



UNITED STATES GENERAL ACCOUNTING OFFICE
WASHINGTON, D.C. 20548

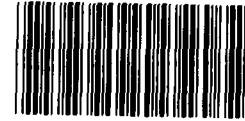
119515

FEDERAL PERSONNEL AND
COMPENSATION DIVISION

B-208934

SEPTEMBER 27, 1982

The Honorable Les Aspin
House of Representatives



119515

Dear Mr. Aspin:

Subject: Information on the Funded Legal
Education Program (GAO/FPCD-82-76)

This report responds to your January 30, 1982, letter in which you asked us to review selected aspects of the military services' implementation of the Funded Legal Education Program (FLEP). The Congress enacted this program in 1973 to help the services overcome critical shortages of lawyers in grades O-4 to O-6. During fiscal year 1981, 179 military officers were participating in FLEP at a total cost of about \$5.3 million.

As you requested, we obtained information on (1) the military services' implementation of FLEP, (2) the services' procedures for determining the number of lawyers and FLEP participants required, and (3) whether the services have waived obligated service for FLEP participants. As agreed with your office, we did not assess the cost effectiveness of FLEP. Also, because of insufficient data, we could not measure the extent FLEP has helped the services to retain lawyers, but the data we did collect allowed us to generalize about its effect on retention.

We conducted our review between April and August 1982 in accordance with our Office's current "Standards for Audit of Governmental Organizations, Programs, Activities, and Functions." We discussed the purpose, scope, and implementation of FLEP with the Judge Advocates General (JAG) Corps (which is comprised of lawyers who perform various legal functions) in each service and reviewed applicable program regulations. We also obtained FLEP cost estimates. To determine the probable effect of FLEP on retention, we obtained some estimates on the likelihood that personnel with varying periods of completed military service would remain in service until retirement. We reviewed and discussed with manpower policy, standards, and plans personnel the services' regulations and procedures for determining the number of lawyers required and their policies on waiving obligated service requirements.

(967059)

023475

BACKGROUND

Under provisions of the fiscal year 1974 Department of Defense Appropriations Act (Public Law 93-155), the Secretary of each military department is authorized to send up to 25 commissioned officers a year to law school at Government expense under FLEP. Between 1953 and 1973, the services were legislatively prohibited from using appropriated funds for this purpose. To fill their needs for JAG Corps officers, the services were limited to obtaining lawyers either through the draft, from normal voluntary service commissions, or by granting extended leave without pay to active duty officers to pursue law school at their own expense. The end of the draft resulted in declining numbers of lawyers in grades O-4 through O-6, while at the same time, new responsibilities for lawyers under the Uniformed Military Justice Act of 1968 had significantly increased the JAG Corps' workloads.

After considering several alternatives to overcome shortages of lawyers in grades O-4 through O-6, including special pays and bonuses, the Congress enacted FLEP. FLEP was intended to provide the services with a continuous source of lawyers who would likely remain in the service and who would also provide the JAG Corps with the experienced and balanced officer structure the services believed was necessary to successfully accomplish their legal missions:

FLEP eligibility criteria and costs

To be considered for FLEP participation, an individual must be a U.S. citizen who has served on active duty at least 2, but not more than 6 years, and be an officer in pay grade O-3 or lower upon entering law school. Participants are selected competitively from applicants meeting eligibility requirements. Officers selected for the program incur, in addition to any existing service commitment, an active duty 2-year service obligation for every year or partial year of law school completed under the program.

For each participant, FLEP covers pay and allowances; transportation costs incident to a permanent change of station to attend law school; and all direct educational costs, such as tuition, essential fees, and books, whose expense is not to exceed \$150 annually. In 1981, 179 military officers participated in FLEP. Although not all FLEP costs are budgeted or accounted for as a separate budget line item, service estimates, on the basis of a representative program participant, indicate that total fiscal year 1981 FLEP costs exceeded \$5.3 million. Approximately 81 percent of the total, or \$4.3 million, was for participants' pay and allowances; and the remainder was spent on tuition, fees, books, transportation, and other costs directly

associated with law school. Enclosure I shows the number of officers selected and total participants for each service during fiscal years 1974-82.

