

Army Regulation 635–200

Personnel Separations

**Active Duty
Enlisted
Administrative
Separations**

**Headquarters
Department of the Army
Washington, DC
28 June 2021**

UNCLASSIFIED

SUMMARY of CHANGE

AR 635–200

Active Duty Enlisted Administrative Separations

This major revision, dated 28 June 2021–

- o Adds additional statutory authority under Sections 1177 and 1214, Title 10, United States Code (paras 1–6*n* and 1–6*o*).
- o Implements Section 1177, Title 10, United States Code, which establishes that a medical examination is required before administrative separation for any Soldier who has deployed overseas in support of a contingency operation during the previous 24 months, and who is diagnosed with or reasonably asserts post-traumatic stress disorder or traumatic brain injury. Any such Soldier will not be administratively separated under conditions other than honorable until the results of the medical examination have been reviewed by the separation authority (paras 1–6*n* and 1–33*e*).
- o Updates separation process timeline standards (paras 1–8*c* and 1–9).
- o Clarifies leave in conjunction with administrative separation actions. (para 1–11).
- o Expands upon reduction in grade for voluntary and involuntary reductions in grade by the Secretary of the Army or designee for administrative separations on the basis of misconduct for Soldiers with 20 or more years of active federal service (paras 1–14*b* and 1–14*c*).
- o Adds processing guidance for actions requiring action by the Secretary of the Army (para 1–15*i*).
- o Removes paragraph regarding conduct from prior enlistments (formerly paras 1–15*c*(6)(d)1 through 1–15*c*(6)(d)3).
- o Removes personality disorder counseling and rehabilitative requirements (formerly para 1–16*a*(2)).
- o Adds restrictions on administrative separation and board hearings (para 1–18*d*).
- o Adds language to comply with recent Presidential and Office of the Secretary of Defense guidance on gender dysphoria (para 1–20*p*).
- o Clarifies lost time and waiver process (paras 1–22*a* through 1–22*c*).
- o Adds the authority to retain a Soldier when an investigation is initiated with a view to trial by court-martial or when Soldier is awaiting trial or results of trial (paras 1–23 and 1–32).
- o Clarifies when period of service expires for Soldier sick in hospital when medical/dental care is required (para 1–25*c*(1)).
- o Adds guidance for retention past expiration term of service for voluntary and involuntary discharge for miscellaneous reasons (para 1–27).
- o Adds requirement for the separation authority to review the medical examination and mental status evaluation to determine if the Soldier's medical condition(s) constitute matters in extenuation that relate to the basis for administrative separation for chapters 10 and 14 (para 1–33).

- o Adds the requirement for a mental status evaluation in addition to medical examinations for Soldiers being processed for separation under chapters 10, 13, or 14 (sec III) (para 1–33).
- o Adds a requirement for a medical examination to evaluate a diagnosis of post-traumatic stress disorder or traumatic brain injury and deletes reference to SF 600 (Chronological Record of Medical Care), including its requirements (paras 1–33*a* and 1–33*c*).
- o Incorporates Army Directive 2021–05, Integrated Disability Evaluation System (para 1–34*a*.)
- o Clarifies when the Physical Disability Evaluation System does not take precedence over administrative separation (para 1–34*b*).
- o Adds guidance for separation in foreign countries (para 1–42).
- o Adds retention policy for nondeployable Soldiers (para 1–49 and 1–50).
- o Adds restriction to intermediate commanders notification to Soldier (para 2–2*d*(4)).
- o Adds guidance on notations when a Soldier and/or counsel declines to respond to waiver of rights (para 2–2*e*(4)).
- o Provides clarification of separation authority of waivers before an administrative board (para 2–3*a*).
- o Clarifies composition of administrative board (para 2–6).
- o Expands board procedure delay timeline and adds a timeline to Soldier’s witness requests (para 2–9).
- o Moves separation authority action after board hearings (para 2–12).
- o Adds burden of proof for misconduct in the civilian community as the Soldier responsibility (para 3–5*b*).
- o Provides clarification to types of administrative discharges and character of service (para 3–7).
- o Deletes erroneous enlistments discovered prior to departure from military entrance processing station (formerly para 3–9*b*(1)(d)).
- o Adds an exception to separate Soldiers accepted to attend a Service academy or academy preparatory school (para 4–2*e*).
- o Adds guidance on retention control point separations (para 4–3*e*(3)).
- o Adds guidance for the voluntary separation of Soldiers serving on indefinite enlistments/reenlistments (para 4–4).
- o Moves Secretarial plenary authority to chapter 15 (formerly para 5–3).
- o Provides guidance on benefits available under Public Law 110–317 in connection with sole survivorship discharges (para 5–3*c*).
- o Updates definition for “surviving son or daughter” and clarifies “U.S. Armed Forces” (paras 5–4*a* and 5–4*b*).
- o Adds additional guidance for counseling for involuntary separation due to parenthood (para 5–7*b* and 5–7*d*).
- o Combines separation due to personality disorder with paragraph 5–14 (formerly para 5–13).
- o Increases the number of days to 120 for separation to further education (para 5–13*a*).

- o Clarifies use of accrued leave in early separation to further education (para 5–13*e*).
- o Adds exception to policy guidance for highly deserving Soldiers (para 5–13*i*).
- o Adds and clarifies physical and mental conditions that may receive separation approval (para 5–14).
- o Adds separation authority for separation under designated physical or mental conditions (para 5–14*l*).
- o Prescribes DA Form 7771 (Enlisted Behavioral-Health Related Administrative Separation Checklist) (para 5–14*f*).
- o Removes policy allowing the early release of Reserve Component personnel serving Active Guard Reserve tours under Section 12301, Title 10, United States Code, under certain circumstances (formerly para 5–15).
- o Clarifies the criteria and intent for separation due to dependency or hardship (para 6–3).
- o Adds death of a spouse as a hardship provision for separation (para 6–3*b*).
- o Clarifies separations due to fraudulent entry (paras 7–17 through 7–22).
- o Adds the requirement to use DD Form 2808 (Report of Medical Examination) instead of SF 88 (Medical Record–Report of Medical Examination) and SF 93 (Medical Record–Report of Medical History) to conduct a medical examination for pregnancy (para 8–6).
- o Adds guidance for outside the continental United States separation due to pregnancy (para 8–9*a*).
- o Updates the number days to consider separation options due to pregnancy (para 8–10*b*).
- o Changes the title of chapter 9.
- o Removes references to the Alcohol and Drug Abuse Prevention and Control Program and the Army Substance Abuse Program (chap 9).
- o Incorporates Army Directive 2012–07, Administrative Processing for Separation of Soldiers for Alcohol or Other Drug Abuse, by adding basis for separation for alcohol and drug abuse rehabilitation failure (paras 9–2 and 14–12*c*(2)).
- o Incorporates Army Directive 2021–07, Individual Ready Reserve Management, by adding mobilization asset requirements (para 1–36).
- o Updates general guidance for discharge in lieu of trial by court-martial (para 10–1).
- o Adds information to be considered for decision of discharge in lieu of trial by court-martial (para 10–2*b*(11) and 10–2*c*(5)).
- o Adds limited use evidence (para 10–10).
- o Updates service obligation requirements (paras 12–8*b*(1) and 12–8*d*).
- o Updates requirements for retirement in lieu of permanent change of station (para 12–9).
- o Adds voluntary and involuntary request to withdrawal of DA Form 2339 (Application for Voluntary Retirement) or changes in retirement date (para 12–15).

- o Adds notification to the U.S. Army Human Resources Command of flagging action for Soldiers with an approved retirement date (para 12–15*f*).
- o Adds additional category for separation for unsatisfactory performance (para 13–2*a*).
- o Removes actions by unit commander when Soldier is under military control (formerly para 13–5).
- o Removes actions by intermediate commander when a Soldier is under military control (formerly para 13–7).
- o Incorporates Army Directive 2013–21, Initiating Separation Proceedings and Prohibiting Overseas Assignments for Soldiers Convicted of Sex Offenses (chap 14).
- o Updates information to meet the requirements of Section 1177, Title 10, United States Code (para 14–2*a*(3)).
- o Clarifies conviction by court (paras 14–5 through 14–17).
- o Moves Soldiers confined pursuant to the sentence in a foreign court to chapter 14 (para 14–9).
- o Adds Secretarial plenary authority (chap 15).
- o Moves Qualitative Management Program to chapter 16.
- o Adds separation authority for active duty Soldiers being ordered to an Active Guard Reserve tour to meet Headquarters, Department of the Army requirements (para 16–1*b*).
- o Clarifies other officer accession programs (para 16–2*a*(3)).
- o Removes discharge for the purpose of immediate enlistment or reenlistment (formerly para 16–3).
- o Clarifies the procedures for Soldiers identified for early separation (para 16–6).
- o Adds two-time not fully qualified (para 16–10).
- o Incorporates Army Directive 2014–06, Qualitative Management Program (para 16–11).
- o Incorporates Army Directive 2016–19, Retaining a Quality Noncommissioned Officer Corps (para 16–12).
- o Removes presentation of instruction for benefits of an honorable discharge (formerly para 17–2).
- o Updates when instructions will be given for benefits of an honorable discharge (para 17–3).
- o Adds sample instructions for benefits of an honorable discharge (para 17–4).
- o Updates failure to meet weight control standards (chap 18).
- o Removes chapter 19.
- o Adds an internal control evaluation (app C).
- o Cancels and removes references to DA Form 4657 (Statement of Retirement-Eligible Soldier–Remaining Service Obligation), DA Form 4658 (Statement of Retirement-Eligible Soldier–Not Eligible to Reenlist), and DA Form 4941 (Statement of Options, Qualitative Management Program (QMP)) (throughout).

Personnel Separations
Active Duty Enlisted Administrative Separations

By Order of the Secretary of the Army:

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General, United States Army
Chief of Staff

Official:


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Administrative Assistant
to the Secretary of the Army

History. This publication is a major revision.

Summary. This regulation has been revised to implement DoDI 1332.14. Statutory authority for this regulation is established under Sections 1169, 12313, and 12681, Title 10, United States Code.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve serving on active duty pursuant to Title 10, United States Code. AR 135-series

regulations are the primary separation policies for Reserve Component personnel. AR 135–18 is the primary separation policy for Army National Guard Soldiers serving on full-time National Guard duty, Title 32, United States Code.

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 within 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 app C).

Supplementation. Supplementation of this regulation and establishment of command and local forms are prohibited without prior approval from the Deputy Chief of Staff, G–1 (DAPE–MPE), 300 Army Pentagon, Washington, DC 20310–0300.

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 Deputy Chief of Staff, G–1 (DAPE–MPE), 300 Army Pentagon, Washington, DC 20310–0300.

Distribution. This regulation is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

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*This regulation supersedes AR 635–200, dated 19 December 2016. AD 2012–07, dated 13 March 2012; AD 2013–21, dated 7 November 2013; AD 2014–06, dated 10 April 2014; and AD 2016–19, dated 26 May 2016 are rescinded on publication of this regulation.

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Chapter 1

General Provisions

Section I

General

1–1. Purpose

This regulation prescribes policies and standards to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. It prescribes the policies, procedures, and authority for separation of Soldiers upon expiration term of service (ETS) or fulfillment of active duty obligation, and the general provisions governing the separation of Soldiers before ETS or fulfillment of active duty obligation to meet the needs of the Army and its Soldiers. The regulation implements laws and policies governing voluntary retirement of Soldiers for length of service, and criteria governing uncharacterized separations and the issuance of honorable, general, and under other than honorable conditions discharges within the Department of the Army (DA).

1–2. References and forms

See appendix A.

1–3. Explanation of abbreviations and terms

See glossary.

1–4. Responsibilities

- a. The Deputy Chief of Staff (DCS), G–1 will—
 - (1) Plan and supervise the execution of personnel policies relating to enlisted separations.
 - (2) Ensure the Commanding General (CG), U.S. Army Human Resources Command (HRC), establishes standards and operating tasks for the enlisted separation program.
- b. The Surgeon General (TSG) will ensure the U.S. Army Medical Command requests retention via memorandum or electronic message for Soldiers past their set release date when the provisions of paragraph 1–25 apply.
- c. The Judge Advocate General (TJAG) will, upon request, review DA administrative changes to verify the legality of prescribed policies and changes.
- d. The CG, U.S. Army Training and Doctrine Command (TRADOC), through the Commandant, Adjutant General School, will ensure that programs of instruction incorporate the provisions of this regulation.
- e. Commanders, Army commands, Army service component commands (ASCCs), and direct reporting units will monitor the administration of the enlisted separation program to ensure compliance with the policies and operating tasks established by this regulation.

1–5. Records management (recordkeeping) requirements

The records management requirement for all record numbers, associated forms, and reports required by this publication are addressed in the Records Retention Schedule–Army (RRS–A). Detailed information for all related record numbers, forms, and reports are located in ARIMS/RRS–A at <https://www.arims.army.mil>. If any record numbers, forms, and reports are not current, addressed, and/or published correctly in ARIMS/RRS–A, see DA Pam 25–403 for guidance.

1–6. Statutory authority

Principal laws pertaining to or effecting enlisted separations are cited below. Questions concerning the applicability of these laws in individual cases should be referred to the servicing staff judge advocate (SJA). All references are to sections of Title 10, United States Code (USC).

- a. 10 USC 507 provides authority in certain cases—medical care or hospitalization—to retain Soldiers on active duty beyond ETS.
- b. 10 USC 651 establishes the initial military service obligation (MSO) and provides for transfer to a Reserve Component (RC), in certain cases, upon release from active duty (REFRAD).
- c. 10 USC 972 requires a Soldier to make up lost time due to being absent without leave (AWOL), confinement, and so forth, prior to separation.

- d.* 10 USC 1141 through 1153 describe benefits and services available to Soldiers who are being voluntarily or involuntarily separated.
- e.* 10 USC 1168 stipulates that a discharge certificate or certificate of REFRAD must be given to each Soldier discharged or released from active duty.
- f.* 10 USC 1169 confers broad authority on the Secretary of the Army (SECARMY) to order separation of a Regular Army (RA) Soldier prior to ETS.
- g.* 10 USC 1170 provides authority for separation on the grounds of minority age (under 18 years of age).
- h.* 10 USC 1171 provides authority to separate a Soldier up to 1 year before ETS.
- i.* 10 USC 1173 provides authority for discharge due to hardship of a Soldier who has Family members.
- j.* 10 USC 1174 provides for separation pay to certain Soldiers involuntarily discharged or released from active duty.
- k.* 10 USC 1174a provides for special separation benefits (lump sum payment) for certain Soldiers who separate voluntarily.
- l.* 10 USC 1175 provides for a voluntary separation incentive (annual payment) for certain Soldiers who separate voluntarily.
- m.* 10 USC 1176 establishes rules for retention on active duty to retirement eligibility of Soldiers with 18 or more years of service and 18 years qualifying service.
- n.* 10 USC 1177 establishes that a medical examination is required before administrative separation for any Soldier who has deployed overseas in support of a contingency operation or has been sexually assaulted during the previous 24 months, and is diagnosed as experiencing post-traumatic stress disorder (PTSD) or traumatic brain injury (TBI), or reasonably asserts the influence of such a condition, based upon service while deployed or such sexual assault. Any such Soldier will not be administratively separated under conditions other than honorable until the results of the medical examination have been reviewed by the separation authority.
- o.* 10 USC 1214 establishes that Soldiers determined “fit for duty” in a physical evaluation board (PEB) determination may not be involuntarily separated, or denied reenlistment, due to unsuitability for deployment or worldwide assignment based on the same medical condition(s) considered in the evaluation. The Secretary of Defense will be the final approval authority for any case determined by the Secretary of a military department to warrant administrative separation or denial of reenlistment based on a determination that the member is unsuitable for continued service due to the same medical condition(s) considered in the evaluation.
- p.* 10 USC 12305 describes the President’s authority to suspend laws pertaining to separation or retirement during any period RC Soldiers are serving on active duty under various mobilization scenarios.
- q.* 10 USC 12313 provides Secretarial authority to release RC Soldiers from active duty.
- r.* 10 USC 12681 provides Secretarial authority for discharge of RC Soldiers.
- s.* 10 USC 12684 authorizes SECARMY to drop RC Soldiers from the rolls of the Army under certain circumstances.
- t.* 10 USC 12686 establishes rules for retention on active duty of RC Soldiers who are within 2 years of retirement eligibility.

1–7. Separation pay

Eligibility for, and payment of, separation pay is governed by AR 637–2 and DoDI 1332.29.

1–8. Processing goals

- a.* Processing time for separations, when the notification procedure is used, will not normally exceed 15 working days.
- b.* Processing time, when the administrative board procedure is used, will not normally exceed 50 working days.
- c.* Processing time will be measured from the date the commander signs the separation notification memorandum per paragraph 2–2 and end on the date of the final separation decision.
- d.* Shorter processing times are encouraged, particularly for cases in which prompt action is likely.
- e.* Failure to process an administrative separation within these timeframes will not prevent separation or characterization of service.
- f.* DA Form 5138 (Separation Action Control Sheet) is used to ensure processing goals are met.

1–9. Suspension of favorable personnel action

The effective date of the suspension of favorable personnel action will be the date the commander signs the intent to separate notification memorandum to the Soldier or the date Headquarters, Department of the Army (HQDA) initiates an involuntary separation action. When suspension of favorable personnel action is initiated solely because a Soldier

is being considered for separation under chapter 13 or 14 of this regulation and it is later determined that the Soldier will be processed for separation for medical reasons, the Soldier's immediate commander will expedite action to remove the suspension action to prevent delays in disposition of the case through medical channels (see AR 600–8–2).

1–10. The enlisted discharge/transfer process

The enlisted transfer/discharge process is divided into the following subfunctions:

- a. Voluntary REFRAD or discharge.
- b. Involuntary REFRAD or discharge.
- c. Miscellaneous types of separations.
- d. Retirement for length of service.

1–11. Leave in conjunction with administrative separation actions

Granting of leave in conjunction with separation will be processed in accordance with AR 600–8–10. Generally, as part of military requirements, leave should not be granted that would delay or interfere with the processing of an administrative separation under this regulation. Commanders maintain the responsibility and discretion to determine whether specific facts of each case warrant allowing a Soldier to take leave.

1–12. Separation orders

a. Authority for separation will be included in directives or orders directing Soldiers to report to the appropriate transition center (TC) for separation processing (see AR 600–8–105).

b. Except as provided in paragraphs (1) and (2), below, Army National Guard of the United States (ARNGUS) personnel will be released from active duty or active duty for training (ADT) and returned to the control of the appropriate state National Guard authorities. U.S. Army Reserve (USAR) personnel will be released from active duty or ADT and returned to their appropriate USAR status.

(1) *Army National Guard of the United States.*

(a) An ARNGUS Soldier who is being separated for any reason for which an RA Soldier would be discharged will be discharged from his or her Reserve of the Army status. The Soldier will be returned to the appropriate state National Guard authorities for discharge from the Army National Guard (ARNG).

(b) When a Soldier is to be separated because of a void enlistment, an order, stating specific reasons will be issued releasing the individual from the custody and control of the Army (see chap 7). The order will return the individual to the appropriate state adjutant general (SAG) for disposition. The order will include the statement, "This voids individual's enlistment in the Army Reserve."

(c) When an ARNGUS Soldier is to be transferred to the Individual Ready Reserve (IRR) under section VII of this chapter, the Soldier will be released from active duty. The Soldier will be returned to the appropriate SAG for discharge from his or her state status and transferred to the IRR (appropriate USAR control group).

(d) Forward copy of the separation order, DD Form 214 (Certificate of Release or Discharge from Active Duty), and documentation of the separation action to the appropriate SAG for disposition, in accordance with AR 635–8. These documents will be uploaded to Interactive Personnel Electronic Records Management System (IPERMS) for filing in the Soldier's Army Military Human Resource Record (AMHRR).

(2) *U.S. Army Reserve.*

(a) A USAR Soldier who is being separated for any reason for which an RA Soldier would be discharged, will also be discharged. If the RA Soldier would be released from custody and control because of a void enlistment, the USAR Soldier will be released from custody and control by reason of a void enlistment.

(b) When a USAR Soldier is to be transferred to the IRR under section VII of this chapter, the Soldier will be released from active duty. The Soldier will be transferred to the appropriate USAR control group to complete his or her MSO.

(c) When a USAR Soldier is discharged from active duty, forward a copy of the separation order, DD Form 214, and documentation of the separation action to the appropriate Regional Support Command. These documents will be uploaded to IPERMS for filing in the Soldier's AMHRR.

1–13. Separation of Soldiers with access to special intelligence, other compartmented information, or sensitive programs

When a Soldier has had access to sensitive compartmented information, special access programs, Nuclear Weapon Personnel Reliability Program, Single Integrated Operation Program—extremely sensitive information, or has been assigned to presidential support activities, and a discharge under other than honorable conditions is being considered, the action must be coordinated with the intelligence officer (S2/G2/J2), director of security, security manager, or

designated security representative prior to initiation of the proposed separation. The following information will be reported to intelligence officer (S2/G2/J2), director of security, security manager: name, grade, social security number (SSN), date and place of birth, length of service, and reason for proposed discharge.

1–14. Reduction in grade

a. Reduction upon retirement request.

(1) For Soldiers who have completed 20 or more years of active federal service creditable toward retirement under chapter 12 of this regulation, and for whom the basis of separation is the commission of a serious offense, as defined in paragraph 14–12c, the SECARMY or the Secretary’s approved designee, as announced in updated memoranda, may reduce the Soldier in grade prior to approving the Soldier’s retirement under chapter 12. The initiation of separation for the commission of a serious offense under this paragraph may be under chapter 14 or the Secretarial plenary authority in chapter 15.

(2) The reduction may be either voluntary or involuntary and, subject to the limitations in paragraph 1–14c(1), may be to any grade equal to or higher to which the SECARMY or the Secretary’s approved designee determines is the highest grade that the Soldier has served satisfactorily. The reduction by the SECARMY or the Secretary’s approved designee is final and may not be appealed. This reduction is considered an administrative action per 10 USC 1407. Nothing in this paragraph will be construed to limit the authority of commanders to enforce standards and maintain good order and discipline by means of all applicable provisions of the Uniform Code of Military Justice (UCMJ).

b. Voluntary request to be reduced. A Soldier recommended for involuntary separation as detailed in paragraph 1–14a, who elects to apply for retirement per paragraph 12–12b, may also elect to submit a written request to SECARMY that he or she be allowed to retire, but at a lower grade. This request, along with the request for retirement, will be submitted via email through the first general officer in the chain of command, to Commander, U.S. Army Human Resources Command (AHRC–EPF–M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 (email address usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil), for forwarding to the proper authority. The Soldier will sign a written request, stating:

- (1) That he or she has been counseled on the request and makes it voluntarily;
- (2) That he or she understands his or her rights under paragraph 1–14c(2) and elects to request to be retired at a lower grade;
- (3) The grade at which he or she requests to be retired at;
- (4) That SECARMY or the Secretary’s approved designee may retire the Soldier at this grade or a higher grade;
- (5) That SECARMY or the Secretary’s approved designee may disapprove the request and retire the Soldier at a lower grade than the one requested using the involuntary reduction procedures detailed in paragraph 1–14c; and
- (6) That he or she understands the adverse nature of the grade reduction and the possible consequences on his/her retirement.

c. Involuntary reduction. A Soldier recommended for involuntary separation as detailed in this paragraph, who elects to apply for retirement per paragraph 2–12b, but does not request to be retired at a lower grade or whose request is disapproved per paragraph 1–14b, may be involuntarily reduced in grade by the SECARMY or the Secretary’s approved designee prior to approval of the Soldier’s request for retirement. Prior to any reduction, the Soldier will be provided written notice by the SECARMY or the Secretary’s approved designee of the proposed action and a chance to respond.

- (1) Written notification will be provided to the Soldier specifically stating:
 - (a) The allegation(s) on which the proposed reduction in grade is based;
 - (b) That the SECARMY or the Secretary’s approved designee has determined that the Soldier has committed misconduct in the current grade, and potentially lower grade(s);
 - (c) That the proposed action could result in the Soldier being reduced to any grade equal to or higher than the last grade satisfactorily served; and
 - (d) That the Soldier has the right to submit matters to refute the allegations or to provide matters in extenuation or mitigation.
- (2) The Soldier will be afforded the following rights:
 - (a) The right to consult with military counsel within a reasonable time;
 - (b) The right to consult with civilian counsel at his/her own expense; and
 - (c) The right to submit statements or other documents on his/her behalf (not less than 10 duty days).

d. Reduction with other than honorable characterization. When a Soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade (see AR 600–8–19).

1-15. Disposition of proceedings/records

a. When separation is ordered, the approved proceedings will be sent to the commander who has the Soldier's records for separation processing. The original copy of the proceedings will be filed in Soldier's AMHRR by the supporting TC or Brigade S1 based on local support agreements.

b. If the separation authority recommends involuntary separation of a Soldier with 18 or more years of active federal service, the proceedings, with complete documentation and the recommendation of the separation authority, will be sent via email to Commander, U.S. Army Human Resources Command at usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil for forwarding to HQDA for final determination (see para 1-20*f* for exceptions).

c. When the separation authority does not order separation, the proceedings will be filed at that headquarters. The Soldier's commanding officer will be notified of the final action. When practicable, the separation authority will direct reassignment of the Soldier to a different organization. Ultimate disposition of the board proceedings will be governed by AR 25-400-2.

d. When the Soldier is considered for discharge because of fraudulent entry and retention is directed, the retention constitutes a waiver of the fraudulent entry. The following statement will be included on the decision memorandum, "Discharge action based on fraudulent entry is waived and retention is authorized on (date)." The original approved document will be forwarded to the following authorities for inclusion in the Soldier's AMHRR:

(1) For RA personnel: Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204.

(2) For ARNGUS personnel: The appropriate SAG.

(3) For USAR personnel: Commander, U.S. Army Human Resources Command, 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204.

e. The respondent, whether to be separated or retained, will be furnished a copy of the board proceedings. The proceedings will not include any written medical testimony or reports that would prove injurious to the respondent's physical or mental health. Classified documents attached to the board proceedings may be summarized.

(1) The respondent's copy of the proceedings will be marked "Copy for [name of the Soldier and last four digits of SSN]." This copy will be given to the respondent or his or her counsel. A signed receipt will be obtained from the Soldier or his or her counsel and filed with the original board proceedings. If the Soldier refuses to sign the receipt, a statement to that effect will be submitted.

(2) If the Soldier or his or her counsel does not want a copy of the board proceedings, or if a copy is not furnished, a notation will be made on the Soldier's copy to accompany the original. Only the CG, HRC, may release this copy thereafter.

f. When an ARNGUS trainee is released from ADT under chapter 4 or chapter 13 of this regulation, a copy of the approved proceedings will be sent to the SAG of the appropriate state. However, all proceedings under chapter 9, and any proceedings under chapter 13 or 14 of this regulation, containing limited use evidence will be disclosed per AR 600-85 to the appropriate SAG only if that officer is federally recognized (see para 2-12*h*).

g. When the Soldier is the subject of DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), a report of return to military control using DD Form 616 (Report of Return of Absentee) must be sent to U.S. Army Deserter Information Point, (DAPM-MPP-AD), Building 298, Room 331, 481 Gold Vault Road, Fort Knox, Kentucky 40121-5182, or via email at usarmy.knox.imcom-atlantic.mbx.usadip-admin@mail.mil (see AR 630-10).

h. When material errors and discrepancies are noted before accomplishing separation, the type of separation directed by the separation authority may be changed by the separation authority at any time prior to the full execution of the separation. If another headquarters office processing the case (transfer activities) finds material errors or discrepancies in approved board proceedings prior to the full execution of separation, the case will be returned to the separation authority for review before separation.

i. Unless otherwise specified in this regulation, determinations requiring action by the SECARMY or the Secretary's approved designee as announced in updated memoranda, HQDA, HRC, or ARNGUS will be processed as follows:

(1) SECARMY, or the Secretary's approved designee as announced in updated memoranda, actions will be forwarded to the SECARMY through Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, 40122-5204, unless otherwise specified. The AHRC-EPF-M email address is usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil.

(2) HQDA actions will be forwarded to Headquarters, Department of the Army (DAPE-MPE-IP), 300 Army Pentagon, Washington, DC 20310-0300.

(3) CG, HRC actions will be forwarded to Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, 40122-5204, unless otherwise specified. The AHRC-EPF-M email address is usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil.

(4) ARNGUS actions will be forwarded to the Chief, National Guard Bureau, 111 S. George Mason Drive, Arlington, VA 22204–1373.

Section II

Guidelines on Separation

1–16. Guidance

a. The separation policies in this regulation promote the readiness of the U.S. Army by providing an orderly means to—

(1) Judge the suitability of persons to serve in the Army on the basis of their conduct and their ability to meet required standards of duty performance and discipline.

(2) Maintain standards of performance and conduct through characterization of service in a system that emphasizes the importance of honorable service.

(3) Achieve authorized force levels and grade distribution.

(4) Provide for the orderly administrative separation of Soldiers in a variety of circumstances.

b. DA separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation. Soldiers who do not conform to required standards of discipline and performance and Soldiers who do not demonstrate potential for further military service should be separated in order to avoid degradation of morale and substandard mission performance. A substantial investment is made in training persons enlisted or inducted into the Army; therefore, this general guidance will be considered when initiating separation action.

c. Unless separation is mandatory, the potential for rehabilitation and further useful military service will be considered by the separation authority; where applicable, the administrative separation board will also consider these factors. If separation is warranted despite the potential for rehabilitation, consider suspending the separation, if authorized.

d. Adequate counseling and rehabilitation measures will be taken before initiating separation action against a Soldier when the reason for separation so specifies. An alleged or established inadequacy in previous rehabilitation efforts does not provide a bar to separation.

e. When deciding retention or separation in a case, consider the following factors:

(1) The seriousness of the events or conditions that form the basis for initiation of separation proceedings. Also consider the effect of the Soldier's continued retention on military discipline, good order, and morale.

(2) The likelihood that the events or conditions that led to separation proceedings will continue or recur.

(3) The likelihood that the Soldier will be a disruptive or undesirable influence in present or future duty assignments.

(4) The Soldier's ability to perform duties effectively now and in the future, including potential for advancement or leadership.

(5) The Soldier's rehabilitative potential.

(6) The Soldier's entire military record, including:

(a) Past contributions to the Army, assignments, awards and decorations, evaluation ratings, and letters of commendation.

(b) Memoranda of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by court-martial and records of involvement with civilian authorities.

(c) Any other matter deemed relevant by the board or the separation authority, including specialized training, duties, and experience of persons entrusted by this regulation with making recommendations or decisions on separation or retention.

(d) Adverse information from a prior enlistment or period of military service when such information would have a direct and strong probative value in determining whether separation is appropriate. This includes records of nonjudicial punishment and convictions by court-martial. Such information ordinarily will be used only in those cases involving conduct repeated over an extended period of time. Commanders who believe that a Soldier's case represents an unusual situation within the meaning of this paragraph should request guidance from CG, HRC per paragraph 1–15i(3).

(e) Isolated incidents and events that are remote in time normally have little probative value in determining whether administrative separation should be effected.

f. Commanders will review all administrative separations involving known victims of sexual assault and any Soldier who answered "Yes" to either of the questions cited under paragraph 2–2i or 2–4h (also see AR 600–20). Unless otherwise directed, this review must consider the following:

(1) Whether the separation appears to be in retaliation for the Soldier filing an unrestricted report of sexual assault. If so, consult with the servicing office of the SJA or other servicing legal office.

(2) Whether the separation involves a medical condition that is related to the sexual assault, to include PTSD. If so, consult with the appropriate medical personnel.

(3) Whether the separation is in the best interest of the Army, the Soldier, or both. If not, consult with the servicing SJA.

(4) The status of the case against the alleged offender, and the effect of the Soldier's (victim's) separation on the disposition or prosecution of the case. If the case is still open, consult the servicing Criminal Investigation Command unit and SJA.

g. Commanders will annotate in all administrative separations if the Soldier is alleged to have committed an abuse offense against a then-current spouse or dependent child (see AR 608–1) and include the following information in the separation action:

(1) Date(s), nature, and any determinations made regarding alleged dependent-abuse offense(s).

(2) Name of the victim(s) and relationship(s) to the Soldier at the time of the offense.

(3) For child victims, whether the child resided with the Soldier at the time of the offense.

(4) Whether the decision for the separation action is based upon the dependent-abuse offense. Commanders should affirm when a dependent-abuse offense factored into the decision, even when the alleged dependent-abuse offense is not the primary reason for the separation.

h. Each commander in the chain of command must include a statement on their endorsement certifying review in accordance with paragraph 1–16d. Commanders will ensure compliance with AR 25–22 and AR 25–55.

1–17. Counseling and rehabilitative requirements

a. *General.* Army leaders at all levels must be continually aware of their obligation to provide purpose, direction, and motivation to Soldiers. It is essential that Soldiers who falter, but have the potential to serve honorably and well, be given every opportunity to succeed. Effective leadership is particularly important in the case of Soldiers serving their initial enlistments. Except as otherwise indicated in this regulation, commanders must make maximum use of counseling and rehabilitation before determining that a Soldier has no potential for further useful service and, therefore, should be separated. In this regard, commanders will ensure that adequate counseling and rehabilitative measures are taken before initiating separation proceedings for the following reasons:

(1) Involuntary separation due to parenthood (see para 5–7).

(2) Other designated physical or mental conditions (see para 5–14).

(3) Entry-level performance and conduct (see chap 11).

(4) Unsatisfactory performance (see chap 13).

(5) Minor disciplinary infractions or a pattern of misconduct (see paras 14–12a and 14–12b).

(6) Failure to meet body composition standards (see chap 18).

b. *Counseling.* When a Soldier's conduct or performance becomes unacceptable, the commander will ensure that a responsible official formally notifies the Soldier of his or her deficiencies. At least one formal counseling session is required before separation proceedings may be initiated for one or more of the reasons specified in paragraph 1–17a. In addition, there must be evidence that the Soldier's deficiencies continued after the initial formal counseling.

(1) The number and frequency of formal counseling sessions are discretionary. Such factors as the length of time since the prior counseling, the Soldier's performance and conduct during the intervening period, and the commander's assessment of the Soldier's potential for becoming a fully satisfactory Soldier, must be considered in determining if further counseling is needed.

(2) Counseling will be comprehensive and in accordance with the requirements and guidance in chapter 17 of this regulation.

(3) Each counseling session must be recorded in writing. DA Form 4856 (Developmental Counseling Form) will be used for this purpose.

(4) The Soldier's counseling or personal records must reflect that he or she was formally counseled concerning their deficiencies and given a reasonable opportunity to overcome or correct them.

c. *Rehabilitation.* Except as provided in paragraph 1–17d, the following rehabilitative measures are required prior to initiating separation proceedings for entry-level performance and conduct (see chap 11), unsatisfactory performance (see chap 13), or minor disciplinary infractions/patterns of misconduct (see chap 14):

(1) *Trainees.* Soldiers undergoing initial entry or other training will be recycled (reassigned between training companies or, where this is not feasible, between training platoons) at least once.

(2) *Other than trainees.* Soldiers not in training status will be locally reassigned at least once, with a minimum of 3 months of duty in each unit. Reassignment should be between battalion-sized units or between brigade-sized or larger units when considered necessary by the local commander.

(3) *Permanent change of station transfer.* Permanent change of station (PCS) funds normally will not be used for rehabilitative transfers. However, in meritorious cases where it is determined that a Soldier with potential to be a distinct asset to the Army would benefit from a change in commanders, associates, and living or working conditions, the commander exercising general court-martial conveying authority may authorize PCS transfer within the same command. As an alternative, a request for reassignment to another command may be submitted to Commander, U.S. Army Human Resources Command (AHRC–EP appropriate career branch), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204.

(a) Branches of air defense artillery, armor, aviation, field artillery, infantry, public affairs, and special operations forces may submit requests to Commander, U.S. Army Human Resources Command (AHRC–EPA), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 or email inquiries to usarmy.knox.hrc.mbx.epmd-mdf-pag@mail.mil.

(b) Branches of military intelligence, signal corps, chaplain, engineer, and military policy may submit requests to Commander, U.S. Army Human Resources Command (AHRC–EPB), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 or email inquiries to usarmy.knox.hrc.mbx.epmd-osed-pab@mail.mil.

(c) Branches of ordnance, quartermaster, and transportation corps may submit requests to Commander, U.S. Army Human Resources Command (AHRC–EPC), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 or email inquiries to usarmy.knox.hrc.mbx.epmd-fsd-pab@mail.mil.

d. Waivers.

(1) Waiver of the counseling requirement is not authorized.

(2) The rehabilitative transfer requirements in chapters 11, 13, and 14 may be waived by the separation authority in circumstances where common sense and sound judgment indicate that such transfer will serve no useful purpose or produce a quality Soldier. Such circumstances may include the following:

(a) Two consecutive failures of the Army physical fitness test (APFT) of record.

(b) Pregnancy while in entry-level status.

(c) Highly disruptive or potentially suicidal behavior, particularly in reception battalions.

(d) Active resistance to rehabilitative efforts.

(e) Soldiers assigned to small installations or at remote locations.

(f) Situations in which transfer to a different duty station would be detrimental to the Army or the Soldier (for example, indebtedness, participation in the Alcohol and Drug Abuse Prevention and Control Program, Mental Health Treatment Program, and so forth).

(3) Waiver of rehabilitative transfer may be granted at any time on or before the date the separation authority approves or disapproves the separation proceedings. Waiver authority may be withheld by a higher separation authority in a particular case, a class or category of cases, or all cases. Decision to withhold waiver authority will be announced in writing.

1–18. Restrictions on administrative separation and board hearings

a. Separation action for the reasons indicated in paragraph 1–17*a* will not be started until a Soldier has been counseled by a responsible person about his or her deficiencies and offered a reasonable opportunity to overcome them.

b. Separation per this regulation normally should not be based on conduct that has already been considered at an administrative or judicial proceeding and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separations under the provisions of chapters 11, 13, and 14 and AR 380–67 are subject to the following restrictions. No Soldier will be considered for administrative separation because of conduct that—

(1) Has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. The convening authority must submit a memorandum request for such a determination through command channels to Office of The Judge Advocate General, (DAJA–CL), 2200 Army Pentagon, Washington, DC 20310–2200.

(2) Has been the subject of a prior administrative board in which the board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct, except when the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

(3) Has been the subject of an administrative separation proceeding resulting in a final determination by a separation authority that the Soldier should be retained, except when:

(a) The Soldier’s subsequent conduct or performance forms the basis, in whole or in part, for a new proceeding. Such conduct need not independently justify the Soldier’s discharge, but it must be serious enough to raise a question as to his or her potential for further useful military service.

(b) Fraud or collusion is discovered that was not known at the time of the original proceeding and that will probably produce a result much less favorable for the Soldier at a new hearing.

(c) Substantial new evidence is discovered that was not known at the time of the original proceeding despite the exercise of due diligence.

(4) Has been the subject of a judicial proceeding resulting in acquittal based on a finding of not guilty only by reason of lack of mental responsibility. Soldiers in this category will normally be separated utilizing Secretarial plenary authority (see chap 15), unless separation for disability is appropriate (see AR 635–40).

c. The provisions of paragraph 1–18*b* do not preclude a Soldier convicted by a court-martial whose sentence does not include a punitive discharge from being processed for administrative separation under chapters 13 or 14 at any time after sentencing. Conduct that was the subject of such a court-martial may be considered in determining retention or separation and, if appropriate, characterization of service.

d. Criminal history information from personnel security investigation (PSI) reports requested within the first 90 days of a Soldier’s initial enlistment may be used to support separation proceedings initiated under paragraph 5–12 and chapter 7, sections III and IV of this regulation. Use of PSI reports in connection with all other separation proceedings is prohibited unless specific authorization is granted in accordance with AR 380–67. Requests for such authorization may be submitted on a case-by-case basis through command channels to CG, HRC per paragraph 1–15*i*(3).

1–19. Suspension of execution of approved separation

a. A highly deserving Soldier may be given a probation period to show successful rehabilitation before the Soldier’s enlistment or obligated service expires.

(1) The separation authority or higher authority may suspend (except fraudulent entry) execution of an approved separation for a period of full-time military duty not to exceed 12 months (see chap 2).

(2) When there are approved reasons for separation in addition to fraudulent entry, suspension may be authorized only when waiver of the fraudulent entry is obtained.

(a) During the period of suspension, the Soldier must show that he or she is able to behave properly under varying conditions.

(b) The Soldier must also show that he or she can perform assigned duties efficiently.

b. Upon satisfactory completion of the probationary period, or earlier if rehabilitation has been achieved, the authority that suspended the separation will cancel execution of the approved separation. If the Soldier has been transferred to the command of another separation authority, the separation will be canceled by the new separation authority or higher authority.

c. If the Soldier engages in conduct similar to that for which separation was approved, but then was suspended, or otherwise fails to meet the appropriate standards of conduct and duty performance, the commander concerned, the convening authority, or the separation authority may take one of the following actions:

(1) Initiate punitive or new administrative action in spite of the suspension of execution of the approved discharge.

(2) Withhold action in the case of a Soldier who is absent without authority or in civilian confinement by delivery under UCMJ, Art. 14, or while in civilian confinement. The provisions of either paragraph 1–19*c*(1) or 1–19*c*(3) will be complied with when the Soldier returns to military control and before the period of probation expires.

(3) Advise the Soldier, in writing, that vacation of the administrative separation suspension is being considered and the reasons that warrant such consideration.

(a) The Soldier will be given 3 duty days to consult with counsel and submit a written statement in his or her own behalf or decline to make any statement.

(b) The commander taking the action will consider any information the Soldier submits. If the Soldier identifies specific legal issues for consideration, the separation authority will have the matter reviewed by an attorney in the Judge Advocate General’s Corps (JAGC). The separation authority may—

1. Vacate suspension of the approved action and execute separation, or

2. Continue to suspend execution of the approved separation for the remainder of the probationary period.

Section III

Separation Authority

1–20. Authority to approve or disapprove separation

a. Except for Secretarial plenary authority (see chap 15); separation due to reduction in force, strength limitations, or budgetary constraints (see para 16–6); the enlisted Qualitative Service Program (QSP) (see para 16–12); the Qualitative Management Program (QMP) (see chap 16–11); voluntary separation of Soldiers serving indefinite enlistments (see para 4–4); conviction by a foreign court (see paras 1–42*a*, 1–42*b*, and 14–9*a*); and the early REFRAID of RC personnel serving Active Guard Reserve (AGR) tours under 10 USC 12301; commanders who are general court-martial convening authorities (GCMCAs) and their superior commanders are authorized to approve or disapprove all other separations per this regulation. This includes the authority to convene administrative separation boards when

required by this regulation. See paragraph 1–20c(4) for delegation of authority to approve discharge in AWOL offense cases under the provisions of chapter 10 of this regulation (see also para 3–7d).

b. A general officer in command who has an attorney in the JAGC available is authorized to approve or disapprove the separation, REFRAD, or ADT of Soldiers per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. This general officer, unless also the GCMCA, cannot order separation or release for lack of jurisdiction (see para 5–8) or discharge in lieu of trial by court-martial (see chap 10).

c. Commanders who are special court-martial convening authorities (SPCMCAs) are authorized to approve or disapprove separation on the following chapters. This authority does not include officers in the grade of major (MAJ) (O–4) or below, who are acting commanders.

(1) Unless otherwise provided in this regulation, chapters 5, 6, 7, 8, 9, 11, 13, 16, and 18 when the issuance of a characterization of service under other than honorable conditions is not warranted. These cases may be processed under either the notification procedures or through an administrative separation board.

(2) Chapter 14 when—

(a) Discharge under other than honorable conditions is not warranted under paragraph 3–7c and the notification procedure is used. In cases not requiring an administrative separation board, only a GCMCA may authorize an honorable discharge.

(b) An administrative separation board recommends an entry-level separation or a discharge with an honorable or general discharge certificate.

(3) This includes the authority to convene an administrative separation board when required by this regulation. If a board convened by an SPCMCA recommends discharge of under other than honorable conditions, the separation authority is the GCMCA.

(4) Chapter 10 when authority to approve requests for discharge has been delegated per paragraph 1–20k.

(a) This authority is limited to cases in which the Soldier—

1. Has been AWOL for more than 30 days.
2. Has been dropped from the rolls of his or her unit as absent in desertion.
3. Has been returned to military control.
4. Is currently at the personnel control facility (PCF).
5. Is charged only with AWOL for more than 30 days.

(b) This authority does not include cases involving any other charged offense, including desertion.

(c) The SPCMCA cannot approve or disapprove a request for discharge in lieu of trial by court-martial. The request for discharge must be approved prior to trial.

(d) A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this paragraph.

d. The following commanders who have an attorney in the JAGC available are authorized to approve or disapprove separation under paragraph 5–10 and chapters 8, 11, and 16 of this regulation; and under chapters 9, 13, and 18 when the case is processed using the notification procedure (see chap 2, sec I):

(1) Commanders in the grade of lieutenant colonel (LTC) or above.

(2) Commanders in the grade of MAJ who are on an approved recommended list for promotion to LTC and who are assigned to command any unit authorized a commander in the grade of LTC or above. This authority does not include officers in the grade of MAJ, who are acting commanders, even if on an approved recommended list for promotion to LTC.

e. The authority granted under paragraphs 1–20b, 1–20c, and 1–20d may be withheld by a higher separation authority in a particular case or class of cases. Such authority will be in writing and will be valid until revoked in writing.

f. Except when discharged pursuant to the approved sentence of a court-martial or for physical disability, any Soldier who has completed 18 or more years of active federal service prior to discharge will not be involuntarily discharged or released from active duty without approval by the SECARMY or the Secretary's approved designee as announced in updated memoranda. These separation actions will be submitted per paragraph 1–15i(1). Requests for voluntary separation (for example, those submitted under chaps 6, 10, or 16 of this regulation) need not be sent to HQDA for approval.

g. Except when discharged pursuant to the approved sentence of a court-martial or for physical disability, any USAR or ARNGUS Soldier (including AGR Soldiers) having completed 18 but fewer than 20 years of qualifying service for retired pay (see 10 USC 1176(b)) will not be involuntarily separated from the Army without the approval of the SECARMY or the Secretary's approved designee as announced in updated memoranda. These separation actions will be submitted per paragraph 1–15i(1). Requests for voluntary separation (for example, those submitted under chaps 6, 8, 10, 15, or 16 of this regulation) need not be sent to HQDA for approval.

h. Except when discharged pursuant to the approved sentence of a court-martial or for physical disability, any USAR or ARNGUS Soldier (including AGR Soldiers) having completed 18 but fewer than 20 years of qualifying service for retired pay (see 10 USC 1176(b)) will not be involuntarily released from active duty without the approval of the first GCMCA in the Soldier's chain of command.

i. The authority to convene an administrative separation board, when required by this regulation, may not be delegated.

j. The authority to approve or disapprove requests for length of service retirement is as specified in paragraph 12–2.

k. Commanders of recruiting battalions in grade of LTC or higher who have an attorney in the JAGC available are authorized to void enlistments under paragraph 7–15*e*.

l. The GCMCA or higher authority at installations having PCFs may delegate the authority to approve separations in lieu of trial by court-martial (see chap 10) to the commander exercising SPCMCA over the Soldier who submitted the request for discharge in cases in which the Soldier—

- (1) Has been AWOL for more than 30 days.
- (2) Has been dropped from the rolls of his or her unit as absent in desertion.
- (3) Has been returned to military control.
- (4) Currently is at the PCF.
- (5) Is charged only with AWOL for more than 30 days.

m. The authority referred to in paragraph 1–20*k* does not include cases involving any other charged offense, including desertion. The request for discharge must be approved prior to trial. Authority to disapprove separations under chapter 10 remains at the GCMCA or higher authority and may not be delegated. All delegations must be in writing and will be valid until revoked in writing. A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this authority.

n. Separation authority for cases involving Soldiers who filed an unrestricted report of sexual assault within 24 months of initiation of the separation action or 1 year of the final disposition of their sexual assault case, whichever is longer, is withheld to the general officer with GCMCA or higher authority (see AR 600–20).

o. Except for voluntary separations under the provisions of chapters 5, 8, and 16, commanders may not act as the separation authority on a case that they initiated. In these cases, the separation authority becomes the next higher commander in the chain of command.

p. No Soldier will be involuntarily separated based solely on the basis of his or her gender identity. Prior to initiation of an involuntary separation for a Soldier that the unit commander is aware has been diagnosed with gender dysphoria, the commander must have written approval from the Army's transgender Service Central Coordination Cell (SCCC) that separation is authorized under DoD and Army policy for the specific case. These cases will be processed to the HQDA as directed by the SCCC. The SCCC can be reached at usarmy.pentagon.hqda-dcs-g-1.mbx.sccc@mail.mil.

1–21. Action by commanders having separation authority

a. Commanders having separation authority directing separation or REFRAD of a Soldier will comply with AR 635–8.

b. Recoupment of the unearned portion of an enlistment or reenlistment bonus is required by law when a Soldier is separated voluntarily or because of misconduct (see 37 USC 303a and 37 USC 308).

(1) In implementation of the law, DoD 7000.14–R, Volume 7A contains specific separation reasons for which bonus recoupment is required.

(2) Semiannual by-name reports reflecting the Army's success at actual recoupment are required by Congress.

(3) Individual commanders must screen actions to ascertain recoupment requirements and then counsel Soldiers about their repayment responsibilities.

c. Counseling concerning earned education benefits is required by law. For voluntary separations under the provisions of chapters 5, 8, and 16, as well as other provisions of this regulation that involve separation as an exception to policy more than 90 days before ETS, separation authorities will take an active role in this counseling process as follows:

(1) Soldiers with less than 20 months of a 24-month initial enlistment, and less than 30 months of a 36-month or longer initial enlistment at the time of separation must be counseled that loss of accrued benefits will occur and that monies deducted from pay are not refundable.

(2) Approval of separation under these provisions is contingent upon this counseling, and a statement of understanding must be included in the approval packet.

d. Commanders, in coordination with the servicing SJA, will counsel permanent resident aliens enlisted in the Army for 3 years or more who wish to fulfill naturalization requirements through honorable military service (see 8

USC 1439). Counseling should include an explanation that voluntary or involuntary separation could affect fulfillment of the naturalization requirements.

Section IV

Separation after Expiration of Term of Service, Period of Active Duty, or Active Duty Training

1–22. Time lost to be made good

Every Soldier in active federal service who is unable for more than 1 day to perform duty will complete the full term of service or obligation, exclusive of such time lost. The term will be served when the Soldier returns to full duty status.

a. Lost time refers to periods of more than 1 day when a Soldier on active duty cannot perform duty because of:

- (1) Desertion.
- (2) Absence from his/her organization, station, or duty for more than 1 day without proper authority.
- (3) Confinement under sentence.
- (4) Confinement while awaiting trial or disposition of Soldier's case, if trial results in conviction.
- (5) Intemperate use of drugs or alcohol (see AR 600–85).
- (6) Disease or injury, the result of Soldier's misconduct (see AR 600–8–4).

b. Time lost during an enlistment period (prior to ETS) will be made good at the end of the enlistment period. When an enlistment is extended by law, time lost will be made good at the end of the extension.

c. The requirement may be waived only in specific situations (see 10 USC 972c). Approval to waive lost time is delegated to the CG, HRC. Requests will be submitted to Commander, U.S. Army Human Resources Command (AHRC–EPF –M R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204. AHRC–EPF –M R mailbox is usarmy.knox.hrc.mbx.epmd-eligibility-management-branch@mail.mil.

d. Retention of a Soldier after the Soldier's ETS, under paragraph 1–23, is not considered part of the enlistment period and therefore no lost time or time to be made good accrues during this retention period.

e. RC personnel ordered to initial active duty for training (IADT) will make up time lost.

(1) Commanding officers of training installations can waive this requirement if the Soldier has completed the required training and the commander determines that it would not be in the best interest of the Service to retain the Soldier on ADT to make good time lost.

(2) Commanding officers of training installations are authorized to endorse the orders extending the initial period of ADT for reservists who must make good the time lost during IADT. One copy of the memorandum will be furnished to the SAG or the commander that issued the original ADT orders and the Soldier's unit commander.

f. Soldiers of the ARNGUS and the USAR being released from active duty because the unit in which they were ordered to active duty is released from active duty status will not be retained on active duty to make good time lost.

1–23. When investigation is initiated with view to trial by court-martial or Soldier is awaiting trial or result of trial

a. In accordance with UCMJ, Art. 2 and UCMJ, RCM 202(c), a Soldier may be retained after his or her term of service has expired when one of the following applies:

- (1) An investigation of the Soldier's conduct has been started with a view to trial by court-martial.
- (2) Charges have been preferred.
- (3) The Soldier has been apprehended, arrested, confined, or otherwise restricted by the appropriate military authority.

b. If charges have not been preferred, the Soldier will not be retained more than 30 days beyond the ETS unless the GCMCA approves retention (see para 1–32). The GCMCA may, in writing, approve extensions of up to 180 days at a time prior to the preferral of charges.

c. After preferral of charges, a Soldier who is awaiting trial or result of trial by court-martial, when the Soldier would otherwise be eligible for discharge or REFRAD, will not be discharged or released until final disposition of the court-martial charges. For effective date of discharge, see paragraph 1–30.

d. Soldiers under sentence to an unsuspended dishonorable or bad conduct discharge will not be discharged before appellate review is completed, unless requested by the Soldier so directed by SECARMY or the Secretary's approved designee as announced in updated memoranda. If the Soldier is AWOL at the time appellate review is completed, the punitive discharge may still be carried out. This paragraph does not apply to Soldiers processed for discharge under the provisions of chapter 10.

