

Army Regulation 690–300

Civilian Personnel

Employment

**Headquarters
Department of the Army
Washington DC
3 April 2019**

UNCLASSIFIED

SUMMARY of CHANGE

AR 690–300

Employment

This major revision, dated 3 April 2019—

- o Provides information on “intent of provisions” (para 1–6).
- o Updates policies on upward mobility (para 2–4).
- o Incorporates policy from AR 690–900 (chap 4).
- o Updates policies on employment in foreign locations (chap 17).
- o Clarifies return rights for employees who accept employment within the Department of Defense in Alaska and Hawaii (chap 18).
- o Clarifies Army obligations under the Uniformed Services Employment and Reemployment Rights Act of 1994 (chap 19).
- o Removes obsolete policies (throughout).
- o Supersedes AR 690–335–1 and AR 690–351–1 (throughout).

Civilian Personnel Employment

By Order of the Secretary of the Army:

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History. This publication is a major revision.

Summary. This regulation supplements 5 CFR 300 and DODI 1400.25. It establishes the framework for delegation of authorities for the conduct of civilian personnel matters within the Department of the Army. It consolidates certain Army policies and procedures relating to civilian personnel management.

Applicability. This regulation applies to DA Civilian appropriated fund employees, in the competitive and excepted services, and to U.S. Army Reserve technicians. It does not apply to Army National Guard technicians employed under Title 32, United States Code, unless specifically made applicable by the Chief, National Guard Bureau. The Department of the Army has several alternate personnel systems, for which certain portions of this AR may not apply. The affected organizations

received approval from Congress, Office of Personnel Management, or the Department of Defense to establish their own personnel policies and procedures. For those organizations, follow the approved guidance in each of the specific Federal Register notices or the alternative personnel system's internal guidance to qualify, appoint, and promote applicants and employees. Some of these organizations include the demonstration projects and the Defense Civilian Intelligence Personnel System.

Proponent and exception authority.

The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief with the proponent agency or its direct reporting unit or field operating agency in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval of the proponent. Send requests for approval to the Assistant G–1 (Civilian Personnel), (DAPE–CPP–SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to the Assistant G–1 (Civilian Personnel), (DAPE–CPP–SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060.

Committee management. AR 15–39 requires the proponent to justify establishing or continuing committee(s), coordinate draft publications, and coordinate changes in committee status with the Administrative Assistant to the Secretary of the Army, Analysis and Integration Cell (AAAI–CL), 105 Army Pentagon, Washington DC, 20310–0105. Further, if it is determined that an established "group" identified within this regulation later takes on the characteristics of a committee as found in AR 15–39, then the proponent will follow AR 15–39 requirements for establishing and continuing the group as a committee.

Distribution. This publication is available in electronic media only and is intended for command levels A, B, C, D, and E for the Regular Army, the Army National Guard of the United States, and the U.S. Army Reserve.

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*This regulation supersedes AR 690-300, dated 12 August 1994; AR 690-335-1, dated 1 April 1987; and AR 690-351-1, dated 7 February 1992.

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Glossary

Chapter 1 Introduction

1–1. Purpose

This regulation provides Department of Army (DA) guidance and policy that supplements Title 5, Code of Federal Regulations and Department of Defense Instruction (DODI) 1400.25. This regulation also establishes certain DA-specific civilian human resources management policies. It is the primary source for these policies as they reflect the transformation of the Army.

1–2. References

See appendix A.

1–3. Explanation of abbreviations and terms

See the glossary.

1–4. Responsibilities

a. The Assistant Secretary of the Army (Manpower and Reserve Affairs). The ASA(MR&A) will—

(1) Serve as the senior Army official for manpower and personnel affairs across all the Army components, and has principal responsibility for setting the strategic direction and providing overall supervision. This includes providing civilian human resources policy, programming, and oversight.

(2) Meet other responsibilities as listed in later chapters.

(3) Through the Deputy Chief of Staff (DCS, G–1), supervise civilian personnel policy, management, and related functions, by—

(a) Developing policy that provides guidance for human resources support to the Army.

(b) Developing detailed human resources programs, budgets, and activities.

(c) Directing operations of the Civilian Human Resources Agency (CHRA).

(d) Advising on personnel policy outside the scope of Senior Executive Service (SES), senior scientific and professional, and equivalent-level positions.

(4) Through the Assistant G–1 (Civilian Personnel) (AG–1(CP)), direct and develop civilian personnel policy, procedures, and programs. The AG–1(CP) also will evaluate and administer the civilian personnel program Army wide.

b. Commanders of Army commands, Army service component commands, direct reporting units, and the Administrative Assistant to the Secretary of the Army (as applicable). These leaders will—

(1) Exercise leadership to improve the economy and effectiveness of position structures.

(2) Evaluate position management activities within the command and assure that subordinate commanders are meeting their responsibilities.

(3) Meet other responsibilities as listed in later chapters.

(4) Use their delegated authority for civilian appointment and personnel management to implement the provisions of 5 CFR, the DODIs referenced in this regulation, applicable labor relations obligations, and policies in this regulation.

(5) Ensure subordinates understand and meet their personnel-related responsibilities and duties.

1–5. Records-management requirements

AR 25–400–2 governs the maintenance and disposition of Army information and implements policy on record-keeping requirements for Army regulations prescribing the creation and maintenance of records under functional programs. The civilian personnel record category concerns the administration of the civilian personnel program. Most of the records-management policies contained in the 690-civilian personnel series are prescribed by 5 CFR. To align with the numbering structure of the CFR, policies in the AR 690–100 series, for example, contain information that is prescribed by 5 CFR 100–199, and policies in the AR 690–200 series contain information prescribed by 5 CFR 200–299. Detailed information about civilian personnel records management is located on the Records Retention Schedule-Army Module of Army Records Information Management System Disclaimer (ARIMS) (available at <https://www.arims.army.mil>).

1–6. Intent of provisions

a. The intent of this regulation is to establish and implement policy regarding civilian personnel management within Army. This regulation is composed of several chapters, each containing its own purpose.

b. The DA has a strong commitment to protect civilian applicants and employees from prohibited personnel practices and to ensure adherence to Merit Systems Principles. The 13 prohibited personnel practices located at 5 USC Section 2302 are in place to discourage employment discrimination, retaliation, improper hiring practices, and failure to adhere to laws, rules, or regulations.

c. The nine merit systems principles, part of the Civil Service Reform Act of 1978, can be found at 5 USC Section 2301(b). Merit systems principles are more than the public's expectations of a systems that is efficient, effective, fair, open to all, free from political interference, and staffed by honest, competent, and dedicated employees.

d. DA is committed to achieving and maintaining a strong workforce that includes employees from all segments of society. Diversity is essential to accomplishing DA missions and includes characteristics such as national origin, language, race, color, disability, ethnicity, gender, age, religion, sexual orientation, gender identify, socioeconomic status, veteran status, and family structures.

e. Managers at all levels will ensure that they satisfy any obligations to unions representing employee affected by changes to DOD policies, procedures, and programs. Changes that conflict with existing negotiated agreements may not be implemented until the agreement expires or is renewed unless: the parties agree otherwise or the change is required by law or rule or regulation implementing law governing prohibited personnel practices.

1–7. Delegations

Delegations of authority were deleted from each chapter within this AR. The delegations of authority can be found at <https://www.milsuite.mil/book/community/spaces/civ-hr/civilianhrtools/delegation-of-authority-matrix/>.

Chapter 2 General Employment

2–1. Qualification standards

The qualification standards issued by the Office of Personnel Management (OPM), available at www.opm.gov, are the primary qualification standards used to determine applicants' qualifications. DOD qualification standards will be used when authorized by OPM. Requests to update, modify, or establish qualification standards may be submitted to the Assistant G–1 (Civilian Personnel), DAPE–CPP–SC, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060 for coordination with DOD and OPM. See chapter 7 for procedures to establish excepted service qualification standards.

2–2. Employment of minors

a. The Fair Labor Standards Act states persons under the age of 18 will not be assigned to positions in occupations classified as hazardous or detrimental to the health of young workers, including those listed below. Further information about occupations classified as hazardous can be obtained from the U.S. Department of Labor, in the Wage and Hour Division, <http://www.dol.gov/whd/childlabor.htm>.

- (1) Manufacturing or storage occupations involving explosives.
- (2) Motor vehicle occupations.
- (3) Power-driven woodworking machine occupations.
- (4) Power-driven hoisting apparatus occupations.
- (5) Power-driven metal-forming, punching, and shearing-machine occupations.
- (6) Occupations with exposure to radioactive substances.
- (7) Slaughtering, meat packing, processing, or rendering occupations.
- (8) Bakery machine occupations.

b. To ensure a safe working environment for youth under 18, minors employed by or volunteering for the Army will only be assigned to a first-line supervisor (civilian, military, or volunteer) who has undergone additional screening that ensures the individual should be entrusted to have responsibility for the safety and welfare of minors. Guidance regarding these requirements is provided in the Army directive or Army regulation covering screening and background checks for individuals who have regular contact with children in Army programs.

2–3. Other than full-time employment

The DA part-time career employment program includes permanent positions in the excepted or competitive service. Delegated officials are required to establish annual goals for establishing or converting positions for part-time career employment. Managers and/or supervisors to whom authority has been delegated have the authority to determine which positions are eligible for other than full time employment. This decision will be made in accordance with DODI 1400.25, Volume 340.

2-4. Upward mobility program

Installation and activity commanders are encouraged to implement upward mobility programs. Implementation, at these levels, permits commanders to structure personnel policies, procedures, and practices to accommodate individual or unique requirements.

a. Installations and activities must ensure that upward mobility programs provide a variety of developmental opportunities for employees to support organizational and mission requirements. These programs aim to achieve a balance of occupational skills and efficient organizations, by retaining and retraining employees.

b. Upward mobility permits permanent competitive and excepted service employees, who have demonstrated potential for higher level work, to be developed under a structured training plan. Training agreements will help propel employees into positions covered by the program. Commanders, with help from civilian personnel and equal employment opportunity officials, will develop and institute procedures to effect, manage, and monitor the program. Program procedures will help managers systematically identify and analyze job patterns and personnel management practices that hold back lower-grade-level employees. Army commands, civilian personnel, and equal employment opportunity officials will advise installation leaders on how to establish and implement an upward mobility program.

2-5. Use of commercial recruiting firms and nonprofit employment services

a. Using services outside the Army. Use of commercial recruiting firms and nonprofit employment services. These will be based on the provisions allowed within 5 CFR 300.401, Subpart D. All requests for placement and payment of paid advertising must be forwarded to the servicing contracting officer for processing, per the Federal Acquisition Regulation.

b. Using employment services. The DA has authority to expend funds for employment services. Organizations desiring to use employment services will coordinate with the local contracting officer before making any commitment of funds.

c. Maintaining records. Commands are required to maintain records necessary to determine that using commercial recruiting firms or nonprofit employment services is cost effective and has not violated merit systems principles or any prohibited personnel practice. Upon determining that it is necessary to use a nonprofit employment service, a record of the information prescribed by 5 CFR 300.407, Subpart D, and the basis for making the determination will be maintained locally. Send an information copy of the records to the Office of the Assistant G-1 (Civilian Personnel), DAPE-CPP-SC, 6010 6th Street, Building 1465, Fort Belvoir, VA 22060 within 15 calendar days following the date of the request.

Chapter 3

Restriction on the Employment of Relatives

3-1. Restrictions

a. A public official, as defined in 5 USC Section 3110, may not appoint, employ, promote, advance, or advocate for appointment, employment, promotion, or advancement (either orally or in writing), in or to a civilian position in the agency in which they are serving or over which they exercise jurisdiction or control any individual who is a relative (as defined in 5 USC 3110(a)(2) of the public official). See 5 USC 3110. Advocacy includes—

(1) Any action that reveals an interest in securing or facilitating a person's consideration for appointment, employment, promotion, or advancement. This includes referring the relative for consideration to a subordinate, letters of introduction, and transmittal of applications.

(2) Public officials may reply to employment inquiries concerning the qualifications and suitability of a relative, but may not advocate their employment.

b. A public official may not appoint, employ, promote, or advance their own relative (or the relative of any other public official within or exercising jurisdiction over the command, if these officials have recommended the action) in any organization over which they exercise jurisdiction or control. These restrictions apply throughout the entire agency. A public official may not participate in a promotion panel decision affecting a relative.

(1) *Subordinate selecting officials.* The relative of a public official may be appointed by a subordinate of the official if the official is in no way involved in the action and if the agency concerned has no regulations prohibiting such employment. The subordinate selecting official must have full and continuing appointing authority. Employment restrictions apply to any actions taken in the name of the public official.

(2) *Classification.*

(a) Classification specialists must disqualify themselves from determining that positions held by relatives are classifiable at higher levels.

(b) A public official may not promote a relative whose position is reclassified at a higher grade if the action is discretionary.

(3) *Selection certificates.*

(a) An appointing official shall not consider an eligible candidate for employment on a certificate if the appointment of the eligible candidate is prohibited by the restrictions in this subchapter. The official will consider the next available eligible instead.

(b) If a relative who is a preference eligible is at the top of a certificate, and the other candidates who are in reach are not preference eligible, the relative may be selected. Any other preference eligible candidate within reach must be selected before the relative, and no other preference eligible candidate may be passed over to select the relative.

(c) A public official cannot later promote or advocate the promotion of a relative who is appointed under the above provision. This provision applies only to appointments.

c. The restriction does not preclude agency officials from supporting programs designed to enhance job opportunities for groups of people, such as Family members.

3–2. Department of Army policy

a. See DODD 5500.07 for general policy on actions taken by DA military or civilian personnel.

b. Supervisory relationships.

(1) Assignments of current employees will not be made which result in supervisory relationships between relatives unless mandatory placement based on a nondiscretionary action (for example, a reduction-in-force action, or exercise of reemployment or restoration rights), and the employee's rights cannot be satisfied otherwise. Commands will actively monitor placement alternatives to ensure supervisory relationships between relatives do not continue. Exceptions to this policy require the approval of the ACOM, ASCC, DRU, or the AASA. The approval authority may not be further delegated.

(2) The selecting official may appoint an applicant if he or she is not a relative of the proposed selectee, and no other highly qualified candidates are available.

(3) Due to a necessity to meet urgent needs resulting from an emergency posing an immediate threat to life or property, or a national emergency as defined in 5 CFR Section 310.102.

c. Approved exceptions will be reviewed at least annually, by the command, to ensure that subsequent personnel actions (such as appraisals and awards) remain proper.

d. When a supervisor marries a subordinate, the appointing authority prescribes procedures to ensure proper personnel actions. Involuntary reassignments are appropriate only with proper justification. Each case will be reviewed separately, considering the circumstances of the situation.

e. Assignment of relatives in the same organizational unit (a unit encompassing one supervisor) will be avoided if an equivalent assignment is available in another unit. The appointing authority decides if assignments in the same unit are proper.

f. In situations where the appointing authority and the first line supervisor are the same, a request will be submitted the DASA(CP) for approval.

3–3. Penalties

5 USC Section 3110(c) provides that “An individual appointed, employed, promoted, or advanced in violation of this section is not entitled to pay and money may not be paid from the Treasury as pay to an individual so appointed, employed, promoted or advanced.” Payments made in violation of this section are subject to recovery. In addition, public officials who violate the regulations governing employment of relatives are subject to appropriate disciplinary action.

Chapter 4

Positions with Special Requirements

4–1. Positions having special retirement coverage

Firefighters, law enforcement officers, and air traffic controller positions may be eligible for special retirement coverage. These positions will not be encumbered until proper position determination is made by the appropriate authority, in accordance with DODI 1400.25, Volume 331 and Volume 336.

a. All requests for position determination must be sent through servicing CHRA officials to AG–1(CP) for the appropriate approval authority.

b. The AG–1(CP) will establish coverage determination files that include all background material used in the determination made.

c. Servicing CPACs or the Army Benefits Center-Civilian will file determination memorandums in the employee's electronic official personnel folder (eOPF).

d. Upon retirement, the Army Benefits Center-Civilian will certify to the OPM that the employee's service was in a covered position.

4–2. Motor vehicle operators

Due to the complex driving problems unique to the military departments, the OPM has authorized the Department of Army to measure applicants against the additional standards set forth in AR 600–55.

Chapter 5 Employment of Retired Members of the Armed Forces

5–1. Applicability

This chapter provides supplemental guidance to DODI 1402.01. This chapter applies to the appointment of civilians paid from appropriated funds in support of the Regular Army, appointment to U.S. Army Reserve technician positions, and appointment to Army National Guard technician positions filled under 32 USC Section 709. (See AR 215–3 for requirements for non-appropriated fund positions.)

5–2. Waiver packages

Waiver packages for all appropriated fund appointments will be reviewed by the local legal office. Documentation will include the information listed in the DODI 1402.01 in addition to the following—

- a.* Copy of proposed appointee's DD Form 214 (Certificate of Release or Discharge from Active Duty).
- b.* A memorandum that—
 - (1) Compares the qualifications of the proposed appointee and the other eligible candidates. Explains why the other candidates could not be expected to satisfactorily perform the duties of the position within a reasonable amount of time.
 - (2) Addresses the reasons for establishing the position (if the position is being filled for the first time).
 - (3) Explains the relationship between the position to be filled and the proposed appointee's previously held military position, if the proposed appointee previously held a military position in your organization before retiring.

5–3. Documentation

Appointments made under this section must be fully documented. Documentation will include the information outlined above and will be retained for 2 years from the date of appointment.

Chapter 6 Experts and Consultants

6–1. Employing experts and consultants

This chapter supplements 5 CFR Part 304 and governs the employment of experts, consultants, and advisory committee members (employed as consultants) who perform services under excepted service appointments. This chapter does not apply to the acquisition of services of experts and consultants employed by firms or organizations or to highly qualified experts under 5 USC Section 9903. Questions regarding "highly qualified experts" hired under 5 USC Section 9903, should be submitted to the Civilian Senior Leader Management Office, 111 Army Pentagon, Room 1D755, Washington, DC 20310-0111.

6–2. Policy

a. The proper use of experts and consultants is a normal, legitimate, and economical way to improve Government services and operations. Organization activities can be strengthened by the highly specialized knowledge and skills of persons from the private sector brought into the service for brief periods of time. Appointments are either temporary or intermittent. In addition, the positions are exempt from competitive examination, position classification, and the General Schedule pay rates.

b. Appointments can be used to hire experts and consultants who are specifically qualified by education and experience to perform difficult and challenging tasks in a field beyond the usual range of achievement. They can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience.

c. In addition to the situations in 5 CFR Section 304.103(b), consulting services will not be used--

- (1) To bypass personnel ceilings, pay limits, or competitive employment procedures.
- (2) To aid in influencing or enacting legislation.

d. Former civilian employees or military members will not be given preference in arranging for consulting services.

6-3. Establishing positions and selecting appointees

a. Each proposed appointment and extension or renewal of appointment will be reviewed and certified by a management official as listed in *b* below.

b. Within DA, the following officials are authorized to make the appropriate certification for positions—

(1) Within the Army Staff or Army Secretariat – the SECARMY (or delegated official).

(2) Outside the Army Staff or Army Secretariat – the commanders or heads of Army commands (ACOMs), Army service component commands (ASCCs), or direct reporting units (DRUs). The commanders or heads of ACOMs, ASCCs, and DRUs may further delegate this authority, in writing, no lower than a senior official at the general officer, Senior Executive Service, or equivalent level.

c. DD Form 2292 (Request for Appointment or Renewal of Appointment of Expert or Consultant) will be signed by the certifying official in block 11.

6-4. Reappointment to same position

An expert or consultant may be reemployed to perform demonstrably different duties without regard to the length of that individual's previous expert or consultant service with the agency. Reappointment to perform substantially the same duties is subject to the following limits—

a. An activity may employ an expert or consultant who works on a full-time basis for a maximum of 2 years—such as an initial appointment not to exceed 1 year and a reappointment not to exceed 1 additional year.

b. Experts or consultants may work on a part-time or intermittent schedule in accordance with one of the following options. The activity must determine which option it will use in advance of any reappointment and must base its determination on objective criteria (such as, nature of duties, pay level, whether or not work is regularly scheduled). Option 1 must be applied to reappointments of experts and consultants appointed without compensation.

(1) *Option 1—Annual service.* An agency may reappoint an expert or consultant, with no limit on the number of reappointments, as long as the individual is paid for no more than six months (130 days or 1,040 hours) of work, or works for no more than that amount of time without compensation, in a service year. (The service year is the calendar year that begins on the date of the individual's initial appointment in the agency.) An expert or consultant who exceeds this limit in their first service year may be reappointed for 1 additional year. An expert or consultant who exceeds the limit during any subsequent service year may not be reappointed thereafter.

(2) *Option 2—Cumulative earnings.* Each expert or consultant will have a lifetime limit of twice the maximum annual rate payable under the annualized basic pay limitations of 5 CFR Section 304.105. The agency may adjust this limit to reflect statutory increases in basic pay rates. The agency may reappoint an expert or consultant until their total earnings from expert or consultant employment with the agency reach the lifetime maximum, as determined by using the applicable maximum salary rate. At that point, the employment must be terminated.

6-5. Appointment to advisory committees

AR 15-1 requires all members of advisory committees who are not full-time officers or employees of the Federal Government to be appointed as consultants. A separate consultant appointment is required for each advisory committee on which an individual serves.

6-6. Documenting employment

a. For each expert or consultant employed, an electronic official personnel folder (eOPF) must be established. The folder must contain the following—

(1) A description of the position in enough detail to show that the position requires an expert's or consultant's services.

(2) A resume.

(3) A description of any regularly scheduled tour of duty for a less than full-time employee.

(4) A Standard Form (SF) 50 (Notification of Personnel Action) showing the employment and an SF 50 showing termination of employment.

(5) Certification that a statement of employment and financial interest has been obtained and it has been determined that no conflict of interest exists.

(6) For all appointments, reappointments, and extension of appointments for experts and consultants, certification that requirements concerning the appointee's qualifications, pay documentation and use of the appointing authority have been met.

(7) For all reappointments of intermittent experts and consultants, the number of days worked in the previous service year should be documented in block 6 on the DD Form 2292.

- (8) DA Form 5412 (Waiver of Compensation Statement), if applicable.
- (9) Approvals for appointment, extension of appointment and pay rate.
- b. Each appointee will submit a U.S. Office of Government Ethics form, OGE Form 450 (Confidential Financial Disclosure Report), for preappointment review. (Statements will not be filed in the eOPF, but will be kept per DODD 5500.7.) The form is available at <https://www2.oge.gov/web/oge.nsf/oge+forms/>.

6–7. Types of assignments

The following are examples specific to expert and consultant assignments.

- a. The medical staffs listed in (1) through (3) below use professional consultants. Experts and consultants provide the highest possible level of skill, advice, and assistance in medicine, surgery, epidemiology, psychiatry, nursing, and other closely allied medical science fields. They also participate in and evaluate training programs in these specialties.
 - (1) The Army Surgeon General.
 - (2) U.S. Army Medical Command.
 - (3) Various Army boards, committees and commissions.
- b. The U.S. Army Corps of Engineers (USACE) uses consultants in the following areas—
 - (1) On experimental tunnel construction; on dam and reservoir projects; design of test equipment, and interpretation of test results.
 - (2) On investigations, reports, tests, design, and inspection of dam sites and to give technical advice and assistance to division and district engineers on dam construction.
 - (3) To give advice and assistance on agricultural values, such as flood losses and flood control benefits on agricultural lands affected by USACE construction.
- c. The commandant of an Army service school uses an educator to review testing or counseling procedures.
- d. The president of an industrial research organization serves on the Army Science Board.
- e. The dean of a university law school serves on a board that reviews the curriculum of the U.S. Army Judge Advocate General School to ensure the American Bar Association's continued national accreditation of the school's courses.

6–8. Obtaining prior approval

All proposed appointments, extensions, or renewals, regardless of duration, must be submitted 60 days prior to desired effective date. This requirement is in addition to the review and certification procedures in paragraph 6–3.