METHODS FOR DETERMINING
STAFF NEEDS

As we pointed out in a prior GAO report, 1/ the services use different approaches to determine their staffing requirements. They differ on the (1) extent to which management engineering techniques and statistical analysis are used, (2) assignment and training of personnel, (3) number of personnel covered by staffing standards, and (4) use of staffing standards in determining and managing personnel requirements.

Staffing standards specify the number and type of people required to accomplish a given workload. Such standards are classified as "engineered" or "statistical," depending on how they are developed and the degree of precision required. Engineered standards are developed within prescribed levels of accuracy and confidence using industrial engineering techniques, such as timestudy and work sampling. Highly repetitive tasks are generally measured by these standards, but they are not always the most appropriate. The nature of the work (such as tasks that are difficult to measure) may not be suited to engineered techniques or be large enough to warrant the effort. In such cases, statistical standards may be the most cost effective, although they are less precise. Tasks that are not highly repetitive are generally measured by statistical standards. These standards are developed extensively from historical data, using correlation and regression techniques, and involve less work sampling than engineered standards.

The following summarizes how each service determines its need for lawyers and the extent to which requirements are covered by some form of staffing standard or guide.

Navy

The Navy Manpower and Material Analysis Centers, Atlantic and Pacific, develop Navy staffing standards by using the Shore Requirements, Standards, and Manpower Planning System (SHORSTAMPS). SHORSTAMPS is a functional and comprehensive

1/"Development and Use of Military Staffing Standards: More Direction, Emphasis and Consistency Needed" (FPCD-77-72, Oct. 18, 1977).

approach for determining military and civilian work force requirements. It applies proven industrial and management engineering techniques to determine the number and type of people needed to accomplish assigned tasks. SHORSTAMPS staffing standards are approved by the Chief of Naval Operations, are supposed to be reviewed at least once every year, and are updated as necessary by the Navy Manpower and Material Analysis Centers.

Two approved staffing standards cover approximately 75 percent of the 986 fiscal year 1982 authorized positions for lawyers. According to the Navy, these standards were developed using proven operational audit techniques to measure and analyze required workloads. The remaining 25 percent of these positions are not covered by staffing standards and are divided between training (both student and instructor) spaces and spaces assigned directly to JAG.

Training requirements are determined annually by the Graduate Education Steering Committee under the direction of the Deputy Chief of Naval Operations for Manpower, Personnel, and Training and presently constitute about 8.7 percent of all positions authorized for JAG. The remaining 16.3 percent of the Navy's legal requirements, such as those for legislative and administrative activities located primarily in Washington, D.C., were developed through a study conducted in January 1980 by the JAG Corps. This study evaluated each legal function and the number and grades of lawyers performing those functions at that time. Through inspections, general experience of personnel managers, requests for additional authorizations from field commanders, and review of JAG timesheets and monthly productivity reports, JAG officials verified the amount and type of work being done and subjectively determined the number and pay grade of persons needed. Since the completion of the study, additional positions have been authorized by the Chief of Naval Operations on the basis of written requests.

Air Force

About 67 percent of the Air Force's 1,231 fiscal year 1982 authorized positions for lawyers is determined by using two statistical staffing standards developed by management engineering teams and approved by the Deputy Chief of Staff, Manpower and Personnel. Like the Navy's standards, these staffing standards apply proven industrial engineering and statistical techniques to determine the number and type of people needed to accomplish assigned tasks. The primary standard applies to base judge advocate offices having special court martial convening authority. About 63 percent of the Air Force's authorized positions are located in these base judge advocate offices. The staffing standard governing these requirements was published August 25, 1978, and is currently being revised by the Air Force with a targeted completion date of October 1983.

The second standard, dated August 10, 1979, applies only to a few work centers engaged in Air Force major systems procurement. This standard covers approximately 4 percent of the Air Force's authorized positions for lawyers. The staffing standards are validated and adjusted annually by management engineering teams who monitor actual caseload data at each work center.

