Army Regulation 635–200

Personnel Separations

Active Duty Enlisted Administrative Separations

Rapid Action Revision (RAR) Issue Date: 6 September 2011

Headquarters
Department of the Army
Washington, DC
6 June 2005

UNCLASSIFIED

SUMMARY of CHANGE

AR 635–200
Active Duty Enlisted Administrative Separations

This rapid action revision, dated 6 September 2011--

- Implements the Don't Ask, Don't Tell Repeal Act of 2010 by deleting all references to separation for homosexual conduct and concealment of pre-service and prior-service homosexual conduct (paras 1-8, 1-14*g*, 1-17*b*, 1-17*c*, 1-18*a*(1) and (2), 1-28*d*, 1-32*b*, 1-33*b*, 2-6*c*, 2-12b(8), 3-7*c*, 5-3*c*, 5-13*c*, 11-3*c*, and 14-2*e*; rescinded paras 1-5*c*, 1-35*b*(8)j, 2-6*a*(4), 2-12*b*(3), 7-17*b*(7), and chap 15).

- Makes administrative changes (app A: obsolete publications marked; removed "A" from "DD Form 256A" and added DD Form 363 in the prescribed forms list, added DA Form 3891-1 in the referenced forms list; glossary: deleted unused acronyms and corrected abbreviations as prescribed by Army Records Management and Declassification Agency).

Headquarters
Department of the Army
Washington, DC
6 June 2005

*Army Regulation 635–200

Effective 6 July 2005

Personnel Separations

Active Duty Enlisted Administrative Separations

By Order of the Secretary of the Army:

RAYMOND T. ODIERNO
General, United States Army
Chief of Staff

Official:

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Administrative Assistant to the
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History. This publication is a rapid action revision (RAR). This RAR is effective 20 September 2011. The portions affected by this RAR are listed in the summary of change.

Summary. This regulation implements DODI 1332.14 and DODI 1332.30. Statutory authority for this regulation is established under Sections 1169, 12313(a), and 12681, Title 10, United States Code.

Applicability. This regulation applies to the Active Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve, unless otherwise stated.

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 management control process. This regulation contains management control provisions in accordance with AR 11-2, but it does not identify key management controls that must be evaluated.

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 (AHRC–PDP–T), 200 Stovall Street, Alexandria, VA 22332–0418.

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

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* This AR supersedes AR 635–200, dated 15 July 2004. This edition publishes a rapid action revision of AR 635–200.

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Glossary

Chapter 1
General Provisions

Section I
General

1–1. Purpose

a. This regulation sets policies, standards, and procedures to ensure the readiness and competency of the force while providing for the orderly administrative separation of Soldiers for a variety of reasons. Readiness is promoted by maintaining high standards of conduct and performance.

b. 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.

c. Department of the Army separation policy is designed to strengthen the concept that military service is a calling different from any civilian occupation.

(1) The acquisition of military status involves a commitment to the United States, the Army, one's fellow citizens, and Soldiers, to complete successfully a period of obligated service. Early separation for failure to meet required standards of performance or discipline represents a failure to fulfill that commitment.

(2) Millions of Americans from diverse backgrounds and with a wide variety of aptitudes and attitudes upon entering military service have served successfully in the Army. It is the policy of the Department of the Army to provide Soldiers with the training, motivation, and professional leadership that inspires the dedicated Soldier to emulate his/her predecessors and peers in meeting required standards of performance and discipline.

(3) The Army makes a substantial investment in training, time, equipment, and related expenses when persons enter into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Army.

(a) Diligent efforts will be made to identify Soldiers who exhibit a likelihood for early separation and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings.

(b) 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 the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance.

d. This regulation provides—

(1) The authority for separation of Soldiers upon expiration term of service (ETS) or fulfillment of active duty obligation.

(2) The authority and 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.

(3) The procedures to implement laws and policies governing voluntary retirement of Soldiers of the Army for length of service.

(4) The criteria governing uncharacterized separations and the issuance of honorable, general, and under other-than-honorable-conditions discharges.

1–2. References

Required and related publications and prescribed and referenced forms are listed in appendix A.

1–3. Explanation of abbreviations and terms

Abbreviations and special terms used in this publication are explained in the glossary.

1–4. Responsibilities

a. The Deputy Chief of Staff, G–1 (DCS, G–1) establishes personnel policies relating to enlisted separations.

b. The Commanding General (CG), U.S. Army Human Resources Command establishes standards and operating tasks for the enlisted separation program.

c. The Judge Advocate General (TJAG), upon request, reviews DA administrative changes to verify the legality of prescribed policies and changes.

d. The Commandant, Adjutant General School, ensures that lesson programs of instruction incorporate the provisions of this regulation.

e. Commanders of all major Army commands (MACOMs) monitor the administration of the enlisted separation program to ensure compliance with the policies and operating tasks established by this regulation.

1–5. 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. All references are to sections of Title 10 of the United States Code (10 USC).

a. 10 USC 507 provides authority in certain cases to retain Soldiers on active duty beyond ETS.

b. 10 USC 651 establishes the initial military service obligation and provides for transfer to a Reserve Component (RC), in certain cases, upon release from active duty.

c. Rescinded.

d. 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.

e. 10 USC 1141 through 1153 describe benefits and services available to Soldiers who are being voluntarily or involuntarily separated.

f. 10 USC 1168 stipulates that a discharge certificate or certificate of release from active duty must be given to each Soldier discharged or released from active duty.

g. 10 USC 1169 confers broad authority on the Secretary of the Army to order separation of a regular Army (RA) Soldier prior to ETS.

h. 10 USC 1170 provides authority for separation on the grounds of minority age (under 18 years of age).

i. 10 USC 1171 provides authority to separate a Soldier up to 3 months before ETS.

j. 10 USC 1173 provides authority for discharge due to hardship of a Soldier who has Family members.

k. 10 USC 1174 provides for separation pay to certain Soldiers involuntarily discharged or released from active duty.

l. 10 USC 1174a provides for special separation benefits (lump-sum payment) for certain Soldiers who separate voluntarily.

m. 10 USC 1175 provides for a voluntary separation incentive (annual payment) for certain Soldiers who separate voluntarily.

n. 10 USC 1176 establishes rules for retention on active duty to retirement eligibility of Soldiers with 18 or more years of service.

o. 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.

p. 10 USC 12313 provides Secretarial authority to release RC Soldiers from active duty.

q. 10 USC 12681 provides Secretarial authority for discharge of RC Soldiers.

r. 10 USC 12684 authorizes the Secretary of the Army to drop RC Soldiers from the rolls of the Army under certain circumstances.

s. 10 USC 12686 establishes rules for retention on active duty of RC Soldiers who are within two years of retirement eligibility.

t. Laws pertaining to retirement for length of service are explained in chapter 12, section II, of this regulation.

1–6. Separation pay

Eligibility for, and payment of, separation pay is governed by Department of Defense (DOD) Instruction 1332.29.

1–7. Processing goals

a. Processing time for separations when the notification procedure is used will not normally not 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 Soldier acknowledges receipt of the notification of the proposed separation to the date the separation authority directs separation. (See para 2–2*h* concerning the receipt of notification.)

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 is used to ensure processing goals are met. (This form is available on the Army Publishing Directorate (APD) Web site at http://www.apd.army.mil.)

1–8. Suspension of favorable personnel action

When suspension of favorable personnel action, per Army Regulation (AR) 600–8–2, is initiated solely because a Soldier is being considered for separation under chapter 13 or 14 and it is later determined that the Soldier will be processed for separation for medical reasons (see para 1–33), the Soldier's immediate commander will expedite action to remove the suspension action. This will prevent delay in disposition of the case through medical channels.

1–9. The enlisted discharge/transfer process

The enlisted transfer/discharge process is divided into the following sub-functions:

a. Voluntary release from active duty or discharge.

b. Involuntary release from active duty or discharge.

c. Miscellaneous types of separations.

d. Retirement for length of service.

1–10. Leave in conjunction with separation

Granting of leave in conjunction with separation will be per AR 600–8–10.

1–11. Separation orders

a. Authority for separation (per this regulation) 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 (1) and (2), below, Army National Guard of the United States (ARNGUS) personnel will be released from active duty (AD) 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 AD or ADT and returned to their appropriate USAR status.

(1) *ARNGUS.*

(a) An ARNGUS Soldier who is being separated for any reason for which a RA Soldier would be discharged will be discharged from his/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 (see paras 7–4, 7–9, 7–15*e* or *f*, 7–18, or 7–22) an order, stating specific reasons, will be issued releasing the individual from the custody and control of the Army. The order will return the individual to the appropriate State Adjutant General 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) per section VII of this chapter, the Soldier will be released from active duty. The Soldier will be returned to the appropriate State Adjutant General for discharge from his/her State status and transferred to the IRR (appropriate USAR control group).

(d) The Military Personnel Records Jacket (MPRJ) or local file, as appropriate, with a copy of the separation order and documentation of the separation action, will be sent expeditiously to the appropriate State Adjutant General for disposition. In addition, when the Soldier is transferred to the IRR, a copy of the order will be sent to Commander, United States Army Human Resources Command (USA HRC) (DARP–PR), 1 Reserve Way, St. Louis, MO 63132–5200.

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

(a) A USAR Soldier who is being separated for any reason for which a 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 per 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/her military service obligation.

(c) If the Soldier is being discharged or transferred to the IRR, the MPRJ or local file, as appropriate, a copy of the separation order and documentation of the separation action will be sent expeditiously to Commander, USA HRC, (DARP–PR), 1 Reserve Way, St. Louis, MO 63132–5200. In all cases, a copy of the separation order will be sent to the Soldier's USAR unit of assignment.

1–12. Separation of Soldiers with access to special intelligence, other compartmented information, or sensitive programs

When a Soldier has had access to sensitive compartmented information (SCI), special access programs (SAPs), Nuclear Weapon Personnel Reliability Program, Single Integrated Operation Program-extremely sensitive information (SIOP-ESI), 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), director of security (DSEC), security manager, prior to initiation of the proposed separation. The following information will be reported to S2, G2,

DSEC, security manager: name, grade, social security number (SSN), date and place of birth, length of service, and reason for proposed discharge.

1–13. Reduction in grade

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 per AR 600–8–19, chapter 10.

1–14. 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 per AR 635–10. The original copy of the proceedings will be filed in the permanent section of the Soldier's MPRJ or local file, as appropriate, per AR 600–8–104.

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 to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, for final determination. (See para 1–19*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 entered in item 27, DA Form 2–1 (Personnel Qualification Record-Part II): "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 official military personnel file (OMPF):

(1) For RA personnel: Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301.

(2) For ARNGUS personnel: The appropriate State Adjutant General.

(3) For USAR personnel: Commander, USA HRC, 1 Reserve Way, St. Louis, MO 63132–5200.

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 and SSN of the Soldier)." This copy will be given to the respondent or his/her counsel. A signed receipt will be obtained from the Soldier or his/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/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 Commander, USA HRC, St. Louis, MO, may release this copy thereafter.

f. When the separation authority approves a Soldier's discharge from a Reserve commission or warrant, he/she will send a copy of the approved proceedings to the Commander, USA HRC (DARP-PAT-R), 1 Reserve Way, St. Louis, MO 63132–5200, for appropriate action. (See AR 135–175.) Action prescribed in AR 135–175 will be taken after the Soldier's separation from an enlisted status.

g. When an ARNGUS trainee is released from ADT per chapter 4 or 13, a copy of the approved proceedings will be sent to the State Adjutant General of the appropriate State. However, all proceedings under chapter 9, and any proceedings under chapter 13 or 14, containing limited-use evidence (see para 3–8*g*) will be disclosed per AR 600–85, chapter 6, section III, to the appropriate State Adjutant General only if that officer is federally recognized.

h. When the Soldier is the subject of DD Form 553 (Deserter/Absentee Wanted by the Federal Armed Forces), a report of return to military control must be sent to the Commander, U.S. Army Personnel Control Facility, ATTN: ATZK–PMF–DIP, Bldg. 1481, Fort Knox, KY 40121.

i. When material errors and discrepancies are noted before accomplishing separation, the type of separation directed by the separation authority per this regulation 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.

j. Active duty determinations requiring action by the Commanding General, USA HRC, as set forth in this regulation, will be forwarded to USA HRC (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, unless otherwise specified. Forward USAR AGR separation actions to the U.S. Army Reserve Personnel Command, 1 Reserve Way, St. Louis, MO 63132–5200. Forward ARNGUS AGR separation actions to the National Guard Bureau (NGB).

Section II
Guidelines on Separation

1–15. Guidance

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.

a. 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.

b. 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 legal bar to separation.

c. 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 only when such information would have a direct and strong probative value in determining whether separation is appropriate.

1. 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.

2. In unusual situations, conduct from a prior enlistment that does not constitute a pattern of conduct manifested over an extended period of time may be considered in determining whether retention or separation is warranted. For example, a single incident of misconduct occurring in the prior period of service that, by itself, would warrant separation may be considered if the officials in the Soldier's chain of command neither knew, nor reasonably should have known of, at the time the Soldier re-enlisted.

3. Commanders who believe that a Soldier's case represents an unusual situation within the meaning of this paragraph should request guidance from the Commanding General (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478.

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

d. Commanders will review all administrative separations involving known victims of sexual assault (see AR 600–20, chap 8) and any Soldier who answered "Yes" to either of the questions cited under either paragraph 2–2*i* or 2–4*h*. 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 staff judge advocate or other legal office.

(2) Whether the separation involves a medical condition that is related to the sexual assault, to include Post Traumatic Stress Disorder (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 staff judge advocate.

(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 Division unit and staff judge advocate.

e. Each commander in the chain of command must include a statement on his/her endorsement certifying review in

accordance with paragraph 1–15*d* of this recommendation. Commanders will ensure compliance with AR 340–21 and AR 25–55.

1–16. 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 5–8.)

(2) Personality disorder. (See para 5–13.)

(3) Other designated physical or mental conditions. (See para 5–17)

(4) Entry-level performance and conduct. (See chap 11.)

(5) Unsatisfactory performance. (See chap 13.)

(6) Minor disciplinary infractions or a pattern of misconduct. (See para 14–12*a* and *b*.)

(7) Failure to meet body fat 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/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 *a*, above. 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 chapter 17 of this regulation and will include the reason(s) it is being administered, the date, the fact that separation proceedings may be initiated if the deficiencies continue, and other guidance as appropriate.

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

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

c. Rehabilitation. Except as provided in *d*, below, 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 (PCS) transfer.* 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 jurisdiction may authorize PCS transfer within the same command. As an alternative, a request for reassignment to another command may be submitted to Headquarters, Department of the Army (AHRC-EP-appropriate career branch), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478.

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:

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

(b) Pregnancy while in entry-level status.

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

(d) Active resistance of 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.

1–17. Restrictions on administrative separation and board hearings

a. Separation action for the reasons indicated in paragraph 1–16*a* will not be started until a Soldier has been counseled by a responsible person about his/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. Only Headquarters, Department of the Army (HQDA) will decide that an action does not have the effect of an acquittal. The convening authority must submit a request for such a determination through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478.

(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/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 para 5–3), unless separation for disability is appropriate. (See AR 635–40.)

c. The provisions of *b*, above, 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 investigative (PSI) reports requested within the first 90 days of a Soldier's initial enlistment may be used to support separation proceedings initiated under paragraph 5–14 and chapter 7, sections III and IV. Use of PSI reports in connection with all other separation proceedings is prohibited unless specific authorization is granted in accordance with AR 380–67, paragraph 10–100. Requests for such authorization may be submitted on a case-by-case basis through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478.

1–18. 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/she is able to behave properly under varying conditions.

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

b. Upon satisfactory completion of the probation 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 will 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 Uniform Code of Military Justice (UCMJ), Article 14 (Absence Without Authority), or while in civilian confinement. The provisions of either (1), above, or (3), below, 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 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/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 officer of the Judge Advocate General's Corps. 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 probation period.

Section III
Separation Authority

1–19. Authority to approve or disapprove separation

a. Except for Secretarial plenary authority (see para 5–3); separation due to reduction in force, strength limitations, or budgetary constraints (see para 16–7); the Qualitative Management Program (see chap 19); voluntary separation of Soldiers serving indefinite enlistments (see para 4–4); conviction by a foreign court (see paras 14–1*a* and *d* and 14–9*a*); and the early release from active duty of RC personnel serving Active Guard Reserve (AGR) tours under 10 USC 12301(d) (see para 5–15), commanders who are General Court-Martial Convening Authorities (GCMCAs) and their superior commanders are authorized to approve or disapprove separation per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. (See *l*, below, for delegation of authority to approve discharge in chapter 10 AWOL offense cases.) (See also para 3–7*d*.)

b. A general officer in command who has a judge advocate or legal advisor available is authorized to approve or disapprove the separation or release from AD 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 5–9) or discharge in lieu of trial by court-martial. (See chap 10.)

c. Commanders who are special court-martial convening authorities are authorized to approve or disapprove separation on the following chapters listed below. This authority does not include officers in the grade of major (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.

(2) Chapter 14 when—

(a) Discharge under other than honorable conditions is not warranted under paragraph 3–7*c* and the notification procedure is used. An Honorable Discharge may be ordered only when the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case.

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

(c) An administrative board recommends discharge with an Honorable Discharge and the commander exercising general court-martial jurisdiction has authorized the exercise of separation authority in the case.

(3) This includes the authority to convene an administrative board when required by this regulation for actions initiated under the notification procedure (see chap 2, sec I).

(a) A board convened by a special court-martial convening authority is not authorized to recommend discharge under other than honorable conditions.

(b) A special court-martial convening authority (SPMCA) is not authorized to convene administrative separation boards in misconduct actions when a characterization of service under other than honorable conditions is contemplated because such actions must be initiated under the administrative board procedure (see chap 2, sec II).

(4) Chapter 10 when authority to approve requests for discharge has been delegated per *l*, below.

(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) This SPMCA cannot disapprove a request for discharge in lieu of trial by court-martial. The request for discharge must be approved prior to trial. (See the initial Article 39(a) session for general and special courts-martial, the initial convening of a summary court-martial.)

(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 judge advocate or legal advisor available are authorized to approve or disapprove separation under paragraph 5-11 and chapters 8, 11, and 16; 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 or above.

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

e. The authority granted under *b*, *c*, and *d*, above, 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 (AR 635–40), any Soldier who has completed 18 or more years of active Federal service will not be involuntarily discharged or released from active duty without approval at HQDA level. These separation actions will be submitted to HQDA (AHRC–EPR–F) for forwarding to the proper authority. Requests for voluntary separation (for example, those submitted under chaps 6, 10, or 16) need not be sent to HQDA for approval.

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

h. Unit commanders are authorized to order discharge for immediate re-enlistment (see para 17–3) under the provisions of AR 601–280.

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

j. The general court-martial authority, or a general officer in command who has a judge advocate or legal advisor available, may delegate to other officials of his/her or her staff the authority to approve, disapprove, or otherwise appropriately dispose of cases under chapter 6 (when an honorable discharge certificate will be awarded) and chapter 16.

k. Commanders of recruiting battalions (RBNs) in grade of lieutenant colonel or higher 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 special court-martial convening authority 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/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 *l*, above, does not include cases involving any other charged offense, including desertion. The request for discharge must be approved prior to trial (the initial Article 39(a) session (Uniform Code of Military Justice (UCMJ)) for general or special courts-martial, the initial convening of a summary court-martial). Authority to disapprove separations for the good of the Service (see chap 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 (see AR 600-20, chap 8) within 24 months of initiation of the separation action is withheld to the GCMCA or higher authority.

1–20. Action by commanders having separation authority

a. Commanders having separation authority directing separation or release from active duty of a Soldier will comply with AR 635–10 and Army Pamphlet 635–4.

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

(1) In implementation of the law, DOD 7000.14–R, volume 7A, paragraph 0904, 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 staff judge advocate, will counsel permanent resident aliens enlisted in the Army for three or more years who wish to fulfill naturalization requirements through honorable military service (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/Active Duty Training

1–21. 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 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.

b. Time lost during an enlistment period 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. This requirement may be waived by HQDA. Recommendations for waiver of time lost will be submitted to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, when the separation authority considers that because of unusual circumstances, waiver of time lost is in the best interest of the Soldier and the Government.

c. Reserve Component 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 active duty for training 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 the State Adjutant General or the commander that issued the original ADT orders and the Soldier's unit commander.

d. 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.

1–22. When investigation is initiated with view to trial by court-martial or Soldier is awaiting trial or result of trial

a. A Soldier may be retained after his/her term of service has expired when one of the following applies:

(1) An investigation of his/her 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 general court-martial convening authority approves retention. (See para 1–31.)

c. A Soldier who is awaiting trial or result of trial by court-martial when he/she would otherwise be eligible for discharge or release from AD will not be discharged or released until final disposition of the court-martial charges. (For effective date of discharge, see sec V of this chapter.)

d. Soldiers under sentence to an unsuspended dishonorable or bad conduct discharge will not be discharged before

appellate review is completed, unless so directed by HQDA. If the Soldier is absent without leave 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.

1–23. 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 in *a* and *b*, 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 re-enlist for the same organization on the day following discharge will be discharged and re-enlisted at sea. Those who do not signify their intention to re-enlist will be held in the Service until they arrive in the United States.

1–24. 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 health care 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 *b* and *c*, below. Soldiers determined medically fit for retention or separation will not be retained past the set release date.

b. A Soldier being retired for maximum length of service or maximum age will not be retained on active duty unless his/her medical condition indicates referral of the case to a physical evaluation board. When retention is required, the hospital commander will notify Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, and request the Soldier's retirement orders be rescinded. The request will include the medical diagnosis and expected date of case referral to the physical evaluation board for processing.

c. No Soldier will be retained beyond his/her scheduled release date without written consent signed by the Soldier. (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.

(2) The consent affidavit will be filed in the Soldier's MPRJ or local file, as appropriate, U.S. Army. (See DA Form 201.)

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

(a) How he/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 chapter 61, 10 USC.

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

d. Note: 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 hospital commander will supply full details of the case including actions taken to secure consent for retention. The hospital commander will notify—

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

(2) The appropriate State Adjutant General for ARNGUS (AGR) personnel.

(3) The Commander, USA HRC (DARP-ARE), 1 Reserve Way, St. Louis, MO 63132–5200, for USAR (AGR) Soldiers.

e. The medical facility commander will—

(1) Send requests for retention, endorsed by the Soldier's unit commander, to the nearest GCMCA for the following personnel:

(a) Regular Army personnel.

(b) ARNGUS and USAR personnel on IADT or AGR tours. Retention of ARNGUS personnel must be coordinated with the appropriate State Adjutant General. The Adjutant General (ATTN: AHRC–PDZ–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 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. Retention requires approval by the GCMCA. The GCMCA may delegate this authority to other military or civilian officials on his/her staff. Every action taken according to such a delegation will state that it is taken "pursuant to authority delegated by ___ dated ___." The Adjutant General (ATTN: TACP–PDZ–B) will be the approval authority for ARNGUS and USAR Soldiers on initial active duty for training or Active Guard/AGR tours.

(1) A copy of the retention action on RA personnel will be sent to Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249, for filing in the OMPF.

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

(3) A copy of the retention action for USAR (AGR) personnel will be sent to Commander, USA HRC, (DARP-FS) 1 Reserve Way St. Louis, MO 63132–5200.

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 AD 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 per Army regulations, or under the law under which he/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.

1–25. Indebtedness

a. A Soldier who is eligible for discharge or release from active duty 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. The Secretary of the Army 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 release from active duty.

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.)

1–26. Retention for miscellaneous reasons

Retention beyond a Soldier's ETS to process administrative separation proceedings pursuant to this regulation is not authorized. If it is desirable to retain a Soldier beyond the ETS for any reason other than those covered by paragraphs 1–21 through 1–24, request for approval of such action must be submitted to

a. Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, for RA personnel.

b. The appropriate State Adjutant General for ARNGUS (AGR) personnel.

c. Commander, USA HRC (DARP-ARE), 1 Reserve Way St. Louis, MO 63132–5200, for USAR (AGR) personnel.