1–24. En route to United States or to territory of origin

When a Soldier is held in service after period of service expires under the conditions below, the Soldier will be retained for the convenience of the Government.

a. As a casual for separation. A Soldier en route to the United States from overseas as a casual will not be separated until arrival at destination.

b. As Soldiers of an organization. Soldiers whose periods of service expire while at sea en route to the United States with their organization and who signify intention to reenlist for the same organization on the day following discharge will be discharged and reenlisted at sea. Those who do not signify their intention to reenlist will be held in the Service until they arrive in the United States.

1–25. Medical/dental care required or sick in hospital when period of service expires

a. A Soldier may only be considered for retention past the set release date when one or both of the following apply:

(1) Continued healthcare is required (must be in-hospital status but not necessarily occupying a bed).

(2) Physical disability processing is required or has been initiated. The request for retention will be submitted per paragraphs 1–25*b* and 1–25*c*. Soldiers determined medically fit for retention or separation, and not requiring continued healthcare per paragraph 1–25*a*(1), will not be retained past their ETS without approval by HQDA.

b. A Soldier being retired for maximum length of service or maximum age will not be retained on active duty unless continued healthcare is required per paragraph 1–25*a*. When retention is required, the unit commander will submit a request through the chain of command to CG, HRC per paragraph 1–15*i*(3) requesting that the Soldier's retirement orders be suspended. The request will contain supporting documentation to include the medical diagnosis and expected date of recovery.

c. No Soldier will be retained beyond his or her scheduled release date without written consent signed by the Soldier. The retained Soldier will complete DA Form 2823 (Sworn Statement) (see fig 1–1).

(1) If the Soldier is mentally incompetent or otherwise unable to sign, the next of kin or legal representative will be requested to sign for the Soldier. A Soldier will be retained past his or her ETS for a reasonable time until the next of kin or legal representative is able to be contacted. The Soldier will be regarded as having been retained in service for the convenience of the Government.

(2) The DA Form 2823 will be filed in the Soldier's AMHRR.

(3) A Soldier retained under this paragraph is subject to favorable and adverse personnel actions. However, if the Soldier later demands discharge, he or she cannot be retained on active duty for the sole purpose of taking adverse administrative action. An officer authorized by law to administer oaths under the UCMJ, Art. 36 will swear the Soldier (insuring that the Soldier personally appears before the officer), and tell the Soldier:

(*a*) How he or she will benefit from remaining on active duty in the Army beyond the scheduled date of release to complete hospital care or a physical evaluation (or both) under 10 USC Chapter 61.

(*b*) If he or she elects to be discharged or released from active duty as scheduled, he or she will not, after such discharge or REFRAD, be eligible for separation or retirement for physical disability.

d. If the Soldier is unable to sign and the next of kin or legal representative cannot be located or will not indicate whether or not the Soldier will be retained, the Soldier will be retained. The unit commander will request full details of the case from the medical treatment facility (MTF) commander or director, including actions taken to secure consent for retention and notify:

(1) The nearest military commander exercising general court-martial authority for RA Soldiers.

(2) The appropriate SAG for ARNGUS (AGR) personnel.

(3) The CG, HRC per paragraph 1–15*i*(3).

e. The unit commander will—

(1) Submit requests for retention through the chain of command to the nearest GCMCA for the following personnel:

(*a*) RA personnel.

(*b*) ARNGUS and USAR personnel on IADT or AGR tours. Retention of ARNGUS personnel must be coordinated with the appropriate SAG. The Adjutant General (AHRC–B) will be the approval authority for ARNGUS and USAR Soldiers on IADT or Active Guard/AGR tours.

(2) Include the following information in the request:

(*a*) Soldier's name, grade, and last four digits of SSN.

(*b*) Reason for separation (such as ETS).

(*c*) Scheduled release date.

(*d*) A copy of the signed affidavit consenting to retention.

(*e*) Medical reason for retention.

(f) Medical recommendation (approval or disapproval).

f. The GCMCA is the approval authority for requests for retention. The GCMCA may delegate this authority to other military or civilian officials on his or her staff. This delegation must be in writing. Approving authorities should approve retention in the absence of substantial evidence that such retention prejudices good order and discipline. Disapproval is withheld to HQDA and requests for disapproval will be processed per paragraph 1–15i(2). That disability evaluation could be accomplished by the IRR or other organization to which the Soldier is to be transferred, or that the Soldier may be eligible for Veterans Administration healthcare and disability compensation, are inappropriate reasons to deny a Soldier’s request for extension. Every action taken according to such a delegation will include the written delegation and state that it is taken “pursuant to authority delegated by (name), dated (date).” The Adjutant General (AHRC–PDZ–B) will be the approval authority for ARNGUS and USAR Soldiers on IADT or Active Guard/AGR tours.

(1) A copy of the retention action on RA personnel will be filed in the Soldier’s AMHRR.

(2) A copy of the retention action for ARNGUS personnel will be sent to the appropriate SAG.

(3) A copy of the retention action for USAR (AGR) personnel will be sent to Commander, U.S. Army Human Resources Command, Army Personnel Records Division, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204.

g. Soldiers will be advised of the advantages of remaining on active duty. Soldiers will be furnished the following list of retention advantages:

(1) Advantages while remaining on active duty for completion of hospitalization or medical care or while being processed for disability.

(a) Medical care and/or hospitalization provided.

(b) Receipt of normal benefits such as pay and allowances, including exchange and commissary privileges.

(c) Eligibility for dependent medical care if Soldier is on active duty or ADT under orders that specify a period of more than 30 days or is under orders specifying a period of 30 days or less that are modified or extended resulting in more than 30 days.

(d) State income tax benefits where allowed by the laws of the states concerned.

(2) Advantages if processed and found eligible for disability separation.

(a) If permanently retired, the Soldier may choose the pay most favorably computed under Army regulations or under the law under which he or she is eligible for retired pay. If temporarily retired, the same selection of pay is authorized, but the minimum pay will not be less than 50 percent of basic pay while temporarily retired.

(b) If retired, a former Soldier and authorized Family members would be eligible for certain medical care depending on facilities and staffing availability at Uniformed Services facilities and certain medical care in civilian facilities (see AR 40–3).

(c) If discharged for disability, Soldier will be entitled to severance pay.

(d) To the extent that retired pay is based on the percent of disability involved, such pay is excluded in computing gross income reportable for taxation.

1–26. Indebtedness

a. A Soldier who is eligible for discharge or REFRAD will not be retained—

(1) To satisfy a debt to the U.S. Government or to an individual.

(2) To obtain remission or cancellation of a debt to the U.S. Government. SECARMY is authorized to remit or cancel only that part of a Soldier’s debt that is unpaid before or at the time of honorable discharge, retirement, or REFRAD.

b. A request for remission or cancellation of indebtedness will be acted on before the date the Soldier is eligible for discharge, retirement, or release (see AR 600–4).

1–27. Retention past expiration term of service in order to involuntarily discharge a Soldier and for miscellaneous reasons

a. Retention beyond the Soldier’s ETS to process administrative separation proceedings, except as detailed in paragraphs 1–23 and 1–32, is not authorized for Soldiers whose enlistment contracts (including annexes) do not expressly authorize an extension for administrative separation. If the Soldier’s chain of command believes that it is desirable to retain a Soldier beyond the Soldier’s ETS for any reason other than those covered by paragraphs 1–22 through 1–25, request for approval of such action must be timely submitted to DCS, G–1 for RA or the appropriate SAG for ARNGUS (AGR) personnel. Requests for retention beyond a Soldier’s ETS will include, at a minimum, the following:

(1) Requested new separation date to retain the Soldier through;

(2) Detailed reason for the retention past ETS;

- (3) Current duty status of the Soldier; and
- (4) Explanation why the request is justified and is in the best interests of the Army.

b. Soldiers whose enlistment contract (including annexes) expressly authorizes an extension, without the Soldier's consent, in order to be administratively discharged may be extended in accordance with the following provisions in order to fully adjudicate a Soldier's administrative separation. "Fully adjudicate" is defined for this paragraph as all phases of the administrative separation from suspicion of an offense until final disposition and/or discharge.

(1) Extensions may be granted when the Soldier is suspected of committing and/or being investigated for the commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the Manual for Courts-Martial (MCM). Administrative discharges for any reason other than the commission of a serious military or civil offense will follow the rules in paragraph 1-27*a*.

(2) The extension may be requested upon a credible allegation of a serious military or civil offense. The command does not need to wait for a formal police report.

(3) Extensions will be granted for the minimal amount of time necessary to fully adjudicate the Soldier's administrative separation. All extension requests for approval of such action will be sent and approved in writing and will include a detailed justification for retaining the Soldier beyond the ETS, the current duty status of the Soldier, and all relevant facts pertaining to the request. Extensions may be approved as follows:

(a) SPCMCA may grant a 30-day extension to the Soldier's ETS. The SPCMCA may further grant one additional 30-day extension for a maximum total of 60 days. This authority may not be delegated but may be approved by an acting commander in the grade of LTC or higher.

(b) GCMCA may grant an extension of 60 additional days beyond those granted by the SPCMCA for a maximum total of 120 days. The GCMCA may further grant one additional 60-day extension for a maximum total of 180 days. This authority may not be delegated but may be approved by an acting commander in the grade of brigadier general or higher.

(c) CG, HRC may grant an extension of 120 additional days beyond those granted by the GCMCA for a maximum total of 300 days. This authority may be delegated no lower than to a division chief at HRC.

(d) SECARMY may grant extensions of 90 additional days beyond those granted by HRC. There are no limits on the number of extensions that SECARMY may grant. This authority is delegated to the Director of Military Personnel Management (DMPM).

1-28. Retained in service while subject to criminal jurisdiction of foreign courts but not physically confined by such courts

Retention in service under this paragraph is intended to permit the Government to fulfill its obligations under current jurisdictional agreements with foreign governments (see fig 1-2).

a. If it appears that final action on the civil charges will not be completed before the accused ETS, the following action will be taken:

(1) The Army will try to obtain the accused consent to be retained beyond ETS until final action on the civil charges and consequent administrative separation action has been completed. Before such consent is obtained, the Soldier concerned will be advised that since he or she is subject to the UCMJ, it is possible that court-martial charges may be preferred if the foreign government does not proceed with the case. However, court-martial charges will not be resorted solely to ensure retention. Further, the Soldier will be advised that he or she may be processed for separation per chapter 14, section II of this regulation, if the case ultimately results in a civil conviction.

(2) If the accused does not consent to retention, foreign officials will be offered the opportunity of accepting custody of the accused in time to prevent his or her separation from the Service as a Soldier absent in the custody of civil authorities.

b. Should the Soldier consent to retention, he or she will be requested to complete the statement in figure 1-2. The Adjutant General (AHRC-PDZ-B) 1600 Spearhead Division Avenue, Department 400, Fort Knox, KY 40122-5204 will be the approval authority for ARNGUS and USAR Soldiers on IADT or Active Guard/AGR tours. A copy of the retention action will be sent to the following:

(1) Commander, U.S. Army Human Resources Command, Army Personnel Records Division, 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204 for RA personnel.

(2) The appropriate SAG, for ARNGUS (AGR) personnel.

(3) Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204 for USAR AGR personnel.

c. If the provisions of paragraph 1–28a cannot be complied with, the case, with full details, will be referred through channels to Commander, U.S. Army Human Resources Command (AHRC–EPF–M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204, for instructions. Care will be exercised to ensure that each case is submitted before the Soldier’s ETS. Submit cases to usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil.

d. When the foreign country concerned has determined to exercise criminal jurisdiction, and it appears probable that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the accused will follow the procedures in AR 27–50/SECNAVINST 5820.4G.

1–29. Discharge or release from active duty prior to expiration of term of service

a. When separation is to be completed before ETS, or the period for which ordered to active duty or ADT, it will be completed per this regulation or other applicable regulations by the commanders specified in paragraph 1–20. Exceptions are indicated in paragraphs 1–29b and 1–29c.

b. When discharge or REFRAAD is to be completed before ETS or the period for which ordered to active duty or ADT, time lost normally need not be made good. In cases where discharge or release is to be completed per paragraphs 16–5, 16–6, 16–9, and 16–10, the ETS of a Soldier with time lost will be adjusted to include such lost time (adjusted ETS).

c. Personnel sentenced to a dishonorable or bad conduct discharge will not be discharged or released from active duty before appellate review is completed, unless so directed by HQDA.

d. When the Soldier is discharged per chapters 9, 10, 13, or 14 of this regulation, the case file of the Soldier will be reviewed by the commander having authority to approve discharge. The commander will decide whether the reporting requirements set forth in AR 190–45 apply. When such conditions exist in a Soldier’s case file, the report required by AR 190–45 will be submitted.

Section V

Effective Date of Discharge

1–30. Effective date of discharge

a. The discharge of a Soldier is effective at 2400 on the date of release when the Soldier is—

- (1) Transferred to the USAR to complete a reserve obligation.
- (2) Transferred to the temporary disability retired list per AR 635–40.

b. For a Soldier who entered active duty from an RC and reverts to USAR or state ARNG control, release is effective at 2400 on the date of expiration of authorized travel time.

c. Discharge for all reasons other than those set forth in paragraphs 1–30a and 1–30b is effective at 2400 on the date of notice of discharge to the Soldier.

d. Notice of discharge may be either of the following:

- (1) Actual, as by delivery to the Soldier of the discharge certificate.
- (2) Constructive, when actual delivery of the discharge order cannot be accomplished because of the absence of the Soldier to be discharged. Such a situation arises in the case of Soldiers on authorized leave and in those cases covered by paragraph 2–15.

(a) Receipt by the Soldier’s organization at his or her proper station of the order directing the Soldier’s discharge will be deemed sufficient notice.

(b) The Soldier’s organization will annotate the date of receipt and the reason that actual notice was not given on the discharge order and on the back of the certificate.

(c) The annotated discharge certificate, discharge order, and copy of DD Form 214 (Certificate of Release or Discharge from Active Duty) reflecting effective date of discharge, will be sent to the Soldier at the address provided for that purpose. If the documents mailed to the Soldier are returned unclaimed or undeliverable, they will be destroyed.

(d) The annotated discharge order and copy of DD Form 214, further reflecting date of mailing to the Soldier, will be filled in the Soldier’s AMHRR in accordance with AR 635–8.

1–31. Mental incompetence

The effective date of discharge of a mentally incompetent Soldier may be constructive, as when the Soldier has been placed in an institution (see AR 635–40).

1–32. When retained in service awaiting trial or result of trial

When a Soldier is retained in service past his or her ETS per paragraph 1–23, the effective date of discharge or release depends upon the result of the trial or the disposition of the case.

a. A Soldier who has no lost time to make good under 10 USC 972, who is confined while awaiting trial will, if acquitted after ETS, be discharged or released from active duty within 10 duty days after date of announcement of acquittal. The Soldier will be regarded as having been retained in service for the convenience of the Government.

b. A Soldier who has no lost time to make good under 10 USC 972, who is not confined while awaiting trial, will if convicted after ETS, but not sentenced to confinement, be discharged or released from active duty within 10 duty days after date of announcement of the sentence. The Soldier will be regarded as having been retained in service for the convenience of the Government.

c. A Soldier who is confined while awaiting trial and is then convicted and sentenced to either confinement only or to confinement and forfeiture or fine only, will be discharged on the adjusted ETS. The adjusted ETS date will be computed by adding to the date of release from confinement or completion of the court-martial case, as applicable, all time lost before and including the original ETS date.

d. A Soldier who is not confined while awaiting trial, who has no lost time to make good under 10 USC 972, and is then convicted and sentenced to either confinement only or to confinement and forfeiture or fine only, will be discharged or released from active duty within 10 duty days after the release from confinement. The Soldier will be regarded as having been retained in service for the convenience of the Government.

e. A Soldier who is retained according to paragraph 1–23 with a view to trial by court-martial, and the chain of command determines that court-martial charges will not be brought or the alleged offenses are disposed of without trial, will be separated within 10 days after the decision not to prefer court-martial charges is made. The Soldier will be regarded as having been retained in service for the convenience of the Government.

Section VI

Medical Processing

1–33. Separation and medical examinations

a. Commanders will ensure that Soldiers initiated for separation under this regulation who are required to obtain a physical examination per 10 USC 1145 and 10 USC 1177 obtain such.

b. In addition to medical examinations, mental status evaluations are required for Soldiers being processed for separation under chapters 10, 13, or 14 (sec III).

c. Mental status evaluations may be conducted by privileged mental health providers as defined in DoDI 6490.04.

d. Detailed information about the reasons for considering a Soldier for separation will be provided to attending medical personnel to permit thorough understanding of the contemplated action.

(1) Medical personnel will not be used in an investigative capacity to determine facts relative to a Soldier's behavior.

(2) Commanders referring a Soldier for a mental status evaluation that is not required, as specified in paragraphs 1–33*a*, 1–33*b*, and 1–33*c*, must comply with the provisions of DoDI 6490.04 and AR 600–20.

e. In accordance with 10 USC 1177 and AR 40–501, a medical examination and mental status evaluation is required for any Soldier pending administrative separation under conditions other than honorable who has deployed overseas in support of a contingency operation or is alleged to have been sexually assaulted during the previous 24 months, and is diagnosed as experiencing PTSD and/or TBI, or reasonably asserts the influence of such a condition, based upon service while deployed or such sexual assault.

f. Any Soldier covered by paragraph 1–33*e* will not be administratively separated under conditions other than honorable until the results of the medical examination have been reviewed by the separation authority. The purpose of the medical examination is to assess whether the effects of PTSD and/or TBI constitute matters in extenuation that relate to the basis for administrative separation under conditions other than honorable or the overall characterization of service of the member as other than honorable.

g. Separations under chapters 10 and 14 of this regulation will indicate the separation authority has reviewed the medical examination and include the following statement: "I have reviewed the medical examination and mental status evaluation and have determined the Soldier's medical condition(s) (DO) (DO NOT) constitute matters in extenuation that relate to the basis for administrative separation or the overall characterization of service of the member as other than honorable."

h. Commanders will ensure that Soldiers separated under this regulation who have completed a period of active duty as detailed in DoDI 6040.46, Section 3, receive a Separation History and Physical Examination (SHPE).

1–34. Disposition through medical channels

a. Except as specified in paragraphs 1–34*d* and 1–34*e*, processing under the Disability Evaluation System (DES) takes precedence over administrative separation processing, regardless of when the medical determination is made (either before, during, or after initiation of separation). This includes cases where the separation authority has approved separation, but the Soldier has not reached his or her effective date of separation or discharge. This also includes a member of an RC of the Army on active duty for more than 30 days when identified for referral to DES to complete DES processing. Separation due to retirement for length of service (see chap 12) or ETS (see chap 4) are administrative separation actions and disposition through DES take precedence. Soldiers scheduled to ETS or retire who subsequently enter the DES process will be extended in accordance with paragraph 1–25, with the Soldier’s consent and beyond his or her scheduled retirement or separation date, in order to complete DES processing. This includes Soldiers who may be ineligible for reenlistment in accordance with AR 601–280.

b. Soldiers who do not meet medical fitness standards for retention are referred to a medical evaluation board (MEB). A finding that a Soldier does not meet medical fitness standards for retention requires the awarding of a permanent profile documented on DA Form 3349 (Physical Profile) establishing a permanent “3” or “4” in any physical, upper extremities, lower extremities, hearing, eyes, psychiatric (PULHES) factor in accordance with AR 40–501. A Soldier is considered in the DES process as of the date (earliest date where the profile lists multiple referred conditions) the DA Form 3349 is approved by the physician approving authority (second signature) for a condition that fails medical retention standards, or on the disposition date of a Military Occupational Specialty Administrative Retention Review which referred the Soldier to DES in accordance with AR 635–40.

c. Except as specified in in paragraphs 1–34*d* and 1–34*e*, when the MEB determines referral to a PEB is warranted, Soldiers will be referred to a PEB. The separation authority will not take final action on the administrative separation action for a Soldier in the DES process until either a MEB determination of “return to duty” or the U.S. Army Physical Disability Agency (USAPDA) approves a PEB finding of “fit.” If USAPDA approves a PEB finding of “unfit,” the administrative separation action is abated.

d. Soldiers undergoing administrative separation under section IV of chapter 7, chapter 14, and involuntary separation under chapter 15 are eligible for referral to and completion of the MEB phase of DES. The administrative separation proceedings will continue, but the separation authority will not take final action.

(1) If the MEB finds the Soldier meets medical retention standards, the approved MEB proceedings are forwarded to the separation authority and unit commander to complete the separation action.

(2) If the MEB finds the Soldier does not meet medical retention standards and referral to a PEB is warranted, the Soldier’s GCMCA and unit commander will receive the approved MEB proceedings. The GCMCA must direct, in writing, whether to proceed with the DES process or administrative separation. The GCMCA’s written directive must address whether the Soldier’s medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative separation, and/or whether other circumstances of the individual case warrant disability processing instead of further processing for administrative separation.

(*a*) The authority of the GCMCA to determine whether to proceed with the DES process or administrative separation may not be delegated, but may be exercised by the acting GCMCA if in the grade of brigadier general or higher.

(*b*) The GCMCA’s written directive will be transmitted to the MTF commander or director. A copy will also be furnished to the unit commander and included in the administrative separation packet.

(3) If the Soldier was beyond the MEB phase when the chapter 7, 14, or involuntary separation under chapter 15 was initiated, the last level of completed adjudication (PEB adjudication or USAPDA approval of the case for the SECARMY, whichever is the last completed action) will be forwarded with the MEB to the Soldier’s GCMCA. If neither an informal or formal PEB was completed, only the MEB will be forwarded to the GCMCA.

e. Soldiers undergoing administrative separation under chapter 10 are eligible to be referred to and complete the MEB phase of DES before the discharge is approved. In accordance with AR 635–40, at the point of approval, the Soldier becomes ineligible to be referred to the MEB or for a MEB to be referred to the PEB.

Section VII

Mobilization Asset Transfer Program

1–35. Policy

The purpose of the Mobilization Asset Transfer Program is to ensure that sufficient trained manpower is available in the RC to meet the Army’s personnel requirements under conditions of full mobilization.

a. To retain mobilization assets, eligible and qualified active duty Army Soldiers who have a statutory or contractual MSO will be transferred to the IRR upon completion of their active duty service (see 10 USC 651).

- b.* RA Soldiers will be transferred to the IRR to complete their statutory or contractual MSO, whichever expires later.
- c.* RC Soldiers will be transferred to the IRR to complete their statutory MSO.
- d.* Soldiers who are not transferred to the IRR will be discharged. AR 135–91 contains policies and procedures regarding service obligations and participation requirements.

1–36. Eligibility/ineligibility for transfer to the Individual Ready Reserve

a. Soldiers with a remaining MSO will be transferred to the IRR upon REFRAD if they meet all of the following mobilization asset requirements:

- (1) Have completed initial entry training (IET) and have been awarded a military occupational specialty (MOS).
- (2) Have 3 months or more remaining on their MSO.
- (3) Are assigned a characterization of service of honorable, or under honorable conditions (general), or have service described as uncharacterized if in entry-level status.
- (4) Meet medical and dental retention standards under AR 40–501. Soldiers in the DES process will not be administratively transferred to the IRR until the DES process is complete. If the outcome of that process results in separation for physical disability under AR 635–40, the Soldier will not be transferred to the IRR. If the Soldier declines retention on active duty to complete the DES, the Soldier will be transferred to the IRR to complete the process provided the Soldier’s P3 or P4 profile for referral to DES has been approved (see para 1–34*b*). If the Soldier’s profile has not been approved, the Soldier will not be transferred to the IRR.
- (5) Have at least a National Agency Check with Local Agency and Credit Check/Tier 3 investigation or higher.
- (6) Do not have a revoked or final denial of security clearance eligibility.
- (7) Do not have a nontransferable suspension of favorable action (Flag).
- (8) Do not possess any of these disqualifying adverse actions:
 - (a)* Conviction, as defined by paragraph 14–2*h*, of a sex offense, as defined by paragraph 14–2*g* (see chap 14-5*e* and 14-12*c*(3)).
 - (b)* Qualifying conviction triggering the Domestic Violence Amendment to the Gun Control Act of 1968, the Lautenberg Amendment. (see 18 USC 922).
 - (c)* Two or more alcohol or drug incidents which require initiation of separation proceedings (see chaps 9 and 14), that has not been completed by the command.
 - (d)* Felony conviction.

b. Soldiers with a remaining MSO are ineligible for transfer to the IRR and will be discharged if they meet any of the following criteria:

- (1) Have not completed IET and have not been awarded an MOS.
- (2) Have less than 3 months remaining on their MSO.
- (3) Are separated with a punitive discharge (bad conduct or dishonorable) as a result of a court-martial.
- (4) Are administratively separated with a service characterization of under other than honorable conditions.
- (5) Are released from the custody and control of the Army by reason of void enlistment.
- (6) Are separated for physical disability under AR 635–40.
- (7) Are administratively separated voluntarily for any of the following reasons:
 - (a)* Sole surviving sons or daughters (see chap 5).
 - (b)* Medical failure for flight training (see chap 5).
 - (c)* Hardship, dependency, parenthood (see chap 6).
 - (d)* In lieu of trial by court-martial (see chap 10).
 - (e)* Entrance into officer accession programs (see chap 16).
 - (f)* Conscientious objection (see AR 600–43).
- (8) Are administratively separated involuntarily for any of the following reasons:
 - (a)* Parenthood (see chap 5).
 - (b)* Lack of jurisdiction (see chap 5).
 - (c)* Noncitizen (see chap 5).
 - (d)* Concealment of arrest record (see chap 5).
 - (e)* Minority (age) (see chap 7).
 - (f)* Fraudulent entry (see chap 7).
 - (g)* Alcohol or drug abuse rehabilitation failure (see chap 9).
 - (h)* Unsatisfactory performance (see chap 13).
 - (i)* Misconduct (see chap 14).
 - (j)* Denial or revocation of security clearance eligibility (see AR 380–67).

(9) Are determined by the separation authority to possess no potential for useful service under conditions of full mobilization.

1–37. Separation authority determination

a. The separation authority must determine whether or not the Soldier possesses the potential to perform useful service to meet mobilization requirements if ordered to active duty.

(1) The decision to order discharge or transfer to the IRR rests with the separation authority and cannot be delegated, although the recommendation of subordinate commanders may be considered (see fig 2–5).

(2) The separation authority’s determination will be made on a case-by-case basis and will be included in the instrument approving separation.

b. The separation authority must exercise sound judgment in the decision process. The key consideration is the need to retain trained personnel in the IRR for mobilization purposes. In making a decision regarding potential for future useful service, the separation authority must give due consideration to all pertinent factors, including the following:

(1) The positive motivation that full mobilization may have on the Soldier.

(2) The probable maturing effect of the passage of time, especially in the case of young Soldiers.

c. The reason for separation is not, in itself, a basis for determining that a Soldier has no potential for useful service in the future.

d. The following additional guidance is offered to assist separation authorities in the decision-making process. Only in unusual circumstances should Soldiers separated for the following reasons be discharged instead of being transferred to the IRR to complete their remaining MSO:

(1) Expiration of term of service (see chap 4).

(2) Furthering education (see chap 5).

(3) Erroneous, defective, or unfulfilled enlistment agreement, if requested by the Soldier (see chap 7).

(4) Denial of reenlistment due to declination of continued service, reduction in force, strength limitations or budgetary constraints, or the holiday early transition program (see chap 16).

(5) Other separation categories require careful deliberation by the separation authority as to the potential of the Soldier for useful service as a mobilization asset. Such deliberation is essential in the case of Soldiers separated due to:

(*a*) Failure to meet procurement medical fitness standards (see chap 5).

(*b*) Personality disorder (see chap 5).

(*c*) Other physical or mental conditions (see chap 5).

(*d*) Pregnancy (see chap 8).

(*e*) Entry-level performance and conduct (see chap 11).

(*f*) Inability of USAR AGR Soldier to overcome local bar to reenlistment (see chap 16).

(*g*) Failure to meet body composition standards (see chap 18).

e. In the final analysis, the separation authority will direct discharge, in lieu of transfer to the IRR, only when the circumstances of the individual case clearly indicate that the Soldier has no potential for useful service under conditions of full mobilization.

f. In cases where the Soldier has no remaining MSO and when discharge is required, the separation authority will determine the reentry eligibility (RE) code. This determination should be made based on waivable and nonwaivable guidance in AR 601–210. Retirements and disability separations will receive a code RE–4R and RE–4, respectively.

Section VIII

Naturalized Personnel Separated Under Other Than Honorable Conditions

1–38. General

This section prescribes the procedures for notifying the U.S. Citizenship and Immigration Services when naturalized personnel are separated under other than honorable conditions.

1–39. Revocation of citizenship

The citizenship of Soldiers of the United States Armed Forces who were naturalized through active duty service in the Armed Forces during designated periods of military hostilities may be revoked if such Soldiers are later separated from the military service under other than honorable conditions (see 8 USC 1440). The Department of Justice, U.S. Citizenship and Immigration Services, is responsible for initiating citizenship revocation proceedings in such cases.

1–40. Notification to Immigration and Naturalization Service

When a naturalized Soldier is separated under conditions other than honorable, the Soldier's commanding officer will notify U.S. Citizenship and Immigration Services at 1–877–247–4645 or militaryinfo@uscis.dhs.gov and provide the following information:

- a.* Address of proposed residence after discharge.
- b.* Certificate of nation number, if available.
- c.* Name under which the Soldier was naturalized if different than the name at the time of discharge.
- d.* Date and place of birth.
- e.* Date and place of naturalization.

Section IX

Separation of Soldiers in Foreign Countries

1–41. General

This section prescribes the rules governing the separation of Soldiers in foreign countries. It governs only the place of separation and does not prescribe substantive rules for discharge or other separations.

1–42. Separation in foreign countries

a. A Soldier eligible for separation who is serving in a foreign country may be separated therein, upon approval by the ASCC commander provided:

- (1) Soldier requests separation in that country.
- (2) Soldier's separation in that country is not precluded by law or any regulation (see paras 1–42a, 1–44, and 1–45).
- (3) The foreign government concerned has either formally or informally—
 - (a)* Consented to the separation of the specific Soldier within its territory.
 - (b)* Consented generally to the separation of Soldiers otherwise eligible for separation under the circumstances set forth in paragraphs 1–42a(1) and 1–42a(2).

b. No Soldier will be separated in a foreign country until the Soldier has obtained documents needed for his or her lawful continued presence in that country. The Soldier will provide these documents to his or her chain of command prior to discharge and will be included in the Soldier's final administrative separation packet.

c. Soldiers who are accepted for service in a foreign country, but who are not stationed in that country, may be returned if paragraphs 1–42a and 1–42b are complied with, and the Soldier has the appropriate documents entitling him or her to entry into the country. However, specific consent of that country for the Soldier's separation in its territory is not needed.

d. Requests for action in an overseas command may be disapproved by the ASCC commander, when—

(1) Revocation action per AR 380–67 has been taken against the Soldier concerned during the Soldier's current term of enlistment.

(2) The Soldier's access to defense information is suspended per AR 380–67 at the time the decision is made whether or not to separate a Soldier in a foreign country.

(3) There is reason to believe that the Soldier's presence in the overseas area in a nonmilitary status would endanger national security or good order and discipline.

(4) Other cogent reasons exist causing the commander to believe the Soldier should not be separated in the overseas command.

e. ASCC commanders may delegate authority to the appropriate commanders who are GCMCAs to approve or disapprove the separation of a Soldier in a foreign country as provided by this section. The delegations are authorized provided the commanders concerned have the expertise to comply with the following requirements:

- (1) Change-of-status reporting requirements.
- (2) Immigration procedures of the host government; that is, visa, residence permit, and work permit.
- (3) United States requirements; that is, surrender of no-fee passport and issuance of fee passport.

f. All delegations will be in writing and will be valid until revoked in writing. Every action taken according to such a delegation will state that it is taken "pursuant to delegation of authority by (name) dated (date)."

1–43. Soldiers confined pursuant to the sentence of a foreign court

Soldiers confined in a foreign penal institution pursuant to the sentence of a foreign court may be separated from the Service per chapter 14, section II of this regulation.

1–44. Soldiers under Investigation by foreign authorities or sentence by foreign court but not confined pursuant to that sentence

a. Soldiers will not be considered for separation in a foreign country (except per para 1–28) until final action has been taken by the foreign authorities when—

(1) The Soldier’s sentence to confinement is not suspended, but he or she is not confined pending appellate action.

(2) The Soldier is not confined but is charged with, or is under investigation for, offenses subject to jurisdiction of foreign authorities for which a sentence to confinement could be imposed.

b. After final action by the foreign authorities, such Soldiers may be considered for separation in the foreign country under paragraph 1–42 or 1–43, whichever is appropriate.

1–45. Separation of Soldiers sentenced by foreign courts

The provisions of paragraph 1–43 do not prohibit a commander from initiating action per chapter 14, section II, when a Soldier is confined in a foreign penal institution. The commander can initiate action with a view toward final discharge of such Soldier after release from confinement and return to the United States or its territorial possessions.

1–46. Personnel eligible for return from overseas for separation or release from active duty

Soldiers scheduled for return to the United States, its territories, or possessions for separation or REFRAD will be processed for return per AR 635–8.

Section X

Bars to Continued Service

1–47. General

As provided in paragraph 1–48, commanders will initiate separation proceedings against Soldiers who have received a local bar to continued service (previously bar to reenlistment) under the provisions of AR 601–280 (for RA) or AR 140–111 (for USAR AGR). Separation action is not based upon the imposition of a bar to continued service but rather on the Soldier’s conduct and/or performance of military duties. If no more specific basis exists under this regulation, commanders will initiate separation proceedings against these Soldiers under chapter 13 for unsatisfactory performance.

1–48. Separation initiation and processing of locally imposed bars

If, at the time of the second 3-month review of a locally imposed bar to continued service imposed in accordance with AR 601–280 or AR 140–111, the unit commander does not recommend that the bar be removed, the commander will process the Soldier for separation per chapters 13, 14, or other appropriate chapters of this regulation. “Processed for separation” means that separation action will be initiated and processed through the chain of command to the separation authority for appropriate action. Compliance with paragraph 1–17 is mandatory. The immediate and intermediate commanders will recommend separation or retention and the characterization of service to be awarded (see para 2–2 or 2–4).

Section XI

Retention Policy for Nondeployable Soldiers

1–49. General

It is the personal responsibility of every Soldier to maintain individual readiness, including medical, dental, physical, and administrative (for example, maintaining a Family care plan) readiness. Soldiers will remain personally responsible and prepare for training and worldwide deployment at all times. Commands must be proactive and enable the individual readiness and deployability of each Soldier at all times.

a. Commanders must be diligent in ensuring Soldiers understand their obligations and document the failure of those who demonstrate an unwillingness to meet these obligations. Commanders will use written counseling and performance evaluations to document a Soldier’s knowing failure to comply with responsibilities to maintain the individual readiness required to be deployable (for example, repeatedly missing medical or dental appointments).

b. Commanders will ensure Soldiers attend scheduled medical and dental appointments. Maintaining medical readiness through prescribed annual health encounters (for example, periodic health assessments, annual dental exams, and medical assessments) are key components of identifying and correcting nondeployable conditions.

c. Soldiers are considered deployable unless they have a Service-determined reason that precludes them from deployment. To be deployable, Soldiers must meet the following criteria:

(1) The Soldier is administratively, legally, and medically cleared for employment in any environment in which the Army is operating or could operate.

(2) The Soldier can operate in austere areas or areas that regularly experience significant environmental conditions (for example, heat, cold, altitude) that would exacerbate existing medical conditions.

(3) The Soldier can carry and employ an assigned weapon.

(4) The Soldier is capable of executing all individual warrior tasks for his or her assigned mission.

(5) The Soldier can operate while wearing body armor, helmet, eye protection, gloves, and/or chemical or biological protective equipment.

(6) The Soldier is capable of passing the APFT or meeting the physical demands of tasks required for a specific deployment.

d. Commanders in the grade of O-6 or higher in a Soldier's chain of command may waive one or more of the criteria in paragraphs 1-49c(1) through 1-49c(6) in determining a Soldier's deployability status, except in cases when the controlling regulation(s) specifies a different waiver approval authority. Regardless of Service determination, this authority does not change the requirement to submit waiver requests to applicable combatant commanders pursuant to DoDI 6490.07.

e. Soldiers who become permanently nondeployable are considered unqualified to hold any primary MOS unless an exception to policy is granted. The following Soldiers are exempt and continue to retain their primary MOS:

(1) Soldiers found to be deployable with limitations.

(2) Soldiers approved for continuation on active duty.

(3) Soldiers with approved retention waivers in accordance with paragraph 1-50c.

1-50. Separation initiation and processing

a. Soldiers who are nondeployable for an administrative reason (not medical or legal as defined in DoDI 1332.45) for more than 6 consecutive months, or 6 nonconsecutive months in a 12-month period, will be processed for administrative separation. The basis for administrative separation will be the underlying administrative (not medical or legal) reason(s) causing them to be administratively nondeployable. Commanders will follow the current policy for initiating administrative separation proceedings. Unless a more specific portion of this regulation applies, generally these actions will be processed under chapter 13. If the separation authority approves retention, they will immediately initiate an action for the exercise of Secretarial plenary authority under chapter 15 of this regulation. The processing of Secretarial plenary authority separation actions will comply with all current notification and processing guidance contained in this regulation. Exemptions to the requirements of this paragraph include:

(1) Single Soldiers adopting a child or member of a military couple adopting a child who have been approved for operational deferment. These exemptions will expire the day following the expiration of the Soldier's operational deferment.

(2) Soldiers who are temporarily nondeployable as a result of a compassionate reassignment or stabilization. These exemptions will expire the day following the expiration of the stabilization period.

(3) Soldiers who are not yet 18 years of age.

(4) Conscientious objectors during the investigation and resolution of their claim.

(5) Sole surviving Family members deferred from serving in a hostile fire zone.

(6) Ex-prisoners of war deferred from serving in a country where they were formerly held captive.

(7) Transients, trainees, cadets, or other Soldiers who have not completed IET.

(8) Soldiers serving in a humanitarian assignment.

(9) Soldiers pending administrative separation for another reason under this regulation.

b. Commanders do not have to wait 6 consecutive months, or 6 nonconsecutive months in a 12-month period, if there is a reasonable expectation that the underlying reason(s) causing them to be administratively nondeployable (not medical or legal) will not be resolved and the Soldier will not become deployable.

c. Soldiers who are nondeployable for an administrative reason (not medical or legal) will be evaluated for retention by commanders in the grade of O-6 or higher. If the commander determines retention is in the best interests of the Army, a retention waiver will be submitted, if requested by the Soldier. Waivers can be requested at any point after a determination is made that the Soldier will be nondeployable for an administrative reason (not medical or legal) exceeding a threshold in paragraph 1-50a. All requests must be endorsed with recommendation, at a minimum, by the first general officer in the Soldier's chain of command. All RA and USAR AGR requests will be forwarded through CG, HRC to the SECARMY or the Secretary's approved designee as announced in updated memoranda per paragraph 1-15i(1). All ARNGUS AGR (Title 10) requests will be forwarded through the Chief, National Guard Bureau

(ARNG–HCM), 111 S. George Mason Drive, Arlington, VA 22204–1373, to the DCS, G–1 for processing. Waivers may be granted for up to the length of time remaining on the most current contract or 3 years for enlisted Soldiers on indefinite contracts. Upon expiration of the retention period, the Secretary of the military department concerned may renew retention for a Servicemember on a case-by-case basis.

I have been fully advised of the rights and advantages that may accrue to me by voluntarily remaining on active duty in the Army beyond the scheduled date of my release for the purpose of completing hospital care and/or physical disability evaluation under the provisions of Title 10, U.S. Code, Chapter 61 and have been further fully advised that if I elect to be discharged or released or released from active duty as scheduled, I will not after such discharge or release from active duty be eligible for separation or retirement for physical disability.

Wherefore, in consideration of the above, I (do) (do not) desire retention on active duty in the Army beyond the scheduled date of expiration of my term of service.

Figure 1–1. Sample format for retention statement used on DA Form 2823



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR RECORD

SUBJECT: Affidavit for United States Army Soldier

1. I am being subjected to the exercise of criminal jurisdiction of the Government of (name of country). I am presently:
 - a. Awaiting disposition of the charges by the authorities of the foreign government.
 - b. Undergoing trial in a court of the foreign government.
 - c. Awaiting a decision on my appeal of my conviction and sentence by a court of the foreign government.

2. I request that I be retained in the Service beyond (ETS date), the expiration date of my term of service until final disposition of the charges against me by the foreign government and completion of administrative action to accomplish my separation from the Army. I have been informed that if my case results in civil conviction, I may be processed for separation under the provisions of AR 635 – 200, chapter 14, section II and my service may, if warranted, be characterized as under other than honorable conditions. I have been advised of my rights under Article 31, UCMJ. I have also been informed that since I am subject to the UCMJ, it is possible that court-martial charges may be preferred against me if the foreign government does not proceed with its case. I certify that this request for retention in the Service is not the result of coercion, force, or threat of harm, nor have I been promised any benefits by the military authorities of the United States.

(Signature of Soldier)
(Typed name, grade, organization)

(Signature of officer administering oath)
(Typed name, grade, branch)

Figure 1–2. Sample format for affidavit for United States Army Soldier

Chapter 2 Procedures for Separation

Section I

Notification Procedure

2-1. Application

a. The procedures in this chapter will be followed when required by the specific reason or reasons for separation (see figs 2-1, 2-2, 2-3, 2-4, 2-5, and app B).

b. When a Soldier is subject to separation for more than one reason, the following guidelines apply to procedural requirements (including procedural limitations on characterization of service or description of separation):

(1) The basis for each reason must be clearly established, including the circumstances upon which the action is based.

(2) If any reason for separation set forth in the notice of proposed action requires processing under the administrative board procedure, the entire matter will be processed under section II of this chapter.

(3) If more than one reason for separation is approved, the guidance on characterization that provides the greatest latitude may be applied.

(4) When there is any other conflict between a specific requirement for one reason and a general requirement for another reason, the specific requirement will be applied.

(5) If a conflict in procedures cannot be resolved based on the guidance in paragraphs 2-1b(1) through 2-1b(4), the requirement most favorable to the Soldier will be used.

c. The commander initiating the administrative separation will indicate on the commander's report to the separation authority whether the Soldier is a known victim of sexual assault, or if the Soldier has filed an unrestricted report of sexual assault within the 24-month period prior to initiation of the separation action (see fig 2-5).

2-2. Notice

When the reason for separation requires the notification procedure, the commander will notify the Soldier in writing that his or her separation has been recommended per this regulation (see fig 2-1 and app B).

a. The commander will cite specific allegations on which the proposed action is based and will also include the specific provisions of this regulation authorizing separation.

b. The Soldier will be advised of—

(1) Whether the proposed separation could result in discharge, REFRAD to an RC, or release from custody and control of the Army.

(2) The least favorable characterization of service or description of separation he or she could receive.

(3) The type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander.

c. The separation authority is not bound by the recommendations of the initiating or intermediate commander and has complete discretion to direct any type of discharge and characterization of service authorized by applicable provisions of this regulation (see para 2-4d(4)). Chapter 3 provides guidance on the appropriate type of discharge and characterization of service. The servicing SJA will be consulted when limited use evidence is involved (see para 2-12h). The Soldier will be further advised of the following rights:

(1) To consult with military counsel, qualified under UCMJ, Art. 27(b), within a reasonable time (not less than 3 duty days).

(2) To submit statements in his or her own behalf.

(3) To obtain copies of documents that will be sent to the separation authority supporting the basis of the proposed separation. For a separation under chapters 9 or 14 based upon a positive urinalysis, the Soldier will be provided, upon request, a copy of the supporting laboratory documents (as described in AR 600-85). Classified documents may be summarized.

(4) To a hearing before an administrative separation board under section III of this chapter if he or she had 6 years or more of total active and reserve service on the date of initiation of recommendation for separation. This includes creditable service in any U.S. military component, for example, RA, ARNGUS, USAR (including IRR and Delayed Entry Program), U.S. Navy, U.S. Air Force, and so forth.

(5) To waive the rights in paragraphs 2-2c(1) through 2-2c(4) in writing, including the right to submit a conditional waiver of the right to have the case heard before an administrative separation board (see para 2-5b and fig 2-2).

(6) Failure to respond (including failure to submit matters under paragraph 2–2c(3)) within 7 duty days will constitute a waiver of the rights in paragraphs 2–2c(1) through 2–2c(5). An extension will normally be granted until any documents requested by the Soldiers, and required to be provided by law or regulation, pursuant to paragraph 2–2c(4) are provided to the Soldier, and the Soldier has a reasonable opportunity to respond to such documents.

d. The following additional notice requirements will be satisfied, as appropriate:

(1) If separation processing is initiated for more than one reason, the Soldier will be notified of the basis for each reason, including the circumstances upon which the action is based, per this regulation.

(2) If the respondent is in civil confinement or AWOL, the relevant notification procedures apply.

(3) Additional notification requirements are set forth in chapter 5 when characterization of service as general (under honorable conditions) is authorized, and the Soldier is processed for separation by reason of convenience of the Government.

(4) The intermediate commander(s), in making recommendations on the type of discharge and characterization of service, may recommend any type of discharge and characterization of service authorized for the notified basis of separation but will normally be limited to considering facts contained within the proposed action. Subject to the requirements in paragraph 2–2d(5), recommendations on the type of discharge and characterization of service by the intermediate commanders do not form the basis for the proposed separation and therefore will not be provided to the Soldier.

(5) If the intermediate commander(s) considers additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander will state, in writing, the specific facts and incidents in the Soldier’s record that warrant such type of discharge and characterization.

(a) The Soldier will be given an opportunity to rebut the additional material, prior to the proposed action being forwarded from that intermediate commander.

(b) Military legal counsel will be made available to assist in preparation of rebuttal of the additional material.

(c) An explanation by the intermediate commander(s) of the reasons for their recommendations that refers only to facts contained within the proposed action or to the commander’s conclusions based on those facts will not constitute “additional unfavorable information” within the meaning of this paragraph.

e. An extension may be granted to the time allowed to consult with counsel upon a timely showing of good cause by the Soldier.

(1) If the Soldier elects to waive his or her rights, the Soldier will personally sign a waiver.

(2) The Soldier’s consulting counsel will advise the Soldier and will sign the written waiver as witness, indicating that he or she is a commissioned officer of the JAGC, qualified under UCMJ, Art. 27(b) (see para 2–5 and app B).

(3) If the Soldier refuses to consult with counsel and/or declines to respond as to the waiver of rights, such declination will constitute a waiver of rights. An appropriate notation will be made on the figure 2–2 provided for the Soldier’s reply.

(4) If the Soldier consults with counsel and the Soldier and/or counsel declines to respond to or sign the waiver of rights, such declination or refusal will constitute a waiver of rights. An appropriate notation will be made on the figure 2–2 provided for the Soldier’s reply.

(5) If the Soldier indicates that one or more of the rights will be exercised but declines to sign, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

f. The Soldier’s commander or other designated individual will personally serve the Soldier with the memorandum of notification. The Soldier is required to sign an acknowledgment of receipt. The acknowledgment of receipt will be signed and dated on the date it is served.

g. If notice by mail is authorized and the Soldier fails to acknowledge receipt or submit a timely reply, that fact will constitute a waiver of rights. An appropriate notation will be recorded on a retained copy of the appropriate figure.

h. The Soldier may withdraw his or her waiver of rights listed in paragraphs 2–2c(1) through 2–2c(5) at any time prior to the date the separation authority orders, directs, or approves the separation.

i. The Soldier will indicate on the notification of rights whether he or she has filed an unrestricted report of sexual assault within 24 months of initiation of the separation action (see fig 2–4). The Soldier will also indicate whether he or she believes that this separation action is a direct or indirect result of the sexual assault itself or of the filing of the unrestricted report, if the above is true. A Soldier recommended for involuntary separation within 1 year of making an unrestricted report of sexual assault may request general/flag officer review of and concurrence with the circumstances of, and grounds for, the separation.

2–3. Action by separation authority

The action of the separation authority will be recorded.

a. Upon receipt of the recommended action, the separation authority will determine if there is a preponderance of the evidence to support each basis for separation (see fig 2–5 and app B). If no sufficient basis for separation exists, the separation authority will disapprove the recommendation or take other appropriate action under this regulation. If the recommendation is disapproved, the return memorandum will cite reasons for disapproval.

b. If sufficient factual basis for separation exists, the separation authority will determine whether separation is warranted per chapter 1, section II of this regulation, and will take one of the following actions:

(1) Direct retention.

(2) Direct separation for a specific reason. (If there is more than one basis for separation, the separation authority will designate the most appropriate basis as the primary reason for reporting purposes.)

(3) Suspend separation per paragraph 1–19.

c. The separation authority will determine the type of discharge certificate and character of service per chapter 3 of this regulation. The servicing attorney in the JAGC will be consulted when limited use evidence is involved (see para 2–12*h*).

d. The criteria in chapter 1, section VII, will govern whether the Soldier will be released from active duty or ADT with transfer to the IRR, or discharged (see para 1–12 for additional instructions on ARNGUS and USAR personnel.)

e. Action by the separation authority is final and may not be appealed.

Section II

Administrative Board Procedure

2–4. Notice of administrative board procedure

a. When the reason for separation requires the administrative board procedure, the commander will notify the Soldier in writing that his or her separation has been recommended in accordance with this regulation (see fig 2–3 and app B).

(1) The commander will cite the specific allegations on which the proposed action is based.

(2) The commander will include the specific provisions of this regulation authorizing separation.

(3) The commander will advise whether the proposed separation could result in discharge, REFRAD to an RC, or release from custody and control of the Army.

(4) The Soldier will be advised of the least favorable characterization of service or description of separation he or she could receive.

(5) The Soldier will be advised of the type of discharge and the characterization of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander.

b. The separation authority is not bound by the recommendations of the initiating or intermediate commander(s) (see para 2–4*d*(4)). However, the separation authority will not authorize the issuance of a type of discharge or character of service less favorable to the Soldier than that recommended by the board. Chapter 3 provides guidance and criteria as to the appropriate type of discharge and characterization of service. The servicing attorney in the JAGC will be consulted when limited use evidence is involved (see para 2–12*h*). The Soldier will be further advised of the following rights:

(1) To consult with military counsel, qualified under UCMJ, Art. 27(b). Soldiers may also consult with a civilian counsel at his or her own expense.

(2) To obtain copies of documents that will be sent to the separation authority supporting the proposed separation. For a separation under chapter 9 or chapter 14 of this regulation, based on a positive urinalysis, the Soldier will be provided, upon request, a copy of the supporting laboratory documents (as prescribed in AR 600–85). Classified documents may be summarized.

(3) To a hearing before an administrative separation board.

(4) To present written statements instead of board proceedings.

(5) To request appointment of a military counsel for representation, if counsel of choice is determined to be reasonably available.

(6) To retain civilian counsel at no expense to the Government. If the respondent is absent, the counsel may present the case before an administrative separation board. The proceedings will not be delayed unduly to permit a respondent to obtain a particular counsel, or to accommodate the schedule of such counsel (see AR 15–6).

(7) To waive the rights in paragraphs 2–4*b*(1) through 2–4*b*(6) in writing. This includes the right to submit a conditional or unconditional waiver of the right to have a case heard before an administrative separation board (see para 2–5*b*, fig 2–2, and app B). Failure to respond within 7 duty days will constitute a waiver of the rights in paragraphs 2–4*b*(1) through 2–4*b*(6). An extension of the period in which to reply may be granted upon a timely showing of good

cause by the Soldier. An extension will normally be granted until any documents requested by the Soldier, and required to be provided by law or regulation, (pursuant to paragraph 2–4b(2)) are provided to the Soldier, and the Soldier has a reasonable opportunity to respond to such documents.

(8) To request to withdraw a waiver of the rights listed in paragraphs 2–4b(1) through 2–4b(7) any time before the date the separation authority orders, directs, or approves the separation and to request that the case be presented before a board of officers.

c. The Soldier will be given a reasonable time (not less than 3 duty days) to consult with counsel before waiving the rights listed in paragraphs 2–4b(1) through 2–4b(7).

(1) An extension may be granted to the time allowed to consult with counsel upon a timely showing of good cause.

(2) The Soldier must personally sign a waiver when electing to waive rights. Consulting counsel will advise the Soldier and will sign the written waiver as witness, indicating that he or she is a commissioned officer of the JAGC, qualified under UCMJ, Art. 27(b) (see figs 2–1, 2–4, and app B).

