

Army Regulation 635-200

Personnel Separations

Enlisted Personnel

**Headquarters
Department of the Army
Washington, DC
26 June 1996**

Unclassified

SUMMARY of CHANGE

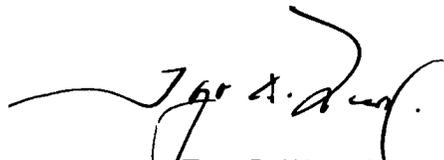
AR 635-200

Enlisted Personnel

Effective 26 July 1996

Personnel Separations

Enlisted Personnel



Togo D. West, Jr.
Secretary of the Army

History. This publication was originally printed on 17 September 1990. It was authenticated by Carl E. Vuono, Chief of Staff, and Milton H. Hamilton, Administrative Assistant to the Secretary of the Army. This electronic edition publishes the basic 1990 edition and incorporates Changes 1 through 15. Change 15 was printed on 26 June 1996

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Summary. This (write-in) change implements new separation policy changes as announced by the Office of the Deputy Chief of Staff for Personnel. It continues in force and consolidates changes announced in Interim Change I03. This change, also includes necessary minor administrative and editorial changes.

Applicability. (See para 1-6.)

Proponent and exception authority. The proponent of this regulation is the Deputy Chief of Staff for Personnel. The proponent has the authority to approve exceptions to this regulation that are consistent with controlling law and regulation. Proponents may delegate the approval authority, in writing, to a division chief under their supervision within the proponent agency who holds the grade of colonel or the civilian equivalent.

Army management control process. This regulation contains management control provisions in accordance with AR 11-2, but does not contain checklists for conducting

management control reviews used to accomplish assessment of management controls.

Supplementation. Supplementation of this regulation and establishment of command or local forms are prohibited without prior approval from HQDA (TAPC-PDT-S), ALEX VA 22331-0479.

Interim changes. Interim changes to this regulation are not official unless they are authenticated by the Administrative Assistant to the Secretary of the Army. Users will destroy interim changes on their expiration dates unless sooner superseded or rescinded.

Suggested Improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) directly to HQDA (TAPC-PDT-S), ALEXANDRIA VA 22332-0478.

Distribution. Distribution of this publication is made in accordance with the requirements on DA Form 12-09-E, block number 2565, intended for command level A for Active Army, Army National Guard, and U.S. Army Reserve.

Contents (Listed by paragraph and page number)

Chapter 1

General Provisions, page 1

Section I

General, page 1

Purpose and scope • 1-1, page 1

References • 1-2, page 1

Explanation of abbreviations and terms • 1-3, page 1

User guidance • 1-4, page 1

Statutory authority • 1-5, page 3

Applicability • 1-6, page 3

Processing goals • 1-7, page 3

Separation Action Control Sheet (DA Form 5138-R) • 1-8, page 3

Suspension of favorable personnel action • 1-9, page 3

Forwarding fingerprints to the Federal Bureau of Investigation (FBI) • 1-10, page 3

Leave in conjunction with separation • 1-11, page 3

Separation orders • 1-12, page 3

Separation of soldiers with access to Special Intelligence, other compartmented information, or sensitive programs • 1-13, page 3

Reduction in grade • 1-14, page 4

Disposition of proceedings/records • 1-15, page 4

Section II

Guidelines on Separation, page 4

Scope • 1-16, page 4

Guidance • 1-17, page 4

Counseling and rehabilitative requirements • 1-18, page 5

Restrictions on administrative separation and board hearings

• 1-19, page 5

Suspension of execution of approved separation • 1-20, page 6

Section III

Authority to Order and Accomplish Separation, page 6

Authority to order separation prior to expiration of term of service

• 1-21, page 6

Action by commanders having separation authority • 1-22, page 7

Section IV

Separation After Expiration of Term of Service/Period of Active Duty/Active Duty Training, page 7

Time lost to be made good • 1-23, page 7

When investigation is initiated with view to trial by court-martial or soldier is awaiting trial or result of trial • 1-24, page 8

En route to United States or to territory of origin • 1-25, page 8

*This change supersedes Interim Change I02, 11 June 1993 and Interim Change I03, 30 November 1994.