1–27. Retained in service while subject to criminal jurisdiction of foreign courts but not physically confined by such courts

Retention in service per 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's ETS, the following action will be taken:

(1) The Army will try to obtain the accused's 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/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 to solely to ensure retention. Further, the Soldier will be advised that he/she may be processed for separation per chapter 14, section II, 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/her separation from the Service as a Soldier absent in the custody of civil authorities.

b. Should the Soldier consent to retention, he/she will be requested to complete the following statement. The statement will be filed in the Soldier's DA Form 201. A copy of the statement will be sent to the following for filing in the Soldier's OMPF as a permanent document:

(1) Commander U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249, for RA personnel.

(2) The appropriate State adjutant general, for ARNGUS (AGR) personnel.

(3) Commander, USA HRC (DARP–ARE), 1 Reserve Way, St. Louis, MO 63132–5200, for USAR AGR personnel.

c. If the provisions of paragraph 1–27*a* cannot be complied with, the case, with full details, will be referred through channels to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, for instructions. Care will be exercised to ensure that each case is submitted before the Soldier's ETS.

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, paragraph 1–7*a*(1).

1–28. 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 AD or ADT, it will be completed per this regulation or other applicable regulations by the commanders specified in paragraph 1–19. Exceptions are indicated in *b* and *c*, below.

b. When discharge or release from AD is to be completed before ETS or the period for which ordered to AD 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, 16–8, and 16–9, 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 190–40 apply. When such conditions exist in a Soldier's case file, the report required by AR 190–40 will be submitted.

e. For discharge prior to ETS for immediate re-enlistment see paragraph 16–3.

Section V
Effective Date of Discharge

1–29. 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 a 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 above 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/her proper station of the order directing him/her 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 included in the personnel file. The personnel file will be sent to the Commander, U.S. Army Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249.

f. Distribution of DD Form 214 will be made per AR 635–5.

1–30. 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.)

1–31. When retained in service awaiting trial or result of trial

When a Soldier is retained in service per paragraph 1–22, 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 5 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 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.

c. A Soldier who is retained per paragraph 1–22 with a view to trial by court-martial, and court-martial charges are not brought or are disposed of without trial, will be separated within 5 days after the decision is made. The Soldier will be regarded as having been retained in service for the convenience of the Government.

Section VI
Medical Processing

1–32. 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 obtain such. Physical examinations and mental health evaluations will comply with AR 40-501 and other policy guidance issued by the Surgeon General and U.S. Army Medical Command.

b. In addition to medical examinations, mental status evaluations conducted by a psychologist, or master-level, licensed clinical social worker, are required for Soldiers being processed for separation under chapters 13 or 14 (sec III). A mental status evaluation is also required when a Soldier being processed for discharge under chapter 10 requests a medical examination. The mental status evaluation will be documented in the Soldier's medical records on SF 600 (Health Record-Chronological Record of Medical Care).

c. 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 above, must comply with the provisions of DODD 6490.1 and AR 600–20.

d. Except as provided in paragraph 1–33*b*(2), below, specific responsibilities and procedures for conducting medical examinations and mental status evaluations will be prescribed in pertinent regulatory guidance issued by The Surgeon General.

e. Soldiers being considered for separation under paragraph 5–13 must have the diagnosis of personality disorder established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components.

f. A command-directed mental health evaluation performed in connection with separation under paragraph 5–17 will be performed by a psychiatrist, doctoral-level clinical psychologist, or doctoral-level clinical social worker with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components.

1–33. Disposition through medical channels

a. Except in separation actions under chapter 10 and as provided in para 1–33*b*, disposition through medical channels takes precedence over administrative separation processing.

b. When the medical treatment facility (MTF) commander or attending medical officer determines that a Soldier being processed for administrative separation under chapters 7 (see sec IV), or 14, does not meet the medical fitness standards for retention (see AR 40–501, chap 3), he/she will refer the Soldier to a Medical Evaluation Board (MEB) in accordance with AR 40–400. The administrative separation proceedings will continue, but final action by the separation authority will not be taken, pending the results of MEB.

(1) If the MEB findings indicate that referral of the case to a physical evaluation board (PEB) is warranted for disability processing under the provisions of AR 635–40, the MTF commander will furnish copies of the approved MEB proceedings to the Soldier's GCMCA and unit commander. The GCMCA may direct, in writing, that the Soldier be processed through the physical disability system when action under the UCMJ has not been initiated, and one of the following has been determined:

(a) The Soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination.

(b) Other circumstances of the individual case warrant disability processing instead of further processing for administrative separation.

(2) The authority of the GCMCA to determine whether a case is to be processed through medical disability channels or under administrative separation provisions will not be delegated.

(3) The GCMCA's signed decision to process a Soldier through the physical disability system will be transmitted to the MTF commander as authority for referral of the case to a PEB.

(a) Copies of the GCMCA's decision will be furnished to the unit commander and included in the administrative separation proceedings.

(b) The unit commander will suspend processing of the administrative separation action pending the PEB.

1. If the Soldier is found physically fit, the administrative separation action will be resumed.

2. If the Soldier is found physically unfit, the administrative separation action will be abated.

c. Disability processing is inappropriate if the conditions in *b*(1)(*a*) and (*b*) do not apply, if UCMJ action has been initiated, or if the Soldier has been medically diagnosed as drug dependent. (See para 14–12*c*.) Accordingly, disability processing is inappropriate in separation actions under chapter 10.

Section VII
Mobilization Asset Transfer Program

1–34. 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 Army Soldiers who have a statutory (10 USC 651) or contractual military service obligation (MSO) will be transferred to the IRR upon completion of their active duty service.

b. Regular Army 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.

1–35. Eligibility/ineligibility for transfer to the IRR

a. Soldiers with a remaining MSO may be transferred to the IRR upon release from active duty if they meet all of the following criteria:

(1) Have completed initial entry training (IET) and have been awarded a military occupational specialty (MOS).

(2) Have three or more months 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) Are determined by the separation authority to possess the potential for useful service if ordered to active duty under conditions of full mobilization.

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 a military occupational specialty (MOS).

(2) Have less than three 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) Illegal alien. (See chap 5.)

(d) Concealment of arrest record. (See chap 5.)

(e) Minority. (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) Rescinded.

(k) Military personnel security program. (See AR 380–67.)

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

1–36. Separation authority determination

a. Except in cases where the Soldier has no remaining MSO or where discharge is required, 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 (see fig 2–5, para 3) may be considered.

(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

(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 re-enlistment 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 re-enlistment. (See chap 16.)

(g) Failure to meet body fat 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.

Section VIII
Naturalized Personnel Separated Under Other Than Honorable Conditions

1–37. General
This section prescribes the procedures for notifying the Immigration and Naturalization Service when naturalized personnel are separated under other than honorable conditions.

1–38. 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 (8 USC 1440) may be revoked if such Soldiers are later separated from the military service under other than honorable conditions. The Immigration and Naturalization Service, Department of Justice, is responsible for initiating citizenship revocation proceedings in such cases.

1–39. Notification to Immigration and Naturalization Service
When a naturalized Soldier is separated under conditions other than honorable, the Soldier's commanding officer will notify the Immigration and Naturalization Service, ATTN: Assistant Commissioner (Naturalization), 425 Eye Street, NW, Washington, DC 20536, by letter. The letter will include the facts and date of discharge. The letter should contain—

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

1–40. 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.

1–41. 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 major Army overseas commander provided—

(1) Soldier requests separation in that country.

(2) Soldier's separation in that country is not precluded by any provision of paragraphs l–42*a*, 1–43, and 1–44.

(3) The foreign government concerned has either formally or informally—

(a) Consented to the separation of the Soldier within its territory.

(b) Consented generally to the separation of the Soldier otherwise eligible for separation under the circumstances set forth in (1) and (2), above.

b. No Soldier will be separated in a foreign country until the Soldier has obtained documents needed for his/her lawful continued presence in that country.

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

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

(1) Revocation action per AR 380–67 has been taken against the Soldier concerned during his/her 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 cogent reason to believe that the Soldier's presence in the overseas area in a non-military status would endanger national security.

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

e. Major overseas commanders may delegate authority to the appropriate commanders who are GCMCAs or SPCMAs to approve or disapprove the separation of a Soldier in a foreign country as provided by this section. The GCMCA or SPCMA may further delegate the authority to a general officer in command who has a judge advocate or legal advisor available. 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 ____dated ____."

1–42. Soldiers confined pursuant to the sentence of a foreign court

a. 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. The Soldier will be separated only—

(1) Upon approval of HQDA (AHRC–EPR–F).

(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 his/her separation in its territory.

b. When the overseas commander considers separation of such a Soldier before the sentence of confinement is completed, he/she will send a request for approval for such separation to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, 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 as set forth in chapter 2, section III.

1–43. 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 1–27*c*) until final action has been taken by the foreign authorities when—

(1) The Soldier's sentence to confinement is not suspended, but he/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 1–41 or 1–42, whichever is appropriate.

1–44. Separation of Soldiers sentenced by foreign courts

The provisions of paragraph 1–42 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 discharge of such Soldier after release from confinement and return to the United States or its territorial possessions.

1–45. Personnel eligible for return from overseas for separation or release from active duty

Soldiers scheduled for return to the continental United States, its territories, or possessions for separation or release from active duty will be processed for return per AR 635–10.

Section X
Bars to Re-enlistment

1–46. General

Commanders will initiate separation proceedings in accordance with this regulation against Soldiers who have received a local bar to re-enlistment under the provisions of AR 601–280 (RA) or AR 140–111 (USAR AGR). Separation action

is not based upon the imposition of a bar to re-enlistment but rather on the Soldier's conduct and/or performance of military duties.

1–47. Separation initiation and processing of locally imposed bars

If at the time of the second 3-month review of a locally imposed bar to re-enlistment, 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 1–16 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.)

At (installation), personally appeared before me, the undersigned, authorized by law to administer oaths pursuant to the Uniform Code of Military Justice, Article 136, one (name of soldier) who after being advised by me of the rights and advantages of remaining in an active duty status in the Army beyond the scheduled date of release for the purpose of completion of hospital care and/or physical disability evaluation under the provisions of chapter 61, 10 USC, and after being duly sworn, deposes and says,

"I have been fully advised by the undersigned officer 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 chapter 61, 10 USC and have been further fully advised that if I elect to be discharged 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."

(Signature of soldier)
(Typed name, SSN, branch)

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

Figure 1–1. Sample format for SS Affidavit the United States Army

I am being subjected to the exercise of criminal jurisdiction of the Government of (name of country). I am presently:

___ Awaiting disposition of the charges by the authorities of the foreign government.

___ Undergoing trial in a court of the foreign government.

___ Awaiting a decision on my appeal of my conviction and sentence by a court of the foreign government.

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.

(Date)	*(Signature of Soldier)* *(Typed name, grade, SSN, organization)*
(Date)	*(Signature of Counseling Officer)*

Figure 1–2. Sample format for request for retention in service

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.

(2) If a 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 above, 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 (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.

2–2. Notice

When the reason for separation requires the notification procedure, the commander will notify the Soldier in writing that his/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, release from active duty to a Reserve Component, or release from custody and control of the Army.

(2) The least favorable characterization of service or description of separation he/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 2–4*d*(4).) Chapter 3 provides guidance on the appropriate type of discharge and characterization of service. The servicing Judge Advocate will be consulted when limited use evidence (see para 3–8*g*) is involved. The Soldier will be further advised of the following rights:

(1) To consult with military counsel within a reasonable time (not less than 3 duty days). Soldiers may also consult with civilian counsel at their own expense.

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

(3) To obtain copies of documents that will be sent to the separation authority supporting the proposed separation. For a separation under chapter 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/she had 6 or more years 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), USN, USAF, and so forth.

(5) To waive the above rights 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 2–5*b* and fig 2–2.) Failure to respond (including failure to submit matters under (3), above) within 7 duty days will constitute a waiver of the rights in (1) through (5), above. An extension will normally be granted until any documents requested by the Soldiers pursuant to (4), above, 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 absent without leave, 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.

(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 his/her 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/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/she is a commissioned officer of the Judge Advocate General's Corps. (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 form provided for the Soldier's reply.

(4) If the Soldier indicates that one or more of the rights will be exercised but declines to sign the appropriate form, 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 form.

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

i. The Soldier will indicate on the Notification/Acknowledge/ Election of Rights (fig 2–4) whether he or she has filed an unrestricted report of sexual assault within 24 months of initiation of the separation action. 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.

2–3. Action by separation authority

The action of the separation authority will be recorded.

a. Upon receipt of the recommended action (see fig 2–5 and app B), the separation authority will determine if there is sufficient evidence to verify the allegations. 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, 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 1–18.

c. The separation authority will determine the type of discharge certificate and character of service per chapter 3. The servicing Judge Advocate will be consulted when limited use evidence (see para 3–8*g*) is involved.

d. The criteria in chapter 1, section VII, will govern whether the Soldier will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1–11 for additional instructions on ARNGUS and USAR personnel.)

Section II
Administrative Board Procedure

2–4. Notice

a. When the reason for separation requires the administrative board procedure, the commander will notify the Soldier in writing that his/her separation has been recommended per 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, release from active duty to a Reserve Component, 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/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 *d*(4), below.) However, the separation authority will not authorize the issuance of a type of discharge or character of service less favorable than that recommended by the board. (See para 2–6*d*.) Chapter 3 provides guidance and criteria as to the appropriate type of discharge and characterization of service. The servicing Judge Advocate will be consulted when limited use evidence (see para 3–8*g*) is involved. The Soldier will be further advised of the following rights:

(1) To confer with consulting counsel. Soldiers may also consult with a civilian counsel at their 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.

(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 discharge board.

(7) To waive the above rights in writing. This includes the right to submit a conditional 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 (1) through (7). 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 (pursuant to *b*(2), above) are provided to the Soldier, and the Soldier has a reasonable opportunity to respond to such documents.

(8) To withdraw a waiver of the rights listed in *b*(1) through (7), above, anytime 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 *b*(1) through (7), above.

(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/she is a commissioned officer of The Judge Advocate General's Corps. (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 indicates that one or more of the rights will be exercised but declines to sign the appropriate form, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

(5) If a Soldier elects to present his/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.

(6) If a Soldier waives his/her right to an administrative separation board, the separation authority may disapprove the waiver. 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, absent without leave, 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 Soldiers 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 his/her 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 (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 form.

h. The Soldier will indicate on the Notification/Acknowledge/ Election of Rights (fig 2–4) whether he or she has filed an unrestricted report of sexual assault within 24 months of initiation of the separation action. 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.

2–5. Waiver

a. When a Soldier waives his/her right to a hearing before an administrative board and the separation authority approves the waiver, the case will be processed without convening a board. However, the separation authority will be the same as if the board was held.

b. A Soldier may wish to waive his/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/her right to a hearing before an administrative separation board.

c. The appropriate 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 active Federal service.

2–6. Separation authority action after board hearings

a. When the board is completed, the board proceedings will be reviewed by a qualified officer 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 (see para 3–8*g*) was introduced in the board proceedings, or the Soldier identifies specific legal issues for consideration by the separation authority, the proceedings will be reviewed by an officer of The Judge Advocate General's Corps. Upon completion of the review—

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

(a) Direct separation of the Soldier for misconduct, except for Soldiers referred to in paragraph 1–19*f*. (See also para 2–12*b*(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 1–19*f*. (See also para 2–12*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 specifically 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 1–18.)

(2) In fraudulent entry actions processed per chapter 7, section IV, 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 1–19*f*. (See also para 2–12*b*(5).)

(b) Recommend, if the separation authority is the special court-martial convening authority (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 *e*, below, 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 1–19*f*. (See also paras 1–18 and 2–12*b*(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 1–18.)

(4) Rescinded.

(5) 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 HQDA will be given the opportunity of applying for retirement.

(1) He/she will be told that authority to submit the application does not assure that it will be approved.

(2) DA Form 2339 (Application for Voluntary Retirement) 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 Reserve Component 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. Neither will the separation authority authorize issuance of a discharge of less favorable character than that recommended by the board. However, as provided above, a separation authority may direct retention when discharge is recommended, or he/she may issue a discharge certificate of a more favorable character than that recommended.

e. When a board of officers has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge for the convenience of the Government per paragraph 5–3, may be forwarded to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478.

(1) Separation under the provisions of paragraph 5–3 is based upon different criteria from that considered by the board of officers and does not constitute overturning the board.

(2) It is the policy of HQDA not to direct separation per paragraph 5–3 when a duly constituted board has recommended retention unless sufficient justification is provided to warrant separation by the Secretary of the Army, based on all the circumstances, as being in the best interest of the Army.

(3) If separated, the Soldier will be given an entry-level separation or awarded an honorable or general discharge, as appropriate.

(4) Before forwarding a request for discharge under this paragraph, the separation authority will—

(a) Notify the Soldier, in writing, of the proposed recommendation using the notification procedure. (See chap 2, sec I.) This notification will cite this paragraph and paragraph 5–3 as the basis for the action and specify the justifications and reasons supporting the action. However, the procedure for requesting consideration by an administrative board (see para 2–2*c*(5)) is not applicable.

(b) Provided the Soldier copies of documents, or other evidence, upon which the proposed action is based (classified documents may be summarized).

(c) Personally consider any response provided by the Soldier. If the Soldier's response specifies legal issues for consideration, a member of The Judge Advocate General's Corps or legal advisor who has not previously acted as a board member, recorder, counsel for consultation, or counsel for representation in the prior separation action, will review the response and advise the separation authority thereon.

(d) Personally sign the memorandum to HQDA setting forth specific reasons justifying the Soldier's discharge as being in the Army's best interest.

(5) 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 paragraph constitutes the separation authority's initial action on the case.

(6) No further action will be taken on the findings or recommendations of the board of officers unless directed by HQDA. As a minimum, enclosures to the transmittal memorandum should include—

(a) The notification memorandum to the Soldier

(b) The Soldier's acknowledgment of notification and any response

(c) The report of the board proceedings

(d) Any other supporting documents or evidence.

(e) Allegations of misconduct or other adverse information concerning the Soldier not specified in the notification in (4)(*a*), above, will not be referred to unless the Soldier has been further notified that such information will be forwarded for consideration and afforded the opportunity to respond.

f. If the separation authority notes a defect that he/she deems to be harmless in a case in which separation has been recommended, he/she will take final action, subject to *d*, above. If there are substantial defects, he/she may take one of the following actions:

(1) Direct retention.

(2) If the board has failed to make the findings 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.

(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. 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) 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/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 Secretary of the Army or at the request of the Soldier. (See para 14–6.)

h. The Government may initially introduce limited use evidence (see AR 600–85, chap 6) 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. If 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 convenes, the separation proceedings may be reinitiated, excluding all references to limited use evidence.

(2) If limited use evidence is introduced by the Government after the board convenes, 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, para 6–4*e*.)

(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.

(4) If a rehearing is not deemed appropriate, the Soldier may be separated with an honorable discharge. (See para 3–8*a*.) The servicing Judge Advocate 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.

2–7. 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. 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 major 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 non-voting recorder. The convening authority may also appoint a non-voting legal adviser.

b. Care will be exercised to ensure that—

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

(2) In the case of a Reserve Component Soldier, the membership of the board will include at least one Reserve Component 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 Reserve Component Soldiers when only an honorable or general discharge may be issued.

(3) In the case of a female Soldier, the board will, upon the written request of the respondent, include a female member as a voting member, if reasonably available. In the event of non-availability, the reason will be stated in the record of proceedings.

(4) In the case of a Soldier who holds a Reserve commission or warrant, the board will be composed of an uneven number of officers. The officers will be senior in permanent grade to the Reserve grade held by the Soldier. One member of the board will be a RA officer and the remainder Reserve Component officers of the Army who are serving on AD.

(5) If the respondent is a member of a minority group, the board will, upon written request of the respondent, include as a voting member a member who is also a minority group member, if reasonably available.

(a) When requested, the appointed board member should be of the same minority group as the respondent. However, non-availability of a member of the same minority group will not prevent convening the board.

(b) In the event of non-availability, the reason will be stated in the record of proceedings.

(6) The board is provided a competent stenographer or clerk.

(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 himself/herself. The appointed legal advisor will pay particular attention to cases that involve limited use evidence. (See para 3–8*g*.)

2–8. 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.

2–9. 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/she does not consent, a deposition or affidavit will be obtained, as appropriate.

2–10. Board procedures

a. A Soldier under military control will be notified in writing of the convening date of the board at least 15 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 himself/herself without good cause, he/she may be discharged from or retained in the Service without personal appearance before a board.

b. The Soldier will be notified of names and addresses of witnesses expected to be called at the board hearing. The Soldier will also be notified that the recorder of the board will, upon request of the Soldier, try to arrange for the presence of any available witness that he/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, the minimum of 15 days cannot be granted, the president of the board will ensure that the reason for acting before that time is fully explained.

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

(2) 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.

(3) The decision of the president 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/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.

(b) The Soldier will be counseled as to type of discharge he/she may receive as a result of the board action, the effects of such a discharge in later life, and that he/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. 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 or recorded 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 a judge advocate) 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 or recorded testimony will not accomplish adequately the same objective.

(d) The need for live 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, Article 31, will apply.

(9) The Soldier and his/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 above rights after he/she has been apprised of the same will not have an effect upon the validity of the separation proceedings.

e. If the Soldier holds Reserve Component status as a commissioned or warrant officer, the board will notify him/her that the action also involves his/her Reserve Component status and could terminate such status, but only if applicable Reserve Component officer separation requirements are satisfied in accordance with DODI 1332.40 and AR 135–175.

f. When the board meets in closed session, only voting members will be present.

g. 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, paragraph 3–7*b*, expert medical and psychiatric testimony routinely may be presented in the form of affidavits. However, if the Soldier desires to present such evidence, he/she is entitled to have the witnesses appear in person, if they are reasonably available.

h. 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.)

i. If the Soldier has exercised his/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/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.

2–11. 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 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 recommending the separation, that evidence is admissible.

(1) Such evidence may be considered by the board as proof of an amended or new factual allegation in support 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.

2–12. 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 the findings warrant separation. If more than one basis for separation was contained in the notice, there will 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 a characterization of service of honorable, general (under honorable conditions), or under other than honorable conditions.

(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.

(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 unsatisfactory performance will recommend that he/she be—

(a) Separated because of unsatisfactory performance. The board will recommend a characterization of service of honorable or general (under honorable conditions).

(b) Retained in the Service.

(3) Rescinded.

(4) When the Soldier is absent without leave 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 (1), (2), or (3), above.

(5) If the Soldier holds a Reserve Component commission or warrant, the board will make separate recommendations concerning his/her Reserve Component status, including character of service to be issued, but only if applicable Reserve Component officer separation requirements are satisfied in accordance with DODI 1332.40 and AR 135–175.

(a) The recommendations should be compatible with enlisted status recommendations. Normally, facts warranting separation from an active duty enlisted status prescribed in this chapter will also warrant termination of a Reserve Component commission or warrant.

(b) Under certain circumstances, it may be reasonable to recommend retention in an active duty enlisted status but termination of a Reserve Component commission or warrant.

(6) When the board recommends separation, it may also recommend that the separation be suspended per paragraph 1–18. But the recommendation as to suspension is not binding on the separation authority.

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

(8) 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.

c. The completed report of proceedings.

(1) The completed report of proceedings will be forwarded to the separation authority. (See app B for sample report of proceedings.)

(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 to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, for final determination when the convening authority recommends discharge.

Section III
Additional Provisions Concerning Absent Soldiers

2–13. Processing in absence of Soldier

When proceedings have been initiated against a Soldier who is absent without leave or confined by civil authorities, the case may be processed in his/her absence.

a. A Soldier held in custody by civil authorities does not accrue service creditable for completion of his/her period of enlistment, or order to active duty, except for any period in which he/she was in an authorized leave status or when the Soldier's commander determines per AR 630–10 that the time spent in the custody of civil authorities should not be considered as lost time.

(1) Upon return to military control, a Soldier's ETS will be recomputed.

(2) When a Soldier's term of service has expired, his/her separation will be accomplished within 5 days of his/her return to military control and the Soldier will be regarded as having been retained in service for the convenience of the Government.

(3) For pay and allowances, see Department of Defense Financial Management Regulations (DOD 7000.14–R, vol. 7A).

b. A Soldier in duty status who is delivered to civil authorities in accordance with AR 630–10 prior to ETS, will be credited with the period of time in the hands of civil authorities in the computation of the expiration of service date unless finally convicted prior to the ETS. When the term of service expires, the Soldier will be separated in absentia by reason of ETS.

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 PS Form 3800 (Receipt for Certified Mail).