(3) If the Soldier refuses to consult with a counsel, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the Soldier had consulted with counsel.

(4) If the Soldier consults with counsel and the Soldier and/or counsel declines to respond to or sign the waiver of rights, such declination or refusal will constitute a waiver of rights.

(5) If the Soldier indicates that one or more of the rights will be exercised but declines to sign the appropriate figure, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

(6) If a Soldier elects to present his or her case before an administrative separation board, the Soldier will be advised that willful failure to appear before the board of officers without good cause will constitute a waiver of rights to personal appearance before the board.

(7) If a Soldier conditionally or unconditionally waives his or her right to an administrative separation board, the separation authority may disapprove the waiver per paragraph 2–5. The separation authority will then refer the case to an administrative separation board, or direct retention on active duty.

d. The following additional notice requirements will be satisfied as appropriate:

(1) If separation processing is initiated for more than one reason, the Soldier will be notified of the basis for each reason.

(2) If the respondent is in civilian confinement, AWOL, or is transferred to the IRR, the relevant notification procedures apply.

(3) Additional notification requirements are set forth in chapter 5 when characterization of service as general (under honorable conditions) is authorized, and the Soldier is processed for separation for convenience of the Government.

(4) The intermediate commander(s), in making recommendations on the type of discharge and characterization of service, may recommend any type of discharge and characterization of service authorized for the notified basis of separation but will normally be limited to considering facts contained within the proposed action.

(a) If the intermediate commander(s) considers additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander will state in writing the specific facts and incidents in the Soldier's record that warrant such type of discharge and characterization.

(b) The Soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander. Military legal counsel will be made available to assist in preparation of rebuttal of the additional material.

(c) An explanation by the intermediate commander of the reasons for the commander's recommendation that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

e. The commander initiating the administrative separation will indicate on the commander's report to the separation authority (see fig 2–5) whether the Soldier is a known victim of sexual assault, or if the Soldier has filed an unrestricted report of sexual assault within the 24-month period prior to initiation of the separation action.

f. The Soldier's commander or other designated individual will personally serve the Soldier with the memorandum of notification. The Soldier is required to sign and date the acknowledgment of receipt on the date it is served.

g. If notice by mail is authorized and the Soldier fails to acknowledge receipt or submit a timely reply, that fact will constitute a waiver of rights. An appropriate notation will be recorded on a retained copy of the appropriate figure and the mail receipt.

h. The Soldier will indicate on the notification of rights whether he or she has filed an unrestricted report of sexual assault within 24 months of initiation of the separation action (see fig 2–4). The Soldier will also indicate whether he or she believes that the separation action is a direct or indirect result of the sexual assault itself or of the filing of the unrestricted report, if the above is true. A Soldier recommended for involuntary separation who has submitted a restricted or unrestricted report of sexual assault must have a general officer review prior to separation.

2-5. Waiver

a. When a Soldier waives his or her right to a hearing before an administrative board, only the separation authority listed on the initiation of separation may approve or disapprove the waiver. If approved, the case will be processed without convening a board. In these cases, the separation authority is the same as if the board was held, and the administrative separation board recommended the least favorable characterization or description of separation authorized.

b. A Soldier may wish to waive his or her right to a hearing before an administrative separation board contingent upon receiving a characterization of service or description of separation more favorable than the least favorable characterization authorized for the separation reason set forth in the notice of separation action.

(1) Soldiers wishing to submit a conditional waiver will submit a completed request for conditional waiver (see fig 2-2 and app B).

(2) Commanders will ensure that a Soldier is not coerced into waiving his or her right to a hearing before an administrative separation board.

c. Unless permitted by law or regulation, the separation authority may approve or disapprove the conditional waiver.

(1) If the conditional waiver is disapproved, the case will be referred to a hearing before an administrative separation board unless there is a subsequent unconditional waiver of the right to a hearing before an administrative separation board under paragraph 2-2 or 2-4.

(2) There is no requirement to delay board proceedings pending action by the convening authority on the conditional waiver. However, once the board has made its findings and recommendations, the convening authority may not approve the conditional waiver.

d. Waivers of the board hearing will not be accepted in the cases of Soldiers who have completed 18 years or more of active federal service.

2-6. Composition of the board

a. A board convened to determine whether a Soldier should be separated under the administrative board procedure will consist of at least three experienced commissioned, warrant, or noncommissioned officers (NCOs). Enlisted Soldiers appointed to the board will be in grade sergeant first class (SFC) or above, and senior to the respondent. At least one member of the board will be serving in the grade of MAJ or higher, and a majority will be commissioned or warrant officers. The senior member will be president of the board. The convening authority will appoint a nonvoting recorder. Unless operationally unfeasible, the convening authority will also appoint a nonvoting legal advisor. If a nonvoting legal advisor is not appointed, the convening authority, in consultation with his or her servicing attorney in the JAGC, will include a memorandum in the board file explaining why it was not operationally feasible to do so.

b. Care will be exercised to ensure that—

(1) The board is composed of experienced, unbiased NCOs and officers. The NCOs and officers should be fully aware of applicable regulations and policies pertaining to cases for which the board is convened.

(2) In the case of an RC Soldier, the membership of the board will include at least one RC voting member.

(a) Voting members will be senior to the respondent's reserve grade.

(b) Enlisted Soldiers will not be appointed as members of boards in cases of ARNGUS or USAR Soldiers when a discharge under other than honorable conditions could result.

(c) Enlisted Soldiers may be appointed as members of boards considering RC Soldiers when only an honorable or general discharge may be issued.

(3) If the respondent requests a voting member(s) of his or her same race, color, religion, gender, or national origin (or combination thereof), a voting member of the board will be made available.

(4) In the event an individual of the requested race, color, religion, gender, or national origin group (or combination thereof) is determined to be unavailable, the convening authority will annotate the measures taken to have the person(s) made available. The annotation will be entered in the board proceedings.

(5) In the event of nonavailability, the reason will be stated in the record of proceedings. However, the mere appointment, failure to appoint, or failure to record a reasoning to appoint a member of such a group to the board does not provide a basis for challenging the proceedings.

(6) The board audio is recorded or the board is provided a competent paralegal or legal technician.

(7) The officer initiating the action prescribed in this regulation, or any intervening officer who had direct knowledge of the case, is not a member of the board.

c. The president will preside and rule finally on all matters of procedure and evidence. The rulings of the president may be overruled by a majority of the board. If appointed, the legal advisor will rule finally on all matters of evidence

and challenges except to him or herself. If the legal advisor is challenged, the president, in consultation with a senior judge advocate, will determine the challenge.

d. If appointed, the appointed legal advisor must be physically or telephonically present for any case likely to involve limited use evidence (see para 2–12*h*).

2–7. Effective processing procedures

The following procedures have proved useful in effective processing by boards:

a. Appointing a permanent board of officers to serve as large a unit as possible. Changes should be held to a minimum and regulated to provide continuity. This ensures uniform treatment for lower or parallel units. It will provide a volume of cases sufficient to allow the board members to attain professional competence in this duty. On a permanent board, the members will gain experience from which evolves judgment more mature and more sensitive to the interest of both the Soldier and the Army.

b. Disseminating procedural instructions to lower units by the recorder of the board serving the units.

c. Recessing a hearing for 30 to 90 days when the board members are unable to reach an agreement based on the data at hand. During this time, further rehabilitation data may be secured.

2–8. Witnesses

a. The ETS date or transfer status of each expected witness will be checked. This will ensure that essential military witnesses will be available at the board proceedings.

b. The appropriate commander will ensure that no witness is transferred or separated before the beginning of a board hearing, except when an enlistment or period of service fixed by law expires. In such cases, an attempt will be made to obtain the Soldier's consent to retention. If he or she does not consent, a deposition or affidavit will be obtained, as appropriate.

2–9. Board procedures

a. A Soldier under military control will be notified in writing of the convening date of the board at least 15 calendar days before the hearing. This will allow the Soldier and the appointed counsel time to prepare the case. The written notice will state that if the Soldier fails to appear before the board when scheduled by willfully absenting him or herself without good cause, he or she may be discharged from or retained in the Service without personal appearance before a board. Requests for an additional delay, normally not to exceed 30 days after initial notice, will be granted if the convening authority or president of the board believes such delay is warranted to ensure that the respondent receives a full and fair hearing.

b. The Soldier will be notified of names and contact information of witnesses expected to be called at the board hearing. The Soldier will also be notified that the recorder of the board will, as provided below, and upon request of the Soldier, try to arrange for the physical or telephonic presence of any available witness that he or she desires. A copy of the case file, including all affidavits and depositions of witnesses unable to appear in person at the board hearing will be furnished to the Soldier or the counsel as soon as possible after it is determined that a board will hear the case.

c. When, for overriding reasons, including, but not limited to a Soldier's impending ETS, the minimum of 15 days cannot be granted, the president of the board (or legal advisor if appointed) will ensure that the reason for acting before that time is fully explained.

(1) The reason will be recorded on the record in the proceedings of the board.

(2) The decision of the president (or legal advisor if appointed) is subject to being overruled by the convening authority upon application by the recorder or the respondent; however, the proceedings need not be delayed pending review.

d. The commander will advise the Soldier, in writing, of the specific basis (subparagraph number and description heading) for the proposed discharge action. The commander will also advise the Soldier that he or she has the following rights:

(1) The Soldier may appear in person, with or without counsel for representation or, if absent, be represented by counsel at all open proceedings of the board.

(*a*) When the Soldier appears before a board without representing counsel, the record will show that the president of the board counseled the Soldier on his or her right to counsel.

(*b*) The Soldier will be counseled as to type of discharge he or she may receive as a result of the board action, the effects of such a discharge in later life, and that he or she may request representing counsel. The record will reflect the Soldier's response.

(2) The Soldier may, at any time before the board convenes or during the proceedings, submit any answer, deposition, sworn or unsworn written statement, affidavit, certificate, or stipulation. This includes depositions or affidavits of witnesses not deemed to be reasonably available or witnesses who are unwilling to appear voluntarily.

(3) The Soldier may request the attendance of witnesses. A Soldier requesting attendance of witnesses must do so 10 calendar days prior to the scheduled board. Failure to submit a timely request, may result in denial of the Soldier's request. The Soldier may submit a written request for temporary duty (TDY) or invitational travel orders for witnesses. Such a request will contain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.
(b) An explanation of the relevance of such testimony to the issues of separation or characterization.
(c) An explanation as to why written, recorded, or telephonic testimony would not be sufficient to provide for a fair determination.

(4) The convening authority may authorize expenditure of funds for production of witnesses only if the presiding officer (after consultation with an attorney in the JAGC) or the legal advisor (if appointed) determines that—

(a) The testimony of a witness is not cumulative.
(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization.
(c) Written, recorded, or telephonic testimony will not accomplish adequately the same objective.
(d) The need for live in-person testimony is substantial, material, and necessary for a proper disposition of the case.
(e) The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness.

(5) Factors to be considered in the balancing test include the cost of producing the witness, the timing of the request for production of the witness, and the potential delay in the proceedings that may be caused by producing the witness or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(6) If the convening authority determines that the personal testimony of a witness is required, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

(7) The hearing will be continued or postponed to provide the respondent with a reasonable opportunity to obtain a written statement from the witness if a witness requested by the respondent is unavailable in the following circumstances:

(a) When the presiding officer determines that the personal testimony of the witness is not required.
(b) When the commanding officer of a military witness determines that military necessity precludes the witness's attendance at the hearing.

(c) When a civilian witness declines to attend the hearing.
(8) The Soldier may or may not submit to examination by the board. The provisions of UCMJ, Art. 31, will apply.

(9) The Soldier and his or her counsel may question any witness who appears before the board.

(10) The Soldier may challenge any voting member of the board for cause only.

(11) The Soldier or counsel may present argument before the board closes the case for deliberation on findings and recommendations.

(12) Failure of the Soldier to invoke any of the rights in paragraphs 2–9d(1) through 2–9d(11) after he or she has been apprised of the same will not have an effect upon the validity of the separation proceedings.

e. When the board meets in closed session, only voting members will be present.
f. Except as modified per this regulation, the board will conform to the provisions of AR 15–6 applicable to formal proceedings with respondents. As an exception to AR 15–6, expert medical and psychiatric testimony routinely may be presented in the form of affidavits. However, if the Soldier desires to present such evidence, he or she is entitled to have the witnesses appear in person, if they are reasonably available.

g. The proceedings of the board will be summarized as fairly and accurately as possible. They will contain a verbatim record of the findings and recommendations (see app B). Objections made on the record will include the specific question, information, or evidence objected to, a summary of the opposing counsel's response, and a verbatim finding by the board president (or legal advisor if appointed).

h. If the Soldier has exercised his or her right to revoke a previous waiver, the board and its members will not be advised in any manner of such action by the Soldier or of the type discharge that has been recommended in his or her case. When the Soldier or the counsel knows that facts intended to be excluded by this paragraph are known by any member of the board, failure to challenge the member having such knowledge constitutes an irrevocable waiver of the benefits of the exclusionary rule of this paragraph.

i. The voting members of the administrative separation board will not be furnished copies of any conditional or unconditional waivers submitted by the Soldier to the separation authority. However, mere knowledge of a waiver by the board does not provide a basis for challenging the proceedings.

2-10. Evidence

a. *Presentation of evidence.* The rules of evidence for court-martial and other judicial proceedings are not applicable before an administrative separation board. Reasonable restrictions will be observed, however, concerning relevancy and competency of evidence.

b. *Newly discovered evidence.* If, after initiation of separation but prior to the beginning of the board hearing, the commander or the board recorder discovers additional evidence similar in nature to that previously considered by the commander in initiating the separation, that evidence is admissible.

(1) Such evidence may be considered by the board as proof of a reason for separation that was cited in the commander's recommendation for separation.

(2) When such additional evidence is considered and the board determines that the respondent has not had reasonable time to prepare a response to it, a reasonable continuance must be granted upon the respondent's request.

(3) If the newly discovered evidence constitutes a separate reason for separation that was not included in the notice of proposed separation, the case may be processed without the new evidence or the case must be returned to the commander for consideration as to whether an additional reason for separation should be included in the notice.

2-11. Findings and recommendations of the board

a. Findings.

(1) The board will determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence.

(2) The board will then determine per chapter 1, section II, whether each finding warrants separation. If more than one basis for separation was contained in the notice, there must be a separate determination for each basis.

b. Recommendations.

(1) The board convened to determine whether a Soldier should be separated for misconduct will recommend that the Soldier be—

(a) *Separated because of misconduct.* The board will recommend (as applicable) a characterization of service of honorable, general (under honorable conditions), or under other than honorable conditions; or

(b) *Separated because of unsatisfactory performance (except in fraudulent entry actions).* If such was a stated basis for separation in the initial memorandum of notification and is included in the board's findings. Type of discharge certificate (honorable or general) to be furnished will be indicated; or

(c) *Retained in the Service.* (See para 14-7 for guidance on retention of Soldiers convicted by civil court.)

(2) The board convened to determine whether a Soldier should be separated for any other reason will recommend that he or she be—

(a) Separated. The board will recommend (as applicable) a characterization of service of honorable or general (under honorable conditions); or

(b) Retained in the Service.

(3) When the Soldier is AWOL and fails to appear before the board, the discharge authority will be advised of that fact, together with any board recommendation for separation or retention made per paragraphs 2-11b(1) or 2-11b(2).

(4) When the board recommends separation, it may also recommend that the separation be suspended per paragraph 1-19. But the recommendation as to suspension is not binding on the separation authority. If the board recommends a nonbinding suspension, it will annotate the specific reasons why suspension of the separation is appropriate.

(5) If separation (including suspension of separation) is recommended, the board will also recommend a characterization of service or description of separation as authorized in chapter 3 of this regulation.

(6) Except when the board has recommended separation because of alcohol or drug abuse rehabilitation failure or misconduct (see chaps 9 and 14), or has recommended characterization of service under other than honorable conditions, the board will recommend whether the respondent should be retained in the IRR as a mobilization asset to fulfill the respondent's total military obligation (see app B).

c. The completed report of proceedings.

(1) The completed report of proceedings will be forwarded to the separation authority. See appendix B for a sample report of proceedings. While the separation authority has the discretion to accept any post-board and/or rebuttal matters submitted by a Soldier, there is no due-process right requiring the separation authority to delay processing to do so.

(2) When board action is completed on a Soldier with over 18 years of service, the findings and recommendations of the board, with complete documentation and the recommendation of the convening authority, will be forwarded through CG, HRC to SECARMY or the Secretary's approved designee as announced in updated memoranda per paragraph 1-15i(1) when the convening authority recommends discharge.

2-12. Separation authority action after board hearings

a. When the board is completed, the board proceedings will be reviewed by an attorney in the JAGC fully cognizant of applicable regulations and policies to determine whether the action meets the requirements of this regulation. When the board recommends that a discharge under other than honorable conditions be issued, limited use evidence was introduced in the board proceedings, or the Soldier alleges that there were substantial errors in the board proceedings, the proceedings will be reviewed by a commissioned officer of the JAGC in the grade of O-4 or higher. Upon completion of the review—

(1) When the board has recommended separation for misconduct, the separation authority may take one of the following actions (see chap 14):

(a) Direct separation of the Soldier for misconduct, except for Soldiers referred to in paragraph 1-20*f*. (See also para 2-12*f*(5).)

(b) Direct separation of the Soldier for unsatisfactory performance if such was a stated basis for separation in the initial memorandum of notification and was included in the board's findings, except for Soldiers referred to in paragraph 1-20*f*. (See also para 2-1*b*(5).)

(c) Disapprove the recommendation. Direct retention of the Soldier when the grounds for separation are not documented in the file or if the file does not indicate that the Soldier is without the potential for full effective duty and separation is not otherwise mandatory.

(d) Unless otherwise prohibited, approve separation for misconduct and suspend execution of the separation when the Soldier's record shows sufficient potential for full effective duty (see para 1-19).

(2) In fraudulent entry actions processed per chapter 7, section IV of this regulation, the separation authority may take one of the following actions (when misconduct by recruiting officials is involved):

(a) Approve the board recommendation to separate the Soldier, except for Soldiers referred to in paragraph 1-20*f*. (See also para 2-12*f*(5).)

(b) Recommend, if the separation authority is the SPCMCA, or approve, if the separation authority is the GCMCA, retention in meritorious cases, involving waivable disqualification.

(c) If the board recommends separation, take the action specified in paragraph 7-18*b*, when appropriate.

(d) Take the action specified in paragraph 2-12*e*, if appropriate.

(3) When the board has recommended separation for unsatisfactory performance, the separation authority may take one of the following actions:

(a) Direct separation of the Soldier for unsatisfactory performance, except for Soldiers referred to in paragraph 1-20*f*. (See also paras 1-19 and 2-12*f*(5).)

(b) Disapprove the recommendation and direct retention of the Soldier.

(c) Approve separation for unsatisfactory performance and suspend execution of the separation when the Soldier's record shows sufficient potential for full active duty (see para 1-19).

(4) The action of the separation authority in alcohol or other drug abuse rehabilitation failure actions will be per chapter 9.

b. A Soldier who has completed 20 or more years of active service creditable toward retirement and for whom separation is recommended to the SECARMY or the Secretary's approved designee as announced in updated memoranda will be given the opportunity to apply for retirement, and if electing to apply for retirement, request a reduction in rank per paragraph 1-14.

(1) He or she will be told that authority to submit the DA Form 2339 (Application for Voluntary Retirement) does not assure that it will be approved.

(2) DA Form 2339 will be attached when the case is sent to HQDA or a statement will be included that the Soldier was given the opportunity but declined to apply for retirement.

c. When a member of the RC is to be separated per chapters 13 or 14, the separation authority will decide, based on board findings, whether the Soldier concerned is being separated because of moral or professional dereliction.

d. No separation authority will direct discharge if a board recommends retention. The separation authority will also not authorize issuance of a discharge of less favorable character than that recommended by the board. However, as provided in paragraphs 2-12*a*(1)(*c*) and 2-12*a*(3)(*b*), a separation authority may direct retention when discharge is recommended, or the separation authority may issue a discharge certificate of a more favorable character than that recommended.

e. When administrative separation board has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge under chapter 15 may be initiated.

f. If the separation authority notes an error that he or she deems to be harmless in a case in which separation has been recommended, the separation authority will take final action, subject to paragraph 2–12*d*. If there are substantial errors, the separation authority takes one of the following actions:

(1) Direct retention.

(2) If the board has failed to make the findings and/or recommendations required, return the case to the same board for compliance with this regulation.

(3) If there is an apparent procedural error or omission in the record of proceedings that may be corrected without reconsideration of the findings and recommendations of the board, return the case to the same board for corrective action.

(4) If the board error materially prejudiced a substantial right of the Soldier, the separation authority may act only as can be sustained without relying on the proceedings affected by the error.

(*a*) The separation authority may set aside the findings and recommendations and refer the case to a new board for a rehearing. The new board must make new, independent findings and recommendations.

(*b*) No member of the new board may have served on a prior board that considered any of the same matters against the Soldier.

(*c*) The new board may be furnished the evidence properly considered by the first board. This evidence will include extracts from the record of testimony of witnesses not deemed by the convening authority to be reasonably available to testify at the rehearing. If available, the new board will be furnished audio recordings from these witnesses record of testimony from the prior board. Additional admissible evidence may be furnished to or obtained by the new board. The separation authority may, upon due notice to the Soldier, incorporate new allegations based on later conduct of the Soldier.

(*d*) Unless the new board considers substantial additional evidence unfavorable to the Soldier, the separation authority may not approve any findings and recommendations of the new board less favorable than those rendered by the first board.

(5) If the separation authority determines that the findings of the first board were obtained by fraud or collusion, the case may be referred to a new board.

(*a*) No member of the new board may have been a member of the first board.

(*b*) Unless the new board considers substantial additional evidence unfavorable to the Soldier, the separation authority may not approve findings and recommendations less favorable to the Soldier than those rendered by the first board unless the separation authority finds that the fraud or collusion in the first board is attributable to the Soldier or an individual acting at the Soldier's request.

(6) No more than one rehearing may be directed without HQDA approval.

g. A Soldier subject to discharge because of conviction by civil court or because of adjudication as a juvenile offender may be processed for discharge even though the Soldier has filed an appeal or stated his or her intention to do so.

(1) General policy will be to withhold the execution of the approved discharge pending the outcome of the appeal.

(2) If execution of the discharge is considered appropriate without waiting for final action on the appeal, the Soldier may be discharged with the appropriate characterization of service upon the direction of the SECARMY or the Secretary's approved designee as announced in updated memoranda or at the request of the Soldier (see para 14–6).

h. The Government may initially introduce limited use evidence into separation proceedings accomplished under this regulation or, at its discretion, may elect to proceed solely with other, independent evidence not subject to limited use (see AR 600–85). Except as prescribed in chapter 10f the Government initially introduces limited use evidence and the separation proceedings result in separation, the Soldier is entitled to an honorable discharge (see para 3–8*c*). However, the proceedings may be reinitiated or a rehearing held in accordance with the following guidance:

(1) If the Government introduces limited use evidence before the board recesses, the separation proceedings may be reinitiated, excluding all references to limited use evidence.

(2) If limited use evidence was introduced by the Government at a board and the board has recessed, a GCMCA who is a general officer may set aside the proceedings and refer the case to a new board for rehearing (see AR 600–85).

(3) The reason for the rehearing will not be disclosed to the new board and limited use information will not be initially introduced by the Government. Review and action in the case will be based only on the new record. Unless the new board considers substantial additional evidence unfavorable to the Soldier, the separation authority may not approve any findings and recommendations of the new board less favorable than those rendered by the first board.

(4) If a rehearing is not deemed appropriate, the Soldier may be separated with an honorable discharge (see para 3–8a). The servicing SJA will review completed board proceedings that contain limited use evidence and advise the GCMCA whether a rehearing is appropriate.

- i. The respondent will be provided a copy of the board’s proceedings.
- j. Action by the separation authority is final and may not be appealed.

Section III

Additional Provisions Concerning Absent Soldiers

2–13. Processing in absence of Soldier

When proceedings have been initiated against a Soldier who is AWOL or confined by civil authorities, the case may be processed in his or her absence.

a. A Soldier held in custody by civil authorities does not accrue service creditable for completion of the Soldier’s period of enlistment, or order to active duty, except for any period in which he or she was in an authorized leave status.

- (1) Upon return to military control, a Soldier’s ETS will be recomputed.
- (2) For pay and allowances, see DoD 7000.14–R, Volume 7A.

2–14. Civil confinement

a. A Soldier confined by civil authorities will receive notice under the notification procedure or the administrative board procedure, as appropriate. The notice will be delivered personally to the Soldier or sent by certified mail, return receipt requested. When a Soldier refuses to acknowledge receipt of notice, the individual who mails the notice will prepare a sworn affidavit of service by mail that will be inserted in the Soldier’s personnel file with Postal Service (PS) Form 3800 (Certified Mail Receipt).

b. If delivered personally, the Soldier will acknowledge receipt in writing. If the Soldier does not acknowledge receipt, the notice will be sent by mail as provided in paragraph 2–14a.

c. The notice will state that the action has been suspended until a specific date (not less than 30 days from the date of delivery) in order to give the Soldier the opportunity to exercise the rights set forth in the notice. When warranted by the distance involved or other circumstances, a period in excess may be allowed for the Soldier to reply. If the Soldier does not reply by the given date, the separation authority will take appropriate action under paragraph 2–3.

d. The name and address of the appointed military counsel for consultation will be specified in the notice.

e. When entitled to an administrative board, the Soldier will be notified that the hearing by an administrative separation board will proceed in his or her absence and that counsel will represent the Soldier.

2–15. Additional requirements for Soldiers beyond military control by reason of unauthorized absence

a. *Determination of applicability.* If the GCMCA or higher authority determines that separation is otherwise appropriate under this regulation, a Soldier may be separated without return to military control in one or more of the following circumstances:

(1) Absence without authority after receiving notice of initiation of separation processing.

(2) Commission of a serious offense when prosecution of a Soldier who is absent without authority appears to be barred by the statute of limitations is covered under UCMJ, Art. 43 (see para 14–12c). Questions concerning the statute of limitations should be referred to the servicing SJA.

(3) Commission of a serious offense when a Soldier who is a noncitizen is AWOL and appears to have gone to a foreign country in which the United States has no authority to apprehend the Soldier under a treaty or other agreement (see para 14–12c).

b. *Notice.* Before separation is executed under paragraphs 2–15a(2) or 2–15a(3), the Soldier will be notified of the imminent action by registered mail, with return receipt requested (or by an equivalent form of notice if such service by U.S. mail is not available for delivery outside the United States), sent to the Soldier’s last known address or to the next of kin.

(1) The notice will contain the matter set forth in chapter 2, section I or II of this regulation, as appropriate.

(2) The notice will state that the action has been suspended until a specific date (not less than 30 days from the date of mailing) to give the Soldier the opportunity to return to military control.

(3) If the Soldier does not return to military control by such date, the separation authority will take appropriate action per chapter 2, section I or II of this regulation.

c. *Members of the Reserve Components.*

(1) A member of an RC of the Army who is separated for cause is entitled to a discharge under honorable conditions except in either of the following circumstances:

(a) The Soldier is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the SECARMY or the Secretary's approved designee as announced in updated memoranda.

(b) The Soldier consents to a discharge under conditions other than honorable with a waiver of proceedings of a court-martial or a board.

(2) The provisions of paragraph 2-15c(1) do not apply in cases of ARNGUS or USAR Soldiers dropped from the rolls of the Army who are sentenced to confinement in a federal or state penitentiary or correctional institution after being found guilty of an offense by a court other than a court-martial or other military court and whose sentence has become final.

d. *Reassignment prior to separation.* Soldiers whose discharges are ordered under this paragraph will be reassigned from the unit of which they are AWOL or absent into the hands of civil authorities to appropriate separation transfer point (STP) for separation. Reassignment will not be accomplished earlier than the effective date of separation.

2-16. Exceptional circumstances

If information described in paragraph 2-15a or 2-15b is received before a discharge under other than honorable conditions is approved or directed for a Soldier pending discharge in accordance with paragraph 2-15a(2) or 2-15a(3), an informal inquiry will be conducted to verify the information. After completion of the inquiry, the file will be forwarded to HQDA via email to CG, HRC (AHRC-EPF-M) at usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil requesting determination as to the final disposition to be taken.

a. An indication that the Soldier has not been in continuously unauthorized absence.

b. Information that a Soldier has been awarded the Purple Heart, Bronze Star with V device, Soldiers Medal, Distinguished Flying Cross, Silver Star, Distinguished Service Cross, or Medal of Honor.



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR (Soldier's name, grade, unit)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

1. Under the provisions of AR 635-200, (indicate specific chapter, section, and paragraph), I am initiating action to separate you for (indicate narrative reason). The reasons for my proposed action are: (state specific, factual details that constitute the basis for the proposed action).
2. I am recommending that you receive a(n) (characterization for service) (entry-level separation). My recommendation and your reply will be submitted to the Commander, (cite unit designation of separation authority), who is the separation authority and will make the final decision in your case.
3. The intermediate commander/s and the separation authority are not bound by the recommendation as to characterization of service. The separation authority may direct that your service be characterized as honorable or under honorable condition, or you may receive and entry level separation (uncharacterized) if in an entry- level status.
4. If my recommendation is approved, the proposed separation could result in discharge, release from active duty to a Reserve component (See Para 1-34), or release from custody and control of the Army.
5. You have the right to consult with consulting counsel and/ or civilian counsel at no expense to the Government within a reasonable time (not less than 3 duty days).
6. You may submit written statements in your behalf.
7. You may obtain copies of documents that will be sent to the separation authority supporting the proposed separation. (Classified documents may be summarized.)
8. You are entitled to a hearing before and administrative board if you have 6 or more years of active and reserve military service at the time of separation.
9. You may waive the rights listed above in paragraphs 5, 6, 7, and 8 in writing, and you may withdraw any such waiver at any time prior to the date the separation authority orders, directs, or approves your separation.
10. If entitled to have your case heard by and administrative separation board, you may submit a conditional waiver of that right.

Figure 2-1. Sample format for notification of separation under AR 635-200

(Office Symbol)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

11. You are required to undergo a complete medical and mental examination in accordance with AR 40-501. Arrangements have been made for this examination and you are to report to (location) at (time) on (date). (See Para 1-32)

12. Execute the attached acknowledgment (See fig 2-4) and return it within 7 duty days from the date of your receipt of this memorandum. Any statement you desire to submit in your behalf must reach me within 7 duty days after you receive this letter, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to respond within 7 duty days will constitute a waiver of the rights in paragraphs 5, 6, 7, and 8.

Encl

(Commander's signature)
(Typed name, grade, branch)

Figure 2-1. Sample format for notification of separation under AR 635-200—continued



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM THRU: (Address of endorsing office)

FOR: (Appropriate Commander in Basic Memorandum)

SUBJECT: Request for Conditional Waiver-Separation Under AR 635-200 (enter appropriate chapter)

1. I have been advised by my consulting counsel of the basis for the contemplated action to separate me for (indicate reason/s) under AR 635-200, (indicate specific chapter, section and paragraph), and its effect; of the rights available to me; and of the effect of any action taken by me in waiving my rights. I understand that I am entitled to have my case considered by an administrative separation board (because I will have 6 or more years of active and reserve service at the time of separation) (because I am being considered for a separation under other than honorable conditions).
2. Prior to completing this form, I was afforded the opportunity to consult with consulting counsel and to consider whether or not to submit a condition waiver. ¹
3. I hereby voluntarily waive consideration of my case by an administrative separation board contingent upon my receiving a characterization of service or description of separation no less favorable than (honorable) (under honorable conditions – otherwise referred to as a General discharge).
4. Statements in my own behalf (are) (are not) submitted herewith. (Encl(s) numbered)
5. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person.
6. I understand that I may, until the date the separation authority orders, directs, or approves my separation, withdraw this waiver and request that an administrative separation board hear my case.
7. I understand that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board, my case will be referred to an administrative separation board. In that case:
 - a. I (request) (waive) personal appearance before an administrative separation board.
 - b. I (request) (waive) (consulting counsel) (and) representation by (counsel for representation) (or) (name) as my military counsel (and) (civilian counsel at no expense to the Government).
 - c. I understand that my willful failure to appear before the administrative separation

Figure 2–2. Sample format for request for conditional waiver

(Office Symbol)

SUBJECT: Request for Conditional Waiver-Separation Under AR 635-200 (enter appropriate chapter)

board by absenting myself without leave will constitute a waiver of my rights to personal appearance before the board

8. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. I further understand that as the result of issuance of a discharge under other than honorable conditions I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.² I understand that I may make application to the Army discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, I realize that an act of consideration by either board does not imply that my discharge will be upgraded.

9. I understand that if I am being considered for separation for fraudulent entry, my enlistment may be voided under certain circumstances and that all pay and allowances will be suspended immediately upon verification of the fraudulent entry.³

10. I further understand that I will be ineligible to apply for enlistment in the United States Army for a period of 2 years after discharge.

11. I have retained a copy of this statement.

UNDERSTANDING: I have read and understand each of the statements above and understand that they are intended to constitute all promises whatsoever concerning my conditional waiver. Any other promise, representation, or commitment made to me in connection with my separation is written below in my own handwriting or is hereby waived. (If none, write "NONE")

Encl

(Signature of soldier)

(Typed name, grade, organization)

Having been advised by me of the basis for his/her contemplated separation and its effects, the rights available to him/her of a waiver of his/her rights, (name of Soldier) personally made the choices indicated in the foregoing statement.

(Signature of counsel)

(Typed name, grade, branch)

Figure 2-2. Sample format for request for conditional waiver—continued

(Office Symbol)

SUBJECT: Request for Conditional Waiver-Separation Under AR 635-200 (enter appropriate chapter)

Notes:

¹ If the soldier declines to consult with consulting counsel prior to waiving his/her right to consult with such counsel, he/she will be advised to do so by his/her commander. If the soldier persists in his/her refusal, insert as first sentence of paragraph 2, the following statement: "Before completing this format, I have been afforded the opportunity to consult with appointed counsel for consultation, or civilian counsel at my own expense. I decline the opportunity." Separation action will then proceed as if the soldier had consulted with counsel. In all cases, except the above, consulting counsel will witness the soldier's statement and indicate that he/she is a commissioned officer of the Judge Advocate General's Corps.

² To be used if the soldier has been recommended for discharge for fraudulent entry or misconduct.

³ to be used if the soldier is considered for separation for fraudulent entry. Renumber latter paragraphs if this paragraph is used.

Figure 2-2. Sample format for request for conditional waiver—continued



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR (Soldier's name, grade, organization)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

1. Under the provisions of AR 635-200, (indicate specific chapter, section, and paragraph), I am initiating action to separate you for (indicate narrative reason). The reasons for my proposed action are (state specific, factual details that constitute the basis for the proposed action). ("You have the burden to present evidence to refute this presumption, should you so desire.")
2. I am recommending that you receive a(n) (characterization of service) (entry-level separation). The intermediate commander/s and the separation authority are not bound by my recommendation as to characterization of service. The separation authority in your case is (cite unit designation of separation authority). The separation authority may direct that your service be characterized as honorable, under honorable conditions, under other than honorable conditions, or you may receive an entry-level separation (uncharacterized) if you are in an entry-level status. However, the separation authority may not direct the issuance of a type of discharge or characterization of service less favorable than that recommended by the board should you request a hearing before an administrative board.
3. If my recommendation is approved, the proposed separation could result in discharge, release from active duty to a Reserve component (See para 1- 34.), or release from custody and control of the Army.
4. You have the right to consult with consulting counsel (and) (or) civilian counsel at no expense to the Government within a reasonable time (not less than 3 duty days).
5. You may obtain copies of documents that will be sent to the separation authority supporting the proposed separation. (Classified documents may be summarized.)
6. You may request a hearing before an administrative board, or you may present written statements instead of requesting board proceedings.
7. You may request appointment of military counsel for representation. You may also retain civilian counsel at no expense to the Government.
8. You may waive your rights listed above in paragraphs 4, 5, 6, and 7 in writing, and you may withdraw any such waiver any time prior to the date the separation authority orders, directs, or approves your separation.

Figure 2-3. Sample format for notification of separation under AR 635-200

(Office Symbol)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

9. You may submit a conditional waiver of your right to have your case hard by an administrative separation board.

10. You are required to undergo a complete medical examination in accordance the AR 40-501. Arrangements have been made for this examination, and you are to report to (location) at (time) on (date). (See para 1-32.)¹

11. Execute the attached acknowledgment (See fig 2-4) and return it within 7 duty days from the date of your receipt of this memorandum. Any statement you desire to submit in your behalf must reach me within 7 duty days after you receive this letter, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to respond within 7 duty days will constitute a waiver of the rights in paragraphs 4, 5, 6, and 7.

Encl

(Commander's signature)
(Typed name, grade, branch)

Note:

¹ To be used when required by paragraph 1-32.

Figure 2-3. Sample format for notification of separation under AR 635-200—continued



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM THRU: (Address of endorsing office)

FOR: (Appropriate Commander in Basic Memorandum)

SUBJECT: Sample format for request of notification/acknowledgment/election of rights under AR 635-200, (enter appropriate chapter)

1. I have been advised by my consulting counsel of the basis for the contemplated action to separate me for (reason/s) under AR 635-200, (chapter number), and its effects; of the rights available to me; and of the effect of any action taken by me in waiving my rights. I understand that if I have 6 years of total active and reserve military at the time of separation; under AR 635-200, chapter (enter appropriate chapter) (or I have been notified that I am subject to a characterization of service under other than honorable conditions), I am entitled to have my case considered by an administrative separation board. (I understand that I have less than 6 years of total active and reserve service at the time of separation, I am not entitled to have my case heard by an administrative board unless I have been considered under other than honorable conditions.) (I understand that if I am being considered for separation under AR 635-200 Chapter 14, (patterns of misconduct), I am entitled to have my case heard by an administrative separation board.)¹
2. I (request) (waive) consideration of my case by an administrative separation board.
3. I have been advised of my right to submit a conditional waiver of my right to have my case considered by an administrative separation board. ²
4. I (request) (waive) personal appearance before an administrative separation board.
5. Statements in my own behalf (are) (are not) submitted here with Encl.
6. I (request) (waive) consulting counsel and representation by military counsel (and) (or) (civilian counsel at no expense to the Government).
7. I understand that my willful failure to appear before the administrative separation board by absencing myself without leave will constitute a waiver of my rights to personal appearance before the board
8. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. I further understand that as the result of issuance of a discharge under other than honorable conditions I may be ineligible for many or all benefits as a veteran under both Federal and State laws and

Figure 2-4. Sample format for receipt of notification of separation under AR 635-200

(Office Symbol)

SUBJECT: Sample format for request of notification/acknowledgment/election of rights under AR 635-200, (enter appropriate chapter)

that I may expect to encounter substantial prejudice in civilian life. ³ I understand that if I receive a discharge/character of service that is less than honorable I may make application to the Army discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, I realize that an act of consideration by either board does not imply that my discharge will be upgraded.

9. I understand that I may, until the date the separation authority orders, directs, or approves my separation, withdraw this waiver and request that an administrative separation board hear my case.

10. I (have) (have not) filed an unrestricted report of sexual assault within 24 months of initiation of the separation action.

11. (To be answered only if the Soldier answered the previous question affirmatively) I (believe) (do not believe) that this separation is a direct or indirect result of the sexual assault itself or the filing of the unrestricted report. (N/A)

12. I understand that if I am being considered for separation for fraudulent entry, my enlistment may be voided under certain circumstances and that all pay and allowances will be suspended immediately upon verification of the fraudulent entry.⁴

13. I have retained a copy of this statement.

Encl

(Signature of soldier)
(Typed name, grade, organization)

Having been advised by me of the basis for his/her contemplated separation and its effects, the rights available to him/her of a waiver of his/her rights, (name of Soldier) personally made the choices indicated in the foregoing statement.

(Signature of counsel)
(Typed name, grade, branch)

Figure 2-4. Sample format for receipt of notification of separation under AR 635-200—continued

(Office Symbol)

SUBJECT: Sample format for request of notification/acknowledgment/election of rights under AR 635-200, (enter appropriate chapter)

Notes:

¹ If the soldier declines to consult with consulting counsel prior to waiving his/her right to consult with such counsel, he/she will be advised to do so by his/her commander. If the soldier persists in his/her refusal, insert as first sentence of paragraph 2, the following statement: "Before completing this format, I have been afforded the opportunity to consult with appointed counsel for consultation, or civilian counsel at my own expense. I decline the opportunity." Separation action will then proceed as if the soldier had consulted with counsel. In all cases, except the above, consulting counsel will witness the soldier's statement and indicate that he/she is a commissioned officer of the Judge Advocate General's Corps.

² If the Soldier desires to submit a conditional waiver of the right to have his/her case considered by and administrative separation board, use figure 2-2

³ To be used if the Soldier has been recommended for discharge for fraudulent entry or misconduct.

⁴ To be used if the Soldier is considered for separation for fraudulent entry. Renumber latter paragraphs if this paragraph is used.

Figure 2-4. Sample format for receipt of notification of separation under AR 635-200—continued



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM THRU (Address of endorsing office)

MEMORANDUM FOR (Next higher commander)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

1. Under the provisions of AR 635-200, Chapter (number), Paragraph (number), recommend that the following named individual be (separated from the United States Army) (released from custody and control of the Army) (retained in the United States Army) prior to expiration of (his/her) term of service.

- a) Name/grade/DoD ID
- b) Date of Birth
- c) Date of current enlistment/reenlistment
- d) Length of term for which enlisted
- e) Prior service, if any
- f) Specific, factual reason/s for action recommendation
- g) Aptitude area scores and DMOS
- h) Structured Self-Development (level completed)(date completed)
- i) Record of counseling, if applicable
- j) Description of rehabilitation attempts, if applicable
- k) Record of trails by court martial
- l) Record of other disciplinary action, including non-judicial punishment
- m) Report of metal status evaluation or psychiatric report (is) (is not) attached, if applicable

Figure 2-5. Sample format for commanding officer's report of separation under AR 635-200

(Office Symbol)

SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

- n) Report of medical examination (is) (is not) attached, if applicable
 - o) Statement why the commander does not consider it feasible or appropriate to accomplish other disposition
 - p) Promotions and dates thereof
 - q) Reductions and dates thereof
 - r) Whether there is a record of time lost; if so, whether due to absence without leave, confinement, or other reasons
 - s) Note favorable communications or recommendations for the Soldier
 - t) Note other derogatory data other than Article 15 action and courts-martial
 - u) Make note of any citations and awards
 - v) Where derogatory information has been revealed, make note of any evidence of rehabilitation
 - w) Make note of any medical or other data meriting consideration in the overall evaluation to separate the Soldier and in the determination as to the appropriate characterization of service
 - x) Other information considered pertinent
2. When a Soldier is being processed for separation for a substance abuse rehabilitation failure include-
- a) A statement that the commander, in consultation with the rehabilitation team, has determined that further rehabilitative efforts are not practical, rendering the rehabilitation a failure. Documentation indicating this must be included with the statement.
 - b) A chronological history of the Soldier's substance abuse. Inclusion of limited use evidence (See AR 600-85, para 6-3) is discretionary. (If limited-use evidence is included, the provisions of para 2-6)
 - c) Circumstance (to include dates) concerning Soldier's referral, initial screening interview, medical evaluation (when conducted), and enrollment in ADAPCP.

Figure 2-5. Sample format for commanding officer's report of separation under AR 635-200—continued

(Office Symbol)
SUBJECT: Separation Under AR 635-200, (enter appropriate chapter)

d) A summary of the rehabilitation efforts made before and after the Soldier was enrolled in the ADAPCP including-

- (1) Dates of detoxification (if applicable).
- (2) Extent (including dates) of counseling and other rehabilitation efforts made by the unit chain of command.

e) Explanation of how criteria in AR 635-200, paragraph 9-1 are met.

3. Has the Soldier filed an unrestricted report of sexual assault within 24 months of initiation of the separation action [No] [Yes] [Enclosure #].

4. Has there been an allegation that the Soldier committed a dependent-abuse offense? [No] [Yes]. If yes, include required information. (See para 1-15).

5. Include a statement that the Soldier clearly has no potential for useful service under conditions of full mobilization, if applicable. (See para 1-34)

6. Memorandum of notification and acknowledgement are attached as enclosures.

Encl

(Commander's Signature)
(Type Name, Grade, Branch)

Note: To be used when required by the policy Mobilization Asset Transfer Program. (see para 1-34)

Figure 2-5. Sample format for commanding officer's report of separation under AR 635-200—continued

Chapter 3 Character of Service and Description of Separation

Section I

Separation Certificates

3-1. Statutory authority

10 USC 1168 provides that a discharge certificate or certificate of REFRAD will be given to each Soldier of the Army upon discharge from the Service or REFRAD.

3–2. Discharge certificates

Discharge certificates are furnished to Soldiers in accordance with AR 635–8. Soldiers separated from active duty are issued DD Form 214 (Certificate of Release or Discharge from Active Duty). Instructions for the completion of the various types of discharge certificates are in AR 635–8. The issuance of discharge certificates is governed by this regulation.

3–3. Certificate of Release or Discharge from Active Duty (DD Form 214)

Individuals who are retired, discharged, or released from active duty or ADT will be furnished a record of their military service on DD Form 214. Instructions for the completion and distribution of DD Form 214 are in AR 635–8.

Section II

Types of Characterization or Description

3–4. Types authorized

- a.* The following types of characterization of service or description of separation are authorized:
- (1) Separation with characterization of service as honorable, general (under honorable conditions), or under other than honorable conditions.
 - (2) Entry-level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3–9*a*.
 - (3) Order of release from the custody and control of the Army by reason of void enlistment or induction.
 - (4) Separation by being dropped from the rolls of the Army.
- b.* The types of separation listed in paragraph 3–4*a* will be used in appropriate circumstances unless limited by the reason for separation.

3–5. General considerations

- a.* Characterization at separation will be based upon the quality of the Soldier's service, including the reason for separation and guidance in paragraph 3–7, subject to the limitations under the various reasons for separation.
- (1) The quality of service will be determined according to standards of acceptable personal conduct and performance of duty for military personnel.
 - (2) These standards are found in the UCMJ, directives, and regulations issued by the Army and the time-honored customs and traditions of military service.
- b.* The quality of service of a Soldier on active duty is affected adversely by conduct that is of a nature to bring discredit on the Army or is prejudicial to good order and discipline, regardless of whether UCMJ jurisdiction is exercised. Characterization may be based on misconduct in the civilian community, and the burden is on the Soldier to demonstrate that such misconduct did not adversely affect the Soldier's service.
- c.* The reasons for separation, including the specific circumstances that form the basis for the separation, will be considered on the issue of characterization. As a general matter, characterization will be based upon a pattern of behavior other than an isolated incident. There are circumstances, however, in which the conduct or performance of duty reflected by a single incident provides the basis for characterization.
- d.* Due consideration will be given to the Soldier's age, length of service, grade, aptitude, physical and mental conditions, and the standards of acceptable conduct and performance of duty.
- e.* The characterization of service is of great significance to the Soldier and must accurately reflect the nature of service performed.
- f.* Eligibility for various benefits, such as veterans' benefits provided by law, eligibility for reentry into service, and acceptability for employment in the civilian community, may be affected by the characterization of service.

3–6. Separation as it affects the Soldier

- a.* An honorable discharge generally entitles a Soldier to full federal rights and benefits provided by law.
- b.* Discharge under a general (under honorable conditions) or other than honorable conditions may or may not deprive the Soldier of veterans' benefits administered by the Department of Veterans Affairs; a determination by that agency is required in each case.
- c.* Commanders should seek guidance from their servicing legal office to determine the effect of a discharge or characterization of discharge may have on each specific Soldier.

3-7. Types of administrative discharges/character of service

a. Honorable discharge. An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the Soldier's service generally has met the standards of acceptable conduct.

(1) Only the honorable characterization may be awarded a Soldier for discharges under chapter 4 or 12, for completion of a period ordered to active duty or ADT, or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted (see para 3-9a and chap 11).

(2) When a Soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply:

(a) Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s).

(b) A Soldier will not be denied an honorable discharge solely by reason of a conviction by court-martial, action under the UCMJ, Art. 15, or any other administrative action. The characterization should be based upon the underlying conduct.

(c) In accordance with paragraph 3-5, an honorable discharge may be furnished when disqualifying entries in the Soldier's military record are clearly outweighed by prior or subsequent honest and faithful service over a greater period of time during the current term of service. In these cases, the performance of duty must be so meritorious that any other characterization would be clearly inappropriate.

(3) In the case of an honorable discharge, a DD Form 256 (Honorable Discharge Certificate) will be awarded and notation will be made on the appropriate copies of the DD Form 214 (Certificate of Release or Discharge from Active Duty) or DD Form 215 (Correction to DD Form 214, Certificate of Release or Discharge from Active Duty).

b. General discharge.

(1) A general discharge is a separation from the Army under honorable conditions. When authorized, it is issued to a Soldier whose military record is satisfactory but not sufficiently meritorious to warrant an honorable discharge.

(2) A characterization of under honorable conditions may be issued only when the reason for separation specifically allows such characterization. It will not be issued to Soldiers solely upon separation at expiration of their period of enlistment, MSO, or period for which called or ordered to active duty.

(3) In accordance with paragraph 3-5, a general (under honorable conditions) discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by prior or subsequent honest and faithful service over a greater period of time during the current term of service.

c. Under other than honorable conditions discharge. A discharge under other than honorable conditions is an administrative separation from the Service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, security reasons, or in lieu of trial by court-martial in the following circumstances:

(1) When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Soldiers of the Army.

(2) When the reason for separation is based upon one or more acts or omissions that constitutes a significant departure from the conduct expected of Soldiers of the Army. Examples of factors that may be considered include the following:

(a) Use of force or violence to produce serious bodily injury or death.

(b) Abuse of a special position of trust.

(c) Disregard by a superior of customary superior-subordinate relationships.

(d) Acts or omissions that endanger the security of the United States or the health and welfare of other Service-members.

(e) Deliberate acts or omissions that seriously endanger the health and safety of other persons.

(3) An under other than honorable conditions discharge will be directed only by one of the following:

(a) A commander exercising general court-martial authority.

(b) Subject to the limitations in paragraph 1-20, a general officer in command who has an attorney in the JAGC available to his or her command.

(c) Higher authority.

(d) The commander exercising SPCMCA over the Soldier who submitted a request for discharge in lieu of trial by court-martial when delegated authority to approve such requests for discharge per paragraph 1-20 (see chap 10).

(4) No Soldier will be discharged per this regulation under other than honorable conditions unless afforded the right to present his or her case before an administrative discharge board per paragraph 2-4.

(5) As an exception to paragraph 3-7c(4), a discharge under other than honorable conditions may be issued without board action if one of the following apply. The Soldier:

(a) Is beyond military control by reason of prolonged unauthorized absence.

(b) Requests discharge in lieu of trial by court-martial under chapter 10. The separation authority must verify that the rights contained within chapter 10 have been satisfied.

(c) Waives his or her right to an administrative separation board per paragraph 2–4.

(6) A Soldier beyond military control by reason of unauthorized absence may be issued an under other than honorable conditions discharge in absentia only as provided for in paragraph 2–15 or chapter 14 of this regulation, except when directed by the SECARMY or the Secretary’s approved designee as announced in updated memoranda.

d. *Consideration required.* Members of boards that recommend discharges and commanders that recommend or determine the types of discharges to be issued will consider all facets of a case so a fair decision will result.

3–8. Limitations on characterization

Characterization will be determined solely by the Soldier’s military record which includes the Soldier’s behavior and performance of duty during the current enlistment or period of service to which the separation pertains, plus any extensions prescribed by law or regulation or effected with the consent of the Soldier. Exceptions are provided in this paragraph. In determining the character of service, the following will be used as guidelines:

a. Unless otherwise stated, a Soldier is entitled to an honorable characterization of service if limited use evidence is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings (see AR 600–85). The separation authority will consult with the servicing attorney in the JAGC in cases involving limited use evidence.

b. The following will not be considered in determining the characterization of service:

(1) Pre-service activities except in a proceedings for fraudulent entry, when misrepresentations, including omissions of facts which, if known, would have prevented, postponed, or otherwise affected the Soldier’s eligibility for enlistment.

(2) Prior service activities including, but not limited to, records of convictions by courts-martial, records of nonjudicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed. To the extent that such matters are considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization.

(3) Mental status evaluation or other similar medical evaluation given during the period of service that is being characterized.

c. In the case of an ARNGUS or USAR Soldier on active duty or ADT who is to be discharged, the character of the period of service from which he or she is discharged will be based solely on military behavior and performance of duty during the current period of service while actually performing active duty or ADT.

d. The limitations in chapter 1 of this regulation as to matters that may be considered on the issue of separation apply to matters that may be considered on characterization.

e. When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial authorized to impose, but not imposing, a punitive discharge, the Soldier’s service may not be characterized as under other than honorable conditions unless such characterization is approved by the SECARMY or the Secretary’s approved designee as announced in updated memoranda.

f. A Soldier’s current enlistment record or current period of service, only, will be carefully screened for data that might affect the final decision as to type of discharge to be awarded. A checklist will be prepared to assist in the overall evaluation. The checklist will include the following data:

(1) Length of time served in the enlistment or period of service.