The remaining 33 percent of authorized positions is based on various factors, including (1) military population size, (2) per capita historical workload, and (3) imposed manpower requirement ceilings. Changes from current approved levels for these positions must be justified in writing by the requesting JAG office and submitted through appropriate channels for approval by the Deputy Chief of Staff, Manpower and Personnel.

Army

Although the Army has begun a long-range program to develop staffing standards, that program is still at least several years away from producing a credible and functional standard for determining the number of lawyers needed. Currently, the Army uses two methods for determining this.

Approximately 60 percent of the 1,740 fiscal year 1982 authorized positions for lawyers are for noncombat units. These needs are determined by survey teams staffed by manpower analysts who conduct onsite visits to installations and organizations every 2 to 4 years. (These analysts are not a part of the JAG Corps.) During these visits, the survey teams validate each work center's mission and workload by interviewing work center staff and reviewing mission tasking documents and historical workload data. After validating the mission and associated workload levels, analysts use JAG staffing guides to determine staffing requirements. Staffing guides are developed using historical workload and staffing pattern data collected by manpower survey teams. The guides are used to statistically measure the number and pay grade of persons needed to staff a work center on the basis of varying workloads. Analysts also use their own judgment concerning unique operating conditions at work centers in deviating from staffing guides. Staffing guides are supposed to be updated at least once every 3 years.

The remaining 40 percent of authorized position are contained in the Army's combat and combat-support units. Current personnel needs for these units are based on a 1977 manpower authorization criteria (MACRIT) study conducted by the Army Training and Doctrine Command. The study relied on questionnaires completed by staff judge advocates and lawyers assigned to the units, as well as historical workload data reports, to determine a weighted average of what kind and how much legal work was being done by the units. On the basis of that study,

the Army concluded that the number of lawyers needed for all combat and combat-support units which have comparable organizational structure and troop strength are fixed at one lawyer for each 1,000 troops served. Although MACRIT is to be reviewed and revised at least once every 3 years, the last approved update was published in September 1978. Army officials said that the Training and Doctrine Command recently completed an update of the MACRIT study which reconfirms the previous requirements.

Marine Corps

The Marine Corps uses onsite manpower surveys similar to the Army's as the primary means for determining its personnel requirements. Surveys are conducted by headquarters manpower survey teams assigned to the Deputy Chief of Staff for Manpower at each post or station once every 3 years. These surveys have been used to document the need for 75 percent of the 320 fiscal year 1982 authorized positions for lawyers.

The survey teams use the Marine Corps Personnel Requirements Criteria Manual, which provides recommended staffing levels needed to perform base operating support functions at Marine Corps major commands. The Manual's chapter 31, which was published in 1981, pertains to lawyers and was developed by three lawyers assigned to a Reserve legal mobilization training unit. In developing the criteria, the lawyers primarily used historical data obtained from major command staff judge advocates which detailed the number and types of cases handled and the size and type of military population served at each major command. The lawyers used this data and comments received from commanders and others involved in the study, as well as their own personal knowledge of Marine Corps legal organization operations, to develop staffing formulas. These formulas stipulate the number of lawyers needed on the basis of the type of legal work and the population being served.

Field testing during manpower surveys conducted after publication of chapter 31 showed, however, that the criteria needed further refinement. Revised criteria, scheduled for publication in early 1983, is currently being tested in the field by manpower survey teams.

The remaining 25 percent of authorized positions are determined by the Deputy Chief of Staff for Manpower on the basis of written justification of the need for additional requirements from the requesting Judge Advocate Division office.

METHODS FOR DETERMINING NUMBER OF FLEP PARTICIPANTS

Although all of the service JAG offices have made substantial progress toward achieving full staffing in grades O-4

through 0-6, all of them remained understaffed in at least one of the three grades at the end of fiscal year 1981. The Army and Air Force were understaffed in all three grades. (See enc. II.) Because of these shortages and the expectation that such shortages will persist in the future, the services indicated that they have not developed and do not presently plan to develop formal documented methods for determining the number of officers that should be selected for FLEP each year. Currently, the number of participants is determined subjectively by JAG staffs on the basis of predictions of how many lawyers will be needed 3 to 4 years hence and how many will likely be available through other sources.

