



Department of Defense INSTRUCTION

NUMBER 1332.14
August 28, 2008

USD(P&R)

SUBJECT: Enlisted Administrative Separations

References: See Enclosure 1

1. PURPOSE. This Instruction:

a. Reissues DoD Directive 1332.14 (Reference (a)), by combining Reference (a) and DoD Instruction 1332.15 (Reference (b)) as one DoD Instruction (DoDI) in accordance with the guidance in DoD Instruction 5025.01 (Reference (c)) and the authority in DoD Directive 5124.02 (Reference (d)).

b. Establishes DoD policy, responsibilities, and procedures governing administrative separation of enlisted personnel from the Military Services.

2. APPLICABILITY. This Instruction applies:

a. To OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities in the Department of Defense (hereafter referred to collectively as the "DoD Components"). The term "Military Services," as used herein refers to the Army, the Navy, the Air Force, and the Marine Corps.

b. Only to administrative separation proceedings initiated on or after the date this issuance is signed unless the Secretary of the Military Department concerned determines that it should be applied in a particular case in which proceedings were initiated before that date.

3. DEFINITIONS. Terms used in this issuance are defined in the Glossary.

4. POLICY

a. It is DoD policy to promote the readiness of the Military Services by maintaining high standards of performance, conduct, and discipline. Separation policy promotes the readiness of the Military Services by providing an orderly means to:

- (1) Evaluate the suitability of persons to serve in the Armed Forces based on their ability to meet required performance, conduct, and disciplinary standards;
- (2) Maintain standards of performance, conduct, and discipline through characterization of service in a system that emphasizes the importance of honorable service;
- (3) Achieve authorized force levels and grade distributions; and
- (4) Provide an orderly means of discharge for enlisted personnel.

b. DoD separation policy is designed to strengthen the concept that Military Service is a unique calling, different from that of a civilian occupation. The acquisition of military status, whether through enlistment or induction, involves a commitment to the United States, the Service, one's fellow citizens, and one's fellow Service members.

(1) Organizing, training, and equipping newly accessed personnel represents a substantial investment. Separation of Service members prior to completion of their respective obligated service periods results in a significant loss of investment and generates a requirement for increased accessions.

(2) It is DoD policy to provide enlisted Service members with the training, motivation, and professional leadership to enable them to meet required standards of performance, conduct, and discipline.

(a) Reasonable efforts should be made to identify enlisted Service members who exhibit the likelihood for early separation, and to improve their chances for retention through counseling, retraining, and rehabilitation.

(b) Enlisted Service members who do not demonstrate the commitment or potential for further service should be separated. Separation will help counter high personnel costs in terms of pay and administration, as well as the potential for degradation of command morale, or substandard mission performance associated with retention of those who fail to meet required standards.

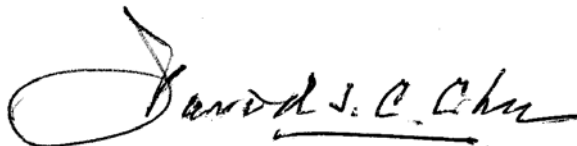
c. It is DoD policy to permit motivated enlisted personnel to further their education at a college, university, or vocational or technical school when it is determined that a discharge or release from active service prior to expiration of obligated service is appropriate. Enclosure 7 outlines applicability and guidelines for Service members eligible for separation under this issuance.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. Procedures and standards for implementing policy outlined in this Instruction are contained in Enclosures 3 through 7 of this issuance.

7. RELEASABILITY. UNLIMITED. This Directive is approved for public release. Copies may be obtained through the Internet from the DoD Issuances Web Site at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Instruction is effective immediately.



David S. C. Chu
Under Secretary of Defense for
Personnel and Readiness

Enclosures

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3. Reasons for Separation
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Glossary

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1332.14, "Enlisted Administrative Separations," December 21, 1993 (hereby canceled)
- (b) DoD Instruction 1332.15, "Early Release of Military Enlisted Personnel for College or Vocational/Technical School Enrollment," June 1, 1976 (hereby canceled)
- (c) DoD Instruction 5025.01, "DoD Directives Program," October 28, 2007
- (d) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD (P&R))," June 23, 2008
- (e) Chapter 61 and Sections 504, 505, 511(d), 654, 802, 843, 937, 1145, 1170, 1552, 1553, 12303 and 12685 of title 10, United States Code
- (f) DoD Instruction 1332.28, "Discharge Review Board (DRB) Procedures and Standards," April 4, 2004
- (g) Section 5303 of title 38, United States Code
- (h) DoD Directive 1205.05, "Transfer of Members Between Reserve and Regular Components of the Military Services," April 22, 2004
- (i) DoD Directive 1344.10, "Political Activities by Members of the Armed Forces on Active Duty," February 19, 2008
- (j) DoD Instruction 1300.06, "Conscientious Objectors," May 5, 2007
- (k) DoD Instruction 1315.15, "Special Separation Policies for Survivorship," January 5, 2007
- (l) Section on Mental Disorders, Diagnostic and Statistical Manual of Mental Disorders, Committee on Nomenclature and Statistics, American Psychiatric Association, current edition
- (m) DoD Directive 1332.18, "Separation or Retirement for Physical Disability," November 4, 1996
- (n) DoD Instruction 1215.18, "Reserve Component Member Participation Requirements," July 17, 2002
- (o) Manual for Courts-Martial, United States
- (p) DoD Directive 5200.2, "DoD Personnel Security Program," April 9, 1999
- (q) DoD Directive 1308.1, "DoD Physical Fitness and Body Fat Program," June 30, 2004
- (r) DoD Instruction 1336.1, "Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)," January 6, 1989
- (s) DoD Directive 1010.1, "Military Personnel Drug Abuse Testing Program," December 9, 1994
- (t) DoD Instruction 5505.8, "Defense Criminal Investigative Organizations and Other DoD Law Enforcement Organizations Investigations of Sexual Misconduct," January 24, 2005
- (u) DoD Instruction 5500.14, "Naturalization of Aliens Serving in the Armed Forces of the United States and of Alien Spouses and/or Alien Adopted Children of Military and Civilian Personnel Ordered Overseas," January 4, 2006
- (v) DoD Instruction 1332.36, "Preseparation Counseling for Military Personnel," February 14, 1994

ENCLOSURE 2

RESPONSIBILITIES

1. PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (PDUSD(P&R)). The PDUSD(P&R), under the Under Secretary of Defense for Personnel and Readiness (USD(P&R)):

- a. Shall develop, maintain, and oversee procedural instructions and policy for enlisted administrative separations.
- b. May supplement the enclosures to this Instruction, and may delegate authority to establish appropriate reporting requirements.

2. SECRETARIES OF THE MILITARY DEPARTMENTS. The Secretaries of the Military Departments shall:

- a. Implement Service policies, standards, and procedures consistent with this issuance and ensure they are administered in a manner that provides conformity and clarity of separation policy to the extent practicable in a system based on command discretion.
- b. Ensure enlisted separation policies, standards, and procedures are applied consistently; ensure fact-finding inquiries are conducted properly; ensure abuses of authority do not occur; and ensure that failure to follow the provisions contained in this issuance results in appropriate corrective action.
- c. Establish processing time goals for the types of administrative separations authorized by this Instruction. Such goals shall be designed to effect the efficient separation of enlisted members from the Armed Forces and shall be measured from the date of notification to the date of separation. Failure to process an administrative separation within the prescribed goals shall not create a bar to separation or characterization.
 - (1) Processing goals should not exceed 15 working days for the notification procedure (paragraph 2 of Enclosure 6) and 50 working days for the administrative board procedure (paragraph 3 of Enclosure 6).
 - (2) While goals for shorter processing times are encouraged, variations may be established for complex cases or cases in which the separation authority is not located on the same facility as the respondent.
 - (3) Program goals, and the process for monitoring effectiveness, shall be set forth in the Military Department's implementing document.

(4) Prescribe appropriate internal procedures for periodically informing enlisted personnel about separation policy, the types of separations, the basis for their issuance, the possible effects of various actions upon reenlistment, civilian employment, veterans' benefits, and related matters concerning denial of certain benefits to Service members who fail to complete at least 2 years of an original enlistment. Failure on the part of the Service member to receive or to understand such explanation shall not create a bar to separation or characterization.

(a) Such explanation may be provided in the form of a written fact sheet or similar document.

(b) The periodic explanation shall take place at least each time the provisions of the Uniform Code of Military Justice (UCMJ) are explained pursuant to Article 137 of the UCMJ, section 937, title 10, United States Code (U.S.C.) (Reference (e)).

(c) The requirement that the effects of the various types of separations be explained to enlisted Service members is a command responsibility, not a procedural entitlement.

(5) Ensure that information concerning the purpose and authority of the Discharge Review Board and the Board for Correction of Military/Naval Records, established pursuant to sections 1552 and 1553 (Reference (e)), and DoDI 1332.28 (Reference (f)), is provided to Service members during the separation processing, except when the separation is for an immediate reenlistment. The information required by this paragraph may be provided in the form of a written fact sheet or similar document. Failure on the part of the Service members to receive or to understand such explanation does not create a bar to separation or characterization.

(a) Specific counseling is required pursuant to section 5303, title 38, U.S.C. (Reference (g)), which states that a discharge under other than honorable conditions, resulting from a period of continuous, unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Department of Veterans Affairs, notwithstanding any action by a Discharge Review Board. Failure on the part of the Service member to receive or to understand such explanation shall not create a bar to separation or characterization.

(b) Ensure compliance with statutory requirements under section 1145 (Reference (e)). Conduct a health assessment sufficient to evaluate the health of members at the time of separation. This assessment should determine any existing medical condition incurred during active duty service, provide baseline information for future care, complete a member's military medical record, and provide a final opportunity to document prior to separation any health concerns, exposures, or risk factors associated with active duty service.

ENCLOSURE 3

REASONS FOR SEPARATION

1. EXPIRATION OF SERVICE OBLIGATION

a. Basis. A Service member may be separated upon expiration of enlistment or fulfillment of service obligation. This includes separation authorized by the Secretary concerned when the Service member is within 30 days of the date of expiration of term of service under one of the following circumstances:

(1) The Service member is serving outside the continental United States (CONUS).

(2) The Service member is a resident of a State, territory, or possession outside CONUS and is serving outside the Service member's State, territory, or possession of residence.

b. Characterization or Description. Honorable, unless the separation is under one of the following circumstances:

(1) An entry-level separation is required under subparagraph 3.c.(1) of Enclosure 4.

(2) Characterization of service as general (under honorable conditions) is warranted under paragraph 3 of Enclosure 4 on the basis of numerical scores accumulated in a formal, Service-wide rating system that evaluates conduct and performance on a regular basis.

(3) Another characterization is warranted upon discharge from the IRR under paragraph 5 of Enclosure 6.

2. SELECTED CHANGES IN SERVICE OBLIGATIONS

a. Basis. A Service member may be separated for the following reasons:

(1) General demobilization or reduction in authorized strength.

(2) Early separation of personnel under a program established by the Secretary concerned. A copy of the document authorizing such program shall be forwarded to the Office of the USD(P&R) on or before the date of implementation.

(3) Acceptance of an active duty commission or appointment, or acceptance into a program leading to such commission or appointment in any branch of the Military Services.

(4) Immediate enlistment or reenlistment.