(2) Promotions and dates thereof.

(3) Reductions, if any, and dates thereof. (When there has been a reduction, the specific reason should be listed.)

(4) Whether there is a record of time lost; if so, whether it was AWOL, confinement, or other reasons.

(5) Whether there has been disciplinary action under UCMJ, Art. 15. If so, a list of the specific offenses that resulted in such action.

(6) Whether there have been any convictions by court-martial; if so, the offenses, findings, and sentence and any subsequent actions in the case.

(7) Favorable communications or recommendations for the Soldier.

(8) Any derogatory data, other than UCMJ, Art. 15 actions and courts-martial.

(9) Any citations and awards.

(10) Where derogatory data has been revealed, whether there is evidence or other indication of successful rehabilitation.

(11) Any medical or other data meriting consideration in the overall evaluation (see para 3–8b(3)).

g. The following information cannot be used against a Soldier on the issue of characterization:

(1) The results of mandatory urinalysis or alcohol-breath tests when such use is prohibited by AR 600–85.

- (2) A Soldier's voluntary submission to a DoD treatment and rehabilitation program (self-referral).
- (3) Admissions and other evidence concerning illegal drug or alcohol use or possession of drugs incidental to personal use occurring prior to initial referral to a treatment and rehabilitation program provided voluntarily by a Soldier either as part of initial entry or at a scheduled interview when enrolled in such a program.
- (4) Evidence concerning illegal drug or alcohol use or possession of drugs incidental to personal use obtained as a result of a Soldier's emergency medical care for an actual or possible drug or alcohol overdose when such use is prohibited by AR 600–85.
 - h.* The limitations in paragraph 3–8g do not preclude the following actions:
 - (1) The introduction of evidence for impeachment or rebuttal purposes in any proceeding where the evidence of drug or alcohol abuse, or the lack thereof, has been first introduced by the Soldier.
 - (2) Taking action based on independently derived evidence, including evidence of drug or alcohol abuse after initial entry into the treatment and rehabilitation program.
 - (3) Discharging a Soldier with a characterization or general (under honorable conditions) or under other than honorable per paragraph 10–10.

3–9. Uncharacterized separations

a. Entry-level status separation. A separation will be described as entry-level with service uncharacterized if processing is initiated while a Soldier is in entry-level status, except when—

- (1) Characterization under other than honorable conditions is authorized under the reason for separation and is warranted by the circumstances of the case.
- (2) DCS, G–1, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the Soldier is separated by reason of selected changes in service obligation, convenience of the Government, and Secretarial plenary authority.
- (3) The Soldier is on active duty with less than 181 days of continuous active military service, has completed IET, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment (see para 11–3c). RC Soldiers will receive a characterization of service as “honorable” upon successful completion of IET.

b. Void enlistments. A Soldier will not receive a discharge, characterization of service at separation, or an uncharacterized description of service if the enlistment or induction is void, except when a constructive enlistment arises and such action is required under paragraph 3–9b(3). If characterization or an uncharacterized description of service is not required, the separation will be described as an order of release from custody and control of the Army.

- (1) An enlistment is void in the following circumstances:
 - (a) If it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the Army. This includes enlistment of a person who is intoxicated or insane at the time of enlistment.
 - (b) If the person is under 17 years of age.
 - (c) If the person is a deserter from another military service.
- (2) Although an enlistment may be void at its inception, a constructive enlistment will arise in the case of a person serving with the Army who—
 - (a) Submitted voluntarily to military authority.
 - (b) Met the mental competency and minimum age qualifications at the time of voluntary submission to military authority.
 - (c) Received military pay or allowances.
 - (d) Performed military duties.
- (3) If an enlistment that is void at its inception is followed by a constructive enlistment within the same term of service, characterization of service or description of separation will be in accordance with this paragraph and paragraph 3–5 as appropriate.
- (4) If an enlistment was void by reason of desertion from another military service, the Soldier will be separated by an order of release from the custody and control of the Army regardless of any subsequent constructive enlistment.
- (5) A constructive enlistment does not preclude the Army from either retaining the Soldier or separating the Soldier based on the circumstances that occasioned the original void enlistment or any other reason for separation.

Section III

Dishonorable and Bad Conduct Discharge

3–10. Dishonorable discharge

A Soldier will be given a dishonorable discharge pursuant only to an approved sentence of a general court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

3–11. Bad conduct discharge

A Soldier will be given a bad conduct discharge pursuant only to an approved sentence of a general or special court-martial. The appellate review must be completed and the affirmed sentence ordered duly executed. Questions concerning the finality of appellate review should be referred to the servicing SJA.

3–12. Soldiers confined in foreign penal institutions

Soldiers with approved sentences to a dishonorable or bad conduct discharge who are confined in foreign penal institutions either before, during, or after trial by a foreign tribunal, will not be discharged until returned to the United States (see AR 27–50/SECNAVINST 5820.4G). In a specific case, if the commander considers that discharge in an oversea area is desired, he or she will send a request for approval for such separation to the SECARMY or the Secretary's approved designee as announced in updated memoranda, per paragraph 1–15*i*(1). The separation in foreign countries of Soldiers so confined will be subject to paragraph 1–43.

3–13. Reason and authority for discharge

The reason and authority for separation will be entered per AR 635–5–1.

3–14. Discharge in absentia

Except as provided in paragraph 3–12, a Soldier placed on excess leave without pay pending completion of appellate review may be discharged without returning to a military installation when the sentence is affirmed (see AR 600–8–10).

a. When appellate review is completed and the affirmed sentence ordered executed, the appropriate discharge documents will be completed and mailed by certified mail (return receipt). The documents are mailed to the address furnished by the Soldier. The return address will be shown as Commander, U.S. Army Human Resources Command (AHRC–EPF–R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204. If the documents are returned unclaimed or undeliverable they will be destroyed.

b. Before departure on excess leave, action will be taken to complete as much of the preprocessing as is appropriate, including partial completion of DD Form 214 (see AR 635–8).

c. Soldiers assigned to an overseas unit who have approved excess leave may be reassigned to the PCF closest to their leave address (see AR 614–30 and AR 600–62) provided:

- (1) Any sentence to confinement has been deferred or served.
- (2) Individual is not subject to further trial or investigation within the overseas command.

3–15. Form of separation certificate to be given

a. A DD Form 256, based upon the character of service rendered and DD Form 214, will be issued to the Soldier concerned per AR 635–8.

b. A Soldier to be released from military control pursuant to paragraph 5–8 or an administrative determination that he or she is not currently a Soldier of the Army will not be “discharged” from the Army. The individual does not have military status and will, instead, be released from the custody and control of the Army without being furnished a certificate of discharge. A DD Form 214 indicating no creditable service will be furnished the individual (see AR 635–8).

Chapter 4

Separation for Expiration of Service Obligation

4–1. Policy

A Soldier will be separated upon expiration of enlistment or fulfillment of service obligation.

4-2. Discharge or release from active duty upon termination of enlistment and other periods of active duty or active duty for training

a. The periods of military service required of all Army Soldiers will be in accordance with applicable laws. Periods for which enlistment is authorized are in NGR 600-200, AR 140-111, and AR 601-210. Periods for which Soldiers are ordered to active duty are prescribed by law.

b. Noncitizens who enlisted in the RA for 3 years will not be separated before the full period for which enlisted purely as a matter of convenience. The exception is provided in paragraph 5-2. If performance or conduct does not justify retention, the Soldier will be processed for separation under the appropriate chapter of this regulation.

c. Personnel who are physically unfit for retention but who were accepted for, or continued in, military service per AR 635-40, will not be separated because of ETS unless processing for separation because of physical disability is waived (see AR 40-501).

d. Active duty Soldiers not at their retention control point (RCP) that fulfill their enlistment contract and a commander denies extension or reenlistment on active duty because nonretention is in the best interest of the Army will be discharged or released from active duty at their ETS.

e. Subject to chapter 1, section V of this regulation, a Soldier enlisted or ordered to active duty normally will be discharged or released from active duty on the date he or she completes the period for which enlisted or ordered to active duty. As an exception, Soldiers accepted to attend a Service academy or academy preparatory school will be released from active duty and transferred to the USAR to complete their enlistments (in accordance with AR 150-1).

f. Other than those listed in paragraph 4-2*b*, some Soldiers' terms of service expire or they otherwise become eligible for discharge or REFRAD on a Saturday, Sunday, or legal holiday. These Soldiers may consent to be discharged or released to or transferred to the USAR on the last working day before their normal date of discharge or release. This includes:

(1) Soldiers within 30 days of their ETS date who return to the United States, its territories, or possessions supported by TC or transition activity (TA) for separation (see AR 635-8).

(2) Soldiers listed in paragraph 4-2*b* whose terms of service expire or who otherwise become eligible for separation on a Saturday, Sunday, or legal holiday. These Soldiers may consent to be released from active duty and be transferred to the USAR on the last working day before the normal date of discharge or release if otherwise appropriate; however, they may not be discharged on such date. (As an exception, Soldiers whose early separations will leave them 90 days short of completing their 6-year or 8-year obligation will be discharged.)

(3) Soldiers whose rate of pay is subject to change on a Saturday, Sunday, or legal holiday upon which they would be separated. These Soldiers will not be discharged until their normal separation date unless they request otherwise. The actual date of release or discharge will be recorded in DD Form 214, item 1-2*b*.

(4) Personnel released from active duty and transferred to the USAR upon completion of the term of service for which ordered into active federal service, or released to their RC upon completion of active duty. These Soldiers will not be discharged until completion of their reserve obligation.

g. AR 135-91 defines the various service obligations incurred by military personnel upon initial entry into military service and prescribes the methods of fulfillment. Soldiers who will not continue or who reenter on active duty in another status will be released by separation orders to the ARNGUS or the USAR.

h. A noncitizen who incurs a reserve obligation upon entry into military service but who at the time of REFRAD fails or refuses to give a mailing address within the United States, the Commonwealth of Puerto Rico, or a territory of the United States but who gives only an address in a foreign country as a permanent mailing address, thus showing his or her intention to reside permanently outside the United States, is not eligible for transfer to the USAR (see DD Form 214).

(1) The Soldier will be discharged upon, and by reason of, having completed the period of service for which enlisted.

(2) The Soldier will be advised before such discharge that it may permanently bar him or her from United States citizenship.

i. Soldiers of the ARNGUS and the USAR ordered to active duty for a period in excess of 90 days will, upon REFRAD, revert to control of the appropriate RC.

j. ARNGUS and USAR Soldiers who successfully complete a period of IADT to which ordered will out-process per AR 612-201.

(1) For the service of Soldiers who have completed their IADT successfully (see para 3-9).

(2) When the Soldier is eligible for leave, early release may be authorized in lieu of leave for cogent reasons such as death or serious illness of a member of the trainee's immediate family. To warrant early release the trainee must have completed at least 12 weeks IADT and the training benefits that would result from return to the training center upon completion of leave must not be substantial enough to justify return to duty in lieu of early discharge from IADT.

k. Soldiers serving as cadets in military academies whose expiration of enlisted terms of service occur while the Soldier is serving in such capacity will be discharged or released, as appropriate.

l. Soldiers who at the time of entry on active duty held an appointment as USAR commissioned or warrant officers or who while on active duty accept such appointments will not be transferred to the USAR in their enlisted status. These Soldiers will be discharged.

(1) Orders discharging the Soldiers will be prepared per AR 600–8–105.

(2) Orders will indicate that these Soldiers are transferred to the USAR in their commissioned or warrant grades.

(3) Discharge to enter another military status does not terminate a Soldier's MSO incurred under 10 USC 651.

m. The separation authority delegated to commanders by this regulation will not include the authority to discharge a Soldier who is under court-martial sentence to an unsuspended dishonorable for bad conduct discharge before appellate review is complete (see para 1–23*c*).

4–3. Counseling required for certain retirement-eligible personnel

a. The following Soldiers will be counseled regarding retirement options:

(1) Those Soldiers serving on a conventional reenlistment contract who will have 20 or more years active federal service at their current ETS date.

(2) Soldiers serving on an indefinite reenlistment contract who have over 18 years active federal service.

b. Personnel officers will advise Soldiers regarding the following circumstances:

(1) Soldiers not on indefinite status who have a service-remaining requirement that necessitates extension or reenlistment to complete the requirement will be advised of the amount of time needed or alternatives regarding submission of DA Form 2339.

(2) Soldiers on indefinite status will be counseled as to the remaining time needed to complete service obligations or the proper time period required to submit DA Form 2339 to preclude reassignment.

(3) All Soldiers will be informed of any reasons that make them ineligible for reenlistment, extension, or, if in indefinite status, ineligible for continued service.

c. Counseling will be performed no later than 6 months before ETS, if applicable, or within 6 months after surpassing 18 years active federal service for Soldiers on indefinite status. The counseling session will determine whether or not the Soldier intends to submit DA Form 2339.

d. Soldiers not serving on indefinite status will be required to sign a statement acknowledging that they have been counseled and fully understand the consequences of being discharged upon ETS rather than extending or reenlisting to complete a service obligation.

(1) In accordance with AR 601–280, a primary duty career counselor will explain the consequences of not taking action to meet service-remaining requirements.

(2) Soldiers will also be counseled on retirement eligibility if not eligible to extend or reenlist.

(3) Soldiers on indefinite status will be advised of deadlines to submit DA Form 2339 if they do not intend to proceed with assignment instructions (see chap 12).

e. The following information will be provided to the Soldier during the counseling session:

(1) Under 10 USC 7314 and 10 USC 7317 a Soldier of the RA must be on active duty at the time of application for retirement and at the time of retirement. There is no statutory requirement that USAR or ARNG Soldiers be on active duty at the time of retirement.

(2) Soldiers who are precluded from retention for any reason will not be retained beyond the last day of the month in which their ETS falls, or, if on indefinite status, they will not be retained beyond the last day of the month in which their RCP falls.

(3) Soldiers who exceed RCP as a result of reduction in grade must retire or separate no earlier than 90 days or no later than 180 days after the effective date of the reduction in grade (see AR 601–280 for exceptions). Soldiers with 18 years or more of active federal service will be retained until 20 years of service unless involuntarily separated by SECARMY or designated representative, or separated under the provisions of AR 635–40.

(4) Enlistment may not be extended solely for failure to apply for, or late application for, retirement, or to complete a medical examination in conjunction with retirement (see chap 12, sec V). Refer to AR 601–280, for further extension information regarding retirement-eligible Soldiers.

(5) A Soldier who elects to be discharged upon ETS rather than to reenlist or to extend enlistment, as appropriate, to complete a service-remaining requirement will not be eligible to reenter the RA unless a waiver is granted.

(6) Retirement cannot be retroactive; therefore, a Soldier who is discharged, later reenlists, and then retires, cannot be placed in a retired pay status for the period between his or her discharge and subsequent reenlistment. Retired pay is based on the grade in which retired.

(7) Soldiers precluded from reenlistment for any reason and discharged forfeit retirement eligibility altogether, as reentry on active duty for the purpose of applying for retirement is not allowed.

4-4. Voluntary separation of Soldiers serving on indefinite enlistments/reenlistments

a. RA and USAR Soldiers serving on indefinite enlistments/reenlistments desiring a voluntary separation for reasons not specifically covered in this regulation must submit DA Form 4187 (Personnel Action) with recommendations through the chain of command, up to the first general officer, to the separation authority for such actions: Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204.

b. Soldiers requesting voluntary separation under this paragraph will provide the following on the DA Form 4187:

(1) Reason(s) for voluntary separation. Reason(s) must be specific enough for the separation authority to determine that separation is in the best interest of the Soldier and the Army.

(2) Such requests generally will be denied if the Soldier has an unfulfilled service obligation as a result of training or a service-remaining obligation.

(3) If requests are approved, Soldiers will be separated under the provisions of this chapter, as they have fulfilled their active duty service obligation.

c. Soldiers applying for separation may request specific separation dates but must receive pre-separation counseling not later than 90 days before separation. Requests for separation dates more than 6 months after the date of the application must be fully justified.

4-5. Characterization of service

A Soldier being separated upon expiration of enlistment or fulfillment of service obligation will be awarded a character of service of honorable, unless the Soldier is in entry-level status and service is uncharacterized.

4-6. Separation authority

Separations will be accomplished by the TC or TA processing the Soldier for separation per the separation orders issued by the appropriate commander (see AR 635-8).

Chapter 5

Separation for Convenience of the Government

Section I

General

5-1. Characterization of service or description of separation

a. Unless the reason for separation requires a specific characterization, a Soldier being separated for the convenience of the Government will be awarded a character of service of honorable, general (under honorable conditions), or an uncharacterized description of service if in entry-level status.

b. No Soldier may be awarded a character of service of general (under honorable conditions) under this chapter unless the Soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for Soldiers separated under the provisions of paragraphs 5-3, 5-10, 5-11, 5-13, or 5-14.

5-2. Scope

This chapter, together with chapters 6, 8, 15, and 16, contains policies and procedures for voluntary and involuntary separation for the convenience of the Government.

Section II

Surviving Family Member

5-3. General

a. Commanders specified in paragraph 1-20 will promptly approve requests for separation for the convenience of the Government of Soldiers who qualify under this section as surviving or sole surviving sons or daughters.

b. Separation under this section is not authorized—

(1) When a Soldier who qualified under this section has waived status as surviving son or daughter.

(a) A Soldier who has waived such status may request reinstatement of that status; however, reinstatement will not necessarily provide a basis for separation under this section. Each case will be considered on its individual merits.

(b) A Soldier who has been advised of this section and who enlists, reenlists, or otherwise voluntarily extends his or her active duty period after the date of notification of the Family casualty on which the surviving status is based, will be considered to have automatically waived his or her rights for separation under this section. In such cases, any later request must be requested and processed under chapter 15.

(2) When a Soldier—

(a) Is under criminal investigations or has court-martial charges pending. Pending per this paragraph is any time between the preferral of charges and final sentence adjudged.

(b) Has been tried and convicted by court-martial, and the case is being reviewed or appealed.

(c) Is serving a sentence (or otherwise undergoing punishment) imposed by court-martial.

(d) Is being processed for involuntary administrative separation for cause.

c. Pursuant to DoD 7000.14–R, under certain circumstances, a Soldier separated under this paragraph who is the only surviving child in a Family in which the father or mother, or one or more siblings, while serving in the Armed Forces, was killed, died as a result of wounds, accident, or disease, is in a captured or missing-in-action status, or is permanently disabled may be entitled to certain benefits, such as separation pay, transitional healthcare, or transitional commissary and exchange benefits, and will not be required to repay the unearned portion of any bonus, incentive pay, or similar benefit previously paid to the Soldier. Commanders must consult their servicing attorney in the JAGC for advice on the precise implications of Public Law 110–317, known as the Hubbard Act.

5–4. Definitions

The following definitions apply to terms used in this section only:

a. *Sole surviving son or daughter.* Refers to the only surviving child in a family in which the father or mother or one or more siblings served in the Armed Forces and was killed; died as a result of wounds, accident, or disease; is in a captured or missing-in-action status; or is permanently 100 percent disabled or hospitalized on a continuing basis (and is not employed gainfully because of the disability or hospitalization). In these cases, the death, status, disability, or hospitalization must not have resulted from the intentional conduct or willful neglect of the parent or sibling and was not incurred during a period of unauthorized absence.

b. *Surviving son or daughter.* Refers to any son or daughter in a family in which the father or mother or one or more siblings meet the criteria listed in the sole surviving son or daughter definition.

c. *Armed Forces.* Used to denote collectively all components of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard.

5–5. Procedures

The Soldier concerned must submit a DA Form 4187. All requests will include the following information:

a. Name, grade, SSN, branch of service (Army, Navy, Air Force, Marine Corps, or Coast Guard), relationship, and date of death or disability of the Family member upon whom request is based.

b. Department of Veterans Affairs claim number, if appropriate.

5–6. Characterization of service or description of separation

See paragraph 5–1.

Section III

Other Convenience of the Government Separation Policies

5–7. Involuntary separation due to parenthood

a. Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. See AR 600–20 concerning Soldiers' responsibilities for care of Family members as related to military responsibilities. Specific reasons for separation because of parenthood include:

(1) Inability to perform prescribed duties satisfactorily.

(2) Repeated absenteeism.

(3) Repeated tardiness.

(4) Inability to participate in field training exercises or perform special duties such as charge of quarters and staff duty NCO.

(5) Nonavailability for worldwide assignment or deployment according to the needs of the Army.

b. Separation processing may not be initiated under this paragraph until the Soldier has been adequately counseled concerning deficiencies and has been afforded the opportunity to overcome them (see para 1–17 and AR 600–20). Prior to initiation of separation under this paragraph, the unit commander will document efforts made to assist the Soldier in overcoming the deficiencies.

c. The notification procedure will be used for separation (see chap 2, sec I).

d. For characterization of service or description of separation, see paragraph 5–1. If, after adequately counseling and a reasonable opportunity to overcome deficiencies, a Soldier refuses or fails to take steps to address the deficiencies, a commander, in consultation with the commander’s servicing attorney in the JAGC, should consider whether such refusal or failure constitutes failing to follow a lawful order and processing under chapter 14 as misconduct.

e. Commanders specified in paragraph 1–20 are authorized to order separation. See paragraph 1–12 for additional instructions for ARNGUS and USAR Soldiers. The criteria in chapter 1, section VII of this regulation, will govern whether the Soldier will be released from active duty or ADT with transfer to the IRR, or whether he or she will be discharged.

5–8. Lack of jurisdiction

The GCMCA will direct the discharge or release from active military service or will release the individual concerned from military control. This authority will not be delegated.

a. The discharge or release of an individual from the Army may be ordered by a U.S. court or judge thereof. The office upon whom such an order or writ is served will report it immediately to TJAG per AR 27–40.

b. Upon the final judicial determination of a military judge, a president of a special court-martial, or a military appellate agency that an individual is not currently a Soldier of the Army, and where a commander reasonably believes that the Army may lack jurisdiction over a Soldier presently under his or her jurisdiction, the GCMCA will immediately initiate a thorough inquiry. All allegations and relevant facts and circumstances will be examined. AR 15–6 will not apply to such inquiries.

(1) If the claim of lack of jurisdiction is based upon recruiter misconduct, an inquiry to appropriate recruiting officials will be included.

(2) If the claim of lack of jurisdiction is based upon other provisions of this regulation, such as minority age or erroneous or fraudulent enlistment, the inquiry and later action on the claim will be conducted per procedures outlined in those specific provisions. Those paragraphs will be cited as the authority for the action taken.

c. The GCMCA will determine whether retention or release from military control or release from active service is warranted.

(1) *Retention.* In making determinations on retention, paragraph 7–21b should be considered. Only individuals with waivable disqualifications will be considered for retention (see AR 601–210 or AR 601–280).

(2) *Release from military control or from active military service.* If the GCMCA concludes that the Army lacks jurisdiction over the individual and determines that separation is warranted, he or she will take action per paragraph 1–12b for ARNGUS or USAR personnel. RA personnel will be released from military control per this paragraph.

5–9. Discharge of noncitizens not lawfully admitted to the United States

Commanders specified in paragraph 1–20 are authorized to dispose of cases involving aliens not lawfully admitted to, or residing in, the United States who did not divulge their true citizenship status at enlistment.

a. Such individuals will be reported to the nearest office of the U.S. Citizenship and Immigration Services or U.S. Immigration and Customs Enforcement.

b. If these individuals are subject to deportation proceeding at that time, or upon discharge from the Service, or if immigration officials desire their custody, they will be reported to the commander having discharge authority. That commander will then order the discharge for the convenience of the Government.

c. Commanders responsible for separation processing will notify immigration officials of the discharge action so that they may take the individual into custody, if they so desire.

d. The character of service and discharge certificate furnished will reflect service rendered by the individual after enlistment (see paras 3–7 and 5–1).

5–10. Separation of personnel who did not meet procurement medical fitness standards

a. Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment or who became medically disqualified under these standards prior to entry on active duty or ADT for IET, may be separated. Such conditions must be discovered during the first 6 months of active duty. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier’s first 6 months of active duty, takes the place of the notification procedure required for separation under this chapter (see para 2–2).

b. Medical proceedings must establish that a medical condition was identified by an appropriate military medical authority within 180 days of the Soldier's initial entrance on active duty for RA or during ADT for IET for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on active duty or ADT for IET had it been detected at that time.

(2) Does not disqualify the Soldier for retention in the military service per AR 40–501. As an exception, Soldiers with conditions which existed prior to service of pregnancy or human immunodeficiency virus infection will be separated (see AR 600–110).

c. A Soldier who is found after entry on active duty not to have been qualified under procurement medical fitness standards at the time of enlistment may request to be retained on active duty subject to the conditions listed below. Approval or disapproval of requests for retention under this paragraph is delegated to the separation authority cited in paragraph 1–20*d*. No Soldier has a right to be retained under this paragraph. Soldiers not retained will be processed for separation. Soldiers will not be retained under this paragraph unless both conditions below are met:

(1) The separation authority cited in paragraph 1–20*d* determines, after considering the proceedings of an entrance physical standards board, that the Soldier's disqualifying condition will not prevent the Soldier from performing satisfactorily throughout his or her period of enlistment in the MOS for which the Soldier is being trained or in another MOS based on the Soldier's medical condition (see AR 40–400).

(2) The Soldier, after being counseled and given the opportunity to obtain legal advice, signs a statement requesting to complete the period of service for which enlisted.

d. The criteria in chapter 1, section VII of this regulation will govern whether the Soldier will be released from active duty, with transfer to the IRR, or discharged.

(1) In the case of an ARNGUS or USAR Soldier found to be pregnant upon entry on IADT, the Soldier will be released from active duty and returned to her ARNGUS or USAR unit for disposition in accordance with AR 135–91.

(2) The Soldier will be separated within 72 hours following approval by the separation authority (see para 1–20). Refer to paragraph 1–12 for additional instructions on ARNGUS or USAR personnel.

e. Soldiers who do not meet the medical retention standards of AR 40–501 or whose conditions existed prior to service, and whose condition has been aggravated by military service, will be processed per AR 635–40. The 180-day time frame does not apply in these circumstances.

f. This paragraph is not to be used in personality disorder cases, which will be processed per paragraph 5–14.

g. For characterization of service or description of separation, see paragraph 5–1.

5–11. Discharge for failure after enlistment to qualify medically for flight training

Soldiers who enlist per AR 601–210 for the warrant officer flight training option and who, after enlistment, fail to qualify medically for flight training, may be discharged from the Army. The following conditions apply:

a. Eligibility for discharge will be based on a determination by the Commander, U.S. Army Aeromedical Center, 301 Andrews Avenue, Fort Rucker, AL 36362–5107, that—

(1) The medical condition would permanently disqualify the Soldier for flight training.

(2) The condition does not disqualify the Soldier for retention in the military service per AR 40–501.

b. To be eligible for discharge under this paragraph, the Soldier must submit a written request for discharge to his or her unit commander. It must be submitted within 30 days of the date the Commander, U.S. Army Aeromedical Center, notifies the Soldier that he or she is disqualified for flying (see fig 5–1).

c. Applications for discharge will be processed promptly and separations will be accomplished within 3 working days following approval by the discharge authority (see para 1–20).

d. Soldiers who do not meet retention medical fitness standards will be processed per AR 635–40.

e. This paragraph is not to be used for personality disorder cases, which will be processed per paragraph 5–14.

f. A Soldier who meets the requirements of paragraph 5–11*a* and elects to complete the period of service for which he or she enlisted, must submit a written request to be retained on active duty (see fig 5–2). The request is submitted to the unit commander within 30 days of the date the Commander, U.S. Army Aeromedical Center, finds the Soldier medically disqualified for flying.

g. The determination made by the Commander, U.S. Army Aeromedical Center, concerning the Soldier's request for discharge or retention and other pertinent papers will be filed in the Soldier's AMHRR as permanent material (see fig 5–1 or 5–2).

h. For characterization of service or description of separation, see paragraph 5–1.

5–12. Concealment of arrest record

a. Policy. A Soldier who concealed an arrest record (not followed by a civil court conviction and not reflecting charges pending at the time of enlistment) for any juvenile or adult offense and such concealment does not amount to a fraudulent entry may be separated (see chap 7). Separation is based on the false statements made in enlistment documents regarding the existence of an arrest record. In determining whether discharge is appropriate, the following will be considered:

(1) Concealing a pattern of arrests strongly suggests that the Soldier was intentionally attempting to mislead recruiting officials regarding enlistment eligibility. The pattern may include misdemeanors and lesser offenses in addition to a felony.

(2) The age of the individual when enlisted, when arrested, and the period of time that elapsed since the arrest.

(3) The nature and circumstances surrounding the arrests.

(4) The nature of the Soldier's service since enlistment.

b. Discharge authority. Commanders specified in paragraph 1–20 will direct discharge or retention of the Soldier. When retention is authorized, the Soldiers personnel record will be annotated to reflect that concealment of the arrest has been waived. After waiver, no further action will be taken.

c. Evidence. When information is received which indicates the Soldier may have concealed an arrest record, an investigation under AR 15–6 into the circumstances is required. From this investigation, a decision to discharge or retain can be made. To prove an arrest record as required, documentary evidence must be obtained from the appropriate law enforcement agency. A typical example of bona fide evidence includes a completed DA Form 3286 (Statements for Enlistment, United States Army Enlistment Program, U.S. Army Delayed Enlistment Program (EGA)) or other evidence that clearly shows the individual concealed an arrest record.

d. Notification procedure. The notification procedure will be used (see chap 2, sec I).

e. Characterization of service or description of separation. Refer to paragraph 5–1.

5–13. Early separation to further education

Soldiers may be discharged or released from active duty for the convenience of the Government, up to 120 days before ETS, in order to attend a specific term at college, university, vocational school, or technical school.

a. Soldiers serving initial enlistments of less than 3 years, members of the ARNGUS or USAR serving on ADT, and former senior Reserve Officers' Training Corps (ROTC) cadets ordered to active duty because of breaches of contract are ineligible for separation under this paragraph.

b. To qualify for early separation, eligible Soldiers must—

(1) Not be mission essential to their assigned organizations, as determined by the separation authority.

(2) Clearly establish that the specific school term for which they seek early separation is academically the most opportune time for them to begin or resume their education, and that delay of school enrollment until normal ETS would cause undue personal hardship.

(3) Provide a statement from an appropriate school official (for example, a registrar or director of admissions) indicating acceptance for enrollment (without qualification or in a probationary status) in a full-time resident course of instruction. The statement must also reflect that the latest acceptable registration date for the school term falls within the 120-day period preceding the Soldier's ETS.

(4) Show that they are able to pay, or have already paid, school entry fees.

c. The college or university must offer courses of instruction leading to an associate, baccalaureate, or higher degree and must be approved by the Department of Veterans Affairs. The vocational or technical school must offer a course of instruction of no less than 3 months duration and must be approved by the Department of Veterans Affairs.

d. The separation date will be at the convenience of the Army, but will normally not be later than 10 days prior to the class starting date and in no event will be earlier than 30 days prior to such starting date. This is not intended as authority to permit separation a full 30 days prior to class starting date in every case but to provide a reasonable latitude in justifiable cases to authorize separation on a date that will give the Soldier adequate time to register and enter the school on time. Examples include Soldiers returning from overseas and those who must move their Families to the school location.

e. Accrued leave will be used, to the maximum extent possible, as transition leave in conjunction with early separation under this paragraph. Accrued leave is not considered when determining eligibility. Commanders have latitude to allow transition leave to allow time for registration and relocation.

f. For characterization of service, see paragraph 5–1.

g. Commanders specified in paragraph 1–20 are authorized to order separation under this paragraph. The criteria in chapter 1, section VII of this regulation, will govern whether Soldiers will be released from active duty with transfer to the IRR, or discharged.

h. Excluding the use of accrued leave as in paragraph 5–13*e*, combining this paragraph with other early release programs to effect separation more than 120 days before ETS is not authorized.

i. In rare and exception cases, wherein a truly deserving Soldier does not fully qualify with the criteria listed in this paragraph, early separation may be authorized by the SECARMY or the Secretary’s approved designee as announced in updated memoranda. In these cases the Soldier will send a request for approval per paragraph 1–15*i*(1). This request must include recommendations on approval or disapproval by the chain of command, up to the first general officer in the Soldier’s chain of command.

5–14. Other designated physical or mental conditions

a. Excluding conditions appropriate for separation under paragraph 5–10, commanders specified in paragraph 1–20 may initiate separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (see DoDI 1332.18, AR 40–501, and AR 635–40) that interfere with assignment to or performance of duty. Such physical or mental conditions may include, but are not limited to:

- (1) Airsickness, motion, and/or travel sickness.
- (2) Phobic fear of air, sea, and submarine modes of transportation.
- (3) Attention-Deficit/Hyperactivity Disorder.
- (4) Sleepwalking.
- (5) Enuresis.
- (6) Adjustment Disorder (except Chronic Adjustment Disorder).

(a) Soldiers recommended for separation under this paragraph based upon a diagnosis of adjustment disorder must meet the following criteria: Soldier experiences one or more incident(s) of acute adjustment disorder and does not respond to behavioral health treatment (or refuses treatment) when one or more treatment modalities have been offered and/or attempted. The condition must continue to interfere with assignment to or performance of duty even with treatment.

(b) Duration of adjustment disorder episode must be less than 6 months when separation procedures are initiated. The provider must clearly document in the medical record how the condition interferes with assignment to or performance of duty.

(c) When an episode of adjustment disorder has persisted for longer than 6 months and continues to interfere with assignment to or performance of duty, the Soldier must be referred to the Integrated Disability Evaluation System.

(7) Personality disorder. A personality disorder is an enduring pattern of inner experience and behavior that deviates markedly from cultural expectations, is pervasive and inflexible, is stable over time and leads to clinically significant distress or impairment in functioning. The onset of personality disorder typically occurs in adolescence or early adulthood and may manifest as an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks (though both may be present in some cases). Observed behavior of specific conditions should be documented in appropriate counseling or personnel records, and should establish that the behavior is persistent, interferes with assignment to or performance of duty, and has continued after the Soldier was counseled and afforded an opportunity to overcome the mental condition.

b. When a commander is concerned that a Soldier may have a physical or mental condition that interferes with assignment to or performance of duty, the commander will refer the Soldier for a medical examination and/or mental status evaluation in accordance with DoDI 1332.14 and DoDI 6490.04. Mental status evaluations are only required for separation on the basis of mental disorders (not physical conditions), including personality disorders, not amounting to a disability.

c. The evaluation will assess whether PTSD, TBI, depression, sexual assault, and other behavioral health conditions may be contributing factors to the basis for administrative separation.

d. The behavioral health provider will document in the electronic medical record the specific diagnostic criteria for the condition used as the basis for the Soldier’s separation action in accordance with the most current edition of the Diagnostic and Statistical Manual of Mental Disorders. A statement indicating that the Soldier’s disorder is of sufficient severity to interfere with the Soldier’s ability to function in the military must be included. The diagnosis must be established by a privileged mental health provider as defined in DoDI 6490.04. The installation Director of Psychological Health (DPH), or designee, will corroborate the diagnosis and sign the DA Form 3822 (Report of Mental Status Evaluation).

(1) In accordance with paragraph 1–33, Soldiers will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other co-morbid behavioral health conditions are significant contributing factors to the basis for separation, but will instead be evaluated under DES in accordance with AR 635–40.

(2) In accordance with paragraph 1–34, Soldiers determined to have a medical condition that may not meet medical fitness standards for retention under AR 40–501 will be evaluated under DES. Processing under DES takes precedence over administrative separation under this chapter.

(3) In accordance with AR 600–85, Soldiers who present with symptoms consistent with alcohol and/or drug use disorder must be referred for further evaluation and treatment.

(4) In accordance with AR 608–18, in cases where a mandated referral to the Family Advocacy Program is required based on the Soldier’s clinical presentation, documentation must be submitted in order to confirm that a referral was made.

e. In the case of Soldiers who have served or are currently serving in an imminent danger pay area, the installation DPH will corroborate the diagnosis and forward to the Office of The Surgeon General (OTSG), Behavioral Health Division (DASG–HSZ) for final review. OTSG will ensure healthcare provider compliance with the requirements in paragraphs 5–14*d*(1) through 5–14*d*(4) and provide a memorandum to the installation DPH. The OTSG review will be included in the separation packet. Soldiers who have never served in an imminent danger pay area do not require review by OTSG.

f. The separation action must include the DA Form 7771 (Enlisted Behavioral-Health Related Administrative Separation Checklist).

g. Commanders will not take action prescribed in this chapter in lieu of disciplinary action solely to spare a Soldier who may have committed acts of misconduct for which punishment may be imposed under the UCMJ.

h. Separation under this paragraph on the basis of other physical or mental conditions not amounting to a disability is authorized only if the condition is so severe that the Soldier’s ability to function effectively in the military environment is significantly impaired. Separation under this paragraph is not appropriate when separation is warranted under chapters 4, 5, 7, 9, 10, 11, 13, 14, or 18, of this regulation; AR 380–67; or AR 635–40.

i. Nothing in this paragraph precludes separation of a Soldier who has such a condition for other reasons authorized by this regulation.

j. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally, in writing, concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records (see para 1–17). The Soldier will also be counseled, in writing, that the condition does not qualify as a disability. Additionally, applicable counseling statements that support separation will be included as part of the separation action and will be uploaded by the TC into IPERMS prior to the administrative separation of the Soldier.

k. When it has been determined that separation under this paragraph is appropriate, the unit commander will take the actions specified in the notification procedure in this regulation under chapter 2, section I; or the administrative board procedure in chapter 2, section II, as applicable.

l. Separation authority is as follows:

(1) Separation authority for Soldiers separated under this paragraph who are, or have been, deployed to an area designated as an imminent danger pay area, or Soldiers who filed an unrestricted report of sexual assault within 24 months of initiation of separation, is the GCMCA. This authority may not be delegated but may be exercised by a general officer serving as the acting GCMCA. In cases where the sexual assault results in a mental health condition not amounting to a physical disability, and the Soldier is being discharged based solely on such condition, the separation will be per paragraph 5–14*l*(3).

(2) Separation authority for Soldiers who have been the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Army is the GCMCA. This delegation may not be further delegated. Specific instruction for these separation actions are contained in paragraph 5–14*m*.

(3) Separation authority for Soldiers separated under this paragraph for a physical condition not expressly listed in paragraph 5–14*a*(1) through 5–14*a*(7) is the GCMCA. For Soldiers in an entry-level status, this authority may be delegated in writing to the SPCMCA. For separation under this paragraph, for a condition not expressly listed in paragraph 5–14*a*(1) through 5–14*a*(7), the separation authority will include a statement that the requirements of this paragraph have been complied with.

(4) In all other cases, the separation authority is the SPCMCA.

m. Before a member of the Armed Forces who was the victim of a sex-related offense, an intimate partner violence-related offense, or a spousal-abuse offense during service in the Army (whether or not such offense was committed by another member of the Armed Forces), and who has a mental health condition not amounting to a physical disability, is separated, discharged, or released from the Army based solely on such condition, the diagnosis of such condition must be corroborated by a competent mental healthcare professional at the peer level or a higher level of the healthcare professional making the diagnosis and endorsed by TSG. The endorsement by TSG may not be delegated.

(1) *Narrative reason for separation if mental health condition present.* If the narrative reason for separation, discharge, or release from the Armed Forces of a member of the Armed Forces is a mental health condition that is not a disability, the appropriate narrative reason for the separation, discharge, or release will be a condition, not a disability, or Secretarial plenary authority under chapter 15.

(2) *Definitions.* In this section only, the following definitions apply:

(a) *Intimate partner violence-related offense.* An offense under UCMJ, Art. 128 or UCMJ, Art. 130 or an offense under State law for conduct identical or substantially similar to UCMJ, Art. 128 or UCMJ, Art. 130.

(b) *Sex-related offense.* An offense under UCMJ, Art. 120 or UCMJ, Art. 120b or an offense under state law for conduct identical or substantially similar to UCMJ, Art. 120 or UCMJ, Art. 120b.

(c) *Spousal-abuse offense.* An offense under UCMJ, Art. 128 or an offense under state law for conduct identical or substantially similar to UCMJ, Art. 128.

n. For characterization or description of service, see paragraph 5–1.



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR (Discharge authority)

SUBJECT: Request for Discharge (Name, rank, organization)

1. I, having enlisted for warrant officer flight training under the provisions of AR 601 – 210 and having been found by the Commander, United States Army Aeromedical Center, to be medically disqualified for Class 1A flying, request discharge under provisions of AR 635-200, paragraph 5-12.
2. I have been counseled concerning an alternate training course. I do not desire to serve in the U.S. Army.

Encl

(Signature of Individual)
(Typed name, grade, organization)

Figure 5–1. Sample format for request for discharge



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM THRU (Unit Commander)

FOR: Commander, U.S. Army Aeromedical Center

SUBJECT: Request to Remain on Active Duty (Name, rank, organization)

1. I, having enlisted for warrant officer flight training under the provisions of AR 601 – 210 and having been found by the Commander, United States Army Aeromedical Center, to be medically disqualified for Class 1A flying, understand that I have the option of being retained on active duty for the remainder of my enlistment.
2. Being medically qualified for retention under the provisions of AR 40-501, Chapter 3, I hereby request retention on active duty in an enlisted status. I have been counseled concerning an alternate training course and understand that I may select a training course for which I am qualified and for which a quota exists.

Encl

(Signature of Individual)
(Typed name, grade, organization)

Figure 5–2. Sample format for request to remain on active duty

Chapter 6

Separation Because of Dependency or Hardship

6–1. General

Separation under this chapter is for the convenience of the Government.

6–2. Separation authority

See paragraph 1–20.

6–3. Criteria

Soldiers may be discharged or released from active duty because of genuine dependency or hardship (see para 6–10). Discharge or REFRAD under this chapter should only be approved when the dependency or hardship can only be materially alleviated or eliminated by the discharge or REFRAD of the Soldier. Unless otherwise provided in this chapter, the burden is on the Soldier to prove the dependency or hardship and that discharge or REFRAD is in the best interest of the Soldier and the Army.

a. Dependency. Dependency exists when death of a member of a Soldier's (or spouse's) immediate Family or disability of a member of a Soldier's (or spouse's) immediate Family causes the Soldier's (or spouse's) immediate Family to rely upon the Soldier for principal care or support (see para 6–5 for definition of Soldier's "immediate Family") and such care or support cannot be provided while on active duty in the Army.

b. Hardship. Hardship exists in cases, not involving death or disability of a member of the Soldier's (or spouse's) immediate Family, that causes the Soldier's (or spouse's) immediate Family to rely upon the Soldier for principal care or support (see para 6–5 for definition of Soldier's "immediate Family") and such care or support cannot be provided while on active duty in the Army.

c. Special considerations.

(1) *Parenthood of married Soldiers.* A married Soldier who becomes a parent by birth, adoption, or marriage (stepparent) and whose child (or children) is less than 18 years of age and resides within the household, may apply for separation under hardship. The Soldier must submit evidence that the roles of parent and Soldier are clearly incompatible and that the Soldier cannot adequately fulfill his or her military obligation without neglecting the child or children (see para 6–7b(5)).

(2) *Sole parents.* Soldiers who are sole parents and whose children are under 18 years of age and reside within the household, may apply for separation under hardship. A "sole parent" is defined as a parent who is single by reason of never having been married, who is divorced or legally separated and has been awarded child custody by judicial decree or court order, or who is a widow/widower.

(3) *Intent.* Except in exceptional cases, it is not the intent of the Army to allow the separation of a Soldier who elects to remain in the Army during her pregnancy and then request release after receiving the medical and monetary benefits related to prenatal and postnatal absence and delivery. Also, barring exceptional circumstances, it is also not the intent of the Army to allow parenthood alone to form the basis for hardship. An example of unexpected and exceptional circumstances is the birth of a child with a serious birth defect requiring constant care. Inability to obtain an approved dependent care plan does not qualify the Soldier for separation under this provision.

(4) *Supporting evidence.* Supporting evidence will be provided as required in paragraph 6–7b(5).

(5) *Surviving spouse.* Soldiers may request separation for hardship when the death of military or civilian spouse occurs. There will be a presumption of approval in these cases, especially cases when the death of the spouse causes the Soldier to become a sole parent.

6–4. Application of criteria

a. Separation from the service of Soldiers because of dependency may be granted when all the following circumstances exist:

(1) Conditions have arisen or have been aggravated to an excessive degree since entry on active duty or ADT.

(2) Conditions are not of a temporary nature.

(3) Every reasonable effort has been made by the Soldier to alleviate the dependency or hardship conditions without success.

(4) Separation from active military service of the Soldier is the only readily available means of eliminating or materially alleviating the dependency or hardship conditions.

b. The circumstances outlined below do not justify separation because of dependency or hardship. However, the existence of these circumstances does not prevent separation because of dependency or hardship, provided the application meets the criteria in paragraph 6-4*a.*

(1) Pregnancy of a Soldier's wife is not considered a condition for which separation is justified. However, this does not prevent separation because of a permanent medical disability resulting from pregnancy.

(2) Undue and genuine hardship does not necessarily exist solely because of altered income or because the Soldier is separated from his or her Family or must suffer the inconvenience normally incident to military service.

6-5. Conditions affecting determination regarding separation for dependency or hardship

a. In determining eligibility for separation, "members of the immediate Family" include only:

- (1) Spouse.
- (2) Children.
- (3) Father.
- (4) Mother.
- (5) Brothers.
- (6) Sisters.
- (7) Only living blood relative.

(8) Any person who stood "in loco parentis" to the Soldier (or spouse) before entry into the Service. "In loco parentis" is any person who has stood in the place of a parent to the Soldier (or spouse) for a continuous period of at least 5 years before he or she reached 21 years of age.

b. When a Soldier is eligible for separation under this chapter, separation will not be disapproved because of the Soldier's indebtedness to the Government or to an individual.

c. When Soldiers are eligible for separation, their separation will not be disapproved because their services are needed by their organization.

d. Soldiers will not be separated because of dependency or hardship until proper disposition is made of the case if they are:

- (1) Under charges.
- (2) In confinement.
- (3) Being processed for involuntary separation under this regulation.
- (4) Being investigated under the military personnel security program.
- (5) Being processed for discharge or retirement for physical disability; however, the application will be accepted and processed to final decision.

e. A sentence to confinement (not including dishonorable or bad conduct discharge) will be fully served unless terminated by proper authority before a separation for dependency or hardship may be given.

f. A Soldier may withdraw his or her request at any time prior to approval by the separation authority. After approval by the separation authority but prior to the effective date, a Soldier may request withdrawal of his or her approved separation. The separation authority, based on the evidence provided by the Soldier, has the discretion to vacate the approved separation before its effective date.

g. Commanders authorized to approve separation under this chapter will withdraw approval before its effective date when—

- (1) The separation is being achieved by fraud by the Soldier.
- (2) An error is discovered that would have prevented approval.
- (3) The Soldier, who has been approved for separation based on sole parenthood, and later marries.

h. The separation authority will ensure that this chapter is not used solely to procure a reassignment, a curtailment of assignment, or an avoidance of an assignment. A Soldier whose separation is not approved and requires a new PCS assignment will be reported immediately available for assignment per AR 614-200.

6-6. Application for separation

The Soldier must complete a DA Form 4187 for separation from the Army because of dependency or hardship.

a. Submitting the application.

(1) A person serving in the United States or stationed overseas will submit a DA Form 4187 to his or her commanding officer. The evidence required in paragraph 6-7 must support the DA Form 4187.

(2) A person assigned to an overseas unit who is temporarily in the United States on leave or TDY will submit a DA Form 4187 to the commander of the Army installation (except military entrance processing station (MEPS) and recruiting main stations) nearest the Soldier's leave address or the installation to which temporarily assigned. In addition, no attachments to Army medical centers are authorized for personnel unless the applicant is a patient or is being

treated at that medical facility or unless commuting distance to garrison or troop unit would create additional hardship to the applicant.

(3) A person assigned to a unit or installation within the United States who is temporarily in an overseas command on leave or TDY will submit a DA Form 4187 to the commander for the area in which he or she is located (see AR 614–200). The commander specified in paragraph 1–20 will specify the unit to which the Soldier will be attached while the DA Form 4187 is being considered. However, attachment to the nonpermanent party element of transfer points or stations is not authorized.

(4) Soldiers on orders for overseas shipment, either as individuals or as members of units, who apply for dependency or hardship separation before departure from unit of assignment will be held at the losing station pending final disposition of the DA Form 4187 (see AR 614–30).

(5) Soldiers on orders for reassignment from one continental United States (CONUS) installation to another CONUS installation (either as individuals or as members of units) who apply for dependency or hardship separation before departure from unit of assignment will comply with reassignment orders if considered appropriate by the losing commander. The Soldier will be held at the losing installation if the DA Form 4187 reflects sufficient grounds for approval. If not, the Soldier will be advised to submit the DA Form 4187 upon arrival at the gaining installation.

(6) DA Form 4187 for dependency or hardship separation from personnel en route overseas may be accepted at the Army installation (except MEPS and recruiting main stations) nearest the Soldier's leave address if an interview reveals information that may justify separation.

(a) The Soldier will be attached at that installation until a final decision is made on the application.

(b) No attachments are authorized to Army medical centers for personnel unless the applicant is a patient or is being treated at that medical facility or unless commuting distance to garrison or troop unit would create additional hardship to the applicant.

(c) The losing commander and the U.S. Army Military Personnel and Transportation Assistance Office at the aerial port of embarkation through which the Soldier is scheduled to travel will be notified of the attachment and any later decision.

(d) The U.S. Army Military Personnel and Transportation Assistance Office will notify the gaining commander and the Passenger Liaison Office, Surface Deployment and Distribution Command.

(e) The Soldier en route overseas who arrives at the aerial port of embarkation and has not been previously attached to another installation for the same purpose may be referred to the U.S. Army Military Personnel and Transportation Assistance Office at the aerial port of embarkation, and to the Army installation nearest the port, for consideration of the application, if an interview reveals information that may justify separation for dependency or hardship. The Soldier will be attached to the installation nearest the aerial port until final determination is reached on the application.

(7) The Soldier assigned to a CONUS unit who is on leave within CONUS normally will submit a DA Form 4187 to his or her commanding officer per paragraph 6–6a(1). However, when exceptional circumstances require the Soldier's continued presence, and if the commanders concerned agree, attachment to an installation to submit a DA Form 4187 is authorized. Attachment to the nonpermanent party element at TCs is not authorized.

b. Forwarding to the separation authority. Forwarding memorandums prepared by commanders having records management responsibility for the applicant's records will contain the following information if it does not appear elsewhere in the enclosures:

(1) Amount and type of allotments the Soldier has in effect, along with the name and relationship of each allottee.

(2) A statement whether a determination of dependency for benefits has been requested and the decision of the Defense Finance and Accounting Center, Allotments and Deposits Operations.

(3) Date of current enlistment, entry on active duty, and ETS.

(4) Whether the applicant is under charges, in confinement, or under investigation or consideration for involuntary separation per AR 635–40, AR 380–67, or this regulation.

6–7. Evidence required

The supporting evidence for an application for separation because of dependency or hardship normally will be in affidavit form. The evidence must substantiate the dependency or hardship conditions.

a. The evidence required will depend upon the nature of the claimed hardship. The DA Form 4187 should include, as a minimum, the following:

(1) A personal affidavit requesting separation and explaining the nature of the dependency or hardship condition and addressing the four required criteria in paragraph 6–4a.

(2) An affidavit or statement by, or on behalf of, the Soldier's Family members substantiating the dependency or hardship claim.

(3) Affidavits by at least two agencies or individuals, other than members of the Soldier's Family, substantiating the dependency or hardship claim.

b. Additional evidence may be required as follows:

(1) When the basis for the application is financial difficulty, a detailed statement is required to establish the monthly income and expenses of the Family.

(2) When the basis for the application is death of a member of the Soldier's Family, a death certificate or other valid proof of death should be furnished.

(3) When the basis for the application is disability of a member of the Soldier's Family, provide documentation, statements, or certificates showing the diagnosis, prognosis, and date of disability.

(4) When the Soldier requests separation to support members of his or her Family, other than spouse or children, the DA Form 4187 should show the names, addresses, and contact information of other members of the Family and proof that they cannot aid in the care of the Soldier's Family.

(5) When the basis for separation is the Soldier's parenthood, supporting evidence will be in affidavit form.

(a) Evidence will support the applicant's claim that unexpected circumstances, or circumstances beyond his or her control, have occurred since acquired parenthood that prevent adequate fulfillment of military obligations without neglect of the child.

(b) Affidavits or sworn statements from the Soldier's immediate commander or officer who is the job supervisor, as appropriate, will be considered sufficient to substantiate the applicant's claim. The affidavit or sworn statement will indicate what efforts have been made to accommodate or alleviate the condition(s) and why such efforts have failed or are not sustainable.

(c) Evidence in paragraphs 6-7a(2) and 6-7a(3) is not required for these applications; however, a judicial decree or court order awarding child custody to the Soldier will substantiate sole parenthood resulting from divorce or legal separation.