For example, because both the Army and the Marine Corps project future shortages of lawyers in grades 0-4 through 0-6, they continue to select annually the maximum number of FLEP participants they are allowed.^{1/} Both services are reluctant to assume that current economic conditions, which are contributing to improved retention trends, will continue, so neither has any plans to reduce its number of FLEP participants unless budget constraints force them to do so.

The Air Force, on the other hand, while still short of lawyers, anticipates that recent improved retention trends among JAG officers will continue. Therefore, the Air Force decided to reduce the number of participants for fiscal year 1982 from 25 to 22. If the retention trend continues to improve, the Air Force indicated it likely will further reduce the number of FLEP participants.

The Navy has met or exceeded its total authorized staffing for lawyers since fiscal year 1978 and believes that five FLEP participants a year is adequate and will provide the optimal number of lawyers with fleet experience. Unless retention rates among non-FLEP lawyers or authorized staffing levels in grades 0-4 through 0-6 change significantly, the Navy believes it will likely continue to select only five Navy officers each year for FLEP.

^{1/}No more than 25 officers from the Navy, which includes the Marine Corps, may begin law school under FLEP in any fiscal year. The number of Navy and Marine Corps officers to be selected each year is determined annually by the Assistant Secretary of the Navy (Manpower, Reserve Affairs and Logistics).

FLEP'S EFFECT ON RETENTION NOT KNOWN
BUT SIGNS OF IMPROVEMENT ARE POSITIVE

Military officers who have completed 3 years of law school under FLEP have not yet completed the 6-year term of obligated service incurred for participating in the program. Therefore, it is not possible to definitively evaluate FLEP's long-term effect on the retention of lawyers. However, information obtained during our review (also see enc. II) shows that the shortage of lawyers in grades O-4 through O-6 has been reduced substantially in all four services since FLEP was enacted.

	Percent of authorized staff on board (grades O-4 through O-6)	
	<u>FY 1974</u>	<u>FY 1981</u>
	Navy	78.7
Marine Corps	<u>a/81.3</u>	111.3
Air Force	55.7	87.5
Army	47.2	83.5

a/Information concerning authorized staffing and staffing by grade was not available for fiscal year 1974. Information supplied is the percentage on board for all Marine Corps lawyers, grades O-2 through O-7.

The services believe that the improved retention trends can, in part, be attributed to FLEP's eligibility and obligated service requirements. Before FLEP, the services were generally able to get the number of lawyers needed to fill vacancies at the entry level grades O-2 and O-3, but many of these officers did not choose to remain in the service beyond their normal initial service commitment of 3 to 4 years. According to the services, of those that did remain beyond their initial commitments, too few were willing to remain long enough to fill the services' needs for experienced lawyers in grades O-4 through O-6. FLEP provided relief from this critical situation by

- limiting eligibility for participation in the program to officers in pay grades O-3 and below, with at least 2 years but not more than 6 years of active service; and
- requiring participants to serve 2 years of active duty for each year or partial year of law school completed.

In addition, the Department of Defense Directive implementing the program stipulates that no period of service spent in

school under the program is considered as satisfying any previously incurred service commitments. Thus, notwithstanding prior service obligations, officers who receive their law degrees after 3 years of school under FLEP accumulate from 11 to 15 years of active duty service if they complete their obligated term.

	<u>Minimum years</u>	<u>Maximum years</u>
Eligibility requirement	2	6
Law school (note a)	3	3
Obligated service for 3 years' law school	<u>6</u>	<u>6</u>
Total years service	<u>11</u>	<u>15</u>

a/Most students complete law school in 3 years; however, some FLEP participants may be in the program a shorter time because they have completed some law school before entering the program or they are able to complete law school in less than 3 years.