(5) Inter-Service transfer of inactive reserves in accordance with DoD Directive (DoDD) 1205.05 (Reference (h)).

b. Characterization or Description. Honorable, unless the separation is under one of the following circumstances:

(1) An entry-level separation is required under paragraph 3 of Enclosure 4.

(2) Characterization of service as general (under honorable conditions) is warranted under paragraph 3 of Enclosure 4 on the basis of numerical scores accumulated in a formal, Service-wide rating system that evaluates conduct and performance on a regular basis.

(3) Another characterization is warranted upon discharge from the IRR under paragraph 5 of Enclosure 6.

3. CONVENIENCE OF THE GOVERNMENT

a. Basis. A Service member may be separated for convenience of the Government for the following reasons:

(1) Early Release to Further Education. A Service member may be separated to attend a college, university, vocational school, or technical school under guidelines outlined in Enclosure 7.

(2) Early Release to Accept Public Office. A Service member may be separated to accept public office only under circumstances authorized by the Military Department concerned and consistent with DoDD 1344.10 (Reference (i)).

(3) Dependency or Hardship. Undue hardship does not necessarily exist solely because of altered present or expected income, family separation, or other inconveniences normally incident to Military Service. Upon request of the Service member and concurrence of the separation authority, separation may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary;

(b) Conditions have arisen or have been aggravated to an excessive degree since entry into the Service, and the Service member has made every reasonable effort to remedy the situation;

(c) The administrative separation will eliminate or materially alleviate the condition;
and

(d) There are no other means of alleviation reasonably available.

(4) Pregnancy or Childbirth. A female Service member may be separated on the basis of pregnancy or childbirth upon her request, unless retention is determined to be in the best interests of the Service under paragraph 1 of Enclosure 4 and guidance established by the Military Department concerned.

(5) Parenthood. A Service member may be separated by reason of parenthood under the guidance set forth in paragraph 1 of Enclosure 4 if, as a result thereof, it is determined that the Service member is unable to satisfactorily perform his or her duties or is unavailable for worldwide assignment or deployment. Prior to involuntary separation under this provision, the notification procedure in paragraph 2 of Enclosure 6 shall be used. Separation processing may not be initiated until the Service member has been formally counseled concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

(6) Conscientious Objection. A Service member may be separated if authorized under DoDI 1300.06 (Reference (j)).

(7) Surviving Family Member. A Service member may be separated if authorized under the provisions set forth in DoDI 1315.15 (Reference (k)).

(8) Other Designated Physical or Mental Conditions

(a) The Secretary concerned may authorize separation on the basis of other designated physical or mental conditions, not amounting to disability, that interfere with assignment to or performance of duty. Such conditions may include, but are not limited to, chronic seasickness or airsickness, enuresis, and personality disorder.

(b) Separation processing may not be initiated until the member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. For personality disorders, the member will also be counseled that the diagnosis of a personality disorder does not qualify as a disability.

(c) Separation on the basis of personality disorder is authorized only if a diagnosis by a psychiatrist or PhD-level psychologist utilizing the Diagnostic and Statistical Manual of Mental Disorders (Reference (l)), and in accordance with procedures established by the Military Department concerned, concludes that the disorder is so severe that the member's ability to function effectively in the military environment is significantly impaired. For Service members who have served or are currently serving in imminent danger pay areas, a diagnosis of personality disorder as addressed in the previous sentence must be corroborated by a peer or higher-level mental health professional and endorsed by the Surgeon General of the Military Department concerned. The diagnosis must address post-traumatic stress disorder (PTSD) or other mental illness co-morbidity. 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 Service member was counseled and afforded an opportunity to overcome the deficiencies.

(d) Separation for personality disorder is not appropriate nor should it be pursued when separation is warranted on the basis of unsatisfactory performance or misconduct. In such circumstances, the member should not be separated under this paragraph regardless of the existence of a personality disorder. Unless found fit for duty by the disability evaluation system, a separation for personality disorder is not authorized if service-related PTSD is also diagnosed.

(e) Nothing in paragraph 3.a.(8) of this enclosure precludes separation of a Service member who has a personality disorder or other designated physical or mental conditions under any other basis set forth in paragraph 3 of this enclosure (convenience of the Government) or for any other reason authorized by this Instruction.

(f) Prior to involuntary separation under this provision, the notification procedure in paragraph 2 of Enclosure 6 shall be used. Documentation must include evidence that the Service member is unable to function effectively because of a personality disorder.

(g) The reasons designated by the Secretary concerned shall be separately reported.

(9) Additional Grounds. The Secretary concerned may provide additional grounds for separation for the convenience of the Government. A copy of the document authorizing such grounds shall be forwarded to the PDUSD(P&R) on or before the date of implementation.

b. Characterization or Description. Honorable, unless the separation is under one of the following circumstances:

(1) An entry-level separation is required under paragraph 3.c. of Enclosure 4.

(2) The characterization of service is general (under honorable conditions) as warranted under paragraph 3.b.(2) of Enclosure 4.

c. Procedures. Procedural requirements may be established by the Secretary concerned, subject to procedures established in paragraph 3.c. of Enclosure 4. Prior to characterization of service as general (under honorable conditions), the Service member shall be notified of the specific factors in the service record that warrant such a characterization, and the notification procedure in paragraph 2 of Enclosure 6 shall be used. Such notice and procedure is not required, however, when characterization of service as general (under honorable conditions) is based upon numerical scores accumulated in a formal, Service-wide rating system that evaluates conduct and performance on a regular basis.

4. DISABILITY

a. Basis. A Service member may be separated or retired for disability under the provisions of chapter 61 (Reference (e)).

b. Characterization or Description. Honorable, unless:

(1) An entry-level separation is required under paragraph 3 of Enclosure 4; or

(2) Characterization of service as general (under honorable conditions) is warranted under paragraph 3 of Enclosure 4.

c. Procedures. Procedural requirements for separation or retirement due to physical disability may be established by the Military Departments consistent with chapter 61 of Reference (e) and DoDD 1332.18 (Reference (m)). If separation is recommended, the following requirements apply prior to characterization of service as general (under honorable conditions): The Service member shall be notified of the specific factors in the service record that warrant such a characterization, and the notification procedure in paragraph 2 of Enclosure 6 shall be used. Such notice and procedure is not required, however, when characterization of service as general (under honorable conditions) is warranted based upon numerical scores accumulated in a formal, Service-wide rating system that evaluates conduct and performance on a regular basis.

5. DEFECTIVE ENLISTMENTS AND INDUCTIONS

a. Minority

(1) Basis. A Service member shall be separated on the basis of being a minor at the time of enlistment, induction, or extension of enlistment under the guidance set forth in paragraph 1 of Enclosure 4 and this paragraph.

(a) Under Age 17. If a Service member is under the age of 17, the enlistment of the Service member is void, and the Service member shall be separated.

(b) Age 17. A Service member shall be separated under section 1170 of Reference (e) in the following circumstance except when the Service member is retained for the purpose of trial by courts-martial:

1. There is evidence satisfactory to the Secretary concerned that the Service member is under 18 years of age;

2. The Service member enlisted without the written consent of his or her parent or guardian; and

3. An application for the Service member's separation is submitted to the Secretary concerned by the parent or guardian within 90 days of the Service member's enlistment.

(2) Description of Separation. A Service member separated under subparagraph 5.a.(1)(a) of this enclosure shall receive an order of release from the custody and control of the Armed Forces by reason of void enlistment or induction. The separation of a Service member under subparagraph 5.a.(1)(b) of this enclosure shall be described as an entry-level separation.

(3) Procedure. The notification procedure in paragraph 2 of Enclosure 6 shall be used.

b. Erroneous

(1) Basis. A Service member may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment under the guidance set forth in paragraph 1 of Enclosure 4. An enlistment, induction, or extension of enlistment is erroneous if:

(a) It would not have occurred had the relevant facts been known by the Government or had appropriate directives been followed;

(b) It was not the result of fraudulent conduct on the part of the Service member (see paragraph 5.d. of this enclosure); and

(c) The defect is unchanged in material respects.

(2) Characterization or Description. Honorable, unless an entry-level separation or an order of release from the custody and control of the Military Services is required (by reason of void enlistment or induction) under paragraph 3 of Enclosure 4.

(3) Procedure

(a) If the command recommends that the individual continue military service, the initiation of separation processing is not required in the following circumstances:

1. The defect is no longer present; or

2. A waiver is obtained from the appropriate authority.

(b) If separation processing is initiated, the notification procedure (paragraph 2 of Enclosure 6) shall be used.

c. Defective Enlistment Agreements

(1) Basis. A defective enlistment agreement exists in the following circumstances:

(a) As a result of a material misrepresentation by recruiting personnel, upon which the Service member reasonably relied, the Service member was induced to enlist with a commitment for which the Service member was not qualified;

(b) The Service member received a written enlistment commitment from recruiting personnel for which the Service member was qualified, but which cannot be fulfilled by the Military Service; or

(c) The enlistment was involuntary. See section 802 of Reference (e)).

(2) Characterization or Description. Honorable, unless an entry-level separation or an order of release from the custody and control of the Military Services (by reason of void enlistment) is required under paragraph 3 of Enclosure 4.

(3) Procedures. This provision does not bar appropriate disciplinary action or other administrative separation proceedings regardless of when the defect is raised. Separation is appropriate under this provision only in the following circumstances:

(a) The Service member did not knowingly participate in creation of the defective enlistment;

(b) The Service member brings the defect to the attention of appropriate authorities within 30 days after the defect is discovered or reasonably should have been discovered by the Service member;

(c) The Service member requests separation instead of other authorized corrective action; and

(d) The request otherwise meets such criteria as may be established by the Secretary concerned.

d. Fraudulent Entry Into the Military Service

(1) Basis. A Service member may be separated under guidance in paragraph 1 of Enclosure 4 on the basis of procurement of a fraudulent enlistment, induction, or period of military service through any deliberate material misrepresentation, omission, or concealment that, if known at the time of enlistment, induction, or entry into a period of military service, might have resulted in rejection.

(2) Characterization or Description. Characterization of service or description of separation shall be in accordance with paragraph 3 of Enclosure 4. If the fraud involves concealment of a prior separation in which service was not characterized as honorable, characterization normally shall be under other than honorable conditions.

(3) Procedures. The notification procedure in paragraph 2 of Enclosure 6 shall be used except as follows:

(a) Characterization of service under other than honorable conditions may not be issued unless the administrative board procedure in paragraph 3 of Enclosure 6 is used.

(b) When the sole reason for separation is fraudulent entry, suspension of separation (paragraph 2 of Enclosure 4) is not authorized. When there are approved reasons for separation in addition to fraudulent entry, suspension of separation is authorized only in the following circumstances:

1. A waiver of the fraudulent entry is approved; and
2. The suspension pertains to reasons for separation other than the fraudulent entry.

(c) If the command recommends that the Service member be retained in military service, the initiation of separation processing is unnecessary in the following circumstances:

1. The defect is no longer present; or
2. A waiver is obtained from appropriate authority.

e. Separation from the Delayed Entry Program

(1) Basis. A person who is in the Delayed Entry Program may be separated because of ineligibility for enlistment under standards prescribed by the Secretary concerned or upon his or her request when authorized by the Secretary concerned.

(2) Description of Separation. Entry-level separation.