- a. Appointment as a consultant to a Federal advisory committee requires approval under AR 15–1.
- b. Other consultant/expert appointment, renewal, change in compensation or work schedule, and early termination actions will be approved as outlined below—
 - (1) Authority to appoint qualified candidates into Army Staff or Secretariat expert or consultant positions remains with the SECARMY (with further delegation possible). Questions on positions, qualifications, authorities, and process should be referred to the Civilian Senior Leader Management Office.
 - (2) Authority to appoint qualified candidates into non-Army Staff or Secretariat expert or consultant positions is delegated to the commanders or heads of ACOMs, ASCCs, and DRUs (with further delegation). Questions on positions, qualifications, authorities, and process should be directed to AG–1(CP).
- c. Exceptions:
 - (1) Appointments of individuals that served on previous political appointments or former legislative staff as consultants or experts require coordination of the appointment with the Special Assistant to the Secretary of Defense for White House Liaison before approval by the SECARMY.
 - (2) Appointments of individuals that are pending presidential appointment as consultants or experts require coordination of the approval or disapproval of the appointment with the Special Assistant to the Secretary of Defense for White House Liaison.
- d. Requests will include—
 - (1) Request memorandum signed by organization head.
 - (2) DD Form 2292 (part 1 completed).
 - (3) Resume.
 - (4) SF 50 or SF 52 (Request for Personnel Action), submitted electronically.

6–9. Pay

An expert or consultant may be employed with or without compensation. Determination of the rate to be paid will be made on the basis of each individual's case by the appointing authority.

- a. Attention will be given to—
 - (1) The relative importance of the duties to be performed.

- (2) The level and difficulty of the work to be performed.
- (3) The qualifications of the expert or consultant.
- (4) The availability of qualified candidates.
- (5) Comparable pay for positions in the General Schedule or other Federal pay systems.
- (6) Rates paid by private employers.
- (7) Rates paid other experts and consultants employed for similar purposes.
- (8) The appointee's desire to receive no pay.

b. Normally, pay will be at the rate equal to salaries in the GS–13 through GS–15 range. Pay will not be set higher than a GS–15 step 10 (excluding locality) or equivalent salary in pay band positions. The requesting official will recommend the rate of pay as an hourly or daily rate.

c. If appointed on an unpaid basis, the appointee must sign DA Form 5412.

d. Generally, an individual awaiting final action on a presidential appointment is employed without compensation.

e. A concurrent appointment may be held with another Government agency. An individual holding a part-time office or position with the U.S. Government, and receiving compensation, will receive no additional salary for the service performed on the days worked in the part-time capability. An intermittent expert or consultant is entitled to pay for service from more than one expert or consultant position, provided the pay is not received for the same hours of the same day.

f. Pay increases are not automatic and are subject to the approval process above.

g. Experts and consultants are generally not eligible for overtime pay in accordance with 5 USC Section 5542.

h. Hours worked will be recorded on DD Form 2525 (Certification of Hours Worked in Service Year for Expert or Consultant).

6–10. Conflicts of interest

Experts and consultants are subject to the provisions of DODD 5500.7.

Chapter 7

Excepted Service Positions

7–1. Regulations pertaining to excepted service positions

This chapter supplements 5 CFR Part 302 with Army guidance and procedures as it pertains to excepted service positions. When there is doubt as to whether a position is in the excepted service, send a request for a decision through command channels to the Assistant G–1 (Civilian Personnel), (DAPE–CPP–SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060.

7–2. Trial period

All persons given excepted appointments of more than 1 year must serve a trial period based on the specific appointing authority. If no trial period is identified by the specific appointing authority, a 2-year trial period will be required. Prior service is credited toward completion of the trial period to the same extent as that for probationary periods in the competitive service. Employees in the excepted service are not required to serve probationary periods as new managers and supervisors. (See chap 16 of this regulation for information on supervisory probationary periods.)

7–3. Citizenship

a. Within the United States, DA is authorized to appoint non-citizens, persons who are not a U.S. citizen or a national of the United States, to positions in the excepted service. (The definition of a U.S. citizen and national is found at 8 USC 1401.) The hiring of noncitizens is controlled by Executive Order 11935 with limited exceptions found in 5 CFR 7.4 and 5 CFR 302. Non-citizens will be hired only when no qualified U.S. citizens are available. For purposes of this section, applicants are considered qualified when they meet all conditions of employment, such as qualification standards (including selective placement factors), physical standards, and suitability.

b. A non-citizen hired in the absence of qualified citizens may only be given an excepted appointment, and does not acquire competitive civil service status. They may not be promoted or reassigned to another position in the competitive service, except in situations where a qualified citizen is not available. The non-citizen may be hired only if permitted by the section 8002 of the Consolidated Appropriations Act and the immigration law, as found in 8 CFR 274a.

c. Documentation to support hiring a non-citizen includes—

- (1) Resumes of applicant(s).
- (2) Position description.
- (3) Vacancy announcement.

(4) Copies of all notices publicizing the vacancy.

(5) Interview documentation.

d. Request packages will be forwarded to the Assistant G-1 (Civilian Personnel), (DAPE-CPP-SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060. The package will be submitted through channels to the Office of Personnel Management for approval.

7-4. Agency qualification standards

a. In the absence of DA qualification standards, Army will use OPM qualification standards available at <http://www.opm.gov>. Qualification standards for excepted positions are developed by commands having the positions and submitted to AG-1(CP) for submission to DOD for approval. Standards generally should follow competitive service standards for similar positions. Send requests to include written tests through command channels to the Assistant G-1 (Civilian Personnel), (DAPE-CPP-SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060 for approval.

b. Family members appointed overseas under Schedule A 213.3106(b)(6), as identified in the Federal Register Notice of Schedule A, B, and C hiring authorities, must meet OPM qualification standards, less any written test requirement.

Chapter 8

Volunteer Service

8-1. Student volunteer programs

This chapter supplements 5 CFR, Part 308. ACOMs, ASCCs, DRUs, and AASA are delegated the authority to develop student volunteer programs best suited to meet their staffing needs. Student volunteer programs will be conducted through written agreements with educational institutions or nonprofit organizations officially designated by schools or boards of education to coordinate the placement of students in nonpaid work assignments. Volunteer service is limited to service performed by a student, with the permission of the institution at which the student is enrolled, as part of an agency program established for the purpose of providing educational experience for the student. See 5 USC 3111. Education and volunteer services in the same line of work as the experience is creditable towards the student's education.

8-2. Agreements

The written agreements between the ACOMs, ASCCs, DRUs, or AASA and educational institutions will include, at a minimum, descriptive statements for coverage under Federal Tort Claims, 28 USC Chapter, 5 USC Chapter 81, relative to compensation for possible injuries sustained. In addition, the statements may also contain the following—

- a.* Signature of proper school and activity representatives.
- b.* Purpose of the program.
- c.* Number of students that will participate, to include the occupational areas covered.
- d.* Work schedules and duration of work periods.
- e.* Basic eligibility requirements. Include in this statement the minimum age in conformance with either Federal, State, or local laws and standards regarding the employment of minors.
- f.* Equal employment opportunity statement.
- g.* Written certification by the school in cases where there is doubt about a student being enrolled at least halftime under the school's academic program.
- h.* Methods used for selection of students.
- i.* The activity's responsibilities for appointment of a person who would orient students. Also, this person will notify the school of any intent to release a student.
- j.* The school is responsible for—
 - (1) Referring candidates.
 - (2) Providing data on students.
 - (3) Notifying the activity of a change in student status, and
 - (4) Identifying a person for coordination of student volunteer activities, where practicable.
- k.* Status of students while performing volunteer service.
- l.* Methods derived for maintaining attendance and performance records, especially if the service is for course credit.
- m.* Conditions required to change or terminate the agreement.

8-3. Student eligibility and status

To be eligible to participate in the student volunteer program, the student must be at least a half-time student, as defined by the educational institution. A student is permitted to have a break from attending school between school years, if the

break is not more than 5 months and if such student shows to the satisfaction of the agency that the student has a bona fide intention of continuing to pursue a course of study or training in the same or different educational institution during the school semester (or other period into which the school year is divided) immediately after the break. Student volunteers are not eligible for payment of costs of training, leave accrual, or any other benefit. Any student who provides voluntary service shall not be considered a Federal employee for any purpose other than for purposes identified in 5 USC 3111(c) (1). Restrictions on employing sons and daughters found in 5 USC 3110 do not apply to student volunteers.

8-4. Other volunteer services

Guidance on volunteer service, other than student volunteers, is located within DODI 1100.21 and AR 608-1. Prior to accepting volunteers, appointing authorities must coordinate with their local CPAC and legal offices to ensure compliance with regulation. The limitations of voluntary services, as found in 31 USC 1342, provides that an officer or employee of the U.S. Government or the District of Columbia government may not accept voluntary services for either government or employ personal services exceeding that authorized by law *except for* emergencies involving the safety of human life or the protection of property. Below are authorized areas that volunteer work can be accepted—

- a. Medical, dental, nursing, or other healthcare-related services.
- b. Museums or natural resources.
- c. Services to members of the Armed Forces and their families, including but not limited to the following programs—
 - (1) Family support.
 - (2) Child development and youth services.
 - (3) Library and education.
 - (4) Religious.
 - (5) Housing referral.
 - (6) Spouse employment.
 - (7) Morale, welfare, and recreation.
 - (8) Retired activities.
 - (9) Funeral honor details under 10 USC 1491.
 - (10) Legal assistance under 10 USC 1044.

8-5. Documentation of service

Volunteer service will be documented on DA Form 4162 (Volunteer Service Record).

Chapter 9

Employment of Civilian Attorneys

9-1. Applicability

Only persons who are employed in attorney positions may be engaged or utilized to provide professional legal services. This chapter contains policy for establishing and filling civilian attorney positions and employing civilian attorneys, law clerk trainees (pending admission to bar membership), and legal interns throughout the DA, including positions subject to the DCIPS. This chapter supplements requirements found in DODI 1442.02. This chapter applies to recruitment, appointment, assignment, promotion, removal or other disciplinary actions, and standards of conduct. It specifies performance evaluation requirements that apply to heads of legal offices. It also specifies recognition incentive requirements that apply to SES and senior level (SL) attorneys. It supplements other civilian personnel regulations that apply to the excepted service, SES, and SL positions.

9-2. Appointing authority

The Army General Counsel (GC) has been delegated appointing authority with respect to all Army attorneys in the SES. This authority has been re-delegated with power of further delegation to the AASA for all departmental and field elements of the Office of the Secretary of the Army (OSA) and to the Chief of Staff, Army for all other elements of the Army.

9-3. Qualifying authority

a. The GC has been delegated authority to approve the qualifications of persons recommended for any civilian attorney or law clerk trainee position. The GC retains this authority for all attorney positions in the OSA, including its field operating agencies, and for SES and SL attorney positions DA-wide. Such positions may not be filled without prior approval of the proposed selectee's qualifications by the GC. For the remainder of the Department, the authority to approve the

qualifications of persons recommended for positions of attorneys or law clerk trainees in grades GS-15 and below is delegated without power of re-delegation as follows (these officials and the GC are referred to as qualifying authorities)—

- (1) The Chief Counsel, USACE, for all elements under that command.
- (2) The Command Counsel, U.S. Army Materiel Command (AMC), for all elements of that command.
- (3) The Judge Advocate General (TJAG) for all other elements of the DA.

b. Qualifying authorities, in coordination with their civilian personnel counterparts, may establish supplementary procedures for filling positions under their jurisdiction. TJAG procedures are published as figure 13-1 in JAGC Publication 1-1 and are located at www.jagcnet.army.mil.

c. Withdrawal of qualifications—

(1) Approval of a civilian attorney's qualifications by the designated qualifying authority is a continuing condition of employment. A qualifying authority may withdraw such approval for good and sufficient reasons such as a violation of the Army Rules of Professional Conduct for Lawyers when such violation is established in accordance with the procedures published under AR 27-26. When a qualifying authority withdraws approval of an attorney's qualifications, the person may not thereafter be employed by DA as an attorney.

(2) Withdrawal of qualifications approval should be accomplished through a process akin to that followed for actions based on, as appropriate, poor performance, misconduct, or violation of the Rules of Professional Conduct. Applicable procedures required by law or regulation apply to personnel actions taken as a result of withdrawal of qualifications approval.

9-4. Establishing legal offices and position

a. A new legal office headed by a civilian attorney may be established only with prior approval of the GC. Establishing a civilian attorney position that is not under the immediate supervision of another military or civilian attorney within the appointing officer's command constitutes establishing a new legal office.

b. Establishing a civilian attorney position within an existing legal office is subject to any policies and procedures specified by the designated qualifying authority. When an attorney position is established in the SES or at the senior level, prior approval of the GC also is required.

9-5. Qualification requirements (attorney positions)

a. Applicants for initial appointment into attorney positions must be graduates of law schools accredited by the American Bar Association at the time of the applicant's graduation. The GC may make an exception upon a showing that the candidate possesses superior qualifications and that no well-qualified candidates from accredited law schools are available.

b. In addition to the requirements within paragraph 9-5*a*, the following minimum qualification requirements apply when filling attorney positions—

(1) GS-09 or equivalent. The applicant must be a member in good standing (as defined by the pertinent bar) of the bar of a State, territory, the District of Columbia, or the Commonwealth of Puerto Rico.

(2) GS-11 or equivalent. Same as (1) above plus 1 year of professional legal experience after admission to the bar.

(3) GS-12 and GS-13 or equivalent. Same as (1) above plus 2 years of professional legal experience after admission to the bar commensurate with the duties of the position.

(4) GS-14 and GS-15 or equivalent. Same as (1) plus more than 3 years of professional legal experience after admission to the bar commensurate with the duties of the position.

(5) Senior level or defense intelligence senior level qualifications. DISL qualifications will be established by the Civilian Senior Leader Management Office.

(6) For SES level positions, applicants must also achieve quality managerial experience. This normally will be evidenced by having managed at least 1 year at the GS-15 level or equivalent experience.

(7) The qualifying authority may make exceptions to the experience requirements in (2) and (3) above when nominees possess special qualifications in place of those specified. For example, a second professional law degree (master of laws) or graduation with a distinguished record from an accredited law school (for example, in the top 25 percent of the class) may be substituted for 1 year of professional legal experience.

9-6. Law clerk trainee and legal intern appointment

a. Honor and superior law school graduates may be temporarily employed as law clerk trainees with the understanding that they may be converted to regular attorney positions after being admitted to the bar. Such appointments may not exceed 14 months.

b. Students at accredited law schools who are candidates for juris doctorate or bachelor of laws degrees may be appointed as legal interns for a period not to exceed 1 year. Extensions may be approved by the qualifying authority.

9–7. Recruitment and appointment

a. Recruitment for civilian attorneys will be done in accordance with the requirements specified by the designated qualifying authority and the following requirement. Whenever sources of applicants other than current Army civilian attorneys are to be solicited, local recruitment efforts must include reasonable efforts to contact sources in a geographic area thought to be broad enough to provide well-qualified minority groups, and women candidates and candidates with disabilities. This will normally include contacts with all accredited law schools, bar associations, and known minority groups and women's organizations within the area of recruitment. Qualifying authorities will assist local activities in identifying organizations and groups that should be contacted as part of the recruitment process. Each qualifying authority will create, maintain, and annually update, as practical, a list of contacts at accredited law schools, bar associations, and relevant women's and minority-focused attorney groups to provide local hiring offices.

b. The principles of veterans' preference will be followed to the extent administratively feasible. Selecting officials will follow procedures in DODI 1442.02 when candidates with veteran's preference are referred for consideration. A veteran who is not selected is entitled, upon request, to written reasons for non-selection.

c. The following statement will be on all vacancy announcements:

“Notice of Veterans’ Preference:

There is no formal rating system for applying veterans’ preference to attorney appointments in the excepted service; however, the Department of Defense considers veterans’ preference eligibility a positive factor for attorney hiring. Applicants eligible for veterans’ preference must include that information in their cover letter or resume and attach supporting documentation (for example, DD Form 214, “Certificate of Release or Discharge from Active Duty”) to their submissions.

Although the point-preference system is not used, applicants eligible to claim a 10-point preference must submit a Standard Form (SF) 15, “Application for 10-Point Veteran Preference,” and supporting documentation required for the specific type of preference claimed. The SF 15 will identify the supporting documentation required along with a list of the types of 10-point preference. The SF 15 is available from the OPM at <https://www.gsa.gov/portal/forms/type/sf/>.”

d. Attorney spouses of active duty military may apply for available positions in accordance with the military spouse program, as identified in DODI 1500.25 Volume 315.

9–8. Reassignment and promotion

a. A current Army civilian attorney may be reassigned or promoted to another attorney position in accordance with requirements specified by the qualifying authority. When movement is between organizations subject to different qualifying authorities, the requirements of the gaining qualifying authority apply.

b. Assignments to SES and SL positions are subject to prior approval by the GC as specified in paragraph 9–3.a. as well as the ASA(M&RA).

c. Excessively rapid promotions should be avoided. For GS–15 positions and below, normally candidates selected for advancement should have completed at least 1 year of service that is one grade lower than the position to be filled. A waiver may be requested only in cases where hardship or inequity exists in accordance with chapter 11 of this regulation.

d. ACOMs, ASCCs, and DRUs, in conjunction with the qualifying authorities may grant or arrange for the losing command to grant administrative reemployment rights when necessary to move an Army attorney to an overseas Army position.

e. A current, valid license to practice law in a state, territory of the United States, District of Columbia, or Commonwealth of Puerto Rico is a continuing condition of employment for civilian attorneys of DA.

9–9. Securing prior approval of the qualifying authority

a. Requests for approval of recruitment efforts and the qualifications of a candidate for assignment to an attorney position within the DA will be sent with the following documents to the proper qualifying authority—

- (1) A memorandum that describes the area of consideration used and any additional recruitment efforts.
- (2) Resume.

(3) Official certificate showing that the applicant is a member in good standing of the bar and a sworn statement by the candidate that their fitness to practice law or conduct as an attorney has never been challenged in any jurisdiction or; if either has been challenged, a sworn statement giving the facts, circumstances, and any other explanation that the applicant considers appropriate. As an alternative to a sworn statement, a declaration under penalty of perjury may be submitted in the following format: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of

America that the foregoing is true and correct. Executed on (date) (signature of applicant)." The certificate and statement must be dated within 3 months of the date the application is submitted. Selecting officials may alternatively verify the applicant's bar membership status through online information provided by the licensing jurisdiction, provided that the online information clearly establishes that the applicant is permitted to engage in the active practice of law. Information that the applicant is in good standing is not sufficient by itself.

(4) Official transcript of the applicant's law school record and an official statement of their relative standing in class. If the applicant's law school does not rank students, and the transcript does not explain that the school does not rank students, the applicant needs to submit an official statement from the school confirming the practice. Certified documents must be furnished by the time the request for recruitment and qualifications approval is submitted. However, if these are not obtainable, the qualifying authority may authorize submission of other satisfactory evidence of the applicant's law school accomplishments.

(5) Position description.

(6) Copies of the responses to the appointing officer's inquiries from at least three licensed attorneys identified as references by the applicant.

b. A selectee may not be appointed until the qualifying authority issues an approval memorandum to the appointing authority, and furnishes an information copy to the GC.

9–10. Head-of-legal office performance evaluation

a. Before rating the performance of any civilian attorney who is the head of a legal office at any level of the Army, the initial rater will request information about the attorney's performance from the head of the legal office at the next higher level in the chain of command. For the Chief Counsel, USACE, and the Command Counsel, AMC, the GC will be considered the head of the next higher level legal office. The head of the next higher level legal office will furnish information to the initial rater on the mandatory criteria in *b* below and may provide other information to assist the initial rater. The furnished information will be considered by the initial rater when rating the attorney, and a copy of this information will be attached to the official performance rating. In addition, this information will be considered and attached to any recommendations for performance awards (bonuses), other awards, or Presidential Rank Awards for the concerned attorney.

b. As part of their jobs, all civilian heads of legal offices are expected to ensure that they, and the clients and attorneys for whom they are responsible, provide adequate support and responsiveness to Army headquarters. Therefore, as a minimum, the performance of all civilian heads of legal offices will be rated on the following as a separate performance objective.

(1) Ensures adequate communication within and between the employing organization and offices at higher and lower levels considering—

(a) The extent to which the head of the legal office maintains awareness of and anticipates issues regarding matters of legal and policy significance occurring in the employing organization and subordinate field elements.

(b) The extent to which they independently act on and communicates relevant information in a prompt and meaningful manner to the next higher level legal office.

(2) Ensures responsiveness to requests from higher level legal office. This criterion concerns how well the legal office obtains factual information and provides legal or policy analysis quickly in response to requests from higher level legal offices.

(3) Ensures follow-up and control to make certain that immediate and subordinate legal offices have complied with higher level legal office guidance. This concerns how successful the head of the legal office is in obtaining compliance with guidance they initiate or pass on in response to requests from higher level legal offices.

c. The senior rater will send a copy of the annual performance appraisal of each SES attorney who is the head of a legal office to the GC.

9–11. Senior Executive Service and senior level recognition incentives

Senior raters will consult with the GC prior to making final performance awards (bonuses) to SES or SL attorneys. The Chairman of the Civilian Executive Resources Board will consult with the GC before nomination of an SES attorney to the SECARMY for a Presidential Rank Award. The written views of the GC will be obtained and considered before an SES or SL attorney is recommended for any type of financial recognition incentive (such as Presidential Rank, performance award, or pay adjustment).

9–12. Adverse actions

a. The responsible qualifying authority will—

(1) Be notified before action is taken to involuntarily reassign, suspend, separate, or reduce the grade of a civilian attorney.

(2) Ensure that no adverse action is taken against an attorney that is based solely or in part on the substance of complete and accurate legal advice given by the attorney.

(3) Take, or oversee the taking of, disciplinary action as warranted and appropriate under AR 690–700 for violating the Army Rules of Professional Conduct for Lawyers published in AR 27–26.

b. Excepted service appeal procedures are outlined in PL 101–376 and other applicable laws and regulations.

9–13. Assistance to attorneys affected by personnel actions

The following assistance will be provided for civilian attorneys who have been officially notified that they will be displaced from their current position due to a reduction in force, or who are seeking a new Army civilian attorney position due to the expiration of their current overseas civilian attorney employment contract.

a. If an attorney in this situation cannot be placed in a position within a qualifying authority's current vacancies, the qualifying authority will certify this fact in writing, and request that the other qualifying authorities assist in placement.

b. Attorneys who desire such assistance should forward, through their current qualifying authority, a resume not exceeding two pages and a one-paragraph executive summary of the resume (including current telephone and address) to the other qualifying authority.

c. Each assisting qualifying authority will advertise to all subordinate legal offices the desire of the attorney to continue employment as an Army attorney, and will solicit direct contact with the attorney by servicing CPAC and selecting officials for possible non-competitive appointment to a vacancy in the same or lower grade.

d. If interested in employing the attorney, local selecting officials, in conjunction with the servicing CPAC, may request to interview and may request additional information from the attorney (at least as necessary to satisfy the requirements of paragraph 9–9). Based on this information, and interview if any, the CPAC may, with the approval of the relevant qualifying authority, offer noncompetitive reassignment to the attorney.

e. While they continue as current Army employees, attorneys may remain in this placement program until they are placed, request that they be removed from the program or refuse an official offer by CPAC. Qualifying authorities will notify each other when one of these events occurs, thereby providing grounds for removal of an attorney from the program.

9–14. Reporting personnel actions

a. The SF 50 will be sent to the proper qualifying authority for any movement to or from an attorney position.

b. Each qualifying authority will maintain records for each attorney under their jurisdiction. Records will contain the documents listed in paragraph 9–9, copies of SF 50s (forwarded per "a" above), and any other documents considered necessary by the qualifying authority. Upon request, these records will be available to other qualifying authorities on loan or for permanent retention when an attorney is selected for another assignment.

9–15. Standards of conduct and professional rules

Attorneys must comply with the standards of conduct required of all DA personnel in regulations issued by the Office of Government Ethics, Department of Defense, DA and other applicable laws and regulations. They will also comply with AR 27–26 and any supplements issued by the appropriate qualifying authority.