6-8. Procedure

The separation authority will consider the facts upon which the request is based (see para 1-20). Any additional information required to determine the validity of the reason for separation will be requested from the Soldier, or the American Red Cross (see para 6-9). The specific reason(s) for denial of a DA Form 4187 will be included in the return memorandum.

a. The personnel officer of an Army installation, except MEPS and recruiting main stations, will give all assistance required to any Soldier desiring to apply for separation (see paras 6-6a(2) and (3)). In addition, no attachments to Army medical centers are authorized for personnel unless the applicant is a patient or is being treated at that medical facility or unless commuting distance to garrison or troop unit would create additional hardship to the applicant. Assistance will consist of:

(1) Explaining the requirements of this chapter.

(2) Assisting in preparing evidence.

(3) Notifying the Soldier's parent unit.

(a) The commander who authorized leave or TDY will be notified by electronically transmitted message of the date and reason for the attachment and will be requested to reply by message whether or not AR 600-8-2 is applicable to the Soldier.

(b) If communications condition MINIMIZE is in effect, messages will be dispatched by mail.

(c) No attachments are authorized for Soldiers on leave from or en route to other CONUS installations without prior approval of the individual's commander. In these cases the coordination will be between the commanders concerned, without referral to HRC.

b. If the DA Form 4187 is approved, the separation authority will—

(1) With the exception of U.S. Army Europe (USAREUR), Eighth United States Army (EUSA), and U.S. Army Pacific Command (USARPAC), notify the commander who authorized leave or TDY of approval by electronically transmitted message within 24 hours of the approval of hardship separation and request reassignment orders and personnel and financial records be forwarded by military official mail, First Class, or Priority mail.

(2) Request expeditious shipment of personal property. When applicable, the message will contain the name of an individual, if other than unit commander or first sergeant (1SG), with whom the Soldier may have left any personal property.

(a) The Soldier will remain attached pending receipt of reassignment orders.

(b) If communications condition MINIMIZE is in effect, the message will be dispatched by mail. If a tracer message is required, the Army command will be included as an information addressee. In all cases involving Soldiers of

USAREUR, EUSA, or USARPAC, notification and request for reassignment orders, records, and shipment of personal property will be made by electronically transmitted message to the following:

1. Commander, U.S. Army Europe, 1st Personnel Command (AEUPE-PSSD-PAD), Schwetzingen, Germany. Include "APO AE 09081" if dispatched by mail.

2. Commander, Eighth United States Army, 8th Personnel Command (EAPCMP), Yongsan, Korea. Include "FPO AA 96301" if dispatched by mail.

3. Commander, U.S. Army Pacific Command (APAG), Honolulu, HI. Include Fort Shafter, HI 96858 if dispatched by mail.

(3) Accomplish the preprocessing procedures, including the medical examination (see AR 635-8). If possible, the separation interview and the processing and completion of DD Form 214WS (Certificate of Release or Discharge from Active Duty (Worksheet)) will also be accomplished.

(4) Authorize the Soldier to proceed home on ordinary and/or excess leave, provided the Soldier so desires (see AR 600-8-10). The Soldier will be advised that separation documents and final pay will be mailed to the address furnished. The partially completed records will be suspended pending receipt of the original records.

(5) Upon receipt of the original records, reassign the Soldier to the U.S. Army TC installation for separation processing.

c. If the DA Form 4187 is disapproved, the Soldier will be notified in writing of the specific reason(s) for denial. The Soldier will then be released from attachment to revert to emergency or ordinary leave for return to his or her assignment. The commander will be notified by electronically transmitted message of the date of departure and the disapproved DA Form 4187 will be forwarded to the commander for inclusion in the personnel file as a temporary document. If communications condition MINIMIZE is in effect, the message will be dispatched by mail.

d. The U.S. Army TC or military personnel office commander or chief will—

(1) Upon reassignment, report the Soldier as assigned and upon separation, submit the Standard Installation/Division Personnel Reporting System separation transaction.

(2) Complete and mail the separation orders and DD Form 214 to the address furnished by the Soldier.

(3) Dispose of records per AR 25-400-2.

e. The overseas or CONUS commander will respond immediately to any messages received per paragraphs 6-8a and 6-8b.

6-9. Service of the American Red Cross

a. Requests for supplemental factual information pertaining to applications for separation of Soldiers because of dependency or hardship may be made to the American Red Cross. Such requests originating within military agencies will be restricted to specific information when probable separation is warranted.

b. The following procedures will be followed when a military agency requests assistance from the American Red Cross:

(1) The military agency requesting assistance will prepare a brief containing sufficient information to identify the applicant for separation. The brief will also include the name, address, and relationship of the dependent(s) on whom the information is desired.

(2) If the American Red Cross representative is serving the organization or installation concerned, the brief, together with a request for the specific information, will be forwarded to the representative.

(3) If no American Red Cross representative is serving the organization or installation, the request will be sent to The American Red Cross, Emergency Communications, 8111 Gatehouse Road, Falls Church, VA 22042-1213.

(4) Contents of reports furnished by the American Red Cross will be disclosed only per AR 25-22 and AR 25-55.

c. Soldiers or their Family members may request local chapters of the American Red Cross to assist in obtaining necessary evidence to substantiate applications for separation. The American Red Cross does not, however, make formal reports to military agencies unless requested by appropriate military commanders.

6-10. Type of separation

The criteria in chapter 1, section VII of this regulation, will govern whether Soldiers separated for dependency, hardship, or parenthood of married Soldiers or sole parents will be released from active duty or ADT with transfer to the IRR or discharged. Refer to paragraph 1-12 for additional instructions on ARNGUS and USAR personnel.

6-11. Characterization or description of service

a. If the Soldier is still in entry-level status, service will be described as uncharacterized.

b. If the Soldier is beyond entry-level status, service will be characterized as honorable or under honorable conditions as set forth in chapter 3, section II of this regulation.

c. Before service is characterized as under honorable conditions, the Soldier will be notified of the specific factors in the service record that warrant such characterization. The notification procedure will be used (see chap 2, sec I).

Chapter 7

Defective Enlistments, Reenlistments, and Extensions

Section I

General

7-1. General

This chapter provides the authority, criteria, and procedures for the separation of Soldiers because of enlistment while a legal minor, erroneous enlistment, reenlistment or extension of enlistment, defective enlistment agreement, or fraudulent entry.

7-2. Separation authority

See paragraph 1-20.

Section II

Legal Minor

7-3. Statutory authority

Applicable statutory provisions are cited in paragraph 1-6.

7-4. Criteria

a. A Soldier will be released from custody and control of the Army because of void enlistment if, upon receipt of satisfactory proof of date of birth, it is shown that he or she was less than 17 years of age at the time of enlistment and that he or she has not yet attained that age. Refer to paragraph 1-12*b* for instructions on ARNGUS and USAR personnel.

b. A Soldier will be released from custody and control of the Army for minority (age) upon application of the Soldier's parents or guardian made within 90 days after the Soldier's enlistment, unless charged with a serious offense committed after attaining the age of 17 years of age, if—

- (1) There is satisfactory evidence that the Soldier is under 18 years of age.
- (2) The Soldier enlisted without the written consent of his or her parents or guardian.

7-5. Evidence required

a. In support of an application for discharge or for release from custody and control of the Army under this section, the following evidence of age is required:

- (1) A duly authenticated copy of a municipal or other official record of birth of the Soldier.
- (2) If no official record of birth of the Soldier can be obtained, an affidavit of the parent(s) or guardian stating specifically why an official record cannot be obtained. The affidavit must be accompanied by one of the following:
 - (a) A baptismal certificate.
 - (b) A certified copy or photocopy of school records, preferably the first term of school.
 - (c) The affidavit of the physician or midwife in attendance at the birth of the Soldier.
 - (d) A notarized transcript from records of the hospital in which the Soldier was born.
 - (e) Affidavits of at least two persons not related to the Soldier, testifying from their personal knowledge as to the Soldier's date of birth.

b. In the case of an enlistment under an assumed name, identification of the Soldier with the person mentioned in the record of birth or the affidavits must be shown by the affidavit of the parents or guardian.

c. Birth or baptismal certificates will be examined carefully for alterations, other than those made officially. The "date of filing" will be noted. A delayed birth certificate with date of filing subsequent to the Soldier's enlistment or one with no filing date is not acceptable unless supported by substantial evidence to establish the date and place of filing.

d. If the parents are divorced or otherwise legally separated, application for discharge must be accomplished by a copy of the court order or other evidence showing that the parent submitting the application has custody of the Soldier.

If a parent has lost control of the Soldier by judgment of a court, appointment of a guardian, desertion of Family, or waiver, an application from such parent for the discharge of the Soldier will not be considered.

e. Although a guardian usually is not recognized as such unless legally appointed, a person who has assumed support of a minor and performed the duties of guardian for 5 years immediately preceding the enlistment will be recognized as a guardian. An affidavit supporting “guardianship” under these conditions will be submitted with the birth certificate.

7-6. Procedure

a. When a commander authorized to order minority (age) discharge or release from custody and control of the Army because of minority age receives an application from either the parents or guardian, together with the supporting evidence required in paragraph 7-5, the commander will take action as specified in the notification procedure, chapter 2, section II of this regulation. The signatures on the application for separation and consent statement will be closely examined to determine authenticity.

b. Applications, along with recommendations, may be forwarded to Commander, U.S. Army Human Resources Command (AHRC-EPF -M R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204, or via email to usarmy.knox.hrc.mbx.epmd-eligibility-management-branch@mail.mil under the following circumstances:

- (1) Any doubtful case.
- (2) When additional evidence is required and the final decision for Soldiers stationed overseas would be materially expedited by processing the case in CONUS.

7-7. Minors under charges or in confinement or pending administrative separation

a. When a minor who is otherwise eligible for minority (age) discharge under paragraph 7-4*b* is under court-martial charges, serving a court-martial sentence, or is in military confinement for a serious offense, he or she will not be discharged for minority age until proper disposition has been made in the case.

b. If the facts indicate that in other circumstances the Soldier would be discharged for a reason other than minority age misconduct or unsatisfactory performance, action by a board of officers or trial and confinement of a Soldier who otherwise is eligible for minority (age) discharge should be avoided. Immediate action will be taken to discharge such Soldiers.

7-8. Indebtedness or confinement by civil authorities

Indebtedness to the Government or to a Soldier, or confinement by civil authorities, will not prevent discharge or release from custody and control of the Army for a legal minor when a Soldier is otherwise eligible.

7-9. Void service

Upon determination that a period of service is void under paragraph 7-4*a*, the discharge authority will issue an order releasing the Soldier from custody and control of the Army (see para 1-20). As a response to the “additional instruction” lead line, the order will state that the Soldier’s enlistment is void because of minority age. Copies of the order will be issued to the Soldier and will also be filed in the AMHRR or local file, as appropriate, as permanent material. A DD Form 214 will be issued. A discharge certificate will not be issued. Refer to paragraph 1-12*b* for instruction on ARNGUS and USAR personnel.

7-10. Minors stationed in area other than area in which enlisted

a. A Soldier serving in an area other than the area in which enlisted will not be discharged or released from custody and control of the Army until returned to the appropriate territory or area (see AR 635-8).

b. As a response to the “additional instructions” lead line, reassignment orders will include one of the following statements, as appropriate, so that such separation may be accomplished promptly upon arrival:

- (1) “You are a minor and are being returned for discharge from the Army.”
- (2) “You are a minor and are being returned for release from custody and control of the Army.”

7-11. Pay and allowances

a. Except as provided in paragraph 7-11*b*, a Soldier discharged or released from custody and control of the Army because of minority (age)—

(1) May retain pay and allowances already received during the period of minority age enlistment or period of service. No pay or allowances may be paid after the date of determination of minority age. (See DoD 7000.14-R, Volume 7A.)

- (2) Is provided transportation in kind to home of record.

b. Soldiers who enlisted in the RA after reaching age 17 and who are discharged for minority (age) before their 18th birthday, are entitled to pay and allowances to include the date of discharge. (See DoD 7000.14–R, Volume 7A.)

7–12. Army National Guard of the United States and U.S. Army Reserve personnel

a. ARNGUS personnel will be discharged from their Reserve of the Army status and returned to the control of the appropriate state National Guard authorities for discharge from their state contractual commitment.

b. USAR personnel will be discharged.

7–13. Type of separation

a. The separation of a Soldier under paragraph 7–4a will receive an order of release from custody and control of the Army.

b. The separation of a Soldier under paragraph 7–4b will be described as an entry-level separation.

7–14. Entitlement

The entitlements portion of this chapter pertaining to pay and allowances has been approved by the Secretary of Defense in accordance with 37 USC 1001.

Section III

Erroneous Enlistments, Reenlistments, or Extensions

7–15. Process for erroneous enlistments, reenlistments, or extensions

a. A Soldier may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment per guidance in chapter 1, section II of this regulation. For the purpose of this chapter, the term enlistment means both an original enlistment and any subsequent enlistments (reenlistments). An enlistment, induction, or extension of enlistment is erroneous if all of the following apply:

(1) It would not have occurred had the relevant facts been known by the Government or had appropriate directives been followed.

(2) It was not the result of fraudulent conduct on the part of the Soldier.

(3) The defect is unchanged in material respects.

b. When it is discovered that a Soldier's enlistment or extension is erroneous because he or she failed to meet the qualifications for enlistment (see AR 601–210) or reenlistment (see AR 601–280), the unit commander will initiate action to obtain authority to retain, discharge, or release the Soldier from active duty or ADT, as appropriate (see para 7–15c). Correspondence containing the following information will be forwarded through channels to the appropriate separation authority:

(1) Facts relating to and circumstances surrounding the erroneous enlistment or extension.

(2) The desire of the Soldier regarding retention or separation.

(3) A specific recommendation for retention or separation, and the reasons, by each commander in the chain of command.

c. The commander specified in paragraph 1–20 will take action as follows:

(1) If doubt exists as to whether an enlistment or extension is erroneous, the case, containing the information outlined in paragraph 7–15b, will be forwarded to CG, HRC per paragraph 1–15i(3) requesting such determination.

(2) If it is determined that the enlistment or extension is erroneous, separation, when deemed appropriate, will be accomplished without referral of the case to the CG, HRC.

(3) If it is determined that the enlistment or extension is erroneous, but retention is determined to be in the best interest of the Service and the disqualification is waivable by a headquarters office below the level of HRC (AHRC–EPF–R), retention may be directed at that level (see AR 601–210 or AR 601–280). In such cases, the following statement will be entered on the decision memorandum: “Separation considered, and retention is authorized on (date).” The original copy of the document authorizing retention will be forwarded to CG, HRC per paragraph 1–15i(3).

(4) If it is determined that the enlistment or extension is erroneous, but retention is considered to be in the best interest of the Service and the disqualification is waivable at HQDA or nonwaivable (in accordance with AR 601–210 or AR 601–280), the case, including the information in paragraph 7–15b, and the reasons for recommending retention, will be forwarded to CG, HRC per paragraph 1–15i(3). Approval will be granted only in exceptionally meritorious cases. Where recommendations are not favorably considered by the CG, HRC separation will be directed. Where the CG, HRC grants a waiver for retention, actions required in paragraph 7–15c(3) will be accomplished.

d. Except as provided in paragraphs 7–15*e* and 7–15*f*, Soldiers will be discharged unless they request transfer to the USAR, have completed 12 weeks of active duty, and have been awarded an MOS. Soldiers discharged under this paragraph will not be held to a statutory service obligation.

e. If, before an enlistee's departure from a MEPS, it is discovered that he or she erroneously enlisted, the enlistment will be voided as follows:

(1) The MEPS commander will revoke any orders already issued assigning the individual to a reception station or other unit of assignment and will issue an order assigning the individual to the adjacent recruiting battalion commander for the purpose of separation.

(2) The recruiting battalion commander will void the enlistment by the issuing an order releasing the individual from the custody and control of the Army (see AR 600–8–105). The order will reflect that the individual's enlistment is void by reason of erroneous enlistment and that his or her release from the custody and control of the Army is being accomplished by reason of a void enlistment.

(3) Neither a discharge certificate nor a DD Form 214 will be furnished. Distribution of the order will be as follows:

(*a*) One copy will be filed as a permanent document in the Soldier's AMHRR (or local file, as appropriate).

(*b*) One copy will be furnished to the Soldier.

(*c*) One copy will be furnished to the Commander, U.S. Army Recruiting Command, 1307 Third Avenue, Fort Knox, KY 40122–5204.

f. If the Soldier is AWOL, in desertion, or absent in the hands of civil authorities upon discovery and establishment that his or her enlistment is erroneous, the enlistment may be voided by the separation authority in accordance with the criteria in paragraph 7–15*e* (see para 1–20).

(1) The separation authority will not issue a discharge certificate but will issue an order releasing the Soldier from custody and control of the Army and a DD Form 214.

(2) The order will reflect that the Soldier's enlistment is void because of erroneous enlistment and that release from custody and control of the Army is accomplished because of a void enlistment.

(3) A copy of the orders will be filed as a permanent document in the Soldier's AMHRR.

(4) Pay and allowances entitlement will be as prescribed in DoD 7000.14–R, Volume 7A. Refer to paragraph 1–12*b* for instructions on ARNGUS and USAR personnel.

(5) Distribution of DD Form 214 will be as shown in AR 635–8, except that copy number 1 will be placed in the AMHRR or local file, as appropriate, when the whereabouts of the Soldier is unknown. When the absent Soldier does not meet the criteria for a void enlistment, discharge action will be taken.

(6) The provisions of paragraph 2–15 must be complied with in these cases.

g. If an enlistment is erroneous under this paragraph and the provisions of paragraph 7–16 also apply, action will be taken first to determine whether the Soldier will be separated because of erroneous enlistment or retained. If retention is authorized, action then will be taken per paragraph 7–16.

h. This section is not applicable to:

(1) Soldiers who are eligible for separation under paragraph 5–9 (except erroneously enlisted aliens whose enlistment should be voided under paras 5–10 and 7–15*e* or sec II of this chapter).

(2) Soldiers who do not meet the medical fitness standards for retention and who are eligible for processing under AR 635–40 (see AR 40–501).

i. Separation will be processed under the notification procedure.

j. Soldiers separated under this paragraph will be awarded an honorable character of service or order of release from custody and control of the Army unless an uncharacterized description of service is required for Soldiers in entry-level status under chapter 3, section II of this regulation.

7–16. Defective or unfulfilled enlistment or reenlistment agreements

Claims of defective or unfulfilled enlistment agreements are processed under this section and per AR 601–210 or AR 601–280.

a. A defective enlistment agreement exists when the Soldier is eligible for enlistment in the Army but does not meet the prerequisites for the option for which enlisted. This situation exists when the following occurs:

(1) A material misrepresentation by recruiting personnel, upon which the Soldier reasonably relied, resulting in the Soldier being induced to enlist for that option.

(2) An administrative oversight or error on the part of the recruiting personnel, in which the Soldier did not knowingly take part, in failing to detect that the Soldier did not meet all the requirements for the enlistment commitment.

b. An unfulfilled enlistment commitment exists when the Soldier receives a written enlistment commitment from recruiting personnel for which the Soldier is qualified but which cannot be fulfilled by the Army through no fault of the Soldier.

c. When a defective enlistment agreement or unfulfilled enlistment commitment is discovered while an individual is being processed at the reception station or is undergoing basic or advanced individual training (AIT), the CONUS commander exercising special court-martial jurisdiction, or any higher commander, may approve a request for discharge. Before approving the request for discharge, the following actions should be taken to resolve individual cases and to determine alternate options available:

(1) Maximum use of the U.S. Army Recruiting Command (USAREC) liaison office is encouraged to obtain information about all options available for which the Soldier is qualified. Alternate options can then be determined and guaranteed to the Soldier. Installations without a USAREC liaison NCO should contact Commander, U.S. Army Recruiting Command, 1307 Third Avenue, Fort Knox, KY 40122–5204 to obtain information about available alternate options.

(2) To obtain waivers of low mental test scores or to obtain assistance in coordinating an alternate option, contact Commander, U.S. Army Human Resources Command (AHRC–EPF–R), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 or via email at usarmy.knox.hrc.mbx.epmd-eligibility-management-branch@mail.mil.

(3) Waivers should be completed, where appropriate.

d. When it appears to the Soldier's unit commander, after the period prescribed in paragraph 7–16c that the Soldier's enlistment commitment is either defective when made or cannot be fulfilled, he or she will submit all pertinent facts in the case to CG, HRC per paragraph 1–15i(3).

e. When the SPCMCA or the CG, HRC finds an enlistment is defective or cannot be fulfilled, Soldiers covered by the following may request separation (see para 7–16c):

(1) A nonprior-service RA Soldier serving on a first enlistment may request immediate discharge.

(2) An RA Soldier serving on a second or later enlistment, having been discharged from a previous enlistment before ETS to reenlist, may request separation. The separation will be effective when the active service in the current enlistment and last preceding enlistment equals the period stated in the preceding enlistment contract or agreement.

(3) When Soldiers are under charges, in confinement, or are recommended for separation under other administrative provisions, they will not be separated because of a defective enlistment agreement until proper disposition is made of the case. However, the application will be accepted and processed to the point of final decision pending the outcome of the other case.

(4) Separation is not authorized when the Soldier fails to bring the defect to the attention of his or her commander within 30 days after the defect was discovered or reasonably should have been discovered by the Soldier.

f. If an enlistment is also erroneous under paragraph 7–15 (failure to meet basic qualifications for enlistment or reenlistment as distinct from failure to meet the prerequisites for the particular enlistment option), action will be taken first per paragraph 7–15. If retention is authorized under paragraph 7–15, action will then be taken under this paragraph, if appropriate.

g. This paragraph is not applicable to Soldiers who do not meet the medical fitness standards for retention specified in AR 40–501 and who are eligible for processing under AR 635–40.

h. Soldiers will be discharged unless they request transfer to the USAR, have completed 12 weeks of active duty, and have been awarded an MOS. Soldiers discharged under this paragraph will not be held to a statutory service obligation.

i. Commanders specified in paragraph 1–20 are authorized to order the separation of personnel pursuant to the material in paragraphs 7–16a through 7–16h.

j. Soldiers separated under this paragraph will be awarded an honorable character of service unless an entry-level separation is required under chapter 3, section II of this regulation.

Section IV

Fraudulent Entry

7–17. Incident of fraudulent entry

a. Fraudulent entry is the procurement of an enlistment, reenlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. This includes all waivable or nonwaivable disqualifying information. However, the enlistment of a minor with false representation as to age and without proper consent will not in itself be considered a fraudulent enlistment. The following tests must be applied in each case of suspected fraudulent enlistment or reenlistment. These tests will establish whether the enlistment or reenlistment is fraudulent.

(1) *First test.* Commanders will determine if previously concealed information is, in fact, disqualifying. This information will be evaluated using the criteria for enlistment or reenlistment in AR 601–210 or AR 601–280. Any

deliberate material misrepresentation, omission, or concealment of information regarding a waivable or nonwaivable disqualification constitutes fraudulent entry. This includes concealing information with alleged or actual recruiter connivance. If, however, the newly revealed information would not have prevented enlistment or reenlistment under the appropriate regulation, there is no fraudulent enlistment or reenlistment. Hence, the enlistment or reenlistment is valid and separation may not be directed.

(2) *Second test.* Commanders must verify the existence and true nature of the apparently disqualifying information. Verification of the actual offense may reveal that the enlistee was qualified for service and, therefore, no fraudulent entry exists. For example, if the Soldier believes that he or she was convicted of burglary and placed on probation, inquiries must be made as to whether the Soldier was actually convicted of burglary. In fact, the Soldier may have initially been charged with burglary, but the charge may have been reduced to a lesser offense that is not disqualifying for enlistment or reenlistment. Unless otherwise provided, when information is received which indicates the Soldier may have committed fraudulent entry, an investigation under AR 15–6 into the circumstances is required. The investigation should be completed as soon as practical.

b. Any incident that meets the tests in paragraphs 7–17a(1) and 7–17a(2) may be cause for separation for fraudulent entry. Some examples of fraudulent entry are:

(1) *Concealment of prior service.* The establishment of the identity of Army personnel and verification of prior service in any of the U.S. Armed Forces normally requires only comparison of fingerprints and examination of records. Accordingly, commanders will not request field investigations to establish evidence of prior military service. When additional evidence (such as a statement of service or certificate of service) is required from the custodian of the records to establish prior service, an inquiry will be forwarded to the Commander, U.S. Army Human Resources Command, Army Personnel Records Division, 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204. The request will include the person’s name(s), SSN, and all available information concerning the alleged period of service. To support an administrative action, a statement of service is sufficient evidence.

(2) *Concealment of true citizenship status.*

(a) When information is received from U.S. Immigration and Customs Enforcement that a warrant for the Soldier’s arrest has been issued or that deportation proceedings are pending upon completion of military service, the Soldier will be processed for administrative separation per this section.

(b) The nearest office of the U.S. Citizenship and Immigration Services will be informed when a Soldier will be discharged or released from custody and control of the Army. Arrangements can then be made, if desired, to take him or her into custody.

(c) A report of the facts, along with a report of action taken, will be submitted to DCS, G–2 (Department of the Army Military Intelligence), 100 Army Pentagon, Room 2D350, Washington, DC 20310–1000, through intelligence channels.

(3) *Concealment of conviction by civil court.* A Soldier who concealed a felony conviction by civil court normally will be processed for administrative separation. If information concerning the existence of a civil criminal record is required from the Federal Bureau of Investigation (FBI), contact with the FBI must be made by HQDA. Accordingly, the inquiry will be addressed to Commander, U.S. Army Human Resources Command (AHRC–EPF–R) and sent via email to usarmy.knox.hrc.mbx.epmd-eligibility-management-branch@mail.mil. The inquiry will include Standard Form (SF) 87 (Fingerprint Chart), the Soldier’s date and place of birth, and the Soldier’s complete address. Specific details of the case will be obtained by direct communications with the appropriate civil law enforcement agency, other than the FBI, by the commander concerned. When information is required from both sources, the inquiries will be dispatched concurrently.

(4) *Concealment of record as a juvenile offender.*

(a) A Soldier who concealed an adjudication as a juvenile offender for a felony offense normally will be processed for administrative separation.

(b) The evidence must clearly show that the Soldier gave a negative answer to a specific question about having a record of being a juvenile offender or that he or she denied that civil custody, as a result of such record, existed at the time of entry into the Service.

(5) *Concealment of medical defect.* Deliberate concealment of a medical defect or disability (for example, procurement medical fitness standards under AR 40–501, for enlistment) known to the applicant before enlistment constitutes fraudulent entry. Deliberate concealment is defined as purposely concealing a medical defect or disability with the intent to deceive.

(6) *Concealment of absence without leave or desertion from prior service.*

(a) *From one of the other Services.* When a Soldier is discovered to be a deserter from another Service, the commander will report the circumstances to Commander, U.S. Army Human Resources Command (AHRC–EPF–R), via

email to usarmy.knox.hrc.mbx.epmd-eligibility-management-branch@mail.mil and request disposition instructions. After determining if the Service desires custody of the Soldier, HRC will direct that the Soldier be—

1. Released from control of the Army without a DD Form 256 or DD Form 214.
2. Considered for discharge under this section.

(b) *From the U.S. Army.*

1. If court-martial charges are not barred by the statute of limitations, the Soldier will be dropped from the current period of service and held to his or her first untermiated period of service (see UCMJ, Art. 43). When this action is taken, an entry will be made on Soldier Record Brief, showing the reason for the drop and the period of service to which held. No discharge certificate will be furnished. Appropriate disposition will be made of the desertion charges for the untermiated period of service.

2. If court-martial is barred by the statute of limitations, the Soldier will be processed for administrative separation from the prior period of service per chapter 14 of this regulation. The Soldier will be considered for discharge from the current period of service under this section. In accomplishing the discharge from a prior period of service, the Soldier will not be sent to the TC.

(c) *Procedure when DD Form 553 has been circulated.* When the Soldier was the subject of DD Form 553, a report of action taken will be furnished the U.S. Army deserter information point, when—

1. Custody reverts to another Service.
2. The Soldier is released from control of the U.S. Army.
3. The Soldier is discharged from the U.S. Army from prior or current service.

(7) *Misrepresentation of intent with regard to legal custody of children.* A Soldier who was an applicant without a spouse at the time of enlistment and who executed the certificate required by AR 601–210 will be processed for separation for fraudulent entry if custody of a child is regained by court decree, as provided by state law, or as a result of a child resuming residency with the Soldier instead of the legal custodian. Because the Soldier certified at enlistment that the custody arrangement was intended to remain in full force and effect during the term of enlistment, the burden is on the Soldier to demonstrate that regaining custody is not contrary to statements made at the time of enlistment.

(8) *Concealment of other disqualification.* A Soldier who conceals other disqualification will be considered for discharge under this chapter. This concealment includes assuming the identity of another individual through the use of birth certificate, discharge certificate, or any other record belonging to another. Exceptions to this policy are concealment of minority age and concealment of true name (see chap 7, sec II). However, if concealment of a true name is used to conceal a disqualification, it will be considered fraudulent entry.

7–18. Authority

When court-martial charges are not pending or contemplated, commanders exercising separation authority will take one of the following actions:

- a. Void the fraudulent entry by issuing orders releasing the Soldier from Army control in all cases involving desertion from another military service.
- b. When a Soldier enlisted or reenlisted with a waivable disqualification, recommend, if the separation authority is the SPCMCA, or direct, if the separation authority is the GCMCA, retention of the Soldier in meritorious cases (see AR 601–210, AR 601–280, AR 140–111, or NGR 600–200). The separation authority will act in accordance with instructions in paragraph 7–22d.
- c. Discharge for fraudulent entry under the notification procedure if a discharge under other than honorable conditions is not to be issued.
- d. Convene an administrative separation board under the administrative board procedures as specified in chapter 2 of this regulation when the separation authority considers discharge under other than honorable conditions as appropriate or when the Soldier has 6 years or more total of service and requests a hearing before an administrative board (see chap 2, sec II).
- e. Process the case through medical channels, if appropriate, when the conditions of paragraph 1–34 have been met.

7–19. Trial by court-martial

This section does not prevent trial by court-martial for violations of UCMJ, Art. 83, or other appropriate articles of the UCMJ when determined by the appropriate commander. If trial by court-martial is not considered appropriate under any article of the UCMJ, separation action as authorized in paragraph 7–18 will be taken.

7–20. Responsibilities

- a. The unit commander will—

- (1) Initiate action as specified in the notification procedure or the administrative board procedure, as appropriate.
- (2) Initiate action to obtain substantiating evidence as required (see para 7–21).
- (3) Request a medical evaluation if such is requested by the Soldier (see para 1–33a).
- (4) Forward the action and necessary enclosures to the separation authority for a determination as to whether a fraudulent enlistment has occurred.
 - b. The separation authority will take action per paragraph 7–22.
 - c. When the sole reason for separation is fraudulent entry, suspension of separation is not authorized under paragraph 1–19.

7–21. Unit commander’s report

a. When the evidence to support a deliberate misrepresentation, omission, or concealment of facts, which might have resulted in rejection, has been obtained, the unit commander will forward a memorandum through the chain of command to the separation authority. The unit commander will enclose a statement by the Soldier concerning his or her rights (see paras 2–2 and 2–4). The memorandum will also include any other statements or evidence submitted by the Soldier and will include the following:

- (1) Soldier’s name, grade, SSN, age, date and term of enlistment, and prior service.
- (2) Statement as to whether the Soldier holds Reserve status as a commissioned or warrant officer and, if so, show the grade and date of appointment.
- (3) Primary MOS evaluation score, if available.
- (4) Record of trials by court-martial.
- (5) Record of other disciplinary action, including nonjudicial punishment.
- (6) Recommendation for discharge, voidance of fraudulent entry, or retention if it is determined that fraudulent entry did occur. A recommendation will be made as to the type of discharge certificate to be awarded.
- (7) Report of medical examination when the Soldier requests such examination (see para 1–33a).

b. In making recommendations and determinations on retention, the guidance in paragraph 1–16 should be followed.

c. In each instance in which it is alleged that a recruiting official aided the fraud, a copy of the unit commander’s report will be forwarded to Commander, U.S. Army Recruiting Command, 1307 Third Avenue, Fort Knox, KY 40122–5204. For cases of connivance by reenlistment NCOs, a copy of the report will be forwarded to the appropriate GCMCA.

7–22. Action by separation authority prior to board proceedings

Upon receiving the recommended action, the separation authority will determine whether fraudulent entry has been verified and proven. If further substantiating facts and evidence are required, they will be obtained, or confirmed as unobtainable, and a final determination made. If the fraudulent entry is verified, the separation authority will take one of the following actions:

a. Direct discharge and issuance of an honorable or general discharge certificate. Action will be taken to suspend the Soldier’s pay and allowances per DoD 7000.14–R, Volume 7A.

b. Direct discharge and issuance of a discharge certificate under other than honorable conditions provided the Soldier has waived his or her rights to present the case before an administrative separation board (see para 3–7c). Action will be taken to suspend the Soldier’s pay and allowances per DoD 7000.14–R, Volume 7A.

c. If discharge under other than honorable conditions appears warranted or the Soldier has completed 6 years or more of active and reserve service and requests a hearing before an administrative separation board, direct that a board be convened to determine whether the Soldier should be discharged. If the separation authority directs separation after the administrative separation board, action will be taken to suspend the Soldier’s pay and allowances per DoD 7000.14–R, Volume 7A.

d. Subject to the following provisions, recommend retention if the recommending authority is the SPCMCA; otherwise, the GCMCA may direct retention:

(1) Soldiers with nonwaivable disqualifications under AR 601–210, AR 601–280, AR 140–111, or NGR 600–200 will be processed for immediate separation. If the separation authority believes that retention is clearly meritorious and fully justifiable, the GCMCA may forward the case to SECARMY or the Secretary’s approved designee. The GCMCA will provide justification based on all the circumstances, as being in the best interest of the Army and will forward the request through CG, HRC per paragraph 1–15i(1).

(2) In cases of waivable disqualifications that are clearly meritorious and fully justifiable, the GCMCA may grant a waiver of the fraudulent entry to permit retention. The GCMCA must personally interview the Soldier and determine that he or she has demonstrated the ability to serve as a fully productive member of the Army and that retention will

serve the best interest of the Army. As an exception, the GCMCA may delegate authority to battalion commanders to conduct the personal interview of Soldiers in reception or basic training (BT) battalions at TRADOC installations. In making a retention decision, the GCMCA will carefully consider the guidelines outlined in paragraph 1–16.

(3) The GCMCA's decision to waive the fraudulent entry to permit retention will be reported and documented as specified in paragraph 1–15.

e. Direct that the fraudulent entry be voided as required by paragraph 7–18*a*. The order issuing authority will issue orders releasing the individual from custody and control of the Army. Refer to paragraph 1–12*b* for instructions for ARNGUS and USAR personnel and paragraph 7–24 regarding DD Form 214. When this individual is in an AWOL status, in desertion, or in the hands of the civil authorities, the following additional action will be taken:

(1) A copy of orders will be forwarded to the individual's last known address.

(2) When the Soldier is the subject of DD Form 553, a report of action taken will be furnished the U.S. Army deserter information point.

7–23. Type of discharge

A Soldier discharged under the provisions of this chapter will be furnished a DD Form 214 with a character of service of honorable, general (under honorable), or under other than honorable conditions. If in entry-level status, service will be described as uncharacterized, as appropriate (see chap 3, sec II). In addition to chapter 3, section II of this regulation, the following factors will be considered in determining the character of service to be issued during the current period of service:

a. Evidence of pre-service misrepresentation that would have precluded, postponed, or otherwise affected the Soldier's enlistment eligibility.

b. Characterization will normally be under other than honorable conditions if the fraud involves concealment of a prior separation in which service was not characterized as honorable.

c. The offense of fraudulent enlistment occurs when the Soldier accepts pay or allowances following enlistment procured by knowingly false representation or concealment of his or her qualifications (see UCMJ, Art. 83). Therefore, upon receipt of pay and allowances, it becomes an in service activity by the Soldier and may be considered in characterizing his or her period of service, even though the Soldier is not tried for the offense. Commanders should consult their servicing attorney in the JAGC for advice regarding UCMJ, Art. 83 and this paragraph.

d. When the individual is in an AWOL status, in desertion, or in the hands of civil authorities, the provisions of chapter 2, section III of this regulation, must be followed.

7–24. Preparation of DD Form 214 when service is voided

DD Form 214 will be prepared and distributed on all individuals released from custody and control due to void of service, except those individuals described in paragraphs 7–15*e*(3) and 7–17*b*(6)(*a*)(1).

Chapter 8

Separation for Pregnancy

Section I

General

8–1. Policy

This chapter establishes policy and procedures and provides authority for voluntary separation of Soldiers because of pregnancy. This chapter applies to RA Soldiers, and ARNGUS and USAR Soldiers ordered to active duty, except for ARNGUS and USAR Soldiers found to be pregnant upon entry on IADT, to whom paragraph 5–1 applies.

8–2. Separation authority

Commanders specified in paragraph 1–20 are authorized to order separation per this chapter.

8–3. Characterization or description of service

a. If the Soldier is still in entry-level status, her service will be uncharacterized.

b. If the Soldier is beyond entry-level status, her service will be characterized as honorable or under honorable conditions per chapter 3, section II of this regulation.

c. Prior to characterization as under honorable conditions, the Soldier will be advised of the specific factors in the service record that warrant such a characterization, and the notification procedure will be used.

8-4. Type of separation

The criteria in chapter 1, section VII of this regulation, will govern whether the Soldier will be released from active duty with transfer to the IRR or discharged. Refer to paragraph 1-12 for additional instructions on ARNGUS and USAR personnel.

8-5. Responsibility of the unit commander

a. The unit commander will direct a Soldier who believes that she is pregnant, or whose physical condition indicates that she might be pregnant, to report for diagnosis by a physician at the servicing Armed Forces MTF.

b. When service medical authorities determine that an enlisted woman is pregnant, she will be counseled and assisted as required by chapter 8, section II of this regulation.

8-6. Medical examination and diagnosis

When pregnancy is the only medical condition upon which separation is based, a Soldier's voluntary separation under this chapter will be accomplished without a MEB or PEB. If there are medical conditions that disqualify the enlisted woman for retention, processing will be accomplished per AR 40-501 and AR 635-40.

8-7. Line of duty determination

A line of duty determination is not required for pregnancy.

8-8. Conditions affecting separation for pregnancy

a. Separation will not be accomplished outside the continental United States (excluding Hawaii or Alaska) unless the enlisted woman's home of record is located there.

b. If an enlisted woman believes that she is pregnant while en route overseas, commanders of Military Personnel Transportation Assistance Offices will process her per AR 614-30.

c. If during the processing for separation under another chapter or regulation an enlisted woman is found to be pregnant, she will not be separated under this chapter. Separation will be accomplished per the chapter or regulation under which separation processing was initiated. In such cases, a notation of pregnancy will be made on DD Form 2808.

d. An enlisted woman under investigation, court-martial charges, or sentence of court-martial who is found to be pregnant, per paragraph 8-6, may be separated under this chapter. However, the approval authority for such a separation is the commander exercising general courts-martial jurisdiction over the enlisted woman. The GCMCA must consult with the servicing SJA when considering a separation under this paragraph.

e. Except as provided in paragraph 8-8*f*, it is not the intent of the pregnancy separation policy that enlisted women be separated under this chapter when the pregnancy terminates before separation is accomplished. A medical officer must verify the fact of pregnancy termination.

f. In circumstances of an abnormal pregnancy, when a Soldier carries a pregnancy for 16 weeks or more but then has an abortion, miscarriage, or an immature or premature delivery before separation is accomplished, the Soldier will have the option to be retained or to be separated under this chapter. The duration of time she carried the pregnancy is defined as starting approximately at conception and ending when the products of conception are delivered or considered disappeared. A medical officer (obstetrician) must verify the duration of the pregnancy. The Soldier will be counseled concerning her options. If she chooses to separate, the separation authority may set the separation date. The Soldier's decision will be recorded as a signed statement and included in the records.

g. An enlisted woman who elects to remain on active duty when counseled may, if she is still pregnant, subsequently request separation (see para 8-9). The separation authority must separate the Soldier but may set the separation date. The subsequent request must comply with guidance in paragraph 8-9*a*.

h. An enlisted woman who requests separation in writing may subsequently request withdrawal of the separation request. Based upon the circumstances of the case and the best interest of the Army, the separation authority will determine, in writing, if the Soldier will be separated, as previously requested, or retained.

Section II

Pregnancy Counseling

8-9. General

If an enlisted woman is pregnant, she will be counseled by the unit commander using the record of counseling to inform Soldier of the options, entitlements, and responsibilities in connection with a pregnancy (see fig 8-1 and app

B). The unit commander will explain that the purpose of the counseling is to provide information concerning options, entitlements, and responsibilities and that the Soldier may—

a. Upon request, be separated per this chapter. She may request a specific separation date; however, the separation authority, after consultation with her military physician, will determine the separation date. The date will be the earlier of: 30 days before the expected date of delivery; the latest date her military physician will authorize her to travel to her home of record or entry on duty destination; or the latest date that the Soldier is able to fly if stationed outside the continental United States. The separation authority will approve the request in accordance with this chapter. If a Soldier requests separation within 30 days of the expected date of delivery, the Soldier's command will expeditiously process the separation request. Soldiers stationed outside the continental United States (excluding Alaska and Hawaii), who request separation within 30 days before the expected date of delivery may only be separated if medically authorized to travel to her home of record or entry on duty destination or the Soldier's home of record is there.

b. Remain on active duty.

8–10. Statement of counseling

a. Figure 8–1 provides a sample statement of counseling and will be signed by the Soldier after counseling.

b. The Soldier will be granted at least 5 duty days to consider the options available. She will indicate her election by completing part two of the statement of counseling.

c. Copies of the completed statement of counseling and the record of counseling to inform Soldier of the options, entitlements, and responsibilities in connection with a pregnancy will be filed in the AMHRR or local file, as appropriate, as an action pending document (see sample provided in fig 8–2).



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR (Name, rank, organization)

SUBJECT: Sample format for pregnancy counseling checklist AR 635-200

1. The purpose of this counseling is to inform you of the options, entitlements, and responsibilities in connection with your pregnancy. Information on your entitlements:

a. Retention or separation:

- (1) You may request separation or elect to remain on active duty.
- (2) Separation for pregnancy does not void your military service obligation. Unless unusual circumstances exist you will be transferred to the individual ready reserve IRR).
- (3) For more information, see paragraph 8-9.

b. Maternity care:

- (1) If you remain on active duty you will receive treatment in a military facility or in a civilian facility, if there is no military maternity care available within 50 miles of your location
- (2) If you separate, you are authorized treatment in a military treatment facility that has maternity care. You must request care in writing and provide a DD214 or DD Form 256A. You are NOT authorized care in a civilian facility at government expense. (See AR 40-400 3-39b)
- (3) For more information see AR 40-400, para 2-8 for care while on active duty and AR 40-400, para 3-39 for care after separation

c. Leave

- (1) You may request ordinary, advance, and excess leave in order to return home or other appropriate place, for the birth of your child or to receive other maternity care. Such leave usually terminates with the onset of labor.
- (2) No-chargeable convalescent leave for postpartum care is limited to the amount of time essential to meet your medical needs.
- (3) For more information see AR 600-8-10, chapters 4&5

d. Maternity clothing and uniforms:

Figure 8-1. Sample format for record of counseling to inform Soldier of the options, entitlements, and responsibilities in connection with a pregnancy

(Office Symbol)

SUBJECT: Sample format for pregnancy counseling checklist AR 635-200

(1) Military maternity uniforms will be provided to Soldiers.

(2) For more information see AR 670-1

e. BAH and government housing:

(1) Availability depends upon the status of housing at the installation.

(2) For more information see Post housing Office

f. Assignments:

(1) You will not normally receive PCS orders directing movement overseas during your pregnancy. However, you are considered available for unrestricted worldwide assignment upon completion of postpartum care.

(2) For more information see AR 614-30

g. Separation for unsatisfactory performance, misconduct, or parenthood:

(1) If your performance or conduct warrants separation for unsatisfactory performance, or if parenthood interferes with your duty performance, you may be separated involuntarily even though you are pregnant.

(2) For more information see chapters 5-8, 11, 13, and 14.

h. Family care counseling:

(1) In Accordance with AR 600-20, paragraph 5-5b(1), you must have an approved family care plan on file stating actions to be taken in the event you are assigned to an area where dependents are not authorized or you are absent from your home on military duty. Failure to develop an approved family care plan may result in involuntary separation.

(2) For more information see AR 600-20.

2. Should you desire assistance in gathering addition information on the above subjects, I will assist you in locating the appropriate information. Further, if you desire, I will assist you in contacting the American Red Cross or other appropriate agencies.

3. Request your election of appropriate option indicated on the enclosed (see AR 635-200, figure 8-2) and return within 5 duty days.

Encl

Commander
(Name, rank, branch)

Figure 8–1. Sample format for record of counseling to inform Soldier of the options, entitlements, and responsibilities in connection with a pregnancy—continued



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR RECORD

SUBJECT: Record of Counseling on entitlements and responsibilities in connection with my pregnancy.

1. I affirm that I have been counseled by (grade, name) on (date) on all items on the attached counseling checklist. I understand my entitlements and responsibilities, should I elect separation. I understand if I elect separation I may receive maternity care at the Department of Defense expense, on a space available basis for up to six weeks postpartum. (See AR 40-400 para 3-39). I understand I may request a separation date no later than 30 days prior to expected delivery date or the latest date my physician will authorize travel, whichever is earlier. I understand many military treatment facilities cannot provide maternity care and that unforeseen circumstances or medical emergency could force me to use civilian medical treatment facilities following separation from active duty. Should this happen, I fully understand that UNDER NO CIRCUMSTANCES can TRICARE, any military department, or the Department of Veterans Affairs reimburse my civilian maternity care expenses. Such costs will be a matter of my personal responsibility. Further, I understand that the separation authority in conjunction with my military physician will determine my separation date. I understand separation for pregnancy does not void my military service obligation.

2. I understand if I remain on active duty I must continue to perform my duties as a Soldier, unless limited by physical profile as outlined in AR 40-501. I understand that I will be expected to fulfill the terms of my enlistment contract. I understand that I must remain available for unrestricted service on a worldwide basis when directed and that I will receive no special consideration in duty assignments or duty stations based on my status as a parent.

3. During my counseling session there was no coercion on the part of the counselor influencing my decision.

Figure 8-2. Sample format for statement of counseling

(Office Symbol)
SUBJECT: Record of Counseling on entitlements and responsibilities in connection with my pregnancy.

4. Select one option:
a. I elect separation for pregnancy per AR 635-200, chapter 8.
b. I desire to remain on active duty until (date) (No later 30 days prior to expected date of delivery).
c. I elect remain on active duty to fulfill the terms of my enlistment contract.

CF: (Signature of Soldier)
1- Soldier (Typed name, grade, organization)
1- AMHRR
1- Local File

Figure 8–2. Sample format for statement of counseling—continued

Chapter 9 Separation for a Substance Use Disorder

9–1. Scope

This chapter provides the authority and outlines the procedures for discharging Soldiers for whom further rehabilitation are either not practical or will not result in a fully mission capable Soldier.

a. The Soldier is entitled to request a hearing before an administrative separation board if he or she has 6 years or more of total active and reserve military service (see para 2–2c(5)).

b. A Soldier who has less than 6 years of military service is not entitled to a board.

c. Discharge is based upon alcohol or other substance use such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when—

(1) The Soldier is enrolled in mandatory substance abuse treatment program.

(2) The commander determines that further rehabilitation efforts are either not practical, or will not result in a fully mission capable Soldier. This determination will be made in consultation with the rehabilitation team (see AR 600–85).

d. When not precluded by the limited use policy, offenses involving alcohol or drugs may properly be the basis for discharge proceedings under chapter 14 of this regulation. However, the limited use policy is applicable. Soldiers processed for separation under other provisions of this regulation who also are, or become, subject to separation under this chapter and whose proceedings on other grounds ultimately result in their retention in the Service, will be considered for separation under this chapter.

e. When the commander determines that a Soldier who has never been enrolled in mandatory substance abuse treatment program lacks the potential for further useful service, the Soldier will be screened per AR 600–85. If found to not meet criteria for enrollment in a mandatory substance abuse treatment program, the Soldier will not be rehabilitated but will be considered for separation under other appropriate provisions of this regulation.

f. Separations for alcohol use disorder will be reported separately from separations for other substance use disorders. If separation is based on both, the primary basis will be used for reporting purposes.

g. The policies of paragraph 1–34 apply for Soldiers with medical conditions that may not meet the medical retention standards of AR 40–501.

9–2. Basis for separation

a. A Soldier who is enrolled in mandatory substance abuse treatment program for alcohol/drug use may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program in one of the following circumstances:

- (1) There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical.
 - (2) Long-term rehabilitation is necessary and the Soldier is transferred to a civilian medical facility for rehabilitation.
 - (3) The chronic treatment required for the Soldier to maintain recovery degrades full mission readiness.
- b.* Nothing in this chapter prevents a Soldier who has been referred to such a program from being separated under any other provision of this regulation.

c. Initiation of separation proceedings is required for Soldiers—

- (1) For whom rehabilitation efforts are considered no longer practical; or
- (2) That have another alcohol/drug incident within 12 months following successful completion of enrollment in mandatory substance abuse treatment program or during the 12 months following removal from the program for any reason.

9–3. Procedures

The immediate commander will—

- a.* Take action as specified in the notification procedure (see chap 2, sec I).
- b.* Separation action will be initiated only when a Soldier is under military control. The exception is a Soldier confined by civil authorities whose military record indicates that he or she should be processed for separation under this chapter. Refer to chapter 2, section III of this regulation for completing proceedings initiated before a Soldier departs AWOL.

9–4. Characterization of service or description of separation

The service of Soldiers discharged under this section will be characterized as honorable or under honorable conditions unless the Soldier is in entry-level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the Government initially introduces into the final discharge process limited use evidence as defined by AR 600–85 (see para 2–12h for procedures for reinitiating or rehearing, if appropriate).

9–5. Separation authority

a. The commanders specified in paragraph 1–20 are authorized to take final action on cases processed under this chapter.

b. The separation authority will approve separation in cases processed without an administrative board if the documentation in the file indicates that:

- (1) Required rehabilitative efforts have been made.
- (2) Further rehabilitative efforts are not practical.
- (3) The Soldier’s potential for fully effective service is substantially reduced by substance use.
- (4) An administrative board is not required or has been waived.

c. For actions processed under the administrative board procedure, the separation authority will take one of the following actions:

(1) Approve separation when recommended by the board if the criteria in paragraphs 9–5*b*(1) through 9–5*b*(3) are established, and direct the characterization of the Soldier’s service according to paragraph 9–4. The separation authority may not authorize the issuance of a discharge certificate of less favorable character than that recommended by the board.

- (2) Approve retention when recommended by the board.
- (3) Disapprove a recommendation of separation by the board and direct retention of the Soldier.

d. For discharge suspension, see paragraph 1–19.

9–6. Authority for separation

The authority for separation will be included in directives or orders directing Soldiers to report to the appropriate STP for separation (see para 1–20).

9–7. Confidentiality and release of records

Records of separation proceedings and action under this chapter, including separation documents referencing reason and authority for separation, are confidential by operation of federal law. Records may be disclosed or released only in accordance with AR 600–85.

Chapter 10 Discharge in Lieu of Trial by Court-Martial

10–1. General

a. A Soldier who has committed an offense or offenses, the punishment for which under the UCMJ and the MCM, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial (see fig 10–1).

(1) The provisions of Rule of Court-Martial, MCM, do not apply to requests for discharge unless the case has been referred to a court-martial authorized to adjudge a punitive discharge.

(2) The discharge request may be submitted after court-martial charges are preferred against the Soldier or, where required, after referral, until entry of judgment.

(3) A Soldier who is under a suspended sentence of a punitive discharge may likewise submit a request for discharge in lieu of trial by court-martial (see fig 10–1).

b. The request for discharge in lieu of trial by court-martial does not prevent or suspend disciplinary proceedings. Whether proceedings will be held in abeyance pending final action on a discharge request is a matter to be determined by the commander exercising general court-martial jurisdiction over the individual concerned.

c. If disciplinary proceedings are not held in abeyance, the GCMCA may approve the Soldier's request for discharge in lieu of trial by court-martial after the Soldier has been tried, within the limitations of UCMJ, Art. 60a. If permitted under UCMJ, Art. 60a, UCMJ, any request considered after the conclusion of trial must be acted upon before entry of judgment. In this event, the officer who convened the court in his/her action on the case may either approve or disapprove each charge and/or specification of the court. If any of the charges or specifications are approved, the GCMCA will not approve any punitive discharge adjudged and may only approve so much of any adjudged sentence to confinement at hard labor or hard labor without confinement as has been served at the time of the action.