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 *a*, above.

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 a board of officers will proceed in his/her absence and that counsel will represent him/her.

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 (see para 14–12*c*) when prosecution of a Soldier who is absent without authority appears to be barred by the statute of limitations, UCMJ Article 43. Questions concerning the statute of limitations should be referred to the servicing Staff Judge Advocate.

(3) Commission of a serious offense (see para 14–12*c*) when a Soldier who is an alien is absent without leave 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.

b. Notice. Before separation is executed under *a*(2) or (3), above, 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, 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.

c. Members of the Reserve Components.

(1) A member of a Reserve Component 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 Secretary of the Army.

(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 (1), above, 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 for separation. Reassignment will not be accomplished earlier than the effective date of separation.

2–16. Exceptional circumstances

If information described in paragraph 2–16*a* or *b* is received before a discharge under other than honorable conditions is approved or directed for a Soldier pending discharge in accordance with paragraph 2–15*a*(2) or (3), an informal inquiry will be conducted to verify the information. After completion of the inquiry, the file will be forwarded to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, 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 Bronze Star with V device, Soldiers Medal, Distinguished Flying Cross, Silver Star, Distinguished Service Cross, or Medal of Honor.

(*Letterhead*)

(*Office Symbol*) (*Date*)

MEMORANDUM FOR (Soldier's name, SSN, 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 of 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 my recommendation as to characterization of service. The separation authority may direct that your service be characterized as honorable or under honorable conditions, or you may receive an 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 an 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 an administrative separation board, you may submit a conditional waiver of that right.

11. You are required to undergo a complete medical 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.)[1]

12. You are required to undergo a mental status evaluation 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.)[1]

Figure 2–1. Sample format for notification of separation when the notification procedure is used

13. 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 Listing

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

Note:
[1] To be used when required by paragraph 1-32.

Data Required by the Privacy Act of 1974
(5 USC 552a)

AUTHORITY: 5 USC 301 and 10 USC 3013.

PURPOSE: Information provided is used by processing activities and the approval authority to determine if the member meets the requirements for recommended separation action.

ROUTINE USES: Upon completion of processing actions, the statement is filed in the MPRJ. As long as filed in the MPRJ, this personal information may be used by other appropriate Federal agencies and State and local government authorities where the use of the information is compatible with the purpose for which the information is collected. Release of any information from this form is subject to the restrictions of 42 USC 290dd-2 and 42 USC 290dd-3. Under these statutes and regulations, disclosure of information that would identify the client as an abuser of alcohol or other drugs is authorized within the Armed Forces or those components of the Department of Veterans Affairs furnishing health care to veterans. AR 600-85 further limits disclosure within the Armed Forces to those individuals having an official need to know (for example, the physician or the client's unit commander). All other disclosures require the written consent of the client except disclosures (1) to medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency, (2) to qualified personnel conducting scientific research, management for financial audits, or program evaluation, or (3) upon the order of a court of competent jurisdiction.

Submission of a statement for consideration is voluntary. If a statement is not submitted, the Army will determine separation or retention based on the available information.

Figure 2–1. Sample format for notification of separation when the notification procedure is used—Continued

(*Letterhead*)

(*Office Symbol*) (*Date*)

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

(*Address of endorsing office*)

FOR: (*Appropriate Commander in Basic Memorandum*)

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) (because I am being separated under Chapter 15 (homosexual conduct)).

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

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

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 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 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 Listing

(Signature of individual)
(Typed name, SSN, and grade)

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, SSN, grade, branch)

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, misconduct, or homosexual conduct.

[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

Data Required by the Privacy Act of 1974
(5 USC 552a)

AUTHORITY: 5 USC 301 and 10 USC 3013.

PURPOSE: To be used by the commander exercising separation authority over the soldier to determine approval or disapproval of his/her request for conditional waiver and, in case of disapproval, to indicate the soldier's options concerning rights available to him/her in contemplated administrative separation cases.

ROUTINE USE: Information provided in the statement is used by processing activities and the approval authority to determine what rights the soldier desires to exercise and the offering of such rights as indicated. Upon completion of processing actions, the statement is filed in the MPRJ.

As long as filed in the MPRJ, the personal information may be used by other appropriate Federal agencies and State and local government authorities where the use of the information is compatible with the purpose for which the information is collected.

Disclosure is voluntary. If the information is not provided, the Army will complete processing using information available.

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

(*Letterhead*)

(*Office Symbol*) (*Date*)

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

SUBJECT: Separation Under AR 635-200 Chapter (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). (For separation under provisions of chapter 15 when based upon a soldier's statement and he/she is a homosexual or bisexual, state the following: "You have created a rebuttable presumption that indicates you engage in, attempt to engage in, or have a propensity to engage in, or intend to engage in homosexual or bisexual acts. 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 the 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.

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

10. You are required to undergo a complete medical 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.) [1]

Figure 2–3. Sample format for notification of separation when the administrative board procedure is used

11. You are required to undergo a mental status evaluation 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.) [1]

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 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 Listing

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

Note:
[1] To be used when required by paragraph 1-32.

Data Required by the Privacy Act of 1974
(5 USC 552a)

AUTHORITY: 5 USC 301 and 10 USC 3013.

PURPOSE: To be used by the commander exercising separation authority over the soldier to determine approval or disapproval of his/her request for conditional waiver and, in case of disapproval, to indicate the soldier's options concerning rights available to him/her in contemplated administrative separation cases.

ROUTINE USE: Information provided in the statement is used by processing activities and the approval authority to determine what rights the soldier desires to exercise and the offering of such rights as indicated. Upon completion of processing actions, the statement is filed in the MPRJ.
As long as filed in the MPRJ, the personal information may be used by other appropriate Federal agencies and State and local government authorities where the use of the information is compatible with the purpose for which the information is collected.

Disclosure is voluntary. If the information is not provided, the Army will complete processing using information available.

Figure 2–3. Sample format for notification of separation when the administrative board procedure is used—Continued

(Letterhead)

(Office Symbol)

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

(Address of endorsing office)

FOR: (Appropriate commander in basic memorandum)

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 service 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 15 (homosexual conduct), 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 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.[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.

Figure 2–4. Sample format for receipt of notification/acknowledgment/election of rights

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 Listing

(Signature of individual)
(Typed name, SSN, and grade)

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

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

Notes:

[1] If the Soldier declines to consult with consulting counsel prior to waiving his/her rights, he/she will be advised to do so by his/her commander. If he/she 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 military counsel of my own choice, if he/she is reasonably available; 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 their 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 an administrative separation board, use figure 2-2.

[3] To be used if the Soldier has been recommended for discharge for fraudulent entry, misconduct, or homosexual conduct.

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

Data Required by Privacy Act of 1974

(5 USC 552a)

Figure 2–4. Sample format for receipt of notification/acknowledgment/election of rights—Continued

AUTHORITY: 5 USC 301 and 10 USC 3013.

PURPOSE: To be used by the commander exercising separation authority over you to determine approval or disapproval of the separation action.

ROUTINE USES: Information provided in the statement is used by processing activities and the approval authority to determine what rights Soldier desires to exercise and the offering of such rights as indicated. Upon completion of processing actions, the statement is filed in the MPRJ. So long as filed in the MPRJ, the personal information may be used by other appropriate Federal agencies and State and local government authorities where the use of the information compatible with the purpose for which the information is collected.

Disclosure is voluntary. If the information is not provided, the Army will complete processing using information available.

Figure 2–4. Sample format for receipt of notification/acknowledgment/election of rights—Continued

(Letterhead)

(Office Symbol) (Date)

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

(Address of endorsing office)

FOR: (Next higher commander)

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/SSN:

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 recommended:

g. Aptitude area scores and DMOS:

h. Results of the common Task, Test (CTT), commander's evaluation, and Skill Qualification Test (SQT), including MOS in which evaluated and results:

i. Record of counseling, if applicable:

j. Description of rehabilitation attempts, if applicable:

k. Record of trials by court martial:

l. Record of other disciplinary action, including non-judicial punishment (include offenses, findings, and sentence):

m. Report of mental status evaluation or psychiatric report (is) (is not) attached, if applicable:

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:

Figure 2–5. Sample format for commanding officer's report to the separation authority

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 alcohol or other drug 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 alcohol/drug abuse. Inclusion of limited-use evidence (see AR 600-85, para 6-3.) is discretionary. (If limited-use evidence is included, the provisions of paras 2-6h and 3-8a apply.)

c. Circumstances (to include dates) concerning Soldier's referral, initial screening interview, medical evaluation (when conducted), and enrollment in the ADAPCP.

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.

Figure 2–5. Sample format for commanding officer's report to the separation authority—Continued

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

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

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

Encl Listing

(Commander's Signature)

(Typed name, grade, branch)

Note:

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

Figure 2–5. Sample format for commanding officer's report to the separation authority—Continued

Chapter 3
Character of Service/Description of Separation

Section I
Separation Certificates

3–1. Statutory authority
Section 1168, Title 10, United States Code provides that a discharge certificate or certificate of release from active duty will be given to each Soldier of the Army upon discharge from the Service or release from AD.

3–2. Discharge certificates
Discharge certificates are furnished Soldiers when they are honorably discharged. Soldiers released from AD and transferred to Reserve Components 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 635–5. 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 AD 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 635–5.

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 above 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 AD is affected adversely by conduct that is of a nature to bring discredit on the Army or is prejudicial to good order and discipline. Characterization may be based on conduct in the civilian community.

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.

(1) Eligibility for veterans' benefits provided by law, eligibility for re-entry into service, and acceptability for employment in the civilian community may be affected by these determinations.

(2) The characterization of service will be determined solely by the military record during the current enlistment or period of service, plus any extension thereof, from which the Soldier is being separated.

(3) The Soldier's performance of duty and conduct must be accurately evaluated. The evaluation must be based on the overall period of service and not on any isolated actions or entries on DA Form 2–1.

3–6. Separation as it affects the Soldier

a. Both honorable and general discharges entitle a Soldier to full Federal rights and benefits provided by law.

b. Discharge under 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.

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 and performance of duty for Army personnel or is otherwise so meritorious that any other characterization would be clearly inappropriate.

(1) Only the honorable characterization may be awarded a Soldier upon completion of his/her period of enlistment or period for which called or ordered to AD or ADT or where required under specific reasons for separation, unless an entry-level status separation (uncharacterized) is warranted. (See para 3–9*a* 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 necessarily be denied an honorable discharge solely by reason of the number of convictions by court-martial or actions under the UCMJ Art 15. Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge.

(c) An honorable discharge may be furnished when disqualifying entries in the Soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior and not the isolated incident that should be considered the governing factor in determination of character of service.

(d) Unless otherwise ineligible, a Soldier may receive an honorable discharge if he/she has, during his/her current enlistment, period of obligated service, or any extensions thereof, received a personal decoration.

(3) In the case of an honorable discharge, a DD Form 256A will be awarded and notation will be made on the appropriate copies of the DD Form 214 or DD Form 215.

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, military service obligation, or period for which called or ordered to AD.

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 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 Soldiers of the Army.

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

d. An under other than honorable conditions discharge will be directed only by one of the following:

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

(2) A general officer in command who has a judge advocate or legal advisor available to his/her command.

(3) Higher authority.

(4) The commander exercising special court-martial convening authority over the Soldier who submitted a request for discharge in lieu of court-martial (see chap 10) when delegated authority to approve such requests for discharge per paragraph 1–19*l*. (See para 1–19*c*(5).)

e. No Soldier will be discharged per this regulation under other than honorable conditions unless afforded the right to present his/her case before an administrative discharge board.

(1) The Soldier will be offered the advice and assistance of counsel.

(2) Approved board findings and an approved board recommendation for a discharge under other than honorable conditions must support such discharge.

(3) As prescribed in chapter 13, an under other than honorable conditions discharge is not authorized in case of discharge for unsatisfactory performance.

f. As an exception to *e*, above, a discharge under other than honorable conditions may be issued without board action if one of the following apply. The Soldier—

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

(2) Requests discharge in lieu of trial by court-martial.

(3) Waives his/her right to board action.

g. 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, except when directed by HQDA.

h. A Soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he/she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel.

(1) The Soldier must certify, in writing, that he/she understands that he/she may receive a discharge under other than honorable conditions.

(2) The Soldier must understand the adverse nature and possible consequences of such a discharge.

(3) The Soldier must personally sign a request for discharge. A conditional request is not permitted.

(4) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps. A Soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect that will be attached to the file; the Soldier will state that the right to counsel has been waived.

i. Consideration required. Members of boards that recommend discharges to be furnished and commanders that determine the types of discharges to be issued, are urged to consider all facets of a case involving discharge 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. A Soldier is entitled to an honorable characterization of service if limited-use evidence (see AR 600–85, chap 6) is initially introduced by the Government in the discharge proceedings, and the discharge is based upon those proceedings. (See para *c*(1), below, as well as AR 600–85, paras 6–4*a* and 6–5*d*.) The separation authority will consult with the servicing Judge Advocate 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 non-judicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed.

(a) 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.

(b) As an exception, personal decorations received during prior service may be considered in characterizing the current period of service. (See para 3–7*i*.)

(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 AD or ADT who is to be discharged, the character of the period of service from which he/she is discharged will be based solely on military behavior and performance of duty during the current period of service while actually performing AD or ADT.

d. The limitations in chapter 1 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 HQDA (AHRC–EPR–F).

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, Article 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 Article 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 *b*(3), above.)

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 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 *g*, above, 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.

3–9. 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) HQDA (AHRC–EPR–F), 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 has less than 181 days of continuous active military service, has completed Initial Entry Training, has been awarded an MOS, and has reported for duty at a follow-on unit of assignment (see para 11–3*c*).

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 *b*(3), below. 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.

(d) If an enlistee's erroneous enlistment is discovered prior to the Soldier's departure from the Military Entrance Processing Station (MEPS). (See para 7–15*e*.)

(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 staff judge advocate.

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 staff judge advocate.

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.) In a specific case, if the commander considers that discharge in an oversea area is desired, a request for approval of such discharge may be forwarded to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 2233– 0478. A report containing essentially the information outlined in

paragraph 1–42*b* will be sent with the request. The separation in foreign countries of Soldiers so confined will be subject to paragraph 1–42*a*.

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 (see AR 600–8–10) may be discharged without returning to a military installation when the sentence is affirmed.

a. When appellate review is completed and the affirmed sentence ordered executed, the appropriate discharge documents will be completed and mailed by certified mail. The documents are mailed, return receipt requested, to the address furnished by the Soldier. The return address will be shown as Commander, USA HRC, (DARP–PRR–P), 1 Reserve Way, St. Louis, MO 63132–5200. 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 (see AR 635–10) as is appropriate, including partial completion of DD Form 214.

c. Soldiers assigned to an overseas unit who have approved excess leave may be reassigned to the personnel control facility (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. Discharge certificate, based upon the character of service rendered and DD Form 214, will be issued to the Soldier concerned per AR 635–5.

b. A Soldier to be released from military control pursuant to paragraph 5–9 or an administrative determination that he/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 635–5.)

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 AD are prescribed by law.

b. Aliens 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 (see AR 40–501, chap 3) 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.

d. Subject to chapter 1, section V, a Soldier enlisted or ordered to AD normally will be discharged or released from AD on the date he/she completes the period for which enlisted or ordered to AD.

e. Other than those listed in *b*, above, some Soldiers' terms of service expire or they otherwise become eligible for discharge or release from active duty 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 continental United States (CONUS) for separation.

(2) Soldiers listed in *b*, above, 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 1–2b.

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

f. 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 re-enter on active duty in another status will be released by separation orders to the ARNGUS or the USAR per DA Pam 600–8–11.

g. A non-citizen who incurs a reserve obligation upon entry into military service but who at the time of release from AD 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 (see DD Form 214, item 19), thus showing his/her intention to reside permanently outside the United States, is not eligible for transfer to the USAR.

(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/her from United States citizenship.

h. Soldiers of the ARNGUS and the USAR ordered to AD for a period in excess of 90 days will, upon release from AD, revert to control of the appropriate Reserve Component.

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

(1) The service of Soldiers specified in this paragraph who are in entry-level status will be uncharacterized, even though they 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.

j. 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.

k. 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 military service obligation incurred under 10 USC 651a.

l. 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 1–22*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 re-enlistment contract who will have 20 or more years active Federal service (AFS) at their current ETS date.

(2) Soldiers serving on an indefinite re-enlistment contract who have over 18 years AFS.

b. Personnel officers will advise Soldiers regarding the following circumstances:

(1) Soldiers not on indefinite status who have a service remaining requirement that requires extension or re-enlistment to complete the requirement will be advised of the amount of time needed to complete the requirement or alternatives regarding submission of retirement application.

(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 voluntary retirement applications to preclude reassignment.

(3) All Soldiers will be informed of any reasons that make them ineligible for re-enlistment, extension, or, if in Indefinite status, ineligible for continued service.

c. Counseling will be performed no later than six months after the sixth month before ETS, if applicable, or within six months after surpassing 18 years AFS for Soldiers on indefinite status. The counseling session will determine whether or not the Soldier intends to submit a retirement application.

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 re-enlisting to complete a service obligation.

(1) In accordance with AR 601–280, chapter 4, 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 re-enlist.

(3) Soldiers on indefinite status will be advised of deadlines to submit voluntary retirement applications if they do not intend to proceed with assignment instructions.

(a) DA Form 4657 (Statement of Retirement-Eligible Soldier-Remaining Service Obligation) will be used for personnel affected by *a*(1), above. (This form is available on the APD Web site at http://www.apd.army.mil.)

(b) DA Form 4658 (Statement of Retirement-Eligible Soldier-Not Eligible to Re-enlist) will be used for personnel affected by *b*(3), above. (This form is available on the APD Web site at http://www.apd.army.mil.)

(c) The statement will be prepared in three copies. The Soldier will sign all copies.

1. The original signed copy will be sent to the Commander, U.S. Army Enlisted Records and Evaluation Center (USAEREC), 8899 East 56th Street, Indianapolis, IN 46249, to be filed in the Soldier's OMPF as a permanent document.

2. A copy of the statement will be filed in the Soldier's MPRJ or local file, as appropriate, as an action-pending document, and a copy will be forwarded to Headquarters, Department of the Army (AHRC-EP-appropriate career branch symbol), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. (See AR 614–200, table 3–1, for correct symbol.)

e. The following information will be provided to the Soldier during the counseling session:

(1) Under 10 USC 3914 and 3917 a Soldier of the RA must be on AD at the time of application for retirement and at the time of retirement. There is no statutory requirement that USAR or U.S. Army National Guard Soldiers be on AD 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 retention control point (RCP) falls.

(3) Indefinite Soldiers who are reduced in grade will not serve beyond the RCP for the lower grade, or 20 years AFS. These Soldiers will not be retained beyond the last day of the month in which they meet the RCP for the lower grade or 20 years of service, whichever comes later. Soldiers with 20 or more years of AFS serving indefinite enlistments who exceed RCP as a result of reduction in grade must retire not earlier than 90 days or later than 180 days after the effective date of the reduction in grade. (See AR 601–280, chaps 2 and 3 for exceptions.)

(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, section V.) (See AR 601–280, chap 4, for further extension information regarding retirement-eligible Soldiers.)

(5) A Soldier who elects to be discharged upon ETS rather than to re-enlist or to extend enlistment, as appropriate, to complete a service-remaining requirement will not be eligible to re-enter the RA unless a waiver is granted.

(6) Retirement cannot be retroactive; therefore, a Soldier who is discharged, later re-enlists, and then retires, cannot be placed in a retired pay status for the period between his/her discharge and subsequent re-enlistment. Retired pay is based on the grade in which retired.

(7) Soldiers precluded from re-enlistment for any reason and discharged forfeit retirement eligibility altogether, as re-entry on active duty for the purpose of applying for retirement is not allowed.

4–4. Voluntary separation of Soldiers serving on indefinite enlistments/re-enlistments.

a. Regular Army Soldiers serving on indefinite enlistments/re-enlistments desiring a voluntary separation for reasons not specifically covered in this regulation must submit requests through the SPCMCA to Commander, USA HRC (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, the separation authority for such actions. USAR Soldiers on active duty serving indefinite enlistments must submit requests for voluntary separation through their chain of command to Commander, USA HRC (ARPC–AR), 1 Reserve Way, St. Louis, MO 53132–5200.

(1) Soldiers requesting voluntary separation under this provision will indicate the reason(s) for voluntary separation.

(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 are considered to have fulfilled the active duty service obligation.

b. 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 TP or TA processing the Soldier for separation (see AR 635–10) per the separation orders issued by the appropriate commander.

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, under honorable conditions, or an uncharacterized description of service if in entry-level status.

b. No Soldier will be awarded a character of service under honorable conditions under this chapter unless the Soldier is notified of the specific factors in his/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 5–4, 5–11, 5–12, 5–15, 5–16, or 5–17.

5–2. Scope

This chapter, together with chapters 6, 8, and 19, contains policies and procedures for voluntary and involuntary separation for the convenience of the Government.

5–3. Secretarial plenary authority

a. Separation under this paragraph is the prerogative of the Secretary of the Army. Secretarial plenary separation authority is exercised sparingly and seldom delegated. Ordinarily, it is used when no other provision of this regulation applies, and early separation is clearly in the best interest of the Army. Separations under this paragraph are effective only if approved in writing by the Secretary of the Army or the Secretary's approved designee as announced in updated memorandums.

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 field commanders for the class category of Soldiers concerned.

c. Individual cases that may be submitted to HQDA for consideration of separation under Secretarial plenary authority include those processed under paragraphs 1–17*b*(4) and 2–6*e*. Other bases for separation under this paragraph include, but are not limited to, HIV infection (see AR 600–110.), refusal to submit to medical care (see AR 600–20), and when religious practices cannot be accommodated (see AR 600–20).

d. Separation under this paragraph may be voluntary or involuntary. When involuntary separation proceedings are initiated, the notification procedure (see chap 2, sec I) will be used; however, the provision for requesting an administrative board (see para 2–2*d*) is not applicable. Medical examinations are required for Soldiers being processed for involuntary separation. (See para 1–32*a*.)

e. Blanket or individual requests for separation under this paragraph will be submitted to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 2233–20478.

(1) Chain of command forwarding endorsement must recommend approval or disapproval. If approval is recommended, the chain of command must provide rationale to support determination that separation is in the best interest of the Army, as well as a statement as to whether the counseling requirements of paragraph 1–20 have been met.

(2) In addition, chain of command forwarding favorable memorandums on individual cases must include recommendations concerning characterization or description of service (see para 5–1) and, when applicable, transfer to the IRR (see chap 1, sec VII), re-entry eligibility (RE) code to be assigned, recoupment of enlistment/re-enlistment bonus, and award of separation pay.

Section II
Surviving Sons or Daughters

5–4. General

a. Commanders specified in paragraph 1–19 will approve requests for separation for the convenience of the Government of Soldiers who qualify per this section as surviving sons or daughters.

b. Separation under this section is not authorized—

(1) During a period of war or national emergency declared by the Congress.

(2) When a Soldier who qualified per 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, re-enlists, or otherwise voluntarily extends his/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/her rights for separation under this section.

(3) When a Soldier—

(a) Has court-martial charges pending.

(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.

5–5. Definitions

The following definitions apply to terms used in this section:

a. The "surviving son" or "surviving daughter" is any son or daughter in a family whose parent or one or more sons or daughters served in the Armed Forces of the United States and—

(1) Was killed in action.

(2) Died as a result of wounds, accident, or disease while serving in the U.S. Armed Forces.

(3) Is in a captured or missing-in-action status.

(4) Is permanently 100 percent physically disabled or 100 percent mentally disabled due to service connection, as determined by the Department of Veterans' Affairs or one of the military services, and is not gainfully employed because of such disability.

b. "Armed Forces of the United States" denotes collectively all components of the Army, Navy, Air Force, Marine Corps, and Coast Guard.

5–6. Procedures

The Soldier concerned must submit request for separation in writing. All requests will include the following information—

a. Name, grade, SN or SNN, 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.

5–7. Characterization of service or description of separation

See paragraph 5–1.

Section III
Other Convenience of the Government Separation Policies

5–8. 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, chapter 5, 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 CQ and staff duty noncommissioned officer (NCO).