9–16. Outside employment

a. No Army civilian attorney will participate in outside employment, with or without compensation, which (as determined by the attorney's supervisor, or qualifying authority, or delegee)—

(1) In any manner interferes or is incompatible with the proper and effective performance of his or her official duties.

(2) Creates a conflict of interest or appearance of one.

(3) Or may reasonably be expected to reflect adversely on the Government or DA.

b. In addition to restrictions in "a" above, no Army civilian attorney will engage in the outside practice of law without prior written approval of the qualifying authority or delegee. Requests for approval will be submitted in writing through legal office command channels and will include any applicable justification. Approved copies of the request and the response will be furnished to the General Counsel, Department of the Army, Washington, D.C. 20310–0104, within 14 calendar days of approval. For purposes of this regulation, practice of law means representing, advising or providing other legal services for a client or employer with or without compensation. It does not include teaching, lecturing or writing for publication. It also does not include the infrequent, occasional rendering of legal advice or assistance without compensation to personal friends and relatives when not inconsistent with the restrictions in subparagraphs *c* through *c*(2) below.

c. Even with written approval, no attorney will engage in outside practice of law in violation of 18 USC Sections 203, 205 or 209 (outside compensation for official services), standards of conduct regulations cited above, or (for those for whom TJAG is the Qualifying Authority) AR 27–1, nor with respect to matters—

(1) Referred from his or her Army legal office.

- (2) Or which he or she is, or may become, involved in an official capacity.
- (3) Or involving Government personnel serviced by his or her legal office.
- d. The GC may authorize deviations from paragraphs 9–16*a* through *c* under exceptional circumstances.
- e. Upon receiving written approval for outside employment as described above, Army civilian attorneys may provide pro bono services subject to the restrictions and guidance in the Office of Government Ethics regulations and any qualifying authority regulation or policy. This guidance precludes pro bono services on Government time, or at its expense, or which may interfere with the discharge of official duties. Except for certain personnel proceedings (see 18 USC 205), representing anyone else in a matter in which the Government has a direct and substantial interest is also prohibited.

Chapter 10

Promotion and Internal Placement

10–1. Merit promotion plans

a. Title 5, CFR Section 335.103 requires each agency to adopt and administer a “program designed to ensure systematic means of selection for promotion according to merit.” The DCS, G–1 is responsible for ensuring that all positions are covered by a merit promotion plan to which promotion and internal placement are made and that local merit promotion plans are in compliance with the requirements of this regulation, DOD and OPM policy.

b. Commanders of ACOMs, ASCCs, DRUs, the AASA, or their designee, will—

- (1) Coordinate with the servicing CPAC on the development of merit promotion plans, ensuring that all positions to which promotion is made are covered.
- (2) Ensure that their plans fulfill the requirements of 5 CFR, Part 335 and this chapter.
- (3) Review their plans every 5 years and promptly revises them if necessary to fulfill the above requirements.
- (4) When plans are to be revised, notify the appropriate union official(s) of the proposals and follow union negotiation procedures.

c. A merit promotion plan establishes the procedures and practices for filling positions. The number of plans will be determined by such factors as position grouping and location. A plan must be appropriate for all positions covered.

(1) This chapter applies to positions in the competitive service. Coverage includes competitive positions occupied by employees hired under special excepted service appointments (such as, Veterans Recruitment Appointment (VRA), individuals with disabilities, and disabled veterans). This chapter does not apply to jobs in the SES.

(2) Plans will provide—

(a) That candidates eligible for special noncompetitive appointment (for example, VRA, selective placement programs, disabled veterans, family members under EO 12721) will be considered for competitive service jobs within restraints set by the special appointing authority.

(b) For noncompetitive conversion of individuals with disabilities.

(c) For noncompetitive appointment of eligible veterans with 30 percent disability who are serving on temporary appointments under 5 CFR Section 315.707.

(d) For noncompetitive promotion to the highest grade previously held. Plans must allow but may not require, noncompetitive promotion or transfer up to and including any grade previously held in a non-temporary position in the competitive service.

d. Servicing CPAC directors and Equal Employment Opportunity (EEO) officers will—

(1) Ensure that merit promotion and related placement plans set procedures to provide equal opportunity for all candidates, consistent with local Affirmative Action Program (AAP) Plans.

(2) Follow paragraph 10–9 of this chapter if selection for training or employment or the promotion pattern in any unit shows that—

(a) Local AAP plans have not been fully implemented

(b) Regulatory or procedural violations or other deficiencies exist.

10–2. Merit promotion requirements

All local merit promotion plans must be written in accordance with the following requirements and the requirements set forth in 5 CFR Part 335.

10–3. Requirement 1

Each merit promotion plan must establish procedures for promoting employees that are based on merit and are available in writing to candidates. Plans must list appropriate exceptions, including those required by law or regulation (see para 10–8). Actions under a promotion plan—whether identification, qualification, evaluation, or selection of candidates—will

be made without regard to race, color, religion, sex (including pregnancy and gender identity), national origin, age (as defined by the Age Discrimination in Employment Act of 1967, as amended), disability, genetic information (including family medical history), marital status, political affiliation, sexual orientation, labor organization affiliation or non-affiliation, status as a parent, or any other non-merit-based factor, unless specifically designated by statute as a factor that must be taken into consideration when awarding such benefits, or retaliation for exercising rights with respect to the categories enumerated above, where retaliation rights are available, and must be based solely on job-related criteria.

10–4. Requirement 2

The area of consideration must be sufficiently broad to ensure the availability of high quality candidates, taking into account the nature and level of the positions covered. Organizations must also ensure that employees within the area of consideration who are absent for legitimate reasons, such as, on detail, on leave, at training courses, in the military service, or serving in public international organizations or on Intergovernmental Personnel Act assignments, receive appropriate consideration for promotion. Servicing CPACs will—

- a.* Provide for areas of consideration that ensure the availability of high quality candidates.
- b.* Accept and rate applications from current DA employees with personal competitive status, even if such candidates apply to an announcement with an area of consideration that would otherwise exclude their consideration. These candidates will be given an opportunity to compete equally for referral with the local work force.
- c.* Ensure that merit promotion plans do not bar—
 - (1) Meeting special civilian personnel program requirements.
 - (2) Reaching AAP objectives.
 - (3) Placing employees completing training programs, such as graduating DA career interns.
 - (4) Placing Family member employees relocating to accompany their civilian or military sponsors.

10–5. Requirement 3

To be eligible for promotion or placement, candidates must meet the minimum qualification standards, prescribed by the OPM or any agency-specific standard that has been approved for use. Methods of evaluation for promotion and placement, and selection for training that leads to promotion, must be consistent with 5 CFR, Part 300 Subpart A. Local plans will establish procedures to provide due weight to performance appraisals and incentive awards when submitted by applicants.

- a.* The servicing CPAC will utilize performance appraisals and incentive awards to assist with determining qualifications.
- b.* Only those appraisals and incentive awards that are relevant to the position to be filled will be considered.
- c.* Annual, special, and appropriate appraisals from private sector organizations that contain information relevant to the vacancy can be requested from applicants.
- d.* Selecting officials may request applicants provide performance appraisals and incentive awards upon receipt of referral list.

10–6. Requirement 4

Selection procedures will provide for management’s right to select or not select from among a group of best-qualified candidates. They will also provide for management’s right to select from other appropriate sources, such as reemployment priority lists, reinstatement, transfer, individuals with disability, VRA-eligibles or those within reach on an appropriate competitive examination registers certificate. In deciding which source or sources to use, managers have an obligation to determine which is most likely to best meet the organization’s mission objectives, contribute fresh ideas and new viewpoints, and meet affirmative action goals.

- a.* A reasonable number of the best qualified candidates will be referred for selection. Consider requirements of the AAP when setting the number. Factors that may influence the number are—
 - (1) Size and nature of the applicant pool.
 - (2) Ability of managers to review the number of candidates in a prompt and efficient manner.
- b.* In filling positions, selecting officials must consider the activity’s approved AAP plans for minorities, women, and individuals with disabilities as a part of the selection process. Selecting officials must state their reasons for expecting the selectee to perform successfully, and record the reasons for their competitive selections on the referral list.

10–7. Requirement 5

Administration of the promotion system will include recordkeeping and providing necessary information to employees and the public, ensuring the individuals rights to privacy are protected. The servicing CPAC must maintain a temporary record of each promotion sufficient to allow reconstruction of the promotion action, including documentation on how

candidates were rated and ranked. These records may be destroyed after 2 years, or after the program has been formally evaluated by the OPM (whichever comes first) if the time limit for grievance has lapsed before the anniversary date.

10–8. Covered personnel actions

a. Competitive procedures in agency promotion plans apply to all promotions under 5 CFR Section 335.102 and to the following actions-

(1) Temporary promotions. Competitive procedures must be used for temporary promotions more than 120 days in duration to higher graded positions (prior service under all details to higher graded positions or temporary promotions is included whether competitive or noncompetitive during the preceding 12 months). The conditions for making temporary promotions are as follows-

(*a*) Temporary promotions may be extended for a definite period not to exceed 5 years.

(*b*) A temporary promotion may be made permanent without further competition, provided the temporary promotion was originally made under competitive procedures and the fact that it might lead to a permanent promotion was made known to all potential candidates.

(*c*) A temporary promotion may not be used for the purpose of training or evaluating an employee in a higher graded position.

(*d*) When a temporary promotion is terminated, the employee will be returned to the position from which they were temporarily promoted; or, with their consent, to a different position of equivalent grade and pay. (See 5 CFR Section 335.102(f)(1).) When a temporary promotion is to an organization in a different command, the losing and gaining activities must agree to the temporary promotion and decide in advance which activity will assume responsibility for placement of the employee when the temporary promotion ends. If no decision is made, the employee will return to their permanent position of record.

(*e*) When employees are qualified for promotion, and are assigned to higher graded positions for more than 60 days, use of a temporary promotion instead of a detail is encouraged.

(2) Selection for details for more than 120 days to a higher graded position or to a position with known promotion potential.

(3) Selection for training, which is part of an authorized training agreement, part of a promotion program, or required before an employee may be considered for a promotion. (See 5 CFR Part 410.)

(4) Reassignment or demotion to a position with more promotion potential than previously held on a permanent basis in the competitive service (except as permitted by reduction-in-force regulations).

(5) Transfer to a higher graded position.

(6) Reinstatement to a permanent or temporary position at a higher grade than the last grade held in a non-temporary position in the competitive service.

b. Competitive procedures do not apply to—

(1) A promotion resulting from the upgrading of a position without significant change in the duties and responsibilities due to issuance of a new classification standard or to correct an initial classification error.

(2) A position change permitted by reduction-in-force regulations. (See 5 CFR Part 351.)

c. Other promotion actions may be excepted subject to the guidance below. Exceptions must be outlined in local merit promotion plans.

(1) Career promotions.

(*a*) A promotion without current competition—when at an earlier stage an employee was selected under competitive examining procedures or under competitive promotion procedures—for an assignment intended to prepare the employee for the position being filled (the intent must be made a matter of record and career ladders must be documented in the promotion plan).

(*b*) A promotion resulting from the addition of duties and responsibilities may be made noncompetitively, only when all the following conditions have been met:

1. The employee is the only employee in the organizational unit to whom the additional duties and responsibilities could be assigned.

2. The complexity, range and/or level of difficulty in the duties and responsibilities of the position have gradually increased over a period of time.

3. The employee continues to perform the same basic functions as those in the former position, and the duties of the former position are in the new position.

4. The addition of the duties and responsibilities does not adversely affect another employee's position, such as job abolishment or the erosion of their duties

5. The employee meets all eligibility, qualification, and certification requirements for the position.

(c) Career-ladder promotions of employees appointed under noncompetitive appointing authorities (see para 10–1(3)(a)) require competition unless excepted in local plans.

(2) A career ladder promotion following noncompetitive conversion of a Pathways Program student in accordance with the requirements of 5 CFR Part 362.

(3) A position change from a position having known promotion potential to a position having no higher promotion potential.

(4) A temporary promotion of 120 days or less.

(5) Special consideration for re-promotion.

(a) Except as noted in (c) below, DOD policy requires special consideration for re-promotion to be given to employees receiving grade or pay retention benefits. This special consideration must be given at least as long as the retention benefits continue. Coverage under the DOD policy stops when the retention benefits are discontinued. However, additional optional coverage may be given under (b) below. (See DODI 1400.20 for information on the DOD policy.)

(b) Special consideration for re-promotion may be given to current, permanent DA or other DOD employees who are not receiving retention benefits, but have been changed to a lower grade without personal cause and not at their request. This coverage may be given to DA or other DOD employees who were demoted in other Federal agencies under like conditions. The extent of coverage (such as length of time or number of referrals, positions covered, effect or declinations, and so forth) is determined by the applicable merit promotion plan.

(c) Special consideration for re-promotion will not be granted to employees—regardless of their entitlement to retention benefits—if they are demoted to correct a procedural, regulatory, or program violation under paragraph 10–9, or if a demotion is accepted to enter a training program and then the training is not completed.

(6) Priority consideration.

(a) Priority consideration may be given only to candidates who were adversely affected due to a procedural, regulatory, or program violation. If reconstruction shows that the candidate is not in the best qualified group, that candidate is not adversely affected and no priority consideration is to be granted.

(b) Priority consideration may be granted only once for each time proper consideration in a competitive promotion action was not given. It is important, therefore, that the candidate is given a bona fide consideration before consideration is given to candidates under competitive procedures. If the candidate does not satisfactorily meet all the job-related criteria, as determined by local procedures, then the candidate should not be referred and the conditions of an appropriate vacancy have not been met. Nor will a candidate have received bona fide consideration if, after referral, management decides not to fill the vacancy at that time. In this situation, the candidate will be referred for the next bona fide appropriate vacancy.

(c) Priority consideration will be for the next appropriate vacancy to make up for the consideration lost. The next appropriate vacancy is one that meets all the following conditions—

1. A similar type of position in the same pay system as the position for which the candidate failed to receive proper consideration.

2. One in which the candidate has indicated prior interest.

3. One at the same grade level with no higher potential than the position for which consideration was lost. If the position has known promotion potential, advancement beyond the entry grade is contingent upon satisfactory performance and not guaranteed by the priority consideration.

4. Candidates will be referred on the DA Form 2600 (Referral and Selection Register).

(7) Order of referral under (5) and (6) above.

(a) Except as noted in (b) below, the order of referral for candidates receiving special consideration for re-promotion or priority consideration is determined by the applicable merit promotion plan.

(b) Candidates given remedy under 29 CFR Section 1614.501 (EEO complaints) are referred before consideration is given to candidates covered by this chapter. However, when remedy is given under Section 1614.501, it will not subsequently be given under this chapter.

10–9. Grievances

Employees have the right to file a complaint relating to a promotion action. Such complaints will be resolved under appropriate grievance procedures. The standards for adjudicating complaints are set forth in 5 CFR Part 300. While the procedures used to identify and rank qualified candidates are proper subjects for formal complaints or grievances, non-selection from among a group of properly ranked and certified candidates is not an appropriate basis for a formal complaint or grievance. There is no right of appeal to the OPM, but the OPM may conduct investigations of substantial violations of OPM requirements.

10–10. Position changes

a. Authorized position changes.

(1) Career and career-conditional employees may be promoted, demoted, reassigned, or transferred in accordance with 5 CFR Section 335.102.

(2) Overseas-limited employees serving under appointments of indefinite duration or under overseas-limited term appointments may be promoted, demoted, or reassigned to any other position to which an initial appointment of the same type is authorized by chapter 17.

(3) Employees on indefinite and status quo appointments may be promoted, demoted, or reassigned if they meet legal and qualification requirements for the position being filled. This authority does not apply to a position an agency is authorized to fill by overseas limited appointment.

(4) Term employees may be promoted, demoted, or reassigned to another position covered by the same term appointment authorization. Applicable merit promotion plans should be updated to include this provision.

(5) Employees on temporary appointment, pending establishment of a register, may be reassigned to any position to which their original appointment could have been made by the same appointing officer, from the same recruiting list, in the same order of consideration.

(6) VRA appointees may be promoted, demoted, reassigned, or transferred in accordance with provisions prescribed in 5 CFR Part 307.

b. Limitations on position changes.

(1) Although position changes are not subject to the policies governing appointments from competitive examination registers or temporary appointments outside of registers, they must be made with regard to applicable requirements of the merit system. Except as shown under (2) of this section the employee selected must meet the OPM minimum qualification standards as well as legal requirements for the position (see 5 CFR Part 338). The action must meet the requirements in this chapter and any additional procedural requirements set forth in the organizations merit promotion program.

(2) Qualifications may be modified if it is determined the individual can successfully perform the work of a position even though they may not meet all the requirements in the OPM qualification standard. This authority is not to be used for placement to a higher grade, except where the employee previously held a position at that grade or higher.

(3) Prior approval of exceptions from standards and requirements. The authority of agencies to make position changes is subject to the requirement that prior OPM approval be secured for any action that would require an exception from applicable standards and requirements in 5 CFR Part 338.

(4) Final action on any promotion or other internal placement will be withheld for all persons who are being investigated based on data considered derogatory under AR 380–67.

10–11. Management directed reassignments

An employee may have a valid reason for not wishing to be reassigned to another position. When an employee does not voluntarily consent to such an assignment, he or she will be given advance written notice by the appropriate management official or their designee. The advance notice will include reasons for the reassignment, the effective date, and an opportunity for the employee to reply. If the employee does not reply, no further notice will be issued, and the action will be effected as stated in the advance notice. If the employee replies before the effective date, the reply will be considered in determining if the reassignment should be effected, and the employee will be advised of the decision by the appropriate management official. The amount of advance notice, the amount of time the employee has to reply, and the method of advising an employee who replies are determined locally. Reassignment in the same position as a result of position review or classification action does not require an advance notice.

10–12. Effect of position change on tenure

a. A promotion, demotion, or reassignment does not change an employee's tenure except as provided in 5 CFR Part 316 (status quo employee).

b. The promotion, demotion, or reassignment of a career or career-conditional employee before they have completed probation is subject to completion of the period in the new position. No new probation is required if one is completed before the action (see 5 CFR, Part 315).

10–13. Effective date for implementing a position change

A position change must be approved by signature of someone with authority to make such approvals, unless the effective date is set by circumstances beyond the control of the appointing officer. For actions involving a change between employing activities, CPACs will set the effective date to avoid any break in service. When travel is involved, an advance agreement will be reached as to the responsibility for covering travel expenses. In all such cases, the employee will be consulted in arriving at an effective date.

10–14. Corrective actions

a. Types of corrective actions. Failure to adhere strictly to law, OPM regulations and instructions, agency policies and guidelines, and local promotion plans are to be rectified promptly by the OPM or the activity and/or CPAC involved. Action to rectify a violation may involve an employee who was erroneously promoted, an employee or employees who were not promoted or considered because of the violation, or officials who caused or sanctioned the violation. It also may involve correction of program deficiencies. The nature and extent of actions to be taken in any case have to be determined on the basis of all the facts in the case, with due regard to the circumstance surrounding the violation, to the equitable and legal rights of the parties concerned, and to the interests of the Government.

b. Types of promotion violations.

(1) *Procedural.* A procedural violation occurs when a promotion action does not conform to the procedural requirements of the applicable promotion plan. It may include, for example—

- (a) Failure to consider an employee entitled to consideration.
- (b) Or selection of an employee not in the best qualified group.
- (c) Or failure to give the required weight to an evaluation factor prescribed by the plan.

(2) *Regulatory.* A regulatory violation occurs when the promoted employee did not meet legal requirements or OPM regulatory requirements at the time of the promotion. It may include, for example—

- (a) Failure to meet time-in-grade requirements, or
- (b) Failure to meet OPM qualification requirements.

(3) *Program.* A program violation occurs when agency promotion guidelines do not conform to OPM requirements or agency merit promotion plans do not conform to agency guidelines. It may include, for example—

- (a) Use of inappropriate evaluation methods.
- (b) Or establishment of inappropriate minimum areas of consideration.
- (c) Or failure to consult employees' and employee organizations when required.

c. Action involving erroneously promoted employee.

(1) *Retention in position.* The general rule is that an erroneously promoted employee may be retained in the position only if the promotion action can be corrected to conform essentially to all OPM and agency requirements as of the date the action was taken. As indicated above, however, corrective action decision must be tempered by all the facts surrounding the violation. Under some conditions, it may be permissible to retain the employee in the position even when the general rule does not apply.

(2) *Procedural violation.* In this kind of violation, an employee may be retained in the position only if—

(a) Reconstruction of the promotion action shows that he or she could have been selected had the proper procedures been followed at the time the action was taken.

(b) Or OPM gives approval.

(3) *Regulatory violation.* In this kind of violation, an employee may be retained in the position only if—

- (a) They now meet the necessary qualifications or regulatory requirement.
- (b) And OPM gives approval.

(4) *Program violation.* An employee generally may be retained in the position if there was no accompanying procedural or regulatory violation. OPM is to be notified once the program correction is made.

(5) *OPM approval.* OPM approval for retaining an employee in the position will be dependent on the nature, extent, and seriousness of the violations involved in the particular situation. It may take into account such factors as—

(a) How close the employee was to meeting qualification or regulatory requirements at the time of promotion if a regulatory violation is involved.

(b) How close the employee was to being in the best qualified group if a procedural violation is involved.

(c) How much time has elapsed since promotion?

(d) Whether identification can be made of employees who were or should have been in the group certified to the selecting official and whether they have been promoted or have left the agency.

(6) *Correction action.* If an employee is not retained in the position, they must be returned to their former position or placed in another position for which qualified. If the latter position is in a higher grade or level than the position they were in prior to the erroneous promotion, the position change is made under competitive promotion procedures as though the employee were still serving at the grade or level from which erroneously promoted.

d. Action involving non-selected employees.

(1) If the action taken to correct the erroneous promotion was to require that the position be vacated, an employee who was not promoted or given proper consideration because of the violation (that is, an employee in the best qualified group who was not selected or an employee who should have been in this group but was not) may be considered for promotion to the vacated position before candidates are considered under a new promotion or other placement action.

(2) Priority consideration may be given to correct an error in the referral process or because of a prohibited personnel practice. This consideration is given under paragraph 10–8 of this guidance, unless directed otherwise by law, regulation, or higher authority.

e. Action involving responsible officials. Action taken against officials responsible for a violation will be under laws and regulations regarding military or civilian personnel.

10–15. Evaluating employees for promotion and internal placement

This paragraph clarifies current minimum required procedures for evaluating candidates for promotion and internal placement. These procedures cover evaluation based on competencies, knowledge, skills, and abilities. Any candidate evaluation procedure that meets the needs of the hiring activity and that complies with regulatory requirements may be used. See paragraph 10–16 for additional methods

a. Candidate evaluation procedures must be based on a job analysis as identified in 5 CFR Section 300.103. Job analysis is the foundation for all assessment and selection decisions. To identify the best candidate for a position, it is crucial to fully understand the nature of that job. Job analysis provides a way to develop this understanding by examining the tasks performed in a job, the competencies required to perform those tasks, and the connection between the tasks and competencies. The job analysis, as well as the criteria developed, may cover a single position or a group of positions with common characteristics. If a job analysis has been completed and the documentation is still accurate, a later analysis need not be as thorough.

b. The evaluation criteria developed in the job analysis must go beyond the standards for determining basic eligibility, but they must not exceed those expected based on the grade of the job.

c. At least one subject matter expert (SME) must provide information for the job analysis that is conducted by the CPAC specialist. The SME must be knowledgeable of the requirements of the job to be filled. In some situations, the CPAC specialist may be a SME of the job to be analyzed. Reliability may be improved and additional job information may be obtained by using more than one SME; however, this is not required.

d. Documentation of the job analysis is essential to show that the candidate evaluation procedures are job related. The documentation must include—

- (1) The principal tasks, duties, or responsibilities of the position.
- (2) The competencies, knowledge, skills and abilities needed to carry out those tasks, duties, or responsibilities.
- (3) Identification of the competency, knowledge, skill or ability that must be brought to the job and the ones that may be learned or developed on the job.
- (4) Identification of the skill that will distinguish high quality from marginal or average performers.
- (5) Identification of selective placement factors, if any, and the justification for their use.

e. Although evaluation of training, experience, and education is not required to be used as one of the multiple measures, it is often used within DA to evaluate the candidate's level of a competency. Training, experience, and education provide opportunities to increase knowledge or improve skills and abilities.