10–2. Personal decision

a. Commanders will ensure that a Soldier is not coerced into submitting a request for discharge in lieu of trial by court-martial. The Soldier will be given a reasonable time (not less than 72 hours) to consult with counsel, qualified under UCMJ, Art. 27(b), and to consider submitting such a request for discharge (see para 3–7c).

b. Consulting counsel will advise the Soldier concerning:

- (1) Elements of the offense(s) charged.
- (2) Burden of proof.
- (3) Possible defenses.
- (4) Possible punishments.
- (5) Provisions of this chapter.
- (6) Requirements of volunteerism.
- (7) Type of discharge normally given under the provisions of this chapter.
- (8) Rights regarding the withdrawal of the Soldier's request.
- (9) Loss of veterans' benefits.

(10) Prejudice in civilian life based upon the characterization of discharge. Consulting counsel may advise the Soldier regarding the merits of this separation action and the offense pending against the Soldier.

(11) That pursuant to a delegation of authority under paragraph 1–20k, a request for discharge in lieu of trial by court-martial may be approved by the commander exercising SPCMCA (a lower level of approval than the GCMCA or higher authority), but the authority to disapprove a request for discharge in lieu of trial by court-martial may not be delegated.

c. After receiving counseling, the Soldier may elect to submit a request for discharge in lieu of trial by court-martial (see para 10–2b). The Soldier will sign a written request, certifying that he or she—

- (1) Has been counseled on the rights listed in paragraph 10–2b.
- (2) Understands his or her rights.
- (3) May receive a discharge under other than honorable conditions.
- (4) Understands the adverse nature of such a discharge and the possible consequences.

(5) Understands that limited use evidence may be included in the separation action under this chapter without affecting the characterization of separation that the Soldier may receive.

(6) Understands the elements of the offense(s) charged and that he or she is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorizes the imposition of a punitive discharge (see fig 10–1, para 2).

d. The consulting counsel will sign as a witness, indicating that he or she is a commissioned officer of the JAGC, unless the request is signed by a civilian counsel representing the Soldier.

e. A Soldier may waive consultation with counsel. If the Soldier refuses to consult with counsel, a statement to this effect will be prepared by the counsel and included in the file. The Soldier will also state that the right to consult with counsel was waived. Separation action may then proceed as if the Soldier has consulted with a counsel, or the GCMCA authority may disapprove the discharge request.

10–3. Preparation and forwarding

a. A request for discharge in lieu of trial by court-martial will be submitted in the format shown in figure 10–1.

b. The discharge request will be forwarded through channels to the separation authority specified in paragraph 1–20.

(1) The discharge request must be reviewed by the servicing office of the SJA prior to approval by the separation authority specified in paragraph 1–20.

(2) Commanders through whom the request is forwarded will recommend either approval or disapproval and state the reasons for the recommendation.

(3) If approval is recommended, the type of discharge to be issued will be included in the recommendation.

c. The following data will accompany the request for discharge:

(1) A copy of the court-martial, DD Form 458 (Charge Sheet).

(2) DD Form 2808 and DA Form 3822.

(3) A complete copy of all reports of investigation.

(4) Any statement, documents, or other matter considered by the commanding officer in making his or her recommendation, including any information presented for consideration by the Soldier or consulting counsel.

(5) A statement of any reasonable ground for belief that the Soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

d. When a Soldier is under a suspended sentence of discharge, a copy of the court-martial orders, or a summary of facts that relate to the conduct upon which the request is predicated, will be forwarded.

10–4. Consideration of request

a. Commanders having discharge authority under paragraph 1–20 must be selective in approving requests for discharges in lieu of trial by court-martial. The discharge authority should not be used when the circumstances surrounding an offense warrant a punitive discharge and confinement. Nor should it be used when the facts do not establish substantially serious offense, even though the punishment under the UCMJ may include a bad conduct or dishonorable discharge.

b. Consideration should be given to the Soldier's potential for rehabilitation, and his or her entire record should be reviewed before taking action.

10–5. Withdrawal of request for discharge

Unless the trial results in an acquittal or the sentence does not include a punitive discharge, even though one could have been adjudged by the court, a request for discharge submitted per this chapter may be withdrawn only with the consent of the commander exercising general court-martial jurisdiction (see chap 2, sec III for provisions for completing proceedings initiated before a Soldier departs AWOL). If the sentence does not include a punitive discharge, although one could have been adjudged by the court, a request for discharge submitted per this chapter may be executed only with the consent of the Soldier.

10–6. Medical processing

Refer to requirements in paragraph 1–33.

10–7. Discharge authority

The separation authority will be a commander exercising GCMCA or higher authority (see para 1–20*a*). The separation authority will make this determination in consultation with his or her servicing attorney in the JAGC. The authority

to approve discharges may be delegated to the commander exercising SPCMCA over the Soldier. See paragraphs 1–20c(4) and 1–20k in cases in which all of the following apply to the Soldier:

- a. Has been AWOL for more than 30 days.
- b. Has been dropped from the rolls of his or her unit as absent in desertion.
- c. Has been returned to military control.
- d. Is currently at the PCF.
- e. Is charged only with AWOL for more than 30 days.

10–8. Types of discharge, characterization of service

a. A discharge under other than honorable conditions normally is appropriate for a Soldier who is discharged in lieu of trial by court-martial. However, the separation authority may direct a general discharge if such is merited by the Soldier’s overall record during the current enlistment (see chap 3, sec II).

b. For Soldiers who have completed entry-level status, characterization of service as honorable is not authorized unless the Soldier’s record is otherwise so meritorious that any other characterization clearly would be improper.

c. When characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status, service will be uncharacterized.

10–9. Disposition of supporting documentation

The request for discharge in lieu of trial by court-martial will be filed in the AMHRR or local file, as appropriate, as permanent material and disposed of per AR 600–8–104. Material should include appropriate documentation and the separation authority’s decision (see para 10–3c). Statements by the Soldier or Soldier’s counsel submitted in connection with a request under this chapter are not admissible against a Soldier in a court-martial, except as authorized under Military Rule of Evidence 410, MCM.

10–10. Limited use evidence

a. Due diligence should be exercised to avoid including limited use evidence in a separation action under this chapter, but the inclusion of such evidence will not form the basis for a Soldier to challenge the separation or the characterization of service.

b. If limited use evidence is included in the separation action, the requirement that an honorable discharge be given due to the introduction of limited use evidence does not apply to separations under this chapter.

c. The separation authority will include a statement in the approval of separation under this chapter that the inclusion of any information in the separation packet, which may be considered limited use evidence, was excluded as evidence from and not considered or used against the Soldier on the issue of characterization in accordance with DoDI 1010.01 and AR 600–85.

d. AR 600–85 will be updated in the next revision to mirror this change.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

[office symbol]

(date, YYYYMMDD]

MEMORANDUM FOR (Soldier's name, grade, unit)

SUBJECT: Request for Discharge in Lieu of Trial by Court-martial Under AR 635-200,
(enter appropriate chapter)

1. I hereby voluntarily request discharge in lieu of trial by court-martial under AR 635-200, chapter 10. I understand that I may request discharge in lieu of trial by court-martial because of the following charge(s) that (has) (have) been preferred against me under the Uniform Code of Military Justice, each of which authorize(s) the imposition of a bad conduct or dishonorable discharge:

2. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person. I have been advised of the implications that are attached to it. By submitting this request for discharge, I acknowledge that I understand the elements of the offense(s) charged and I am guilty of the charge(s) against me or of (a) lesser included offense(s) therein contained that also authorize(s) the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service.

3. Prior to completing this form, I was afforded the opportunity to consult with appointed counsel for consultation. (In addition, I have consulted with (military counsel of my own choice who was reasonably available)(civilian counsel retained at no expense to the Government 1) (Although I have been advised to see consulting counsel, I persist willfully in my refusal to see him/her. 2)(I have consulted with counsel for consultation who has fully advised me of the nature of my rights under the Uniform Code of Military Justice, the elements of the offense(s) with which I am charged, any relevant less included offense(s) thereto and the facts that must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty, the possible defenses that appear to be available at this time, and the maximum permissible punishment if charge. 3) (Although he/she has furnished the legal advice, this decision is my own,)(I understand that, pursuant to a delegation of authority per paragraph 1-19) my request for discharge in lieu of trial by court-martial may be approved by the commander exercising special court-martial convening authority (a lower level of approval than the general court-martial convening authority or higher authority), but the authority to disapprove a request for discharge in lieu of trial by court-martial may not be delegated.

Figure 10-1. Sample format for discharge in lieu of trial by court-martial under AR 635-200

(Office Symbol)

SUBJECT: Request for Discharge in Lieu of Trial by Court-martial Under AR 635-200,
(enter appropriate chapter)

4. I understand that if my request for discharge is accepted, I may be discharged under conditions other than honorable. I have been advised and understand the possible effects of an Under Other Than Honorable Conditions Discharge and that as a result of the issuance of such a discharge I will be deprived of many or all Army benefits, that I may be ineligible for many or all benefits administered by the Department of Veterans Affairs, and that I may be deprived of my rights and benefits as a veteran under both Federal and State law. I also understand that I may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Conditions Discharge. I further understand that there is no automatic upgrading or review by any Government agency of a less than honorable discharge and that I must apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my discharge. I realize that the act of consideration by either board does not imply that my discharge will be upgraded.

5. I understand that once my request for discharge is submitted, it may be withdrawn only with consent of the commander exercising general court-martial authority or without that commander's consent in the event trial results in an acquittal or the sentence does not include a punitive discharge even though one could have been adjudged by the court. Further I understand that if I am absent without leave, this request may be processed, and I may be discharged even though I am absent.

6. I have been advised that I may submit any statement I desire in my own behalf, which will accompany my request for discharge. Statements in my own behalf (are) (are not) submitted with this request.

7. I hereby acknowledge receipt of a copy of this request for discharge and of all enclosures submitted herewith.

Encl Listing

[Respondent, name, organization]

Having been advised by me of (the basis for his/her contemplated trial by court-martial and the maximum permissible punishment authorized under the Uniform Code of Military Justice)(the significance of his/her suspended sentence to a bad conduct or dishonorable discharge), of the possible effects of an Under Other Than Honorable Conditions Discharge if this request is approved ; and of the procedures and rights available to him/her, (name of soldier) personally made the choice indicated in the foregoing request for discharge for the good of the Service.

[Counsel, name, grade, branch]

Figure 10-1. Sample format for discharge in lieu of trial by court-martial under AR 635-200—continued

(Office Symbol)

SUBJECT: Request for Discharge in Lieu of Trial by Court-martial Under AR 635-200,
(enter appropriate chapter)

Notes: ¹ To be used when appropriate. Such counseling is not to be used in lieu of consultation with consulting counsel.

² To be used only when a soldier under military control refuses to consult with consulting counsel. (See para 10-2c.)

³ To be used in all cases when a soldier had consulted with consulting counsel.

⁴ To be used when authority to approve a request for discharge in lieu of court martial has been delegated per paragraph 1-191.

Figure 10–1. Sample format for discharge in lieu of trial by court-martial under AR 635–200—continued

Chapter 11 Entry-Level Performance and Conduct

11–1. General

This chapter sets policy and provides guidance for the separation of Soldiers because of unsatisfactory performance and/or conduct while in entry-level status.

11–2. Basis for separation

Separation of a Soldier in entry-level status may be warranted on the grounds of unsatisfactory performance and/or unsatisfactory conduct as evidenced by:

- a. Inability.
- b. Lack of reasonable effort.
- c. Failure to adapt to the military environment.
- d. Minor disciplinary infractions.

11–3. Separation policy

- a. This policy applies to Soldiers who—
 - (1) Enlisted in the RA, ARNG, or USAR.
 - (2) Are in entry-level status, undergoing IET, and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous active duty or IADT or no more than 90 days of Phase II under a split or alternate training option (see the glossary for precise definition of entry-level status).
 - (3) Have demonstrated that they are not qualified for retention. The following conditions are illustrations of conduct and/or performance that disqualify Soldiers for retention:
 - (a) Cannot or will not adapt socially or emotionally to military life.
 - (b) Cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation, or self-discipline.
 - (c) Have demonstrated character and behavior characteristics not compatible with satisfactory continued service.
 - (4) Have failed to respond to counseling (recorded on DA Form 4856).
- b. Enlisted women who become pregnant while still in entry-level status—
 - (1) Will be involuntarily separated under this chapter when the training activity commander with separation authority, in conjunction with the medical officer (obstetrician), determines that she cannot fully participate in the required training for the MOS concerned because of her physical condition.
 - (a) The training commander will furnish the training requirements to the obstetrician.

(b) Soldiers separated for pregnancy that occurred after entry on active duty or IADT are entitled to maternity care in a military medical facility only per AR 40–3.

(2) Will be retained when she can fully participate unless she requests separation under chapter 8 of this regulation.

c. Nothing in this chapter precludes separation under another provision of this regulation when such separation is warranted. However, if separation of a Soldier in entry-level status is warranted by reason of unsatisfactory performance (see chap 13) or misconduct (minor disciplinary infractions (see para 14–12a)), separation processing will be accomplished under this chapter. As an exception, Soldiers with less than 181 days of continuous active service who have completed IET, been awarded an MOS, and been assigned to a follow-on unit for duty will be processed for discharge under the appropriate chapter (see chap 13 or 14 or another appropriate chapter).

11–4. Counseling and rehabilitation requirements

Counseling and rehabilitation requirements are essential when entry-level performance and conduct are the reason for separation. Military service is a calling different from any civilian occupation, and a Soldier should not be separated when this is the sole reason for separation unless efforts at rehabilitation have failed. Before initiating separation action, commanders will ensure that the Soldier receives adequate counseling and rehabilitation (see chap 1, section II).

11–5. Separation authority

Commanders specified in paragraph 1–20 are authorized to order separation. Separation will be accomplished within 3 duty days following approval by the separation authority.

11–6. Type of separation

The criteria in chapter 1, section VII of this regulation, will govern whether the Soldier will be released from active duty or ADT with transfer to the IRR or be discharged. Refer to paragraph 1–12 for additional instructions on ARNGUS and USAR personnel.

11–7. Procedures

The commander will take action as specified in the notification procedure (see chap 2, sec I).

11–8. Description of service

Service will be described as uncharacterized under the provisions of this chapter.

Chapter 12

Retirement for Length of Service

Section I

General

12–1. Purpose

a. This chapter sets policies and procedures for voluntary retirement of Soldiers because of length of service and governs the retirement of Soldiers (RA, ARNGUS, and USAR) who are retiring in their enlisted status.

b. Prior service Soldiers serving on active duty as officers who are not qualified for retirement in their commissioned or warrant officer status may qualify for retirement under this chapter. For procedures, see AR 600–8–24.

12–2. Retirement authority

a. The following individuals are retirement authorities for Soldiers with less than 30 years of service:

(1) CG, HRC may approve, disapprove, or delay the requested retirement date of RA Soldiers and USAR AGR Soldiers in the grade of staff sergeant (promotable) (SSG (P)) and above.

(2) A general officer in command may approve, disapprove, or delay the requested retirement date of active duty Soldiers in the grade of SSG and below. Retirement approval authority, but not disapproval/delay authority, may be delegated to the SPCMCA. SSGs who transferred education benefits will not be approved for a retirement date prior to their active duty service obligation resulting from the transfer. The SPCMCA should return the request without action.

(3) Chief, National Guard Bureau (NGB) may approve, disapprove, or delay the requested retirement date of all ARNGUS Soldiers who are not members of the RA.

b. The individuals in paragraphs 12–2*a*(1) through 12–2*a*(3) are referred to as the “retirement authority” or “commander having retirement authority.”

c. The provisions in paragraph 12–2*a* concerning disapproval or delay of a requested retirement date do not apply to Soldiers denied continued service under RCP policy (see paras 4–3 and 12–8*d*(2)(*d*)).

Section II

Statutory Authority

12–3. General provisions of laws governing retirement

a. Soldiers of the RA must be on active duty when they retire (see 10 USC 7314 and 10 USC 7317). There is no statutory requirement that ARNGUS and USAR Soldiers be on active duty when they retire.

b. Retirement normally will be in the regular or reserve grade the Soldier holds on the date of retirement (see 10 USC 1371).

(1) As an exception, ARNGUS and USAR Soldiers serving on active duty at the time of retirement, under paragraph 12–4, in a grade lower than their highest active duty enlisted grade, who were administratively reduced in grade not as a result of their own misconduct, will retire at the highest enlisted grade in which they served satisfactorily on active duty (see 10 USC 7343).

(2) In accordance with AR 15–80, the Army Grade Determination Review Board will make determination of the highest grade served in satisfactorily.

(3) This provision applies only to ARNGUS and USAR Soldiers retired after 30 September 1996. Refer to paragraph 12–16 for instructions pertaining to former command sergeants major (CSMs) who are serving as sergeants major (SGMs) when they retire. Refer to paragraph 12–17 for instructions pertaining to former 1SGs who are serving as master sergeants (MSGs) when they retire.

c. Years of service for retirement are computed by adding all active federal service in the Armed Forces and service computed under 10 USC 7325.

d. For the RA, ARNGUS, and USAR Soldiers retiring from an active duty status, the date of retirement is the first day of the month following the month in which the Soldier is released from active duty. For the ARNGUS and USAR Soldiers not on active duty, the date of retirement is the first day of the month following the month in which retirement orders are issued.

12–4. Twenty-year retirement law (10 USC 7314)

a. A Soldier who has completed 20 but less than 30 years of active federal service in the U.S. Armed Forces may be retired at his or her request (see para 12–14*f*). The Soldier must have completed all required service obligations at the time of retirement.

b. A Soldier who holds a current commission in the USAR will be transferred to the Retired Reserve in the status he or she elects, if otherwise eligible.

(1) Dual status in the USAR as a commissioned officer and as an enlisted Soldier is not authorized. When a Soldier retires in the elected status, the status may not be changed.

(2) Transfer to the Retired Reserve to complete obligated service in an enlisted status vacates commissioned status in the USAR.

c. A Soldier who retires under 10 USC 7314 and has been awarded the Medal of Honor, Distinguished Service Cross, or Navy Cross for extraordinary heroism will have his or her retired pay increased 10 percent. However, the total retired pay (including the increase) may not exceed 75 percent of the basic pay upon which computed.

(1) A Soldier who is retired for physical disability under 10 USC 1201 or 10 USC 1202 and is otherwise eligible for retirement under 10 USC 7314 is entitled to the 10 percent increase in retired pay based on this criteria.

(2) A Soldier who has been awarded the Distinguished Flying Cross, the Soldier’s Medal, or equivalent decoration from another service for noncombat related heroism may be credited by SECARMY with extraordinary heroism only if it is determined that the heroism displayed was equivalent to that required for the award of the Distinguished Service Cross.

(3) In all cases involving extraordinary heroism, a copy of the order that awards the decoration and the separate citation if not contained in the order will be submitted to Commander, U.S. Army Human Resources Command (AHRC–PDP–A), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204, for verification and determination. Previous letters of determination more than 2 years old will be submitted for confirmation and will be accompanied by the order awarding the decoration.

d. A Soldier referred to the DES may request and be approved for length of service retirement. The date of the length of service retirement will not exceed the date of the disability disposition.

12-5. Thirty year retirement law (10 USC 7317)

An RA Soldier who has completed at least 30 years of active federal service in the U.S. Armed Forces will, upon request, be placed on the retired list.

12-6. Advancement on the retired list (10 USC 7344)

a. Active duty means full-time duty in the active military service of the United States. It includes full-time training duty and annual training duty but does not include full-time National Guard duty (see 10 USC 101). Active service means service on active duty or full-time National Guard duty (see 10 USC 101).

b. Retired Soldiers who have less than 30 years of active service, whose active service plus service on the retired list total 30 years, are entitled to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily or, in the case of ARNGUS Soldiers, in which they served on full-time duty satisfactorily (see 10 USC 7344).

(1) This provision applies to warrant officers, RA enlisted Soldiers, and Reserve enlisted Soldiers who, at the time of retirement, are on active duty (or full-time National Guard duty).

(2) When these Soldiers complete 30 years of satisfactory service, their military personnel records are reviewed to determine whether service in the higher grade was satisfactory (see para 12-6*d*). Soldiers advanced to a higher grade will be notified by the CG, HRC.

(a) For advancement to a commissioned officer grade, the Soldier must have served satisfactorily on active duty in this grade for not less than 6 months (see 10 USC 1370).

(b) For advancement to a warrant officer grade, the Soldier must have served on active duty in this grade for at least 31 days (see 10 USC 1371).

c. Soldiers retired after 30 or more years of active service are entitled to be advanced on the retired list, at retirement, to the highest grade in which they served on active duty satisfactorily or, in the case of ARNGUS Soldiers, in which they served on full-time duty satisfactorily. The requirements of paragraphs 12-6*b*(1) and 12-6*b*(2) also apply.

d. Grade determinations for purposes of advancement on the retired list are made by the Army Grade Determination Review Board on behalf of SECARMY (see AR 15-80).

e. Cases of Soldiers who are eligible for advancement on the retired list at retirement will be sent to Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204 (email usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil). Cases should be sent for determination at least 75 days before requested retirement date. These will include:

(1) Cases covered in paragraph 12-6*c*.

(2) Cases of Soldiers retiring in an enlisted status who have served on active duty in any Armed Force in an enlisted grade higher than their current grade.

f. Soldiers advanced to a higher commissioned grade may be restored to their former enlisted status on the retired list (see 10 USC 7345). These Soldiers must apply to SECARMY within 3 months of advancement.

g. For personal reasons, Soldiers may not want to advance to a higher grade.

(1) Before such advancement, a Soldier may apply for a specified period of deferment and for placement or retention on the retired list in his or her current status. The application for deferment will include the following statement over the Soldier's personal signature: "I understand that subsequent advancement will not be retroactive and that increased pay or other entitlements accruing there from will be based on the actual date of advancement."

(2) Soldiers who are retiring after completion of 30 years active federal service who are eligible for advancement on the retired list to a higher grade may request deferment. The request should be submitted through channels to the retirement authority. That commander must receive the request at least 30 days before the requested retirement date.

(3) Retired Soldiers may apply for deferment to the Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204. That headquarters must receive the application at least 30 days before the Soldier completes 30 years' service (active federal service plus service on the retired list).

h. Paragraphs 12-16 and 12-17 explain the eligibility of former CSMs and former 1SGs for placement on the retired list in those grade titles. This paragraph does not apply in such cases.

Section III

Requirements and Procedures

12-7. Eligibility

a. Soldiers who have completed 20 but less than 30 years of active federal service and who have completed all required service obligations are eligible, but not entitled, to retire upon request. Except as indicated in chapter 16 of this regulation, unless restricted in this section, Soldiers who have completed 19 or more years of active federal service may apply for retirement. The request must be made within 12 months of the requested retirement date except as indicated in chapter 1916.

b. Soldiers must complete at least 20 years of active federal service and all service obligations (see para 12-8) by the requested retirement date. (See para 12-12 concerning applying for retirement.)

c. Soldiers who are under suspension of favorable personnel action under AR 600-8-2 are not precluded from submitting DA Form 2339. Requests for retirement will be considered on a case-by-case basis by the local retirement approval authority.

12-8. Service obligations

a. *General.* This paragraph applies to Soldiers retiring under 10 USC 7314, including Soldiers who have completed 20, but less than 30, years of active federal service.

b. *Tours.* Soldiers will be required to serve as indicated below:

(1) *Continental United States.* Soldiers will serve 2 years in their current assignment or at their current duty station, whichever occurs first, beginning when the Soldier reports for duty. This does not include Soldiers who have returned from overseas on a PCS. These Soldiers will serve 1 year at their current duty station beginning when the Soldier reports for duty.

(2) *Overseas.* Refer to AR 614-30.

(a) Soldiers accompanied by Family members who traveled at Government expense must complete the prescribed "with Family members" tour or at least 12 months from the date of the arrival of Family members, whichever is longer.

(b) Unaccompanied Soldiers must complete the prescribed "all others" tour.

(c) Soldiers who have no Family members must complete the tour prescribed for the country in which they are serving.

(3) *Other.* Personnel who have incurred a service obligation and who have reached the RCP for their grade, will be retired on the first day of the month following the month the RCP is met.

c. *Schools.* Soldiers who have attended military or civilian courses of instruction must complete any service obligation voluntarily incurred because of such attendance.

d. *Promotions.* Soldiers who have an approved retirement are in a nonpromotable status. They will not be promoted unless a request for withdrawal of their DA Form 2339 has been approved (see para 12-15).

(1) Soldiers who are promoted to the grade of SFC, MSG/1SG, or SGM/command sergeant major (CSM) must meet the established promotion service obligation in accordance with AR 600-8-19.

(2) The following are excluded from the promotion service obligation:

(a) Soldiers who have completed 30 or more years of active federal service on their requested retirement date.

(b) Soldiers who are already eligible through prior service for a higher grade at the time of retirement.

(c) Soldiers who are 60 years of age or older.

(d) Soldiers who are eligible for retirement based on RCP for the recommended grade (see AR 601-280).

(3) A promoted individual may not be administratively reduced to terminate a promotion service obligation (see AR 600-8-19).

e. *Current expiration term of service prior to completion of service.* Soldiers whose current ETS or RCP is prior to completion of service obligation will be counseled per paragraph 4-3.

12-9. Retirement in lieu of permanent change of station

a. Soldiers having 19 years or more of active federal service when notified of PCS may request a retirement date.

(1) If the Soldier elects to retire, a DA Form 2339 must be submitted within 30 days of receipt of official alert notification of PCS. DA Form 2339 received by HRC after 30 days will not normally be favorably considered and the Soldier will be expected to comply with the PCS order.

(2) The retirement date will not be later than 12 months from the date of notification, or the first day of the month following the month in which 20 years of active federal service is completed, whichever is later. All service obligations resulting from promotion, training, or similar action must be fulfilled no later than the approved retirement date.

(a) DA Form 2339 will be submitted through command channels to Commander, U.S. Army Human Resources Command (AHRC–EPF–M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204. This action must be submitted within 30 days of official notification of PCS.

(b) Soldiers will have at least 20 years active federal service at ETS.

b. When a Soldier cannot fulfill the service obligations by the requested retirement date, the retirement authority will return the Soldier's DA Form 2339.

c. Applications for retirement in lieu of PCS that are approved will not be withdrawn, nor will the retirement date be changed. The Soldier must retire on the approved retirement date.

d. The retirement authority will set up procedures to ensure written acknowledgment by the Soldier of the reassignment notification.

(1) Written acknowledgment will be used as confirmation of receipt of assignment instructions.

(2) Soldiers in grades SGM/CSM and MSG/1SG (P), as an exception to AR 614–200, will be officially notified telephonically of PCS. If the Soldier elects to retire in lieu of PCS, the provisions of paragraph 12–9a are applicable.

e. Assignment instructions or orders will be deleted only after request for retirement is approved.

f. Soldiers who request retirement in lieu of PCS will normally remain at the same duty station in an authorized position. Utilization will be in the best interest of the Army. A move may be necessary for such reasons as deletion of position, reorganization, or disciplinary problems.

(1) Soldiers will not be slotted below the grade currently held.

(2) To facilitate proper utilization, Soldiers may be reassigned within the installation. Where this is not possible, Soldiers will be reassigned to the nearest military installation where they can be used.

(3) Soldiers will not be reassigned solely to move them to the installation nearest their requested place of retirement. Soldiers moved for the convenience of the Government under these conditions will not be required to complete a 1 year CONUS service obligation.

12–10. Loss of Headquarters, Department of the Army centralized promotion list standing upon approval of retirement

a. All NCOs in grades of SSG through MSG/1SG who are currently on a DA centralized promotion list will lose promotion list standing upon approval of a retirement. Their names will be administratively removed from a promotion list, and they will retire in the grade currently held.

b. In the event that a Soldier in this situation has his or her retirement withdrawn, current promotion list status will not be regained. If eligible, the Soldier will be considered for promotion by the next regularly scheduled promotion board.

c. A SGM who becomes a CSM designee (CSM (D)) will lose such designation if he or she receives an approved retirement.

12–11. Waivers

a. Exceptions to service obligations may be granted when the best interest of the Service is involved or when substantial hardship exists or would result if the Soldier is not retired (see paras 12–7 and 12–8). Substantial hardship is a situation or circumstance that imposes undue suffering on the Soldier or the immediate Family. Requests for exception to service obligation must be submitted by the Soldier only. The request must be fully defined and documented.

b. Soldiers who are selected for attendance at the Sergeants Major Academy and complete the letter of acceptance incur a service obligation to attend the academy. Requests for exception to this obligation must be requested by the Soldier with full justification and forwarded through command channels as indicated in paragraph 12–11c.

c. Requests for waivers will be forwarded through the Soldier's commander to Commander, U.S. Army Human Resources Command (AHRC–EPF–M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 or via email to usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil. Attach DA Form 2339 with sections I and II completed and signed per paragraph 12–13. Commanders will comment on the justification submitted and make appropriate recommendation.

12–12. Applying for retirement

a. Submit requests for retirement on DA Form 2339 through the chain of command to the appropriate retirement authority listed in paragraph 12–2 (see para 12–13). The retirement authority will notify the Soldier in writing of the effective date of the retirement, if approved.

b. Before applying for retirement, the Soldier should be firm in his or her decision to retire on a certain date (see para 12–15).

c. The retirement authority is authorized to set a minimum time for submission of the DA Form 2339. Soldiers' retirement applications will be submitted at least 9 months before the retirement date.

d. Personnel officers will—

- (1) Require each Soldier who wants to apply for retirement to read this chapter.
- (2) Ensure that each applicant understands section V of this chapter, including the provisions that the Soldier will not be held on active duty beyond the requested retirement date to complete a medical examination.

12–13. Preparation of DA Form 2339

Each Soldier requesting retirement will, with the help of the personnel officer, complete section I, DA Form 2339, including date and signature. DA Form 2339 not including this information is invalid. Each item will be completed in full. “Not applicable” or “none” will be entered where appropriate. When a waiver to a service obligation is requested, justification will be included as an enclosure.

a. The officer having custody of the applicant's personnel records will assist the Soldier in preparing the DA Form 2339. Special attention will be given to items 4, 6, 14, and 19.

- (1) *Item 4.* Enter the first day of desired retirement month, not the last day of the preceding month.
- (2) *Item 6.* Enter the highest rank (permanent or temporary) in which the Soldier served on active duty and the branch of Armed Forces in which served.

(3) *Item 14.*

(a) Ensure that all service claimed is correct. A Soldier must have at least 20 years of creditable active federal service to be eligible for retirement (see chap 12, sec IV).

(b) Enter all uninterrupted service on one line (such as RA enlisted service with no breaks between enlistments or continuous active federal service as a commissioned officer, regardless of grade).

(4) *Item 19.* If Soldier elects to be processed for retirement at a location of choice TC or TA, enter the complete designation and location of such TC or TA (for example, U.S. Army Transition Center, Fort Sill, OK) (see AR 635–8). The Soldier must check the appropriate election and sign his or her name. This does not apply to Soldiers not on active duty.

b. The personnel officer will complete section II of DA Form 2339. Each item will be completed in full.

(1) *Item 21.* Enter the complete designation and location of the authorized TC or TA where the Soldier will be processed for retirement (see AR 635–8).

(2) *Item 27.* Also enter type tour “all other” or “with Family members” as applicable and date eligible for return from overseas.

(3) *Item 28.* Will be completed only when Soldier elects retirement in lieu of PCS. Enter the date Soldier was notified of alert for PCS. When applicable, enter date of DA Form 4991 (Declination of Continued Service Statement) and include as enclosure to DA Form 2339.

(4) *Item 30.* Require the applicant to sign all copies.

(5) *Item 31.* Enter the statements and information required.

(a) If the DA Form 2339 is being submitted per paragraph 12–9, enter the following statement: “Approved for retirement in lieu of PCS.” This statement will be typed on all copies of the DA Form 2339 and signed by the retirement authority or the designated representative.

(b) If the Soldier will be taking transition leave in conjunction with retirement, enter the following statement: “(rank) (name) has requested and had approved days of transition leave (days delay en route chargeable as leave) to be taken in conjunction with the requested retirement action. This leave will begin (date) and end on (date).”

(c) If the Soldier currently is serving as a SGM but formerly served as CSM, enter whichever of the following statements is applicable (see para 12–16): “SGM (name) served satisfactorily as CSM, from (date) to (date). He or she was released from the CSM Program solely because of assignment-limiting physical condition that was incurred in line of duty,” or “SGM (name) served as CSM from (date) to (date). He or she (was released from the CSM Program due to inadequate performance of duty) or (voluntarily withdrew from the CSM Program for reasons other than an assignment-limiting physical condition that was incurred in line of duty).”

(d) If Soldier is currently serving in the grade of MSG but formerly served as 1SG, E–8, enter the following statement (see para 12–17): “MSG (name) served satisfactorily as 1SG from (date) to (date).”

c. Copies of the signed DA Form 2339 will be forwarded as follows:

(1) The personnel officer will send a signed copy of the DA Form 2339, as soon as sections I and II are completed, to the servicing military personnel detachment Retirement Service Office.

(2) Soldiers of the USAR on active duty will submit a signed copy of the DA Form 2339 to servicing Personnel Center.

(3) ARNGUS Soldiers on active duty will submit a signed copy of the DA Form 2339 to the SAG.

d. The personnel officer will verify the Soldier's service (see para 12–28) and that actions related to increased retired pay for extraordinary heroism have been accomplished (see para 12–4c).

e. The personnel officer will ensure that the Soldier's enlistment does not expire before the requested retirement date. If the enlistment will expire before requested date of, or eligibility for, voluntary retirement, the retirement approval authority may extend it through the last day of the month preceding the requested retirement date. Enlistment will not be extended more than 12 months (see AR 601–280). For example—

(1) Soldiers who have reached retirement eligibility (20 years of active federal service) may be extended up to 12 months if they qualify for such extension (see AR 601–280).

(2) Soldiers who have reached retirement eligibility, but are not qualified for extension under AR 601–280, may be extended through the last day of the month during which ETS occurs or RCP is reached. No DA Form 1695 (Oath of Extension of Enlistment) is required for this extension. The retirement order will serve as documentary evidence of the approved extension.

(3) Soldiers who at ETS or RCP will have completed 18 years but less than 20 years of active federal service will be extended to reach retirement eligibility, unless lawfully discharged. RC Soldiers serving on active duty, except ADT, who at ETS or RCP will have completed 18 but less than 20 years of creditable service for nonregular retirement, may also be extended to reach nonregular retirement eligibility. Soldiers who exceed RCP as a result of reduction in grade must retire or separate not earlier than 90 days or later than 180 days after the effective date of the reduction in grade (see AR 601–280 for exceptions). The personnel officer will send the DA Form 2339 to the retirement authority as soon as section II is completed and signed.

f. After retirement orders are issued, the personnel officer will notify the retirement authority and HQDA if a waiver has been granted. The officer will get the decision of that commander or HQDA either to revoke the orders or to let them stand. The officer will notify the Soldier of the decision before the effective date of retirement.

12–14. Responsibility of retirement authority

Commanders specified in paragraph 12–2 will ensure that—

a. No Soldier is retired who has not completed at least 20 years of active federal service that is creditable for retirement (see chap 12, sec IV).

b. Soldiers who submit a DA Form 2339 in lieu of PCS are not permitted to withdraw their applications or change the requested retirement date.

c. Retirement orders are issued as far in advance of the retirement date as possible. This gives the Soldier ample time to arrange for movement of Family members and transportation of household goods.

d. Paragraphs 12–13b(5)(a) and (c) are complied with.

e. CG, HRC (AHRC–EPF–M), SAG, and HRC (TARP–PAR–P) are notified of any change in the Soldier's status that would prevent retirement.

f. All requests for retirement of eligible Soldiers with less than 30 years of service are considered on their individual merits. Such requests normally should be approved. Requests, however, may be disapproved, or the required date of retirement delayed, based on the best interest of the Army.

12–15. Voluntary and involuntary requests for withdrawal of DA Form 2339 or change in retirement date

a. An approved DA Form 2339 for retirement may not be withdrawn by the Soldier unless it is established that retention on active duty will prevent an extreme hardship to the Soldier or his or her immediate Family. The hardship must have been unforeseen at the time of application. A DA Form 2339 may not be withdrawn after travel has been performed for retirement.

b. The retirement date will not be changed unless, after the DA Form 2339 is submitted, events that justify a change in the retirement occur that would cause an extreme hardship to the Soldier or immediate Family.

c. A Soldier's voluntary request for withdrawal of a DA Form 2339 or change in retirement date must be fully documented.

(1) The DA Form 4187 will be forwarded with one copy of the DA Form 2339, through channels, to reach the retirement authority at least 30 days before the previously requested retirement date. The retirement approval authority will disapprove those requests that clearly do not meet established criteria or are not fully documented.

(2) When the retirement authority recommends approval, the request will be forwarded to reach CG, HRC (AHRC–EPF–M) at least 20 days before the previously requested retirement date. The retirement authority will inform the unit commander of this referral.

(3) Approval or disapproval action should be received by the unit commander by the third day before the date that applies below. If not received, the unit commander will query the retirement authority or HQDA (AHRC–EPR–F) by telephone (even when communications condition MINIMIZE is in effect):

- (a) Date Soldier is to depart overseas command for return to CONUS or area of residence.
- (b) Date Soldier is to depart duty station for authorized or location of choice transfer activity.
- (c) Previously requested retirement date, when the retirement authority has approved a request for retirement in the overseas command.
- d. Requests for exception to policy not supported by required documentation, that is, DA Form 2339 or DA Form 4991, will be returned without action.
- e. In cases not involving a Soldier's voluntary request based on hardship or those involving court-martial, administrative discharge, or physical disability, an approved retirement may be only revoked or the effective date delayed, based on the best interest of the Army. In such situations, requests for revocation or delay may be submitted on a case-by-case basis through the CG, HRC to the DCS, G–1. Requests must be fully justified.
- f. Upon the notification of a circumstance requiring flagging a Soldier per AR 600–8–2, to include, but not limited to, initiation of a military or civilian investigation, preferral of court-martial charges, initiation of administrative discharge, or physical disability, CG, HRC may immediately suspend an approved retirement if prior to the effective retirement date. The unit commander will forward a DA Form 4187 requesting suspension, with all supporting documentation, through channels, to reach the CG, HRC as soon as possible.

12–16. Grade title on retired list of former command sergeants major

- a. NCOs holding the grade title of SGM at retirement will be placed on the retired list in the grade title of CSM if their records reflect honorable service as CSM and they were released from the CSM Program, voluntarily or involuntarily, because of an assignment-limiting medical or physical condition, or to serve as SGM in any duty assignment.
- b. NCOs released from the CSM Program for the following reasons will not be placed on the retired list in the grade title of CSM:
 - (1) Unsatisfactory conduct or inadequate performance of duty as CSM.
 - (2) Holding a pay grade below E–9 at the time of retirement.
- c. If information in field personnel or medical records is insufficient to determine a Soldier's eligibility for placement on the retired list in the grade title of CSM, request for such determination will be made to Commander, U.S. Army Human Resources Command (AHRC–EPS–S), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204.
- d. Retirement orders on eligible Soldiers will reflect active duty as SGM and placement on the retired list as CSM.

12–17. Grade title on retired list of former first sergeants

NCOs holding the grade of MSG at retirement, whose records show successful service as 1SG, will be placed on the retired list in the grade title 1SG. The following are the only criteria for such placement on the retired list:

- a. The Soldier must be serving in and retiring in the grade of MSG.
- b. The Soldier must have served as 1SG in grade of MSG. No minimum time period is specified. Service in the duty as an acting 1SG while in the grade of SFC does not meet this requirement.

12–18. Retirement orders

a. The retirement authority, or the agency that normally issues orders on personnel of the Soldier's unit of assignment, may issue retirement orders. When HRC is the retirement authority, retirement orders will be issued by the normal orders issuing agency for the Soldier's unit of assignment. The following standard orders formats contained in AR 600–8–105 will be used to retire Soldiers for length of service:

- (1) Format 602. To announce the retirement under 10 USC 7317 of Soldiers with 30 or more years of active federal service.
- (2) Format 600. To announce the retirement under 10 USC 7314 of Soldiers with 20 or more, but less than 30, years of active federal service.
- b. Retirement orders direct relief from active duty on the last day of the month and placement on the retired list on the first day of the following month. Relief from active duty and retirement occur on the dates specified in the orders unless the orders are amended or revoked by proper authority. If the orders are amended or revoked, this must take place before 2400 hours (local time) on the date of relief from active duty.
- c. Once an order has been issued, it will not be amended or revoked except for extreme compassionate reasons, the best interest of the Army, or under the circumstances in paragraph 12–15.

(1) Orders may not be modified, amended, or revoked on or after the effective date of retirement in the absence of fraud, mistake of law, mathematical miscalculation, or substantial new evidence affecting the Soldier's basic eligibility

for retirement. When it appears that retirement orders require modification, amendment, or revocation after the effective date of retirement, the case will be sent to the SECARMY or the Secretary's approved designee as announced in updated memoranda, per the instructions in paragraph 1-15i(1).

(2) The following cases will be promptly forwarded to Commander, U.S. Army Human Resources Command (AHRC-EPF-M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204 with full substantiating information:

- (a) When circumstances require that retirement orders be revoked before the effective date of retirement.
- (b) When circumstances require that retirement orders be amended before the effective date of retirement, and the Soldier has been reassigned outside the jurisdiction of the retirement authority who issued the orders.
- d. The Soldier must have the retirement orders or copy of verification message containing the retirement order number. The Soldier's AMHRR or local file, as appropriate, must contain copies of the retirement orders before his or her departure from the overseas command or CONUS station of assignment for retirement processing.

12-19. Date of retirement

Soldiers retiring for length of service will be placed on the retired list only on the first day of a month (see 5 USC 8301), with REFRAD on the last day of the preceding month. Soldiers approved for retirement may be retired on the date requested or on the first day of any month thereafter, provided they are medically and otherwise qualified for retirement.

12-20. Place of retirement

a. Soldiers are required to be processed for retirement at the authorized and directed TC specified in AR 635-8. Exceptions are provided in paragraphs 12-20b and 12-20c.

b. In accordance with AR 635-8, a Soldier may elect to be processed for retirement at a location of choice TC. If a Soldier later wishes to retire at the authorized and directed place of retirement, he or she will submit justification for this change to the retirement authority.

(1) The Soldier will submit the justification before leaving the unit of assignment. If retirement orders have been issued and the Soldier's retirement authority approves the request, that commander will immediately advise the TC chiefs or commanders at the location of choice and the authorized and directed TC of this change. The retirement orders need not be amended.

(2) The Soldier who has elected to be processed for retirement at a location of choice may later decide to be processed from the authorized and directed STP or station.

(3) A change from one location of personal choice to another location of choice is not authorized.

c. See AR 600-8-10 for guidance on being absent from the home station in a leave status on the date of retirement.

d. A Soldier serving on foreign service who wants to retire in the overseas area of assignment (subject to approval of overseas commander or other commander if overseas separation authority is delegated as provided in paragraph 1-42e) must mark this on the DA Form 2339. If required, the retiree should secure a passport from the nearest United States Consulate.

12-21. Certificates

The TC or TA will prepare and issue the following certificates per AR 635-8 to each Soldier upon retirement. These certificates are sensitive items and will be transmitted, stored, and destroyed in a manner that will prevent their unauthorized use. The certificates are available through normal publications supply channels. Requisitions will be honored only from TC listed in AR 635-8 and from approval authorities shown in paragraph 12-2.

a. DD Form 363 (Certificate of Retirement).

b. DA Form 3891 (Army Spouse Certificate of Appreciation).

c. DD Form 2542 (Certificate of Appreciation for Service in the Armed Forces of the United States).

12-22. Career recognition

Appropriate ceremonies will be set up per AR 600-25. When the senior or duty station commander decides that the retiring Soldier's career merits special recognition, the commander may issue an additional extended retirement order. This citation should have the same number on it as the retirement order plus the prefix "EXT" and should highlight key career events. The information can be gathered from field documents and by interview. This announcement may be placed on bulletin boards, included in the retiree's file, read at ceremonies, and presented to the Soldier in appropriate binder.

12-23. Disposition of retirement papers

One copy of the retirement orders (including any amendments for revocations) will be placed in the AMHRR along with the following essential papers:

- a. The original DA Form 2339.
- b. DD Form 2808.
- c. Verification of service, if any obtained.
- d. Determinations of extraordinary heroism.
- e. Grade determinations for concurrent advancement on the retired list.
- f. Approved or disapproved requests for waiver or requests for exception to service obligations.
- g. Approval or disapproval action on requests for withdrawal of DA Form 2339 or change in retirement date.
- h. Determinations concerning grade title of former CSMs.
- i. Other essential papers showing actions and reasons for actions taken.

12-24. References

Additional information concerning the following retirement concerns may be found in the following publications:

- a. Decorations and Awards, see AR 600-8-22.
- b. Identification cards, tags, and badges, see AR 600-8-14/AFI 36-3026_IP, Vol. 1/BUPERSINST 1750.10D/MCO 5512.11E/COMDTINST M5512.1B/NOAA Corps Directives, Chap 1, Part 5/Commissioned Corps Manual 29.2; Instructions 1 and 2.
- c. Preparation of DD Form 214, see AR 635-8.
- d. Pre-retirement leave, see AR 600-8-10.
- e. Records disposition, see AR 635-8.
- f. Retirement ceremony, see AR 600-25.
- g. Retirement processing, see AR 635-8.
- h. Selection of home, see Joint Travel Regulations (JTR).
- i. Shipment of household goods, see JTR.
- j. Transportation of Family members, see JTR.

Section IV

Computation of Service

12-25. Service creditable for retirement

All years of active service are creditable for retirement (see 10 USC 7325). All service below is creditable for retirement under this chapter and is creditable for basic pay purposes. For other service creditable for basic pay, see DoD 7000.14-R, Volume 7A. The following service is creditable for retirement if performed as a commissioned officer, commissioned warrant officer, warrant officer, Army field clerk, flight officer, or Soldier, unless otherwise specified:

- a. *Army*.
 - (1) U.S. Army (regular).
 - (2) Women's Army Corps.
 - (3) Active federal service in the:
 - (a) RA Reserve.
 - (b) Army of the United States.
 - (c) USAR.
 - (d) ARNG.
 - (e) ARNGUS.
 - (4) Cadet, U.S. Military Academy.
 - (5) Fraudulent enlistment, if enlistment was not voided.
- b. *Navy*.
 - (1) U.S. Navy (regular).
 - (2) Active federal service in the U.S. Naval Reserve.
- c. *Air Force*.
 - (1) U.S. Air Force (Regular).
 - (2) Active federal service in the:
 - (a) Air Force of the United States.
 - (b) U.S. Air Force Reserve.

- (c) Air National Guard.
- (d) Air National Guard of the United States.
- (3) Aviation Cadet.
- (4) Cadet, U.S. Air Force Academy.
- d. *Marine Corps*.
- (1) Marine Corps (regular).
- (2) Active federal service in the U.S. Marine Corps Reserve.
- e. *Coast Guard*.
- (1) U.S. Coast Guard (Regular).
- (2) Active federal service in the U.S. Coast Guard Reserve.
- (3) Midshipman, U.S. Coast Guard Academy.
- f. *Public Health Service*. Active federal service as commissioned officer in the Reserve Corps of the Public Health Service.
- g. *Minority service*. All service performed under an enlistment or induction entered into before reaching the age prescribed by law for that enlistment or induction when such service is otherwise creditable.

12–26. Periods not creditable for retirement

The following periods are not creditable for retirement under this chapter.

- a. All time required to be made good (see 10 USC 972 and para 1–22).
- b. Periods of service voided by the Government other than those voided because of minority age.
- c. Time in a nonpay (noncasualty) status under 37 USC 552.
- d. Service in an RC not on:
 - (1) Active duty.
 - (2) ADT.
 - (3) Other full-time training duty.

12–27. Verification of service

a. Each Soldier of the RA will be interviewed by the officer having custody of the Soldier's records when he or she completes 18 years of service for basic pay. The interview will determine if the Soldier has had service (active federal service or inactive service in any branch of the Armed Forces) in addition to that shown in the AMHRR (or local file, as appropriate) or personal financial records (PFR). Further verification is not required for Soldiers whose only claimed service is Army service that is clearly substantiated in their AMHRR (or local file, as appropriate), or PFR.

b. Army service claimed by the Soldier that is not clearly substantiated in his or her AMHRR or PFR will be verified as follows:

- (1) Claimed National Guard service will be verified with the adjutant general of the state or territory.
- (2) If breaks in the applicant's Army service or periods of prior Army service have been previously verified, one copy of DA Form 2339 will be submitted to Commander, Army Personnel Records Division (AHRC–PDR–V), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204, requesting verification. Inclusive dates must be furnished for all active and inactive federal service claimed.

c. Other service claimed by the applicant will be verified by certified statements of service and other official statements furnished by the offices listed below. Statements will contain all dates of active duty, ADT or other full-time training duty, and all time lost. The original or certified copies will be attached as enclosures to DA Form 2339.

(1) *Navy, Air Force, Marine Corps, or Coast Guard*. General Services Administration, National Personnel Records Center, 1 Archives Drive, St. Louis, MO 63138–5038.

(2) *National Guard*. Adjutant general of the state concerned.

d. The signature of the commander or personnel officer at the close of DA Form 2339, section II, certifies that the service claimed by the Soldier in DA Form 2339, items 14 through 18, is correct. Exceptions are indicated in item 25 or 31.

Section V

Medical Examination

12–28. General

- a.* RA Soldiers, including Army Reserve and ARNGUS Soldiers, retiring after more than 20 years of active duty are required to undergo a medical examination. The examination will record the Soldier's state of health and protect the interest of the Soldier and the Government.
- b.* Examination will be accomplished not earlier than 4 months prior to the anticipated date of commencement of transition leave and not later than 1 month before the scheduled date of retirement.
- c.* Medical examinations will be conducted as prescribed by AR 40–501.
- d.* The immediate commander of each Soldier requesting retirement will ensure that medical examination procedures are followed per AR 40–501.

12–29. Hospitalization/physical evaluation board proceedings

- a.* In addition to guidance contained in paragraph 1–25*b*, if a Soldier who has requested retirement or has an approved retirement becomes hospitalized or has an identified medical problem which might result in his or her referral to a PEB, the unit commander will submit notification through the chain of command to CG, HRC per paragraph 1–15*i*(3). The notification should be based on consultation with MTF personnel, or a senior medical officer who has detailed knowledge of medical fitness and unfitness standards, disposition of patients, and disability separation processing. In the case of HQDA approved retirements, the notification should request that the Soldier's retirement orders be suspended pending completion of the DES process.
- b.* When the outcome of the DES evaluation is a finding of fit, the Soldier's retirement date should be the first day of the month following the month of the finding. If found unfit, the retirement date will be no later than 90 days subject to approved permissive TDY/leave.
- c.* If the PEB is not necessary, but additional medical care is, the retirement will be processed as a nondisability retirement. Continuing medical problems will be treated up to and after the retirement date. Retirement dates will not be changed to continue medical treatment that will extend past the approved retirement date.
- d.* If referral to a PEB results, approved retirement dates will not be changed until approved by CG, HRC (AHRC–EPF–M).

Chapter 13

Separation for Unsatisfactory Performance

Section I

General

13–1. Policy

A Soldier may be separated when it is determined that he or she is unqualified for further military service because of unsatisfactory performance (see chap 1, sec II). This reason will not be used if the Soldier is in entry-level status, except as provided in paragraph 11–3*c*.

13–2. Criteria

- a.* Commanders may initiate separation for a Soldier for unsatisfactory performance when the three following conditions are met:
 - (1) The Soldier's performance has been unsatisfactory.
 - (2) After sufficient counseling and rehabilitative efforts have been made, the Soldier's performance continues to be unsatisfactory.
 - (3) The Soldier's performance and potential indicate that he or she will not develop sufficiently to become a fully satisfactory Soldier.
- b.* Commanders will initiate separation for unsatisfactory performance for Soldiers who are eliminated for cause from a Noncommissioned Officer Education System (NCOES) course. Commanders have the discretion to bar Soldiers from reenlistment in lieu of initiation of separation for these Soldiers per AR 601–280 or AR 140–111.
- c.* Commanders will initiate separation for unsatisfactory performance when the Soldier fails two consecutive record APFTs under AR 350–1. The APFT failures must be within the timeline set forth in AR 350–1. The time a Soldier is on a temporary medial profile, which prohibits taking an APFT, does not count towards the timeline prescribed in

AR 350–1. Commanders have the discretion to bar Soldiers from reenlistment in lieu of initiation of separation per AR 601–280 or AR 140–111.

13–3. Separation authority

The commanders specified in paragraph 1–20 are authorized to take final action in cases processed under this chapter.

13–4. Counseling and rehabilitation requirements

Before initiating separation action against a Soldier, commanders will ensure that the Soldier has received adequate counseling and rehabilitation. Paragraph 1–17 prescribes the counseling and rehabilitation requirements.

Section II

Procedures

13–5. Commanding officer’s report

When the immediate commander determines that separation for unsatisfactory performance is in the best interest of the Service, he or she will take action specified in the notification procedure (see chap 2 and fig 2–4), and will report the fact by memorandum to the separation authority specified in paragraph 1–20 through the intermediate commander (see fig 2–5).