(5) Non-availability 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 1–16 and AR 600–20.)

c. The notification procedure (see chap 2, sec I) will be used for separation under this paragraph.

d. For characterization of service or description of separation, see paragraph 5–1.

e. Commanders specified in paragraph 1–19 are authorized to order separation under this paragraph. See paragraph 1–11 for additional instructions for ARNGUS and USAR Soldiers. The criteria in chapter 1, section VII, will govern whether the Soldier will be released from AD or ADT with transfer to the IRR, or whether he/she will be discharged.

5–9. 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 The Judge Advocate General, 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/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 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 7–21*b* should be considered. Only individuals with waivable disqualifications (see AR 601–210 or AR 601–280) will be considered for retention.

(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/she will take action per paragraph 1–11*b* for ARNGUS or USAR personnel. Regular Army personnel will be released from military control per this paragraph.

5–10. Discharge of aliens not lawfully admitted to the United States

Commanders specified in paragraph 1–19 are authorized to dispose of cases involving aliens not lawfully admitted to, or residing in, the United States who did not conceal their true citizenship status at enlistment.

a. Such individuals will be reported to the nearest office of the Immigration and Naturalization Service.

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.)

5–11. 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 AD or ADT for initial entry training, may be separated. Such conditions must be discovered during the first 6 months of AD. Such findings will result in an entrance physical standards board. This board, which must be convened within the Soldier's first 6 months of AD, takes the place of the notification procedure (para 2–2) required for separation under this chapter.

b. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by an appropriate military medical authority within 6 months of the Soldier's initial entrance on AD for RA or during ADT for initial entry training for ARNGUS and USAR that—

(1) Would have permanently or temporarily disqualified the Soldier for entry into the military service or entry on AD or ADT for initial entry training had it been detected at that time.

(2) Does not disqualify the Soldier for retention in the military service per AR 40–501, chapter 3. As an exception, Soldiers with existed prior to service conditions of pregnancy or HIV infection (AR 600–110) will be separated.

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 1–19*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 1–19*d* determines, after considering the proceedings of an Entrance

Physical Standards Board (see AR 40–400), that the Soldier's disqualifying condition will not prevent the Soldier from performing satisfactorily throughout his/her period of enlistment in the MOS for which he/she is being trained or in another MOS based on the Soldier's medical condition.

(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, will govern whether the Soldier will be released from AD, 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, paragraph 4–23.

(2) The Soldier will be separated within 72 hours following approval by the separation authority. (See para 1–19. See para 1–11 for additional instructions on ARNGUS or USAR personnel.)

e. Soldiers who do not meet the medical fitness standards for retention or whose existed prior to service condition has been aggravated by military service, will be processed per AR 635–40.

f. This paragraph is not to be used in personality disorders cases, which will be processed per paragraph 5–13.

g. For characterization of service or description of separation, see paragraph 5–1.

5–12. 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, Fort Rucker, AL 36362, 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, chapter 3.

b. To be eligible for discharge under this paragraph, the Soldier must submit a written request for discharge (see fig 5–1) to his/her unit commander. It must be submitted within 30 days of the date the Commander, U.S. Army Aeromedical Center, finds the Soldier disqualified for flying.

c. Applications for discharge will be processed promptly and separations will be accomplished within 72 hours following approval by the discharge authority. (See para 1–19.)

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 5–13.

f. A Soldier who meets the requirements of *a*, above, and elects to complete the period of service for which he/she enlisted, must submit a written request to be retained on AD. (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 (see fig 5–1) or retention (see fig 5–2) and other pertinent papers will be filed in the Soldier's DA Form 201 as permanent material.

h. For characterization of service or description of separation, see paragraph 5–1.

5–13. Separation because of personality disorder

Under the guidance in chapter 1, section II, a Soldier with less than 24 months of active duty service, as of the date separation proceedings are initiated, may be separated for personality disorder (not amounting to disability (see AR 635–40)) that interferes with assignment or with performance of duty, when so disposed as indicated in *a*, below.

a. This condition is a deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty. (Exceptions: combat exhaustion and other acute situational maladjustments.) The onset of personality disorder is frequently manifested in the early adult years and may reflect an inability to adapt to the military environment as opposed to an inability to perform the requirements of specific jobs or tasks or both. As such, observed behavior of specific deficiencies should be documented in appropriate counseling or personnel records and include history from sources such as supervisors, peers, and others, as necessary to 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 deficiencies. The diagnosis of personality disorder must have been established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluations for the DOD components. It is described in the Diagnostic and Statistical Manual (DSM–IV) of Mental Disorders, 4th edition. In the case of Soldiers who have served or are currently serving in an imminent danger pay area and are within the first 24 months of active duty service, the diagnosis of personality disorder for separation under this paragraph, must be corroborated by the MTF Chief of Behavioral Health (or an equivalent official). The corroborated diagnosis will be forwarded for final review and confirmation by the Director, Proponency of Behavioral Health, Office of the Surgeon General (DASG–HSZ). Medical review of the personality disorder diagnosis will consider whether PTSD, traumatic brain injury (TBI), and/or other comorbid mental

illness may be significant contributing factors to the diagnosis. A Soldier will not be processed for administrative separation under this paragraph if PTSD, TBI, and/or other comorbid mental illness are significant factors to a diagnosis of personality disorder, but will be evaluated under the physical disability system in accordance with AR 635–40.

b. Commanders will not take action prescribed in this chapter in lieu of disciplinary action solely to spare a Soldier who may have committed serious acts of misconduct for which harsher penalties may be imposed under the UCMJ.

c. Separation because of personality disorder is authorized only if the diagnosis concludes that the disorder is so severe that the Soldier's ability to function effectively in the military environment is significantly impaired. Separation for personality disorder 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.

d. Nothing in this paragraph precludes separation of a Soldier who has such a condition for other reasons authorized by this regulation.

e. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records (see para 1–16). The Soldier will also be counseled that the diagnosis of a personality disorder does not qualify as a disability.

f. When it has been determined that separation under this paragraph is appropriate, the unit commander will take the actions specified in the notification procedure (see chap 2, sec I).

g. Separation authority for Soldiers separated under this paragraph who are, or have been, deployed to an area designated as imminent danger pay area is the GCMCA. This authority may not be delegated. In all other cases, the separation authority is the SPCMCA.

h. The service of a Soldier separated per this paragraph will be characterized as honorable unless an entry-level separation is required under chapter 3, section II. Characterization of service under honorable conditions may be awarded to a Soldier who has been convicted of an offense by general court-martial or who has been convicted by more than one special court-martial in the current enlistment, period of obligated service, or any extension thereof.

5–14. 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 (see chap 7) may be separated. 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 the circumstances surrounding the arrests.

(4) The nature of the Soldier's service since enlistment.

b. Discharge authority Commanders specified in paragraph 1–19 will direct discharge or retention of the Soldier. When retention is authorized, DA Form 2–1 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 into the circumstances is required. From this investigation, a decision to discharge or retain can be made. To prove an arrest record as required in this paragraph, bona fide evidence must be obtained from the appropriate law enforcement agency. A typical example of bona fide evidence includes a completed DA Form 3286 (Statement for Enlistment) 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. (See para 5–5.)

5–15. Early release of Reserve Component personnel serving AGR tours under 10 USC 12301(d)

a. General. USAR or ARNGUS AGR Soldiers serving tours under 10 USC 12301(d) may be released from active duty for the convenience of the Government, prior to completion of their AGR tour under the following circumstances:

(1) AGR Soldiers may be voluntarily released from active duty, at their request, when such release is fully justified and determined to be in the best interest of the Army. This provision does not apply to USAR AGR Soldiers denied continued service under the Qualitative Management Program (QMP). (See chap 19.) However, those Soldiers may request voluntary discharge/release from active duty (REFRAD) in accordance with paragraph 19–13.

(2) AGR Soldiers serving on an initial tour as recruiters (that is, are on an initial AGR tour having entered the AGR program for the purpose of recruiting) may be involuntarily released from active duty when a determination has been made that they are unqualified, ineffective, or unsuitable for continued recruiting duty, and that early release is in the best interest of the Government.

b. Notification. The notification procedure (see chap 2, sec I) will be used for Soldiers involuntarily released from active duty under this paragraph. However, the procedure for requesting an administrative board (see para 2–2*c*(5)) is not applicable.

c. Characterization of service. Soldiers released from active duty under this paragraph will be awarded a characterization of service of honorable.

d. Authority. Notwithstanding the provisions of paragraph 1–19, only the Chief, National Guard Bureau; the Chief, Army Reserve; the Commander, USA HRC; or higher authority within the office of the Secretary of the Army is authorized to order release from active duty under this paragraph. This authority may not be further delegated.

e. Separation under provisions other than this paragraph. This paragraph will not be used as authority for release from AD of an AGR Soldier who meets the criteria for separation under other provisions of this regulation. For example, a Soldier who has established a pattern of misconduct will be processed for separation under the provisions of chapter 14.

5–16. Early separation to further education

Soldiers may be discharged or released from active duty for the convenience of the Government, up to 90 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 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 commanders concerned.

(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 90–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 effective date of early separation under this paragraph normally will not be earlier than 10 days prior to the date classes convene, except when Soldiers may be separated up to 30 days prior to the date classes convene if evidence is submitted that the 10-day period is clearly insufficient. 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.

f. For characterization of service, see paragraph 5–1.

g. Commanders specified in paragraph 1–19 are authorized to order separation under this paragraph. The criteria in chapter 1, section VII, will govern whether Soldiers will be released from AD with transfer to the IRR, or discharged.

h. Combining this paragraph with other early release programs to effect separation more than 90 days before ETS is not authorized.

5–17. Other designated physical or mental conditions

a. Commanders specified in paragraph 1–19 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635–40) and excluding conditions appropriate for separation processing under paragraph 5–11 or 5–13 that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to—

(1) Chronic airsickness.

(2) Chronic seasickness.

(3) Enuresis.

(4) Sleepwalking.

(5) Dyslexia.

(6) Severe nightmares.

(7) Claustrophobia.

(8) Transsexualism/gender transformation in accordance with AR 40-501 paragraph 3-35.

(9) Other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the Soldier's ability to effectively perform military duties is significantly impaired. Soldiers with 24 months or more of active duty service may be separated under this paragraph based on a diagnosis of personality disorder. For Soldiers who have been deployed to an area designated as an imminent danger pay area, the diagnosis of personality disorder must be corroborated by the MTF Chief of Behavioral Health (or an equivalent official). The corroborated diagnosis will be forwarded for final review and confirmation by the Director, Proponency of Behavioral Health, Office of the Surgeon General (DASG-HSZ). Medical review of the personality disorder diagnosis will consider whether PTSD, Traumatic Brain Injury (TBI), and/or other comorbid mental illness may be significant contributing factors to the diagnosis. If PTSD, TBI, and/or other comorbid mental illness are significant contributing factors to a mental health diagnosis, the Soldier will not be processed for separation under this paragraph, but will be evaluated under the physical disability system in accordance with AR 635-40.

(a) The condition of the personality disorder is a deeply ingrained maladaptive pattern of behavior of long duration that interferes with the Soldier's ability to perform duty. (exceptions: combat exhaustion and other acute situational maladjustments.) The diagnosis of personality disorder must have been established by a psychiatrist or doctoral-level clinical psychologist with necessary and appropriate professional credentials who is privileged to conduct mental health evaluation for the DOD components. It is described in the Diagnostic and Statistical Manual (DSM–IV) of Mental Disorders, 4th edition.

(b) In the case of Soldiers who are, or have been, deployed to an area designated as imminent danger pay area, the diagnosis of a mental condition not amounting to disability will be reviewed by the installation MTF Chief of Behavioral Health, or the equivalent, and confirmed by the Director, Proponency of Behavioral Health, Office of The Surgeon General (DASG-HSZ).

b. When a commander determines that a Soldier has a physical or mental condition that potentially 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 AR 40–501. Command-directed mental status evaluations will comply with paragraph 1–32*e*. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

c. Separation processing may not be initiated under this paragraph until the Soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. (See para 1–16.)

d. Nothing in this paragraph precludes separation of a Soldier having a condition as described in *a*, above, under any other provision of this regulation.

e. Prior to involuntary separation under this paragraph, the notification procedure in chapter 2, section I; or the administrative board procedure in chapter 2, section II, will be utilized.

f. For characterization or description of service, see paragraph 5–1.

g. Except for Soldiers being separated under paragraph 5–17a(9) for personality disorder who have deployed to an area designated as an imminent danger pay area, commanders specified in paragraph 1–19 are authorized to order separation under this paragraph. See paragraph 1–11 for additional instructions for ARNGUS and USAR Soldiers. The criteria in chapter 1, section VII, will govern whether the Soldier will be released from AD or ADT with transfer to the IRR, or discharged. The separation authority for Soldiers separated under paragraph 5–17a(9) for a personality disorder who have been deployed to an area designated as imminent danger pay area is the GCMCA.

Data Required by the Privacy Act of 1974
(5 USC 552a)

AUTHORITY: Section 301, title 5, United States Code and section 3013, title 10, United States Code.

PURPOSE: Individual request for discharge when soldier has been found to be medically disqualified for flight training and his/her refusal to accept an alternate training course.

ROUTINE USES: Used by personnel activities to process soldiers for discharge and may be used by appropriate Federal agencies and State and local governmental authorities where use of the information is compatible with the purpose for which the information was collected. Soldier's request is filed in the MPRJ.

Disclosure is voluntary. If information is not provided, the Army will complete processing using information available.

(*Date*)

SUBJECT: Request for Discharge
(*Discharge authority*)
(*Name*)

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.

(*Signature of individual*)
(*Typed name, SSN, and grade*)

Figure 5–1. Sample format for request for discharge

Data Required by the Privacy Act of 1974
(5 USC 552a)

AUTHORITY: Section 301, title 5 United States Code and section 3013, title 10, United States Code.

PURPOSE: Individual request for retention on active duty in an alternate training course when he/she has been found to be medically disqualified for flight training.

ROUTINE USES: Used by personnel activities to process soldiers for assignment to an alternate training course and may be used by other appropriate Federal agencies and State and local governmental authorities where use of the information is compatible with the purpose for which the information was collected. Soldier's request will be filed in the MPRJ.

Disclosure is voluntary. Failure to provide information will result in soldier being discharged.

(Date)

SUBJECT: Request to Remain on Active Duty
(Unit commander)
(Name)

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.

(Signature of Individual)
(Typed name, SSN, and grade)

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 1–19.

6–3. Criteria
Soldiers on active duty may be discharged or released (see para 6–10) because of genuine dependency or hardship.

a. Dependency. Dependency exists when death or disability of a member of a Soldier's (or spouse's) immediate family causes that member to rely upon the Soldier for principal care or support. (See para 6–5 for definition of Soldier's "immediate family.")

b. Hardship. Hardship exists when in circumstances not involving death or disability of a member of the Soldier's

(or spouse's) immediate family, separation from the Service will materially affect the care or support of the family by alleviating undue and genuine hardship. (See para 6–5 for definition of Soldier's "immediate family.")

(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 (see para 6–7*b*(5)) that the roles of parent and Soldier are incompatible and that the Soldier cannot fulfill his/her military obligation without neglecting the child or children.

(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, or 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.* It is not the intent of the Army's policy regarding married Soldiers who are parents or Soldiers who become sole parents, to arbitrarily allow the separation of an enlisted woman who remained in the Service during her pregnancy and then requested release immediately after receiving the medical and monetary benefits related to prenatal and postnatal absence and delivery.

(4) *Supporting evidence.* Supporting evidence will be provided as per paragraph 6–7*b*(5). Paragraph 6–7*b*(5) minimizes the supporting evidence for these two policies. However, Soldiers must meet the application criteria in paragraph 6–4 in addition to the requirement that there be unexpected circumstances beyond the Soldier's control justifying separation. An example of unexpected circumstances beyond the Soldier's control 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.

6–4. Application of criteria

a. Separation from the service of Soldiers because of dependency will be granted when all the following circumstances exist:

(1) Conditions have arisen or have been aggravated to an excessive degree since entry on AD 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. Circumstances outlined in (1) and (2), 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 *a*, above.

(1) Pregnancy of an enlisted man's wife is not considered a condition for which his/her 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 because of altered income or because the Soldier is separated from his/her 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/she reached 21 years of age.

b. When a Soldier is eligible for separation per 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 request withdrawal of application at any time before the effective date. The separation authority, based on the evidence provided by the Soldier, may withdraw approval of 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 later marries.

(4) The Soldier submits evidence that a hardship no longer exists.

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, paragraph 3–15.

6–6. Application for separation

The Soldier must request, in writing, separation from the Service because of dependency or hardship.

a. Submitting the application.

(1) A person serving in the United States or stationed overseas will submit an application to his/her commanding officer. The evidence required in paragraph 6–7 must support the application.

(2) A person assigned to an overseas unit who is temporarily in the United States on leave or TDY will submit an application to the commander of the Army installation (except MEPSs 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 an application to the commander for the area in which he/she is located. The commander specified in paragraph 1–19 will specify the unit to which the Soldier will be attached while the application 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 application. (See AR 614–30.)

(5) Soldiers on orders for reassignment from one 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 application reflects sufficient grounds for approval. If not, the Soldier will be advised to submit the application upon arrival at the gaining installation.

(6) Applications for dependency or hardship separation from personnel en route overseas may be accepted at the Army installation (except MEPSs) 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 (APOE) 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, MTMC.

(e) The Soldier en route overseas who arrives at the APOE 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 APOE, 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 an application for separation to his/her commanding officer per (1), above. However, when exceptional circumstances require the Soldier's continued presence, and if the commanders concerned agree, attachment to an installation to submit an

application for separation is authorized. Attachment to the nonpermanent party element at transition centers is not authorized.

b. Forwarding to the separation authority. Forwarding memorandums prepared by commanders having custody of 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 Allotments and Deposits Operations, Defense Finance and Accounting Center.

(3) Date of current enlistment, entry on AD, 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 application should include, as a minimum, the following affidavits:

(1) A personal request for separation explaining the nature of the hardship condition and what the Soldier intends to do to alleviate it.

(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, a physician's certificate should be furnished showing the diagnosis, prognosis, and date of disability.

(a) Preprinted medical statement forms, which require only a physician's signature, will not be issued or used for hardship applications.

(b) The physician will prepare medical statements and certificates.

(4) When the Soldier requests separation to support members of his/her Family, other than spouse or children, the application should show the names and addresses of other members of the Family, and proof that they cannot aid in the care of their Family should be furnished.

(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/her control, have occurred since acquired parenthood that prevent fulfillment of military obligations without neglect of the child.

(b) Affidavits 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.

(c) Evidence in *a*(2) and (3), above, 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 (see para 1–19) will consider the facts upon which the request is based. 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 an application will be included in the return memorandum.

a. The personnel officer of an Army installation (see para 6–6*a*(2) and (3)), except MEPS and recruiting main stations, will give all assistance required to any Soldier desiring to apply for separation. 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 electrically 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 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 USA HRC.

b. If the application is approved, the separation authority will—

(1) With the exception of United States Army Europe (USAREUR), Eighth United States Army (EUSA), and Pacific Command (PACOM), notify the commander who authorized leave or TDY of approval by electrically-transmitted message within 24 hours of the approval of hardship separation and request reassignment orders and personnel and financial records be forwarded by MOM/First Class/Priority mail (only after application is approved).

(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 MINIMIZE is in effect, the message will be dispatched by mail. If a tracer message is required, the MACOM will be included as an information addressee. In all cases involving Soldiers of USAREUR, EUSA, or PACOM, notification and request for reassignment orders, records, and shipment of personal property will be made by electrically-transmitted message to the following:

1. USAREUR. Commander, 1st Personnel Command, Schwetzingen, Germany (AEUPE-PSSD-PAD). (APO AE 09081 to be included if dispatched by mail.)

2. EUSA. Commander, 8th Personnel Command, Yongson, Korea (EAPCMP). (FPO AA 96301 to be included if dispatched by mail.)

3. PACOM. Commander, PACOM, Honolulu, HI (APAG). (Fort Shafter, HI 96858 to be included if dispatched by mail.)

(3) Accomplish the preprocessing procedures (see AR 635–10), including the medical examination. 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 (AR 600–8–10), provided the Soldier so desires. 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 USA transition center installation for separation processing.

c. If the application 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/her assignment. The commander will be notified by electrically transmitted message of the date of departure and the disapproved application will be forwarded to the commander for inclusion in the personnel file as a temporary document. If MINIMIZE is in effect, the message will be dispatched by mail.

d. The USA transition point 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 (SIDPERS) separation transaction.

(2) Complete and mail the separation documents to the address furnished by the Soldier.

(3) Dispose of records per AR 635–10.

e. The overseas or CONUS commander will respond immediately to any messages received per *a* and *b*, above.

f. DA Pam 600–8–11, procedure 1–1, establishes detailed instructions for processing applications.

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.

(4) Contents of reports furnished by the American Red Cross will be disclosed only per AR 25–55 and AR 340–21.

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, will govern whether Soldiers separated for dependency, hardship, or parenthood of married Soldiers or sole parents, will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1–11 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.

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 (see chap 2, sec I) will be used.

Chapter 7
Defective Enlistments/Re-enlistments and Extensions

Section I
General

7–1. General

This chapter provides the authority, criteria, and procedures for the separation of Soldiers because of minority, erroneous enlistment, re-enlistment or extension of enlistment, defective enlistment agreement, or fraudulent entry.

7–2. Separation authority

See paragraph 1–19.

Section II
Minority

7–3. Statutory authority

Applicable statutory provisions are cited in paragraph 1–5.

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/she was less than 17 years of age at the time of enlistment and that he/she has not yet attained that age. (See para 1–11*b* for instructions on ARNGUS and USAR personnel.)

b. A Soldier will be released from custody and control of the Army for minority upon application of his/her 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/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 chapter, 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 his/her 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 discharge or release from custody and control of the Army because of minority receives an application from either the parents or guardian, with the supporting evidence required in paragraph 7–5, the commander will take action as specified in the notification procedure, chapter 2, section II. 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 Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, 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 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/she will not be discharged for minority 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 (misconduct or unsatisfactory performance), action by a board of officers or trial and confinement of a Soldier who otherwise is eligible for minority 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 minority when a Soldier is eligible therefor.

7–9. Void service

Upon determination that a period of service is void per paragraph 7–4*a*, the discharge authority (see para 1–19) will issue an order releasing the Soldier from custody and control of the Army. As a response to the"additional instruction" lead line, the order will state that the Soldier's enlistment is void because of minority. Copies of the order will be issued to the Soldier and will also be filed in the MPRJ or local file, as appropriate, as permanent material. A DD Form 214 will be issued. A discharge certificate will not be issued. (See para 1–11*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 635–10.)

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 *b*, below, a Soldier discharged or released from custody and control of the Army because of minority

(1) May retain pay and allowances already received during the period of minority enlistment or period of service.

No pay or allowances may be paid after the date of determination of minority. (See DOD 7000.14–R, vol. 7A, chap 4, part 1.)

(2) Is provided transportation in kind to home of record.

(3) May receive a donation of not more than $25.00 if otherwise without funds to meet immediate needs. (See DOD 7000.14–R, vol 7A, chap 35, table 35–11.)

(4) Who is confined in an Army or contract prison at the time of discharge or release from custody and control of the Army is entitled to civilian clothing not to exceed $40.

b. Soldiers who enlisted in the RA after reaching age 17 and who are discharged for minority before their 18th birthday, are entitled to pay and allowances to include the date of discharge. (See DOD 7000.14–R, vol. 7A, rule 6, table 4–1.)

7–12. ARNGUS and USAR 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 7–4*a* will receive an order of release from custody and control of the Army.

b. The separation of a Soldier under paragraph 7–4*b* 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, Re-enlistments, or Extensions

7–15. Erroneous enlistments, re-enlistments, 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. For the purpose of this chapter, the term enlistment means both an original enlistment and any subsequent enlistments (re-enlistments). 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/she failed to meet the qualifications for enlistment (see AR 601–210) or re-enlistment (see AR 601–280), the unit commander will initiate action to obtain authority to retain, discharge, or release the Soldier from AD or ADT, as appropriate (see *c*, below), based upon erroneous enlistment or extension. 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 1–19 will take action as follows:

(1) If doubt exists as to whether an enlistment or extension is erroneous, the case, containing the above information, will be forwarded to Commander, USA HRC (AHRC–EPR–P), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, 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 Commander, USA 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 (see AR 601–210 or AR 601–280) by a headquarters office below the level of USA HRC (AHRC–EPR–P), retention may be directed at that level. In such cases, the following statement will be entered in item 27 of DA Form 2–1: "Separation considered, and retention is authorized on (date)." The original copy of the document authorizing retention will be forwarded to Commander, USA HRC (AHRC–EPR–P), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. This copy will be included in the Soldier's official personnel record.