(3) Procedure. The person shall be notified of the proposed separation and the reasons thereof. The Service member shall be given an opportunity to submit to the separation authority a rebuttal statement by a specified date (not less than 30 days from the date of delivery). The notice shall be delivered personally or sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available by the U.S. mail at an address outside the United States). If the person fails to acknowledge receipt of notice, the individual who mails the notification shall prepare a Sworn Affidavit of Service by Mail (see DoDI 1215.18 (Reference (n)) that shall be inserted in the file along with Postal Service (PS) Form 3800, "U.S. Postal Service Certified Mail Receipt."

6. ENTRY-LEVEL PERFORMANCE AND CONDUCT

a. Basis

(1) A Service member may be separated while in entry-level status (paragraph 5 of Enclosure 3) when it is determined under the guidance in paragraph 1 of Enclosure 4 that the Service member is unqualified for further military service by reason of unsatisfactory performance or conduct (or both), as evidenced by lack of capability, lack of reasonable effort, failure to adapt to the military environment, or minor disciplinary infractions.

(2) When separation of a Service member in entry-level status is warranted by unsatisfactory performance or minor disciplinary infractions (or both), the Service member normally should be separated under this paragraph. Nothing in this provision precludes separation under another provision of this issuance when such separation is authorized or warranted by the circumstances of the case.

b. Counseling and Rehabilitation. Counseling and rehabilitation requirements are important aspects of this reason for separation. Separation processing may not be initiated until the Service member has been formally counseled concerning those deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. A Service member should not be separated when this is the sole reason unless appropriate efforts at rehabilitation have been made under standards prescribed by the Secretary concerned.

c. Description of Separation. Entry-level separation.

d. Procedures. The notification procedure in paragraph 2 of Enclosure 6 shall be used.

7. UNSATISFACTORY PERFORMANCE

a. Basis. A Service member may be separated when it is determined under the guidance in paragraph 1 of Enclosure 4 that the Service member is unqualified for further military service by reason of unsatisfactory performance. This reason shall not be used if the Service member is in entry-level status (paragraph 5 of Enclosure 3).

b. Counseling and Rehabilitation. Counseling and rehabilitation requirements are of particular importance to this reason for separation. Separation processing may not be initiated until the Service member has been formally counseled concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. A Service member should not be separated when unsatisfactory performance is the sole reason unless appropriate efforts at rehabilitation have been made under standards prescribed by the Secretary concerned.

c. Characterization or Description. The service shall be characterized as honorable or general (under honorable conditions) in accordance with paragraph 3 of Enclosure 4.

d. Procedures. The notification procedure (paragraph 2 of Enclosure 6) shall be used.

8. HOMOSEXUAL CONDUCT

a. Basis

(1) Homosexual conduct is grounds for separation from the Military Services under the terms set forth in subparagraph 8.a.(2) of this enclosure. Homosexual conduct includes

homosexual acts, a statement by a Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by a Service member that demonstrates a propensity or intent to engage in homosexual acts is grounds for separation not because it reflects the Service member's sexual orientation, but because the statement indicates a likelihood that the Service member engages in or will engage in homosexual acts. A Service member's sexual orientation is considered a personal and private matter, and is not a bar to continued service under this paragraph unless manifested by homosexual conduct in the manner described in subparagraph 8.a.(2) of this enclosure.

(2) A Service member shall be separated under this paragraph if one or more of the following approved findings is made:

(a) The Service member has engaged in, attempted to engage in, or solicited another to engage in a homosexual act or acts, unless there are approved further findings that:

1. Such acts are a departure from the Service member's usual and customary behavior;
2. Such acts under all the circumstances are unlikely to recur;
3. Such acts were not accomplished by use of force, coercion, or intimidation;
4. Under the particular circumstances of the case, the Service member's continued presence in the Armed Forces is consistent with the interest of the Armed Forces in proper discipline, good order, and morale; and
5. The Service member does not have a propensity or intent to engage in homosexual acts.

(b) The Service member has made a statement that he or she is a homosexual or bisexual, or words to that effect, unless there is a further approved finding that the Service member has demonstrated that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. A statement by a Service member that he or she is a homosexual or bisexual, or words to that effect, create a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence demonstrating that he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. Propensity to engage in homosexual acts means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts. In determining whether a Service member has successfully rebutted the presumption that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts, some or all of the following may be considered:

1. Whether the Service member has engaged in homosexual acts;

2. The Service member's credibility;
3. Testimony from others about the Service member's past conduct, character, and credibility;
4. The nature and circumstances of the Service member's statement;
5. Any other evidence relevant to whether the Service member is likely to engage in homosexual acts. (This list is not exhaustive; any other relevant evidence may also be considered.)

(c) The Service member has married or attempted to marry a person known to be of the same biological sex (as evidenced by the external anatomy of the persons involved).

b. Burden of Proof. See subparagraphs 8.d.(5) and 8.d.(6) of this enclosure for guidance as to the burden of proof and when a finding regarding retention is required.

c. Characterization or Description. Characterization of service or description of separation shall be in accordance with the guidance in paragraph 3 of Enclosure 4. When the sole basis for separation is homosexual conduct, a characterization under other than honorable (OTH) conditions may be issued only if such a characterization is warranted under paragraph 3 of Enclosure 4, and if there is a finding that during the current term of service the Service member attempted, solicited, or committed a homosexual act. Circumstances that warrant consideration of an OTH include a finding that the Service member attempted, solicited, or committed a homosexual act as follows:

- (1) By using force, coercion, or intimidation.
- (2) With a person under 16 years of age.
- (3) With a subordinate in circumstances that violate customary military superior-subordinate relationships ;
- (4) Openly in public view.
- (5) For compensation.
- (6) Aboard a military vessel or aircraft.
- (7) In another location subject to military control under aggravating circumstances noted in the finding that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a vessel or aircraft.

d. Procedures. The Administrative Board procedure under paragraph 3 of Enclosure 6 shall be used, subject to the following guidance:

(1) Separation processing shall be initiated if there is probable cause to believe separation is warranted under subparagraph 8.a.(2) of this enclosure. Procedures for inquiries into homosexual conduct are outlined in Enclosure 5.

(2) The Administrative Board shall follow the procedures set forth in subparagraph 3.e. of Enclosure 6, except with respect to the following matters:

(a) If the Board finds that one or more of the circumstances authorizing separation under subparagraph 8.a.(2) of this enclosure is supported by the evidence, the Board shall recommend separation unless the Board finds that retention is warranted under the limited circumstances described in that paragraph.

(b) If the Board does not find that there is sufficient evidence that one or more of the circumstances authorizing separation under subparagraph 8.a.(2) of this enclosure has occurred, the Board shall recommend retention unless the case involves another basis for separation of which the Service member has been duly notified.

(3) In any case in which characterization of service under other than honorable conditions is not authorized, the separation authority may be exercised by an officer designated under subparagraph 2.d.(1) of Enclosure 6.

(4) The separation authority shall dispose of the case according to the following provisions:

(a) If the board recommends retention, the separation authority shall take one of the following actions:

1. Approve the finding and direct retention; or

2. Forward the case to the Secretary concerned with a recommendation that the Secretary separate the Service member under the Secretary's plenary authority in paragraph 15 of this enclosure.

(b) If the board recommends separation, the separation authority shall take one of the following actions:

1. Approve the finding and direct separation; or

2. Disapprove the finding on the basis of the following considerations:

a. There is insufficient evidence to support the finding; or

b. Retention is warranted under the limited circumstances described in subparagraph 8.a.(2) of this enclosure.

(c) If there has been a waiver of Board proceedings, the separation authority shall dispose of the case in accordance with the following provisions:

1. If the separation authority determines there is not sufficient evidence to support separation under subparagraph 8.a.(2) of this enclosure, the separation authority shall direct retention unless there is another basis for separation of which the Service member has been duly notified.

2. If the separation authority determines that one or more of the circumstances authorizing separation under subparagraph 8.a.(2) of this enclosure has occurred, the Service member shall be separated unless retention is warranted under the limited circumstances described in that subparagraph.

(5) The Service member shall bear the burden of proving throughout the proceeding, by a preponderance of the evidence, that retention is warranted under the limited circumstances described in subparagraphs 8.a.(2)(a) and 8.a.(2)(b) of this enclosure.

(6) Findings regarding whether or not retention is warranted are required if the Service member clearly and specifically raises such limited circumstances as described in subparagraph 8.a.(2) of this enclosure.

(7) Nothing in these procedures:

(a) Limits the authority of the Secretary concerned to take appropriate action in a case to ensure compliance with this issuance;

(b) Requires that a Service member be processed for separation when a determination is made in accordance with regulations prescribed by the Secretary concerned that:

1. The Service member engaged in acts, made statements, or married or attempted to marry a person known to be of the same biological sex for the purpose of avoiding or terminating military service; and

2. Separation of the Service member would not be in the best interest of the Armed Forces.

(c) Precludes retention of a Service member for a limited period of time in the interests of national security as authorized by the Secretary concerned;

(d) Authorizes a Service member to seek Secretarial review unless authorized in procedures promulgated by the Secretary concerned;

(e) Precludes separation in appropriate circumstances for another reason in this Instruction; or

(f) Precludes trial by courts-martial in appropriate cases.

9. DRUG ABUSE REHABILITATION FAILURE

a. Basis

(1) A Service member who has been referred to a rehabilitation program for personal drug abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(a) There is a lack of potential for continued military service; or

(b) Long-term rehabilitation is determined necessary and the Service member is transferred to a civilian medical facility for rehabilitation.

(2) Nothing in this provision precludes separation of a Service member who has been referred to such a program under any other provision of this Instruction.

(3) Drug abuse rehabilitation failures shall be reported separately from alcohol abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting requirements.

(4) A Service member's voluntary submission to a DoD treatment and rehabilitation program and voluntarily disclosed evidence of prior personal drug use by the Service member as part of a course of treatment in such a program may not be used against the Service member on the issue of characterization as specified under paragraph 3.b.(3)(f) of Enclosure 4.

b. Characterization or Description. When a Service member is separated under this provision, characterization of service as honorable or general (under honorable conditions) is authorized except when an entry-level separation is required under paragraph 3 of Enclosure 4. The relationship between voluntary submission for treatment and the evidence that may be considered on the issue of characterization is set forth in subparagraph 3.b.(3)(f) of Enclosure 4. The relationship between mandatory urinalysis and the evidence that may be considered on the issue of characterization is in subparagraph 3.b.(3)(g) of Enclosure 4.

c. Procedures. The notification procedures in paragraph 2 of Enclosure 6 shall be used.

10. ALCOHOL ABUSE REHABILITATION FAILURE

a. Basis

(1) A Service member who has been referred to a program of rehabilitation for alcohol abuse may be separated for failure through inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

- (a) There is a lack of potential for continued military service; or
 - (b) Long-term rehabilitation is determined necessary and the Service member is transferred to a civilian medical facility for rehabilitation.
- (2) Nothing in this provision precludes separation of a Service member who has been referred to such a program under any other provision of this Instruction.
- (3) Alcohol abuse rehabilitation failures shall be reported separately from drug abuse rehabilitation failures. If separation is based on both, the primary basis shall be used for reporting purposes.

b. Characterization or Description. When a Service member is separated under this provision, characterization of service as honorable or general (under honorable conditions) is authorized except when an entry-level separation is required under paragraph 3 of Enclosure 4.

c. Procedures. The notification procedures in paragraph 2 of Enclosure 6 shall be used.