13–6. Action by the separation authority

On receiving a recommendation for separation for unsatisfactory performance, the separation authority will take one of the following actions (see para 1–20):

- a.* Disapprove the recommendation and direct reassignment of the Soldier to another organization. In this case the commanding officer’s report will be forwarded to the new organization commander for information.
- b.* Disapprove the recommendation and return the case to the originator for disposition by other means. The return memorandum will include reasons for considering separation for unsatisfactory performance inappropriate.
- c.* If the Soldier has less than 6 years of total active and/or reserve military service, or has properly waived his or her right to consideration by a board:
 - (1) Approve separation for unsatisfactory performance.
 - (2) Approve separation for unsatisfactory performance and suspend execution of the separation (see para 1–19).
- d.* If the Soldier has 6 years or more of total service and has not executed a waiver, convene an administrative separation board, as prescribed in chapter 2 of this regulation, to determine whether the Soldier should be separated for unsatisfactory performance.

13–7. Separation authority action after board hearings

See chapter 2.

13–8. Characterization of service

The service of Soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military records (see paras 3–5 and 3–7).

13–9. Type of separation

Soldiers separated under this chapter will be discharged. Refer to paragraph 1–12 for additional instructions on ARNGUS and USAR personnel.

Chapter 14

Separation for Misconduct

Section I

General Provisions

14–1. General

This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

14-2. Policy

- a.* Action may be taken to separate a Soldier for misconduct when—
- (1) Despite attempts to rehabilitate or develop him or her as a satisfactory Soldier, further effort is unlikely to succeed.
 - (2) Rehabilitation is impracticable or the Soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).
 - (3) The provisions of paragraph 1-33 and 1-34 have been complied with, if applicable.
- b.* Separation action may be taken when a Soldier is not under military control (see chap 2, sec III).
- c.* Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties that may be imposed under the UCMJ.
- d.* Before taking action against a Soldier under section III of this chapter because of minor disciplinary infractions or a pattern of misconduct, commanders will ensure that the Soldier has received adequate counseling and rehabilitation (see para 1-17).
- e.* Misconduct involving fraudulent entry will be considered under chapter 7 of this regulation.
- f.* Commanders will consider Soldiers meeting the criteria of section III of this chapter and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under section III, when the underlying misconduct warrants separation. When appropriate, commanders may initiate separation action while the Soldier is serving a sentence to confinement at the installation detention facility.
- g.* A “sex offense” as it pertains to this chapter is defined as:
- (1) Offenses involving rape, a sexual act, or sexual contact, as defined by the jurisdiction where the conviction occurred.
 - (2) Offenses listed in 34 USC 20911, 18 USC 1591, 18 USC Chapter 109A, 18 USC 117, and DoDI 1325.07.
 - (3) State or local offenses that contain elements substantially similar to those listed in paragraph 14-12c(3).
 - (4) Attempts and conspiracies to commit one of the offenses listed in paragraphs 14-12c(3).
- h.* A “conviction” for purposes of this chapter includes:
- (1) A plea or finding of guilty.
 - (2) A plea of nolo contendere.
 - (3) All other actions by a court tantamount to a finding of guilty.
 - (4) A finding of guilty at a general or special court-martial.

14-3. Characterization of service or description of separation

- a.* A discharge under other than honorable conditions is normally appropriate for a Soldier discharged under this chapter; however, the separation authority may direct a general discharge if such is merited by the Soldier’s overall record (see chap 3, sec II).
- b.* When the sole basis for separation is a serious offense resulting in a conviction by court-martial that did not impose a punitive discharge, the Soldier’s service may not be characterized as under other than honorable conditions unless approved by the SECARMY or the Secretary’s approved designee as announced in updated memoranda.
- c.* When a Soldier has completed entry-level status, or paragraph 11-3c applies, characterization of service as honorable is not authorized unless the Soldier’s record is otherwise so meritorious that any other characterization clearly would be inappropriate.
- (1) A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction, or higher authority, unless authority is delegated per paragraph 1-20c(2).
 - (2) A commander exercising general court-martial jurisdiction may delegate authority to the SPCMCA to approve separation with service characterized as honorable when the sole evidence of misconduct is urinalysis results, which cannot be used for characterization of service as specified in AR 600-85 or when an administrative discharge board has recommended separation with an honorable discharge (see para 2-12b(1)).
- d.* If characterization of service under other than honorable conditions is not warranted for a Soldier in entry-level status (see chap 3, sec II), service will be described as uncharacterized, except as provided in paragraph 3-9a(3). (Also see para 11-3c.)
- e.* An honorable characterization of service is generally required when the Government initially introduces limited use evidence (see paras 3-8a and 3-8g).

14-4. Authority for discharge or retention

- a.* The separation authority is authorized to order discharge or direct retention in military service when disposition of a Soldier has been made by a domestic court of the United States or its territorial possessions.

b. Upon determination that a Soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority (see AR 600–8–19).

c. Unless prohibited by law or regulation, the separation authority is authorized to suspend execution of an approved administrative discharge under this chapter in accordance with paragraph 1–19.

Section II

Conviction by Civil Court

14–5. Conditions that subject a Soldier to discharge and reduction in grade

a. A Soldier may be considered for discharge when convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present (this includes similar adjudication in juvenile proceedings):

(1) A punitive discharge would be authorized for the same or a closely related offense under the MCM, as amended.

(2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

b. Except as outlined in paragraphs 14–5*c* or 14–5*e*, initiation of separation action is not mandatory. Although the conditions established in paragraph 14–5*a*(1) or 14–5*a*(2) are present, the chain of command must consider whether the specific circumstances of the offense warrant separation (see paragraph 14–7 for guidance on retention).

c. If civil custody exists, such as parole or probation, which would substantially interfere with the Soldier’s military duties, the command will request that the civil authorities relinquish custody during the Soldier’s term of military service. If the civil authorities decline to relinquish custody, and such declination will cause an undue burden to the Army, the Soldier will be processed for administrative separation.

d. A Soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction (see AR 600–8–19).

e. Any Soldier convicted, as defined by paragraph 14–2*h*, of a sex offense, as defined by paragraph 14–2*g*, in a civilian criminal justice proceeding will be processed for administrative separation under his section. This policy applies to all Soldiers currently in the Army, regardless of when the conviction for a sex offense occurred and regardless of component of membership and current status in that component. Commanders will follow the current provisions for initiating administrative separation proceedings under this section. If the separation authority approves retention, he or she will initiate an action for the exercise of Secretarial plenary separation authority under chapter 15 of this regulation. If a Soldier who has been convicted of a sex offense has previously been subject to an administrative separation action for that conviction and has been retained as a result of that proceeding, the separation authority will also initiate an action for exercise of Secretarial plenary separation authority under chapter 15 of this regulation. The processing of Secretarial plenary separation authority actions will comply with all current notification and processing guidance contained in this regulation.

f. When a Soldier being processed under this section has not requested retention per paragraph 1–28 and it appears that compliance with chapter 2, section II, cannot be accomplished before the Soldier’s ETS, the case, with full details, will be forwarded through the CG, HRC, for final determination by HQDA. The case will be submitted in time to permit appropriate consideration before the Soldier’s ETS. There is no authorization to begin a last minute administrative discharge action and then to request special consideration or retention beyond ETS to complete board action.

14–6. Appeals

a. A Soldier will be considered as having been convicted or adjudged a juvenile offender even though an appeal is pending or is later filed.

b. A Soldier subject to discharge under this chapter will be considered and processed for discharge even though he or she has filed an appeal or has stated his or her intention to do so. However, execution of the approved discharge will be withheld until one of the following circumstances occurs, whichever is earlier:

(1) Final outcome of the appeal.

(2) The time in which an appeal may be made has expired.

(3) The Soldier requests discharge under this chapter prior to final action on the appeal.

(4) Approval of the Soldier’s discharge by SECARMY or the Secretary’s approved designee as announced in updated memoranda. In such cases, the entire file will be forwarded to Commander, U.S. Army Human Resources Command (AHRC–EPF–M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204. Case files will be submitted

via email to usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil. The request of the separation authority for immediate discharge as an exception will be fully substantiated with the circumstances requiring expedited discharge.

14-7. Retention action

Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army. In deciding whether retention or separation should be recommended or approved, the factors in paragraph 1-16e of this regulation will be considered.

14-8. Action following disposition by domestic courts

a. When discharge is contemplated and a Soldier is under military control, the unit commander will take action as specified in the administrative board procedure, except that the use of the notification procedure is authorized if characterization of service under other than honorable conditions is not recommended (see chap 2, sec I or II, as appropriate).

b. Chapter 2, section III of this regulation prescribes additional actions to be taken when discharge is contemplated and a Soldier is confined or beyond military control due to unauthorized absence.

14-9. Procedure for civil court cases in foreign countries

a. A Soldier may be discharged when convicted, or when action is taken that is tantamount to a finding of guilty, by foreign courts or tribunals (this includes similar adjudication in juvenile proceedings) when—

- (1) A punitive discharge would be authorized for the same or a closely related offense under the MCM, or;
- (2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

b. Normally, Soldiers who are disposed of by foreign courts or tribunals, but not confined, or who are confined but whose release from confinement is imminent, will be returned to the United States or its territorial possessions for discharge. When a Soldier is convicted by a foreign court or tribunal, and the Soldier is reassigned outside of the ASCC's jurisdiction before initiation or completion of discharge proceedings, discharge proceedings will be initiated or completed per paragraph 14-8. This provision is not intended to relieve overseas commanders of their responsibility to promptly initiate and process civil court cases on Soldiers of their command.

c. When a Soldier is confined by a foreign court or tribunal and when release from confinement is not imminent, commanders of ASCCs may approve the Soldier's discharge only when all of the following apply:

- (1) Upon approval of the ASCC commander. This may not be delegated.
- (2) After final action (including final appellate action, if any) by the foreign authorities.
- (3) Subject to the specific consent of the country concerned to their separation in its territory.

d. For actions initiated under paragraph 14-9b or 14-9c, the Soldier's unit commander, at the time of the conviction, will forward the following information through command channels to the ASCC commander or Soldier's current chain of command:

- (1) Information concerning the civil record and military service of the Soldier.
- (2) A statement from the court indicating that the Soldier has been convicted and status of any appeal or right to appeal.
- (3) A statement as to the character of discharge desired, including a statement as to whether paragraph 2-2 or 2-4 has been complied with. If a Soldier has been reassigned outside of the ASCC jurisdiction after initiation of separation, the commander at the time of the conviction will forward all documentation, including any board proceedings, to the current command.
- (4) A report of the trial proceedings submitted by the official U.S. observer, if any, attending the trial or a transcript of the record of trial, if obtainable.

e. Army personnel confined in foreign prisons will not be separated from military service until the term of imprisonment is completed and they return to the United States. This may only be waived by the SECARMY or the Secretary's approved designee as announced in updated memoranda. When the ASCC commander considers separation of such a Soldier appropriate, before the sentence of confinement is completed, he or she will send a request for approval for such separation to the SECARMY or the Secretary's approved designee as announced in updated memoranda, per paragraph 1-15i(1), with a report that will include the following information:

- (1) Name, grade, SSN.
- (2) Last organization and assignment.
- (3) Offense(s) alleged to have been committed and the pertinent facts and circumstances thereof.
- (4) Court before which tried.

- (5) Date and place of trial.
- (6) Offense(s) of which the Soldier was convicted.
- (7) Sentence pursuant to which the Soldier is confined.
- (8) Matters in mitigation, extenuation, or aggravation.
- (9) Appellate action, if any, and result thereof.
- (10) Whether the action of the foreign court is final or whether further appellate action is possible or contemplated.
- (11) Place and condition of confinement.
- (12) Possibility for parole and facts pertinent thereto.
- (13) Special facts and circumstances, including reasons supporting discharge during confinement.
- (14) Whether consent for separation in the territory of the foreign country has been obtained from that country.
- (15) A report concerning board proceedings (if applicable) as set forth in chapter 2, section III.

14–10. Pay and allowances

Any questions pertaining to pay and allowances will be referred to Defense Finance and Accounting Service representatives.

14–11. Detainers and strength accountabilities

a. Detainer.

(1) A detainer is a written notice to civil authorities that the person in their custody is a Soldier of the Army. The notice states that military authorities desire to take custody when the person is released.

(2) When a detainer is lodged with civil authorities with the objective of having the Soldier returned to military control upon release from confinement, communication to the civil authorities will clearly show the reason for the detainer. A mere statement that the individual is wanted by the Army may lead to erroneous conclusions. The absence of detailed information may deprive the Soldier of parole consideration. Civil authorities may believe the Soldier is wanted for trial, when, in fact, the Army's only objective is to restore the Soldier to duty.

(3) When a detainer has been lodged with civil authorities, and a decision is later made to accomplish administrative discharge, the civil authorities will be notified, in writing, to remove the detainer and that such detainer be canceled.

(4) Notification will be made when discharge is accomplished. Verbal notification may be made, but must be confirmed in writing at the earliest date.

b. Strength accountability.

(1) A Soldier sentenced to confinement for 6 months or more in a domestic, civil, or foreign institution will be dropped from military strength when his or her sentence begins (see AR 600–8–6). However, the Soldier's chain of command retains administrative responsibility for processing separation action.

(2) When separation is approved by the separation authority but the discharge is not executed due to appellate action, the Soldier will be administratively reassigned to the PCF per AR 600–62 and AR 630–10 (see para 14–6). The Soldier's AMHRR or local file, as appropriate, will be forwarded to the commander of the PCF.

Section III

Acts or Patterns of Misconduct

14–12. Conditions that subject Soldiers to discharge

Soldiers are subject to discharge for the following:

a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions. Except as provided in paragraph 11–3c, if separation of a Soldier in entry-level status is warranted solely by reason of minor disciplinary infractions, the action will be processed under chapter 11 of this regulation.

b. A pattern of misconduct. A pattern of misconduct consisting of one of the following:

(1) Discreditable involvement with civil or military authorities.

(2) Conduct prejudicial to good order and discipline including conduct violating the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge is, or would be, authorized for the same or a closely related offense under the MCM. Specific instances of serious offenses include, but are not limited to:

(1) An absentee returned to military control from a status of AWOL or desertion may be separated for commission of a serious offense. Refer to paragraph 1–44 for civil offenses under investigation by foreign authorities.

(2) Abuse of illegal drugs or alcohol (see AR 600–85).

(a) Except for Soldiers referred to a court-martial authorized to impose a punitive discharge, commanders will process for separation all Soldiers who are:

1. Identified as illegal drug abusers (as defined AR 600–85).
2. Involved in two serious incidents of alcohol-related misconduct within a 12-month period. A serious incident of alcohol-related misconduct is defined as any offense of a civil or military nature that is punishable under the UCMJ by confinement for a term exceeding 1 year.
3. Involved in illegal trafficking, distribution, possession with intent to distribute, or sale of illegal drugs.
4. Tested positive for illegal drugs a second time during their career.
5. Convicted of driving while intoxicated (DWI) or driving under the influence (DUI) a second time during their career.

(b) Soldiers who meet separation criteria in paragraph 14c(2)(a), but for whom commanders support retention, the retention authority will be in accordance with the following provisions. For instances in which the retention authority is elevated it may not be delegated.

1. NCOs (corporal and above) processed for separation as provided for in paragraph 14–12c(2)(a) require a retention decision from the first general officer in the chain of command with a legal advisor. All separation decisions (including retention in the Army) for specialist and below will remain with existing separation authorities.

2. All Soldiers processed for separation as a result of drug or alcohol misconduct as provided for in paragraphs 14–12c(2)a2 through a5 require a retention decision from the first general officer in the chain of command with a legal advisor.

(c) Voluntary (self) identification/referral, in accordance with AR 600–85, does not require initiation of separation proceedings under this section.

(3) Any Soldier convicted, as defined by paragraph 14–2h, of a sex offense, as defined by paragraph 14–2g and that did not result in a punitive discharge will be processed for administrative separation regardless of when the conviction for the sex offense occurred. This policy applies to all Soldiers currently in the Army, regardless of when the conviction for the sex offense occurred and regardless of component of membership and current status in that component. The requirement to initiate administrative processing does not mean that the result of that processing must be administrative discharge; the specific facts of each individual case will determine whether administrative discharge is appropriate. Commanders will follow the current policy for initiating administrative separation proceedings. If the separation authority approves retention, they will initiate an action for the exercise of Secretarial plenary authority under chapter 15 of this regulation. If an enlisted Soldier who has been convicted of a sex offense and subject to an administrative separation is retained as a result of that proceeding, the separation authority will also initiate an action for exercise of Secretarial plenary separation authority under chapter 15 of this regulation. The processing of Secretarial plenary separation authority actions will comply with all current notification and processing guidance contained in this regulation.

(4) Any Soldier with a substantiated recruiter violation as defined by AR 600–20. For the purposes of applying this subparagraph, a violation will be treated as substantiated if a violation of AR 600–20 results in a court-martial conviction, but the adjudged sentence does not include discharge or dismissal; or if a nonjudicial punishment authority under 10 USC 815 has determined that a Soldier has committed an offense in violation of AR 600–20 and imposed nonjudicial punishment upon that Soldier. The requirement to initiate administrative processing does not mean that the result of that processing must be administrative discharge; the specific facts of each individual case will determine whether administrative discharge is appropriate. If the separation authority approves retention, he or she will initiate action for Secretarial plenary separation authority under chapter 15, as appropriate.

14–13. Procedures

The administrative board procedures will be used; however, the use of the notification procedure is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7c (see chap 2, sec I or II, as appropriate).

14–14. Separation authority

Commanders specified in paragraph 1–20 are authorized to convene boards and order separation under this chapter. See figure 14–1.



DEPARTMENT OF THE ARMY
ORGANIZATION
STREET ADDRESS
CITY STATE ZIP

(Office Symbol)

(Date)

MEMORANDUM FOR (Name, rank, organization)

SUBJECT: Notification to Appear Before the Board of Officers

1. Under the provisions of Army Regulation 15-6, paragraph 5-5, and Army Regulation 635-200 notice is hereby given that a Board of Officers appointed by memorandum of appointment, this Headquarters, dated (insert date), will hold a hearing at (location ,date and time), to determine whether you should be discharged because of misconduct before the expiration of your term of service. If you fail to appear before the board due to being absent without leave, you may be discharged from or retained in the service by the discharge authority without personal appearance before the board.

2. The following witnesses are expected to be called:

Rank, Name
Organization
Installation, State Zip Code

3. The recorder will endeavor to arrange for the presence of any reasonably available and necessary witnesses whom you may desire to call, upon written request from you for such action.

4. Enclosed is a copy of a deposition from (Rank, Name), who will be unable to appear in person at the board hearings.

Encl

(Signature block of Commander)

I hereby certify that the above is a true and correct copy of the original notification and was delivered by me personally to the individual concerned on *(date)*.

(Signature block of Commander)

Figure 14-1. Sample notification to appear before the board of officers

14–15. Commanding officer’s report

When the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service, he or she will report the fact in memorandum form to the separation authority specified in paragraph 1–20 through the intermediate commander (see fig 2–5).

14–16. Action by intermediate commanders

Unless otherwise prohibited by law or regulation, intermediate commanders will take one of the following actions in cases of misconduct:

a. Recommend discharge or retention of the Soldier and send the report through the chain of command to the separation authority. If discharge is recommended, a recommendation will be made as to characterization of service (see para 2–2 or 2–4). The intermediate commander may, prior to recommending discharge or retention of the Soldier, convene an administrative separation board as prescribed in chapter 2, section II of this regulation, to determine whether the Soldier should be separated for misconduct.

b. Recommend separation for unsatisfactory performance if the reason for separation is determined to be a pattern of misconduct caused by the conditions in paragraph 13–2*a*, and unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification.

14–17. Action by the separation authority

Unless otherwise prohibited by law or regulation, the separation authority may take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the Soldier to another organization. In case of reassignment, the commanding officer’s report will be forwarded to the new organization commander for information.

b. Disapprove the recommendation and return the case to the originator for disposition by other means, if appropriate. The separation authority will include the reasons for considering separation for misconduct inappropriate.

c. If the reason for separation is determined to be a pattern of misconduct caused by the conditions in paragraph 13–2*a*, disapprove the recommendation relating to misconduct and processes the case under chapter 13 for unsatisfactory performance.

(1) The case can be referred to the appropriate separation authority to determine whether the Soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13–2*a*, and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate (see para 1–20*c* or 1–20*d*).

(2) Unless unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification, new proceedings per chapter 13 of this regulation must be initiated to accomplish such separation.

d. Convene an administrative separation board as prescribed in chapter 2, section II of this regulation, to determine whether the Soldier should be separated for misconduct. See figure 14–2.

e. When the board hearing has been properly waived, direct separation of the Soldier for misconduct.

f. When the board hearing has been properly waived, approve separation of the Soldier for misconduct and suspend execution of the separation (see para 1–19).

g. Direct that the case be processed through medical channels, if appropriate (see para 1–34.)



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR RECORD

SUBJECT: Summary of Board Proceedings Concerning *(Rank, Name, Headquarters, Unit Name, Street Address, City, State Zip Code +4)*

1. In the board proceedings concerning *(Rank, Name, Unit)*, the board finds by a preponderance of the evidence that the respondent:

a. Finding 1: *(Name)* *(did/did not)* commit *(alleged offense)*. This offense *(does/does not)* warrant separation.

b. Finding 2: *(Name)* *(did/did not)* commit *(alleged offense)*. This offense *(does/does not)* warrant separation.

2. Recommendation:

a. This board recommends in view of the findings: *(Respondent)* will be retained in military service

OR

a. *(Respondent)* shall be separated from military service and shall receive the following:

a) Honorable characterization of Service.

b) General. Under Honorable Conditions characterization of Service.

c) Under Other than Honorable Conditions characterization of Service.

b. The execution of this separation will be suspended and automatically remitted if not vacated, for a period of *(number of months)*.

(Board President)

(Board Member)

(Board Member)

Note: When the board recommends separation, it may also be recommended that the separation be suspended for a period not to exceed 6 months.

Figure 14-2. Sample summary of board proceedings

Chapter 15 Secretarial Plenary Authority

15–1. Conditions and considerations

a. Separation under this chapter is the prerogative of SECARMY. Secretarial plenary separation authority is exercised sparingly and used when no other provision of this regulation applies. Separation under this chapter is limited to cases where the early separation of a Soldier is clearly in the best interest of the Army. Separations under this chapter are effective only if approved in writing by SECARMY or the Secretary's approved designee as announced in updated memoranda.

b. Secretarial separation authority is normally exercised on a case-by-case basis but may be used for a specific class or category of Soldiers. When used in the latter circumstance, it is announced by special HQDA directive that may, if appropriate, delegate blanket separation authority to commanders with GCMCA for the class of Soldiers concerned.

c. Specific voluntary and involuntary individual cases that may be submitted to HQDA for consideration of separation under Secretarial plenary authority include, but are not limited to:

- (1) Those processed under paragraph 1–18*b*(4) (involuntary);
- (2) Human immunodeficiency virus infection (see AR 600–110) (voluntary or involuntary);
- (3) Refusal to submit to medical care after referral to a medical board (see AR 600–20) (involuntary);
- (4) When religious practices cannot be accommodated (see AR 600–20) (voluntary);
- (5) Soldiers with a qualifying conviction triggering the Domestic Violence Amendment to the Gun Control Act of 1968, the Lautenberg Amendment (voluntary or involuntary) (see 18 USC 922);
- (6) Soldiers convicted of sexual assault in foreign, civilian, or military courts who are not adjudicated a bad conduct or dishonorable discharge (involuntary); and
- (7) Substantial and substantiated misconduct where separation is in the best interest of the Army, subject to the limitations in paragraph 15–1*d* (involuntary).

d. It is the policy of HQDA to only direct separation, when not otherwise required by law or regulation, after a duly constituted board has recommended retention under chapter 14 when sufficient justification is provided to warrant separation to SECARMY or the Secretary's approved designee. This justification is based on all the circumstances, as being in the best interest of the Army. When an administrative separation board has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge will be forwarded through CG, HRC per paragraph 1–15*i*(1) and include the following:

- (1) Personally signed memorandum to HQDA from the separation authority setting forth specific reasons justifying the Soldier's discharge as being in the Army's best interest (see fig 15–1).
- (2) The record of the board proceedings will be attached to the separation authority's memorandum to HQDA. The separation authority will neither approve nor disapprove the findings and recommendations of the board, since forwarding the case to HQDA under this chapter constitutes the separation authority's initial action on the case.
- (3) No further action will be taken on the findings or recommendations of the administrative separation board unless directed by HQDA. As a minimum, enclosures to the transmittal memorandum should include:
 - (*a*) The notification memorandum to the Soldier under this chapter.
 - (*b*) The Soldier's acknowledgment of notification and any response.
 - (*c*) The report of the board proceedings (to include the summarized transcript).
 - (*d*) Any documents which were admitted in the board proceedings or contained in the original notification of separation.

15–2. Separations under Secretarial plenary authority

a. Separation under this chapter may be voluntary or involuntary. For both voluntary and involuntary separation proceedings, the notification procedure (see chap 2, sec I) will be used; however, the provision for requesting an administrative board is not applicable (see para 2–2*d*). Medical examinations are only required for Soldiers being processed for involuntary separation (see para 1–33*a*).

b. Blanket or individual requests for separation under this chapter will be submitted to Commander, U.S. Army Human Resources Command (AHRC–EPF–M), 1600 Spearhead Division Avenue, Fort Knox, KY 40122–5204 for forwarding to HQDA. Actions will be submitted via email to usarmy.knox.hrc.mbx.epmd-retirement-separations@mail.mil.

(1) Except for requests made under paragraph 15–1*d*, the chain of command will forward the request with an endorsement recommending approval or disapproval. The chain of command must provide rationale to support determination that separation is or is not in the best interest of the Army, as well as a statement as to whether the counseling

requirements of paragraph 1–21 have been met. Requests forwarded without rationale will be returned to the chain of command.

(2) In addition, chain of command forwarding favorable memorandums on individual cases must include recommendations concerning characterization or description of service (see para 15–3) and, when applicable, transfer to the IRR (see chap 1, sec VII).

15–3. Characterization of service

The service of Soldiers separated under Secretarial plenary authority will be characterized as honorable or under honorable conditions as warranted by their military records (see paras 3–5 and 3–7), unless an entry-level status separation (uncharacterized) is warranted. No Soldier will be awarded a character of service under honorable conditions in accordance with this chapter unless the Soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure.



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM FOR (GCMCA)

SUBJECT: Separation Under the Provisions of AR 635-200, (enter appropriate chapter), Rank and Name.

1. I have reviewed the enclosed separation packet on Rank, Name, organization, installation, state, zip code.
2. After careful consideration of all matters, I recommend this Soldier be (select one):
 - Retained
 - Retained and rehabilitatively transferred to another unit as directed by the G-1/MPD.
 - Separated, but that the separation be suspended for a period of (number) months (not to exceed 12 months).
 - Separated from the U.S. Army prior the expiration of current term of service.
3. I recommend that this Soldier's service be characterized as (select one):
 - Honorable
 - General (Under Honorable Conditions)
 - Under Other than Honorable Conditions
4. This Soldier (has/has not) filed an unrestricted report of sexual assault within 24 months of initiation of this separation action. (If "has" is selected, answer a – c below).
 - a. The separation (does)(does not) appear to be in retaliation for the Soldier filing an unrestricted report of sexual assault.
 - b. The separation (does) (does not) involve a medical condition that is related to the assault, to include Post Traumatic Stress Disorder (PTSD).
 - c. The separation is in the best interest of (the Army) (the Soldier) (both).
5. Has there been an allegation that the Soldier committed a dependent-abuse offense? (Yes) (No) If yes, include required information. (See para 1-15).

Figure 15-1. Sample format for Soldier separation under the provisions of AR 635-200

(Office Symbol)
SUBJECT: Separation Under the Provisions of AR 635-200, (enter appropriate chapter), Rank and Name.

6. The status of the case against the alleged offender is (open) (closed), and the separation of the Soldier/victim (will) (will not) affect disposition or prosecution of the case.

Encl

(Commander's signature)
(Typed name, grade, branch)

Figure 15–1. Sample format for Soldier separation under the provisions of AR 635–200—continued

Chapter 16

Selected Changes in Service Obligations

16–1. Order to active duty as a commissioned or warrant officer

- a.* Soldiers may be discharged for the purpose of:
- (1) Being ordered to active duty as a commissioned or warrant officer in any branch of the Armed Forces.
 - (2) Being ordered to an AGR tour with the Army as a USAR commissioned or warrant officer. The Soldier must agree to serve at least 1 year in AGR status to be eligible for separation under this paragraph.
- b.* Enlisted Soldiers may be separated for the purpose of being ordered to an AGR tour in a USAR enlisted status to meet special HQDA requirements as prescribed in AR 135–18. Before such separation, the separation authority must have documentary evidence from HRC that the Soldier will be ordered to active duty if separated from his or her enlisted status (see para 1–20). Evidence will consist of a call to AGR accession order from HRC (see AR 600–8–105, Format 174).
- c.* The service of a Soldier discharged will be characterized as honorable unless an entry-level separation is required under chapter 3, section II of this regulation.

16–2. Discharge for acceptance into a program leading to a commission or warrant officer appointment

- a.* Soldiers may be discharged for the purpose of entering a program leading to a commission or warrant officer appointment in any branch of the Armed Forces. This includes:
- (1) ROTC.
 - (2) Officer Candidate School.
 - (3) Other officer accession programs of the U.S. Army, U.S. Navy, and U.S. Air Force that require enlistment in those branches of the Armed Forces.
- b.* Discharge may be approved upon presentation of documentary evidence from the proper authority showing that the Soldier has been accepted for an officer commissioning or appointment program, subject to discharge from his or her Army enlisted status.
- (1) The Soldier must meet the service requirements prescribed in paragraph 16–2*c*(1)(*a*). Discharge is contingent upon enlistment in the appropriate branch of the Armed Forces and entry into an officer accession program.
 - (2) Soldiers accepted for admission to any Service academy or academy preparatory school are not eligible for discharge under this paragraph (see para 4–2*e*).
- c.* Soldiers may be discharged for the purpose of entry into Army Senior ROTC as scholarship cadets or nonscholarship advanced course cadets, with a course of study leading to baccalaureate or higher degree.

(1) To qualify for discharge under this section, Soldiers must—

(a) Have completed at least 2 years of active duty if on their initial enlistment, as well as 3 months of active duty for every 1 month of specialized training received (for example, MOS or language) as of the date of discharge. Soldiers on their second and subsequent enlistment must have completed 3 months of active duty for every 1 month of the most recent specialized training received. Waiver of the service obligation for training may be granted by U.S. Army Human Resources Command (AHRC-EP) 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204, on a case-by-case basis.

(b) Not be under suspension of favorable personnel actions under AR 600-8-2.

(c) Meet ROTC procurement medical fitness standards (see AR 40-501 and AR 150-1), specified academic and administrative criteria (see AR 145-1), and any other prerequisites for ROTC enrollment prescribed by AR 145-1 or established by the U.S. Army ROTC Cadet Command.

(d) Provide a statement from an admissions official of the school they desire to attend indicating acceptance for enrollment and specifying the registration date for the pertinent school term.

(e) Provide a statement from the professor of military science at the school they desire to attend indicating acceptance for ROTC participation. The professor of military science statement will also verify that the Soldier is qualified for the ROTC program and that academic and administrative waivers, if any, have been granted.

(f) For scholarship winners, provide a copy of the Headquarters, ROTC Cadet Command notification of award of the scholarship. Soldiers who are conditional scholarship winners must furnish documentary evidence from Headquarters, ROTC Cadet Command that they are fully qualified prior to requesting discharge. Scholarship recipients require no further review or documentation to qualify for discharge.

(g) Unless a 3-year or 4-year scholarship winner, have satisfactorily completed or received credit for at least 2 years of college work.

(2) Before approving discharge under this section, the separation authority (see para 1-20) will ensure that the Soldier—

(a) Meets the criteria stipulated in paragraph 16-2c(1).

(b) Has served honorably and possesses officer attributes (such as leadership potential, exemplary conduct, and appearance).

(c) Understands that the discharge is contingent upon enlistment in the USAR in the grade of cadet for assignment to the USAR control group (ROTC) and execution of the ROTC student contract (scholarship or nonscholarship).

(d) Has been counseled that breaching the terms of the USAR enlistment contract or ROTC student contract will subject him or her to involuntary order to active duty to complete the contractual obligation and, if a scholarship cadet, may, in lieu of active duty, require repayment of scholarship benefits received.

d. Discharge will be effective the day preceding enlistment in the appropriate branch of the Armed Forces as stated in paragraphs 16-2a and 16-2b, and the day preceding enlistment in the USAR as stated in paragraph 16-2c. Discharge documents will not be delivered to the Soldier until verification is made that such enlistment has taken place. For paragraphs 16-2a, 16-2b, and 16-2c, discharge normally will not take place more than 30 days before the starting date of the school term or officer training program for which the Soldier has been accepted.

e. The service of Soldiers discharged under this paragraph will be characterized as honorable.

16-3. Nonretention on active duty

Soldiers denied or ineligible for continued active duty service may be separated, upon request, as provided below:

a. USAR AGR Soldiers who perceive they will be unable to overcome a field commander's bar to reenlistment imposed by AR 140-111 may request voluntary separation. This provision does not apply to RA Soldiers.

b. RA Soldiers serving on a second or subsequent enlistment who refuse to take action to meet military service-remaining requirements by signing DA Form 4991 pursuant to AR 601-280 may request voluntary separation.

c. Separation under this paragraph will occur no later than 90 days after the Soldier receives pre-separation counseling as required by law, which must be scheduled as soon as separation is approved (see 10 USC 1142). Any existing service obligation that cannot be fulfilled by the separation date will be waived, and overseas tours will be curtailed to the extent necessary to permit separation.

d. Nothing in this paragraph precludes separation of a Soldier for another reason authorized by this regulation.

e. Commanders specified in paragraph 1-20 are authorized to approve or deny requests for separation under this paragraph. Approved requests for separation cannot be withdrawn.

f. The criteria in chapter 1, section VII of this regulation, will govern whether the Soldier is released from active duty, with transfer to the IRR, or discharged.

g. The service of Soldiers separated under this paragraph will be characterized as honorable.

16-4. Overseas returnees

Commanders specified in paragraph 1-20 are authorized to order separation of Soldiers returned to the United States, a possession of the United States, or area of residence in which enlisted or ordered to active duty.

a. Soldiers in the United States or area of residence on TDY or emergency leave from overseas organization who, upon completion of TDY or leave, are within 60 days of ETS, will be discharged or released as appropriate. Those who desire to extend or reenlist can do so as an exception to policy in AR 601-280, provided they are otherwise eligible.

(1) Affected Soldiers will be reassigned to a TC nearest their home for separation processing. Separation processing will not be accomplished before completion of leave or TDY.

(2) Affected Soldiers will be instructed that upon completion of leave or TDY they will report to the TC to which assigned for separation processing.

b. This paragraph is not to be construed as authority for early return. It authorizes separation for the purpose stated only, to preclude nonproductive reassignments for short periods of time.

c. The service of a Soldier separated under this paragraph will be characterized as honorable.

16-5. Early separation due to disqualification for duty in military occupational specialty

To preclude nonproductive utilization for short periods of time, Soldiers who become medically or administratively disqualified for duty in their primary, secondary, and additional MOS, and who do not intend to reenlist, may be separated prior to expiration of term of service. The following criteria apply:

a. Soldiers with 6 months or less remaining until expiration of term of service may be considered for separation under this paragraph.

b. Separation is voluntary. The Soldier must sign a statement that he or she is willing to accept early separation.

c. The Soldier cannot be reclassified into another MOS without retraining. Excluded from this category are individuals who can be retrained within a period of 30 days either by on-the-job training or formal training conducted at the installation to which they are currently assigned.

d. For medical disqualification, the Soldier must be determined by appropriate medical authority to have assignment limitation due to physical impairment. Such impairment must prevent duty in the Soldier's awarded MOS for more than 60 days.

e. For administrative disqualification, the disqualification must not be the Soldier's fault. Grounds for separation include deletion of the Soldier's MOS from the Army inventory, revocation of security clearance eligibility required to perform duties normally related to the MOS, and disqualification from the Personnel Reliability Program (see AR 50-5).

f. This paragraph does not apply to the following:

(1) Personnel who have a medical condition that warrants processing under AR 635-40.

(2) RC personnel ordered to IADT.

(3) Soldiers who lose MOS qualifications due to their own misconduct (see AR 614-200).

g. Separation under this paragraph will not occur more than 3 months before the date of ETS.

h. Commanders specified in paragraph 1-20 are authorized to order the separation of eligible Soldiers under this paragraph.

i. The service of Soldiers separated under this paragraph will be characterized as honorable.

16-6. Early separation due to reduction in force, strength limitations, or budgetary constraints

Soldiers may be separated prior to expiration of enlistment or fulfillment of active duty obligation when specifically authorized as set forth below.

a. When authorization limitations, strength restrictions, or budgetary constraints require the RA or RC active duty enlisted force to be reduced in number, SECARMY, or designee, may authorize voluntary or involuntary early separation. Statutory authority for Secretarial separation direction is 10 USC 1169 or 10 USC 1171 for RA Soldiers, and 10 USC 12313 or 10 USC 12681 for RC Soldiers. (See para 16-6*h* for REFRAD during time of war or national emergency.)

b. CG, HRC (for RA) and Chief, NGB; Chief, Army Reserve and CG, HRC (for RC) will implement the Secretarial decision by issuing separation instructions pertaining to a specific class or category of Soldiers. For purposes of post-service benefits, early separation under this paragraph is considered to be for the convenience of the Government.

c. Soldiers to whom this paragraph applies will be notified of early separation through appropriate channels by commanders specified in paragraph 1-20. Notification will be based upon information and instructions furnished by HRC/NGB/Chief, Army Reserve implementation instructions.

d. Soldiers separated under this paragraph will be discharged or released from active duty, as appropriate. Specific separation dates will be as prescribed in HRC/NGB/Chief, Army Reserve implementation instructions.

e. Soldiers who are within 2 years of qualifying for retirement per chapter 12 of this regulation on the scheduled separation date will not be processed under this paragraph, unless directed by SECARMY.

f. The service of Soldiers separated under this paragraph will be characterized as honorable, except when an uncharacterized description of service is required for Soldiers in entry-level status, per chapter 3, section II of this regulation.

g. Except as provided in paragraph 16–6*h*, Soldiers identified for involuntary separation under this paragraph are not entitled to the process under the notification procedures (see para 2–2) or the administrative board procedure (see para 2–4).

h. In time of war or of national emergency declared by Congress or the President, other than during a period of demobilization or reduction in force, a Soldier who is a member of the RC may be released from active duty (other than for training) if—

(1) Pursuant to the Soldier’s request, a board of officers composed of at least three members senior in rank to the Soldier and at least one RC member, appointed and conducted in accordance with AR 15–6, and convened by the GCMCA, recommends the release and the GCMCA approves it (see para 1–20*a*).

(2) The Soldier does not request that a board be convened.

(3) The release is authorized by another provision of regulation or law.

16–7. Separation of Soldiers in Soldier recovery units

a. Soldier recovery unit commanders who are separation authorities may order separation of those Soldiers assigned to Soldier recovery units who have less than 3 months to serve to ETS following completion of hospitalization (see para 1–20). Soldiers must sign a statement that they are willing to accept separation under this paragraph. RC personnel ordered to IADT are not eligible for separation under this paragraph.

b. The service of Soldiers separated under this paragraph will be characterized as honorable.

16–8. Separation of personnel assigned to installations or units scheduled for inactivation or permanent change of station

Soldiers of all components assigned to units scheduled for PCS, inactivation or demobilization, or to installations scheduled for inactivation, who cannot be effectively utilized within other units at the same station, will be separated from service as set forth below.

a. Soldiers having 90 days or less to serve beyond effective date of inactivation or change of station may be separated from active duty by a commander specified in paragraph 1–20, provided the Soldier desires separation. Separation will be accomplished during the 30-day period preceding the effective date of inactivation or change of station, but in no case will a Soldier be separated more than 90 days before ETS.

b. Soldiers whose normal term of service expires during the 90-day period preceding the effective date of activation or change of station may be separated by a commander specified in paragraph 1–20 any time during the 90-day period, provided the Soldier desires separation.

c. Combining this paragraph with other separation programs to effect separation more than 90 days before ETS is not authorized.

d. Overseas commanders returning personnel to the United States for separation under this authority may add normal travel time required to the 90 days. However, care will be taken to ensure that Soldiers do not arrive in the United States with more than 90 days remaining in their term of service. This paragraph is not to be construed as authority for early return. It authorizes separation only to prevent nonproductive reassignments for short periods of time.

e. The service of Soldiers separated under this paragraph will be characterized as honorable.

16–9. Holiday early transition program

The Christmas/New Year holiday period is established by HQDA. The specific holiday early transitioning schedule is announced in a MILPER message.

a. Soldiers may be considered for early release prior to the expiration of their terms of service in conjunction with the Christmas/New Year holiday period when specifically authorized and subject to the following criteria:

(1) Early transition normally begins on the 1st of December, or the first Monday thereafter, and extends to a date preceding Christmas, approximately 1 week, sufficient to permit the Soldier adequate travel time. Soldiers whose established ETS dates fall between the first Monday in December and the announced date in January that terminates the holiday period are normally eligible for early transition.

(a) Holiday early release is voluntary. Soldiers who do not volunteer for early release will be required to sign a statement that they are not willing to accept separation under this paragraph.

(b) A Soldier who declines separation in writing may subsequently change his or her mind concerning early separation under this paragraph. The separation authority, based on the circumstances of the case and the best interest of the Army, will determine if the Soldier is to be retained, as previously requested, or separated.

(2) Transition leave is authorized in conjunction with the holiday early release program provided the immediate commander approves (see AR 600–8–10). Soldiers must have an original ETS within the program dates.

(a) Transition leave cannot be used to place a Soldier in the program.

(b) Soldiers with AWOL or other time to be made good who have an adjusted ETS (that is ETS adjusted for AWOL) that falls within the program dates are eligible.

(3) Soldiers who are permanent resident aliens currently serving a 3-year enlistment who desire to fulfill naturalization requirements through military service should not volunteer for this early transition program (see para 4–2b).

(4) The following personnel are not eligible for early release under this program:

(a) RC Soldiers performing ADT under special training programs or serving fixed tours of active duty in support of the Army.

(b) Soldiers scheduled for retirement.

(c) Soldiers under suspension of favorable personnel actions (see AR 600–8–2).

(d) Soldiers whose normal ETS does not fall between the first Monday in December and the date in January that terminates the holiday period.

b. Overseas commanders returning Soldiers to the United States for separation under this paragraph may add normal travel time to the Soldier's target early release date to permit the orderly transition from active duty. Care will be taken to ensure that Soldiers do not arrive in the United States with more than 10 days remaining in their term of service.

c. This paragraph is not to be construed as authority for early return. It authorizes early transition in conjunction with the holiday period only.

d. Combining this paragraph with other early release programs to effect separation more than 90 days before ETS is not authorized.

e. The service of Soldiers separated under this paragraph will be characterized as honorable.

16–10. Two-time not fully qualified

a. *General.* This paragraph contains policies and procedures for voluntary and involuntary separation, for the convenience of the Government, of RA and USAR (AGR) NCOs, whose performance, conduct, and/or potential for advancement do not meet Army standards as outlined in paragraph 16–10b(1).

(1) Denial of continued active service under the provisions of this authority facilitates accomplishment of the Army's strategic objectives to improve readiness and sustain a workforce of trusted professionals by employing NCOs to the maximum effect.

(2) This process is designed to—

(a) Enhance the quality of the career enlisted force.

(b) Selectively retain the best-qualified Soldiers.

(c) Deny continued active service to nonproductive NCOs on qualitative grounds.

(d) Encourage NCOs to consistently maintain high standards of performance, efficiency, morality, and professionalism.

b. *Policy.*

(1) All NCOs (SSG and above) previously determined to be not fully qualified (NFQ) for retention on an approved NCO evaluation board merit-based order of merit list (OML) for any reason and previously barred from continued service, who are determined to be NFQ for retention (in the same grade) by a subsequent NCO evaluation board, will be denied continued active service regardless of any previously established ETS or RCP. The two NFQ for retention determinations must be in the same grade, but need not be from consecutive boards.

(2) Statutory authority for Secretarial separation direction is 10 USC 1169 or 10 USC 1171 for RA Soldiers and 10 USC 12313(a) or 10 USC 12681 for RC Soldiers.

(3) This authority is not intended as a substitute, and does not relieve commanders of their command responsibility, for initiation of separation proceedings under other provisions of this regulation, when required or appropriate.

(4) NCOs approved for denial of continued active service under this chapter will be involuntarily discharged for the convenience of the Government without entitlement to a local separation board. The effective date will be the first day of the seventh calendar month following the date the board results are approved.

(a) The service of an NCO discharged under this chapter will be characterized as honorable.

(b) RA and USAR AGR NCOs who are not eligible for retirement and are involuntarily discharged will have their DD Form 214 coded with separation program designator (SPD) code “JGH” and reenlistment eligibility code “RE-3”. NCOs with more than 6 but less than 20 years of active federal service as a result of involuntary separation may be entitled to separation pay (see 10 USC 1174). These NCOs should contact their RC career counselor (in service recruiter) to determine eligibility.

(c) An HQDA initiated flag will be top loaded for each NCO denied continued service. NCOs will also receive DA Form 268 (Report to Suspend Favorable Personnel Actions (FLAG)) from HRC notifying them of their flag status. The HQDA initiated flag (flag code “W”) will remain on their file unless removed by HQDA.

(5) This process is based on the presumption that all documents in an NCO’s AMHRR are otherwise authorized for filing and that all procedures and processes resulting in the official filing of such documents were done in accordance with policy in place at that time.

(6) NCOs seeking removal of unfavorable information from their record may petition to do so by applying to the Department of the Army Suitability Evaluation Board (DASEB) in accordance with existing procedures outlined in AR 600-37.

(7) AR 15-185 establishes the Army Board for Correction of Military Records; the highest level of administrative review within the DA to correct errors in or remove injustices from Army military records. All Soldiers have the right to apply for a correction of error or injustice in their official Army military record (see 10 USC 1552).

(8) A determination of denial of continued active service stemming from an OML status of NFQ for retention a second time in the same grade (after having been barred from continued service) is final. There are no appeal provisions because every NCO will be afforded complete due-process prior to the NCO evaluation board convene date and consideration for continued active service.

(9) The provisions of this regulation pertinent to counseling and rehabilitative transfer (see para 1-17), notification of separation recommendation (see chap 2, sec I), and a hearing before an administrative separation board do not apply to involuntary discharge resulting from denial of continued active service under this chapter (see chap 2, sec II).

(10) Commanders will ensure that all NCOs pending involuntary separation, under the provisions of this chapter, undergo a medical examination as required by law and regulation (see 10 USC 1145 and AR 40-501).

(11) The provisions of paragraph 1-34 apply if the NCO is referred to or is undergoing DES prior to final separation. NCOs assigned or attached to warrior transition units selected for involuntary separation will be retained until final disposition of their medical condition(s), to include the DES.

c. Ineligibility. This separation authority does not apply to NCOs who have an approved retirement (unless it is withdrawn).

d. Approval authority-denial of continued service. The DMPM, DCS, G-1 is authorized to approve the recommendations of denial of continued service subsequent to NCO evaluation board OMLs establishing the NCO as NFQ for retention a second time in the same grade (after having been barred from continued service) as set forth in the board memorandum of instruction. The DMPM, DCS, G-1 is also the authority for separation under this chapter.

(1) HRC will officially inform NCOs of denial of continued active service decisions by memorandum through the NCO’s chain of command.

(2) Upon receipt of the board results, a commander (LTC or higher) in the chain of command will expeditiously present the notification to the affected NCO and counsel him or her of the decision. NCOs who are approved for denial of continued active service must be counseled, in writing, indicating they are no longer in good standing and favorable personal actions are suspended under the provisions of AR 600-8-2, they are in a nonpromotable status, stabilized in their current assignment, and they understand their options as provided for in paragraph 16-10e.

e. Post-board Soldier options. NCOs approved for denial of continued active service may—

(1) Request earlier voluntary discharge. Such discharge is considered voluntary and will occur no earlier than 90 days after the NCO receives notification from HRC that the NCO was identified for separation under this authority (see 10 USC 1142). NCOs who elect voluntary discharge rather than retirement will have their DD Form 214 coded with SPD code “KGGH” and reenlistment eligibility code “RE-3”.

(2) Request voluntary REFRAD. Both RA and USAR AGR NCOs with 20 years or more of qualifying service for nonregular retired pay may elect voluntary REFRAD with concurrent transfer to the Retired Reserves. RA NCOs who elect discharge will receive SPD Code “JGH”. USAR AGR NCOs who elect a voluntary REFRAD with concurrent transfer to the Retired Reserves will receive SPD Code “MGH”. Both will receive reenlistment eligibility code “RE-3”.

(3) Request voluntary retirement under chapter 12 or under any other provision of law for which the NCO is otherwise eligible in lieu of involuntary separation subsequent to NCO evaluation board OMLs establishing the NCO as NFQ for retention a second time (after having been barred from continued service). Voluntary retirement will be approved for the date requested by the NCO, but will not be later than the first day of the seventh calendar month

following the date the board results are approved. NCOs who are selected for denial of continued active service and who, on the date on which the NCO is to be discharged, is within 2 years of qualifying for an active federal service retirement will be retained on active duty until the NCO is qualified for retirement unless the NCO is sooner retired or discharged under any other provision of law (see 10 USC 1176).

(4) Request nonregular retirement. NCOs with 20 or more years of qualifying service for a nonregular retirement as of the established involuntary discharge date may submit a request for discharge (RA) or a request for REFRAD (USAR AGR) with concurrent transfer to the Retired Reserves. Both RA and USAR AGR NCOs with 18 or more, but less than 20 years, of qualifying service for a nonregular retirement as of the established discharge date will be allowed to contract with the RCs for a period of up to 3 years in order to become eligible for retired pay (see 10 USC Chapter 1223). NCOs (RA) will be eligible to request a discharge and NCOs (USAR AGR) request a REFRAD with concurrent transfer to the Army Reserve, Troop Program Unit, to qualify for a nonregular retirement as prescribed by 10 USC 1176(b). Both RA and USAR AGR NCOs will subsequently request release from the Army Reserve with concurrent transfer to the Retired Reserve no later than 90 days prior to attaining 20 years of qualifying service for a nonregular retirement.

16–11. Enlisted Qualitative Management Program

a. General. This paragraph contains policies and procedures for voluntary and involuntary separation, for the convenience of the Government, of RA and USAR (AGR) NCOs (SSG and above), under the QMP.

(1) QMP selection criteria include, but are not limited to:

- (a) Moral or ethical conduct incompatible with the values of the NCO corps and the Army ethic.
- (b) Lack of potential to perform NCO duties in current grade.
- (c) Decline in efficiency and performance over a continuing period, as indicated by an NCO evaluation report or failure of NCOES courses.
- (d) Recent or continuing disciplinary problems, as evidenced by conviction by court-martial, nonjudicial punishment, or administrative reprimand.
- (e) Other discriminators such as imposition of a field commander's bar to reenlistment, inability to meet physical fitness standards, and failure to comply with requirements of the Army Body Composition Program (ABCP).

(2) The QMP is designed to:

- (a) Enhance the quality of the career enlisted force.
- (b) Selectively retain the best-qualified Soldiers.
- (c) Deny continued active service to nonproductive NCOs on qualitative grounds.
- (d) Encourage NCOs to consistently maintain high standards of performance, efficiency, morality, and professionalism.

b. Policy.

(1) All NCOs (SSG and above) whose performance, conduct, and/or potential for advancement do not meet Army standards, as determined under the QMP process by approved recommendations of an HQDA NCO evaluation board, will be denied continued active service. An NCO who is subsequently reduced below the rank of SSG remains eligible for denial of continued active service under this program when the basis for referral occurs as a SSG or higher rank.

(2) NCOs in the rank of SSG through CSM/SGM from the RA or USAR AGR will be subject to the QMP process when one or more of the criteria in paragraph 16–11c(1) or 16–11c(2) are met. NCOs previously considered and determined fully qualified after consideration based on the official filing of a qualifying document in the AMHRR will not be considered again for the same document unless it represents part of an overall pattern when a different and subsequent qualifying document is officially filed when in the same grade.

(3) The QMP is not intended as a substitute, and does not relieve commanders of their command responsibility, for initiation of separation proceedings under other provisions of this regulation, when required or appropriate.

(4) NCOs approved for denial of continued active service by the QMP process will be involuntarily discharged without entitlement to a local separation board for the convenience of the Government effective the first day of the seventh calendar month following the date the board results are approved.

(a) The service of an NCO discharged under this paragraph will be characterized as honorable.

(b) RA and USAR AGR NCOs who are not eligible for retirement and are involuntarily discharged will have their DD Form 214 coded with SPD code "JGH" and reenlistment eligibility code "RE-3". NCOs with more than 6 but less than 20 years of active federal service as a result of involuntary separation may be entitled to separation pay (see 10 USC 1174). These NCOs should contact their RC career counselor (in service recruiter) to determine eligibility.