(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 non-waivable (per AR 601–210 or AR 601–280), the case, including the information in *b*, above, and the reasons for recommending retention, will be forwarded to USA HRC (AHRC–EPR–P). Approval will be granted only in exceptionally meritorious cases. Where recommendations are not favorably considered by Commander, USA HRC, separation will be directed. Where Commander, USA HRC grants a waiver for retention, actions required in paragraph 7–15*c*(3) will be accomplished.

d. Except as provided in *e* and *f*, below, Soldiers will be discharged unless they request transfer to the U.S. Army Reserve, 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/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 RBN for the purpose of separation.

(2) The RBN commander will void the enlistment by the issuing an order (see AR 600–8–105) releasing the individual from the custody and control of the Army. The order will reflect that the individual's enlistment is void by reason of erroneous enlistment and that his/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 DA Form 201 (MPRJ or local file, as appropriate).

(b) One copy will be furnished to the Soldier.

(c) One copy will be furnished to the Commander, United States Army Recruiting Command (USAREC).

f. If the Soldier is AWOL, in desertion, or absent in the hands of civil authorities upon discovery and establishment that his/her enlistment is erroneous, because of the criteria in *e*, above, the enlistment may be voided by the separation authority. (See para 1–19.)

(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 DA Form 201.

(4) Pay and allowances entitlement will be as prescribed in DOD 7000.14–R, table 4–1. (See para 1–11*b* for instructions on ARNGUS and USAR personnel.)

(5) Distribution of DD Form 214 will be as shown in AR 635–5, except that copy number 1 will be placed in the MPRJ 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 per this paragraph and the provisions of paragraph 7–16 also apply, action will be taken first per this paragraph 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 per paragraph 5–10 (except erroneously enlisted aliens whose enlistment should be voided under paragraph 5–11 and *e*, above, or section II of this chapter).

(2) Soldiers who do not meet the medical fitness standards for retention (see AR 40–501, chap 3) and who are eligible for processing under AR 635–40.

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.

7–16. Defective or unfulfilled enlistment or re-enlistment agreements

Claims of defective or unfulfilled enlistment agreements are processed under this section and per AR 601–210 or AR 600–280.

a. Defective enlistment agreements. 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. Unfulfilled enlistment commitment. 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. Action when discovered during processing and training. 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 initial advanced individual training, the CONUS commander exercising special courts-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 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 HQ USAREC 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 Headquarters, Department of the Army (AHRC–EPC–O), 200 Stovall Street, Alexandria, VA 22332–0478.

(3) Waivers should be completed where appropriate.

d. Action when discovered after initial assignment. When it appears to the Soldier's unit commander, after the period prescribed in *c*, above, that the Soldier's enlistment commitment is either defective when made or cannot be fulfilled, he/she will submit all pertinent facts in the case to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, for determination.

e. Procedures. When the special court-martial convening authority (see *c*, above) or the Commander, USA HRC finds an enlistment is defective or cannot be fulfilled, Soldiers covered by (1) and (2), below, may request separation.

(1) A non-prior-service RA Soldier serving on first enlistment may request immediate discharge.

(2) A RA Soldier serving on a second or later enlistment, having been discharged from a previous enlistment before ETS to re-enlist, 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/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 per paragraph 7–15 (failure to meet basic qualifications for enlistment or re-enlistment 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 that paragraph, 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 in AR 40–501, chapter 3, and who are eligible for processing under AR 635–40.

h. Army Soldiers will be discharged unless they request transfer to the U.S. Army Reserve, 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 1–19 are authorized to order the separation of personnel pursuant to the foregoing.

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.

Section IV
Fraudulent Entry

7–17. Incident of fraudulent entry

a. Fraudulent entry is the procurement of an enlistment, re-enlistment, 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 re-enlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. 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 re-enlistment. These tests will establish whether the enlistment or re-enlistment 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 re-enlistment in AR 601–210 or AR 601–280. Any waivable or non-waivable disqualification concealed, omitted, or misrepresented constitutes fraudulent entry. This

includes concealing information with alleged or actual recruiter connivance. If, however, the newly revealed information does not amount to a disqualification from enlistment or re-enlistment under the appropriate regulation, there is no fraudulent enlistment or re-enlistment. Hence, the enlistment or re-enlistment 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 not disqualified and, therefore, is not a fraudulent enlistee. For example, if the Soldier alleged that he/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 trespass, which is a minor non-traffic offense for enlistment purposes that is not disqualifying for enlistment or re-enlistment. To conduct an inquiry using these tests to establish existence of fraud, a delay of 30 days is considered reasonable.

b. Any incident that meets the foregoing two tests may be cause for separation for fraudulent entry. Some examples of fraudulent entry are shown below:

(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 Enlisted Records and Evaluation Center, 8899 East 56th Street, Indianapolis, IN 46249–5301. 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 the Immigration and Naturalization Service 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 not be considered for retention.

(b) The nearest office of the Immigration and Naturalization Service 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/her into custody.

(c) A report of the facts, along with a report of action taken, will be submitted to Headquarters, Department of the Army (DAMI), Washington, DC 20310–1051, through intelligence channels.

(3) *Concealment of conviction by civil court.* A Soldier who concealed a felony conviction by civil court normally will not be considered for retention. If information concerning the existence of a civil criminal record is required from the FBI, the contact with the FBI must be made by HQDA. Accordingly, the inquiry will be addressed to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. The inquiry will include fingerprint card, date and place of birth, and 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 not be considered for retention.

(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/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, chap 2, 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 Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, and request disposition instructions. After determining if the Service desires custody of the Soldier, USA HRC will direct that the Soldier be—

1. Released from control of the Army without a discharge certificate or DD Form 214.

2. Considered for discharge per this section.

(b) From the U.S. Army.

1. If trial is not barred by the statute of limitations (see Art 43, UCMJ), the Soldier will be dropped from the current period of service and held to his/her first unterminated period of service. When this action is taken, an entry will be made on DA Form 2–1, 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 unterminated period of service.

2. If trial is barred by the statute of limitations, the Soldier will be discharged from the prior period of service per chapter 14. The Soldier will be considered for discharge from the current period of service per this section. In accomplishing the discharge from a prior period of service, the Soldier will not be sent to the separation transfer point.

(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) Rescinded.

(8) *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.

(9) *Concealment of other disqualification.* A Soldier who conceals other disqualification will be considered for discharge per 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 (see chap 7, sec II) and concealment of true name. However, if concealment of a true name is used to conceal a disqualification as outlined in this paragraph, 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 re-enlisted with a waivable disqualification (AR 601–210, AR 601–280, AR 140–111, or NGR 600–200), recommend, if the separation authority is the SPCMCA, or direct, if the separation authority is the GCMCA, retention of the Soldier in meritorious cases. The GCMCA will act according to instructions in paragraph 7–22*d*.

c. Discharge for fraudulent entry under the notification procedure if a discharge under other than honorable conditions is not to be issued.

d. Convene a board of officers under the administrative board procedures as specified in chapter 2, when the separation authority considers discharge under other than honorable conditions as appropriate or when the Soldier has 6 or more total years 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 1–33 have been met.

7–19. Trial by court-martial

This section does not prevent trial by court-martial for violations of UCMJ, Article 83, when in the best interest of the Service. 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 1–32*a*.)

(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—

(1) Determine if the incident of fraudulent entry is substantiated.

(2) Ensure that the rights of the suspected fraudulent enlistee are protected.

(3) Direct disposition per chapter 2, section I or II, as applicable.

(4) Comply with paragraph 1–33 as appropriate.

c. When the sole reason for separation is fraudulent entry, suspension of separation is not authorized under paragraph 1–18.

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/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) 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 non-judicial 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 1–32*a*.)

b. In making recommendations and determinations on retention, the following facts should be considered by all commanders:

(1) Seriousness of offense and length of time since last offense. In this regard, conviction for murder, rape, forcible sodomy, aggravated arson, sale or traffic in controlled substances; aggravated assault with intent to commit murder or rape; or any conviction resulting in confinement for 2 or more years; or commitment to a mental institution, are very serious offenses. These should rarely be waived and then only with conclusive evidence of rehabilitation.

(2) Evidence of rehabilitation or maturity since conviction for offenses.

(3) Patterns of offenses that indicate the Soldier is undesirable for service in a military environment.

(4) Age at the time of the offense.

(5) Educational level.

(6) Aptitude area scores.

(7) Performance of military duty and motivation to service. This includes recommendation by commanders and others who know of the Soldier's performance of duty and motivation.

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, USAREC. For cases of connivance by re-enlistment 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 fraudulent entry is verified, action will be taken to suspend the Soldier's pay and allowances per DOD 7000.14–R, part one, chapter 4. 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.

b. Direct discharge and issuance of a discharge certificate under other than honorable conditions provided the Soldier has waived his/her rights to present the case before a board of officers. (See para 3–7*c*.)

c. If discharge under other than honorable conditions appears warranted or the Soldier has completed 6 or more years 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.

d. Subject to the provisions below, recommend retention if the recommending authority is the SPCMCA; otherwise, the GCMCA may direct retention.

(1) Soldiers with non-waivable disqualifications under AR 601–210, AR 601–280, AR 140–111, or NGR 600–200 will be processed for immediate separation. Exceptions are not authorized.

(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 or SPCMCA must personally interview the Soldier and determine that he/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 U.S. Army Training and Doctrine Command installations. In making a retention decision, the GCMCA will carefully consider the guidelines outlined in paragraph 7–21*b*.

(3) The GCMCA's decision to waive the fraudulent entry to permit retention will be reported and documented as specified in paragraph 1–14.

e. Direct that the fraudulent entry be voided as required by paragraph 7–18*a*. The orders issuing authority will issue orders releasing the individual from custody and control of the Army. (See para 1–11*b* for instructions for ARNGUS and USAR personnel. See para 7–24 regarding DD Form 214.) When this individual is in an AWOL status, in desertion, or in 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 DD Form 256A or assigned a character of service of 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, 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 (10 USC 883; Art 83 UCMJ) occurs when the Soldier accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment of his/her qualifications. Therefore, upon receipt of pay and allowances, it becomes an in-service activity by the Soldier and may be considered in characterizing his/her period of service, even though he/she is not tried for the offense.

d. When the individual is in an AWOL status, or in desertion, or in the hands of civil authorities, the provisions of chapter 2, section III, 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 of Enlisted Women—Pregnancy

Section I
General

8–1. Policy

This chapter establishes policy and procedures and provides authority for voluntary separation of enlisted women because of pregnancy. This chapter applies to all Active Army enlisted women and ARNGUS and USAR enlisted women ordered to AD, except for ARNGUS and USAR Soldiers found to be pregnant upon entry on IADT, to whom paragraph 5–11 applies.

8–2. Separation authority

Commanders specified in paragraph 1–19 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.

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, will govern whether the Soldier will be released from AD with transfer to the IRR, or discharged. (See para 1–11 for additional instructions on ARNGUS and USAR personnel.)

8–5. Responsibility of the unit commander

a. The unit commander will direct an enlisted woman 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.

8–6. Medical examination and diagnosis

a. Examination for pregnancy will be conducted as a complete medical examination. Standard Form (SF) 88 (Report of Medical Examination) and SF 93 (Medical Record–Report of Medical History) will be used. If the Soldier is found

to be pregnant, no additional medical examination is required before separation if medical examination is accomplished per AR 40–501, chapter 8, and there is no change in the enlisted woman's medical condition other than her pregnancy.

b. The pregnancy diagnosis will be certified in writing by a physician on duty at an Armed Forces MTF as soon as possible. (This does not prevent observation of the enlisted woman for a reasonable period of time to ensure that the diagnosis is correct.) In accomplishing the diagnosis, the physician may use biological or other tests for pregnancy (without cost to the patient). The certificate will be sent to the separation authority as an enclosure to the request for separation if the enlisted woman applies for separation.

c. When pregnancy is the only medical condition upon which separation is based, separation will be accomplished without a medical or physical evaluation board. 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 within an overseas command unless the enlisted woman's home 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, chapter 3.

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 SF 88.

d. An enlisted woman under investigation, court-martial charges, or sentence of court-martial who is certified by a physician on duty at an Armed Forces MTF to be pregnant may be separated under this chapter. However, she must have the written consent of the commander exercising general courts-martial jurisdiction over the enlisted woman.

e. Except as provided in *f*, below, 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 per 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 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 AD when counseled (see para 8–9) may, if she is still pregnant, subsequently request separation. 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 pregnancy counseling checklist. (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 and her military physician will determine the separation date. The date must not be later than 30 days before the expected date of delivery or the latest date her military physician will authorize her to travel to her home of record or entry on duty destination, whichever is earlier. The separation authority will approve the request according to this chapter.

b. Remain on active duty.

8–10. Statement of counseling

a. Figure 8–2, part one, will be signed by the Soldier after counseling.

b. The Soldier will be granted at least 7 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 pregnancy counseling checklist will be filed in the MPRJ or local file, as appropriate, as an action pending document.

Notice: Required by the Privacy Act of 1974 (5 USC 552a).

Prior to soliciting any personal information in the course of counseling a Soldier, the counselor (see paragraph 8-6) will advise the Soldier substantially as follows:

In the course of counseling you concerning the decision you will have to make in connection with your pregnancy, I will request certain personal information from you. My only purpose in requesting this information is to assist you in planning how to meet your responsibilities to the child and to the military, and to determine if there is anything that I or the Army can do to assist you in meeting those responsibilities. Disclosure of your SSN and other personal information to me, but Army regulations require that you complete a Statement of Counseling. If you choose not to provide personal information to me, however, I may not be able to effectively assist you. No use of the information will be made outside the Department of Defense. A copy of the Statement of Counseling will be maintained in your Military Personnel File until this action is completed, at which time it will be destroyed. My authority for requesting this information is Section 3013, Title 10, United States Code.

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) 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 30 miles of you location.

(2) If you separate, you are authorized treatment only in a military facility that has maternity care. You are NOT authorized care in a civilian facility at government expense.

(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.

Figure 8–1. Sample format for pregnancy counseling checklist

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:

(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 paragraph 5-8 and chapters 11, 13 and 14.

Figure 8–1. Sample format for pregnancy counseling checklist—Continued

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.

Should you desire assistance in gathering additional 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.

Figure 8–1. Sample format for pregnancy counseling checklist—Continued

I affirm that I have been counseled by (grade) (name) this date on all items on the attached counseling checklist, and I understand my entitlements and responsibilities. I understand that if I elect separation, I may receive maternity care at Department of Defense expense, on a space-available basis for up to 6 weeks postpartum for the birth of my child only in a military medical treatment facility that has maternity care capability and that I may elect a separation date no later than 30 days prior to expected date of delivery or the latest date my physician will authorize me travel, whichever is earlier. Further, I understand that many military medical 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 based on the needs of the Army, will determine my separation date. I also understand that if I should remain on active duty, I will be expected to fulfill the terms of my enlistment contract. If I elect to remain on active duty, I understand that I must remain available for unrestricted service on a worldwide basis when directed and that I will be afforded no special consideration in duty assignments or duty stations based upon my status as a parent.

(Date) *(Signature of Soldier)*

TO: *(Soldier concerned)* *(Date)*
FROM: *(Commander, unit)*

CMT 1
Request your election of appropriate option indicated below and return within (number of days).

(Signature)
(Typed name)
(Rank, commanding branch)

TO: *(Commander, unit)* *(Date)*
FROM: *(Soldier concerned)*

CMT 2
___ During the counseling session there was no coercion on the part of the counselor influencing my decision.

___ I elect separation for reason of pregnancy per AR 635-200, chapter 8. I desire to remain on active duty until (date). (In no case later than 30 days prior to expected date of delivery.)

___ I elect to remain on active duty to fulfill the terms of my enlistment contract.

(Signature)
(Typed name, SSN, grade)

1 Copy MPRJ (Action Pending)
1 Copy Soldier
1 Copy File

Figure 8–2. Sample format for statement of counseling

Chapter 9
Alcohol or Other Drug Abuse Rehabilitation Failure

9–1. Scope

This chapter provides the authority and outlines the procedures for discharging Soldiers for alcohol or other drug abuse rehabilitation failure.

a. The Soldier is entitled to request a hearing before an administrative separation board if he/she has 6 or more years of total active and reserve military service per paragraph 2–2*c*(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 drug abuse such as illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when—

(1) The Soldier is enrolled in Alcohol and Drug Abuse Prevention and Control Program (ADAPCP).

(2) The commander determines that further rehabilitation efforts are not practical, rendering the Soldier a rehabilitation failure. 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. 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 ADAPCP lacks the potential for further useful service, the Soldier will be screened per AR 600–85. If found non-dependent, the Soldier will not be rehabilitated but will be considered for separation under other appropriate provisions of this regulation.

f. Separations for alcohol abuse rehabilitation failure will be reported separately from separations for drug abuse rehabilitation failure. If separation is based on both, the primary basis will be used for reporting purposes.

9–2. Basis for separation

a. A Soldier who is enrolled in the ADAPCP for alcohol/drug abuse 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.

b. Nothing in this section prevents separation of a Soldier who has been referred to such a program under any other provision of this regulation.

c. Initiation of separation proceedings is required for Soldiers designated as alcohol/drug rehabilitation failures.

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/she should be processed for separation under this chapter. (See chap 2, sec III for completing proceedings initiated before a Soldier departs absent without leave.)

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, paragraph 6–4. (See para 2–6*h* for procedures for reinitiation or rehearing, if appropriate.)

9–5. Separation authority

a. The commanders specified in paragraph 1–19 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, rendering the Soldier a rehabilitation failure.

(3) The Soldier's potential for fully effective service is substantially reduced by alcohol/drug abuse.

(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 *b*(1) through (3), above, are established, and direct the characterization of the Soldier's service per 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 1–18.

9–6. Authority for separation

The authority for separation (see para 1–19) will be included in directives or orders directing Soldiers to report to the appropriate separation transfer point (STP) for separation.

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 per AR 600–85, chapter 6, sections III and IV.

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 Manual for Courts-Martial, 2002 (MCM 2002), includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial.

(1) The provisions of RCM 1003(d), MCM 2002 do not apply to requests for discharge per this chapter 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 final action by the court-martial convening authority.

(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.

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 per this chapter 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. In this event, the officer who convened the court in his/her action on the case should not approve any punitive discharge adjudged. The officer should approve only 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 consulting counsel (see para 3–7*h*) and to consider the wisdom of submitting such a request for discharge.

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.

c. After receiving counseling (see *b*, above), the Soldier may elect to submit a request for discharge in lieu of trial by court-martial. The Soldier will sign a written request, certifying that he/she

(1) Has been counseled.

(2) Understands his/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.

d. The Soldier also must be advised that pursuant to a delegation of authority per paragraph 1–19*l*, a 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 GCMCA or higher authority), but the authority to disapprove a request for discharge in lieu of trial by court-martial may not be delegated.

e. The Soldier's written request will also include an acknowledgment that he/she understands the elements of the offense(s) charged and 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.)

(1) The consulting counsel will sign as a witness, indicating that he/she is a commissioned officer of The Judge Advocate General's Corps, unless the request is signed by a civilian counsel representing the Soldier.

(2) 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.

(3) Separation action may then proceed as if the Soldier has consulted with a counsel, or the general court-martial convening 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 1–19*a* or paragraph 1–19*c*(5) and 1–19*l*.

(1) The discharge request must be reviewed by the office of the staff judge advocate prior to approval by the separation authority specified in paragraphs 1–19*c*(5) and 1–19*l*.

(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 discharge to be issued will be recommended also.

c. The following data will accompany the request for discharge:

(1) A copy of the court-martial Charge Sheet (DD Form 458).

(2) Report of medical examination and mental status evaluation, if conducted.

(3) A complete copy of all reports of investigation.

(4) Any statement, documents, or other matter considered by the commanding officer in making his/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 per paragraph 1–19 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 a serious offense, even though the punishment, under the Uniform Code of Military Justice, may include a bad conduct or dishonorable discharge.

b. Consideration should be given to the Soldier's potential for rehabilitation, and his/her entire record should be reviewed before taking action per this chapter.

c. Use of this discharge authority is encouraged when the commander determines that the offense is sufficiently serious to warrant separation from the Service and that the Soldier has no rehabilitation potential.

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 absent without leave.)

10–6. Medical and mental examination

A medical examination is not required but may be requested by the Soldier under AR 40–501, chapter 8.

10–7. Discharge authority

The separation authority will be a commander exercising general court-martial jurisdiction or higher authority. (See para 1–19*a*.) However, authority to approve discharges may be delegated to the commander exercising special court-martial convening authority over the Soldier (see paras 1–19*c*(5) and 1–19*l*) in cases in which all of the following apply to the Soldier. He/she—

a. Has been AWOL for more than 30 days.

b. Has been dropped from the rolls of his/her unit as absent in desertion.

c. Has been returned to military control.

d. Currently is 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 MPRJ or local file, as appropriate, as permanent material and disposed of per AR 600–8–104. Material should include appropriate documentation (see para 10–3*c*) and the separation authority's decision. Statements by the Soldier or Soldier's counsel submitted in connection with a request per this chapter are not admissible against a Soldier in a court-martial except as authorized under Military Rule of Evidence 410, MCM 2002.

Data Required by the Privacy Act of 1974 (5 USC 552a)

AUTHORITY: Section 301, title 5 United States Code and section 3013, title 10, United States Code.

PURPOSE: To be used by the commander exercising general court-martial jurisdiction over you to determine approval or disapproval of your request for discharge in lieu of trial by court-martial.

ROUTINE USES: Request, with appropriate documentation, including the decision of the discharge authority, will be filed in the MPRJ as permanent material and disposed of in accordance with AR 600-8-104 and may be used by other appropriate Federal agencies and State and local governmental activities where use of the information is compatible with the purpose for which the information was collected.

Submission of a request for discharge is voluntary. Failure to provide all or a portion of the requested information may result in your request being disapproved.

(*Date*)

SUBJECT: Request for Discharge in Lieu of Trial by Court-martial

TO:

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 Government1)) (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 found guilty, and of the legal effect and significance of my suspended discharge.3) (Although he/she has furnished me legal advice, this decision is my own,) (I understand that, pursuant to a delegation of authority per paragraph 1-191 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.4)

Figure 10–1. Sample format for discharge in lieu of trial by court-martial

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 statements 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.

(*Signature of respondent*)
(*Typed name, SSN, grade*)

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.

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

[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—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 AD 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 (DA Form 4856–R).

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 they cannot fully participate in the required training for the MOS concerned because of their physical condition.

(a) The training commander will furnish the training requirements to the obstetrician.

(b) Soldiers separated for pregnancy that occurred after entry on AD or IADT are entitled to maternity care in a military medical facility only per AR 40–3.

(2) Will be retained when they can fully participate unless they request separation per chapter 8.

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 14–12*a*), 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 (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 1–19 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, will govern whether the Soldier will be released from AD or ADT with transfer to the IRR or be discharged. (See para 1–11 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 (Active Army, ARNGUS, and USAR) who are retiring in their enlisted status. AR 600–8–24, chapter 6, governs the retirement of eligible RA Soldiers in commissioned or warrant officer grades.

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 per 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) Commander, HRC Alexandria may approve, disapprove, or delay the requested retirement date of Active Army Soldiers in the grade of SSG(P) and above.

(2) A general officer in command may approve, disapprove, or delay the requested retirement date of Active Army Soldiers in the grade of SSG and below. Retirement approval authority, but not disapproval/delay authority, may be delegated to the SPCMCA.

(3) Commander, HRC St. Louis may approve, disapprove, or delay the requested retirement date of all USAR Soldiers who are not members of the Active Army.

(4) Chief, National Guard Bureau may approve, disapprove, or delay the requested retirement date of all ARNGUS Soldiers who are not members of the Active Army.

b. The above individuals are referred to as "retirement authority" or "commander having retirement authority."

c. The foregoing provisions 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 3914 and 3917.) There is no statutory requirement that ARNGUS and USAR Soldiers be on AD 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 3961.)