(1) In evaluating training, experience, and education, determine how well these have prepared the candidate for the job to be filled. Evaluate the type and quality of training, experience, and education the candidate has relative to the requirements of the job to be filled.

(2) Purely quantitative factors such as length of experience or amount of education may be used only when there is a clear and positive relationship to quality of performance. Some examples are increases in accuracy, speed or performance, and quality of workmanship. Unless there is evidence that a specific amount of education or training produces the required knowledge, abilities, or skills (and any lesser amount does not), it is not appropriate to use length or amount of experience as a criterion factor. (This does not rule out using length of service or length of experience as a tie breaker, if provided for in the merit placement plan or in the negotiated agreement.)

f. When evaluating awards, determine if the supporting justification gives information about the candidate's knowledge, skills or abilities that relates to requirements of the job to be filled. A mechanical system of crediting awards is not a substitute for this judgment and may not be used.

10–16. Evaluation methods

A variety of methods are available for evaluating qualifications. When the evaluation criteria are identified, determine appropriate evaluation instruments (measures of qualifications). Examples of additional evaluation instruments are available online at www.opm.gov. The instruments chosen must—

- a.* Provide information specifically related to the competencies of the job to be filled.
- b.* Provide a valid measure of the competencies needed for high quality performance in the job to be filled.
- c.* Make meaningful distinctions among candidates based on expected performance.
- d.* Be practical and feasible in the terms of cost, time, and ease of administration.

10–17. Occupational questionnaires

The occupational questionnaire is an assessment tool developed from the job analysis and approved by the selecting official prior to the position being announced. The questionnaire typically consists of multiple choice, yes-or-no, or similar types of questions that cover a variety of competencies related to the position. Questionnaires are to be developed and used for each position or group of positions to be filled and included in the merit placement record.

10–18. Documentation

Each merit placement record will include the required documentation described in paragraphs 10–2 through 10–7, and paragraph 10–14. The documentation will allow a complete audit and reconstruction of the action by an independent reviewer. If the documentation is not included, state where the documentation can be located. Data on sex, race, and national origin of applicants should be maintained for analysis, as required, by the Uniform Guidelines on Employee Selection Procedures.

10–19. Responsibility for proper use of evaluation procedures

a. CHRA is responsible for—

(1) Ensuring personnel involved in the development, administration, and evaluation of the programs, plans, procedures and methods for promotions and related placement actions have the needed technical competence.

(2) Wherever required, special training is provided to ensure such technical competence.

b. CHRA, EEO, and the Civilian Personnel Evaluation and Analysis (CPEA) Office will have the shared responsibility in assessing selection procedures at least once a year to determine the impact on minorities and women. Use the “four-fifths rule” as an initial indicator that adverse impact may exist in a selection procedure. Twenty to 30 selections are enough to obtain needed data in applying the “four-fifths rule.” When fewer than this number occurs in the year, data from use of the “four-fifths rule” may not be as meaningful. Therefore, review the procedures, using rational judgment for obvious areas where bars exist and those bars may be removed or confirmed. When procedures cause discrimination, analyze each part of the procedure and determine the cause(s). Confirm or replace such procedures in favor of others that do not result in adverse impact. Advise AG–1(CP) of mandatory requirements of law or OPM regulation which cause an adverse impact.

Chapter 11

Time-in-Grade Restrictions

11–1. Applicability

This chapter implements the time-in-grade restrictions of 5 CFR 300, subpart F, which applies to the advancement of General Schedule employees in the competitive service. Excepted service positions will also be subject to time-in-grade restrictions unless the position is exempt by specific policy.

11–2. Normal line of promotion (progression)

a. One grade interval positions will normally follow a one-grade interval pattern of progression. However, before a manager or supervisor may request a two-grade promotion on the basis of normal line of promotion, he or she must be able to support that there is no position in the grade immediately below that of the position to be filled. Whether such a position exists may be difficult to determine. Managers and supervisors must—

(1) Consider the organizational structure (determine if the structure and positions optimize productivity and efficiency).

(2) Consider past practices (what has the organization done in the past in this type of situation).

(3) Determine if a position in the next lower grade is in the normal line of promotion.

(4) If it is determined there is no position in grade immediately below the position to be filled, they will request the CPAC to establish the position.

b. The CPAC will verify there is no position in the next lower grade in the normal line of promotion to the position to be filled. Qualified applicants who meet OPM’s definition of in-service placement, may be promoted provided that the employee has 52 weeks in positions no more than two grades below the position to be filled.

c. There may be some cases that do not meet the above criteria. A manager or supervisor may submit a memorandum requesting a waiver to time-in-grade restrictions when he or she feels a situation does not meet the above criteria, but due to special circumstances, warrants a review. These waivers will be submitted by the appointing officer, through command channels to the AG–1(CP), for submission to DOD for consideration. The special circumstances should be clearly and fully described. If prior approval of the qualifications of the employee proposed for promotion is also required, the request

and the necessary information should be submitted with the request for approval. When the position involved is in the excepted service, requests will be sent to the appropriate command headquarters for decision.

d. In each two-grade promotion made under the “normal line of promotion” provision, a statement of the basis for the action must be placed in the eOPF of the promoted employee. The statement must address that there is no position in the next lower grade in the normal line of promotion. For an action based on “organizational structure,” the organizational entity must be described. For an action based on “past practice” there must be a statement clearly stating the past practice of the organization. The required statements will be entered on the SF 52 (Request for Personnel Action).

11-3. Exceptions

Time-in-grade restrictions do not apply to situations—

- a.* Identified in 5 CFR Section 300.603.
- b.* To a referral list for excepted appointment when the list is constructed, and selections made according to 5 CFR, part 302.

11-4. Employees returning from military service and compensable injury

Employees exercising restoration rights due to absence to perform duty with the uniformed services or because of compensable injury, are not penalized for the non-pay status. The non-pay status is creditable for length of service purposes as though the employee had remained in a pay and duty status. Non-pay status under these situations is creditable for time-in-grade purposes.

11-5. Waivers

The DOD retains the authority to approve waivers of time-in-grade restrictions due to undue hardship to an agency or inequity to an employee in the competitive service. Waivers are limited to no more than three grades for one employee during any 52-week period. OPM retains approval authority for granting waivers beyond three grades during a 52-week period and retroactive waivers involving an erroneously promoted employee. All waiver requests will be submitted to the Office of the Assistant G-1 (Civilian Personnel), (DAPE-CPP-SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060. Packages should include the below—

- a.* A determination that a hardship exists clearly showing the following:
 - (1) Difficulty the organization would experience were the employee not promoted to the higher graded position.
 - (2) Recruitment efforts (for example, vacancy announcement and referral list) that were made to locate a fully qualified candidate and why these efforts were not successful or improper under the circumstances.
- b.* A finding of inequity must clearly show the actual lack of equity. The request for waiver should explain and document the exact circumstances leading to the injustice or unfairness.
- c.* The date of the employee's last promotion; also, certify that the employee meets all other qualification requirements.
- d.* The employee's current resume.
- e.* A copy of the higher-graded position description.

11-6. Waivers of time-in-grade restrictions in the excepted service

a. Commanders of ACOMs, ASCCs, DRUs, and the AASA may approve requests for waivers of time-in-grade restrictions in the excepted service. Requests involving positions in the headquarters of ACOMs, ASCCs, DRUs, in the Office of the AASA, or those activities reporting directly to HQDA, must be sent to the Office of the Assistant G-1 (Civilian Personnel), (DAPE-CPP-SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060, for approval. These requests must be fully documented and will contain justification as outlined in paragraph 11-5. Requests will be maintained on file for at least 2 years. If approved, a copy must be filed in the employee's eOPF. Approval of requests for waivers must meet all of the following conditions—

- (1) The request must be supported by a determination that hardship or inequity would exist were the waiver not approved.
- (2) The waiver authorized can total no more than three grade levels for one employee during any 1 service year; waivers beyond three grade levels during a service year require the prior approval of AG-1(CP).
- (3) The employee must meet minimum qualification requirements of the appropriate qualification standard.

b. Excepted service requests for retroactive waivers of time-in-grade restrictions will be sent through the AG-1(CP) to the ASA(M&RA) for approval. Such requests will include actions in which an erroneously promoted employee does not yet meet time-in-grade restrictions and actions in which an erroneously promoted employee now meets the restrictions. The employee may be credited with experience gained during the period of erroneous promotion; however, service credit for the period is disallowed. When the erroneously promoted employee is retained in the position, time-in-grade eligibility

for promotion to the next higher grade will not begin before the date of approval of the retroactive waiver. The appointing authority will establish an effective date on or after the approval date.

c. Waivers of time-in-grade for attorney positions are discussed in chapter 9.

Chapter 12

Position Management

12-1. Authority to classify positions

Position classification includes the determination and certification of the title, pay plan, series and grade of civilian positions in accordance with controlling position classification standards, regulations, and statutory requirements.

a. Classification authority may be delegated to supervisors only for those positions under their direct supervisory control. Classification authority will not be delegated to someone on temporary assignment or detail. Under no circumstances will the classification authority of the supervisor or manager exceed the level of authority delegated to the senior commander or director. Delegated classification authority cannot be utilized until proper training is received from CPAC.

b. Positions subject to coverage under special retirement are subject to a variety of complex requirements that have an impact on entitlements as well as budgetary implications. To ensure that all such positions are accurately described, classified, and meet all the necessary statutory and regulatory requirements, the authority to exercise classification authority for positions subject to coverage under Special Retirement is limited to the delegation established on the delegation matrix.

c. When commanders or directors choose not to delegate position classification authority to subordinate managers and supervisors, the authority to classify civilian positions will be exercised by the appropriate servicing CPAC and/or retained and exercised by the commander or director. Delegation to non-managerial or non-supervisory personnel is prohibited.

d. Delegations will be maintained by the organization or servicing CPAC.

12-2. Responsibilities for establishing positions

Organizing work, assigning duties, and structuring positions are inherent authorities of line managers (military and civilian). The chain of command is accountable for the effective management of position structures.

a. Responsibilities:

(1) Activity commanders and directors will—

(a) Comply with policies and requirements established by the Office of Management and Budget (OMB); the Secretary of Defense; OPM; and HQDA.

(b) Establish supervisory accountability for position management performance by developing performance standards for appropriate civilian supervisors and ensure that position management performance is considered in the annual evaluation of military and civilian supervisors with significant position management responsibilities.

(c) Ensure review of positions during efficiency reviews.

(2) Managers and supervisors will—

(a) Manage positions efficiently and economically.

(b) Consult with CPAC staff during the initial planning of new or revised organizations to develop the best structure.

(3) CPAC directors or their designated representatives will—

(a) Advise and assist the commander, position management officer (if appointed), managers, and supervisors on all aspects of the activity's position management program.

(b) Assist designated managers and supervisors in planning, scheduling and carrying out the program management studies program.

(c) Take part, with members of other functional staffs, in reorganization planning and efficiency reviews.

b. Provisions of this chapter apply to all appropriated fund civilian positions, including local nationals and military positions, in a mixed military-civilian work force.

12-3. Position structures

a. Mixed grade level jobs will be structured so that grade-controlling work is performed more than 50 percent of the time, unless a different mix is cost effective or mission essential as identified in OPM's Introduction to Position Classification Standards.

b. Organizational fragmentation will be avoided and supervisory and leader positions kept to a minimum. Activities should strive for the following—

(1) Supervisory positions at the first level of supervision should normally direct at least eight positions, unless the functions and work require a small highly specialized work force and structuring within another organizational element is not feasible.

- (2) Leader positions, whether civilian or military, should not be established in functions that do not justify performance of leader duties.
- (3) Supervisory positions should not be structured to provide co-equal authority between the chief and deputy of a unit.

12-4. Position management and The Army Authorization Documents System (TAADS)

Position management policies should be applied when developing tables of distribution and allowances (TDA). The title, series and grade cited in TDA documentation will be based on guidance from personnel with classification authority. When a position is officially established and classified, the TDA will be changed if necessary. The U.S. Army Force Management Support Agency will evaluate the position structure shown in TDA documentation and inform commands of needed improvements. Policy guidance for TAADS is provided in AR 570-04.

12-5. Position management reviews

Commanders of ACOMs, ASCCs, and DRUs, as well as the AASA will ensure that position management reviews are conducted to analyze the current position structure, to establish the most efficient and effective position structure, to achieve classification accuracy and consistency, and to obtain management commitment to implement a most efficient organization.

12-6. Planning and conducting reviews

- a. Commands will develop review schedules for each organization at least once every 3 years. These schedules will be coordinated and adjusted as needed to set specific dates for organizational coverage. This will avoid duplicate reviews when new classification standards are issued or efficiency reviews are scheduled.
- b. Reviews will be carried out under the direction of an appropriate manager or supervisor with the assistance of the CPAC and other appropriate staff elements
- c. The review will address the position structure in relation to mission requirements, accuracy of the description and classification of positions.
- d. Supervisors will act promptly to correct inaccurate job descriptions and classifications.

Chapter 13 Training Agreements

13-1. Training agreement uses

This chapter supplements DODI 1400.25, Volume 410 and covers training agreements used as-

- a. A substitution for normal qualification standards requirements.
- b. A basis for promotion consistent with 5 CFR 410.
- c. A plan that incorporates (a) and (b) above.

13-2. Need for prior approval

Training agreements that allow for the modification of qualifications standards, accelerated promotion, or both, must be approved before trainees enter the training program.

13-3. Justification and documentation

- a. Use of the authority to approve training agreements will be justified and documented based on the following conditions—
 - (1) The training agreement may not be a vehicle for moving temporary or excepted employees into career or career-conditional positions without proper authority for the assignment (such as VRA, executive order, reinstatement eligibility).
 - (2) The training agreement cannot impose any form of positive education requirements except those already required by the qualification standard for the target positions. The agreement will not be used to waive requirements that are contained in standards for the target or trainee positions.
 - (3) The training agreement must meet all requirements of the OPM guidelines.
 - (4) The training agreement must state that at least 50 percent of the training must be in the target occupation or directly related fields.
 - (5) The training agreement will provide for pay retention for eligible DA employees who accept downgrades into the training program. The agreement may not provide for noncompetitive re-promotion to the former grades of employees who fail to complete the training satisfactorily.

(6) The training agreement may be the basis for crediting qualifications or service at an accelerated rate only when making assignments to positions under the program. It may not provide accelerated credit for qualifications earned in training by anyone who leaves the program without reaching the target position.

(7) The training agreement may not contain any elements that violate requirements of the Government Employees Training Act, the Fair Labor Standards Act, Executive Order 11348, appropriation act provisions, or other applicable statutes or policies.

(8) The training agreement may not provide for the movement of trainees to positions in the SES.

b. The conditions and restrictions in *a.* above apply to all training agreements developed under this guidance. The following additional conditions apply to agreements that would authorize promotions as an exception to time-in-grade requirements-

(1) A clearly defined recruitment and/or retention problem must exist that can be relieved by rapid promotional advancement.

(2) Agreements that provide for consecutive accelerated promotions must be approved by OPM. Such approvals are usually based on severe shortage situations. Send proposed agreements for approval to AG-1(CP).

c. Use of this authority does not require a report; however, copies of approved ACOM, ASCC, DRU, and AASA training plans will be made available upon request of AG-1(CP). A copy of DA wide training agreements will be provided to AG-1(CP).

Chapter 14

Civilian Mobility Program

14-1. Procedures for the civilian mobility program

This chapter implements DODI 1400.24. It defines types of mobility used within DA, prescribes the conditions under which both mandatory and voluntary mobility programs may be established, and describes the procedures to implement such programs. DA has a continuing need for competent, confident civilian leaders with technical and managerial training and experience who can adapt to changes in focus and mission needs. Both mandatory and voluntary mobility programs have become increasingly important for DA leaders to obtain the employee competencies needed for quality performance in a rapidly changing environment.

a. The Army Civilian Training, Education and Development System (ACTEDS) is the DA program designed to develop technical, professional, and leadership competencies in civilian employees. ACTEDS Plans prescribe functional, organizational and geographic mobility. This chapter applies only to geographic mobility.

b. All formal mobility plans (career program and career field) and special individual mobility agreements must be consistent with the provisions of this chapter.

c. This chapter applies to all DA Civilian employees except SES members (see AR 690-900) and the Army Acquisition Corps (see PL 101-510, Title XII, Nov. 5, 1990, The Defense Acquisition Workforce Improvement Act).

14-2. Program responsibilities

a. ASA(M&RA) will—

(1) Approve establishment of formal mobility programs.

(2) Ensure programs comply with national consultation rights obligations for proposed formal mobility programs when appropriate with national unions in accordance with DA Memo 690-5.

(3) Approve overall civilian mobility program policy and periodically evaluate program effectiveness.

b. The DCS, G-1, through the AG-1(CP), is responsible for implementing policy and procedures for career mobility programs.

c. Career program functional chiefs in coordination with AG-1(CP), will recommend to DCS, G-1 for ASA(M&RA) approval, the establishment of formal DA-wide mobility programs necessary to meet specific mission or function requirements.

d. Commanders of ACOMs, ASCCs, DRUs, and the AASA will—

(1) Recommend to the ASA(M&RA), in coordination with DCS, G-1 and AG-1(CP), the establishment of formal civilian mobility programs to support missions and functions within their commands.

(2) Include mandatory geographic mobility funding requirements in annual budgetary submissions.

(3) Approve or disapprove special individual mobility agreements (see para 14-5, below).

(4) Approve or disapprove administrative actions, or release of employees from the provisions of an agreement, for individuals who fail to comply with mobility agreement provisions (see para 14-8*d*, below).

e. Formal mobility program manager. Career program functional chiefs, or commanders establishing formal mobility programs, will appoint a mobility program manager. The program manager will:

- (1) Initiate and operate the program in accordance with this regulation, merit procedures, and (EEO and AAP) principles.
- (2) Periodically evaluate program effectiveness.
- (3) Recommend to the commander administrative action, or release from the provisions of an agreement for employees who fail to comply with the mobility agreements.

14–3. Policies

a. Geographic mobility may be required of DA Civilians to obtain necessary knowledge, skills and abilities to improve mission effectiveness and to meet other management needs. Employees may be required to sign mandatory mobility agreements as a condition of employment.

b. Voluntary geographic mobility may be recommended for an employee to meet personal and professional career development goals.

c. Placement rights derived from OPM, DOD directives, other higher authority, or reductions in force (RIFs), may have an impact on relocations or movements under this regulation.

d. Return rights of employees assigned overseas under formal mobility programs or special individual mobility agreements, will be as described in the approved mobility program and individual agreements in accordance with the following—

(1) *Competitive service employees.*

(*a*) Subject to subparagraph (b), below, competitive service employees selected for overseas assignment, including those serving overseas under a mobility agreement, have a statutory right to return to the specific position held immediately prior to assignment overseas, unless the position no longer exists, (see 10 USC 1586). The provisions of chapter 18 of this regulation apply.

(*b*) When an agreement states that return rights are to a program rather than the position previously held, a competitive service employee must be advised that his or her signature on the agreement constitutes a waiver of the right to return to the position held prior to the assignment outside the continental United States (OCONUS). Paragraph 3*d* in figure 14–1, and paragraph 3*f* in figure 14–2, constitute this waiver. A separate waiver is not required if these example paragraphs are used. Modifications may be made to the appropriate paragraph(s) of existing approved agreements with employee approval.

(2) *Defense Civilian Intelligence Personnel System employees.* DCIPS excepted service employees selected for overseas assignment are eligible for administrative return rights under the provisions of paragraph 18–12.

(3) *Other excepted service employees.* Return rights for all other excepted service employees will be in accordance with chapter 18.

e. For employees covered under a civilian mobility program, the provisions of this chapter override policies in chapter 18 for purposes of implementing reemployment rights under 10 USC 1586.

f. Competitive service employees selected for an overseas position are subject to the rotation requirements of DODI 1400.25 Vol. 230.

g. Relocation of employees assigned to a position designated as emergency-essential is governed by the provisions of AR 690–11, DODD 1400.31, and DODI 1400.32.

The following format is to be individually prepared and modified as required to suit each situation.

EMPLOYMENT MOBILITY AGREEMENT FOR (Name of the program)

1. Execution of the following agreement is required as a condition of employment upon entrance into the (program/function) in the (job series, title, and grade) position in (Army command/or other Department of the Army (DA) organization). Selection for this position is contingent upon the selectee's timely execution of this agreement.

2. The (mobility program manager) agrees to place the undersigned selectee in the above referenced position and agrees that future assignment of this individual will be consistent with the provisions of this agreement and program requirements set forth in (prescribing document.). Wherever possible, geographic preferences of the selectee will be considered in the relocation process. Management recognizes its obligations to exercise judgment and integrity in placing employees under the terms of this agreement.

3. As the undersigned applicant, I understand that:

- a. The requirements of the rotation plan for the (name of the program) are set forth in (prescribing document) and acknowledge my obligation to accept assignments, i.e., temporary or permanent change of duty station as directed by (proponent or responsible office.)
- b. Assignments to duty stations within the continental United States (CONUS) normally will be for not less than three years unless I am promoted or mission requirements indicate otherwise.
- c. Assignments to overseas positions (to include Alaska and Hawaii) will be in accordance with established tours as defined in Department of Defense Joint Travel Regulation (DOD JTR), appendix Q.
- d. When leaving a position within CONUS to accept an overseas position (to include Alaska and Hawaii), I will have return rights to a position in the program in CONUS unless this agreement provides return rights to a specific position. I understand that I may request a return to the position I held immediately before my overseas assignment, but that my return rights are to a program position and not necessarily to my previously held position. I understand that this is in accordance with public law (as set forth in 10 USC 1586).
- e. Normally, overseas assignments will be followed by tours of duty within the CONUS.
- f. Authorized travel and transportation expenses incident to temporary or permanent changes in duty station will be paid by the government in accordance with DOD JTR.
- g. Failure to comply with this agreement may result in my separation from the program and from employment with the U.S. Government.
- h. This agreement may be terminated or modified by the mobility program manager issuing a written notice to that effect, with the approval of the commander or designee, at the level at which the agreement is approved, for substantial reasons which are in the best interest of the DA.
- i. I may request release from the provisions of this agreement in the event that subsequent circumstances become such that undue hardships or gross inequity would result if release were not granted.
- j. If I am serving overseas, I understand that release from the provisions of this agreement does not release me from the rotation or transportation agreement that I have signed in connection with the overseas transfer.
- k. If I sign this agreement and subsequently accept employment in a function not covered by the provisions of this agreement, decline to accept a directed reassignment under a reduction-in-force or transfer of function, my eligibility to qualify for a discontinued service retirement annuity or eligibility for severance pay may be adversely impacted.

Figure 14–1. Sample formal mobility program agreement

1. Although my geographic and functional preferences will be carefully considered, they are not binding on management.

4. Subject to paragraph 3j, above, this agreement is terminated if the undersigned applicant accepts employment in a function not covered by the provisions of this agreement.

Applicant signature	Date
Mobility Program Manager Signature (Designated Representative)	Date
Human Resource Specialist Signature	Date

Figure 14–1. Sample special individual mobility agreement---Continued

The following agreement is to be individually prepared and the sample shown should be modified as required to suit each situation.

SPECIAL INDIVIDUAL MOBILITY AGREEMENT FOR (Position Title, Series, and Grade) (Installation and Geographic Location)

1. Execution of the following agreement is required as a condition of selection to (position title, series, and grade) in (installation and geographic location).

2. The (mobility program manager) agrees to place (employee's name) in the position described in paragraph 1, above, on or about (day, month, and year) for (number) months and then assign the employee to another position in the (career program/career field/ACOM/AASC/DRU or AASA) consistent with the employee's career goals and previously stated geographic and functional availability subject to mission requirements. Management recognizes its obligation to exercise judgment and integrity in placing employees under the terms of this agreement and will make every effort to accommodate the employee's desires.