(c) An HQDA initiated flag will be top loaded for each NCO denied continued service. NCOs will also receive DA Form 268 from HRC notifying them of their flag status. The HQDA initiated flag (code "W") will remain on their file unless removed by HQDA.

(5) The QMP process is based on the presumption that all documents in an NCO's AMHRR are otherwise authorized for filing and that all procedures and processes resulting in the official filing of such documents were done in accordance with policy in place at that time.

(6) NCOs seeking removal of unfavorable information from their record may petition to do so by applying to the DASEB in accordance with existing procedures outlined in AR 600–37.

(7) AR 15–185 establishes the Army Board for Correction of Military Records; the highest level of administrative review within the DA to correct errors in or remove injustices from Army military records. All Soldiers have the right to apply for a correction of error or injustice in their official Army military record (see 10 USC 1552).

(8) A determination of denial of continued active service stemming from the QMP process is final. There are no appeal provisions because every NCO will be afforded complete due-process prior to the NCO evaluation board convene date and consideration for continued active service.

(9) The CG, HRC implements the QMP.

(10) The provisions of this regulation pertinent to counseling and rehabilitative transfer (see para 1–17), notification of separation recommendation (see chap 2, sec I), and a hearing before an administrative separation board do not apply to involuntary discharge resulting from QMP selection (see chap 2, sec II).

(11) Commanders will ensure that all NCOs pending involuntary separation, under the provisions of this program, undergo a medical examination as required by law and regulation (see 10 USC 1145 and AR 40–501).

(12) The provisions of paragraph 1–34 apply if the NCO requires referral to or is undergoing DES prior to separation. NCOs assigned or attached to warrior transition units selected for involuntary separation will be retained until final disposition of their medical condition(s), to include the DES.

c. Eligibility. An HQDA NCO evaluation board, operating under a separate memorandum of instruction, will consider NCOs for potential denial of continued active service when—

(1) HRC receives material from one of the following categories for permanent filing in the performance or restricted folder of the NCO's AMHRR (this material must be based on performance or conduct in the NCO's current grade):

(a) Memorandum of reprimand from a general officer, or memorandum of reprimand directed for filing in the AMHRR by a general officer.

(b) Conviction by court-martial or punishment under UCMJ, Art 15.

(c) Relief for cause NCO evaluation report.

(d) DA Form 1059 (Service School Academic Evaluation Report) indicating Noncommissioned Officer Professional Development System (NCOPDS) course failure for a second time.

(2) The DCS, G–1, or designee, approves a request from commanders with GCMCA, or their designees, or the CG, HRC, or designee, for referral of an NCO for QMP consideration.

d. Ineligibility. The QMP does not apply to NCOs who—

(1) Have an approved retirement (unless it is withdrawn).

(2) Were previously retained on active duty by the QMP process (provided no new basis for QMP consideration is documented since the previous retention determination).

e. Qualitative Management Program consideration. QMP consideration by an NCO evaluation board is automatic based on the permanent filing of material from one of the categories outlined in paragraph 16–11c.

(1) An NCO subject to potential denial of continued active service by the QMP process will be officially notified, in writing, and afforded the opportunity to ensure his or her AMHRR is correct, and to submit matters for board consideration, as discussed in paragraph 16–11g.

(2) The board reviews the NCO's AMHRR, the board version of the NCO's record brief, official photograph, and matters of mitigation/extenuation submitted by the affected NCO. If any documents in the restricted folder of the NCO's AMHRR formed the basis for referral for QMP consideration, the board will also consider those documents. The board will not consider portions of the NCO's restricted folder that are not relevant to the basis for referral. The foregoing material, along with mitigating/extenuating matters the NCO submits to the president of the board, completes the file for board consideration.

f. Pre-board notification. NCOs subject to consideration for denial of continued active service under the QMP will be notified, through their chain of command, according to procedures established by HRC. Notification memorandums will identify the basis for referral in accordance with paragraph 16–11c, and will reference any relevant documents. The notification will inform the NCO of his or her right to submit matters to the president of the NCO evaluation board within 30 days of receipt of the notification memorandum.

g. Pre-board Soldier options. Personal appearance before an NCO evaluation board is not authorized. NCOs subject to QMP consideration may—

(1) Submit voluntary retirement under the provisions of chapter 12 of this regulation in lieu of being further processed for QMP consideration. Voluntary retirements must be approved effective no later than the date the DCS, G-1, or designee, approves the results of the NCO evaluation board.

(2) Submit matters to the board president addressing the NCO's potential for continued service. These matters may include letters of support from third parties. Correspondence that criticizes or reflects on the character, conduct, or motives of any other Soldier will not be provided to the board. Matters seen by a board become part of the NCO's record for that board and will not be filed in the AMHRR. If the board president does not receive matters, this nonreceipt will not constitute grounds for reconsideration. All correspondence to the board must be received by the date established in the notification memorandum. Failure to provide correspondence by the established suspense date will not be grounds for reconsideration.

h. Approval authority—denial of continued service. The DMPM, DCS, G-1 is authorized to approve the recommendations of denial of continued service subsequent to NCO evaluation boards as set forth in the board memorandum of instruction. The DMPM, DCS, G-1 is also the authority for separation under this paragraph.

(1) HRC will officially inform NCOs of final retention or denial of continued active service decisions by memorandum through the NCO's chain of command.

(2) Upon receipt of the board results, a commander (LTC or higher) in the chain of command will expeditiously present the notification to the affected NCO and counsel him or her of the decision. NCOs who are approved for denial of continued active service must be counseled, in writing, indicating they are no longer in good standing and favorable personal actions are suspended under the provisions of AR 600-8-2, they are in a nonpromotable status, stabilized in their current assignment, and they understand their options as provided for in paragraph 16-11*h*.

i. Post-board Soldier options. NCOs approved for denial of continued active service by the QMP process may:

(1) Request earlier voluntary discharge. Such discharge is considered involuntary and will occur no earlier than 90 days after the NCO receives notification from HRC that the NCO was identified for separation under the QMP process (see 10 USC 1142). NCOs who elect voluntary discharge rather than retirement will have their DD Form 214 coded with SPD code "KGGH" and reenlistment eligibility code "RE-3".

(2) Request voluntary REFRAD. Both RA and USAR AGR NCOs with 20 years or more of qualifying service for nonregular retired pay may elect voluntary REFRAD with concurrent transfer to the Retired Reserves. RA NCOs who elect discharge will receive SPD Code "JGGH". USAR AGR NCOs who elect a voluntary REFRAD with concurrent transfer to the Retired Reserves will receive SPD Code "MGGH". Both will receive reenlistment eligibility code "RE-3".

(3) Request voluntary retirement under chapter 12 or under any other provision of law for which the NCO is otherwise eligible in lieu of involuntary separation as a result of QMP. Voluntary retirement will be approved for the date requested by the NCO, but will not be later than the first day of the seventh calendar month following the date the board results are approved. NCOs who are selected for denial of continued active service and who, on the date on which the NCO is to be discharged, is within 2 years of qualifying for an active federal service retirement will be retained on active duty until the NCO is qualified for retirement unless the NCO is sooner retired or discharged under any other provision of law (see 10 USC 1176). In all cases, voluntary retirement must occur no earlier than 90 days from the date the NCO elects this option. NCOs who elect voluntary retirement in lieu of involuntary separation will have their DD Form 214 coded with SPD code "RBD" and reenlistment eligibility code "RE-4R".

(4) Request nonregular retirement. NCOs with 20 or more years of qualifying service for a nonregular retirement as of the established involuntary discharge date may submit a request for discharge (RA) or a request for REFRAD (USAR AGR) with concurrent transfer to the Retired Reserves. Both RA and USAR AGR NCOs with 18 or more, but less than 20 years, of qualifying service for a nonregular retirement as of the established discharge date will be allowed to contract with the RCs for a period of up to 3 years in order to become eligible for retired pay (see 10 USC Chapter 1223). NCOs (RA) will be eligible to request a discharge and NCOs (USAR AGR) request a REFRAD with concurrent transfer to the Army Reserve, Troop Program Unit, to qualify for a nonregular retirement as prescribed by 10 USC 1176(b). Both RA and USAR AGR NCOs will subsequently request release from the Army Reserve with concurrent transfer to the Retired Reserve no later than 90 days prior to attaining 20 years of qualifying service for a nonregular retirement.

(5) Request reconsideration. An NCO approved for denial of continued service by the QMP process may seek reconsideration of the decision and request retention on active duty when the underlying basis (qualifying document triggering the QMP notification (see para 6-11*c*)) is subsequently removed from the NCO's AMHRR or when there is a material error in the NCO's record that was reviewed by the board. Material error is the omission, change, or improper filing of information in the NCO's AMHRR. Additionally, an NCO may seek reconsideration when the underlying basis (qualifying document triggering the QMP notification) is officially modified or changed or when that document is removed by competent authority. The NCO must send a notice of intent to seek reconsideration to HRC

within 7 days of receipt of the QMP selection notification memorandum and must submit the request to HRC within 30 days of receipt of the QMP selection notification memorandum (or within 30 days of being informed the document has been modified or removed from his or her AMHRR). The HRC QMP selection notification memorandum provides detailed guidance for submitting requests for reconsideration. HRC will return without action requests for reconsideration that fail to meet these established criteria.

j. Expiration of term of service.

(1) Unless ineligible to extend for a reason other than QMP selection (for example local bar to reenlistment or approved separation under another chapter of this regulation), NCOs with less than 120 days to ETS at the time of notification of QMP selection may have their enlistments extended a sufficient amount of time to permit processing a request for reconsideration.

(2) Unless another basis of separation exists, and except as provided in paragraph 16–11*h*(1), NCOs with less than 120 days to ETS at the time of decision not to submit a reconsideration, or denied reconsideration, will not be discharged prior to ETS. NCOs in this category will be discharged at ETS under the provisions of chapter 4 of this regulation.

16–12. Enlisted Qualitative Service Program

a. General. As a means to support readiness requirements, the Army will utilize an approved NCO evaluation board OML to identify NCOs (based on their merit) for potential involuntary early separation due to strength limitations, budgetary constraints, a reduction in force, and to align the force by MOS and grade to ensure a desired grade and experience mix is balanced across a multitude of occupational career paths.

b. Policy.

(1) NCOs may be separated prior to expiration of enlistment or fulfillment of active duty obligation when specifically authorized as set forth in this paragraph. The Army may identify NCOs (SSG and above) for potential denial of continued active service and early separation under the provisions of the QSP through an NCO evaluation board process. Application of the program and specific eligibility criteria will be established and announced by means of a MILPER message. On behalf of the DCS, G–1, eligibility criteria is established by the DMPM, DCS, G–1.

(2) Statutory authority for Secretarial separation direction is 10 USC 1169 or 10 USC 1171 for RA Soldiers, and 10 USC 12313(a) or 10 USC 12681 for RC Soldiers.

(3) The service of an NCO discharged under this paragraph will be characterized as honorable.

(4) For purposes of post-service benefits, early separation under this paragraph is considered to be for the convenience of the Government.

(5) Selection for involuntary separation from active duty is based on an NCO's OML standing (merit), following an assessment by an HQDA NCO evaluation board in accordance with the board's memorandum of instruction.

(6) If selected and approved for involuntary separation from active duty, appeals and reconsiderations are not authorized.

(7) The provisions pertinent to counseling and rehabilitative transfer (see para 1–17), notification of separation recommendation (see chap 2, sec I), and hearing before an administrative separation board (see chap 2, sec II) do not apply to involuntary discharge under this program.

c. Objectives. The process is a performance-based (qualitative), force-shaping (quantitative) process designed to identify NCOs for involuntary separation from active duty in an effort to—

(1) Improve NCO grade/MOS readiness levels by satisfying force structure requirements.

(2) Enhance the quality of the NCO corps by retaining NCOs with the greatest potential for future contributions to the Army.

(3) Support sustainment of viable career paths across grades and MOSs in an all-volunteer Army.

d. Applicability. This separation authority applies to RA and USAR AGR NCOs in the grades of SSG through CSM/SGM.

e. Implementation. The CG, HRC implements the QSP.

(1) NCOs selected for denial of continued service under the QSP will be notified through appropriate channels by commanders specified in para 1–20. Notification will be in accordance with instructions furnished in HRC's implementing instructions.

(2) NCOs will be separated on the 1st day of the 13th calendar month from the date of notification. Deployed NCOs selected for involuntary separation under this authority will not be separated/retired until redeployment plus 270 days (R+270) unless otherwise requested by the affected NCO.

(3) An NCO may request an earlier separation date, retirement, or submit a resignation (whichever applies and if eligible).

(4) An NCO who is within 2 years of qualifying for retirement under chapter 12 (20 years active federal service) as of the established involuntary separation date and who can so qualify prior to attaining the maximum age will be retained on active duty until the last day of the month following the month he or she qualifies for retirement. Maximum ages are specified in AR 601–280.

(5) An NCO eligible for retirement under chapter 12 may apply for retirement to be effective not later than the established involuntary separation date.

(6) Commanders will ensure that all NCOs pending involuntary separation, under the provisions of this program, undergo a medical examination as required by law and regulation (see 10 USC 1145 and AR 40–501).

(7) The provisions of paragraph 1–34 apply if the NCO requires referral to or is undergoing DES prior to separation. NCOs assigned or attached to warrior transition units selected for involuntary separation will be retained until final disposition of their medical condition(s), to include the DES.

(8) NCOs selected and approved for involuntary separation as a result of the QSP process will be discharged or released from active duty, as appropriate, without entitlement to a local administrative separation board, for the convenience of the Government (for the purpose of post-service benefits). Pre-separation counseling must be scheduled as soon as the NCO is notified of the involuntary separation and counseling should be completed within the remaining period of service as required by law (see 10 USC 1142).

(9) When otherwise eligible, in lieu of involuntary separation, NCOs will, within 7 days of receipt of a formal notification memorandum and in accordance with administrative instructions furnished by the CG, HRC—

(a) Except as otherwise provided in this section, request voluntary retirement under any provision of law for which the NCO is otherwise eligible, in lieu of involuntary separation from active duty. Voluntary retirement will be approved for the date requested by the NCO except retirement will be effective no later than the involuntary separation date established by HQDA and will ordinarily be no earlier than 90 days from the date the NCO elects this option.

(b) For NCOs selected for involuntary separation under the provisions of the QSP who have 18 years of active federal service (as of the date designated for involuntary separation), be retained on active duty until the NCO is eligible for retirement (see 10 USC 1176). NCOs who fail to submit requests for voluntary retirement and are retained under this provision will be discharged for the convenience of the Government upon attainment of 20 years active federal service, as otherwise provided for in this regulation.

(c) For eligible AGR (USAR) NCOs with 20 years or more of qualifying service, elect voluntary REFRAD with concurrent transfer to the Retired Reserve. Such REFRAD will occur no earlier than 90 days after pre-separation counseling and no later than the QSP established separation date.

(10) NCOs selected for involuntary separation will be discharged or released from active duty utilizing SPD code of “JBM” or “LBM,” as appropriate (see para 3–13). In all cases, NCOs are otherwise eligible for reentry and the DD Form 214 will be annotated with a reentry code of 1. NCOs with more than 6 but less than 20 years of active federal service as a result of selection for involuntary separation under the provisions of this program may be entitled to full involuntary separation pay (see 10 USC 1174). When applicable, bonus repayment of any unearned portions will not be sought and any unpaid installments will be made to the NCO in lump sum.

Chapter 17

Instruction in Benefits of an Honorable Discharge

17–1. Purpose of instruction

a. The high rate of enlisted personnel receiving other than honorable discharges is a concern of commanders at all levels. The consequences of receiving an other than honorable discharge can have a lasting adverse effect on the individual Soldier. Every effort must be made to ensure that Soldiers are made aware of such consequences. This chapter prescribes a program of instruction concerning the benefits derived from receiving an honorable discharge from the Army. The program affects all RA enlisted personnel, ARNGUS enlisted personnel, and USAR enlisted personnel on active duty 180 days or more.

b. This instruction should assist commanders in their efforts to minimize misconduct. Many Soldiers gain the false impression that an unfavorable discharge can be easily re-characterized by petitioning the Army discharge review board. This is not the case, since only a small percentage of such actions have been acted upon favorably. Many Soldiers can be discouraged from conduct that warrants an unfavorable discharge.

17–2. Contents of instruction

The instruction will include a comprehensive explanation of the following:

- a. The types of discharge certificates.
- b. The basis for issuance of each type of certificate.

c. The possible effects of the various certificates on reenlistment, civilian employment, veterans' benefits, and related matters.

d. The likelihood that the Soldier will be successful in any attempt to have the character of his or her discharge changed.

17-3. Time of instruction

This instruction will be given:

- a. Upon entry into the Service or within 60 days thereafter.
- b. Upon completion of 6 months of service.
- c. After the second UCMJ, Art. 15 (company grade) or first field grade Article 15 in an enlistment.
- d. After any court-martial in which the Soldier is not discharged.
- e. After a memorandum of reprimand from a general officer, or memorandum of reprimand directed for filing in the AMHRR by a general officer if the basis for the memorandum was for an act of misconduct.
- f. After any act of alleged misconduct, including but not limited to a positive drug test, DUI, late to formation, and so forth.
- g. After a member of the chain of command identifies unsatisfactory performance not rising to the level of misconduct.

17-4. Sample Instructions

a. For situations described in paragraphs 17-3a and 17-3b. "You are hereby counseled in accordance with AR 635-200, paragraph 17-2. Your conduct to date has been satisfactory and the command continues to expect that you will serve with honor and dignity. As required for all Soldiers under AR 635-200, you are formally counseled, that should you begin to engage in misconduct or unsatisfactory performance, it may result in initiation of separation action to eliminate you from the Army under various chapters of AR 635-200. If you are separated, you could receive an honorable, general, or other than honorable characterization of service. An honorable discharge is a separation with honor based on the quality of service, which meets the standards of acceptable conduct and performance of duty. A general discharge is a separation under honorable conditions based on a military record being satisfactory but not sufficiently meritorious to warrant an honorable discharge. A discharge under other than honorable conditions is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of a Soldier. A general or other than honorable characterization of service could severely prejudice you in civilian life. Additionally, an other than honorable characterization of service could deprive you of many or all military and VA benefits, to include forfeiture of all educational benefits. Per AR 635-200, paragraph 1-17, for commission of a serious offense, administrative separation may be initiated without further counseling. Although there are agencies to which you may apply to have your characterization of service changed, such application is not automatic and is often unsuccessful. If you have any questions regarding your rights or benefits, please let me know and I will assist you in seeking legal services."

b. For situations described in paragraphs 17-3c through 17-3e. "You are hereby counseled in accordance with AR 635-200, paragraph 17-3 that you have engaged in the misconduct as described above. Your misconduct may result in initiation of separation action to eliminate you from the Army under various chapters of AR 635-200. If you are separated, you could receive an honorable, general, or other than honorable characterization of service. An honorable discharge is a separation with honor based on the quality of service, which meets the standards of acceptable conduct and performance of duty. A general discharge is a separation under honorable conditions based on a military record being satisfactory but not sufficiently meritorious to warrant an honorable discharge. A discharge under other than honorable conditions is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of a Soldier. A general or other than honorable characterization of service could severely prejudice you in civilian life. Additionally, an other than honorable characterization of service could deprive you of many or all military and VA benefits, to include forfeiture of all educational benefits. Per AR 635-200, paragraph 1-17, if your misconduct included a serious offense, administrative separation may be initiated without further counseling. Although there are agencies to which you may apply to have your characterization of service changed, such application is not automatic and is often unsuccessful. If you have any questions regarding your rights or benefits, please let me know and I will assist you in seeking legal services."

c. For situations described in paragraph 17-3f. "You are hereby counseled in accordance with AR 635-200, paragraph 17-3 regarding the alleged misconduct as described above. The alleged misconduct may result in initiation of separation action to eliminate you from the Army under various chapters of AR 635-200. If you are separated, you could receive an honorable, general, or other than honorable characterization of service. An honorable discharge is a

separation with honor based on the quality of service, which meets the standards of acceptable conduct and performance of duty. A general discharge is a separation under honorable conditions based on a military record being satisfactory but not sufficiently meritorious to warrant an honorable discharge. A discharge under other than honorable conditions is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of a Soldier. A general or other than honorable characterization of service could severely prejudice you in civilian life. Additionally, an other than honorable characterization of service could deprive you of many or all military and VA benefits, to include forfeiture of all educational benefits. Per AR 635–200, paragraph 1–17, if your misconduct included a serious offense, administrative separation may be initiated without further counseling. Although there are agencies to which you may apply to have your characterization of service changed, such application is not automatic and is often unsuccessful. If you have any questions regarding your rights or benefits, please let me know and I will assist you in seeking legal services.”

d. For situations described in paragraph 17–3g. “You are hereby counseled in accordance with AR 635–200, paragraph 17–3 regarding the unsatisfactory performance as described above. The unsatisfactory performance may result in initiation of separation action to eliminate you from the Army under various chapters of AR 635–200. If you are separated, you could receive an honorable, general, or other than honorable characterization of service. An honorable discharge is a separation with honor based on the quality of service, which meets the standards of acceptable conduct and performance of duty. A general discharge is a separation under honorable conditions based on a military record being satisfactory but not sufficiently meritorious to warrant an honorable discharge. A discharge under other than honorable conditions is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of a Soldier. A general or other than honorable characterization of service could severely prejudice you in civilian life. Additionally, an other than honorable characterization of service could deprive you of many or all military and VA benefits, to include forfeiture of all educational benefits. Although there are agencies to which you may apply to have your characterization of service changed, such application is not automatic and is often unsuccessful. If you have any questions regarding your rights or benefits, please let me know and I will assist you in seeking legal services.”

Chapter 18

Failure to Meet Body Composition Standards

18–1. Policy

Each Soldier is responsible for meeting the body composition standards prescribed in AR 600–9. Soldiers who fail to meet these standards are subject to involuntary separation. Separation action under this chapter will not be initiated against a Soldier who meets the criteria for separation under other provisions of this regulation. For example, a Soldier beyond entry-level status who, wholly apart from failure to meet body composition standards, is an unsatisfactory performer, will be processed for separation under the provisions of chapter 13.

18–2. Criteria

a. In accordance with AR 600–9, a Soldier who fails to make satisfactory progress in the ABCP or exceeds the body fat standards within 12 months after release from the ABCP, and the required medical evaluation (see paragraph 18–3) finds no underlying medical condition, will be initiated for separation. Commanders have the discretion to bar Soldiers from reenlistment in lieu of initiation of separation per AR 601–280.

b. In accordance with AR 600–9, a Soldier who, after 12 months but less than 36 months from the date of release from the ABCP, again exceeds the body fat standard, and is not found to have a temporary medical condition that prevents weight or body fat loss, will be re-enrolled in the ABCP. Soldiers who fail to meet the ABCP body fat standards within 90 days from reenrollment, will be initiated for separation. Commanders have the discretion to bar Soldiers from reenlistment in lieu of initiation of separation per AR 601–280.

18–3. Procedures

a. Prior to the initiation of separation under paragraph 18–2, a medical evaluation is required. The healthcare provider will ensure the Soldier can participate in the ABCP and rule out any underlying medical condition that may be a direct cause of significant weight gain or directly inhibit weight or body fat loss.

- (1) If no underlying medical condition exists, the Soldier will be processed per paragraph 18–2.
- (2) If the exam determines that a medical condition exists that does not meet medical retention standards of AR 40–501, the healthcare provider will refer the Soldier to an MEB.

(3) If the Soldier is found to have a temporary medical condition that directly caused weight gain or prevented weight or body fat loss, the Soldier will have up to 6 months from the initial medical evaluation date to undergo treatment to resolve the medical condition. The medical specialty physician may extend the time period up to 12 months if it is determined more time is needed to resolve the medical condition. Once the medical condition is resolved, or 6 months (not to exceed 12 months), whichever occurs first, from the date of the medical evaluation, and the Soldier still exceeds the body fat standard, he or she will continue participating in the ABCP and will be required to show satisfactory progress. A Soldier who fails to show satisfactory progress will be processed per paragraph 18–2.

b. Prior to the initiation of separation under paragraph 18–2, commanders will verify that all rehabilitative and counseling requirements of AR 600–9 have been met.

c. The notification procedure will be used for separation under this paragraph (see chap 2, sec I).

d. The provisions of chapter 1, section VII, will govern whether the Soldier will be released from active duty with transfer to IRR or be discharged. Refer to paragraph 1–12 for additional instructions on ARNGUS and USAR personnel.

18–4. Characterization of service

The service of Soldiers separated under this chapter will be characterized as honorable or an uncharacterized description of service if in entry-level status. The commanders specified in paragraph 1–20 are authorized to take final action in cases processed under this chapter.

Appendix A

References

Section I

Required Publications

Unless otherwise stated, all publications are available at the Army Publishing Directorate website at <https://armypubs.army.mil/>. The Uniform of Code of Military Justice is available at <https://uscode.house.gov/>.

AR 15–6

Procedures for Administrative Investigations and Boards of Officers (Cited in para 2–4*b*(6).)

AR 15–80

Army Grade Determination Review Board and Grade Determinations (Cited in para 12–3*b*(2).)

AR 25–22

The Army Privacy Program (Cited in para 1–16*h*.)

AR 25–55

The Department of the Army Freedom of Information Act Program (Cited in para 1–16*h*.)

AR 25–400–2

The Army Records Information Management System (ARIMS) (Cited in para 1–15*c*.)

AR 27–40

Litigation (Cited in para 5–8*a*.)

AR 27–50/SECNAVINST 5820.4G

Status of Forces Policies, Procedures, and Information (Cited in para 1–28*d*.)

AR 40–3

Medical, Dental, and Veterinary Care (Cited in para 1–25*g*(2)(*b*).)

AR 40–501

Standards of Medical Fitness (Cited in para 1–33*e*.)

AR 50–5

Nuclear Surety (Cited in para 16–5*e*.)

AR 135–18

The Active Guard Reserve Program (Cited on title page.)

AR 135–91

Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures (Cited in para 1–35*d*.)

AR 140–111

U.S. Army Reserve Reenlistment Program (Cited in para 1–47.)

AR 145–1

Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training (Cited in para 16–2*c*(1)(*c*).)

AR 150–1

Organization, Administration, and Operation (Cited in para 4–2*e*.)

AR 350–1

Army Training and Leader Development (Cited in para 13–2*c*.)

AR 380–67

Personnel Security Program (Cited in para 1–18*b*.)

AR 600–4

Remission or Cancellation of Indebtedness (Cited in para 1–26*b*.)

AR 600–8–2

Suspension of Favorable Personnel Actions (Flag) (Cited in para 1–9.)

AR 600–8–6

Personnel Accounting and Strength Reporting (Cited in para 14–11*b*(1).)

AR 600–8–10

Leaves and Passes (Cited in para 1–11.)

AR 600–8–14/AFI 36–3026_IP, Vol. 1/BUPERSINST 1750.10D/MCO 5512.11E/COMDTINST M5512.1B/NOAA Corps Directives, Chap 1, Part 5/Commissioned Corps Manual 29.2; Instructions 1 and 2
Identification Cards for Members of the Uniformed Services, Their Family Members, and Other Eligible Personnel
(Cited in para 12–24*b*.)

AR 600–8–19

Enlisted Promotions and Reductions (Cited in para 1–14*d*.)

AR 600–8–22

Military Awards (Cited in para 12–24*a*.)

AR 600–8–24

Officer Transfers and Discharges (Cited para 12–1*b*.)

AR 600–8–104

Army Military Human Resource Records Management (Cited in para 10–9.)

AR 600–8–105

Military Orders (Cited in para 1–12*a*.)

AR 600–9

The Army Body Composition Program (Cited in para 18–1.)

AR 600–20

Army Command Policy (Cited in para 1–16*f*.)

AR 600–25

Salutes, Honors, and Courtesy (Cited in para 12–22.)

AR 600–43

Conscientious Objection (Cited in para 1–36*b*(7)(*f*).)

AR 600–62

United States Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel
(Cited in para 3–14*c*.)

AR 600–85

The Army Substance Abuse Program (Cited in para 1–15*f*.)

AR 600–110

Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (Cited in para 5–10*b*(2).)

AR 601–210

Regular Army and Reserve Components Enlistment Program (Cited in para 1–37*f*.)

AR 601–280

Army Retention Program (Cited in para 1–34*a*.)

AR 612–201

Initial Entry/Prior Service Trainee Support (Cited in para 4–2*j*.)

AR 614–30

Overseas Service (Cited in para 3–14*c*.)

AR 614–200

Enlisted Assignments and Utilization Management (Cited in para 6–5*h*.)

AR 630–10

Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings (Cited in para 1–15*g*.)

AR 635–5–1

Separation Program Designator Codes (Cited in para 3–13.)

AR 635–8

Separation Processing and Documents (Cited in para 1–12*b*(1)(*d*).)

AR 635–40

Disability Evaluation for Retention, Retirement, or Separation (Cited in para 1–18*b*(4).)

DoDI 6490.04

Mental Health Evaluations of Members of the Military Services (Cited in para 1–33*c*.) (Available at <https://www.esd.whs.mil/dd/>.)

JTR

Joint Travel Regulations (Cited in para 12–24*h*.) (Available at <https://www.defensetravel.dod.mil/site/travelreg.cfm>.)

MCM

Manual for Courts-Martial (Cited in para 1–27*b*(1).) (Available at <https://jsc.defense.gov/>.)

NGR 600–200

Enlisted Personnel Management (Cited in para 4–2*a*.) (Available at <https://www.ngbpmc.ng.mil/ngr/>.)

Public Law 110–317

The Hubbard Act (Cited in para 5–3*c*.) (Available at <https://www.gpo.gov/>.)

UCMJ, Art. 14

Delivery of offenders to civil authorities (Cited in para 1–19*c*(2).)

UCMJ, Art. 15

Commanding officer's non-judicial punishment (Cited in para 3–7*a*(2)(*b*).)

UCMJ, Art. 31

Compulsory self-incrimination prohibited (Cited in para 2–9*d*(8).)

UCMJ, Art. 43

Statute of limitations (Cited in para 2–15*a*(2).)

UCMJ, Art. 83

Malingering (Cited in para 7–19.)

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. Unless otherwise indicated, DA publications are available on the Army Publishing Directorate website (<https://armypubs.army.mil/>). DoD publications are available at <https://www.esd.whs.mil/dd/>. The UCMJ (10 USC Chapter 47) and USCs are available at <https://uscode.house.gov/>.

AR 11–2

Managers' Internal Control Program

AR 15–185

Army Board for Correction of Military Records

AR 25–30

Army Publishing Program

AR 40–400

Patient Administration

AR 135–178

Enlisted Administrative Separations

AR 190–9
Absentee Deserter Apprehension Program and Surrender of Military Personnel to Civilian Law Enforcement Agencies

AR 190–45
Law Enforcement Reporting

AR 195–2
Criminal Investigation Activities

AR 600–8–4
Line of Duty Policies, Procedures, and Investigations

AR 600–37
Unfavorable Information

AR 608–1
Army Community Service

AR 608–18
The Army Family Advocacy Program

AR 637–2
Separation Pay (Nondisability) and Levels of Payment

AR 670–1
Wear and Appearance of Army Uniforms and Insignia

DA Pam 25–403
Guide to Recordkeeping in the Army

DA Pam 600–8
Military Human Resources Management Administrative Procedures

DoD 7000.14–R, Volume 7A
Financial Management Regulation Military Pay Policy and Procedures—Active Duty and Reserve Pay (Available at <https://comptroller.defense.gov/>.)

DoDI 1325.07
Administration of Military Correctional Facilities and Clemency and Parole Authority

DoDI 1332.14
Enlisted Administrative Separations

DoDI 1332.28
Discharge Review Board (DRB) Procedures and Standards

DoDI 1332.29
Involuntary Separation Pay (Non-Disability)

DoDI 1332.30
Commissioned Officer Administrative Separations

DoDI 6040.46
The Separation History and Physical Examination (SHPE) for the DoD Separation Health Assessment (SHA) Program

Public Law 109–248
Adam Walsh Child Protection and Safety Act of 2006 (Available at <https://www.congress.gov/public-laws/109th-congress/>.)

UCMJ, Art. 2
Persons subject to this chapter

UCMJ, Art. 27
Detail of trial counsel and defense counsel

UCMJ, Art. 39
Sessions

UCMJ, Art. 60a

Limited authority to act on sentence in specified post-trial circumstances

UCMJ, Art. 104a

Fraudulent enlistment, appointment, or separation

UCMJ, Art. 104b

Unlawful enlistment, appointment, or separation

UCMJ, Art. 120

Rape and sexual assault generally

UCMJ, Art. 120b

Rape and sexual assault of a child

UCMJ, Art. 128

Assault

UCMJ, Art. 130

Stalking

UCMJ, RCM 202

Persons subject to the jurisdiction of courts-martial

5 USC 8301

Uniform retirement date

8 USC 1439

Naturalization through service in the armed forces

8 USC 1440

Naturalization through active-duty service in the Armed Forces during World War I, World War II, Korean hostilities, Vietnam hostilities, or other periods of military hostilities

10 USC Chapter 61

Retirement or Separation for Physical Disability

10 USC Chapter 123

Retired Pay for Non-Regular Service

10 USC 101

Definitions

10 USC 507

Extension of enlistment for members needing medical care or hospitalization

10 USC 651

Members: required service

10 USC 815

Art. 15. Commanding officer's non-judicial punishment

10 USC 972

Members: effect of time lost

10 USC 1141

Involuntary separation defined

10 USC 1142

Preseparation counseling; transmittal of certain records to Department of Veterans Affairs

10 USC 1143

Employment assistance

10 USC 1144

Employment assistance, job training assistance, and other transitional services: Department of Labor

10 USC 1145

Health benefits

10 USC 1146

Commissary and exchange benefits

10 USC 1147

Use of military family housing

10 USC 1148

Relocation assistance for personnel overseas

10 USC 1149

Excess leave and permissive temporary duty

10 USC 1150

Affiliation with Guard and Reserve units: waiver of certain limitations

10 USC 1151

Retention of assistive technology and services provided before separation

10 USC 1152

Assistance to eligible members and former members to obtain employment with law enforcement agencies

10 USC 1153

Assistance to separated members to obtain employment with health care providers

10 USC 1168

Discharge or release from active duty: limitations

10 USC 1169

Regular enlisted members: limitations on discharge

10 USC 1170

Regular enlisted members: minority discharge

10 USC 1171

Regular enlisted members: early discharge

10 USC 1172

Enlisted members: during war or emergency; discharge

10 USC 1173

Enlisted members: discharge for hardship

10 USC 1174

Separation pay upon involuntary discharge or release from active duty

10 USC 1174a

Special separation benefits programs

10 USC 1175

Voluntary separation incentive

10 USC 1176

Enlisted members: retention after completion of 18 or more, but less than 20, years of service

10 USC 1177

Members diagnosed with or reasonably asserting post-traumatic stress disorder or traumatic brain injury: medical examination required before administrative separation

10 USC 1201

Regulars and members on active duty for more than 30 days: retirement

10 USC 1202

Regulars and members on active duty for more than 30 days: temporary disability retired list

10 USC 1214

Right to full and fair hearing

10 USC 1370

Commissioned officers: general rule; exceptions

10 USC 1371

Warrant officers: general rule

10 USC 1407

Retired pay base for members who first became members after September 7, 1980: high-36 month average

10 USC 1552

Correction of military records: claims incident thereto

10 USC 7314

Twenty to thirty years: enlisted members

10 USC 7317

Thirty years or more: regular enlisted members

10 USC 7325

Computation of years of service: voluntary retirement; enlisted members

10 USC 7342

Higher grade for service in special positions

10 USC 7343

Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

10 USC 7344

Higher grade after 30 years of service: warrant officers and enlisted members

10 USC 7345

Restoration to former grade: retired warrant officers and enlisted members

10 USC 12301

Reserve components generally

10 USC 12304

Selected Reserve and certain Individual Ready Reserve members; order to active duty other than during war or national emergency

10 USC 12305

Authority of President to suspend certain laws relating to promotion, retirement, and separation

10 USC 12313

Reserves: release from active duty

10 USC 12681

Reserves: discharge authority

10 USC 12684

Reserves: separation for absence without authority or sentence to imprisonment

10 USC 12686

Reserves on active duty within two years of retirement eligibility: limitation on release from active duty

10 USC 12732

Entitlement to retired pay: computation of years of service

18 USC Chapter 109A

Sexual abuse

18 USC 117

Domestic assault by an habitual offender

18 USC 922

Unlawful acts

18 USC 1591

Sex trafficking of children or by force, fraud, or coercion

34 USC 20911

Relevant definitions, including Amie Zyla expansion of sex offender definition and expanded inclusion of child predators

37 USC 303a

Special pay: general provisions

37 USC 308

Special pay: reenlistment bonus

37 USC 552

Pay and allowances; continuance while in a missing status; limitations

37 USC 1001

Regulations relating to pay and allowances

Section III**Prescribed Forms**

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

DA Form 2339

Application for Voluntary Retirement (Prescribed in para 2–12*b*(1).)

DA Form 5138

Separation Action Control Sheet (Prescribed in para 1–8*f*.)

DA Form 7771

Enlisted Behavioral-Health Related Administrative Separation Checklist (Prescribed in para 5–14*f*.)

Section IV**Referenced Forms**

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate website (<https://armypubs.army.mil/>) and DD forms are available on the Executive Services Directorate website (<https://www.esd.whs.mil/directives/forms/>). Standard forms are available on the General Services Administration website (<https://www.gsa.gov/reference/forms>).

DA Form 11–2

Internal Control Evaluation Certification

DA Form 268

Report to Suspend Favorable Personnel Actions (FLAG)

DA Form 1059

Service School Academic Evaluation Report

DA Form 1695

Oath of Extension of Enlistment

DA Form 2028

Recommended Changes to Publications and Blank Forms

DA Form 2823

Sworn Statement

DA Form 3286

Statements for Enlistment, United States Army Enlistment Program, U.S. Army Delayed Enlistment Program (EGA) (Available through Army Recruiting Information Support System.)

DA Form 3349

Physical Profile (Available through <https://medpros.mods.army.mil>.)

DA Form 3822

Report of Mental Status Evaluation

DA Form 3891

Army Spouse Certificate of Appreciation (Available through normal forms supply channels.)

DA Form 4187

Personnel Action

DA Form 4856

Developmental Counseling Form

DA Form 4991

Declination of Continued Service Statement

DD Form 214

Certificate of Release or Discharge from Active Duty

DD Form 214WS

Certificate of Release or Discharge from Active Duty (Worksheet)

DD Form 215

Correction to DD Form 214, Certificate of Release or Discharge from Active Duty

DD Form 256

Honorable Discharge Certificate (Available through normal forms supply channels.)

DD Form 363

Certificate of Retirement (Available through normal forms supply channels.)

DD Form 458

Charge Sheet

DD Form 553

Deserter/Absentee Wanted By the Armed Forces

DD Form 616

Report of Return of Absentee

DD Form 2542

Certificate of Appreciation for Service in the Armed Forces of the United States

DD Form 2808

Report of Medical Examination

PS Form 3800

Certified Mail Receipt (Available at <https://about.usps.com/resources/forms.htm>)

SF 87

Fingerprint Chart (Available through normal forms supply channels.)

Appendix B

Sample Administrative Separation Board Package

B-1. Sample of discharge for misconduct

This appendix contains a sample of an administrative separation board package that includes an initial notification package with all necessary memorandums and a summarized record of board proceedings (see fig B-1).

B-2. Other chapter actions

Although this sample cites chapter 14 of this regulation, the same procedures will be used for any chapter action requiring a board in compliance with this regulation.



DEPARTMENT OF THE ARMY
HEADQUARTERS, UNIT NAME
STREET ADDRESS
CITY, STATE 12345-0001

(Office Symbol)

(Date)

MEMORANDUM THRU (Unit Commander)

MEMORANDUM FOR Commander, Headquarters, Unit Name, Street Address, City, State, Zip Code +4

SUBJECT: Discharge for Misconduct under AR 635-200, Chapter 14

1. It is recommended that (Name, Rank, organization) be required to appear before a board of officers convened under the provisions of AR 635-200, chapter 14, paragraph 14-12(a) and (b), for the purpose of determining whether he/she should be discharged before the expiration of his/her term of service.
2. In support of the recommendation, the following information concerning (Rank Last Name) is provided:
 - a. He/She enlisted (date of enlistment) for a term of (number of years and weeks) and has no prior service. He/She is (number) years of age.
 - b. He/She has no reserve commission or warrant.
 - c. Discharge is recommended because of frequent incidents of a discreditable nature with military authorities and habitual shirking (Include narrative statement of basis for discharge and results of counseling sessions.)
 - d. His/Her duty MOS is (MOS), and his/her MOS evaluation score is 85. His/Her aptitude area scores are:

<u>APT</u>	<u>Score</u>
CO	(score)
EL	(score)
GM	(score)
MM	(score)
CL	(score)
GT	(score)
FA	(score)
ST	(score)
OF	(score)
SC	(score)

Figure B-1. Sample report package for discharge for misconduct

(Office Symbol)

SUBJECT: Discharge for Misconduct under AR 635-200, Chapter 14

e. During the period (date) to (date), this Soldier has been assigned to various duty assignments (organizations) commensurate with his/her training and ability and has served under different superior officers and noncommissioned officers. In each instance, his/her performance of duty has been unsatisfactory. His/Her military superiors and the psychiatric examiner agree that further rehabilitative efforts would be useless. His/Her assignments in this (organization) are:

(1) (dates)

(2) (dates)

(3) (dates)

f. He/She has been counseled as indicated. (List dates of counseling citing reasons for counseling and the person giving the counseling.)

g. As discharge is recommended for the reasons stated in c above, separation for unsatisfactory performance is not considered appropriate; (Rank, Last Name) performance is characterized by intentional shirking of his/her duties and by behavior rendering him/her repeatedly subject to punitive action. His/Her behavior is not due to incapacity to become a satisfactory soldier within the meaning of misconduct. There appear to be no grounds for other disposition.

h. Rank, Last name (list prior incidents of unsatisfactory performance).

5 Encls

(Signature block of Commander)

1. Memorandum of Notification
2. Memorandum on Acknowledgement
3. Med exam (SP 88, SF93, DA Form 3822-R)
4. Court Martial order(s)
5. Rec. of Art 15 proceedings (DA Form 2627)

Note: This is an example of a recommendation for discharge for misconduct. If individual is being recommended for discharge for unsuitability, sample will be changed accordingly. All documents that are not evidence will be numbered consecutively with Roman numerals and made enclosures. Items that are exhibits will be numbered consecutively (or lettered if submitted by respondent) (AR 15-6, paras 3-15 and 3-16). The first three enclosures must be included in all cases. Enclosures 4 and 5 must be included if appropriate. Other enclosures may be added as desired.

Figure B-1. Sample report package for discharge for misconduct—continued

Appendix C

Internal Control Evaluation

C-1. Function

The function covered by this evaluation is the accurate and orderly administrative separation of enlisted Soldiers.

C-2. Purpose

The purpose of this evaluation is to assist commanders in evaluating the key management controls listed below. It is not intended to cover all controls.

C-3. Instructions

Answers must be based on the actual testing of key management controls (for example, document analysis direct observation, random sampling, and simulation). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation. These management controls must be evaluated at least once every 2 years. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2 (Internal Control Evaluation Certification).

C-4. Test questions

- a. Has a managerial review been conducted using DA Form 5138 (Separation Action Control Sheet) to ensure compliance with regulatory guidance prior to forwarding to approval authority?
- b. Have the processing goals under paragraph 1-8 been met?
- c. Have the notification procedures, as required under AR 635-200 been conducted as required by the regulation?
- d. Have the administrative board procedures, as required under AR 635-200 been conducted accurately?
- e. Is the proper separation authority under paragraph 1-20 evident for approved separations (review of locally filed separations/delegation of authority memorandums, and so forth)?
- f. Have those Soldiers identified for separation under paragraph 5-14 been properly reviewed using DA Form 7771?

C-5. Comments

Help make this a better tool for evaluating management controls. Submit comments to Commander, U.S. Army Human Resources Command (AHRC-PDT), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5204.

Glossary

Section I

Abbreviations

ABCP

Army Body Composition Program

ADT

active duty for training

AGR

Active Guard Reserve

AIT

advanced individual training

AMHRR

Army Military Human Resource Record

APFT

Army physical fitness test

AR

Army regulation

ARNG

Army National Guard

ARNGUS

Army National Guard of the United States

ASCC

Army service component command

AWOL

absent without leave

BT

basic training

CG

commanding general

CONUS

continental United States

CSM

command sergeant major

DA

Department of the Army

DA Form

Department of the Army form

DASEB

Department of the Army Suitability Evaluation Board

DCS

Deputy Chief of Staff

DD Form

Department of Defense form

DES

Disability Evaluation System

DMPM
Director of Military Personnel Management

DoD
Department of Defense

DoDI
Department of Defense Instruction

DPH
Director of Psychological Health

DUI
driving under the influence

ETS
expiration term of service

EUSA
Eighth United States Army

FBI
Federal Bureau of Investigation

GCMCA
general court-martial convening authority

HQDA
Headquarters, Department of the Army

HRC
U.S. Army Human Resources Command

IADT
initial active duty for training

IET
initial entry training

IPERMS
Interactive Personnel Electronic Records Management System

IRR
Individual Ready Reserve

JAGC
Judge Advocate General's Corps

JTR
Joint Travel Regulations

LTC
lieutenant colonel

MAJ
major

MCM
Manual for Courts-Martial

MEB
medical evaluation board

MEPS
military entrance processing station

MILPER
military personnel

MOS
military occupational specialty

MSG
master sergeant

MSO
military service obligation

MTF
medical treatment facility

NCO
noncommissioned officer

NCOES
Noncommissioned Officer Education System

NFQ
not fully qualified

NGB
National Guard Bureau

NGR
National Guard Regulation

OML
order of merit list

OTSG
Office of the Surgeon General

PCF
personnel control facility

PCS
permanent change of station

PEB
physical evaluation board

PFR
personal financial records

PL
Public Law

PS Form
Postal Service form

PSI
personnel security investigation

PTSD
post-traumatic stress disorder

QMP
Qualitative Management Program

QSP
Qualitative Service Program

RA
Regular Army

RC
Reserve Component

RCM
rules for courts-martial

RCP
retention control point

RE
reentry eligibility

REFRAD
release from active duty

ROTC
Reserve Officers' Training Corps

SAG
state adjutant general

SCCC
Service Central Coordination Cell

SECARMY
Secretary of the Army

SF
Standard Form

SFC
sergeant first class

SGM
sergeant major

SJA
staff judge advocate

SPCMCA
special court-martial convening authority

SPD
separation program designator

SSG
staff sergeant

SSN
social security number

STP
separation transfer point

TA
transition activity

TBI
traumatic brain injury

TC
transition center

TC
transition center

TDY
temporary duty

TJAG
The Judge Advocate General

TRADOC

U.S. Army Training and Doctrine Command

TSG

The Surgeon General

UCMJ

Uniform Code of Military Justice

USAPDA

U.S. Army Physical Disability Agency

USAR

U.S. Army Reserve

USAREC

U.S. Army Recruiting Command

USAREUR

U.S. Army Europe

USARPAC

U.S. Army Pacific Command

USC

United States Code

1SG

first sergeant

Section II**Terms****Active duty**

Full-time duty in the active military service of the United States—includes ADT.

Active duty for training

Includes IADT.

Administrative board procedure

The process of an administrative separation action where the respondent will have a right to a hearing before a board of officers. It is initiated in the same manner as the notification procedure.

Administrative separation

Discharge or REFRAD upon expiration of enlistment or required period of service, or before, as prescribed by the DA or by law. If one of the bases for separation includes a continuous unauthorized absence of 180 days or more, the consulting counsel will advise the Soldier that a discharge under other than honorable conditions is a conditional bar to benefits administered by the Department of Veterans Affairs, notwithstanding any action by a Discharge Review Board. Separation by sentence of a general or special court-martial is not an administrative separation.

Administrative separation board

A board of officers, or officers and NCOs, appointed to make findings and to recommend retention or separation in the Service. The board states the reason and recommends the type of separation or discharge certificate to be furnished.

Basic training

IET that provides nonprior-service personnel instructions in basic skills common to all Soldiers. BT precedes AIT.

Character of service for administrative separation

A determination reflecting a Soldier's military behavior and performance of duty during a specific period of service. The three characterizations are honorable, general (under honorable conditions), and under other than honorable conditions. The service of Soldiers in entry-level status is normally described as uncharacterized.

Contractually obligated Soldier

A Soldier who is serving under enlistment contract or extension (has completed statutory service obligation or has not acquired one) (see AR 135–91).

Convening authority

The separation authority or a commanding officer who is authorized by this regulation to process the case except for final action and who otherwise has the qualifications to act as a separation authority.

Detainer

A written notice to civil authorities that the person in their custody is a Soldier of the Army. The notice states that military authorities desire to take custody when the person is released.

Discharge

Complete severance from all military status gained by enlistment.

Entry-level status

a. For RA Soldiers, entry-level status is the first 180 days of continuous active duty or the first 180 days of continuous active duty following a break of more than 92 days of active military service.

b. For ARNGUS and USAR Soldiers, entry-level status begins upon enlistment in the ARNG or USAR. For Soldiers ordered to IADT for one continuous period, entry-level status terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, entry-level status terminates 90 days after beginning Phase II AIT. (Soldiers completing Phase I BT or basic combat training remain in entry-level status until 90 days after beginning Phase II.)

c. Service that is not creditable per DoD 7000.14-R, Volume 7A, is excluded from the period of entry-level status.

Improper recruiting practice

Any intentional action(s) or omission(s), or negligence in performance of duty by a USAREC Soldier that violate(s) law, regulation, directive, or policy and occur(s) during processing of a prospect or applicant for enlistment and result(s) in enlistment or attempted enlistment of a person who does not meet all established enlistment prerequisites for either initial enlistment or specific option/MOS in which enlisted.

Juvenile offender

A person initially adjudged guilty of an offense by a domestic court of the United States or its territorial possessions or by a foreign court, whether or not a sentence has been imposed or suspended or whether there are any other subsequent proceedings in the case. The law of the jurisdiction of the court will be determinative of whether a given proceeding constitutes an adjudication of guilt. Adjudication as a juvenile offender includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

Military behavior

The conduct of the individual while a Soldier of the Army.

Military record

An account of a Soldier's behavior while in military service. This includes personal conduct and performance of duty.

Notification procedure

Initiation of an administrative separation process in which the respondent is notified in writing of the proposed separation, the basis of it, the results of separation, and his or her rights. This term is commonly used when the respondent does not have an automatic right to a hearing before an administrative separation board.

One station unit training

IET in which elements of BT and AIT are provided in the same unit under one cadre for the total period of training. In one station unit training, elements of BT and AIT are either integrated (provided simultaneously) or are nonintegrated (provided in distinct BT/AIT phases).

Preponderance of the evidence

Evidence that, after consideration of all evidence presented, points to a certain conclusion as being more credible and probable than any other conclusion. Where the evidence is equally consistent with two or more opposing propositions, it is insufficient.

Prior enlistment or period of service

Service in any component of the Armed Forces that ends with the issuance of a discharge certificate or certificate of service.

Recruiting official

As used in this regulation includes recruiter, recruiting guidance counselor, retention NCO, and any other personnel that process individuals for enlistment or reenlistment in the Army.

Regular Army

Consists of the following: RA Soldiers on active duty; ARNGUS and the USAR Soldiers on active duty; ARNG Soldiers in the Service of the United States pursuant to a call; and all persons appointed, enlisted, or inducted into the Army without component. Excluded are ARNGUS and USAR Soldiers serving on the following: ADT, AGR status, active duty for special work, temporary tours of active duty for 180 days or less, and active duty pursuant to the call of the President (see 10 USC 12304).

Release from active duty

Termination of active duty status and transfer or reversion to a status of an RC Soldier not on active duty. Personnel enlisted or inducted who have a Reserve obligation under 10 USC 651 or any other provision of law are transferred to a USAR Control Group. Unit members of the ARNGUS and USAR revert from an active duty status to their components to complete unexpired enlistments or unfulfilled obligations.

Respondent

A Soldier who has been notified that action has been initiated to separate him or her under this regulation.

Separation

An all-inclusive term applied to personnel actions resulting from REFRAD, discharge, retirement, being dropped from the rolls, release from military control of personnel without a military status, or death.

Separation authority

The official authorized by Army regulations to take final action on specified types of separations.

Soldier, enlisted person

An enlisted man or woman of the Army. This includes all persons enlisted in any component of the Army, in active federal service, or ADT unless otherwise indicated or obviously inappropriate.

Statutorily obligated Soldier

A Soldier who is serving by reason of law (see AR 135–91).

Transition activity

An activity designated to accomplish separation processing of military Soldiers assigned to that installation only.

Transition center

A centralized activity at an installation listed in AR 635–8 to accomplish separation processing of military Soldiers assigned to activities at the same installation or satellited on the same installation, or assigned to that activity from another installation specifically for separation.

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