(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 3963.)

(2) The Army Grade Determination Review Board in accordance with AR 15–80 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. (See para 12–16 for instructions pertaining to former command sergeants major who are serving as sergeants major when they retire.) (See para 12–17 for instructions pertaining to former first sergeants who are serving as master sergeants 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 3925.

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 3914)

a. A Soldier who has completed 20 but less than 30 years of AFS 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/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 3914 and has been awarded the Medal of Honor, Distinguished Service Cross, or Navy Cross for extraordinary heroism will have his/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 1202 and is otherwise eligible for retirement under 10 USC 3914 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 Navy decoration may be credited with extraordinary heroism if it is determined that the heroism was equivalent to that required for 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 Headquarters, Department of the Army (AHRC–PDA), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, 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.

12–5. Thirty-year retirement law (10 USC 3917)

A 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 3964)

a. As used in this paragraph, 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(d)(1).) Active service means service on active duty or full-time National Guard duty. (See 10 USC 101(d)(3).)

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 3964.)

(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 *d*, below.) Soldiers advanced to a higher grade will be notified by the Cdr, USA 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 *b*(1) and (2), above, 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 the Secretary of the Army per AR 15–80.

e. Cases of Soldiers who are eligible for advancement on the retired list at retirement will be sent to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. Cases should be sent for determination at least 75 days before requested retirement date. These will include—

(1) Cases covered in *c*, above.

(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 3965.) These Soldiers must apply to the Secretary of the Army 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/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 therefrom 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, USA HRC, 1 Reserve Way, St. Louis, MO 63132–5200. 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 command sergeants major and former first sergeants 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 AFS and who have completed all required service obligations are eligible, but not entitled, to retire upon request. Except as indicated in paragraph 19–15, unless restricted in this section, Soldiers who have completed 19 or more years of AFS may apply for retirement. The request must be made within 12 months of the requested retirement date except as indicated in paragraph 19–15.

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 per AR 600–82 are not precluded from submitting applications for retirement. 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 3914, 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 in (1) and (2), below.

(1) *CONUS.* Soldiers will serve 1 year in their current assignment or at their current duty station, whichever occurs first, beginning when the Soldier reports for duty. This includes Soldiers who have returned from overseas on a permanent change of station. Soldiers assigned to a lifecycle unit will incur an active duty service obligation extending until completion of the unit lifecycle. HQDA will announce the duration of each unit lifecycle (normally 3 years) before the lifecycle begins.

(2) *Overseas.* See 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) Personnel who have incurred a service obligation, other than outside CONUS (OCONUS) returnees, 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 retirement application has been approved. (See para 12–15.)

(1) Soldiers who are promoted to the grade of SFC, MSG/1SG, or sergeant major (SGM)/command sergeant major (CSM) incur a 2-year service obligation (AR 600–8–19). This obligation will be from the effective date of promotion. It must be completed before voluntary retirement.

(2) The following are excluded from the 2–year 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 62 years of age or older.

(d) Soldiers who are eligible for retirement based on RCP (AR 601–280) for the recommended grade.

(3) A promoted individual may not be administratively reduced to terminate a promotion service obligation. (See AR 600–8–19, para 4–8*e*.)

e. Current ETS 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 PCS

a. Soldiers having 19 years, 6 months or more of AFS when notified of permanent change of station may request a retirement date. The Soldier will receive official notification per DA Pam 600–8–11, procedure 3–1.

(1) If the Soldier elects to retire, the retirement application (DA Form 2339) must be submitted and approved within 30 days of receipt of official alert notification of permanent change of station.

(2) The retirement date will not be later than 6 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 must be fulfilled not later than the approved retirement date.

(a) Soldiers electing to retire under this provision will be required to retire immediately upon attaining retirement eligibility.

(b) The retirement application (DA Form 2339) will be submitted through command channels to Commander, USA HRC (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478. This action must be submitted and approved with 30 days of official notification of permanent change of station.

(c) All service obligations resulting from promotion, training or similar action must be completed before 20 years AFS.

(d) Soldiers will have at least 20 years AFS at ETS.

b. When a Soldier cannot fulfill the service obligations by the requested retirement date, the retirement authority will return the Soldier's application.

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 DA Pam 600–8–11, procedure 3–1, will be officially notified telephonically of permanent change of station. If the Soldier elects to retire in lieu of PCS, the provisions of *a*, above, 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 one year CONUS service obligation.

12–10. Loss of HQDA centralized promotion list standing upon approval 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/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. SGM who become CSM(D) will lose such designation if they receive an approved retirement.

12–11. Waivers

a. Exceptions to service obligations (see paras 12–7 and 12–8) 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. 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 below.

c. Requests for waivers will be forwarded through the Soldier's commander to Headquarters, Department of the Army (AHRC–EPR–F), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. 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 (see para 12–13) through the chain of command to the appropriate retirement authority listed in paragraph 12–2. The retirement authority will notify Soldier in writing of the effective date of the retirement, if approved.

b. Before applying for retirement, the Soldier should be firm in his/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 retirement applications. 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. Applications not including this information are invalid. Each item will be completed in full. Not applicable (NA) 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 application. 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 grade (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 TP or TA (see AR 635–10, para 2–19), enter the complete designation and location of such TP or TA. (For example, U.S. Army Transition Point, Fort Sill, OK.) The Soldier must check the appropriate election and sign his/her name. This does not apply to Soldiers not on active duty.

b. The personnel officer will complete section II, DA Form 2339. Each item will be completed in full.

(1) *Item 21.* Enter the complete designation and location of the authorized TP or TA where the Soldier will be processed for retirement. (See AR 635–10, chap 2 and app B.)

(2) *Item 27.* Also enter type tour "all other" or "with Family members" as applicable and date eligible for return from overseas (DEROS).

(3) *Item 28.* Will be completed only when Soldier elects retirement in lieu of PCS. Enter the date Soldier was notified of alert for permanent change of station. When applicable, enter date of 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 by (*a*) through (*d*), below, as applicable.

(a) If the application 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: (grade) (name) has requested and had approved days of transition leave (days delay en route chargeable as leave (DDALV)) 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/she was released from the CSM Program solely because of assignment-limiting physical condition that was incurred in line

of duty (LD)." "SGM (name) served as CSM from (date) to (date). He/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 LD)."

(d) If Soldier is currently serving in the grade of MSG but formerly served as 1SG, E8, enter the following statement (see para 12–17): "MSG (name) served satisfactorily as ISG from (date) to (date)."

c. The personnel officer will send a signed copy of the application, as soon as sections I and II are completed, to Headquarters, Department of the Army (AHRC–EP-appropriate career management branch), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. Soldiers of the USAR on active duty will submit a signed copy of the application to USA HRC (TARP–AR) 1 Reserve Way, St. Louis, MO 63132–5200. Army National Guard of the United States Soldiers on active duty will submit a signed copy of the application to the State Adjutant General. For RA Soldiers who are being considered by HQDA Selection Board for promotion to the next higher grade, an additional copy will be sent to Headquarters, Department of the Army (AHRC-MSP-E), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478. The submission of these copies of the application will not be delayed until the medical examination or verification of service is completed.

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 12–4*c*.)

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, per AR 601–280, chapter 4. 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 per AR 601–280.

(2) Soldiers who have reached retirement eligibility but are not qualified for extension per 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 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 of active Federal service but less than 20 years will be extended to reach retirement eligibility. Reserve Component Soldiers serving on active duty, except active duty for training, 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.

f. Soldiers with a minimum of 17 years, 9 months of active Federal service who are denied continued service under the Qualitative Management Program may be extended to complete 20 years of service per chapter 19.

g. The personnel officer will send the application to the retirement authority as soon as section II is completed and signed.

h. 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 applications 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. Paragraph 12–13*b*(5)(*a*) and (*c*) are complied with.

e. Headquarters, Department of the Army (AHRC–EPR–F), State Adjutant General, and USA 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. Request for withdrawal of application or change in retirement date

a. An approved application 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/her immediate Family. The hardship must have been unforeseen at the time of application. An application for retirement may not be withdrawn after travel has been performed for retirement.

b. The retirement date will not be changed unless, after the application is submitted, events that justify a change in the retirement occur that would cause an extreme hardship to the Soldier or immediate Family.

c. Requests for withdrawal of applications or change in retirement date must be fully documented.

(1) The request 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 HQDA (AHRC–EPR–F) 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 in paragraph 12–15*c*(3)(*a*), (*b*), or (*c*). If not received, the unit commander will query the retirement authority or HQDA (AHRC–EPR–F) by telephone (even when 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–R (Declination of Continued Service Statement (available in AR 601–280)), will be returned without action.

e. In cases not involving Soldier requests based on hardship or those not involving court-martial, administrative discharge, or physical disability, an approved retirement may be 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 Commander, HRC to the Deputy Chief of Staff, G–1. Requests must be fully justified.

12–16. Grade title on retired list of former command sergeants major

a. Noncommissioned officers (NCOs) holding the grade title of sergeant major (SGM) at retirement will be placed on the retired list in the grade title of command sergeant major (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.

(3) Holding the grade MSG/1SG or below on date 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 command sergeant major, request for such determination will be made to Headquarters, Department of the Army (AHRC–EPZ–E), 2461 Eisenhower Avenue, Alexandria, VA 22332–0450.

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

Noncommissioned officers holding the grade of master sergeant at retirement, whose records show successful service as first sergeant, will be placed on the retired list in the grade title, first sergeant. 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 possess special qualification identifier "M."

c. The Soldier must have served as first sergeant in grade of MSG. No minimum time period is specified. Service in the duty action of first sergeant 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 USA 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 3917 of Soldiers with 30 or more years of active Federal service.

(2) Format 600: To announce the retirement under 10 USC 3914 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 when a change in the Soldier's status prevents retirement on the specified date (see para 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.

(2) The following cases will be promptly forwarded to HQDA (AHRC–EPR–F) 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.

(c) When it appears that retirement orders require modification, amendment, or revocation after the effective date of retirement.

d. The Soldier must have the retirement orders or copy of verification message containing the retirement order number. The Soldier's MPRJ or local file, as appropriate, must contain copies of the retirement orders before his/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 (5 USC 8301), with release from active duty 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 he/she is 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 transition center (TC) specified in AR 635–10. Exceptions are provided in *b* and *c*, below, and DA Pam 600–8–11, table 2–1–2.

b. A Soldier may elect, per AR 635–10, paragraphs 2–8 and 2–19, 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/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 1–41*e*) must mark this in the retirement application. If required, the retiree should secure a passport from the nearest United States Consulate.

12–21. Certificates

The TP or TA will prepare and issue the following certificates per AR 635–5 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 635–10 and from approval authorities shown in paragraph 12–2.

a. DD Form 363 (Certificate of Retirement).

b. DA Form 3891 (Certificate of Appreciation of Wives of Retirees).

c. DA Form 38911 (Certificate of Appreciation for Husbands of Retirees).

d. DD Form 2542 (Presidential Certificate of Appreciation).

12–22. Career recognition

Appropriate ceremonies will be set up per AR 600–25, paragraph 3–4. When the installation 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 Military Personnel Records Jacket along with the following essential papers:

a. The original DA Form 2339.
b. The complete medical examination report.
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 application or change in retirement date.
h. Determinations concerning grade title of former command sergeants major.
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 cited publications:

a. Decorations and Awards: AR 600–8–22.
b. Identification cards, tags and badges: AR 600–8–14.
c. Preparation of DD Form 214: AR 635–5.
d. Pre-retirement leave: AR 600–8–10.
e. Records disposition: AR 635–10.
f. Retirement ceremony: AR 600–25.
g. Retirement processing: AR 635–10.
h. Selection of home: Joint Federal Travel Regulation (JFTR), paragraph U5130.
i. Shipment of household goods: JFTR, paragraph U5365.
j. Transportation of Family members: JFTR, paragraph U5230.

Section IV
Computation of Service

12–25. Service creditable for retirement

All years of active service are creditable for retirement. (See 10 USC 3925.) 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, vol. 7A. Service below 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) Regular Army Reserve.
(b) Army of the United States.
(c) U.S. Army Reserve.
(d) Army National Guard.
(e) Army National Guard of the United States.
(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). (See paragraph 1–21.)

b. Periods of service voided by the Government other than those voided because of minority.

c. Time in a non-pay (non-casualty) status under 37 USC 552(C).

d. Service in a Reserve Component not on

(1) Active duty.

(2) Active duty for training.

(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/she completes 18 years' 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 MPRJ (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 MPRJ (or local file, as appropriate) or PFR.

b. Army service claimed by the Soldier that is not clearly substantiated in his/her MPRJ (or local file, as appropriate) 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 the Commander, U.S. Army Enlisted Records and Evaluation Center (PCRE-RP-R), 8899 East 56th Street, Indianapolis, IN 46249–5301, 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, active duty for training or other full-time training duty, and all time lost. The original or certified copies will be attached as enclosures to application for retirement.

(1) *Navy.* Military Personnel Records Center, GSA (Navy), 1 Reserve Way, St. Louis, MO 63132–5100.

(2) *Air Force.* Military Personnel Records Center, GSA (Air Force), 1 Reserve Way, St. Louis, MO 63132–5100.

(3) *Marine Corps.* Military Personnel Records Center, GSA (Marine Corps), 1 Reserve Way, St. Louis, MO 63132–5100.

(4) *Coast Guard.* Military Personnel Records Center, GSA (Coast Guard), 1 Reserve Way, St. Louis, MO 63132–5100.

(5) *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. Active Army Soldiers, including Army Reserve and Army National Guard of the United States 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, paragraph 8–3.

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. If a Soldier who has requested retirement becomes hospitalized or has an identified medical problem, he/she might be referred to a physical evaluation board.

(1) The commander of the MTF, or a senior medical officer who has detailed knowledge of medical fitness and unfitness standards, disposition of patients, and disability separation processing, to whom the commander has delegated such authority, will make this decision.

(2) If referral to a physical evaluation board will result, the MTF commander or designated representative will notify Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, by mail or message as soon as possible. The notification will request a change of retirement date if appropriate and furnish a copy of the request to the retirement authority.

b. If the physical evaluation board is not necessary, but additional medical care is, the retirement will be processed as a non-disability 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.

c. If referral to a physical evaluation board results, approved retirement dates will not be changed until approved by HQDA (AHRC–EPR–F).

Chapter 13
Separation for Unsatisfactory Performance

Section I
General

13–1. Policy

A Soldier may be separated per this chapter when it is determined that he/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 will separate a Soldier for unsatisfactory performance when it is clearly established that

(1) In the commander's judgment, the Soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory Soldier.

(2) The seriousness of the circumstances is such that the Soldier's retention will have an adverse impact on military discipline, good order, and morale.

(3) The Soldier will likely be a disruptive influence in duty assignments.

(4) The circumstances forming the basis for initiation of separation proceedings will likely continue or recur.

(5) The Soldier's ability to perform duties effectively is unlikely.

(6) The Soldier's potential for advancement or leadership is unlikely.

b. Commanders will initiate separation action only when the Soldier is under military control. As an exception, commanders may initiate this action when a Soldier is confined by civil authorities and his/her military record indicates that he/she should be processed for separation by reason of unsatisfactory performance. (See chap 2, sec III for completing proceedings initiated before a Soldier departs absent without leave.)

c. This provision applies to Soldiers who are pregnant and whose substandard duty performance is not caused solely by pregnancy. Substandard duty might include failure to report to duty without medical or military authorization or refusal of CONUS reassignment during the first 6 months of pregnancy.

d. Commanders will consider a Soldier meeting the criteria of *a*, above, and convicted by court-martial but not sentenced to a punitive discharge, for administrative separation under this chapter when the underlying misconduct and the Soldier's performance warrant separation. When appropriate, commanders may start separation action while the Soldier is serving a sentence to confinement at the installation detention facility.

e. Initiation of separation proceedings is required for Soldiers without medical limitations who have two consecutive failures of the Army physical fitness test per AR 350–1 or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to re-enlistment per AR 601–280 (RA Soldiers) or AR 140–111 (USAR AGR Soldiers).

13–3. Separation authority

The commanders specified in paragraph 1–19 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. Because military service is a calling different from any civilian occupation, a Soldier should not be separated when unsatisfactory performance is the sole reason for separation unless there have been efforts at rehabilitation. Paragraph 1–16 prescribes the counseling and rehabilitation requirements.

Section II
Procedures

13–5. Action by unit commander when Soldier is under military control

When separation for unsatisfactory performance is appropriate, the unit commander will—

a. Take action specified in the notification procedure. (See chap 2 and fig 2–4.)

b. Forward the case recommending separation for unsatisfactory performance.

c. Ensure that a medical examination and mental status evaluation is obtained per paragraph 1–32.

d. When appropriate, forward the case recommending that the Soldier be processed through medical channels. This is required when UCMJ action is not initiated and when the Soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct for which separation action is being considered.

13–6. Commanding officer's report

When the immediate commander determines that separation for unsatisfactory performance is in the best interest of the Service, he/she will report the fact, by memorandum (see fig 2–5), to the separation authority specified in paragraph 1–19 through the intermediate commander.

13–7. Action by intermediate commander

a. The intermediate commander may disapprove the recommendation and either—

(1) Direct reassignment of the Soldier to another organization.

(2) Direct disposition by other means.

(3) In case of reassignment, forward the commanding officer's report to the new organization commander for information.

b. The intermediate commander may also forward the report recommending approval. Recommendation will be made as to characterization of service. (See para 2–2*d*(4) and (5).)

13–8. Action by the separation authority

On receiving a recommendation for separation for unsatisfactory performance, the separation authority (see para 1–19) will take one of the following actions:

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. Take other appropriate action under this regulation.

d. If the Soldier has less than 6 years of total active and/or reserve military service, or has properly waived his/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 1–18.)

e. If the Soldier has 6 or more years of total active and/or reserve military service and has not executed a waiver, convene a board of officers, as prescribed in chapter 2, to determine whether the Soldier should be separated for unsatisfactory performance.

13–9. Separation authority action after board hearings

See chapter 2.

13–10. 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.) An honorable characterization of service generally is required when the Government initially introduces limited use evidence. (See paras 3–8*a* and *g*.)

13–11. Type of separation

Soldiers separated under this chapter will be discharged. (See para 1–11 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 will be taken to separate a Soldier for misconduct when it is clearly established that—

(1) Despite attempts to rehabilitate or develop him/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 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 1–16.)

e. Misconduct involving fraudulent entry will be considered under chapter 7.

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.

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 HQDA (AHRC–EPR–F).

c. When a Soldier has completed entry-level status, or paragraph 11–3*c* 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 1–19*c*(2).

(2) A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority 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, chapter 6, or when an administrative discharge board has recommended separation with an honorable discharge. (See para 2–12*b*(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 3–9*a*(3). (Also see para 11–3*c*.)

e. An honorable characterization of service is generally required when the Government initially introduces limited-use evidence. (See para 3–8*a* and *g*.)

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. The separation authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving Soldier a probationary period not to exceed 12 months to demonstrate successful rehabilitation. (See paragraph 1–19 for delegation of authority.)

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 initially 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 authorized for the same or a closely related offense under the MCM 2002, 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. Initiation of separation action is not mandatory. Although the conditions established in *a*(1) or (2), above, are present, the immediate commander must also consider whether the specific circumstances of the offense warrant separation. (See paragraph 14–7 for guidance on retention.)

c. If the immediate commander initiates separation action, the case will be processed through the chain of command to the separation authority for appropriate action.

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.)

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 regulation will be considered and processed for discharge even though he/she has filed an appeal or has stated his/her intention to do so.

(1) However, execution of the approved discharge will be withheld until one of the following circumstances occurs, whichever is earlier:

(a) The Soldier has indicated, in writing, that he/she does not intend to appeal the conviction or adjudication as a juvenile offender.

(b) The time in which an appeal may be made has expired.

(c) The Soldier's current term of service, as adjusted (see para 1–21), expires. (See limitation of para 14–9.)

(2) If an appeal has been made, discharge will be withheld until formal action has been taken or until the Soldier's current term of service, as adjusted (see para 1–21), expires. (See limitation of para 14–9.)

(3) Upon request of the Soldier, or when the commander believes it appropriate, a Soldier may be discharged prior to final action on an appeal. In such cases, the entire file will be forwarded to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, for final decision.

c. The recommendation of the separation authority for immediate discharge as an exception will fully substantiate the circumstances and the recommendation.

14–7. Retention action

Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army.

a. In deciding whether retention should be recommended or approved, the gravity of the offense, related events, and any matters in extenuation, will be considered. The military record of the Soldier before the offense should be considered, as well as prospects for rehabilitation.

b. If retention is desired and civil custody exists, such as parole or probation, that would interfere with the Soldier's military duties, the civil authorities will be requested to relinquish such custody during the Soldier's term of military service.

(1) If the civil authorities decline to relinquish custody, as a general rule, the Soldier will be discharged.

(2) The Soldier will also be discharged if the conditions for relinquishment of custody will cause an undue burden to the Army.

14–8. Action following disposition by domestic courts

a. When discharge is contemplated.

(1) When a Soldier is under military control, the unit commander will take action as specified in the administrative board procedure (see chap 2, sec II), except that the use of the notification procedure (see chap 2, sec I) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7*c*.

(2) Chapter 2, section III, prescribes additional actions to be taken when a Soldier is confined and the administrative board procedure will be used, except that the use of the notification procedure is authorized if characterization of service under other than honorable conditions is not warranted.

b. When board hearing is waived or completed. The separation authority may

(1) Disapprove a recommendation for discharge and direct retention.

(2) Approve a recommendation for retention.

(3) Approve a recommendation for discharge and approve the type discharge certificate recommended by the board or a more favorable one than that recommended. He/she may not direct a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined per paragraph 14–3.

(4) Approve a recommendation for discharge and suspend execution of the discharge.

14–9. Procedure for civil court cases in foreign countries

a. Major overseas commanders may approve discharge of Soldiers convicted by a foreign tribunal. This authority may be delegated to a general officer with a judge advocate (JA) on his/her staff. Every action taken in such delegation will state the authority.

(1) When a Soldier is convicted by a foreign tribunal, and the Soldier returns to the United States before initiation or completion of discharge proceedings per this paragraph, discharge proceedings will be initiated or completed per paragraph 14–5. The proceedings will be completed as if the Soldier had been convicted by the domestic court of the United States or its territorial possession. (See paras 14–4 and 14–8.)

(2) The recommendation for discharge will include the items specified in *b*(1) through (4), below. In such cases, the authorities specified in paragraph 1–19 may approve and order discharge under this paragraph if the Soldier has been assigned to their command.

(3) HQDA authorization is required before Soldiers who have completed 18 or more years of active Federal service may be discharged.

(4) 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.

b. Commanders will forward the board proceedings, or waiver, through channels to the major overseas commander. Cases will be processed through the chain of command to the commander in the United States authorized to approve discharge. In both situations, the recommendation regarding discharge will include—

(1) Information concerning the civil record and military service of the Soldier.

(2) A statement from the court indicating that the Soldier has been initially convicted.

(3) A statement as to the character of discharge desired, including a statement as to whether paragraph 2–4 has been complied with.

(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.

c. Army personnel confined in foreign prisons will not be discharged from military service until the term of imprisonment is completed and they return to the United States.

(1) Normally, Soldiers who are disposed of by a foreign tribunal, 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. It is general policy that the Soldier will be returned to CONUS.

(2) Very unusual cases may be forwarded through command channels to Headquarters, Department of the Army (AHRC–EPR–F), 200 Stovall Street, Alexandria, VA 22332–0478, with supporting reasons as to why a Soldier should be authorized discharge in a foreign country. Only most unusual situations will be considered. If discharge in a foreign country is desired, either by the commander or the Soldier concerned, this paragraph and chapter 1, section IX will be complied with before such requests are submitted to HQDA.

d. If HQDA authorizes discharge in a foreign country, the overseas commander accomplishing the discharge will inform the nearest U.S. diplomatic or consular mission of such action.

e. A Soldier may not be retained in the Service beyond ETS without his/her consent (see para 1–27) to complete board action under chapter 2, section II.

(1) When the Soldier has not requested retention per paragraph 1–27 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 submitted through channels to Headquarters, Department of the Army (AHRC–EPR–F) 2461 Eisenhower Avenue, Alexandria, VA 22332–0478.