- a. I, the undersigned applicant, agree to accept an assignment to the position referenced in paragraph 1, above, for (number) months; and,
- b. Then accept an assignment to a position in the (career program/career field/ACOM/AASC/DRU of AASA) determined by previously stated geographic and functional availability; or,
- c. To an available position identified by management.

3. I understand that:

- a. Both management and I must approve any extension of the above described assignment.
- b. I may request release from the provisions of the agreement in the event that future circumstances become such that undue hardships or gross inequity would result if release were not granted.
- c. This agreement may be terminated or modified by the Mobility Program Manager issuing a written notice to that effect with the approval of the commander or designee, at the level at which the agreement is approved, for substantial reasons which are in the best interest of the Department of the Army.
- e. Failure to comply with the terms of this agreement may result in my separation from the program and from the United States Government.
- f. When leaving a position in the continental United States (CONUS) to accept an overseas position (to include Alaska and Hawaii), I will have return rights to a position in the program in the CONUS unless this agreement provides return rights to a specific position. I understand that I may request a return to the position I held immediately before my overseas assignment, but that my return rights is to a program position and not necessarily to my previously held position. I understand that this is in accordance with public law as set forth in 10 USC 1586.
- g. Authorized travel and transportation expenses incident to this permanent change of duty station will be paid by the government in accordance with Department of Defense Joint Travel Regulation.
- h. If I am serving overseas, release from the provisions of this agreement does not release me from the rotation or transportation agreements I have signed in connection with the overseas transfer.
- i. Although my geographic and functional preferences will be carefully considered, they are not binding on management.
- j. If I sign this agreement and subsequently decline to accept a directed reassignment under a reduction-in-force or transfer of function, my eligibility to qualify for a discontinued service retirement annuity or eligibility for severance pay may be adversely affected.

Figure 14–2. Sample special individual mobility agreement

4. Subject to paragraph 4h, above, this agreement is terminated if the undersigned applicant accepts employment in a function not covered by the provisions of this agreement.

Applicant signature	Date
Mobility Program Manager Signature (Designated Representative)	Date
Human Resources Specialist Signature	Date

Figure 14–2. Sample special individual mobility agreement--Continued

14–4. Procedures

Formal mobility programs may be established when required to meet management needs.

a. All formal mobility programs will be approved by the ASA(M&RA) prior to implementation. Requests for approval will include the information in paragraph 14–4c, below, and will be submitted to the Assistant G–1 (Civilian Personnel), (DAPE–CPP–SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060.

b. Formal mobility programs previously approved under other procedures need not be resubmitted for approval. However, when major changes are made in such programs, they must be submitted in accordance with requirements of this regulation.

c. Requests for formal mobility program approval will include the following information—

- (1) Name and office of formal mobility program manager.
- (2) Purpose of the program. Provide the specific purposes for establishing a particular formal mobility program and the criteria for selection of positions to be included in the program.
- (3) Justification. Establishment of a formal program must be consistent with the policy in DODI 1400.24. Justifications must—
 - (a) Document specific career progression or mission effectiveness needs that are not being met.
 - (b) Identify specific efforts made to alleviate the problem.
 - (c) List the series, grade, title, and career program to be covered by the program (for example, quality assurance specialists (ammunition surveillance), GS–1910–9, and above).
- (4) Describe the broad geographic area coverage of the program (such as world-wide; within the continental United States (CONUS); OCONUS).
- (5) Describe the program’s operational procedures and policies (such as candidate selection, relocation requirements, accompanied and unaccompanied tour lengths, consideration of geographic preferences, exceptions to tour lengths or assignments, and other relevant information).
- (6) State whether costs will be centrally funded and cite specific program or other source of funds.
- (7) Explain statutory and administrative return rights. Describe specific return rights for any required assignments in accordance with chapter 18 of this regulation.

(8) Describe exceptions to planned relocations. Clearly define procedures for submission of requests and guidelines on justifiable reasons for approval of exceptions. Application of criteria must be consistent.

(9) State provisions for releasing employees from mobility agreements and the potential administrative actions to be taken for failure to comply with agreements (see para 14–8*d*, below).

(10) Include a copy of the proposed formal mobility agreement (see fig 14–1.)

14–5. Special individual mobility agreements

a. Individual employees selected for positions, or training, requiring geographic mobility must sign a mobility agreement. When the duty assignment or training needs are such that they impact only a small number of employees, then special individual mobility agreements may be appropriate (see fig 14–2).

b. A special individual mobility agreement provides management the flexibility to meet special needs without requiring all employees in a given career program to sign formal mobility program agreements.

c. Functional chiefs and ACOM, ASCC, DRU commanders, as well as the AASA, who identify such a requirement may establish special individual mobility agreements on a case-by-case basis, after meeting any labor obligations. To meet specific positions requirements the position must be—

(1) In a hard-to-fill geographic area, where referral history has not provided a sufficient number of highly qualified candidates.

(2) Used for developmental purposes in which the employee is assigned to the position for a specified period of time.

(3) Used for placing employees after long-term training assignments.

d. When a special individual mobility agreement involves more than one ACOM, ASCC, DRU, or the AASA, the mobility program manager of the originating command or activity will ensure the concurrence of all parties involved prior to implementation.

e. Special individual mobility agreements that are accomplished after the effective date of this regulation will follow the general format provided in figure 14–2.

14–6. Career intern programs

See AR 690–950 for intern mobility policy. DA Form 5227 (DA Employment and Mobility Agreement for DA ACTEDS Interns) or DA Form 5228 (Department of the Army Presidential Management Intern Mobility Agreement) will be used as the mandatory mobility agreement form for mobility needs, for DA interns.

14–7. Labor relation responsibilities

Installation commanders at all levels and activity heads must inform their unions concerning implementation of the mobility program, and may have a further obligation to conduct negotiations, if requested by the union, before implementing the program.

14–8. Administrative actions

a. All employees participating in formal mobility programs or assigned to positions specifically identified for geographic mobility must sign mobility agreements which clearly state the conditions of employment for the job series, at the specified grade level(s), which are a part of the mobility program. Agreements will contain only provisions that are enforceable under DA, DOD, or OPM regulations or under Federal statutes.

b. Employees are subject to geographic mobility agreements only when—

(1) A newly covered position in a mobility program is encumbered by a current employee and the agreement is voluntarily executed by the employee; or

(2) There was a preexisting geographic mobility requirement for the position when the employee accepted the assignment and the employee signed an appropriate agreement; or

(3) The position is subject to mandatory geographic mobility based on law.

c. Incumbents of positions newly incorporated into a program requiring a formal geographic mobility agreement cannot be required to sign a mobility agreement. Current employees who decline to sign the agreement will not be adversely impacted by such decision.

d. Commands will take appropriate action for an employee who fails to complete training, to accept required relocations, or to meet other program geographic mobility requirements. At the discretion of the commander, and depending on the specific circumstances in each case, the employee may be—

(1) Reassigned to an appropriate position for which qualified.

(2) Released from the program and permitted to remain in, or return to, their original organizational assignment.

(3) Or removed from U.S. Government employment. This option will be exercised only when removal of the employee is necessary to promote the efficiency of the Federal service.

e. Employees occupying a position which had an established higher target grade at the time of their entry into the position but which did not have a preexisting geographic mobility requirement, are not required to sign a mobility agreement prior to promotion.

f. An employee required and advised to sign a mobility agreement will sign the agreement, if practicable, prior to the effective date of the action (such as appointments, assignments, reassignments, promotions, acceptance into particular training, developmental, or career programs, and so forth). Failure of an employee to execute the agreement prior to the effective date of the action does not invalidate the action nor does it create any substantive right for an employee to decline or refuse management training, and so forth. The agreement will be filed in the employee's eOPF.

g. Sample mobility agreements should be used as a guide when developing an agreement for a specific formal mobility program or a special individual mobility situation. They contain required terms to comply with all applicable laws and regulations. Managers of mandatory mobility programs may modify these agreements to meet specific program needs, but may not circumvent requirements or change the intent of the agreements.

h. Failure of an employee to comply with provisions of a mobility agreement may have an adverse impact on an employee's eligibility to qualify for discontinued service retirement rights and entitlement to severance pay in the event of a RIF or transfer of function (TOF) as described in Civil Service Retirement System and Federal Employees Retirement System Handbook for Personnel and Payroll Offices. Consequently, program managers must carefully assess the impact in determining the necessity for mandatory geographic mobility agreements.

i. Commanders or managers of formal mobility programs who publish implementing regulations governing the program will provide a copy to: Assistant G-1 (Civilian Personnel), (DAPE-CPP-SC), 6010 6th Street, Building 1465, Fort Belvoir, VA 22060. All administrative procedures must be in accordance with guidance in this regulation and DODI 1400.24.

Chapter 15

Details

15-1. Definition of detail

a. A detail is the temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change; officially, the employee continues to hold the position from which detailed and keeps the same status and pay. Individuals will not be detailed for the purpose of providing an unfair employment advantage. Although time spent in a detail may be used for qualification purposes, employees may not be detailed with the intent to later promote or reassign them to positions with greater promotion potential.

b. Management may detail employees for any legitimate purpose, for example, to handle unexpected workloads or special projects; to fill in during another employee's absence; for professional developmental assignments; during completion of security clearance or investigation. Details will not be used as a substitute for a permanent action, such as a promotion, reassignment, or appointment.

c. An employee who continues to carry out the duties of the position to which permanently assigned and also performs some of the duties of another position for a limited time (for example, while the other position is vacant or the incumbent is on leave) generally is not considered to be on a detail. Performance of other duties on a regular basis may, however, require consideration of a position review to ensure the position is accurately classified.

15-2. Supervisor responsibilities

Supervisors are responsible for—

- a.* Proper documentation of detail of employees.
- b.* Informing employees of the reasons for, and conditions of, the detail.
- c.* Ensuring that employees are returned to their official duties when the detail ends.
- d.* Placing employee on approved performance plan if the detail is expected to last the minimum rating period or longer during the rating period as required by applicable performance management regulations.

15-3. Details within Department of Defense

a. A detail of more than 120 days to a higher graded position or to a position with known promotion potential must be made under competitive procedures.

b. Management may detail an employee in the competitive service to a position in either the competitive or excepted service.

c. Management may detail an employee in the excepted service to a position in the excepted service and may also detail an excepted service employee serving under Schedule A, Schedule B, or a VRA, to a position in the competitive service.

d. Any other detail of an employee in the excepted service to a position in the competitive service may be made only with the prior approval of the OPM or under a delegated agreement between the agency and OPM. Send requests through command channels to AG-1(CP) for submission. Packages will include—

- (1) Reason for detail, to include why another employee in the competitive service cannot perform the detail.
- (2) Employee's current resume.
- (3) Job description or set of duties the employee will perform while on detail.

e. Employees on status quo appointments may be detailed to competitive or excepted positions.

f. Term and temporary employees may be detailed to competitive or excepted positions. Details for temporary and term employees should be to appropriate positions and will not be to positions that are permanent in nature. A detail does not extend the expiration date of a term or temporary appointment.

g. Documented by a memorandum of agreement pursuant to DODI 4000.19.

15-4. Details outside of Department of Defense

All requests to detail personnel to a non-DOD agency will be formally staffed through command channels to AG-1(CP) for submission to the Office of the Secretary of Defense for decision.

a. Employees may be detailed to a foreign government under Sections 1451 through 1453 and Section 2387 Title 22 United States Code. Send requests for approval through command channels to AG-1(CP). Details to foreign governments are approved at the Secretary of State level.

b. Details will be supported based on guidance in DODI 1000.17 or DODI 4000.19.

15-5. Time limits

Management will keep details within the shortest practicable time limits and will make continuing efforts to secure necessary services. A new time limit applies each time an employee is detailed to a different position. Management should not routinely keep employees on detail for long periods of time.

a. Management may effect initial details of employees to unclassified duties, and to positions at the same, lower, or higher grade for up to 120 calendar days. In situations that do not require competition, details may be extended in 120-day increments, not to exceed 1 year. When an employee's service on detail will extend beyond a year, the agency should review the situation to see if another action, based on the reasons for the detail, would be more appropriate. Commands must ensure to adhere to all requirements in applicable collective bargaining agreements.

(1) Unclassified duties are a set of duties to be performed in lieu of an official position description.

(2) Classified duties are a written statement of duties to which an appropriate classification authority has assigned a grade level.

(3) If a set of duties is later classified, time under a detail to the unclassified duties counts toward the maximum time limits in this section, but not toward the maximum period in chapter 10 of this regulation for non-competitive details to higher graded positions.

b. Send requests for extensions beyond the maximum time limits through command channels to AG-1(CP) for submission to OPM. Request must address why an extension is critical and impact if extension is not approved. Request should be submitted 60 days before desired effective date.

c. Maximum time frame of 2 years is authorized to positions in an organization undergoing a commercial activities study.

15-6. Reimbursement

A Comptroller General's decision (64 Comptroller General Decision 370, March 20, 1985) holds that in the absence of a specific statute authorizing non-reimbursable details, all details within an agency and all details between agencies must be made on a reimbursable basis except in the limited circumstances described in this section. Where a reimbursable detail is not required by the Comptroller General, the organizations involved decide whether the detail should be reimbursable or non-reimbursable. Details outside of DOD will be reimbursed as identified in DODI 1000.17.

a. Details within Army will be reimbursable except when the detail is—

(1) To a classified or unclassified set of duties covered by the same appropriation as the position from which detailed;

(2) To a classified or unclassified set of duties covered by a different appropriation but the detail involves a matter related to the loaning organization's appropriation and will aid it in accomplishing the purpose for which appropriations are provided; or

(3) To a classified or unclassified set of duties covered by a different appropriation, however, regardless of the purpose of the appropriation, the detail will have a negligible impact on the lending organization's appropriation.

b. Written agreements between agencies, and between components of a single agency, are required for reimbursable details (see 31 USC 1535).

15–7. Documentation of details

Details of less than 30 days need not be documented unless it is required by a union agreement or local merit promotion plan. Details will be documented in accordance with OPM’s Guide to Processing Personnel Actions, Chapter 14, Table 14-A.

15–8. Related policies

- a.* The time-after-competitive appointment restriction applies to details of employees as identified in 5 CFR 330.502.
- b.* OPM qualification standards, other than those involving minimum education, licensure and/or certification requirements, are not mandatory for details. If a detail is subject to merit promotion procedures, the same standards must be applied to all applicants.
- c.* The OPM Qualifications Standards handbook provides that the experience of employees on detail is credited as an extension of the work the employee was doing immediately prior to the detail, or on its own merits, whichever is more beneficial to the employee.
- d.* Service while on detail is credited for time-in-grade purposes at the grade of the position the employee officially holds.

Chapter 16

Probation on Initial Appointment to A Supervisory or Managerial Position

16–1. Basic requirements

When an individual is permanently placed in a competitive service supervisory or managerial position, they are required to complete a probationary period unless they have already successfully completed one. In this part, supervisory and managerial positions have the meaning given them by the OPM General Schedule Supervisory Guide based on supervisory work and related managerial responsibilities.

- a.* When employees must serve probationary periods, they will be given written notice of the requirement.
 - (1) The notice will, at a minimum, inform the employees of the length of their probationary period and of their placement rights, should return to a non-supervisory or non-managerial position be recommended.
 - (2) The notice may be in writing and/or be included in the remarks section on the personnel action documenting the assignment.
- b.* The selecting official may decide not to require part or all of the normal probationary period based on crediting prior service performed under a supervisory or managerial position, and if such exemption is justified by substantiating documentation of the employee’s performance and experience. The decision will be made in coordination with the servicing CPAC. How to document the exception will be determined by the CPAC.
- c.* When a probationary period is interrupted by other service or a break in service (other than for cause), the past service may be credited toward completion of a probation required by a later appointment. Performance and experience must justify such an action.

16–2. Relationship to the probationary period for competitive appointment

If, upon appointment, an employee is required to serve both a probationary period for a supervisory or managerial position under 5 CFR 315, subpart I) and a probationary period for an initial appointment to a competitive position (under 5 CFR, 315, subpart H), the employee will serve both probationary periods concurrently.

16–3. Length

The probationary period for DA employees appointed to supervisory or managerial position will be 1 year, unless a shorter period is justified by past performance and experience.

16–4. Training

Within the first 12 months of initial placement in a supervisory or managerial position, the DA-approved Supervisory Development Course must be completed.

16–5. Failure to satisfactorily complete the probationary period

- a.* Satisfactory completion of the probationary period is a prerequisite for continuation in a supervisory or managerial position. If, after a reasonable period, an evaluation of the employee reveals deficiencies in supervisory or managerial performance, the employee must be returned to his or her prior position or reassigned to a non-supervisory or non-managerial position in accordance with subparagraphs *d* and *e*, below.

b. An action to return or reassign an unsuccessful supervisor or manager under this section may be taken only for reasons directly related to the employee's performance as a supervisor or manager. An action to demote or separate for conduct or for performance not related to supervisory or managerial performance must be processed under 5 CFR Part 432 or 752.

c. The decision to return an employee to a non-supervisory or non-managerial position under this section must be initiated by the employee's immediate supervisor and concurred by the next higher official in the organizational structure.

d. A written notice will be issued to the employee if he or she fails to demonstrate the ability to perform the supervisory or managerial duties related to the job. The notice will be:

(1) Issued by the employee's supervisor in coordination with the servicing CPAC Labor Management and Employee Relations point of contact.

(2) Cite the specific reason(s) for the action.

(3) Explain that there is no right of appeal, except in cases of alleged discrimination.

(4) Explain that DA grievance procedures do not cover the decision.

(5) Explain procedures to be used to satisfy the employee's placement rights.

(6) Describe actions that may be taken under 5 CFR Part 752, if he or she does not accept a properly directed new assignment.

e. An employee who is removed from a supervisory or managerial position under this section is entitled, except as provided in subparagraph (3) below, to be placed in a position in the activity of no lower grade and pay than the one the employee left to accept the supervisory or managerial position. The employee's entitlement is command wide although efforts should be made to place the employee within the same commuting area.

(1) A transfer employee has the right to a position in the employing ACOM, ASCC, DRU, or OAASA, not back to the position from which transferred.

(2) An employee who is appointed to a supervisory or managerial position from a register or based on reinstatement or noncompetitive eligibility and who is not serving a probationary period under 5 CFR, 315, subpart H, is entitled to be placed in a vacant position equal in grade, salary, or pay band to that currently held.

(3) If the former position is at a higher grade than the supervisory or managerial position, the employee is entitled to be placed in a position at the same grade and pay as the position in which the employee was serving the probation. Re-promotion would then be in accordance with the local merit promotion plan.

f. Employees who fail to complete the probationary period will be assigned to a vacancy within the command; a management-directed reassignment or a permanent change of station (PCS) may be required.

g. Recommendations on whether to keep an employee in a supervisory or managerial position will be documented in accordance with 5 CFR Part 430.

16-6. Appeals and grievances

a. A decision to return or reassign an employee in accordance with this section related to supervisory or managerial performance cannot be appealed. An action to demote an employee to a lower grade than the one the employee left to accept the supervisory or managerial position, or an action to demote or separate an employee for reason of conduct or performance not related to supervisory or managerial performance, is governed by 5 CFR Parts 315, 432, or 752.

b. DA grievance procedures do not cover a decision to return an employee to a non-supervisory or non-managerial position due to supervisory or managerial performance only.

c. Additional information concerning appeal and grievance rights should be obtained from the local servicing CPAC.

Chapter 17

Overseas Employment

17-1. Foreign employment guidance

a. This chapter corresponds to the policies and procedures in DODI.1400.25, Volumes 1230 through 1232. Paragraph titles in this chapter correspond to the applicable titles of DODI 1400.25, except for Army-specific policies.

b. Rules of foreign employment will vary based on negotiated treaties and agreements and host-nation conditions, prevailing practices, local laws, and customs.

c. Senior Army commanders will take the lead for the foreign programs in their area of responsibility.

17-2. Civilian employees in overseas areas

Officials with delegated appointing authority will apply the provisions of the DODI 1400.25, Volume 1230, 5 CFR Part 301, other applicable laws and regulations, and the following for employment of civilian employees in overseas areas—

a. Rotation of U.S. citizens.

(1) To ensure consistency, any written guidance issued by ACOMs, ASCCs, DRUs, and AASA on overseas rotations should be coordinated with other like commands that have civilian employees in the same geographic area. Coordination with other DOD components should also be considered.

(2) Employees hired on career or career-conditional appointments or appointments leading to career status (for example VRA) must, as a condition of employment, sign an appropriate rotation agreement unless the position is exempt from rotation requirements. This includes local hires as well as those required from CONUS, territories, and possessions. The three different rotation requirements are as follows—

(a) DA Form 5369 (Rotation Agreement-Employees Recruited From the United States);

(b) DA Form 5370 (Rotation Agreement-Employees Recruited Locally in Foreign Areas); and

(c) DA Form 5371 (Rotation Agreement-Employees Recruited From the U.S. Territories and Possessions).

(3) These agreements are intended to cover the vast majority of situations that require rotation agreements. Local modifications to cover special situations are subject to prior authorization and approval by the AG-1(CP). International organizations, such as the North Atlantic Treaty Organization, may develop alternative agreements to conform to fixed tour assignments.

(4) Prior to the expiration of the tour, the command will determine who will notify the employee, in writing, on their eligibility to exercise reemployment rights or register in the DOD Priority Placement Program (PPP) for assignment to the U.S. in accordance with DODI 1400.20. When employees return to the United States through the PPP under these agreements, the DOD PPP component coordinator's approval is not required for expanded areas of referral or extended periods of registration described in the agreement.

(5) The overseas command will coordinate the employee's return with the servicing CPAC, which will notify the CONUS activity of the employee's pending return as early as possible.

(6) The rotation agreements in this chapter are the basis for returning employees to the United States. Employees must sign a rotation agreement for the initial tour and each approved extension. When management decides not to extend an employee's tour, the employee must apply to exercise reemployment rights or register in the DOD PPP, as appropriate. When the employee is advised of the extension decision, they have 7 workdays to either notify the servicing CPAC that they will exercise return rights or register in PPP once their eligibility window opens. When a rotation agreement has not been obtained due to administrative oversight, or has been lost, other documented evidence must show that the employee has been advised of the rotation requirement. When proper evidence is not available, the employee will be advised, in writing, of the rotation requirement. If the current tour is not extended, the employee will be allowed to remain in the foreign area for 12 months beyond the date of the written notice. No extension will be granted after a DOD PPP offer is accepted.

(7) An employee who fails to abide by the terms of a signed rotation agreement, or who fails to comply with a directed return to the United States, may be separated under the adverse action procedures.

b. Conversion to status appointment.

(1) All conversions will be in accordance with governing OPM procedures and authority. An employee hired locally in a foreign area may be converted in accordance with that authority to a status appointment only when it is clearly in the best interest of DA and the overseas command. Conversion will not be to improve the employee's job security, employment benefits, or future opportunities.

(2) Requests for conversion will be submitted to the responsible CPAC. The converted employee must sign the appropriate rotation agreement. By signing the rotation agreement, the employee indicates availability for assignment to the United States up to 6 months before the established rotation date.

c. Termination of overseas tours.

(1) Overseas limited appointments may be made in accordance with 5 CFR Part 301.201. These appointments may be made for 5 years or less and are not subject to rotation. A locally hired overseas employee, in an overseas limited appointment not to exceed 5 years, is terminated on completion of the appointment unless management decides to retain the employee for another term of employment. In these cases, a new overseas limited appointment of 5 years or less may be made. When possible, an employee to be terminated will be notified 60 calendar days before the effective date. Termination of an overseas limited employee before the scheduled expiration date of appointment must be processed under the procedures of 5 CFR Part 432 or Part 752 as appropriate, if not because of RIF.