Contents—Continued

Medical/dental care required or sick in hospital when period of service expires • 1–26, *page 8*
Indebtedness • 1–27, *page 9*
Retention for miscellaneous reasons • 1–28, *page 9*
Retained in service while subject to criminal jurisdiction of foreign courts but not physically confined by such courts • 1–29, *page 9*

Section V

Separation Prior to Expiration of Term of Service, *page 10*
Discharge or release from active duty prior to expiration of term of service • 1–30, *page 10*
Not used • 1–30.1, *page 10*

Section VI

Effective Date of Discharge, *page 10*
Effective date of discharge • 1–31, *page 10*
Mentally incompetent • 1–32, *page 10*
When retained in service awaiting trial or result of trial • 1–33, *page 10*

Section VII

Medical Processing, *page 11*
Separation medical examinations • 1–34, *page 11*
Disposition through medical channels • 1–35, *page 11*

Section VIII

Mobilization Asset Transfer Program, *page 11*
Policy • 1–36, *page 11*
Purpose • 1–37, *page 12*
Character/description of service • 1–38, *page 12*

Section IX

Naturalized Personnel Separated Under Other Than Honorable Conditions, *page 12*
General • 1–39, *page 12*
Revocation of citizenship • 1–40, *page 12*
Notification to Immigration and Naturalization Service • 1–41, *page 12*

Section X

Separation of Soldiers in Foreign Countries, *page 12*
General • 1–42, *page 12*
Separation in foreign countries • 1–43, *page 12*
Soldiers confined pursuant to the sentence of a foreign court • 1–44, *page 12*
Soldiers under investigation by foreign authorities or sentence by foreign court but not confined pursuant to that sentence • 1–45, *page 13*
Separation of soldiers sentenced by foreign courts • 1–46, *page 13*
Personnel eligible for return from overseas for separation or release from active duty • 1–47, *page 13*

Section XI

Bars to Reenlistment, *page 13*
General • 1–48, *page 13*
Separation initiation and processing of locally imposed bars • 1–49, *page 13*

Chapter 2

Procedures for Separation, *page 13*

Section I

Scope, *page 13*
Application • 2–1, *page 13*

2–1.1Section II

Notification Procedure, *page 13*
Notice • 2–2, *page 13*

Sample Certificate of Nonavailability • , *page 14*
Action by separation authority • 2–3, *page 14*

Section III

Administrative Board Procedure, *page 14*
Notice • 2–4, *page 14*
Waiver • 2–5, *page 15*
Separation authority action after board hearings • 2–6, *page 16*
Composition of board • 2–7, *page 17*
Effective processing procedures • 2–8, *page 17*
Witnesses • 2–9, *page 17*
Board procedures • 2–10, *page 18*
Evidence • 2–11, *page 18*
Findings and recommendations of the board • 2–12, *page 19*

Section IV

Additional Provisions Concerning Absent Soldiers, *page 19*
Processing in absence of soldier • 2–13, *page 19*
Civil confinement • 2–14, *page 19*
Additional requirements for soldiers beyond military control by reason of unauthorized absence • 2–15, *page 19*
Exceptional circumstances • 2–16, *page 20*

Chapter 3

Character of Service/Description of Separation, *page 20*

Section I

Separation Certificates, *page 20*
Statutory authority • 3–1, *page 20*
Discharge certificates • 3–2, *page 20*
Certificate of Release or Discharge from Active Duty (DD Form 214) • 3–3, *page 20*

Section II

Types of Characterization or Description, *page 20*
Types authorized • 3–4, *page 20*

3–4.1Section III

Characterization of Service, *page 20*
General considerations • 3–5, *page 20*
Separation as it affects the soldier • 3–6, *page 21*
Types of administrative discharges/character of service • 3–7, *page 21*
Limitations on characterization • 3–8, *page 22*
Uncharacterized separations • 3–9, *page 22*

Section IV

Dishonorable and Bad Conduct Discharge, *page 23*
Dishonorable Discharge • 3–10, *page 23*
Bad Conduct Discharge • 3–11, *page 23*
Soldiers confined in foreign penal institutions • 3–12, *page 23*
Expulsion from the Army • 3–13, *page 23*
Reason and authority for discharge • 3–14, *page 23*
Discharge in absentia • 3–15, *page 23*