(2) The case will be submitted in time to permit appropriate consideration before the Soldier's ETS. There is no authorization to begin last minute administrative discharge action and then to request special consideration or retention beyond ETS to complete board action.

14–10. Pay and allowances

Any questions pertaining to pay and allowances will be referred to DFAS representatives.

14–11. Detainers and strength accountabilities

a. Detainer.

(1) 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.

(2) 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.

(3) 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/her sentence begins. (See AR 600–8–6.) However, the Soldier's chain of command retains administrative responsibility for processing separation action.

(2) When discharge is approved by the separation authority but suspended due to appellate action (see para 14–6), the Soldier will be administratively reassigned to the nearest Personnel Control Facility (PCF) per AR 600–62 and AR 630–10. The Soldier's MPRJ or local file, as appropriate, and DA Form 201 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 action per this section for the following:

a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions. Except as provided in paragraph 11–3*c*, 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.

b. A pattern of misconduct. A pattern of misconduct consisting of one of the following:

(1) Discreditable involvement with civil or military authorities.

(2) Discreditable conduct and 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.

(1) An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense. (See para 1–43 for civil offenses under investigation by foreign authorities.)

(2) Abuse of illegal drugs is serious misconduct.

(a) However, relevant facts may mitigate the nature of the offense. Therefore, a single drug abuse offense may be combined with one or more minor disciplinary infractions or incidents of other misconduct and processed for separation under *a* or *b*, above, as appropriate.

(b) All Soldiers against whom charges will not be referred to a court-martial authorized to impose a punitive discharge or against whom separation action will not be initiated under the provisions of chapter 9 or section II of this chapter will be processed for separation under *a*, *b*, or *c*, above, as applicable.

1. "Processed for separation" means that separation action will be initiated and processed through the chain of command to the separation authority for appropriate action.

2. The immediate and intermediate commanders will recommend separation or retention. Recommendations will be made as to characterization of service. (See para 2–2 or 2–4.)

3. The separation reason in all separations authorized by this paragraph will be "misconduct-abuse of illegal drugs." Voluntary (self) identification/referral in accordance with AR 600–85, paragraph 3–2, does not require initiation of separation proceedings under this section.

(3) Any Soldier convicted of a sexually violent offense at a court-martial, as listed in AR 27–10, paragraph 24–2, but whose sentence did not include a punitive discharge will be processed for separation (see para 14–12*c*(b)(*1*)).

14–13. Procedures

The administrative board procedures (see chap 2, sec II) will be used; however, the use of the notification procedure (see chap 2, sec I) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7*c*.

14–14. Separation authority

Commanders specified in paragraph 1–19 are authorized to convene boards and order separation under this chapter.

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/she will report the fact in memorandum form (see fig 2–5) to the separation authority specified in paragraph 1–19 through the intermediate commander.

14–16. Action by intermediate commanders

Intermediate commanders may take one of the following actions in cases of misconduct, except for cases of abuse of illegal drugs:

a. Disapprove the recommendation and direct reassignment of the Soldier to another organization or direct disposition by other means. In case of reassignment, the commanding officer's report will be sent to the new organization commander for information.

b. Approve the commanding officer's recommendation and send the report to the separation authority.

(1) Recommendation will be made as to characterization of service. (See para 2–2 or 2–4.)

(2) Disposition through medical channels is required if the Soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct for which action prescribed in this regulation is being considered, and action under the UCMJ will not be initiated.

c. 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. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to misconduct and take further action per paragraph 13–9.

14–17. Action by the separation authority

On receiving a recommendation for separation for misconduct, 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. Include the reasons for considering separation for misconduct inappropriate, or take other appropriate action under this regulation.

c. Disapprove the recommendation relating to misconduct and take action himself/herself.

(1) The case can be referred to the appropriate separation authority (see para 1–19*c* or *d*) 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.

(2) Unless unsatisfactory performance was stated as a basis for separation in the initial memorandum of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

d. Convene a board of officers as prescribed in chapter 2, section II, to determine whether the Soldier should be separated for misconduct.

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 1–18.)

g. Direct that the case be processed through medical channels, if appropriate.

(1) Such disposition is required if the Soldier has an incapacitating physical or mental illness that was the direct or substantial contributing cause of the conduct, and action under the UCMJ is not initiated. A copy of the signed decision by the GCMCA will be included with the records.

(2) Authority to determine that a case will be referred for disability processing instead of other administrative processing will not be delegated.

Chapter 15
Rescinded.

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 Active Guard/Reserve (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. Before such discharge, the separation authority (see para 1–19) must have documentary evidence from the proper authority. The evidence must prove that the Soldier will be ordered to AD if discharged from his/her enlisted status. Discharge will be effective the day preceding the date of entry on duty as a commissioned or warrant officer.

c. The service of a Soldier discharged per this paragraph will be characterized as honorable unless an entry-level separation is required under chapter 3, section II.

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) Reserve Officer Training Corps (ROTC).

(2) Officer Candidate School (OCS).

(3) Other officer accession programs of the USN and USAF 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/her Army enlisted status.

(1) The Soldier must meet the service requirements prescribed in *c*(1)(*a*), below. 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 AR 612–205.)

c. Soldiers may be discharged for the purpose of entry into Army Senior ROTC as scholarship cadets or non-scholarship 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 AD, if on their initial enlistment, as well as 3 months of AD 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 AD for every 1 month of the most recent specialized training received. Waiver of the service obligation for training may be granted by Headquarters, Department of the Army (AHRC–EPT), 2461 Eisenhower Avenue, Alexandria, VA 22332–0478, on a case-by-case basis.

(b) Not be under suspension of favorable personnel actions per AR 600–8–2.

(c) Meet ROTC procurement medical fitness standards (see AR 40–29 and AR 40–501), 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 (PMS) at the school they desire to attend indicating acceptance for ROTC participation. The PMS 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 HQ ROTC Cadet Command notification of award of the scholarship. Soldiers who are conditional scholarship winners must furnish documentary evidence from HQ 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- 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 1–19) will ensure that the Soldier

(a) Meets the criteria stipulated in *c*(1), above.

(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 non-scholarship).

(d) Has been counseled that breaching the terms of the USAR enlistment contract or ROTC student contact will subject him/her to involuntary order to AD to complete the contractual obligation and, if a scholarship cadet may, in lieu of AD, 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 paragraph *a* and *b*, above, and the day preceding enlistment in the USAR as stated in *c*, above. Discharge documents will not be delivered to the Soldier until verification is made that such enlistment has taken place. For *a*, *b*, and *c*, above, 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. Discharge for the purpose of immediate enlistment or re-enlistment

a. Reserve Component Soldiers who enlist in the RA, and RA Soldiers who re-enlist under the provisions of AR 601–280, will be discharged.

b. Soldiers so discharged will be enlisted or re-enlisted on the day following discharge. The discharge certificate will not be delivered to the Soldier until after enlistment or re-enlistment is accomplished.

(1) Commanders specified in paragraph 1–19 are authorized to order discharge under this paragraph.

(2) The service of a Soldier discharged per this paragraph will be characterized as honorable.

16–4. Non-retention on active duty

Soldiers denied or ineligible for continued active duty service may be separated, upon request, as provided below:

a. Locally imposed bar to re-enlistment. USAR AGR Soldiers who perceive they will be unable to overcome a field commander's bar to re-enlistment imposed by AR 140–111 may request voluntary separation. This provision does not apply to RA Soldiers.

b. Declination of continued service. 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–R 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 (see 10 USC 1142), which must be scheduled as soon as separation is approved. 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 1–19 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, 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.

16–5. Overseas returnees

Commanders specified in paragraph 1–19 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 re-enlist 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 STP nearest their home for separation processing. Separation processing will not be accomplished before completion of leave or TDY. Records and allied papers will be forwarded to such STP.

(2) Affected Soldiers will be instructed that upon completion of leave or TDY they will report to the STP 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.

16–6. Early separation due to disqualification for duty in MOS

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 re-enlist, 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/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, loss of security clearance 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) Reserve Component personnel ordered to IADT.

(3) Soldiers who lose MOS qualifications due to their own misconduct. (See AR 614–200, paragraph 3–18.)

g. Separation under this paragraph will not occur more than 3 months before the date of ETS.

h. Commanders specified in paragraph 1–19 are authorized to order the separation of eligible Soldiers under this paragraph.

i. The service of Soldiers separated per this paragraph will be characterized as honorable.

16–7. 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 Reserve Component (RC) active duty enlisted force to be reduced in number, the Secretary of the Army, or his/her 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(a) or 10 USC 12681 for RC Soldiers. (See *g*, below, for release from active duty during time of war or national emergency.)

b. Commander, USA HRC (for RA) and Chief, NGB; Chief, Army Reserve; and Commander, USA 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 1–19. Notification will be based upon information and instructions furnished by USA HRC/NGB/OCAR 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 USA HRC/NGB/OCAR implementation instructions.

e. Soldiers who are within 2 years of qualifying for retirement per chapter 12 on the scheduled separation date will not be processed under this paragraph unless directed by the Secretary of the Army.

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.

g. 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 reserve component member, appointed and conducted in accordancy with AR 15–6, and convened by the GCMCA (see para 1–19*a*), recommends the release and the GCMCA approves it.

(2) The Soldier does not request that a board be convened.

(3) The release is authorized by another provision of regulation or law.

16–8. Separation of Soldiers in warrior transition units

a. Hospital commanders who are separation authorities (see para 1–19) may order separation of those Soldiers assigned to warrior transition units who have less than 3 months to serve to ETS following completion of hospitalization. Soldiers must sign a statement that they are willing to accept separation under this paragraph. Reserve Component personnel ordered to IADT are not eligible for separation under this paragraph.

b. The service of Soldiers separated per this paragraph will be characterized as honorable.

16–9. 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 AD by a commander specified in paragraph 1–19, 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 1–19 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 per 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 per this paragraph will be characterized as honorable.

16–10. 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 1 December, or the first Monday thereafter, and extends to a date preceding Christmas, approximately one 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/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 (see AR 600–8–10) is authorized in conjunction with the holiday early release program provided the immediate commander approves. 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 4–2*b*.)

(4) The following personnel are not eligible for early release under this program:

(a) Reserve Component 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 per 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 per this paragraph will be characterized as honorable.

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 active Army enlisted personnel, Reserve Component (ARNGUS), 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 recharacterized 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. Presentation of instruction

Commanders will ensure that this instruction is presented in a manner that will create the most lasting impression on each Soldier who receives it.

17–3. 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 re-enlistment, 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/her discharge changed.

17–4. Time of instruction

This instruction will be given to enlisted personnel upon entry into the Service or within 60 days thereafter. It will be given again—

a. Upon completion of 6 months of service.

b. After the second article 15 (company grade) or first field grade article 15 in an enlistment.

c. After any court-martial in which the Soldier is not discharged, first positive drug test, and so forth.

17–5. Recording

The DA Form 2–1 (Personnel Qualifications-Part II) of each individual receiving instruction in the benefits of an honorable discharge will be annotated in item 19 (Specialized Training) as follows: "UCMJ (date) and Bfts of Hon Disch (date)."

Chapter 18
Failure to Meet Weight Control Standards

18–1. Policy

Soldiers who fail to meet the body fat standards set forth in AR 600–9 are subject to involuntary separation per this chapter when such condition is the sole basis for separation.

18–2. Procedures

a. Separation proceedings may not be initiated under this chapter until the Soldier has been given a reasonable opportunity to meet the body fat standards, as reflected in counseling or personnel records.

(1) Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter.

(2) If there is no underlying medical condition and a Soldier enrolled in the Army Weight Control Program fails to make satisfactory progress in accordance with AR 600–9, separation proceedings will be considered.

(3) Initiation of separation proceedings is required for Soldiers who fail to meet body fat standards during the 12–month period following removal from the program, provided no medical condition exists.

b. 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 fat standards, is an unsatisfactory performer, will be processed for separation under the provisions of chapter 13.

c. The notification procedure (see chap 2, sec I) will be used for separation under this chapter.

d. The provisions of chapter 1, section VII, will govern whether the Soldier will be released from AD with transfer to IRR or be discharged. See paragraph 1–11 for additional instructions on ARNGUS and USAR personnel.

e. The service of those separated per this chapter will be characterized as honorable, unless an uncharacterized description of service is required for Soldiers in entry-level status.

f. Except as provided in paragraph 1–19*f*, commanders specified in paragraph 1–19 are authorized to order separation under this chapter.

Chapter 19
Qualitative Management Program

Section I
General

19–1. General

a. This chapter contains policies and procedures for voluntary and involuntary separation, for the convenience of the Government, of RA NCOs and USAR NCOs serving in AGR status, under the QMP.

b. The service of a Soldier discharged under this chapter will be characterized as honorable.

19–2. Policy

a. NCOs whose performance, conduct, and/or potential for advancement do not meet Army standards, as determined by the approved recommendations of HQDA centralized selection boards responsible for QMP screening, will be denied continued service.

b. The QMP is not intended as a substitute, and does not relieve commanders of the responsibility, for initiation of separation proceedings under other provisions of this regulation when required or appropriate.

19–3. Objectives

The QMP is designed to:

a. Enhance the quality of the career enlisted force.

b. Selectively retain the best qualified Soldiers.

c. Deny continued service to nonproductive Soldiers.

d. Encourage Soldiers to maintain their eligibility for further service.

19–4. QMP applicability

a. Except as indicated in *b*, below, the QMP applies to RA and USAR AGR NCOs in the grades of SSG through CSM/SGM.

b. The QMP does not apply to Soldiers who—

(1) Hold the grade of SGT and below.

(2) Have an approved retirement application.

(3) Have been selected for QMP by a previous board and retained on active duty, provided no new bases for QMP were documented since the earlier retention determination.

19–5. Implementation

The QMP is implemented by the Commander, USAEREC, for RA NCOs; the Commander, USA HRC (St. Louis, MO) for USAR AGR NCOs. Mailing addresses for QMP matters are:

a. RA: Commander, USAEREC (PCRE-RP-Q), 8899 E. 56th St., Indianapolis, IN 46249–5301.

b. USAR AGR: Commander, USA HRC (ARPC–ARE–S), 1 Reserve Way, St. Louis, MO 63132–5200.

Section II
Qualitative Screening

19–6. Screening procedures

a. Screening for QMP is accomplished by HQDA boards that may be convened for other purposes as well, such as promotion selection at USAEREC (RA) and USA HRC (USAR AGR), St. Louis, MO. Board schedules and QMP zones of consideration are announced by electronic message.

b. The appropriate board reviews the performance portion (P-fiche) of the OMPF, Personnel Qualification Record (DA Forms 2A and 2–1 or Enlisted Record Brief produced by SIDPERS), official photograph, and other authorized documents pertaining to Soldiers in the QMP zone of consideration. This material forms the basis for the board's evaluation of the Soldier's past performance and potential for continued service, leading to a determination of whether the Soldier does or does not warrant retention.

19–7. Selection criteria

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 reflected by noncommissioned officer evaluation report or failure of Noncommissioned Officer Education System (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 re-enlistment, inability to meet physical fitness standards, and failure to comply with requirements of the Army body composition program.

19–8. Approval authority

The DCS, G–1, or his/her designee, is authorized to approve the recommendations of QMP boards. The DCS, G–1, or his/her designee, is also the authority for separation under this chapter.

Section III
Soldier Notification and Option Provisions

19–9. Notification memorandum

a. Soldiers selected for denial of continued service under the QMP are notified by individually addressed memorandums prepared and dispatched by Commander, USAEREC (RA) and Commander, USA HRC (USAR AGR). Notification memorandums are placed in sealed envelopes and forwarded by transmittal memorandum to the installation, overseas, or other appropriate commander, together with administrative instructions for further processing.

(1) The Soldier is also furnished a copy of the performance portion (P-fiche) of his/her OMPF as well as a listing of those documents indicating areas of deficiency or weakness that most significantly contributed to the selection board's decision to deny the Soldier continued service under the QMP.

(2) The responsible commander expeditiously forwards the notification memorandum by memorandum to the first LTC or higher commander in the Soldier's chain of command for further action.

(3) The installation or other commander retains responsibility for overseeing subsequent processing of the action and may utilize the servicing career counselor, legal advisor, or other appropriate official for program control functions such as monitoring the Soldier notification and option selection process.

(4) Detailed guidance is included in administrative instructions provided by Commander, USAEREC (RA) and Commander, USA HRC (USAR AGR).

b. Upon receipt of the notification memorandum, the LTC or higher commander expeditiously presents the notification to the Soldier and counsels him/her on the ramifications. Counseling must be accomplished in writing and must stipulate that the Soldier has been informed that he/she is in a non-promotable status, is stabilized in assignment, and understands the options available.

19–10. Soldier options

The Soldier and commander complete DA Form 4941 (Statement of Options, Qualitative Management Program) within 7 days of receipt of the QMP notification memorandum, in accordance with administrative instructions furnished by Commander, USAEREC (RA) and Commander, USA HRC (USAR AGR). (This form is available on the APD Web site at http://www.apd.army.mil.)

19–11. Appeal provisions

a. A Soldier denied continued service under the QMP may appeal the determination and request retention on active

duty on the basis of improved performance and/or presence of material error in the Soldier's record when reviewed by the selection board.

(1) A Soldier may submit only one appeal, and requests for reconsideration of denied appeals are not authorized. The Soldier may submit any relevant material in support of the appeal.

(2) Material error criteria and other appeal guidelines are included in administrative instructions provided to the appeals board by Commander, USAEREC (RA) and Commander, USA HRC (USAR AGR).

b. Suspense for appeals submission is as follows:

(1) RA Soldiers must submit their appeals to their commanders within 60 days of completion of DA Form 4941.

(a) Each commander in the chain of command, through the GCMCA or general officer commander, will add substantive comments regarding the Soldier's performance and potential and recommend approval or disapproval of the appeal.

(b) The command will complete comments and forward the appeal to CDR, USAEREC, within 30 days of receipt from the Soldier.

(2) Because of geographical separation and limitations on access to commanders and legal advisors, USAR AGR Soldiers are granted a maximum of 90 days from completion of DA Form 4914 to submit their appeals to their chain of command. Commander memorandums, with comments and recommendations, must reach CDR, USA HRC, within 30 days of receipt of the Soldier's appeal

c. A commander in the grade of LTC or higher may submit an appeal on behalf of a Soldier selected for QMP on the basis of the Soldier's current performance and potential. Such an appeal must be based on the commander's judgment that the Soldier merits retention after comparing the Soldier's current performance with the documents cited as grounds for the denial of continued service.

(1) A commander's appeal is separate and distinct from the Soldier's own appeal since it is based on different criteria.

(2) Commander appeals must be processed through the Soldier's chain of command and must reach USAEREC (RA) and USA HRC (USAR AGR) within 120 days of the date that the Soldier is notified of QMP selection.

d. Appeals are considered by QMP appeals boards normally conducted in conjunction with HQDA centralized promotion selection boards convened at USAEREC (RA) and USA HRC, St. Louis, MO (USAR AGR). The appeals board will consider all information considered by the QMP board and all information included in the appeal under the criteria listed in paragraph 19–3.

(1) The mere fact that a Soldier's performance has improved or that the Soldier's file contains material error is not necessarily sufficient to overcome the reason for QMP selection. The appeal board may determine that the reason for QMP selection still applies even in light of the improved performance or correction of an error.

(2) Successful appeals result in removal of the denial of continued service determination.

Section IV
Separation Provisions

19–12. Involuntary discharge

a. Except as otherwise provided in this section, Soldiers who choose not to appeal the QMP selection for denial of continued service, or whose appeal is denied, will be involuntarily discharged. Soldiers who elect to appeal but fail, without compelling justification, to submit the appeal within the time prescribed by paragraph 19–11*b*, will also be involuntarily discharged. Such discharge will occur 90 days after the Soldier receives pre-separation counseling as required by law (10 USC 1142), which may be scheduled before a final determination of discharge has been made or as soon as possible after a final determination has been made.

b. The provisions of this regulation pertinent to counseling and rehabilitative transfer (see para 1–16), 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 chapter.

19–13. Voluntary separation

a. Except as otherwise provided in this section, Soldiers who choose not to appeal may request voluntary discharge. Such discharge will occur 90 days after the Soldier receives pre-separation counseling as required by law (10 USC 1142). Pre-separation counseling must be scheduled as soon as the Soldier chooses the voluntary discharge option (DA Form 4941). Requests for voluntary discharge, once submitted, may not be withdrawn.

b. AGR Soldiers to whom *c*, below, does not apply, may request voluntary discharge. Soldiers in this category may not request release from active duty (REFRAD).

c. AGR Soldiers with at least 17 years, 9 months, but less than 20 years, of qualifying service for nonregular retired pay (10 USC 12732) at the time of notification of QMP selection, who choose not to appeal or whose appeal is denied, and whose ETS occurs prior to the 20-year point, may extend their enlistments for the minimum period required to qualify for nonregular retirement as prescribed by 10 USC 1176(b). AGR Soldiers with 20 years or more of qualifying

service for non-regular retired pay may elect voluntary REFRAD with concurrent transfer to the Retired Reserve. Such REFRAD will occur 90 days after the Soldier receives pre-separation counseling.

19–14. Expiration of term of service

a. Unless ineligible to extend for a reason other than QMP selection (for example local bar to re-enlistment or approved separation under another chapter of this regulation), Soldiers 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 an appeal.

b. Unless another basis of separation exists, and except as provided in paragraph 19–15, Soldiers with less than 120 days to ETS at the time of decision not to appeal, or denial of appeal, will not be discharged prior to ETS. Soldiers in this category will be discharged at ETS under the provisions of chapter 4.

19–15. Active duty retirement

a. Soldiers with 20 or more years of active Federal service at the time of notification of QMP selection, who choose not to appeal or where appeal is denied, may apply for voluntary retirement under the provisions of chapter 12 of this regulation. Retirement must not occur earlier than 90 days or later than 180 days from the date the Soldier selects the retirement option (DA Form 4941) or the appeal is denied. Soldiers who decline to apply for retirement are subject to discharge in accordance with paragraphs 19–12 or 19–14.

b. Soldiers with a minimum of 17 years, 9 months of active Federal service at the time of notification of QMP selection, who choose not to appeal, will be retained to 20–year retirement eligibility upon request.

(1) Those who appeal will also be retained to retirement eligibility upon request if the appeal is denied. Soldiers in this category must apply for retirement (see chap 12) to be effective no later than the first day of the month following the month in which they complete 20 years of active Federal service.

(2) Soldiers with at least 17 years, 9 months of active Federal service at the time of QMP selection notification whose ETS occurs prior to the 20–year point may have their enlistments extended to allow them to reach retirement eligibility.

c. Consistent with 10 USC 1176(a), RA Soldiers whose appeals are denied and who have 18 or more years of active Federal service on the designated date of separation will be retained to 20-year retirement eligibility upon request.

Appendix A
References

Section I
Required Publications

AR 40–501
Standards of Medical Fitness (Cited in paras 1–32*a*, 1–33*b*, 4–2*c*, 5–11*b*(2), 5–12*a*(2), 5–17*a*(8), 5–17*b*, 7–15*h*(2), 7–16*g*, 7–17*b*(5), 8–6*a* and *c*, 10–6, 12–28*c*, 12–28*d*, 16–2*c*(1)(c).)

AR 600–8–105
Military Orders (Cited in paras 1–11*a*, 4–2*k*(1), 7–15*e*(2), and 12–18*a*.)

AR 600–85
The Army Substance Abuse Program (Cited in paras 1–14*g*, 1–21*a*(5), 2–2*c*(3), 2–4*b*(2), 2–6*h*, 3–8*a*, 3–8*g*, 9–1*c*(2). 9–1*e*, 9–4, 9–7, 14–3*c*(2), and 14–12*c*(2)3.)

AR 635–5
Separation Documents (Cited in paras 1–29*f*, 3–2, 3–3, 3–15, 7–15*f*(5), 12–21, and 12–24*c*.)

AR 635–5–1
Separation Program Designators (SPD) Codes (Cited in para 3–13.)

AR 635–10
Processing Personnel for Separation (Cited in paras 1–14*a*, 1–20*a*, 1–45, 3–14*b*, 4–6, 6–8*b*(2)3, 6–8 *d*(3), 7–10*a*, 12–13*a*(4), 12–13*b*(1), 12–20*a*, 12–20*b*, 12–21, 12–24*e*, 12–24*g*.)