Lawyers obtaining their education under FLEP generally remain on active duty at least until they are eligible for promotion to O-4, which normally occurs somewhere between the 9th and 11th years of service. Thus, the services can depend on a supply of experienced lawyers despite fluctuations in the civilian economy and better-paying jobs with private law firms which might entice those lawyers not obligated beyond their initial military service commitments. Also, grade O-3 officers with 5 or 6 years of service who are selected as FLEP participants must remain on active duty until, or almost until, they are eligible for promotion to O-5, which normally occurs between the 15th and 16th year of service. The prospect of promotion to O-5, combined with the potential for retirement after 20 years of military service, should provide a strong incentive for FLEP participants to remain on active duty.

Retention data we obtained from the services does generally indicate that the longer service members remain on active duty the more likely they are to remain until retirement. For example, an Air Force study of attrition among lawyers from fiscal years 1977 through 1981 showed that the heaviest personnel losses occurred during the 4th and 5th year of service. More than half of the Air Force lawyers who began their 4th year of service during that period left before their 5th year. The following statistics for Navy lawyers who began their Federal service in 1962 show that the closer they are to the required 20 years of service for retirement, the more likely they are to continue.

<u>Years of service lawyers were beginning</u>	<u>Total number of lawyers</u>	<u>Percent who are now in 20th year of service</u>
11	27	77.8
12	27	77.8
13	26	80.8
14	25	84.0
15	24	87.5

While we realize that the training lawyers received at Government expense under FLEP may actually increase their marketability for higher paying jobs in civilian law firms, it appears likely that the requirements of FLEP could help retain lawyers in grades 0-4 and 0-5 and, in time, higher graded lawyers as well.

MOST FLEP PARTICIPANTS ARE FULFILLING
THEIR SERVICE OBLIGATION

All the services have systems to safeguard against the premature release of legal officers from their obligated terms of service. Our review revealed that of the 694 military officers selected for FLEP participation since its inception, only 7 (3 Air Force and 4 Army) have separated before fulfilling their service obligations. The circumstances surrounding these early separations follow:

- One Air Force officer was released 28 days early to accept civilian employment. This practice is relatively common in the Air Force.
- One Air Force officer was granted a family hardship discharge by the Air Force Manpower and Personnel Center and was separated with almost 3 years left to serve.
- One Air Force officer, who did not complete law school, was permitted to resign from FLEP and the Air Force with 2 years left to serve. This officer is voluntarily reimbursing the Air Force for law school tuition, fees, and books.
- One Army officer was separated after being twice denied promotion to major. This officer had approximately 1 year left to serve.
- One Army officer failed to fulfill more than 2 years of obligated service when he was released from active duty to work for the National Security Council.

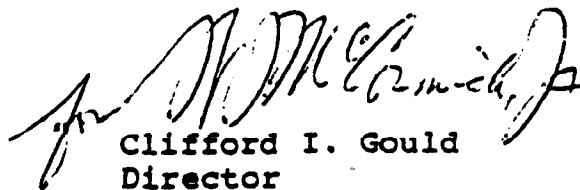
- One Army officer was permitted to quit law school for medical reasons. This officer remained on active duty after resigning from FLEP for nearly 2 years, but received a medical discharge without fulfilling a 3-month service obligation for FLEP participation.
- One Army officer who has a 2-year service obligation will be permitted to resign. The officer's performance has been unsatisfactory and the separation is considered to be in the Army's best interest.

The Air Force and Army JAG endorsed the early release of the officers in two of these separations--the Air Force officer released 28 days early and the Army officer who will resign. The Air Force JAG and Army JAG were not involved in the decisions concerning release of the remaining five officers.

- - - -

As requested by your office, we did not obtain official agency comments. We did, however, discuss the report with service officials responsible for FLEP and considered their views in finalizing it. Also, as arranged with your office, we are sending copies of this report to the Chairmen, House and Senate Committees on Appropriations and Armed Services; the Secretaries of Defense, Army, Navy, and Air Force; the Commandant of the Marine Corps; and other interested persons.

