reorganization Act of 1946 (60 Stat.831)



# DEPARTMENT OF THE AIR FORCE



DEPARTMENT OF THE AIR FORCE  
WASHINGTON DC



18 JAN 1993

OFFICE OF THE ASSISTANT SECRETARY

MEMORANDUM FOR ASSISTANT INSPECTOR GENERAL FOR AUDITING  
OFFICE OF THE INSPECTOR GENERAL  
DEPARTMENT OF DEFENSE

Subject: Draft Report on the Audit of the Defense Officer  
Personnel Management Act for Medical Officer Pay and  
Entitlements (Project No. 1FD-8003) - INFORMATION  
MEMORANDUM

This is in reply to your memorandum requesting the Assistant Secretary of the Air Force (Financial Management and Comptroller) provide Air Force comments on the subject report. Since the issues raised in the draft report concern matters under our purview, your request was referred to this office for response.

As a general observation, it is inappropriate for the audit report to attempt to re-evaluate the merits of the cases that have already been decided by the Correction Board. The auditors' conclusion that the Boards did not require proof of injustice is essentially a disagreement with the Board on the merits of the case. The governing statute, however, provides that corrections effected under its provisions are "...final and conclusive on all officers of the United States." We recommend the report be revised accordingly.

It appears the audit was initiated on the premise that the Board exceeded its authority and was continued on the conclusion that the Board was somehow not making sound decisions. To the contrary, we believe the Correction Board is operating within its authority and in a manner which is entirely consistent with its Congressional mandate.

We appreciate the opportunity to review and comment on the draft report. Our comments on the specific items requested are attached.

J. G. Cooper  
Assistant Secretary of the Air Force  
(Manpower, Reserve Affairs, Installations  
and Environment)

Attachment

Comments on  
Draft Recommendations  
for Corrective Action

We recommend that the Secretaries... develop consistent procedures ... to ensure that:

1. Applicants are required to provide sufficient relevant evidence that probable material errors or injustice actually occurred.

Comment: Both 10 U.S.C. 1552 and the governing Air Force Regulation (AFR 31-3) limit corrective action to situations where the Board finds substantial evidence of error or injustice. This determination, however, is specifically reserved to the Board whose recommendation entitled to considerable deference by the Secretary.

2. Cases are reviewed and decided on their own merits, and blanket approvals are not used.

Comment: Neither the statute nor AFR 31-3 provide for the acceptance or consideration of group or "class action" applications for the correction of military records and the Correction Board is not bound by precedent. However, given essentially the same set of facts in multiple individual cases, the Board's findings and recommended corrective action will normally be the same. Although not bound by precedent, the Board does strive for consistency.

3. The opinions of the Service Judge Advocates General and the General Counsel, Department of Defense are considered for relevance to the Board's authority and the legal soundness of Board actions.

Comment: AFR 31-3 provides that the Board may request advisory opinions from any Air Force activity. In appropriate cases, the Board may request comments from the Office of the Judge Advocate General, or other Air Force legal offices. These opinions and the applicants' related comments are considered by the Board and made a part of the record of proceedings. Due to the unique statute which requires the Secretary to act through a civilian board, however, the final authority on the Board's jurisdiction and the legal soundness of Board actions must rest with the Air Force General Counsel and, in matters applicable to the Correction Boards of all services, The General Counsel of DoD. The Air Force

**MANAGEMENT COMMENTS: ASSISTANT SECRETARY OF THE AIR FORCE (MANPOWER,  
RESERVE AFFAIRS, INSTALLATIONS AND ENVIRONMENT) (cont'd)**

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General Counsel provides legal advice concerning Board cases as necessary to both the Board and the Secretary.

4. When the Boards consider class-action requests for exceptions to statutory requirements, the following issues are addressed:

a. the relevance of established standards for evaluating claims of injustice; and

b. potential circumstances in which legislative changes should be proposed, rather than using the Boards authority.

Comment: a. As pointed out above, the Board does not consider "class actions." In all cases, the standards for evaluating claims of injustice are well established and consistently applied. AFR 31-3, the governing statute, and many Federal Court cases provide the "error or injustice" standard for both single applications and for multiple applications involving the same issue.

b. The Board is charged with evaluation of the case or cases before it rather than a theoretical scenario or potential circumstances. That evaluation may involve a determination of whether a statutory requirement has been correctly interpreted and applied to the applicant's particular situation. The Board cannot make an exception to statutory requirements. When necessary to correct an error or injustice, it can and does change the underlying record to qualify an applicant for a benefit as provided for in applicable statute.

General Observations on Internal Controls:

Comment: As noted in the analysis prepared by the Office of General Counsel, Department of Defense, the audit report fails to recognize the unique authority of the Correction Board process. While the report finds objectionable the "... absence of procedural criteria [which] allowed the Boards to broadly interpret 'an injustice requiring remedial action,'" the legislative history and judicial interpretation of the Board's governing statute clearly indicate that Congress provided the Boards with a liberal mandate to correct error and injustices and the broad authority to effect meaningful relief. It is a board of equity concerned with fairness and justice -- concepts that cannot be rigidly and mechanically applied. It would be inappropriate and contrary to its Congressional mandate to construct restrictive procedural criteria for the purpose of limiting the Board's view of equity, due process and error or injustice.

LIST OF AUDIT TEAM MEMBERS

Nancy L. Hendricks, Director Financial Management Directorate  
David C. Funk, Program Director  
Stephen A. Delap, Project Manager  
David Barbour, Team Leader  
Harold Simmons, Team Leader  
Thomas Hare, Auditor  
Jewel Levy, Auditor  
Susanne Allen, Editor