AR 635–40
Physical Evaluation for Retention, Retirement or Separation (Cited in paras 1–17*b*(4), 1–19*f*, 1–29*a*(2), 1–30, 1–33*b*(1), 1–35*b*(6), 4–2*c*, 5–11*e*, 5–12*d*, 5–13*a*, 5–13*c*, 5–17*a*, 5–17*a*(9), 6–6*b*(4), 7–15*h*(2), 7–16*g*, 8–6*c*, and 16–6*f*(1).)

DA Pam 600–8–11
Military Personnel Office Separation Processing Procedures (Cited in paras 4–2*f*, 6–8*f*, 12–9*a*, and 12–20*a*.)

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. The United States Code is available at http://www.gpoaccess.gov/uscode/index.html. Uniform of Code of Military Justice is available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.

AR 15–6
Procedures for Investigating Officers and Boards of Officers

AR 15–80
Army Grade Determination Review Board and Grade Determinations

AR 25–55
The Department of the Army Freedom of Information Act Program

AR 25–400–2
The Army Records Information Management System (ARIMS)

AR 27–40
Litigation

AR 27–50/SECNAVINST 5820.4G
Status of Forces Policies, Procedures, and Information

AR 40–3
Medical, Dental, and Veterinary Care

AR 40–29
Medical Examination of Applicants for United States Service Academies, Reserve Officer Training Corps (ROTC) Scholarship Programs, Including Two- and Three-Year College Scholarship Programs (CSP), and the Uniformed Services University of the Health Sciences (USUHS)

AR 40–400
Patient Administration

AR 50–5
Nuclear Surety

AR 135–18
The Active Guard Reserve (AGR) Program

AR 135–91
Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures

AR 135–175
Separation of Officers

AR 135–178
Enlisted Administrative Separations

AR 140–111
U.S. Army Reserve Reenlistment Program

AR 145–1
Senior Reserve Officers' Training Corps Program: Organization, Administration, and Training

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 340–21
The Army Privacy Program

AR 350–1
Army Training Leader Development

AR 380–67
The Department of the Army Personnel Security Program

AR 600–4
Remission or Cancellation of Indebtedness

AR 600–8–2
Suspension of Favorable Personnel Actions (Flags)

AR 600–8–6
Personnel Accounting and Strength Reporting

AR 600–8–10
Leaves and Passes

AR 600–8–14
Identification Cards for Members of the Uniformed Services, Their Family Members, and Other Eligible Personnel

AR 600–8–19
Enlisted Promotions and Reductions

AR 600–8–22
Military Awards

AR 600–8–24
Officer Transfers and Discharges

AR 600–8–104
Military Personnel Information Management/Records

AR 600–9
The Army Weight Control Program

AR 600–20
Army Command Policy

AR 600–25
Salutes, Honors, and Visits of Courtesy

AR 600–43
Conscientious Objection

AR 600–62
United States Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel

AR 600–110
Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)

AR 601–210
Active and Reserve Components Enlistment Program

AR 601–280
Army Retention Program

AR 612–201
Initial Entry/Prior Service Trainee Support (RCS MILPC–17(R1))

AR 612–205
Appointment and Separation of Service Academy Attendees

AR 614–30
Overseas Service

AR 614–200
Enlisted Assignments and Utilization Management

AR 630–10
Absence Without Leave, Desertion, and Administration of Personnel Involved in Civilian Court Proceedings

AR 670–1
Wear and Appearance of Army Uniforms and Insignia

DA Pam 600–8
Management and Administrative Procedures

DOD 7000.14–R (Volume 7A)
Department of Defense Financial Management Regulations (Military Pay Policy and Procedures—Active Duty and Reserve Pay) (Available at http://www.dtic.mil/whs/directives.)

DODD 6490.1
Mental Health Evaluations of Members of the Armed Forces (Available at http://www.dtic.mil/whs/directives.)

DODI 1332.14
Enlisted Administrative Separations (Available at http://www.dtic.mil/whs/directives.)

DODI 1332.29
Eligibility of Regular and Reserve Personnel for Separation Pay (Available at http://www.dtic.mil/whs/directives.)

DODI 1332.30
Separation of Regular and Reserve Commissioned Officers (Available at http://www.dtic.mil/whs/directives.)

DODI 1332.40 (obsolete)
Separation Procedures for Regular and Reserve Commissioned Officers (Available at http://www.dtic.mil/whs/directives.)

JFTR
Joint Federal Travel Regulations (Available at http://www.dtic.mil/perdiem/trvlregs.html.)

MCM 2009
Manual for Courts-Martial, 2009 (Available at http://www.apd.army.mil/pdffiles/mcm2002.pdf.)

NGR 600–200
Enlisted Personnel Management (Available at http://www.ngbpdc.ngb.army.mil/arngfiles.asp.)

UCMJ, Art. 14
Delivery of Offenders to Civil Authorities (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ, Art. 15
Commanding Officer's Non-Judicial Punishment (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ, Art. 27
Detail of Trial Counsel and Defense Counsel (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ, Art. 31
Compulsory Self-Incrimination Prohibited (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ, Art. 39
Sessions (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ, Art. 43
Statute of Limitations (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ, Art. 83
Fraudulent Enlistment, Appointment, or Separation (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

UCMJ (10 USC Chap 47)
Uniform Code of Military Justice (Available at http://www.au.af.mil/au/awc/awcgate/ucmj.htm.)

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 Chap 61
Retirement or separation for physical disability

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 883 Art. 83
Fraudulent enlistment, appointment, or separation

10 USC 972
Members: effect of time lost

10 USC 1141
Involuntary separation defined

10 USC 1142
Preseparation counseling; transmittal of medical records to Department of Veterans Affairs

10 USC 1143
Employment assistance

10 USC 1143a
Encouragement of postseparation public and community service

10 USC 1144
Employment assistance, job training assistance, and other transitional services

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
(Repealed)

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 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 1370
Commissioned officers: general rule; exceptions

10 USC 1371
Warrant officers: general rule

10 USC 3914
Twenty to thirty years: enlisted members

10 USC 3917
Thirty years or more: regular enlisted members

10 USC 3925
Computation of years of service: voluntary retirement; enlisted members

10 USC 3961
General rule

10 USC 3963
Highest grade held satisfactorily: Reserve enlisted members reduced in grade not as a result of the member's misconduct

10 USC 3964
Higher grade after 30 years of service: warrant officers and enlisted members

10 USC 3965
Restoration to former grade: retired warrant officers and enlisted members

10 USC 12301(d)
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

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

Except where otherwise indicated below, the following forms are available as follows: DA Forms are available on the Army Electronic Library (AEL) CD-ROM (EM 0001) and the APD Web site (www.apd.army.mil); DD Forms are available from the OSD Web site (www.dior.whs.mil/icdhome/forms.htm); Standard Forms (SF) are available from the GSA Web site (www.gsa.gov).

DA Form 2339
Application for Voluntary Retirement. (Prescribed in paras 2–6*b*(2); 12–9*a*(1) and (2)(*b*); 12–11*c*; 12–12*a*; 12–13; 12–15*c*(1) and *d*; 12–23*a*; 12–27*b*(2) and *d*.) (This form is available on the APD Web site at http://www.apd.army.mil.)

DA Form 4657
Statement of Retirement-Eligible Soldier-Remaining Service Obligation. (Prescribed in para 4–3*d*(3)(*a*).)

DA Form 4658
Statement of Retirement-Eligible Soldier-Not Eligible to Reenlist. (Prescribed in para 4–3*d*(3)(*b*).)

DA Form 4941
Statement of Options, Qualitative Management Program (QMP). (Prescribed in paras 19–10, 19–11*b*(1), 19–13*a*,and 19–15*a*.)

DA Form 5138
Separation Action Control Sheet. (Prescribed in para 1–7*f*.)

DD Form 256
Honorable Discharge Certificate (Prescribed in paras 3–7*a*(3) and 7–23.)

DD Form 363
Certificate of Retirement (Prescribed in paras 12–21*a*.)

Section IV
Referenced Forms

DA Form 2–1
Personnel Qualification Record-Part II

DA Form 201
Military Personnel Jacket, US Army

DA Form 1695
Oath of Extension of Enlistment

DA Form 2028
Recommended Changes to Publications and Blank Forms

DA Form 2627
Record of Proceedings Under Article 15, UCMJ

DA Form 3891
Certificate of Appreciation of Wives of Retiring US Army Personnel

DA Form 3891–1
Certificate of Appreciation for Husbands of Retiring US Army Personnel

DA Form 4856
Developmental Counseling Form

DA Form 4991–R
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 458
Charge Sheet

DD Form 553
Deserter/Absentee Wanted By the Armed Forces

DD Form 2542
Certificate Of Appreciation for Service In the Armed Services of the United States

Standard Form 88
Report of Medical Examination

Standard Form 93
Medical Record-Report of Medical History

Appendix B
Sample Administrative Separation Board Package

B–1. Sample administrative separation board package.

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 figure B-1).

DEPARTMENT OF THE ARMY
Company A
4th BATTALION, 96th INFANTRY
FORT JACKSON, SC 29207

28 March 2000

SUBJECT: Discharge for Misconduct Under AR-635-200, Chapter 14.

THRU: Commander
4TH Battalion, 69th Infantry
Fort Jackson, SC 29207

TO: Commander
118th Infantry Division and Fort Jackson
Fort Jackson, SC 29207

1. It is recommended that Private (E2) John A. Doe, 000-00-000 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 should be discharged before the expiration of his term of service.

2. In support of the recommendation, the following information concerning Private Doe is provided:

a. He enlisted 04 December 1998 for a term of 3 years and has no prior service. He is 20 years of age.

b. He 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 duty MOS is 11B, and his MOS evaluation score is 85. His aptitude area scores are:

APT.	SCORE
CO	A-92; B-89
EL	79
GM	105
MM	89
CL	85
GT	87
FA	100
ST	85
OF	70
SC	76

Figure B–1. Sample report of proceedings of board of officers

e. During the period (date) to (date), this soldier has been assigned to various duty assignments (three different companies) in the battalion commensurate with his training and ability and has served under different superior officers and noncommissioned officers. In each instance, his performance of duty has been unsatisfactory. His military superiors and the psychiatric examiner agree that further rehabilitative efforts would be useless. His assignments in this battalion are:

(1) (*dates*)
(2) (*dates*)
(3) (*dates*)

f. He has been counseled as indicated below.

(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, Private Doe's performance is characterized by intentional shirking of his duties and by behavior rendering him repeatedly subject to punitive action. His behavior is not due to an incapacity to become a satisfactory soldier within the meaning of misconduct. There appear to be no grounds for other disposition.

h. Private Doe has 2 convictions by summary court-martial and 1 by special court-martial. He was convicted by summary court on 8 April 1999, for 7 days AWOL and on 23 September 1999, for damaging US property through neglect. He was convicted by special court-martial on 10 November 1999 for 6 days AWOL and disrespect to a noncommissioned officer while in execution of office. Private Doe has been punished in this company on three separate occasions under the provisions of Article 15, UCMJ.

(*Encl 5*).

5 Encl
1. Memorandum of notification
2. Memorandum of acknowledgment
3. Med exam (SP 88, SF93, DA Form 3822-R)
4. Court-martial order(s)
5. Rec. of Art 15 proceedings (DA Form 2627)

(*Name*)
Captain Infantry
Commanding

*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).

Note. 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.

Recommend approval.

FOR THE COMMANDER:

5 Encl
nc

(*Name*)
Captain Infantry
Adjutant

Figure B–1. Sample report of proceedings of board of officers—Continued

HEADQUARTERS
118th INFANTRY DIVISION
FORT JACKSON, SC 29207

28 March 2000

SUBJECT: Notification to Appear Before the Board of Officers
TO: Private John A. Doe, 000-00-0000
Company A, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

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 1 February 2000, will hold a hearing at Building T-4321 at 0900 hours on 15 June 2000, 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:
Captain Winfield M. Elrod
Company C, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

1LT Titus L. Moody
Company B, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

Sergeant Robert H. Brown
Company C, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

Captain William P, Peters
Company A, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

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. Attached is a copy of a deposition from Captain Duane Evans, who will be unable to appear in person at the board hearings.

1 Encl
as

ALBERT A. FAKIAN
2LT, Artillery,
Recorder

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).

ALBERT A. FAKIAN
2LT, Artillery
Recorder

Note. Include Privacy Act Statement concerning respondent as enclosure (see AR 15-6, para 3-8*e*)

Figure B–1. Sample report of proceedings of board of officers—Continued

SUMMARY OF PROCEEDINGS

The board was appointed by letters of appointment, Headquarters, 118th Infantry Division and Fort Jackson, SC, dated 1 February 2000, a copy of which is attached.

The respondent was referred to this board for a hearing by letter, Headquarters, 118th Infantry Division and Fort Jackson, SC, dated 28 March 2000.

The board convened at Fort Jackson, SC, on 15 June 2000. The board met pursuant to the foregoing letter of appointment at 0900 hours on (date).

PERSONS PRESENT:

Major Walter C. Brown, 000-00-0000, Infantry, President
Major Robert Johnson, 000-00-0000, Infantry, Member
Captain Lewis B. Johnson, 000-00-0000, Infantry, Member
Second Lieutenant Albert A. Fakian, 000-00-0000, Infantry (Recorder)
First Lieutenant George P. Huffnagle, 000-00-0000, JAGC (Counsel for Respondent)
Captain James R. Cronkhite, 000-00-0000, Infantry (Counsel for Respondent)

PERSONS ABSENT:

None.

Private John A. Doe, 000-00-0000, Company A, 4th Battalion, 96th Infantry, appeared before the board with his counsel (1LT George P. Huffnagel) (Captain James R. Cronkhite).

The memorandum appointing the board and the applicable substance of the regulations under which it was convened was read aloud by the recorder.

Private John A. Doe was asked if he desired to challenge any member of the board for cause; he replied he did not.

A true copy of written advance notification to Private John A. Doe, dated 28 March 2000, was received and read and is hereto appended.

Private John A. Doe was present during all open sessions of the board with his counsel and was afforded full opportunity to cross-examine adverse witnesses to present evidence in his own behalf, and to testify in person or submit a written statement.

A memorandum, subject: Discharge for Misconduct Under AR 635-200, Company A, 4th Battalion, 96th Infantry, with two endorsements (enclosures withdrawn), was offered in evidence by the recorder. There being no objection, the memorandum was admitted in evidence.

A certificate of 1LT Paul O. May, dated 10 January 2000, was offered in evidence by the recorder. There being no objection, the certificate was admitted in evidence.

A duly authenticated extract copy of the respondent's service record containing record of convictions by court-martial was offered in evidence by the recorder. There being no objections the document was admitted in evidence.

True copies of summarized records of proceedings under Article 15, UCMJ (DA Form 2627) pertaining to non-judicial punishment imposed upon the respondent on (date(s)), were offered into evidence by the recorder, and admitted into evidence.

Figure B–1. Sample report of proceedings of board of officers—Continued

The following witnesses called by the board were sworn and testified in substance as follows:

Captain Winfield M. Elrod, Company C, 4th Battalion, 96th Infantry.

I am the company commander of Company C, 4th Battalion, 96th Infantry. Private Doe was assigned to my company from 10 December 1998 until 05 December 1999. Before his assignment to my company, he had been in basic training. I initially assigned Doe to a squad in the company, and apparently he performed satisfactorily f or the first month. About that time, he went AWOL for 7 days. Thereafter, Doe developed a bad attitude toward his job and the Army. I assigned Doe to another platoon as assistant supply clerk, and then as assistant to the company clerk where the first sergeant could keep an eye on him, but he performed unsatisfactorily in all of them. I then assigned Doe as an armorer-artificer's helper under the direct supervision of Sergeant Brown, and that is where Doe remained until his transfer out of my company. I gave him non-judicial punishment under Article 15 2 times, once for being late to formation, and once for insubordination to a non-commissioned officer. As time passed, he became more sullen and uncooperative.

CROSS-EXAMINATION

I counseled Doe several times, but he refused to say what was bothering him. I counseled this soldier the first time when he was punished for being AWOL. About a month later, I counseled him again and explained to him that some changes would have to be made for his own good and for the good of the Army. I counseled him in those instances then I imposed non-judicial punishment. I told Doe that his prior record indicated that he could perform the duties required and that his tour would be much better if he did his job. He did not respond to my counseling.

Note. All subsequent testimony should be recorded similarly. After all testimony has been recorded, continue as shown below.

A statement signed by the respondent, dated 25 May 2000, to the effect that he had been advised of the basis of this action, desired to have a board hearing, and desired counsel, was offered in evidence by the recorder. There being no objections, the document was admitted in evidence.

The recorder stated that he had nothing further to offer. The rights of the respondent were explained to him by the president of the board. The respondent elected to take the stand as a witness. He was sworn and testified in substance as follows.

DIRECT EXAMINATION

I have been in the Army since 04 December 1998, I am 20 years old, I lived in Jersey City, NJ, and went to school there up to the 9th grade. Before I finished the 9th grade, I was 16 years old, so I quit. I got mixed up with a bad crowd. So to improve my chance in life, I enlisted in the Army in December 1998. At first, I liked the Army, but then I got tired of being bossed around all the time. The sergeants gave me a bad time. Everything was jump, jump, jump. At first I did my work, but I didn't make PFC., so I figured it was no use and wanted out. I guess I don't want a bad discharge, but I don't want all those rotten details either.

Figure B–1. Sample report of proceedings of board of officers—Continued

CROSS-EXAMINATION

I have heard what the officers and sergeants have said about me. The only way I can explain it is that they don't understand me. They were always pushing me around.

The recorder made an argument.

Counsel for the respondent made an argument. Then the recorder made a closing statement.

Neither the recorder nor the respondent having anything further to offer, the board was closed.

Attached is the verbatim record of the findings and recommendations of the board.

The board adjourned at 1400 hours on 15 June 2000.

VERBATIM FINDINGS AND RECOMMENDATIONS

FINDINGS: In the board proceedings concerning Private (E2) John A. Doe, 000-00-0000, the board carefully considered the evidence before it and finds:

1. Private Doe is undesirable for further retention in the military service because of the following misconduct:

a. Frequent incidents of a discreditable nature with military authorities.

b. Habitual shirking.

2. His rehabilitation is not deemed possible.

RECOMMENDATIONS:

In view of the findings, the board recommends that Private Doe be discharged from the Service because of misconduct under other than honorable conditions.

(*President*)
(*Member*)
(*Recorder*)

Figure B–1. Sample report of proceedings of board of officers—Continued

B–2. Other chapter actions

Although this sample cites chapter 14, the same procedures will be used for any chapter action requiring a board in compliance with this regulation.

Glossary

Section I
Abbreviations

AD
active duty

ADAPCP
Alcohol and Drug Abuse Prevention and Control Program

ADT
active duty for training

AFS
active Federal service

AGR
active guard reserve

AIT
advanced individual training

APD
Army Publishing Directorate

ARNG
Army National Guard

ARNGUS
Army National Guard of the United States

AWOL
absent without leave

BT
basic training

CG
commanding general

CONUS
continental United States

CSM
command sergeant major

DA
Department of the Army

DOD
Department of Defense

DODD
Department of Defense directive

ETS
expiration term of service

FBI
Federal Bureau of Investigation

GCMCA
General Court-Martial Convening Authority

HRC
Human Resources Command

HQDA
Headquarters, Department of the Army

IADT
initial active duty for training

IRR
individual ready reserve

JFTR
Joint Federal Travel Regulation

MACOM
major Army command

MCM
Manual for Courts-Martial

MEPS
military entrance processing station

MOS
military occupational specialty

MPRJ
Military Personnel Records Jacket

MTF
medical treatment facility

NCO
noncommissioned officer

NCOES
Noncommissioned Officer Education System

OMPF
official military personnel file

PCF
personnel control facility

PCS
permanent change of station

PFR
personal financial records

PTSD
post traumatic stress disorder

QMP
Qualitative Management Program

RA
regular Army

RBN
recruiting battalion

RCM
rule of court-martial

RCP
retention control point

REFRAD
release from active duty

SFC
sergeant first class

SGM
sergeant major

SIDPERS
Standard Installation/Division Personnel Reporting System

SPCMCA
special court-martial convening authority

SSN
social security number

STP
separation transfer point

TA
transition activity

TBI
traumatic brain injury

TC
transition center

TDY
temporary duty

TP
transition point

UCMJ
Uniform Code of Military Justice

USAEREC
U.S. Army Enlisted Records and Evaluation Center

USAR
U.S. Army Reserve

USAREC
U.S. Army Recruiting Command

USC
United States Code

Section II
Terms

Active Army
The Active Army consists of: (1) regular Army Soldiers on active duty; (2) ARNGUS and the USAR Soldiers on active duty; (3) Army National Guard Soldiers in the service of the United States pursuant to a call; and (4) all persons appointed, enlisted, or inducted into the Army without component. Excluded are ARNGUS and USAR Soldiers serving on: (1) active duty for training; (2) AGR status; (3) active duty for special work; (4) temporary tours of active duty for 180 days or less; and (5) active duty pursuant to the call of the President (10 USC 12304).

Active duty
Full time duty in the active military service of the United States–includes active duty for training.

Active duty for training
Includes initial active duty for training.

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 Board
A board of officers, or officers and NCOs, appointed to make findings and to recommend retention in the Service or separation. The board states the reason and recommends the type of separation or discharge certificate to be furnished.

Administrative separation
Discharge or release from AD upon expiration of enlistment or required period of service, or before, as prescribed by the Department of the Army 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.

Appointed counsel for consultation
A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps. The officer is appointed to consult with and advise, at the outset of any initiated separation proceedings, per this regulation, other than chapters 4 and 12 and other administrative separation proceedings where required by applicable Army regulations. This officer will advise the Soldier concerning the basis for his/her contemplated separation and its effect, the rights available, and the effect of any action taken by him/her in waiving such rights. A Soldier will also be advised that enlistment may be voided if he/she is being considered for separation for fraudulent entry (desertion from another military service). Consulting counsel may advise the Soldier regarding the merits of the contemplated separation action when the counsel believes such advice is proper. The Soldier should be informed that the counsel cannot represent the Soldier before a board of officers unless also appointed as counsel for representation. Counsel will advise the Soldier that if he/she is separated under other than honorable conditions, there is no automatic upgrading by any government agency. Upgrading is considered only upon application to the Army Board for Correction of Military Records or the Army Discharge Review Board. Consideration by either of these boards does not guarantee upgrading character of service that is under other than honorable conditions. Communications between the Soldier and consulting counsel regarding the merits of the separation action are privileged communications between attorney and client.

Appointed counsel for representation
A counsel appointed to represent a Soldier who is being processed for separation during the course of any hearing before a board of officers. Such counsel will be a lawyer per Article 27(b)(1), Uniform Code of Military Justice, unless—

a. The respondent expressly declines appointment of counsel qualified under Article 27(b)(1) of the UCMJ and requests a specific non-lawyer counsel.

b. The separation authority assigns a non-lawyer counsel as assistant counsel. The appointed counsel for representation and the appointed counsel for consultation need not be the same individual.

Basic training
Initial entry training that provides non-prior service personnel instructions in basic skills common to all Soldiers. Basic training (BT) precedes advanced individual training.

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, para 2–2.)

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 AD or the first 180 days of continuous AD 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, It terminates 180 days after beginning training. For Soldiers ordered to IADT for the split or alternate training option, it terminates 90 days after beginning Phase II advanced individual training (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, vol. 7A, table 1–1–2, 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/military occupational specialty 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.

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 active duty for training unless otherwise indicated or obviously inappropriate.

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.

Minority group
Any group distinguished from the general population in terms of race, color, religion, gender, or national origin.

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/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
Initial entry training 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 non-integrated (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 re-enlistment in the Army.

Release from active duty
Termination of AD status and transfer or reversion to a status of a Reserve Component 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 U.S. Army Reserve Control Group. Unit members of the ARNGUS and USAR revert from an AD 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/her under this regulation.

Separation
An all-inclusive term applied to personnel actions resulting from release from active duty, 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.

Transition activity
An activity designated to accomplish separation processing of military Soldiers assigned to that installation only.

Transition point
A centralized activity at an installation listed in AR 635 10, appendix B, 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.

Statutorily obligated Soldier
A Soldier who is serving by reason of law. (See AR 135–91, chap 2.)

Section III
Special Abbreviations and Terms
This section contains no entries.

USAPD

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