11. MISCONDUCT

a. Basis. A Service member may be separated for misconduct when it is determined under the guidance set forth in paragraph 1 of Enclosure 4 that the Service member is unqualified for further military service by reason of one or more of the following circumstances:

(1) Minor Disciplinary Infractions. A pattern of misconduct consisting solely of minor disciplinary infractions. If separation of a Service member in entry-level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under entry-level performance and conduct (paragraph 6 of this enclosure).

(2) A Pattern of Misconduct. A pattern of misconduct consisting of:

(a) Discreditable involvement with civil or military authorities; or

(b) Conduct prejudicial to good order and discipline.

(3) Commission of a Serious Offense. Commission of a serious military or civilian offense if a punitive discharge would be authorized for the same or a closely related offense under the Manual for Courts-Martial (Reference (o)).

(4) Civilian Conviction

(a) Conviction by civilian authorities or action taken that is tantamount to a finding of guilty, including similar adjudications in juvenile proceedings and if the following conditions are present:

1. A punitive discharge would be authorized for the same or a closely related offense under Reference (o); or

2. The sentence by civilian authorities includes confinement for 6 months or more without regard to suspension or probation.

(b) Separation processing may be initiated whether or not a Service member has filed an appeal of a civilian conviction or has stated an intention to do so. Execution of an approved separation should be withheld pending outcome of the appeal or until the time for appeal has passed, but the Service member may be separated before final action on the appeal upon request of the Service member or upon direction of the Secretary concerned.

b. Counseling and Rehabilitation. Separation processing for minor disciplinary infractions or a pattern of misconduct (subparagraphs 11.a.(2)(a) and 11.a.(2)(b) of this enclosure) may not be initiated until the Service member has been formally counseled concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. If the sole basis of separation is commission of a serious offense (subparagraph 11.a.(3) of this enclosure), or a civilian conviction (subparagraph 11.a.(4)(a) of this enclosure), the counseling and rehabilitation requirements are not applicable.

c. Characterization or Description. Characterization of service shall normally be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted under the guidelines in paragraph 3 of Enclosure 4. For respondents who have completed entry-level status, characterization of service as honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate. In such cases, separations for misconduct with an honorable characterization shall be approved by a commander exercising general court-martial jurisdiction or higher authority as specified by the Secretary concerned.

(1) As an exception, the Secretary concerned may authorize general court-martial convening authorities to delegate authority to the special courts-martial convening authorities to approve separations with service characterized as honorable. This delegation may be done when the sole evidence of misconduct is command-directed urinalysis results, which cannot be used for characterization of service, or when an administrative discharge board has recommended separation with an honorable discharge.

(2) When characterization of service under other than honorable conditions is not warranted for a Service member in entry-level status under paragraph 3 of Enclosure 4, the separation shall be described as an entry-level separation.

d. Procedures. The Administrative Board procedure in paragraph 3 of Enclosure 6 shall be used; however, use of the notification procedure in paragraph 2 of Enclosure 6 is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3 of Enclosure 4.

12. SEPARATION IN LIEU OF TRIAL BY COURTS-MARTIAL

a. Basis. Upon request by the Service member, a member may be separated in lieu of trial by courts-martial if charges have been preferred with respect to an offense for which a punitive discharge is authorized, and it is determined that the Service member is unqualified for further military service under the guidance set forth in paragraph 1 of Enclosure 4. This provision may not be used when rule for court-martial (1003(d) of Reference (o)) provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial empowered to adjudge a punitive discharge.

b. Characterization or Description. Characterization of service normally shall be under other than honorable conditions, but characterization as general (under honorable conditions) may be warranted under the guidelines in paragraph 3 of Enclosure 4. For respondents who have completed entry-level status, characterization of service as honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization clearly would be inappropriate. When characterization of service under other than honorable conditions is not warranted for a Service member in entry-level status under paragraph 3 of Enclosure 4, the separation shall be described as an entry-level separation.

c. Procedures

(1) The request for discharge must be submitted in writing and signed by the Service member.

(2) The Service member shall be afforded an opportunity to consult with counsel qualified under Article 27(b)(1), of the Uniform Code of Military Justice, Appendix 2 of Reference (o). If the Service member refuses to consult with legal counsel, counsel shall prepare a statement to this effect, which shall be attached to the file to document that the Service member has waived the right to consult with counsel.

(3) Except when the Service member has waived the right to counsel, the request shall be signed by counsel.

(4) In the written request, the Service member shall state that he or she understands the following:

(a) The elements of the offense or offenses charged;

(b) That characterization of service under other than honorable conditions is authorized; and

(c) The adverse nature of such a characterization and possible consequences thereof.

(5) The Secretary concerned shall also require that one or both of the following matters be included in the request:

(a) An acknowledgment of guilt of one or more of the offenses or any lesser included offenses for which a punitive discharge is authorized; or

(b) A summary of the evidence or list of documents (or copies thereof) provided to the Service member pertaining to the offenses for which a punitive discharge is authorized.

(6) The separation authority shall be a commander exercising general court-martial jurisdiction or higher authority as specified by the Secretary concerned. (As an exception, the Secretary concerned may authorize general courts-martial convening authorities to delegate authority to the special courts-martial convening authorities to approve requests for discharge in the case of enlisted Service members who have been absent without leave for more than 30 days, have been dropped from the rolls of their units as absent in desertion, have been returned to military control, are assigned to a regional personnel control and/or separation processing facility, and are charged only with being absent without leave for more than 30 days.)

(7) Statements by the Service member or the Service member's counsel submitted in connection with a request under this subsection are not admissible against the Service member in a court-martial except as authorized under Military Rule of Evidence 410 of Reference (o).

13. SECURITY

a. Basis. When retention is clearly inconsistent with the interest of national security, a Service member may be separated by reason of security and under conditions and procedures prescribed in DoDD 5200.2 (Reference (p)).

b. Characterization or Description. Characterization of service or description of separation shall be in accordance with paragraph 3 of Enclosure 4.

c. Procedures. The procedures established by the Military Departments shall be consistent with the procedures contained in this Instruction insofar as practicable.

14. UNSATISFACTORY PARTICIPATION IN THE READY RESERVE

a. Basis. A Service member may be separated for unsatisfactory participation in the Ready Reserve under criteria established by the Secretary concerned under Reference (n).

b. Characterization or Description. Characterization of service or description of separation shall be in accordance with paragraph 3 of Enclosure 4 and Reference (n).

c. Procedures. The Administrative Board procedure (paragraph 3 of Enclosure 6) shall be used, except that the notification procedure (paragraph 2 of Enclosure 6) may be used if characterization of service under other than honorable conditions is not warranted under paragraph 3 of Enclosure 4.

15. SECRETARIAL PLENARY AUTHORITY

a. Basis. Notwithstanding any limitation on separations provided in this Instruction, the Secretary concerned may direct the separation of any Service member prior to expiration of term of service after determining it to be in the best interest of the Service.

b. Characterization or Description. Honorable or general (under honorable conditions) as warranted under paragraph 3 of Enclosure 4 unless an entry-level separation is required under paragraph 3 of Enclosure 4.

c. Procedures. The notification procedure in paragraph 2 of Enclosure 6 shall be used, except subparagraph 2.a.(7) of Enclosure 6, the procedure for requesting an Administrative Board, which is not applicable.

16. REASONS ESTABLISHED BY THE MILITARY DEPARTMENTS

a. Basis. The Military Departments may establish additional reasons for separation for circumstances not otherwise provided for in this Instruction to meet their specific requirements, subject to approval by the PDUSD(P&R).

b. Counseling and Rehabilitation. Separation processing may not be initiated until the Service member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. An exception to these requirements may be granted when the Military Department concerned provides in its implementing document that counseling and rehabilitation requirements are not applicable for the specific reason for separation.

c. Characterization or Description. Characterization of service or description of separation shall be in accordance with paragraph 3 of Enclosure 4.

d. Procedures. The procedures established by the Military Departments shall be consistent with the procedures contained in this Instruction insofar as practicable.

17. WEIGHT CONTROL FAILURE

a. Basis. A Service member may be separated for failure to meet the weight control standards established under DoDD 1308.1 (Reference (q)) when it is determined that the Service member is unqualified for further military service and meets both of the following conditions:

(1) The Service member is not medically diagnosed with a medical condition that precludes or interferes with weight control. Service members with a medically diagnosed condition that precludes or interferes with weight control may be separated either through medical channels, if appropriate, or under the guidance in paragraph 4 of this enclosure.

(2) The Service member fails to meet weight control standards, and the sole reason for separation is failure to meet the weight control standard.

b. Counseling and Rehabilitation. Separation processing may not be initiated until the Service member has been counseled formally concerning deficiencies and has been afforded an opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records.

c. Characterization or Description. Honorable, unless characterization of service as general (under honorable conditions) is warranted under paragraph 3 of Enclosure 4 on the basis of numerical scores accumulated in a formal, Service-wide rating system that evaluated conduct and performance on a regular basis, or when an entry-level separation is required under paragraph 6 of this enclosure.

d. Procedures. The notification procedure in paragraph 3 of Enclosure 6 shall be used.

ENCLOSURE 4

GUIDELINES ON SEPARATION AND CHARACTERIZATION

1. SEPARATION

a. Scope. This general guidance applies when referenced in Enclosure 3. Further guidance is set forth under the specific reasons for separation in Enclosure 3.

b. Guidance

(1) A substantial investment is made in the training of individuals enlisted or inducted into the Military Services. Thus, reasonable efforts at rehabilitation should be made prior to initiating separation proceedings for Service members who do not conform to required standards.

(2) Unless separation is mandatory, the potential for rehabilitation and further useful military service shall be considered by the separation authority and, where applicable, the Administrative Board. If separation is warranted despite the potential for rehabilitation, consideration should be given to suspension of the separation, if authorized.

(3) Counseling and rehabilitation efforts are a prerequisite to initiation of separation proceedings only insofar as expressly set forth under specific requirements for separation in Enclosure 3. An alleged or established inadequacy in previous rehabilitative efforts does not provide a legal bar to separation.

(4) The following factors may be considered on the issue of retention or separation, depending on the circumstances of the case:

(a) The seriousness of the circumstances forming the basis for initiation of separation proceedings, and the effect of the Service member's continued retention on military discipline, good order, and morale.

(b) The likelihood of continuation or recurrence of the circumstances forming the basis for initiation of separation proceedings.

(c) The likelihood that the Service member will be a disruptive or undesirable influence in present or future duty assignments.

(d) The ability of the Service member to perform duties effectively in the present and in the future, including potential for advancement or leadership.

(e) The Service member's rehabilitative potential.

(f) The Service member's entire military record.

1. This may include:

a. Past contributions to the Service, assignments, awards and decorations, evaluation ratings, and letters of commendation;

b. Letters of reprimand or admonition, counseling records, records of nonjudicial punishment, records of conviction by courts-martial and records of involvement with civilian authorities; and

c. Any other matter deemed relevant by the Board, or the separation authority, based upon the specialized training, duties, and experience of persons entrusted by this Instruction with recommendations and decisions on the issue of separation or retention.

2. The following guidance applies to consideration of matters under subparagraph 1.b.(4)(f)1. of this enclosure:

a. Adverse matter from a prior enlistment or period of military service, such as records of nonjudicial punishment and convictions by courts-martial, may be considered only when such records would have a direct and strong probative value in determining whether separation is appropriate. The use of such records shall ordinarily be limited to those cases involving patterns of conduct manifested over an extended period of time.