17-3. Employment of foreign nationals

a. Although the rules of foreign national employment systems will vary based on treaties and negotiated agreements and host-nation conditions, prevailing practices, local laws, and customs will be followed in the employment and administration of foreign nationals. Concerns regarding these procedures should be raised to the appropriate office (e.g., chain of command, CPAC or host nation works council).

b. Officials with delegated appointing and personnel management authority are responsible for applying the provisions of DODI 1400.25, Volume 1231, and the following regarding employment of foreign nationals—

(1) Officials with appointing authority located in foreign areas are authorized to appoint non-U.S. citizens under 5 CFR Section 8.3.

(2) In most foreign areas where DA employs civilians, a treaty or status of forces agreement (SOFA) has been negotiated with the host country that defines members of the civilian component of the U.S. Forces. When a non-U.S. citizen employee acquires U.S. citizenship, determine if the employee will qualify as a member of the civilian component. If there is no agreement with the host country, treat the employee as a member of the civilian component for the purposes of (3) and (4) below.

(3) A direct hire employee appointed under 5 CFR Section 8.3 may continue to be employed in the excepted service and in the position occupied when U.S. citizenship is acquired. If qualified as a member of the civilian component, the employee becomes subject to U.S. salary schedules and conditions of employment. In these cases, make a pay system change on the day immediately following the date on which the employee provides proof of U.S. citizenship.

(4) An indirect hire employee who is a national of or ordinarily resident in the host country will normally not qualify for membership in the civilian component when acquiring U.S. citizenship. The employee continues to be subject to host country labor law and may be retained on the rolls with no change in status, pay, or benefits. Retention of the employee in this status is permissible only in those countries where the host country government is the true legal employer of the employee and when consistent with the governing SOFA.

c. Employment of third-state nationals—

(1) Third-state nationals may be employed only after the commander has determined that a sufficient number of applicants with the required skills are not available from the host country and recruitment of U.S. citizens is neither practical nor feasible. Importation and employment of third-state national personnel must comply with host-nation SOFA.

(2) When possible, third-state national personnel will be recruited from among third-state nationals currently employed by the U.S. forces as local national employees. Recruitment also may be from among third-state nationals employed by DA in other countries or directly from the home country. On completion of the employment agreement or any approved extension, the employee may be restored to the former local national position, or the employee may be given priority placement consideration for reemployment in DA positions in the home country.

(3) Third-state nationals are given time-limited, excepted appointments under the authority of civil service 5 CFR Section 8.3. The initial appointment will be limited to the period of the length of tours prescribed for U.S. citizen employees in the same country. The objective is to retain third-state national employees only until a qualified local national replacement is recruited or trained. ACOM, ASCC, DRU commanders, and the AASA may extend the initial tour of duty, but not beyond the date with a qualified local national employee or applicant is available.

(4) Unless prohibited by U.S. law or the applicable host-nation SOFA or negotiated agreement between the U.S. and the host nation, third-state national employees may be given logistical support under conditions comparable to those established for U.S. citizen employees in the country of employment.

17-4. Employment of Family members in foreign areas

a. *Follow Department of Defense instructions.* DA officials with delegated appointing authority will apply DODI 1400.25 Volume 1232 for employment of Family members of active duty military and civilian employees stationed in foreign areas.

b. *Schedule A excepted appointments.*

(1) Family members may not remain on these appointments for more than 60 days following the transfer of the sponsor from the commuting area or separation of the sponsor. Employment may not be extended when eligibility for Family member appointment is lost.

(2) Local commanders have authority to approve extensions of Schedule A appointments for up to 1 year beyond the sponsor's tour, when the extension is in the interest of the Army. This authority will be used sparingly. If an extension is approved, a request for continued logistical support will be considered separately according to current command practice.

c. *Separation and rotation.*

(1) Excepted service family member employees may be given consideration for assignment to vacant positions. In a RIF affecting U.S. citizen positions, there will be no assignment or displacement between excepted service Family members and competitive service employees.

(2) Family members with competitive status will be granted a minimum of 90 calendar days of leave without pay when they relocate with the sponsor to a new assignment location. Extensions of this initial grant of 90 days are encouraged for employees who have been unable to find employment. (See AR 690-990-2, book 630, subchapter S-12.)

(3) Family members with competitive status who remain in the foreign area after rotation or separation of the sponsor or loss of Family member status may continue employment under the same conditions that apply to other U.S. citizen

career employees. (Examples of conditions are rotation agreements, management initiated extension, and PPP registration.) Family members eligible to continue employment are those on a career or career-conditional appointment in a position that is either subject to rotation policy or excepted from rotation by DODI 1400.25 Volume 1230.

d. Noncompetitive appointments under Executive Order 12721. Family member employees serving under overseas local hire appointments as defined in 5 CFR Section 315.608(b) will be counseled on the eligibility criteria for noncompetitive appointments under Executive Order 12721, as amended, prior to returning to the United States.

Chapter 18

Return Rights

18–1. Statutory and administrative return rights

This chapter supplements DODI 1400.25, Volume 1230 and contains DA policy governing statutory and administrative return rights of career and career-conditional employees of the competitive service serving in overseas rotational assignments, including employees on worldwide mobility agreements. Section 1586 of 10 USC authorizes a rotation program for the interchange of DOD civilian employees between posts of duty in the U.S. and posts of duty outside the United States. Assignment to duty in Alaska or Hawaii is considered to be outside the United States for the purpose of granting return rights. The Secretary of each military department may prescribe regulations to establish and operate programs that will grant to DOD employees the right of return to a position in the United States.

18–2. Employee eligibility

DA employing activities will grant statutory return rights to employees who—

a. Are career or career-conditional employees in the competitive service in the United States or a non-foreign overseas area; and

b. Are offered assignment in a competitive or excepted service position outside the U.S. or its territories or possessions by a DOD activity

c. Employees eligible to exercise return rights are those who—

(1) Satisfactorily complete the overseas duty (see para 18–10*c*); and

(2) Apply not later than 30 days following completion of such duty as provided by paragraph 18–10*b*.

d. The following categories of employees (from Army and other components) who accept assignments with DOD activities overseas are not eligible for initial grant of statutory return rights.

(1) Employees selected for an overseas assignment after—

(a) Submitting a resignation, unless management approves a request to withdraw;

(b) Receiving a notice of involuntary separation for any reason, including a general notice of RIF;

(c) A public announcement of the closure of the employee's activity. Examples of public announcement include town-hall meetings, union notifications, memorandum, bulletin, and so forth.

(d) Receipt of a functional transfer offer to which the employee has not replied within specified time limits

(e) Declining a functional transfer offer; or

(f) Receipt of an unresolved written notice of proposed adverse action based on performance or conduct.

(g) Accepting an overseas temporary or term position.

(2) Employees from non-DOD Federal agencies who accept DOD overseas employment. (Return to the United States will be through the DOD PPP, applicable DA career programs, or through the employee's own efforts.)

(3) Employees who accept initial overseas employment with non-DOD Federal agencies or transfer to a public international organization. Return rights may be granted under certain provisions found in 5 CFR, Part 352.

(4) Employees who are serving a probationary period following initial appointment to the competitive service.

(5) Employees who occupy intern positions immediately prior to overseas assignment and those who are initially appointed in CONUS for overseas assignment as an intern.

NOTE: Employees recruited from non-intern positions to intern assignments overseas will have statutory return rights under this subchapter to their former position and grade in the United States.

e. Employees with an initial grant of statutory return rights forfeit these rights—

(1) Upon return placement in any position in the United States.

(2) After submitting a notification for resignation or retirement when—

(a) The overseas activity, in accordance with 5 CFR, Part 715 does not agree to the employee's written request to withdraw the requested action prior to the effective date; or

(b) The employee has completed PCS or separation travel.

(3) After accepting employment outside DOD or transferring to a public international organization while serving overseas with rights under 10 USC Section 1586.

(4) After a PCS move to the United States for long-term training and being dropped from the overseas activity's rolls.

(5) When their tours are extended beyond 5 years and they do not obtain an extension of return rights from their former U.S. employers. Return placement is through the DOD PPP, appropriate DA career program or through employee's own efforts.

(6) When they do not apply to exercise return rights, within the time limits of subparagraph 18–2c(2). Return will be through the PPP, appropriate career program or through the employee's own efforts.

f. In consideration of the fact that return rights represent a recruiting incentive, DA employees leaving CONUS positions for assignment to DOD activities in Hawaii and Alaska will be granted return rights. Return rights will also be granted to DA employees in Hawaii who accept employment with activities in Alaska and vice versa. However, DA employees serving in Alaska or Hawaii who have return rights in CONUS will not be granted return rights to Alaska or Hawaii upon subsequent acceptance of employment in another overseas activity. Their return rights remain with the last CONUS position. If, after 5 years, these rights are not extended by the CONUS activity, return will be through the PPP or appropriate career program. Employees with no return rights in CONUS who leave Hawaii or Alaska to accept employment in another overseas activity, will be granted return rights to Alaska or Hawaii.

g. Employees of other DOD components accepting assignments with DA in foreign areas will have return rights back to their components based on DODI 1400.25, Volume 1230.

h. DA employees accepting employment with another DOD component in any foreign area will be granted return rights by authority of this chapter subject to the same provisions as those granted under 10 USC Section 1586.

18–3. Initial grant of statutory return rights

a. The SF 50 effecting the overseas assignment will contain this statement in the "Remarks" portion: "Statutory return rights granted under 10 USC Section 1586".

b. The CPAC in the United States will have the employee sign the appropriate statutory return rights agreement (see fig 18–1). The original of this agreement will be filed in the employee's eOPF. The releasing activity will keep one copy in a name file for that employee along with all other applicable documents.

This document represents an agreement between the Department of the Army and the undersigned employee, and becomes effective upon the employee's leaving a position in the United States to accept an overseas assignment.

I understand that this overseas assignment is part of the Army's rotation program and that my selection for this overseas tour of duty entitles me to statutory return rights under 10 USC Section 1586 to my former position upon completion of the initial tour of duty or upon completion of any approved extension. I am aware that if an extension is not approved after completion of my initial tour of duty that I may be directed to return to my former position in the United States and that such action is not grievable.

I also understand that statutory return rights are authorized for the initial tour and approved extensions to an aggregate period of not to exceed 5 years. I understand that failure to apply for the exercise of these rights upon expiration of the 5-year period may result in action directing my return to my former position. If I fail to comply with such directed action, I understand that my statutory return rights will expire and that I will be subject to separation from the service. I understand that such directed return is not a grievable matter under the DA grievance system.

I further understand if I attain a higher grade than that to which I possess statutory return rights, I will be accorded special placement assistance at the higher grade.

Approved by	Signature of employee
Date	Present position, title and grade

Figure 18–1. Sample statutory return rights agreement

18–4. Extension of return rights

- a. Extension beyond the initial tour.* The activity in the United States to which the employee has return rights must be notified.
- b. Extension beyond the 5 years.* Extension of return rights beyond five years requires the concurrence of the former U.S. employer and must be documented. If the activity does not concur to the extension of return rights and the employee agrees to serve an additional tour, return rights are forfeited.

18–5. Exercise of return rights

Management directed exercise of return rights.

- a. Employees may be directed to exercise return rights—*
 - (1) At the completion of the initial tour or approved extension (such return is not grievable under the DA grievance system). It is also not appealable to the Merit System Protection Board if the employee is covered by pay retention;
 - (2) When the overseas commander determines the employee cannot adjust to the overseas area, but the employee's performance or conduct is fully successful.
 - (3) When adverse suitability information that was known to the U.S. employer is discovered by the overseas activity less than 1 year after the employee transferred overseas.
 - (4) When the overseas commander determines that the employee is not qualified for the position for which selected: and there are no other jobs to which the employee can be reassigned.

(5) When the employee refuses to register in PPP; or sign the applicable rotation agreement requiring PPP registration under certain conditions.

(6) To avoid or reduce the effect of a reduction in force.

(7) When the employee fails to accept a valid offer of continued employment in the United States.

(8) When the employee fails to complete satisfactorily the supervisory or managerial probationary period.

b. Note that when it becomes necessary to direct an employee's return to a lower graded position in the United States for reasons in (2) or (3) above, the procedures of 5 CFR Part 752 will be used, unless the employee is entitled to pay retention. When returning to a position in the same grade is directed, the procedures in paragraph 10–6 will be followed. The action will be initiated and carried through to completion by the overseas command. Employees who refuse to comply with the management-directed return are subject to separation.

18–6. Notification requirements

The overseas CPAC must notify the CONUS CPAC to advise the new incumbent when the overseas employee—

a. Will exercise return rights (to include management-directed exercise of return rights). Every effort will be made by the overseas CPAC to provide the CONUS CPAC at least 60 days' advance notice of the employee's return.

b. Is serving an additional tour or an approved extension.

c. Forfeits return rights to register in the PPP or to remain overseas.

d. Separates from Federal service (resigns, retires, and so forth).

e. Will not exercise return rights.

f. If the employee relocates to another overseas activity, the losing CPAC is responsible for notifying the CONUS CPAC.

18–7. Filling the vacated position

a. Depending on the needs of the activity, the vacated CONUS position may be filled by any type of appointment or internal placement deemed appropriate.

b. When filling a position committed to an overseas returnee, the new employee must be advised in writing in advance of the assignment that upon the former employee's return, they will be—

(1) Reassigned to a vacant position or

(2) Placed or separated by RIF.

c. When filling the vacated position, the following statement will be included in the remarks section of the recruitment SF 50: "Occupancy of this position is limited to the return of former incumbent with statutory return rights under 10 USC Section 1586."

18–8. Transfer of function

a. Return rights. When the position to which the employee has return rights is transferred to another Army activity or DOD component, and the employee would have been afforded TOF rights under 5 CFR, Part 351 the employee's return rights transfer to the gaining activity. If the employee would not have been offered functional transfer rights, the activity retains the responsibility to extend statutory return rights to the employee. When the function is transferred to a non-DOD agency, the return rights do not transfer, and return in the United States must be through the PPP, the appropriate career program, or the employee's own efforts.

b. Notification requirements. At the time of a TOF, the losing activity will notify the gaining activity and the employee, via the overseas activity, of the TOF and of any change in the statutory return rights location or entitlement.

18–9. Disestablishment of activity or position

a. Return placement help is available through the PPP when—

(1) The activity to which the employee has return rights has been disestablished or the position to which the employee has return rights has been contracted out and no other positions of that type and grade level exist at the activity.

(2) When the position to which the employee's return rights apply no longer exists and exercise of return rights would cause RIF, the employee may register in PPP.

b. If the activity to which an employee has return rights is disestablished, or the position is abolished, contracted out, downgraded, or upgraded, the CONUS activity must notify the employee via the overseas activity within 60 days of the effective date of the position action.

18–10. Requirements for exercising return rights

a. To exercise return rights, the employee must—

(1) Apply within time limits (see *b*, below).

- (2) Have satisfactorily completed the initial overseas tour and any approved extension (see *d*, below).
- b*. The employee must formally apply to exercise return rights up to 6 months before, but no later than 30 days following completion of the tour, or any approved extension. Application will be through CPAC channels of the local employing activity to the former employing activity in CONUS (or the activity to which return rights have transferred). The application package to exercise return rights will be forwarded to the CONUS CPAC and include—
- (1) A letter or message stating intent to exercise return rights.
 - (2) A completed SF-75 (Request for Preliminary Employment Data).
 - (3) Verification that the employee has (or will have) satisfactorily completed the overseas tour and the proposed reporting date.
 - (4) Upon request from CONUS CPAC, an updated resume.
- c*. The application package will also be forwarded to the CONUS CPAC and advance notification in cases involving early release from the transportation agreement.
- d*. Satisfactory completion of tour of duty requirement. The satisfactory tour of duty requirement is not met if—
- (1) Performance or conduct problems exist which warrant action under 5 CFR Part 752, or under 5 CFR Part 432. Unacceptable performance or conduct will not serve as a basis for returning an employee from overseas. Overseas commanders will take action to correct these problems or remove the employee from Federal service.
 - (2) An employee requests release from their transportation agreement for reasons unacceptable to the overseas commander. This may include reasons beyond the employee's control. Examples of acceptable reasons for releasing employees from their agreements are in the Joint Travel Regulations (JTR), Chapter 5, para. 5844. Questionable cases should be referred through command channels to AG-1(CP).
- e*. Action prior to employee's return.
- (1) Upon receipt of the application to exercise return rights, the activity in CONUS must immediately notify the employee (through the overseas CPAC) of the arrangements being made for their return (see para 18-11) and the proposed effective date.
 - (2) On receipt of information that placement in CONUS has been arranged, the overseas CPAC will contact the employee to determine the date on which they will be available to report to the CONUS activity. The servicing CPAC will advise the CONUS activity and complete travel and transportation arrangements.
 - (3) All employees, except those being separated by RIF, will be retained on the rolls of the overseas activity until notice is received that the CONUS activity has placed them. In the event that the employee arrives without prior official notification from the overseas servicing CPAC, the employee will remain on the rolls of the overseas activity until CONUS employment can be effected. This should occur within 60 calendar days of their arrival in CONUS.

18-11. Obligation to reemploy

- a*. An employee with return rights has a statutory right to return to the position (or a similar or like position of the same grade, if the original position no longer exists) held in the United States immediately prior to assignment overseas. The returning employee must be placed not later than 30 calendar days after the date on which the employee is determined to be available.
- b*. Upon notification of exercise of return rights, the CONUS activity will immediately commence placement planning that will be complete before the employee leaves the overseas post.
- (1) The employee will be placed in the position (or a similar or like position of the same grade) held immediately prior to assignment to duty in the overseas command, if the position exists.
 - (*a*) If the former position is now a higher grade, the employee is entitled to consideration (such as, competitively or noncompetitively, according to 5 CFR, Section 335.102, and chapter 10 of this regulation; and the applicable merit promotion plan in effect at the time of the promotion) as if they had not left the position. If the employee is not selected on the competitive action, the activity still retains responsibility for reemployment under (2) through (4) below.
 - (*b*) If the position is now classified at a lower grade, the returning employee may be offered an available vacant position for which qualified, in the same geographical area with rights, benefits, and grade equal to the former position. If a vacant position at the employee's former grade is not available, the employee will be offered the lower graded position to which they have return rights, whether or not the position is occupied by another employee. If the employee declines the lower graded position or any other offer, they will be placed according to (3) below.
 - (2) If the position the employee left does not exist, the employee will be placed in a vacant continuing position for which qualified in the same geographical area, with rights, benefits, and grade equal to the former position.
 - (3) If placement cannot be accommodated as in (1) or (2) above, the employee will be placed in a new position that will be established for at least 90 days. The employee will then be given a RIF notice, and if not placed at the same grade, immediately registered in PPP. The new position will be in the same geographical area with the rights, benefits, and grade

equal to the position the employee left. Whenever placement under this provision will be required, the overseas activity must be notified.

(4) If within the 90-day period specified in (3) above, placement in a vacant continuing position cannot be effected, RIF procedures will decide the employee's reassignment, placement in a lower grade position, or separation at the end of the 90-day period. During the 90-day period, the employee will remain in the PPP.

(5) In the event two or more employees are entitled to return rights to the same position, the employee who left the position first has prior right to be restored to it. The subsequent employee(s) will be placed in accordance with the applicable provisions in (2) through (4) above.

(6) In the case of several employees occupying additional identical positions, the employees should all be advised that if there is no vacant position in which to place the returning overseas employee, RIF procedures will be used and the incumbent with the lowest retention standing will be displaced to accommodate the overseas returnee. The person who replaced the overseas employee may or may not be affected by RIF, depending on their retention standing. The displaced employee will be placed or separated in accordance with established RIF procedures (DODI 1400.25, Volume 351, 5 CFR Part 351). (The overseas returnee will not compete in this RIF.)

c. Primary responsibility for reemployment rests with the Army activity the employee left prior to overseas assignment. However, any Army activity may employ a returning Army employee who applies on a voluntary basis to any vacant position for which the employee is qualified. Competitive placement procedures may apply, as appropriate.

18–12. Authority of Department of Army appointing officers to grant administrative return rights

DA appointing officers are authorized to grant return rights for the initial and renewal overseas tours in accordance with paragraph 18–2. This authority should be exercised in coordination with CONUS or OCONUS management officials.

18–13. Competitive service

Normally, return rights will not be granted when employees move from one Army activity to another within CONUS. However, under special circumstances, appointing officers may approve administrative return rights to career and career-conditional employees of the competitive service moving between activities within a command. Commanders may approve administrative return rights to career and career-conditional employees of the competitive service moving between CONUS Army commands. The granting of administrative return rights is—

- a. Limited to 3 years with provision for a 2-year extension.
- b. Effected by the applicable provisions outlined in paragraphs 18–10 and 18–11.

18–14. Excepted service

Certain other employees who accept overseas assignments.

a. Employees appointed under Schedule A, 5 CFR Section 213.3102(u), who accept overseas assignments, will be granted administrative return rights. These rights will be contingent upon the employee's conversion to competitive status overseas based upon satisfactory completion of 2 years of service.

b. VRA employees: Employees who accept overseas assignment will be granted administrative return rights. These rights will be contingent upon the employee's satisfactory completion of the required 2 years of excepted service and conversion to competitive status overseas.

c. The granting of administrative return rights to employees in *a* and *b*, above is—

- (1) Limited to one overseas tour with provision for extension up to a total of 5 years. Extensions beyond 5 years are covered by the provisions outlined in paragraph 18–4.
- (2) Subject to the provisions of paragraphs 18–4 through 18–11.

18–15. Return rights agreement

Administrative return rights will be recorded on DA Form 5414 (Administrative Return Rights Agreement). The special instructions below apply when completing the form for employees covered under paragraph 18–14.

a. On DA Form 5414, complete or circle paragraphs a or b, to show the appropriate tour of duty or tour extension, as applicable.

b. Note the correct legal appointing authority; administrative return rights are contingent upon the conversion to competitive status while overseas based on satisfactory completion of 2 years of service under (list appropriate appointing authority).

Chapter 19

Military Duty – Restoration Rights and Unpaid Leave of Absence

19–1. Basic entitlements

In accordance with the Uniformed Services Employment and Reemployment Rights Act of 1994 (USERRA) all employees within Department of Army are entitled to restoration rights when returning from military duty and/or unpaid leave of absence, absent uniformed service to perform such duty. This chapter provides supplemental guidance to 38 USC Chapter 43 and DODI 1205.12.

19–2. Responsibilities

a. Commands. Will ensure that USERRA rights are supported throughout the command and that all training requirements are met. Will ensure that returning employees are afforded proper restoration rights as stated in this chapter and DODI 1205.12.

b. Civilian Personnel Advisory Center. Will maintain proper documentation of employee's uniformed service and ensure management and employee are aware and understand all benefits and entitlements under USERRA.

c. Employees. Provide proper and sufficient notification to supervisor prior to uniformed service and prior to return from such service.

19–3. Applicant rights

If during the hiring process an applicant applies to perform or is required to perform uniformed service prior to entering on duty, the applicant cannot be denied initial employment due to their service. The CPAC will place the action on hold until the applicant returns from service. The applicant will provide copies of the orders calling him or her to uniformed service and any applicable extensions. The applicant will keep the CPAC informed of their return. Upon return from uniformed service, the onboarding process will resume.

19–4. Notification of military service

Employees should provide notification to their supervisor as far in advance as possible for each period of military training, active and inactive duty, or full-time National Guard duty to allow for proper management planning. Written notification is the preferred method, however, verbal notification is acceptable. Written notification will ensure proper documentation is maintained for restoration rights.

a. Upon notification that an employee will be performing military service, the first line supervisor or organization point of contact for USERRA will provide the employee with a pre-deployment checklist to be completed by the employee and the supervisor. Pre-deployment checklists are available online at <https://portal.chra.army.mil/abc/>.

b. The employee will be advised to contact the CPAC to receive additional guidance and information pertaining to their rights during military service.

19–5. Required documentation

In order to maintain accurate records of employees' military service, the servicing CPAC will maintain local records of employees called to active duty. These records will be retained for 5 years following the last day of the employee's military service or until they are no longer employed with the DA, whichever occurs first. All files will contain the following—

a. Original order calling employee to military duty and all subsequent extensions.

b. If applicable, copy of military leave without pay checklist completed by employee.

c. SF 52s documenting absent-uniformed service.

d. SF 50 documenting employee's position of record when called up to active duty.