Sincerely yours,



Clifford I. Gould
Director

Enclosures - 2

Number of Military Officers
Participating in FLEP

<u>FY</u>	<u>Air Force</u>		<u>Navy</u>		<u>Army</u>		<u>Marine Corps</u>	
	<u>Number selected</u>	<u>Total participants</u>	<u>Number selected</u>	<u>Total participants</u>	<u>Number selected</u>	<u>Total participants</u>	<u>Number selected</u>	<u>Total participants</u>
1974	25	25	17	17	25	25	8	8
1975	25	50	17	32	25	50	8	15
1976	b/27	71	16	41	25	50	9	24
TQ (note a)	25	73	16	43	25	(c)	9	(c)
1977	25	68	12	45	25	73	13	27
1978	25	48	12	42	25	74	9	28
1979	25	66	5	37	d/ 21	71	9	29
1980	25	68	5	27	d/ 21	66	9	26
1981	25	67	5	19	25	66	9	27
1982	<u>22</u>	67	<u>5</u>	15	<u>25</u>	70	<u>10</u>	28
Total	<u>249</u>		<u>110</u>		<u>242</u>		<u>93</u>	

a/Transition quarter (July 1 - Sept. 30, 1976) during which the Government FY cycle was changed from July 1 - June 30 to Oct. 1 - Sept. 30.

b/Includes two former prisoners of war selected noncompetitively under authorization prescribed in 10 U.S.C. § 2004.

c/Information not provided by the service.

d/Number of participants limited to 21 by the Army Military personnel Center's Education Division.

Percent of Authorized and Actual Inventory
of Lawyers on Board

ENCLOSURE I I

ENCLOSURE I I

FY	<u>0-4</u>			<u>0-5</u>			<u>0-6</u>			<u>Aggregate percentage</u>
	<u>Authorized</u>	<u>Actual</u>	<u>Percent</u>	<u>Authorized</u>	<u>Actual</u>	<u>Percent</u>	<u>Authorized</u>	<u>Actual</u>	<u>Percent</u>	
<u>Air Force</u>										
1974	349	182	52.1	254	126	49.6	129	100	77.5	55.7
1975	332	150	45.2	253	154	60.9	124	96	77.4	56.4
1976	285	161	56.5	240	149	62.1	113	88	77.9	62.4
1977	253	186	73.5	225	138	61.3	113	91	80.5	70.2
1978	248	204	82.3	227	142	62.6	112	90	80.4	74.3
1979	253	214	84.6	230	141	61.3	104	97	93.3	77.0
1980	250	230	92.0	209	156	74.6	107	95	88.8	85.0
1981	243	207	85.2	208	180	86.5	108	102	94.4	87.5
<u>Navy</u>										
1974	167	153	91.6	113	76	67.3	81	55	67.9	78.7
1975	159	159	100.0	100	73	73.0	70	55	78.6	87.2
1976	170	171	100.6	99	73	73.7	60	50	83.3	89.4
1977	170	175	102.9	95	83	87.4	61	47	77.0	93.6
1978	169	180	106.5	97	97	100.0	61	50	82.0	100.0
1979	171	193	112.9	97	99	102.1	61	55	90.2	105.5
1980	176	211	119.9	99	117	118.2	61	59	96.7	115.2
1981	177	211	119.2	147	142	96.6	79	62	78.5	103.0
<u>Army</u>										
1974	440	167	38.0	182	93	51.1	120	90	75.0	47.2
1975	371	161	43.4	174	105	60.3	107	79	73.8	52.9
1976	365	144	39.5	171	121	70.8	108	77	71.3	53.1
1977	340	140	41.2	177	153	86.4	113	75	66.4	58.4
1978	328	209	63.7	183	141	77.0	111	75	67.6	68.3
1979	330	235	71.2	189	143	75.7	117	85	72.6	72.8
1980	375	249	66.4	188	149	79.3	116	86	74.1	71.3
1981	380	335	88.2	197	150	76.1	118	95	80.5	83.5
<u>Marine Corps</u>										
1974-79 (note a)										
1980	80	86	107.5	37	48	129.7	25	13	52.0	103.5
1981	80	97	121.3	37	48	129.7	25	13	52.0	111.3

a/ Data to compute percentages for fiscal years 1974-79 not available.