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

c. Limitations on Separation Actions. A Service member may not be separated on the basis of the following:

(1) Conduct that has been the subject of judicial proceedings resulting in acquittal or action having the effect thereof except in the following circumstances:

(a) When such action is based upon a judicial determination not going to the guilt or innocence of the respondent; or

(b) When the judicial proceeding was conducted in a State or foreign court and the separation is approved by the Secretary concerned; or

(c) When the acquittal from the judicial proceedings was based on a finding of not guilty only by reason of lack of mental responsibility. Service members in this category normally shall be separated under Secretarial plenary authority (paragraph 15 of Enclosure 3) unless separation for disability (paragraph 4 of Enclosure 3) is appropriate.

(2) Conduct that has been the subject of a prior Administrative Board action 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; or

(3) Conduct that has been the subject of an administrative separation proceeding resulting in a final determination by a separation authority that the Service member should be retained, except in the following circumstances:

(a) When there is subsequent conduct or performance forming the basis, in whole or in part, for a new proceeding;

(b) When there is new or newly discovered evidence that was not reasonably available at the time of the prior proceeding; or

(c) When the conduct is the subject of a rehearing ordered on the basis of fraud or collusion.

2. SUSPENSION OF SEPARATION

a. Suspension

(1) Unless prohibited by this Instruction, a separation may be suspended for a specified period of not more than 12 months by the separation authority or higher authority if the circumstances of the case indicate a reasonable likelihood of rehabilitation.

(2) During the period of suspension, the Service member shall be afforded an opportunity to meet appropriate conduct, disciplinary, and performance standards.

(3) Unless sooner vacated or remitted, execution of the approved separation shall be remitted upon completion of the probationary period, upon termination of the Service member's enlistment or period of obligated service, or upon decision of the separation authority that the goal of rehabilitation has been achieved.

b. Action During the Period of Suspension

(1) During the period of suspension, if there are further grounds for separation under Enclosure 3, one or more of the following actions may be taken:

(a) Disciplinary action;

(b) New administrative action; or

(c) Vacation of the suspension accompanied by execution of the separation if the Service member engages in conduct similar to that for which separation was approved (but suspended) or otherwise fails to meet appropriate standards of conduct and duty performance.

(2) Prior to vacation of a suspension, the Service member shall be notified in writing of the basis for the action and shall be afforded the opportunity to consult with counsel (as provided in subparagraph 2.a.(6) of Enclosure 6) and to submit a statement in writing to the separation authority. The respondent shall be provided a reasonable period of time, not less than 2 working days, to act on the notice. If the respondent identifies specific legal issues for consideration by the separation authority, the matter shall be reviewed by a judge advocate or civilian lawyer employed by the Government prior to final action by the separation authority.

3. CHARACTERIZATION OF SERVICE OR DESCRIPTION OF SEPARATION

a. Types of Characterization or Description

(1) At separation, the following types of characterization of service or description of separation are authorized under this Instruction:

(a) Separation with characterization of service as honorable, general (under honorable conditions), or under other than honorable conditions.

(b) Entry-level separation.

(c) Order of release from the custody and control of the Military Services by reason of void enlistment or induction.

(d) Separation by being dropped from the rolls of the Service.

(2) Any of the types of separation listed may be used in appropriate circumstances unless a limitation is set forth in this Enclosure or in Enclosure 3 (reasons for separation).

b. Characterization of Service

(1) General Considerations

(a) Characterization at separation shall be based upon the quality of the Service member's service, including the reason for separation and guidance in subparagraph 3.b.(2) of this enclosure, subject to the limitations set forth under various reasons for separation in Enclosure 3. The quality of service will be determined in accordance with standards of acceptable personal conduct and performance of duty for military personnel. These standards are found in Reference (o), directives and regulations issued by the Department of Defense and the Military Departments, and the time-honored customs and traditions of military service.

(b) The quality of service of a Service member on active duty or active duty for training is adversely affected by conduct that is of a nature to bring discredit on the Military Services or is prejudicial to good order and discipline, regardless of whether the conduct is

subject to UCMJ jurisdiction. Characterization may be based on conduct in the civilian community, and the burden is on the respondent to demonstrate that such conduct did not adversely affect the respondent's service.

(c) The reasons for separation, including the specific circumstances that form the basis for the separation, shall be considered on the issue of characterization. In general, characterization will be based upon a pattern of behavior rather 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 shall be given to the Service member's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

(2) Types of Characterization

(a) Honorable. The honorable characterization is appropriate when the quality of the Service member's service generally has met the standards of acceptable conduct and performance of duty for military personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. In the case of an honorable discharge, an Honorable Discharge Certificate (DD Form 256) will be awarded and a notation will be made on the appropriate copies of the DD Form 214/5 "Certificate of Release or Discharge from Active Duty (DD Form 214/5 Series)," in accordance with DoDI 1336.1 (Reference (r)).

(b) General (Under Honorable Conditions). If a Service member's service has been honest and faithful, it is appropriate to characterize that service under honorable conditions. Characterization of service as general (under honorable conditions) is warranted when the positive aspects of the Service member's conduct or performance of duty outweigh negative aspects of the Service member's conduct or performance of duty as documented in their service record.

(c) Under Other Than Honorable Conditions

1. This characterization may be issued in the following circumstances:

a. When the reason for separation is based upon a pattern of behavior that constitutes a significant departure from the conduct expected of Service members of the Military Services.

b. When the reason for separation is based upon one or more acts or omissions that constitute a significant departure from the conduct expected of Service members of the Military Services. Examples of factors that may be considered include the use of force or violence to produce serious bodily injury or death; abuse of a special position of trust; disregard by a superior of customary superior-subordinate relationships; acts or omissions that endanger the security of the United States or the health and welfare of other Service members of the

Military Services; and deliberate acts or omissions that seriously endanger the health and safety of other persons.

2. This characterization is authorized only if the Service member has been afforded the opportunity to request an Administrative Board action, except as provided in paragraph 12 of Enclosure 3 (separation in lieu of trial by courts-martial).

(3) Limitations on Characterization. Except as otherwise provided in this paragraph, characterization will be determined solely by the Service member's military record during the current enlistment or period of service to which the separation pertains, plus any extensions thereof prescribed by law or regulation or effected with the consent of the Service member.

(a) Prior service activities, including records of conviction by courts-martial, records of absence without leave, or commission of other offenses for which punishment was not imposed shall not be considered on the issue of characterization. To the extent that such matters are considered on the issue of retention or separation (subparagraph 1.b. of this enclosure), the record of proceedings may reflect express direction that such information shall not be considered on the issue of characterization.

(b) Pre-service activities may not be considered on the issue of characterization except as follows: In a proceeding concerning fraudulent entry into military service (subparagraph 5.d. of Enclosure 3), evidence of pre-service misrepresentations about matters that would have precluded, postponed, or otherwise affected the Service member's eligibility for enlistment or induction may be considered on the issue of characterization.

(c) The limitations in subparagraph 1.c. of this enclosure as to matters that may be considered on the issue of separation are applicable to matters that may be considered on the issue of characterization.

(d) When the sole basis for separation is a serious offense that resulted in a conviction by a court-martial authorized to impose a punitive discharge that did not impose a punitive discharge, the Service member's service may not be characterized under other than honorable conditions unless such characterization is approved by the Secretary concerned.

(e) Conduct in the civilian community of a Service member of a Reserve Component who is not on active duty or active duty for training may form the basis for characterization under other than honorable conditions only if such conduct directly affects the performance of the Service member's military duties. Such conduct may form the basis of characterization as general (under honorable conditions) only if such conduct has an adverse impact on the overall effectiveness of the service, including military morale and efficiency.

(f) A Service member's voluntary submission to a DoD treatment and rehabilitation program and voluntarily disclosed evidence of prior personal drug use by the Service member as part of a course of treatment in such a program may not be used against the Service member on the issue of characterization. This limitation does not apply to:

1. The introduction of evidence for impeachment or rebuttal purposes in any proceeding in which the evidence of drug abuse (or lack thereof) has been introduced first by the Service member.

2. Taking action based on independently derived evidence, including evidence of continued drug abuse after initial entry into a treatment and rehabilitation program.

(g) The results of mandatory urinalysis may be used on the issue of characterization except as provided in DoDD 1010.1 (Reference (s)).

c. Uncharacterized Separation

(1) Entry-Level Separation

(a) A separation shall be described as an entry-level separation if separation processing is initiated while a Service member is in entry-level status, except in the following circumstances:

1. When characterization under other than honorable conditions is authorized under the reason for separation (Enclosure 3) and is warranted by the circumstances of the case; or

2. The Secretary concerned, on a case-by-case basis, determines that characterization of service as honorable is clearly warranted by the presence of unusual military duty. The characterization is authorized when the Service member is separated under Enclosure 3 by reason of selected changes in service obligation (paragraph 2 of Enclosure 3), convenience of the Government (paragraph 3 of Enclosure 3), disability (paragraph 4 of Enclosure 3), secretarial plenary authority (paragraph 15 of Enclosure 3), or an approved reason established by the Military Department (paragraph 16 of Enclosure 3).

(b) In time of mobilization or in other appropriate circumstances, the USD(P&R) may authorize the Secretary concerned to delegate the authority in subparagraph 3.c.(1)(a)2. of this enclosure (concerning the honorable characterization) to a general court-martial convening authority with respect to Service members serving in operational units.

(c) With respect to administrative matters outside this Instruction that require a characterization as honorable or general, an entry-level separation shall be treated as the required characterization. This provision does not apply to administrative matters that expressly require different treatment of an entry-level separation except as provided in subparagraph 3.c.(1)(d) of this enclosure.

(d) In accordance with section 12685 of Reference (e), an entry-level separation for a Service member of a Reserve Component separated from the delayed entry program is “under honorable conditions.”

(2) Void Enlistments or Inductions. Under void enlistments or inductions, a Service member shall not receive a discharge, characterization of service at separation, or an entry-level separation of the enlistment or induction, except when a constructive enlistment arises and such action is required under subparagraph 3.c.(2)(c) of this enclosure. If characterization or an entry-level separation is not required, the separation shall be described as an order of release from custody or control of the Military Services.

(a) An enlistment is void in the following circumstances:

1. If it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the Military Services, including enlistment of a person who is intoxicated or insane at the time of enlistment, per section 504 (Reference (e)) and article 2(b), Appendix 2, of Reference (o).

2. If the person is under 17 years of age (section 505 of Reference (e)).

3. If the person is a deserter from another Military Service per section 504 of Reference (e).

(b) Although an enlistment may be void at its inception, a constructive enlistment shall arise in the case of a person serving with a Military Service who:

1. Submitted voluntarily to military authority;

2. Met the mental competency and minimum age qualifications of sections 504 and 505 of Reference (e), at the time of voluntary submission to military authority;

3. Received military pay or allowances; and

4. Performed military duties.

(c) 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 shall be in accordance with subparagraph 3.b. or subparagraph 3.c.(1) of this enclosure as appropriate; however, if the enlistment was void by reason of desertion from another Military Service, the Service member shall be separated by an order of release from the custody and control of the Service regardless of any subsequent constructive enlistment. The occurrence of such a subsequent constructive enlistment does not preclude the Military Departments, in appropriate cases, from either retaining the Service member or separating the Service member under paragraph 5 of Enclosure 3, on the basis of the circumstances that initiated the original void enlistment or upon any other basis for separation provided in this issuance.