19–6. Required training

In accordance with Public Law 110–389 (Veterans' Benefits Improvement Act of 2008), Section 313, any personnel within DA who are authorized to recommend, take, or approve any personnel action must complete annual training on employment and reemployment rights and limitations no later than 31 July of each fiscal year. USERRA training must be completed under an OPM sanctioned training module.

19–7. Restoration

Restoration is to the position the military service member encumbered or a position the service member would have attained had they not entered the uniformed service, to include career promotions and within grade pay increases (referred

to as the escalator position). Timeframe for notification and restoration based on service time are outlined in DODI 1205.12 and will be followed when restoring an employee or returning an employee from absent uniformed service.

a. When the position the military service member has restoration rights to has been abolished, the servicing CPAC will provide notice of position abolishment to the affected employee. The notification will also identify the action being taken to effect restoration.

(1) In the event the former employing activity no longer exists, the next higher-level organization or command will be responsible for identifying an appropriate position within, the local commuting area of the former employing activity.

(2) If no position exists in the former, then restoration will be to a position with any other command within the local commuting area.

(3) If no position exists in the local commuting area, then restoration will be to a position with the former employing command outside the local commuting area.

(4) If valid placement is not possible through these efforts, the requirement will be elevated through the chain of command, to AG-1(CP), until an Army position is identified for the restoration action.

(5) While a restored employee may not be affected by RIF for the statutory period (6 to 12 months as appropriate), they may be separated under adverse action procedures (for cause) for failure to follow a management directed reassignment to an appropriate available position (includes positions outside the commuting area).

b. When the position to which the employee has restoration rights is transferred to another Army activity or DOD component, and the employee would have been afforded TOF rights under 5 CFR, Part 351, the employee's restoration rights transfer to the gaining activity.

(1) The servicing CPAC will provide notice to the employee. If the individual accepts the transfer to the new location, the servicing CPAC will prepare to receive the individual at the new location upon restoration. If the individual declines the transfer to the new location, the servicing CPAC will take action based on paragraph 19-7a(5) of this regulation, for failing to follow a management-directed reassignment.

(2) If the employee would not have been offered functional transfer rights, the activity retains the responsibility to extend restoration rights to the employee.

19-8. Retention rights

A person who is reemployed following uniformed service cannot be discharged from employment, except for cause—

a. Within 1 year after the date of reemployment if that person's service was 181 days or more or

b. Within 180 days after the date of reemployment if such service was 31 days or more, but less than 181 days.

19-9. Reemployment not required

Management has the burden of providing proof to the CPAC for situations that fall into *a*, *b*, or *c*, prior to any notification to the returning employee. An Army designated official will make the final determination if the documentation is sufficient to support non-reemployment. As identified in title 38 section 43, management is not required to reemploy a person if—

a. The position the employee left was for a brief, non-recurrent period and there was no reasonable expectation that the employment would continue indefinitely or for a significant period.

b. Management's circumstances have so changed as to make reemployment impossible or unreasonable.

c. The reemployment imposes such difficulty or expense as to cause undue hardship on the employer.

d. The employee was separated from military service with a dishonorable or bad conduct discharge, or separated from military service under other than honorable conditions.

e. An officer dismissed from any Armed Forces or dropped from the rolls of any Armed Forces as prescribed under 10 USC Section 1161.

f. The cumulative length of service exceeds 5 years and no portion of that falls within the following exceptions as identified in 31 USC 4312—

(1) Service beyond 5 years is required to complete initial service obligation.

(2) Service during which the employee was unable to obtain release orders before the expiration of the 5-year cumulative service limit through no fault of their own.

(3) Service performed as required pursuant to section 10147 of title 10, under section 502(a) or 503 of title 32, or to fulfill additional training requirements determined and certified in writing, to be necessary for professional development, or for completion of skill training or retraining,

(4) Involuntary order or call to active duty, or retention on active duty.

(5) Service resulting from an order to, or retention on, active duty (other than for training) under any provision of law because of a war or national emergency declared by the President or the Congress.

(6) Ordered to active duty in support of an operational mission for which personnel have been involuntarily called to active duty.

- (7) Ordered to active duty in support of a critical mission or requirement.
- (8) Called into Federal service as a member of the National Guard under chapter 15 of title 10 or under section 12406 of title 10.

19–10. Loss of rights and benefits

If after being advised of his or her rights and benefits, an employee knowingly provides written notification of his or her intent not to return to a position of employment after completion of uniformed service, he or she will no longer be entitled to any seniority-based rights and benefits. However, providing that notification does not waive an employee's right to reemployment. An employee can only waive his or her right to reemployment after the period of uniformed service is completed and only if he or she fails to meet the criteria specified in 38 USC Section 4312 concerning required notice, length of military service or application for reemployment. The CPAC receives and maintains any written documentation concerning the employee's military service and requests for benefits or resignation as stated in paragraph 19–5 of this regulation.

Chapter 20 Reduction-In-Force

20–1. Applicability of reduction-in-force policies

This chapter prescribes policies and procedures applicable to Army civilian employees, including U.S. Army Reserve (USAR) military technicians. This chapter supplements 5 CFR Part 351 and DODI 1400.25, Volume 351. This chapter does not apply to, unless expressly stated—

- a. Army National Guard military technicians employed under the provisions of 32 USC Section 709, unless specifically made applicable by the National Guard Bureau.
- b. SES employees.
- c. DCIPS employees.
- d. Title 10 faculty.
- e. Demonstration project employees covered by other RIF policies.

20–2. Management considerations during a reduction in force

a. In planning and conducting reduction and realignment actions, management will make every effort to avoid the involuntary separation of employees. When shortages of payroll dollars and/or funding drive the RIF, activities should use, and exhaust, other less severe management options such as-

- (1) Curtailing temporary duty travel, overtime, and other discretionary spending.
 - (2) Instituting a selective hiring policy.
 - (3) Releasing temporary employees (Tenure 0) prior to implementing RIF actions that affect the pay or jobs of permanent civilian employees.
 - (4) Releasing term employees at end of the not-to-exceed date, when possible.
 - (5) Open a Voluntary Separation Incentive Payment (VSIP)/Voluntary Early Retirement Authority (VERA) window.
- b. All levels of management must be involved in effective planning, placement, and retraining assistance. If after all reasonable and prudent efforts have been exhausted and separation by RIF is unavoidable, maximum efforts will be made to help employees find continuing employment elsewhere.

c. RIF must be done with as little disruption to the installation's mission and dislocation of employees as possible. When planning and conducting a RIF, every effort will be made to keep the work force productive. Management officials will observe the requirements of the DOD Program for Stability of Civilian Employment, DODI 1400.20, and DOD Civilian Personnel Management System: DOD Priority Placement Program (PPP), DODI 1400.25 Volume 1800 and its effect on decisions to reduce and/or realign operations and personnel, to transfer functions, and to close activities.

20–3. Placement assistance for employees

a. It is Army policy to minimize, to the greatest practical extent, the impact on each individual competing employee and to make every reasonable effort to avoid involuntary separations. Effective planning, intensive placement, outplacement and training (or retraining) are examples of the kinds of actions that will contribute to this effort.

b. DA Civilians who are subject to a RIF or base realignment and closure are eligible to receive transition assistance services at a Soldier For Life-Transition Assistance Program (SFL–TAP) Center, or through the SFL–TAP Virtual Center, which is available 24 hours a day, 7 days a week. Information for SFL–TAP can be located at <https://www.sfl->

tap.army.mil. Those activities that provide transition services through SFL–TAP will establish local procedures to ensure a fully coordinated approach to the provision of transition services by civilian personnel and SFL–TAP offices.

c. Commands are encouraged to establish a program that will place emphasis on finding employment for those employees who are to be involuntarily separated by RIF or for failure to follow their function in a TOF. This will include the standard programs offered through the OPM (for example, the Interagency Career Transition Assistance Program) plus the DOD PPP. The commander should consider making contacts personally with the larger local or non-local employers, both public and private, and with chambers of commerce, trade associations, other community resources, or like organizations. All employees should be requested to furnish data they may have or are able to obtain concerning employment opportunities.

20–4. Prior approval of reduction, realignment, and other actions

a. There are separate approval, coordination, and clearance requirements for reduction and realignment actions prescribed within DODI 1400.25, Volume 351 (also see the Civilian Human Resources Delegation Matrix). Requirements and guidance for documenting and processing reduction and realignment actions are contained in AR 5–10.

b. To fulfill the notification requirements of 10 USC Section 1597(e) and DODI 1400.25, Volume 351, AG–1(CP) will issue a single annual notice through the Chief Legislative Liaison to Congress of all planned RIF, TOF, and other transfer actions that will result in the relocation of civilian employees outside of the local commuting area. In response to an annual AG–1(CP) data call, ACOMs, ASCCs, DRUs and the AASA will submit one consolidated response to the AG–1(CP) for their respective commands and will use the template provided at figure 20–1, below, for each anticipated RIF, TOF, or other transfer action.

c. Any request to seek approval for, or to clear and coordinate, actions that were not included in the annual congressional notification will be forwarded to AG–1(CP) a minimum of 180 days prior to the proposed effective date. Organizations that have collective bargaining agreements that require a longer employee notice period should account for this when submitting requests to AG–1(CP).

d. The AG–1(CP) may establish new or additional notification, reporting, clearance, and/or approval requirements either for Army-wide application or on a case-by-case basis. Guidance identifying these requirements and/or restrictions will be issued as the need arises.

20–5. Furlough

Advance clearance is required prior to issuing an administrative furlough that will be effected under the provisions of 5 CFR Part 351. The template shown in figure 20–1 will be submitted to AG–1(CP) a minimum of 180 days prior to the proposed effective date in order to properly coordinate and clear the furlough request.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

Office Symbol

Date

MEMORANDUM THRU Assistant G-1 for Civilian Personnel (AG-1(CP)), Staffing and
Classification Division (SCD)
Deputy Assistant Secretary of the Army (Civilian Personnel) (SAMR CP)

FOR Assistant Secretary of the Army (Manpower and Reserve Affairs)

SUBJECT: Request for Coordination/Clearance of Reduction in Force for ABC Command

1. Name of activity: (Self-explanatory)
2. Location(s) and Unit Identification Code (UIC): (Self-explanatory)
3. Appropriate BUS Code (may be more than one). (Self-explanatory)
4. Gaining Location (if transfer of function or realignment): (Self-explanatory)
5. Nature of action: Involuntary separation of 65 Perm employees; Change to lower grade of 10 Permanent employees.
6. Proposed effective date: NLT 30 November 2017

(Note— indicate how long the employee notice period is, if longer than 60 days.)

7. Reason for action: *(What happened?)* Due to a change in mission and a reduction in OMA funding, a review of all positions was conducted to determine which positions needed to remain beyond the end of the FY.

8. Criteria and methodology used to support this force structure decision: *(For example, how was the decision made to abolish these particular positions?)* Beginning in September 2015, the command conducted a review of business practices and associated systems which resulted in the abolishment of all Management Analyst, GS-0343-09 positions. Since the duties associated with these positions would no longer be required, the Ccommand has determined the need to conduct a RIF.

9. Number of personnel affected: *(break out reassignments, changes to lower grade and involuntary separations)* 25 reassignments; 10 changes to lower grade; 65 involuntary separations

10. Total number of civilian employees *(who are covered by this action-competitive area)*: 250

11. Actions taken to mitigate reductions: VERA/VSIP windows opened Nov – Dec 2016 (multiple windows expected to open during 2017); early PPP registration will begin Mar 2017; hiring freeze implemented Dec 2015; 15 temporary employees were not extended past NTE date.

12. Funding impact:

a. Savings*: (salaries and other costs avoided by the proposed action) Annual savings of \$1,290,000.00 (salary/benefits)

*(*Note-- Specify whether the savings is before or after deducting the cost).*

Figure 20–1. Sample memorandum to request coordination and clearance of reduction in force

OFFICE SYMBOL
SUBJECT: Request for Coordination/Clearance of Reduction in Force for ABC Command

b. Costs*: Annual leave payout estimate \$1,150,000.00; Severance pay estimate \$2,200,000.00; PCS cost estimate \$3,500,000.00; VSIP cost estimate \$600,000.

(*Note—Include PCS costs for employees who are relocated via PPP).

13. Estimated effect on local economy: *(If impact is expected to be insignificant, state as such.)* The reduction of employees at command, located in Virginia Beach, will likely impact small businesses in the area. Loss of jobs at the command has the potential to exacerbate negative pressures on the business community in an already challenging economic climate. However, because of the aforementioned reduction in funding, we are constrained to request authority to conduct this reduction in force.

14. Anticipated congressional interest, including names and districts of members to be notified:

Senator (Name) (VA)
Senator (Name) (VA)
Senator (Name) (MD)
Senator (Name) (MD)
Representative (Name) (VA-01)
Representative (Name) (VA-02)
Representative (Name) (MD-01)
Representative (Name) (MD-02)

15. Proposed unclassified press announcement or statement that no press announcement is planned: *(If a draft press release is available, please include as an enclosure.)* None

NAME
SIGNATURE BLOCK

2 Encls
1. Local Economic Impact
2. Press Release

Figure 20–1. Sample memorandum to request coordination and clearance of reduction in force--Continued

20–6. Contractual arrangements resulting in reduction in force

The policies and procedures pertaining to conversion of commercial activities (CA) to contractor operation are outlined in AR 5–20. Additional guidance is in DA Pam 5–20. When RIF procedures are necessary to implement a contract decision, RIF notices cannot be issued until receipt of HQDA clearance to proceed with the conversion, and issuance of notice to proceed or award of unconditioned contract has been accomplished by the contracting officer. (Provisions of AR 5–10 discussed in paragraph 20–4 above do not apply to implementing CA decisions.) In addition to the information to be included with all RIF notices, in CA actions, it is advisable to include information on the right of first refusal for the employees who are so entitled. The information should, to the extent that it is available, cover what jobs the contractor will be filling, when and how to apply for the contractor jobs, the effect on severance pay of accepting or declining employment with the contractor, and other pertinent information.

20–7. Commands located in foreign areas

When it is determined that a RIF of local national positions is required, guidance in DODI 1400.25, Volume 1231 will be followed, unless it would violate provisions of host nation treaties or agreements. When it is determined that a RIF of U.S. citizen employees may be necessary, the requirements within DODI 1400.25, Volume 351 will be followed.

20–8. Competitive areas

Commands are responsible for establishing competitive areas. These are the boundaries within which employees compete for retention under RIF procedures. Employees in a competitive area compete only with each other; they do not compete with employees in another competitive area. In any one RIF, commands may not use one competitive area for the first round of competition and a different competitive area for subsequent rounds of competition.

a. Competitive areas must be defined solely in terms of organization unit(s) and geographical location(s).

(1) *Departmental and headquarters.* The minimum competitive area at the departmental or headquarters level is a major subdivision of the agency within the local commuting area, for example, an Army command, directorate, or other equivalent major segment of the organization. It may be identified as an organizational segment that is clearly distinguished from others in operation, work function, staff, and separate administration.

(2) *Field activity.* The minimum competitive area in the field is an activity under separate administration within the local commuting area. If two or more field activities are grouped at the same installation but are organizationally independent and separate from each other in operation, work function, staff and separate administration, each activity may properly be designated a competitive area. For example, although field activities of several commands may be located at one installation, each command activity at the installation can meet the definition of minimum competitive area.

b. As used for purposes of establishing a minimum competitive area, “separate administration”—

(1) Is the administrative authority to take or direct personnel actions (including the authority to establish positions, abolish positions, assign duties, and so forth) rather than the issuance or processing of the documents by which these decisions are effected;

(2) Means that the organizational unit is separately organized and clearly distinguished from other organizational units within the same local commuting area in regard to operation, work function, staff, and personnel management;

(3) Recognizes that individual organizational components may be under separate administration even though organizations reserve final approval of certain personnel actions to a higher level in the command (including classification of positions, filling of higher-graded positions, processing of personnel actions, and so forth); and

(4) Is evidenced by the command's policy and delegations of authority that document where, in the organization, final authority rests to make decisions such as establishing positions, abolishing positions, assigning duties, etc. This is the standard for a minimum competitive area in a local commuting area, in either a headquarters organization or field activity.

c. The fact that the same CPAC services several activities does not constitute “separate administration” and does not, of itself, require that they be placed in the same competitive area. The CPAC processes personnel actions rather than having final responsibility to make decisions on whether to establish positions, abolish positions, assign duties, and so forth.

20–9. Credit for performance

a. When credit is given. Credit will be given to employees for annual performance ratings which have been received in the servicing CPAC by the cutoff date established under (2) below. Exceptions to the cutoff date will be reviewed on a case-by-case basis. With the exception of modal ratings, only ratings of record drawn from performance appraisals as defined in 5 CFR 351.203 will be used for RIF. Credit will not be given for probationary or special ratings.

b. Basis for credit.

(1) The effective date of annual performance ratings is defined as the actual final approval date.

(2) To provide adequate time to determine employee retention standing, activities may provide for a cutoff date prior to the issuance of specific RIF notices, after which no new annual performance ratings will be put on record and used for purposes of determining retention standing. Extensions or exceptions to the cutoff date will be reviewed on a case by case basis. Information concerning such cutoff dates should be broadly disseminated within the RIF competitive area as early as possible. Managers and supervisors should be reminded of the importance of completing all performance appraisals in a timely manner and of their responsibility for ensuring such completion.

(3) Regardless of whether the employee's service occurred in one or more agencies, the employee's actual ratings are to be used to the extent they are available. If they are not available in the employee's official records, the CPAC can accept employee copies of annual performance ratings of record for this purpose.

(4) Annual performance ratings of record, even when they are based on an appraisal system not subject to 5 CFR Part 430 are to be used.

c. Cases of unacceptable performance.

(1) An employee with a proposed, but not a final, written decision of removal or demotion because of a pending adverse action, is not penalized solely on that basis in the first or second-round of RIF competition, and is listed on the retention register with other employees. When the employee's most recent rating of record is "unacceptable", only that rating will be considered for the purposes of RIF.

(2) An employee who has received a final written decision of removal because of unacceptable (or equivalent) performance competes differently from an employee who has received a final written decision of demotion due to unacceptable performance—

(a) An employee who, as of the effective date of the RIF, has received a final written decision of removal because of unacceptable performance, or because of adverse action, is listed apart from the retention register and does not compete in first or second-round RIF competition.

(b) An employee who has received a final written decision of demotion because of unacceptable performance, or because of adverse action, is listed on the retention register for the position to which the employee will be demoted.

20–10. Retention standing

a. The employee's retention standing is determined as of the effective date of the RIF.

b. Employee's holding term appointments (Tenure Group III) may be granted administrative assignment rights at the command's discretion. Unless provided by the command, neither excepted service employees nor competitive service employees in Tenure Group III have any right of assignment.

c. Noncompeting employees are released first. Before a competing employee may be released from a competitive level, the following must first be released from that competitive level—

(1) Employees holding temporary appointments to a position in that competitive level;

(2) Employees temporarily promoted to a position in that competitive level (these employees are returned to their permanent positions of record, or equivalent);

(3) Employees who have received a written decision of removal or demotion because of unacceptable performance, or because of adverse action, from a position in that competitive level.

d. Exceptions—

(1) A mandatory exception applies to employees with restoration rights for either 6 months, or 1 year, as appropriate. Before release from the competitive level by RIF, each employee with a restoration right based on active duty in a uniformed service must be retained over other employees in the tenure group and subgroup until the end of the applicable 6 months or 1-year mandatory retention period.

(2) If an employee with this restoration right is reached for release from a competitive level during the applicable mandatory retention period (for example, 6 months or 1 year following restoration from the Armed Forces), the command is obligated to find another position for the employee under the provisions of the restoration regulations, if possible, rather than separate the employee by RIF.

20–11. Mandatory exception to the regular order of release and the use of annual leave to reach an immediate annuity and/or to continue health benefits

a. A mandatory exception to the regular order of releasing employees from the competitive level to retain an employee who is being involuntarily separated by RIF must be used if the employee elects to use annual leave and remain on the command's rolls after the effective date that the employee would otherwise have been separated, for the purpose of establishing initial eligibility for—

(1) Immediate Civil Service Retirement System (CSRS) or Federal Employees' Retirement System (FERS) retirement (including optional, voluntary early retirement (VERA), discontinued service retirement (DSR), and FERS Minimum Requirement Age+10); and/or

(2) Continuation of Federal Employees Health Benefits (FEHB) coverage into immediate retirement. Employees retained under this provision must be covered by the leave provisions located in 5 USC Chapter 63. An employee may not be retained under this provision past the date that the employee first becomes eligible for immediate retirement, and/or for continuation of health benefits into retirement, except that an employee may be retained long enough to satisfy both retirement and health benefits requirements.

b. Except as permitted as a permissive temporary exception under authority of 5 CFR Section 351.608(d), for an employee on approved sick leave, a command may not approve the employee's use of any other type of leave after the employee has been retained under a mandatory exception for the purpose of gaining initial eligibility for immediate retirement and/or continuation of health benefits into retirement. Title 5 CFR Section 630.212 defines annual leave that is available for purposes of a mandatory exception under this paragraph.

c. The reason for using a mandatory exception must be recorded on the retention register. Each employee listed on the retention register has the right to review the reason for the use of the mandatory exception to the regular order of release.

20–12. Use of annual leave in relocation situations to obtain retirement benefits and/or to continue health benefits coverage

a. An employee who is being involuntarily separated by adverse action because of the employee's decision to decline relocation to a different local commuting area (including transfer of function, reassignment, realignment, change of duty station, and so forth) may elect to use annual leave and remain on the command's rolls after the date the employee otherwise would have been separated by adverse action, in order to establish initial eligibility for—

- (1) Immediate CSRS or FERS retirement (including optional, VERA, DSR, and FERS minimum requirement age + 10); and/or
- (2) Continuation of FEHB coverage into immediate retirement.

b. An employee retained under this provision must be covered by 5 USC Chapter 63. Under this provision, a command may not retain an employee past the date the employee first becomes eligible for immediate retirement, or past the date the employee satisfies the requirement for continuing health benefits coverage into retirement, except if necessary to enable the employee to meet both the retirement and health benefits requirements.

20–13. Permissive continuing exception to the regular order of release

a. Commands may use a permissive continuing exception to the regular order of releasing employees, in order to retain an employee for more than 90 days in a position that no higher-standing employee can take over—

- (1) Within 90 days; and
- (2) Without undue interruption to the activity.

b. The command determines the retention standing of an employee who is retained in the competitive level under a permissive continuing exception as of the date the employee would have been released from the competitive level had the agency not used the exception. When a command retains an employee under a permissive continuing exception, the command must give each higher-standing employee reached for release from the same retention register—

- (1) A written notice of the exception; and
- (2) The reason for the exception.

20–14. Permissive temporary exception for undue interruption

Commands may use a permissive temporary exception for not more than 90 days to the regular order of releasing employees in order to retain an employee in a position that no higher-standing employee can take over within 90 days without undue interruption to the activity.

20–15. Permissive temporary exception to satisfy Government obligation

Commands may use a permissive temporary exception, without regard to time limit, to the regular order of releasing employees to retain an employee for the purpose of satisfying a Government obligation to the retained employee. For example, a command may use a permissive temporary exception in order to provide an employee with a 60-day minimum RIF notice when the command was otherwise unable to give a timely notice to the employee. For another example, a command may use a permissive temporary exception in order to provide an employee with a new 60-day minimum RIF notice when the command gives the employee a new notice because the employee is being reached for a more severe RIF action.

20–16. Permissive temporary exception for sick leave

Commands may use a permissive temporary exception to the regular order of releasing employees in order to retain an employee who is on approved sick leave on the effective date of the RIF. The command may retain the employee under this provision for a period not to exceed the date the employee's sick leave is exhausted. Use of sick leave for this purpose must be in accordance with the requirements in 5 CFR Part 630, subpart D.