(3) Dropping from the Rolls. A Service member may be dropped from the rolls of the Service when such action is authorized by the Military Department concerned and a characterization of service or other description of separation is not authorized or warranted.

ENCLOSURE 5

GUIDELINES FOR FACT-FINDING INQUIRIES INTO HOMOSEXUAL CONDUCT

1. RESPONSIBILITY

a. Only a Service member's commander is authorized to initiate fact-finding inquiries involving homosexual conduct. A commander may initiate a fact-finding inquiry only when he or she has received credible information that there is basis for discharge. Commanders are responsible for ensuring that inquiries are conducted properly and that no abuse of authority occurs.

b. A fact-finding inquiry may be conducted by the commander personally or by a person he or she appoints. It may consist of an examination of the information reported or a more extensive investigation, as necessary.

c. The inquiry should gather all credible information that directly relates to the grounds for possible separation. Inquiries shall be limited to the factual circumstances directly relevant to the specific allegations.

d. If a commander has credible evidence of possible criminal conduct, he or she shall follow the procedures outlined in Reference (o) and implementing regulations issued by the Secretaries of the Military Departments concerned.

e. The guidelines in this enclosure do not apply to activities referenced in DoDI 5505.8 (Reference (t)).

2. BASIS FOR CONDUCTING INQUIRIES

a. A commander will initiate an inquiry only if he or she has credible information that there is a basis for discharge. Credible information exists when the information, considering its source and the surrounding circumstances, supports a reasonable belief that there is a basis for discharge. A determination is made based on articulable facts, not just a belief or suspicion.

b. A basis for discharge exists if:

(1) The Service member has engaged in a homosexual act.

(2) The Service member has said that he or she is a homosexual or bisexual, or made some other statement that indicates a propensity or intent to engage in homosexual acts; or

(3) The Service member has married or attempted to marry a person of the same sex.

c. Credible information does not exist, for example, when:

(1) The individual is suspected of engaging in homosexual conduct, but there is no credible information, as described, to support that suspicion; or

(2) The only information is the opinions of others that a Service member is homosexual; or

(3) The inquiry would be based on rumor, suspicion, or capricious claims concerning a Service member's sexual orientation; or

(4) The only information known is an associational activity such as going to a gay bar, possessing or reading homosexual publications, associating with known homosexuals, or marching in a gay rights rally in civilian clothes. Such activity, in and of itself, does not provide evidence of homosexual conduct.

d. Credible information exists, for example, when:

(1) A reliable person states that he or she observed or heard a Service member engaging in homosexual acts, or saying that he or she is a homosexual or bisexual or is married to a person of the same sex; or

(2) A reliable person states that he or she heard, observed, or discovered a Service member make a spoken or written statement that a reasonable person would believe was intended to convey the fact that he or she engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts; or

(3) A reliable person states that he or she observed behavior that amounts to a non-verbal statement by a Service member that he or she is a homosexual or bisexual; i.e., behavior that a reasonable person would believe was intended to convey the statement that the Service member engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts.

3. PROCEDURES

a. Informal fact-finding inquiries and administrative separation procedures are the preferred method of addressing homosexual conduct. This procedure does not prevent disciplinary action or trial by courts-martial when appropriate.

b. Commanders shall exercise sound discretion regarding when credible information exists. They shall examine the information and decide whether an inquiry is warranted or whether no action should be taken.

c. Commanders or appointed inquiry officials shall not ask, and Service members shall not be required to reveal, whether a Service member is a heterosexual, a homosexual, or a bisexual. However, upon receipt of credible information of homosexual conduct (as described in paragraph 2 of this enclosure) commanders or appointed inquiry officials may ask Service

members if they engaged in such conduct after advising Service member of the DoD policy on homosexual conduct and their rights under Article 31 of the UCMJ, Appendix 2 of Reference (o), if applicable. Should the Service member choose not to discuss the matter further, the commander should consider other available information. Nothing in this provision precludes questioning a Service member about any information provided by the Service member in the course of the fact-finding inquiry or any related proceeding, nor does it provide the Service member with any basis for challenging the validity of any proceeding or the use of any evidence, including a statement by the Service member, in any proceeding.

d. At any given point of the inquiry, the commander or appointed inquiry official must be able to clearly and specifically explain which grounds for separation he or she is attempting to verify and how the information being collected relates to those specific separation criteria.

e. A statement by a Service member that he or she is a homosexual or bisexual creates a rebuttable presumption that the Service member engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The Service member shall be given the opportunity to present evidence demonstrating that he or she does not engage in, attempt to engage in, or have a propensity or intent to engage in homosexual acts.

f. The Service member bears the burden of proving, by a preponderance of the evidence, that he or she is not a person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

4. LEGAL EFFECT. The procedures in this enclosure create no substantive or procedural rights.

ENCLOSURE 6

PROCEDURES FOR SEPARATION

1. SCOPE

a. The supplementary procedures in this Enclosure are applicable only when required under a specific reason for separation as set forth in Enclosure 3.

b. When a Service member is processed on the basis of multiple reasons for separation, the following guidelines apply to procedural requirements (including procedural limitations on characterization of service or description of separation):

(1) The requirements for each reason will be applied to the extent practicable.

(2) If a reason for separation set forth in the notice of proposed action requires processing under the Administrative Board procedure (paragraph 3 of this enclosure), the entire matter shall be processed under paragraph 3 of this enclosure.

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

(4) When there is any other clear conflict between a specific requirement applicable to one reason and a general requirement applicable to another reason, the specific requirement shall be applied.

(5) If a conflict in procedures cannot be resolved on the basis of the foregoing, the most favorable to the respondent shall be used.

2. NOTIFICATION PROCEDURE

a. Notice. If the notification procedure is initiated under Enclosure 3, the respondent shall be notified in writing of:

(1) The basis of the proposed separation, including the circumstances upon which the action is based and a reference to the applicable provisions of the Military Department's implementing regulation.

(2) Whether the proposed separation could result in discharge, release from active duty to a Reserve Component, transfer from the Selected Reserve to the IRR, release from custody or control of the Military Services, or other form of separation.

(3) The least favorable characterization of service or description of separation authorized for the proposed separation.

(4) The right to obtain copies of documents that will be forwarded to the separation authority supporting the basis of the proposed separation. Classified documents may be summarized.

(5) The respondent's right to submit statements.

(6) The respondent's right to consult with counsel qualified pursuant to Article 27(b)(1) of the UCMJ , Appendix 2, of Reference (o). Non-lawyer counsel may be appointed when the respondent is deployed aboard a vessel or in similar circumstances of separation from sufficient judge advocate resources as determined under standards and procedures specified by the Secretary concerned. The respondent also may consult with civilian counsel retained at the Service member's own expense.

(7) If the respondent has 6 or more years of total active and Reserve military service, the right to request an Administrative Board action (paragraph 3 of this enclosure).

(8) The right to waive subparagraphs 2.a.(4), 2.a.(5), 2.a.(6), or 2.a.(7) of this enclosure after being afforded a reasonable opportunity to consult with counsel, and advised that failure to respond shall constitute a waiver of the right.

b. Additional Notice Requirements

(1) If separation processing is initiated on the basis of more than one reason under Enclosure 3, the requirements of subparagraph 2.a.(1) of this enclosure apply to all proposed reasons for separation.

(2) If the respondent is in civil confinement, absent without leave, or in a Reserve Component not on active duty or upon transfer to the IRR, the relevant notification procedures in paragraphs 4, 5, or 6 of this enclosure apply.

(3) Additional notification requirements are set forth in paragraphs 3 and 4 of Enclosure 3, when characterization of service as general (under honorable conditions) is authorized and the Service member is processed for separation by reason of convenience of the Government or disability.

c. Response. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in subparagraphs 2.a.(4) through 2.a.(7) of this enclosure, and applicable provisions referenced in paragraph 2 of this enclosure, shall be recorded and signed by the respondent and counsel, subject to the following limitations:

(1) If notice by mail is authorized under paragraphs 4, 5, or 6 of this enclosure, and the respondent fails to acknowledge receipt or submit a timely reply, that fact shall constitute a

waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

(2) If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent 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 and an appropriate notation as to the failure to sign will be made.

d. Separation Authority

(1) The separation authority for actions initiated under the notification procedure shall be a special court-martial convening authority or higher authority. Also, subject to approval by the PDUSD(P&R), the Secretary concerned may authorize a commanding officer in grade O-5 or above, or a commanding officer in the grade of O-4 who is on an approved recommended list for promotion to O-5 and who is assigned to command a unit authorized a commanding officer in the grade of O-5 or above, with a judge advocate or legal advisor available to the command, to act as a separation authority for a specified reason for separation. If the case was initiated under the Administrative Board procedure and the Service member waived the right to a hearing under subparagraph 3.d. of this enclosure, the separation authority shall be an official designated under subparagraph 3.f. of this enclosure.

(2) The action of the separation authority shall be recorded.

(3) The separation authority shall determine whether there is sufficient evidence to verify the allegations set forth in the notification of the basis for separation. If an allegation is not supported by a preponderance of the evidence, it may not be used as a basis for separation.

(4) If there is a sufficient factual basis for separation, the separation authority shall determine whether separation is warranted under the guidance in paragraphs 1 and 2 of Enclosure 4. On the basis of that guidance, the separation authority shall direct one of the following actions:

(a) Retention;

(b) Separation for a specific reason under Enclosure 3;

(c) Suspended separation in accordance with the guidance in paragraph 2.d. of this enclosure.

(5) If the separation authority directs separation or suspended separation on the basis of more than one reason under Enclosure 3, the separation authority shall designate the most appropriate basis as the primary reason for reporting purposes.

(6) If separation or a suspended separation is directed, the separation authority shall assign a characterization or description in accordance with paragraph 3 of Enclosure 4.

(7) Except when characterization under other than honorable conditions is directed or the Service member is separated on the basis of homosexual conduct or a void enlistment or induction, the Secretary concerned may authorize the separation authority or higher authority to make a recommendation or determination as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies in cases involving separation from active duty or from the Selected Reserve. Paragraph 5 of this enclosure is applicable if such action is approved.

3. ADMINISTRATIVE BOARD PROCEDURE

a. Notice. If an Administrative Board is required, the respondent shall be notified in writing of:

(1) The basis of the proposed separation, including the circumstances upon which the action is based and reference to the applicable provisions of the Military Department's implementing regulation.

(2) Whether the proposed separation could result in discharge, release from active duty to a Reserve Component, transfer from the Selected Reserve to the IRR, release from the custody or control of the Military Services, or other form of separation.

(3) The least favorable characterization of service or description of separation authorized for the proposed separation.

(4) The respondent's right to consult with counsel as prescribed in subparagraph 2.a.(6) of this enclosure. A non-lawyer counsel may not represent a respondent before an Administrative Board unless:

(a) The respondent expressly declines appointment of counsel qualified under Article 27(b)(1) of Reference (o) and requests a specific non-lawyer counsel; or

(b) The separation authority assigns non-lawyer counsel as assistant counsel.

(5) The right to obtain copies of documents that will be forwarded to the separation authority supporting the basis of the proposed separation. Classified documents may be summarized.