20–17. Permissive temporary exception

a. Commands may use a permissive temporary exception to the regular order of releasing employees in order to extend an employee's separation date beyond the effective date of the RIF when the temporary retention of a lower-standing employee does not adversely affect the right of any higher-standing employee who is released ahead of the lower-standing employee. The command may establish a maximum number of days, up to 90 days, for which a permissive temporary exception may be approved under this provision. There is no authority under this provision for an agency to retain an employee for the purpose of gaining eligibility for immediate CSRS or FERS retirement, and/or for continuation of FEHB coverage.

b. The command determines the retention standing of an employee who is retained in the competitive level under a permissive temporary exception as of the date the employee would have been released from the competitive level had the

command not used the exception. When a command retains an employee under a permissive temporary exception for more than 30 days after the date a higher-standing employee is released from the same retention register, the command must complete both steps—

(1) Give written notice, to each higher-standing employee in the competitive level who is reached for release, of the reason for the exception and the date the lower-standing employee's retention will end.

(2) List opposite the retained employee's name on the retention register the reasons for the exception, and the date the employee's retention will end.

20–18. Exception to the regular order of release with the liquidation exception

When a command will abolish all positions in a competitive area within 180 days, it must release the employees in subgroup order, but may release them regardless of their retention standing within a subgroup. A command may not use the liquidation exception to release an employee who is under a mandatory exception covered by a "mandatory exception to the regular order of release based upon service in a uniformed service." When a command uses the liquidation provision, it must complete both steps below—

a. Notify affected employees.

b. Give the date the liquidation will be completed.

20–19. Use of vacancies

Commands will make every effort to find placement for employees who are expected to be impacted by a RIF and will use any available vacant positions for this purpose.

20–20. Assignment rights for employees in the excepted service

Employees in the excepted service have no assignment rights to positions outside their competitive level. Consideration may be given to assigning released employees to vacant positions.

20–21. Qualifications

Activities may establish reasonable deadlines for receipt by the servicing CPAC of other qualifications information to be considered in a RIF. OPM or approved DOD qualification standards will be used to determine placement however commands retain the discretion to modify or waive qualifications for placement purposes.

20–22. Reduction in force notices

Restrictions on issuing or effecting certain RIF actions are covered in DODI 1400.25 Volume 351. Regarding the minimum employee notice period—

a. Competing employees will be given specific advance notices of at least 60 full days before the effective date of the RIF action. The 60 days does not include the date the notice is issued or the effective date of the action, nor can an organization count a Saturday, Sunday, or legal holiday as the last day of the minimum RIF notice period. When possible, employees will remain in an active status during the notice period. If, however, in an emergency, the activity lacks work or funds for all or part of the RIF notice period, the activity may, with or without the employee's consent, place the employee on annual leave; in a leave without pay status; or in a non-pay status.

b. At the same time notices are issued to employees, notice must be given to the labor organizations certified as the exclusive representatives of affected employees. This notification requirement does not relieve the organization of any obligations under the Federal Labor Management Relations Statute, or an applicable collective bargaining agreement.

c. At the same time notices are issued to 50 or more employees in a competitive area, notice will be given to—

(1) The appropriate State program authorized by the Workforce Investment Act of 1998;

(2) The chief elected government official of the local government(s) within which 50 or more employees will be separated by RIF; and

(3) The appropriate OPM Human Capital Officer, at the address below:

Associate Director
Human Capital Leadership and Merit System Accountability Division
U.S. Office of Personnel Management
1900 E Street NW, Room 7470
Washington, DC 20415

d. Waiver of the 60-day minimum employee notice period requirement must be approved by the OPM. Send such requests through command channels to AG–1(CP).

e. In addition to the information outlined in 5 CFR Section 351.802, specific RIF notices must include information concerning how to apply for unemployment compensation insurance through the appropriate State program. See 5 CFR 351.803.

f. Army commands will not issue certificates of expected separation.

Chapter 21

Voluntary Separation Incentive Pay and Voluntary Early Retirement Authority

21–1. Voluntary separation incentives

This chapter supplements DODI 1400.25, Volume 1702. The size and type of reorganization influences the tools that may be used by management to restructure positions and mitigate involuntary separations. There is no one solution and there are many tools that can be used to effectively carry out reorganizations. CPAC specialists play a key role in helping managers reorganize. Commanders are reminded to fulfill their applicable statutory labor relations obligations in exercising these VSIP authorities. Commanders will consider the following when determining if a voluntary separation incentive is appropriate during reorganization or restructuring actions—

- a.* Timeframe of reorganization or restructure plan.
- b.* The size and scope of the reorganization, to include which positions, if any, will be abolished.
- c.* Reason for the reorganization or restructure plan, such as, funding, strategic restructuring goals or mission related changes.
- d.* Skill sets and competencies necessary to meet strategic goals.
- e.* Cost benefit analysis.

21–2. Restructuring voluntary separation incentive pay

a. VSIP for restructuring should be used in a manner that is consistent with future mission requirements and fiscal constraints. There should be compelling business reasons to offer VSIP. Restructured positions should be filled no later than 1 year after the VSIP was approved. Examples of restructuring positions include—

- (1) A lower grade (such as a Contract Specialist, GS–1102–14 restructured to a GS–1102–12) or a lower pay band (such as a Contract Specialist, NH–1102–III restructured to a NH–1102–II);
- (2) A higher grade or pay band with a different skill set (such as an Information Technology Specialist (Customer Support), GS–2210–13 or NH–2210–III to an Information Technology Specialist (Network), GS–2210–14 or NH–IV);
- (3) A different series (such as a Program Analyst, GS–343–14 or NH–343–IV restructured to a Budget Analyst, GS–560–14 or NH–560–IV) when the incumbent is not minimally qualified for the restructured position;
- (4) The same series and grade or pay band with a different skill set if the incumbent does not currently possess the skills (such as an Information Technology Specialist, GS–2210–13 or NH–2210–III with mainframe skills requirements restructured to a GS–2210–13 or NH–2210–III with network skills requirements); or
- (5) An entry level grade or pay band in the same series or different series to correct a skills imbalance (such as an Accountant, GS–510–12 or NH–510–III restructured to a Systems Accountant, GS–510–7 or NH–510–II with full performance at the GS–12 or pay band 2 level to recruit individuals with up-to-date technology skills).

b. When the number of employees applying for VSIP exceeds the offers available, applications will be processed in order of seniority using the service computation date for leave.

21–3. Voluntary early retirement authority

a. Commands may approve VERA only on the basis of organizational considerations such as one or more of the following non-personal factors—

- (1) Organizational unit(s).
- (2) Classification series, occupations, and/or grade levels.
- (3) Geographical location(s).
- (4) Specific VERA window(s).
- (5) Skills, knowledge, or other factors related to a position.
- (6) Any combination of the five factors in subparagraphs (1) through (5) above, that the commander determines to be appropriate and necessary to implement the command's VERA.

b. For situations where the command may need to limit the number of employees who are approved for VERA, the command should have an impartial formal procedure to make these decisions. Commands should finalize its selection procedures before accepting applications from employees for VERA separations. Standard selection procedures may include (but are not limited to)—

- (1) Total creditable Federal civilian service.
 - (2) Total creditable Federal civilian service in the Army or in the organizational component offering the incentive.
 - (3) First-in, first-out (such as accepting the first applications received, up to an established limit).
- c. The command's selection procedure should be clearly communicated to its employees in the announcement.

Appendix A

References

Section I

Required Publications

5 CFR

Administrative Personnel (Cited in the title page.)

DODI 1400.25

DOD Civilian Personnel Management (Cited in the title page.)

DODI 1400.25, Vol. 1702

Voluntary Separation Programs (Cited in para 21–1.)

JAGC Publication 101

Personnel Policies (Cited in para 9–3*b*.)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this publication. DOD publications are available at <http://www.dtic.mil/whs/directives/>. Title 5 of the Code of Federal Regulations material is available at http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/title05/5tab_02.tpl.

AR 5–10

Stationing

AR 5–20

Competitive Sourcing Program

AR 11–2

Managers' Internal Control Program

AR 15–1

Department of the Army Federal Advisory Committee Management Program

AR 15–39

Department of the Army Intergovernmental and Intragovernmental Committee Management Program

AR 25–30

Army Publishing Program

AR 25–400–2

The Army Records Information Management System (ARIMS)

AR 27–1

Judge Advocate Legal Services

AR 27–26

Legal Services: Rules of Professional Conduct for Lawyers

AR 215–3

Nonappropriated Funds Instrumentalities Personnel Policy

AR 380–67

Personnel Security Program

AR 570–4

Manpower Management

AR 600–55

The Army Driver and Operator Standardization Program (Selection, Training, Testing, and Licensing)

AR 608–1

Army Community Service

AR 690–11

Use and Management of Civilian Personnel in Support of Military Contingency Operations

AR 690–700

Personnel Relations and Services (General)

AR 690–950

Career Program Management

AR 690–990–2

Hours of Duty, Pay and Leave Annotated

Civil Service Retirement System and Federal Employees Retirement System Handbook for Personnel and Payroll Offices

Office of Personnel Management (Available at <https://www.opm.gov/retirement-services/publications-forms/csrsfers-handbook>)

64 Comptroller General Decision 370, March 20, 1985

U.S. Government Accountability Office (Available at <http://www.gao.gov/products/457339#mt=e-report>)

DA Memorandum 690–5

Consultation with Labor Organizations

DA Pam 5–20

Competitive Sourcing Implementation Instructions

DODD 1400.31

DOD Civilian Work Force Contingency and Emergency Planning and Execution

DODD 5500.07

Standards of Conduct

DODI 1000.17

Detail of DOD Personnel to Duty Outside the Department of Defense

DODI 1100.21

Voluntary Services in the Department of Defense

DODI 1205.12

Civilian Employment and Reemployment Rights for Service Members, Former Service Members and Applicants of the Uniformed Services

DODI 1400.20

DOD Program for Stability of Civilian Employment

DODI 1400.24

Civilian Mobility Program

DODI 1400.25 Vol. 331

Civilian Air Traffic Controllers

DODI 1400.25 Vol. 336

Civilian Firefighters and Law Enforcement Officers

DODI 1400.25 Vol. 340

Other Than Full-Time Employment

DODI 1400.25 Vol. 351

Coordination and Clearance Requirements for Personnel Reductions, Closures of Installations and Reduction of Contract Operations in the United States

DODI 1400.25 Vol. 410

Training, Education, and Professional Development

DODI 1400.25 Vol. 431

DOD Civilian Personnel Management System: Performance Management and Appraisal Program

DODI 1400.25 Vol. 1230

Employees in Foreign Areas and Employee Return Rights

DODI 1400.25 Vol. 1231

Employment of Foreign Nationals

DODI 1400.25 Vol. 1232

Employment of Family Members in Foreign Areas

DODI 1400.25 Vol. 1800

DOD Civilian Personnel Management System: DOD Priority Placement Program (PPP)

DODI 1400.32

DOD Civilian Work Force Contingency and Emergency Planning Guidelines and Procedures

DODI 1402.01

Employment of Retired Members of the Armed Forces

DODI 1442.02

Personnel Actions Involving Civilian Attorneys

DODI 4000.19

Support Agreements

29 CFR

Title 29: Labor (Available at https://www.dol.gov/general/cfr/title_29)

General Schedule Supervisory Guide

Office of Personnel Management (Available at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/functional-guides/gssg.pdf>)

Introduction to Position Classification

Office of Personnel Management (Available at <https://www.opm.gov/policy-data-oversight/classification-qualifications/classifying-general-schedule-positions/positionclassificationintro.pdf>)

JTR

Joint Travel Regulations (Available at <http://www.defensetravel.dod.mil/docs/perdiem/jtr.pdf>)

Uniform Guidelines on Employee Selection Procedures

These guidelines are jointly adopted by the Equal Employment Opportunity Commission, the Civil Service Commission, the Department of Labor, and the Department of Justice (Available at <http://uniformguidelines.com/uniformguidelines.html>)

5 USC

Government Organization and Employees (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2009-title5/html/uscode-2009-title5-part1.htm>)

10 USC

Armed Forces (Available at <https://www.gpo.gov/fdsys/pkg/cprt-112hprt67344/pdf/cprt-112hprt67344.pdf>)

18 USC

Crimes and Criminal Procedure (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2009-title18/html/uscode-2009-title18.htm>)

22 USC

Foreign Relations and Intercourse (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2010-title22/html/uscode-2010-title22.htm>)

28 USC

Judiciary and Judicial Procedures (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2011-title28/html/uscode-2011-title28.htm>)

31 USC

Money and Finance (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2011-title31/pdf/uscode-2011-title31.pdf>)

32 USC

National Guard (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2011-title32/pdf/uscode-2011-title32.pdf>)

38 USC

Veterans' Benefits (Available at <https://www.gpo.gov/fdsys/pkg/uscode-2011-title38/html/uscode-2011-title38.htm>)

Section III

Prescribed Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate website (<http://www.armypubs.army.mil>).

DA Form 2600

Referral and Selection Register (Prescribed in para 10–8c(6)(c)4.)

DA Form 5369

Rotation Agreement-Employees Recruited From the United States (Prescribed in para 17–2a(2)(a).)

DA Form 5370

Rotation Agreement-Employees Recruited Locally in Foreign Areas (Prescribed in para 17–2a(2)(b).)

DA Form 5371

Rotation Agreement-Employees Recruited From the U.S. Territories and Possessions (Prescribed in para 17–2a(2)(c).)

DA Form 5412

Waiver of Compensation Statement (Prescribed in para 6–9c.)

DA Form 5414

Administrative Return Rights Agreement (Prescribed in para 18–15.)

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate website: <http://www.armypubs.army.mil>, and DD forms are available on the Secretary of Defense, Executive Services Directorate website: <http://www.esd.whs.mil/directives/forms>. SFs are available on the U.S. General Services Administration website: <https://www.gsa.gov/portal/forms/type/sf/>, and OGE forms are available through the U.S. Office of Government Ethics website: <https://www2.oge.gov/>.

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 4162

Volunteer Service Record

DD Form 214

Certificate of Release or Discharge from Active Duty (Available through normal forms supply channels).

DD Form 2292

Request for Appointment or Renewal of Appointment of Expert or Consultant

DD Form 2525

Certification of Hours Worked in Service Year for Expert or Consultant

OGE 450

Confidential Financial Disclosure Report

SF 15

Application for 10-Point Veteran Preference

SF 50

Notification of Personnel Action (Available through normal form supply channels).

SF 52

Request for Personnel Action

SF 75

Request for Preliminary Employment Data

Appendix B

Internal Control Evaluation

B-1. Function

This internal evaluation checklist provides internal controls for the evaluation of civilian personnel policies and procedures within Army.

B-2. Purpose

The purpose of this evaluation is to assist commanders and other Army leaders in evaluating the key internal controls listed. It is intended as a guide and does not cover all controls.

B-3. Instructions

Answers must be based on the actual testing of key internal controls (for example, document analysis, direct observation, sampling, simulation, other). Answers that indicate deficiencies must be explained and the corrective action identified in supporting documentation. These internal controls must be evaluated at least once every 5 years. Certification that the evaluation has been conducted must be accomplished on DA Form 11-2 (Internal Control Evaluation Certification).

B-4. Test questions

- a.* Does the commander have personnel policies posted for employees to access?
- b.* Has the local merit promotion plan been updated within the last 5 years?
- c.* Are administrative procedures for mobility programs in accordance with chapter 15?
- d.* Are reemployment rights folders created and contain proper documentation?
- e.* Are position management studies conducted to analyze position structure?

B-5. Comments

Help make this a better tool for evaluating internal controls. Submit comments to the Administrative Assistant to the Secretary of the Army (AAHS-PA), 9301 Chapek Road, Building 1465, Fort Belvoir, VA 22060-5527.

Glossary

Section I

Abbreviations

AAAI-CL

Office of the Administrative Assistant to the Secretary of the Army, Analysis and Integration Cell

AAP

Affirmative Action Program

AASA

Administrative Assistant to the Secretary of the Army

ACOM

Army command

ACTEDS

Army Civilian Training, Education and Development System

AG-1(CP)

Assistant G-1 (Civilian Personnel)

AR

Army regulation

ARIMS

Army Records Information Management System

ASA(M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

ASCC

Army service component command

CA

commercial activities

CFR

Code of Federal Regulations

CHRA

Civilian Human Resources Agency

CONUS

continental United States

CPAC

Civilian Personnel Advisory Center

CPOL

Civilian Personnel On-Line

CSRS

Civil Service Retirement System

DA

Department of the Army

DASA(CP)

Deputy Assistant Secretary of the Army (Civilian Personnel)

DCIPS

Defense Civilian Intelligence Personnel System

DCS, G-1

Deputy Chief of Staff G-1

DOD

Department of Defense

DODD

Department of Defense Directive

DODI

Department of Defense Instruction

DRU

direct reporting unit

DSR

discontinued service retirement

EEO

equal employment opportunity

eOPF

electronic official personnel folder

FEHB

Federal Employees Health Benefits

FERS

Federal Employees Retirement System

GC

general counsel

HQDA

Headquarters, Department of the Army

JTR

Joint Travel Regulations

NAF

nonappropriated fund

OCONUS

outside the continental United States

OMB

Office of Management and Budget

OPM

Office of Personnel Management

PCS

permanent change of station

PPP

Priority Placement Program

RIF

reduction in force

RPA

request for personnel action

SECARMY

Secretary of the Army

SES

Senior Executive Service

SFL-TAP

Soldier for Life-Transition Assistance Program

SME

subject matter expert

SOFA

status of forces agreement

TDA

table of distribution and allowances

TOF

transfer of function

U.S.

United States

USAR

United States Army Reserve

USC

United States Code

USERRA

Uniformed Services Employment and Reemployment Rights Act

VERA

Voluntary Early Retirement Authority

VRA

Veterans' Recruitment Appointment

VSIP

Voluntary Separation Incentive Payments

Section II**Terms****Activity**

A unit, organization, or installation performing a function or mission.

Administrative return rights

Return rights to a position as granted by the employing agency.

Advisory committee

Any committee, board, commission, council, conference, panel, task force, or other similar group, or any subcommittee or other subgroup thereof (hereafter in this paragraph referred to as "committee"), which is--

(A) established by statute or reorganization plan, or

(B) established or utilized by the President, or

(C) established or utilized by one or more agencies,

in the interest of obtaining advice or recommendations for the President or one or more agencies or officers of the Federal Government, except that such term excludes (i) any committee that is composed wholly of full-time, or permanent part-time, officers or employees of the Federal Government, and (ii) any committee that is created by the National Academy of Sciences or the National Academy of Public Administration.

Agency

Government corporation, agency, department, official, or establishment in the executive, legislative, or judicial branches (5 USC Section 3110).

Appointing authority

A person authorized to take final action on matters pertaining to the employment, direction, and general administration of personnel under their purview and make appointments, by delegation through Command channels.

Appointment and employment

Discretionary personnel actions (not based on statutory requirement) including initial hires, reinstatements, reassignments, and transfers.

Area of consideration

Area in which the agency makes an intensive search for eligible candidates in a specific promotion action. The minimum area of consideration is the area designated by the promotion plan in which the agency should reasonably expect to locate enough high-quality candidates, as determined by the agency, to fill vacancies in the positions covered by the plan.

Best qualified candidate

Candidates who rank at the top when compared with other eligible candidates for a position. A reasonable number of the best qualified candidates are referred for selection.

Civilian component

The civilian members of a collective Federal workforce that includes military and contractors.

Classified duties

A written statement of duties to which an appropriate classification authority has assigned a grade level.

Consultant

A person who can provide valuable and pertinent advice generally drawn from a high degree of broad administrative, professional, or technical knowledge or experience. When an agency requires public advisory participation, a consultant also may be a person who is affected by a particular program and can provide useful views from personal experience.

Demotion

The change of an employee to a lower grade when both the old and the new positions are under the General Schedule or under the same wage grade schedule, or to a position with a lower rate of basic pay when both the old and new positions are under the same type ungraded wage schedule or in different pay method categories.

Detail

Temporary assignment of an employee to a different position or set of duties for a specified period of time. There is no formal position change; officially, the employee continues to hold the position from which detailed and keeps the same status and pay.

Eligible candidate

Applicants who have been determined qualified and referred on a certificate to a selecting official.

Emergency-essential

A position-based designation to support the success of combat operations or the availability of combat-essential systems in accordance with Section 1580 of Title 10, United States Code.

Excepted service

Consists of those civil service positions which are not in the competitive service or the Senior Executive Service; includes all positions in the Executive Branch of the Federal Government which are specifically excepted from the competitive service by statute, by the President or by the Office of Personnel Management.

Excepted service position

A position in the excepted service

Expert

A person who is specially qualified by education and experience to perform difficult and challenging tasks in a particular field beyond the usual range of achievement of competent persons in that field. An expert is regarded by other persons in the field as an authority or practitioner of unusual competence and skill in a professional, scientific, technical or other activity.

Geographic mobility

A change in permanent duty assignment from one location to another requiring a relocation of the employee's residence.

Highly qualified expert

A person who possesses uncommon and recognized knowledge, skills, and experience in an occupational field, and judgment that is accorded authority and status by peers or the public. A highly qualified expert has substantive experience or education in a variety of occupational fields.

In-service placement

Includes a noncompetitive action in which a position is filled with a current or former competitive service employee through promotion, reassignment, change to lower grade, transfer, reinstatement, reemployment, or restoration. In-service

placement also includes noncompetitive conversion of appointees whose Federal excepted positions are brought into the competitive service under title 5 CFR Section 316.702, and Department of Defense/Nonappropriated Fund (DOD/NAF) and Coast Guard NAF employees whose positions are brought into the competitive service.

Jurisdiction or control

Direct control of some or all of an agency's operations.

Mobility program manager

The official at any level having broadest interest in a particular formal mobility program or special individual mobility field. Mobility Program Managers are appointed by the Functional Chief, personnel proponent or commander who initiated establishment of the program.

Noncitizen

An person who does not meet the definition of citizen or national pursuant to 8 USC 1401.

Nonreimbursable detail

Temporary assignment of an employee outside Department of Defense, for which Department of Army is not paid.

Organizational unit

Separately organized and clearly distinguished from other organizational units within the same local commuting area (including employees on telework agreements) in regard to operation, work function, staff, and personnel management; or separately organized by UIC.

Position change

A promotion, demotion, or reassignment made during an employee's continuous service within the federal government. A position change by any of these methods may also involve a change of official headquarters or post of duty within the agency.

Preference eligible

Provides veterans who are disabled or who served on active duty in the Armed Forces during certain specified time periods or in military campaigns preference over others in hiring from competitive lists of eligible and also in reduction in force procedures.

Promotion

The change of an employee to a position at a higher-grade level within the same job classification system and pay schedule or to a position with a higher rate of basic pay in a different job classification system and pay system.

Public official

Anyone who by law, rule, regulation or delegation has appointment or promotion authority, or authority to recommend employees for appointment or promotion.

Qualified candidates

Applicants who meet established qualifications requirements for the position.

Reimbursable detail

A reimbursable detail is the temporary assignment of an employee outside the Department of Defense for which Department of Army is paid. A payment agreement between agencies must be approved prior to the detail being effective.

Relative

With respect to public official, an individual who is related to the public official as father, mother, son, daughter, brother, sister, uncle, aunt, first cousin, nephew, niece, husband, wife, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother or half-sister.

Selective factors

Knowledge, skills, or abilities in addition to the basic qualification standards that are essential for successful performance on the job. Selective factors become part of the minimum requirements for the position and applicants who do not meet it are ineligible for further consideration.

Statutory return rights

Return rights to a stateside position when accepting overseas employment in accordance with 10 USC 1586.

Third-state national and third-country citizen

Non-U.S. citizen employees who are not citizens or permanent residents of the host country in which employed by the U.S. Forces and whose employment conditions are distinct from those that apply to local national employees.

Unclassified duties

A set of duties to be performed in lieu of an official position description.

Voluntary mobility

Employee initiates or freely and voluntarily accepts a reassignment, transfer, promotion, or relocation to further their own career goals. It is not covered by this regulation.

Section III**Special Abbreviations and Terms**

This section contains no entries.

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