(6) The respondent's right to request a hearing before an Administrative Board.

(7) The respondent's right to present written statements instead of Board proceedings.

(8) The respondent's right to representation at the Administrative Board either by military counsel appointed by the convening authority or by military counsel of the respondent's

own choice (if counsel of choice is determined to be reasonably available under regulations of the Secretary concerned) but not both.

(9) The right to representation at the Administrative Board by civilian counsel at the respondent's own expense.

(10) The right to waive the rights in subparagraphs 3.a.(4) through 3.a.(9) of this enclosure.

(11) That failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in subparagraphs 3.a.(4) through 3.a.(9) of this enclosure.

(12) Failure to appear without good cause at a hearing constitutes waiver of the right to be present at the hearing.

b. Additional Notice Requirements

(1) If separation processing is initiated on the basis of more than one reason under Enclosure 3, the requirements of subparagraph 3.a.(1) of this enclosure apply to all proposed reasons for separation.

(2) If the respondent is in civil confinement, absent without leave, or in a Reserve Component not on active duty or upon transfer to the IRR, the relevant notification procedures in paragraphs 4, 5, or 6 of this enclosure apply.

(3) Additional notification requirements are set forth in paragraphs 3 and 4 of Enclosure 3, when characterization of service as general (under honorable conditions) is authorized and the Service member is processed for separation by reason of convenience of the Government or disability.

c. Response. The respondent shall be provided a reasonable period of time, but not less than 2 working days, to act on the notice. An extension may be granted upon a timely showing of good cause by the respondent. The decision of the respondent on each of the rights set forth in subparagraphs 3.a.(4) through 3.a.(9) of this enclosure, and applicable provisions referenced in paragraph 2 of this enclosure, shall be recorded and signed by the respondent and counsel, subject to the following limitations:

(1) If notice by mail is authorized under paragraphs 4, 5, or 6 of this enclosure and the respondent fails to acknowledge receipt or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

(2) If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made on the form provided for respondent's reply. If the respondent 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 and an appropriate notation as to the failure to sign will be made.

d. Waiver

(1) If the right to a hearing before an Administrative Board is waived, the case will be processed under subparagraph 2.d. of this enclosure (notification procedure). The separation authority in such cases shall be an official designated under subparagraph 3.f. of this enclosure.

(2) When authorized by the Secretary concerned, a respondent entitled to an Administrative Board hearing may exercise a conditional waiver after a reasonable opportunity to consult with counsel, under subparagraph 3.a.(4) of this enclosure. A conditional waiver is a statement initiated by a respondent waiving the right to a board proceeding contingent upon receiving a characterization of service or description of separation higher than the least favorable characterization or description authorized for the basis of separation set forth in the notice to the respondent.

e. Hearing Procedure. If a respondent requests a hearing before an Administrative Board, the following procedures are applicable:

(1) Composition

(a) The convening authority shall appoint to the Administrative Board at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted personnel appointed to the Board shall be in grade E-7 or above, and shall be senior to the respondent. At least one Service member of the Board shall be serving in the grade of O-4 or higher, and a majority shall be commissioned or warrant officers. The senior Service member shall be the president of the board. The convening authority may also appoint a non-voting recorder to the Board. A non-voting legal advisor may be appointed to assist the Board if authorized by the Secretary concerned.

(b) If the respondent is an enlisted Service member of a Reserve Component, the Board shall include at least one Reserve officer as a voting Service member. Additionally, all Board Service members will be commissioned officers if an "under other than honorable conditions" characterization from the Reserve Component is authorized to be issued. Voting Service members shall be senior to the respondent's reserve grade.

(c) The convening authority shall ensure that the opportunity to serve on Administrative Boards is given to women and minorities. The mere appointment or failure to appoint a Service member of such a group to the Board, however, does not provide a basis for challenging the proceeding.

(d) The respondent may challenge a voting Service member of the Board or the legal advisor, if any, for cause only.

(2) Presiding Officer. The president shall preside and rule finally on all matters of procedure and evidence, but the rulings of the president may be overruled by a majority of the Board. If appointed, the legal advisor shall rule finally on all matters of evidence and challenges except challenges to himself or herself.

(3) Witnesses

(a) The respondent may request the attendance of witnesses in accordance with the implementing instructions of the Military Department concerned.

(b) In accordance with such instructions, the respondent may submit a written request for temporary duty or invitational travel orders for witnesses. Such a request shall contain the following matter:

1. A synopsis of the testimony that the witness is expected to give.
2. An explanation of the relevance of such testimony to the issues of separation or characterization.
3. An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

(c) 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:

1. The testimony of a witness is not cumulative;
2. The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;
3. Written or recorded testimony will not adequately accomplish the same objective;
4. The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and
5. The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness; the timing of the request for production of the witness; the potential delay in the proceeding that may be caused by producing the witness; or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(d) 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.

(e) The hearing shall 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:

1. When the presiding officer determines that the personal testimony of the witness is not required;
2. When the commanding officer of a military witness determines that military necessity precluded the witness' attendance at the hearing; or
3. When a civilian witness declines to attend the hearing.

(f) Subparagraph 3.e.(3) of this enclosure does not authorize a Federal employee to decline to appear as a witness if directed to do so in accordance with applicable procedures of the employing agency.

(4) Record of Proceedings. In cases where the Board recommends separation, the record of the proceedings shall be kept in summarized form unless a verbatim record is required by the Secretary concerned. In cases where the Board recommends retention, a record of the proceedings is optional unless required by the Secretary concerned. However, a summarized or verbatim record shall be prepared in any case where the board recommends retention and the separation authority elects to forward the matter to the Secretary concerned under subparagraph 3.f.(4)(b)2. of this enclosure. The Board reporter shall retain all materials necessary to prepare a transcript should the separation authority elect to forward the case to the Secretary. In all cases, the findings and recommendations of the Board shall be in verbatim form.

(5) Presentation of Evidence. The rules of evidence for courts-martial and other judicial proceedings are not applicable before an Administrative Board. Reasonable restriction shall be observed, however, concerning relevancy and competency of evidence.

(6) Rights of the Respondent

(a) The respondent may testify in his or her own behalf, subject to the provisions of Article 31(a) of Reference (o).

(b) At any time during the proceedings, the respondent or counsel may submit written or recorded matter for consideration by the Board.

(c) The respondent or counsel may call witnesses in his or her behalf.

(d) The respondent or counsel may question any witness who appears before the Board.

(e) The respondent or counsel may present argument prior to the Board convening in closed session for deliberation on findings and recommendations.

(7) Findings and Recommendations

(a) The Board shall determine its findings and recommendations in closed sessions. Only voting Service members of the board shall be present.

(b) The Board shall determine whether each allegation in the notice of proposed separation is supported by a preponderance of the evidence. If more than one reason was contained in the notice, there shall be a separate determination for each reason.

(c) The Board shall make recommendations on the following:

1. Retention or Separation. The Board shall recommend retention or separation under the guidance in paragraph 1 of Enclosure 4.

2. Suspension of Separation. If the Board recommends separation, it may recommend that the separation be suspended in accordance with paragraph 2 of Enclosure 4, but the recommendation of the Board as to suspension is not binding on the separation authority.

3. Characterization of Service or Description of Separation. If separation or suspended separation is recommended, the Board shall recommend a characterization of service, or description of separation, as authorized in Enclosure 3 in accordance with the guidance in paragraph 3 of Enclosure 4.

4. Transfer to the Ready Reserve. Except when the Board has recommended separation on the basis of homosexual conduct or has recommended characterization of service under other than honorable conditions, the Secretary concerned may authorize the Board to make a recommendation as to whether the respondent should be retained in the Ready Reserve as a mobilization asset to fulfill the respondent's total military obligation. This option applies to cases involving separation from active duty or from the Selected Reserve. Paragraph 5 of this enclosure is applicable if the action is approved.

f. Separation Authority

(1) The separation authority for actions initiated under the Administrative Board procedure shall be a general courts-martial convening authority or higher authority. The Secretary concerned also may authorize a commanding officer in grade O-7 or above with a judge advocate or legal advisor available to his command to act as a separation authority in specified circumstances. When an Administrative Board recommends characterization of service as honorable or general (under honorable conditions), the separation authority may be exercised by an officer designated under subparagraph 2.d. of this enclosure. When the case has been initiated under the notification procedure and the hearing is a result of a request under

subparagraph 2.a.(7) of this enclosure, the separation authority shall be as designated in subparagraph 2.d. of this enclosure.

(2) In every case in which characterization of Service under other than honorable conditions is recommended, the record of the Board's proceedings will be reviewed by a judge advocate or civilian attorney employed by the Military Department prior to action by the separation authority. Such review is not required when another characterization is recommended unless the respondent identifies specific legal issues for consideration by the separation authority.

(3) The respondent will be provided with a copy of the Board's statement of facts and recommendations.

(4) The separation authority shall take action in accordance with this subparagraph, the requirements in Enclosure 3 with respect to the reason for separation, and the guidance in Enclosure 4 on separation and characterization.

(a) If the separation authority approves the recommendations of the Board on the issue of separation or characterization (or both), this constitutes approval of the board's findings and recommendations under subparagraph 3.e.(7) of this enclosure unless the separation authority expressly modifies such findings or recommendations.

(b) If the Board recommends retention, the separation authority may take one of the following actions:

1. Approve the recommendation.

2. Forward the matter to the Secretary concerned with a recommendation for separation based upon the circumstances of the case. In such a case, the Secretary may direct retention or separation. If the Secretary approves separation, the characterization of service or description of separation will be honorable, general (under honorable conditions), or an entry-level separation under the guidance in paragraph 3 of Enclosure 4.

(c) If the Board recommends separation, the separation authority may:

1. Approve the Board's recommendation;

2. Approve the Board's recommendations, but modify the recommendations by when appropriate to approve the separation but suspend execution as provided in paragraph 2 of Enclosure 4; change the character of service or description of separation to a more favorable characterization or description; or change the Board's recommendation, if any, concerning transfer to the IRR.

3. Disapprove the Board's recommendation and retain the respondent.

4. If the separation authority approves the Board's findings and recommendations in whole or in part with respect to more than one reason under Enclosure 3, the separation authority shall designate the most appropriate basis as the primary reason for reporting purposes.

5. If the separation authority finds legal prejudice to a substantial right of the respondent or determines that the findings of the Board have been obtained by fraud or collusion, the case may be referred to a new board. No Service member of the new board shall have served on a prior board that considered the case. The separation authority may not approve findings and recommendations less favorable to the respondent than those rendered by the previous board unless the separation authority finds that fraud or collusion in the previous board is attributable to the respondent or an individual acting on the respondent's behalf.

4. ADDITIONAL PROVISIONS CONCERNING SERVICE MEMBERS CONFINED BY CIVIL AUTHORITIES

a. If proceedings under this enclosure have been initiated against a respondent confined by civil authorities, the case may be processed in the absence of the respondent. Subparagraph 3.a. of this enclosure is not applicable except insofar as such rights can be exercised by counsel on behalf of the respondent.

b. The following requirements apply:

(1) The notice shall contain the matter set forth in subparagraph 2.a or 3.a. of this enclosure (notice in the Administrative Board procedure), as appropriate. The notice shall be delivered personally to the respondent or sent by registered mail or certified mail, return receipt requested (or by an equivalent form of notice if such service is not available for delivery by U.S. mail at an address outside the United States). If the Service member refuses to acknowledge receipt of notice, the individual who mails the notification shall prepare a sworn affidavit of Service by mail (see Reference (n)), which will be inserted in the Service member's personnel file together with PS Form 3800.

(2) If delivered personally, receipt shall be acknowledged in writing by the respondent. If the respondent does not acknowledge receipt, the notice shall be sent by mail as provided in subparagraph 4.b.(1) of this enclosure.

(3) The notice shall 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 respondent the opportunity to exercise the rights set forth in the notice. If respondent does not reply by such date, the separation authority shall take appropriate action under subparagraph 2.d. of this enclosure.

(4) The name and address of the military counsel for appointed consultation shall be specified in the notice.

(5) If the case involves entitlement to an Administrative Board, the respondent shall be notified that the board will proceed in the respondent's absence and that the case may be presented on respondent's behalf by counsel for the respondent.

5. ADDITIONAL REQUIREMENTS FOR CERTAIN SERVICE MEMBERS OF RESERVE COMPONENTS

a. Service Members of Reserve Components not on Active Duty

(1) If proceedings have been initiated against a Service member of a Reserve Component not on active duty, the case may be processed in the absence of the Service member in the following circumstances:

(a) At the request of the Service member;

(b) If the Service member does not respond to the notice of proceedings on or before the suspense date provided therein; or

(c) If the Service member fails to appear at a hearing as provided in subparagraph 3.a.(12) of this enclosure.

(2) The notice shall contain the matter set forth in subparagraphs 2.a. or 3.a. of this enclosure, as appropriate.

(3) If the action involves a transfer to the IRR under circumstances in which the procedures in this enclosure are applicable, the Service member will be notified that the character of service upon transfer to the IRR will also constitute the character of service upon discharge at the completion of the military service obligation unless specified conditions established by the Secretary concerned are met.

b. Transfer to the IRR. Upon transfer to the IRR, the Service member will be notified of the following:

(1) The character of service upon transfer from active duty or the Selected Reserve to the IRR, and that the character of service upon completion of the military service obligation will be the same unless specified conditions established by the Secretary concerned are met.

(2) The date upon which the military service obligation will expire.

(3) The date by which the Service member must submit evidence of satisfactory completion of the specified conditions.

c. Notification of Admin Board. If the Service member submits evidence of completion of the specified conditions but the Military Department proposes to issue a discharge other than an

honorable discharge, the notification procedure shall be used. An Administrative Board is not required at this point notwithstanding the Service member's years of service.

d. Service Expiration. If the Service member does not submit such information on or before the date specified in the notice, no further proceedings are required. The character of discharge at the completion of the military service obligation shall be the same as the character of service upon transfer from the Selected Reserve to the IRR.

e. Notice to Member. The following requirements apply to the notices required by subparagraphs 5.a. and 5.b. of this enclosure.

(1) Reasonable effort should be made to furnish copies of the notice to the Service member through personal contact by a representative of the command. In such a case, a written acknowledgment of the notice shall be obtained.

(2) If the Service member cannot be contacted or refuses to acknowledge receipt of the notice, the notice shall be sent by registered or certified mail, return receipt requested (or by an equivalent form of notice if such service by U.S. mail is not available for delivery at an address outside the United States) to the most recent address furnished by the Service member as an address for receipt or forwarding of official mail. The individual who mails the notification shall prepare a sworn affidavit of Service by mail (see Reference (n)), which will be inserted in the Service member's personnel file together with PS Form 3800.

6. ADDITIONAL REQUIREMENTS FOR SERVICE MEMBERS BEYOND MILITARY CONTROL BY REASON OF UNAUTHORIZED ABSENCE

a. Determination of Applicability. If the general courts-martial convening authority or higher authority determine that separation is otherwise appropriate under this Instruction, a Service member 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) When prosecution of a Service member who is absent without authority appears to be barred by the statute of limitations, Article 43, section 843 of Reference (e).

(3) When a Service member who is an alien is absent without leave and appears to have gone to a foreign country where the United States has no authority to apprehend the Service member under a treaty or other agreement.

b. Notice. Prior to execution of the separation under subparagraphs 6.a.(2) or 6.a.(3) of this enclosure, the Service member will be notified of the imminent action by registered mail or certified mail, return receipt requested (or by an equivalent form of notice if such service by U.S. mail is not available for delivery at an address outside the United States) to the Service member's

last known address or to the next of kin under regulations prescribed by the Military Department concerned. The notice shall contain the matter set forth in subparagraphs 2.a. or 3.a. of this enclosure, as appropriate, and shall specify that the action has been suspended until a specific date (not less than 30 days from the date of mailing) in order to give the respondent the opportunity to return to military control. If the respondent does not return to military control by such date, the separation authority shall take appropriate action under subparagraph 2.d. of this enclosure.

c. Service Members of Reserve Components. See section 12685 of Reference (e) with respect to limitations on separation of Service members of Reserve Components.

ENCLOSURE 7

PROCEDURES FOR EARLY RELEASE OF MILITARY ENLISTED PERSONNEL FOR COLLEGE OR VOCATIONAL/TECHNICAL SCHOOL ENROLLMENT

1. RESPONSIBILITY

a. The Military Services may permit enlisted personnel to further their education at a college, university, or vocational/technical school by approving a discharge or release from active service prior to expiration of obligated service. This provides encouragement and support to enlisted personnel who seek to further their education resulting in more useful and productive citizens transitioning from the military service back to the civilian workforce.

b. The provisions of this enclosure cover all military enlisted personnel with the exception of:

(1) Reservists ordered to active duty for training as provided in section 511(d) of Reference (e) and reservists ordered to active duty due to unsatisfactory participation in reserve assignment, as provided in section 12303 of Reference (e).

(2) Aliens seeking to qualify for citizenship by completion of 3 years active duty military service unless they are to be transferred to inactive duty in a Reserve Component, as provided in DoDI 5500.14 (Reference (u)).

2. PROCEDURES

a. General

(1) Implementation of this enclosure should apply to applicants who meet the following criteria (see paragraph 2.b.(1) of this enclosure) under the following circumstances:

(a) Enlisted personnel (including aliens transferred to inactive duty in a Reserve Component as outlined in Reference (u)) who would be unduly penalized in the pursuit of their education if required to remain in service until expiration of their term of enlistment or induction, may be released early subject to meeting all of the criteria shown in paragraph 2.b. of this enclosure.

(b) Separation date will be at the convenience of the Government, but will normally not be later than 10 days prior to the class starting date and in no event will be earlier than 30 days prior to such starting date.

(2) Prior to separation, personnel being separated under this Instruction will be counseled in accordance with DoDI 1332.36 (Reference (v)).

b. Criteria

(1) If the provisions of this enclosure are implemented by a Military Department, the following criteria should be used in making determinations governing the early release of enlisted personnel:

(a) In general, personnel who will have a Reserve Component obligation upon separation will not be released under this program until they have completed a minimum of 21 months active duty on their current term of obligated service.

(b) The individual's service is not critical to the mission of the assigned organization.

(c) The latest acceptable registration date of school is within the last 3 months of remaining service.

(d) Applicants must:

1. Furnish documentary evidence when applying for separation to attend institutions of higher education, that they have been accepted for enrollment commencing with a specific school term, in a recognized institution of higher education, in a full-time resident course of instruction, leading to an associate, baccalaureate, or higher degree. A recognized institution is one that:

a. Is listed in the Education Directory for Post-secondary Education published yearly by the National Center for Education Statistics, Department of Education, (available through Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402) or

b. Has been determined by the United States Office of Education to be eligible for such listing.

2. Present documentary evidence when applying for separation to attend a vocational/technical school that they have been accepted for enrollment commencing with a specific school term, in a full-time resident course of instruction of substantial duration (no less than 3 months), at a recognized vocational or technical school. A recognized school is one that is approved by the cognizant State Board for Vocational Education, or is accredited by a nationally recognized accrediting agency or association listed by the U. S. Commissioner of Education.

(e) The applicant must demonstrate his or her ability and willingness to make the required payment of an entrance fee, if any, if he or she has not already done so.

(f) Clearly establish that the specific school term for which he or she seeks release is academically the most opportune time to begin or resume education and that delay of enrollment until normal expiration of service would cause undue handicap.

(2) The Secretaries of the Military Departments may approve applications not fully meeting the criteria established in subparagraph 2.b. of this enclosure in exceptional cases.

GLOSSARY

bisexual. A person who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual and heterosexual acts.

commander. A commissioned or warrant officer who, by virtue of rank and assignment, exercises primary command authority over a military organization or prescribed territorial area that, under pertinent official directives, is recognized as a “command.”

convening authority

The separation authority; or

A commanding officer who has been authorized by the Secretary concerned to process a case except for final action and who otherwise has the qualifications to act as a separation authority.

discharge. Complete severance from all military status gained through enlistment or induction.

entry-level status. Upon enlistment, a Service member qualifies for entry-level status during:

The first 180 days of continuous active military service; or

The first 180 days of continuous active service after a service break of more than 92 days of active service. A Service member of a Reserve Component who is not on active duty or who is serving under a call or order to active duty for 180 days or less begins entry-level status upon enlistment in a Reserve Component. Entry-level status for such a Service member of a Reserve Component terminates as follows:

One hundred eighty days after beginning training if the Service member is ordered to active duty for training for one continuous period of 180 days or more; or

Ninety days after the beginning of the second period of active duty training if the Service member is ordered to active duty for training under a program that splits the training into two or more separate periods of active duty. For the purposes of characterization of service or description of separation, the Service member’s status is determined by the date of notification as to the initiation of separation proceedings.

homosexual. A person, regardless of sex, who engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts.

A “homosexual act” means any bodily contact, actively undertaken or passively permitted, between a Service member and another person of the same sex for the purpose of satisfying sexual desires and any bodily contact (for example, hand-holding or kissing, in most circumstances) that a reasonable person would understand to demonstrate a propensity or intent to engage in such an act.

A “statement that a Service member is a homosexual or bisexual, or words to that effect,” means language or behavior that a reasonable person would believe was intended to convey the statement that a person engages in, attempts to engage in, or has a propensity or intent to engage in homosexual acts. This may include statements such as “I am a homosexual,” “I am gay,” “I am a lesbian,” “I have a homosexual orientation,” and the like.

A “homosexual marriage or attempted marriage” is when a Service member has married or attempted to marry a person known to be of the same biological sex.

"Propensity to engage in homosexual acts" means more than an abstract preference or desire to engage in homosexual acts; it indicates a likelihood that a person engages in or will engage in homosexual acts.

homosexual conduct. A homosexual act, a statement by the Service member that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage.

Service member. An enlisted or officer Service member of a Military Service.

military record. An individual’s overall performance while a Service member of a Military Service, including personal conduct and performance of duty.

release from active duty. Termination of active duty status and transfer or reversion to a Reserve Component not on active duty, including transfer to the IRR.

respondent. A Service member who has been notified that action has been initiated to separate the Service member.

separation. A general term that includes discharge, release from active duty, release from custody and control of the Armed Forces, transfer to the IRR, and similar changes in Active or Reserve status.

separation authority. An official authorized by the Secretary concerned to take final action with respect to a specified type of separation.

sexual orientation. An abstract sexual preference for persons of a particular sex, as distinct from a propensity or intent to engage in sexual acts.