Section V

Travel and Form of Separation Certificates, *page 23*
Travel allowance • 3–16, *page 23*
Form of separation certificate to be given • 3–17, *page 23*

Chapter 4

Separation for Expiration of Service Obligation, *page 23*

Policy • 4–1, *page 23*
Discharge or release from active duty upon termination of enlistment, and other periods of active duty or active duty for training • 4–2, *page 23*
Counseling required for certain retirement-eligible personnel • 4–3, *page 24*
Characterization of service • 4–4, *page 25*

Contents—Continued

Separation authority • 4–5, *page 25*

Chapter 5

Separation for Convenience of the Government, *page 25*

Section I

General, page 25

Characterization of service or description of separation • 5–1, *page 25*

Exclusion from applicability • 5–2, *page 25*

Section II

Secretarial Authority, page 25

Secretarial Plenary Authority • 5–3, *page 25*

Section III

General • 5–4, page 25

Definitions • 5–5, page 25

Procedures • 5–6, page 26

Characterization of service or description of separation • 5–7, *page 26*

Section IV

Other Convenience of the Government Separation Policies, page 26

Involuntary separation due to parenthood • 5–8, *page 26*

Lack of jurisdiction • 5–9, *page 26*

Discharge of aliens not lawfully admitted to the United States • 5–10, *page 26*

Separation of personnel who did not meet procurement medical fitness standards • 5–11, *page 26*

Discharge for failure after enlistment to qualify medically for flight training • 5–12, *page 27*

Separation because of personality disorder • 5–13, *page 27*

Concealment of arrest record • 5–14, *page 27*

Rescinded • 5–15, *page 28*

Early release of Reserve Component personnel serving AGR tours under 10 U.S.C. 672(d). • 5–16, *page 28*

Early separation to further education • 5–17, *page 28*

Other designated physical or mental conditions • 5–18, *page 28*

Chapter 6

Separation Because of Dependency or Hardship, *page 28*

General • 6–1, page 28

Separation authority • 6–2, page 28

Criteria • 6–3, page 29

Application of criteria • 6–4, page 29

Conditions affecting determination regarding separation for dependency or hardship • 6–5, page 29

Application for separation • 6–6, page 29

Evidence required • 6–7, page 30

Procedure • 6–8, page 30

Service of American Red Cross • 6–9, page 31

Type of separation • 6–10, page 31

Characterization or description of service • 6–11, page 31

Chapter 7

Defective Enlistments /Reenlistments and Extensions, *page 31*

Section I

General, page 31

General • 7–1, page 31

Separation authority • 7–2, page 31

Section II

Minority, page 31

Statutory authorities • 7–3, page 31

Criteria • 7–4, page 31

Evidence required • 7–5, page 32

Procedure • 7–6, page 32

Minors under charges or in confinement • 7–7, page 32

Indebtedness or confinement by civil authorities • 7–8, page 32

Void service • 7–9, page 32

Minors stationed in area other than area in which enlisted • 7–10, page 32

Pay and allowances • 7–11, page 32

ARNGUS and USAR personnel • 7–12, page 32

Type of separation • 7–13, page 33

Entitlement • 7–14, page 33

Section III

Erroneous Enlistments, Reenlistments, or Extensions, page 33

Erroneous enlistments, reenlistments, or extensions • 7–15, page 33

7–15.1Section IV

Defective or Unfulfilled Enlistment or Reenlistment Agreements, page 33

Defective or unfulfilled enlistment or reenlistment agreements • 7–16, page 33

17–16.1Section V

Fraudulent Entry, page 34

Incident of fraudulent entry • 7–17, page 34

Authority • 7–18, page 35

Trial by court-martial • 7–19, page 35

Responsibilities • 7–20, page 36

Unit commander's report • 7–21, page 36

Action by separation authority prior to board proceedings • 7–22, page 36

Type of discharge • 7–23, page 36

Preparation of DD Form 214 when service is voided • 7–24, page 37

Chapter 8

Separation of Enlisted Women—Pregnancy, *page 37*

Section I

General, page 37

Policy • 8–1, page 37

Separation authority • 8–2, page 37

Characterization or description of service • 8–3, page 37

Type of separation • 8–4, page 37

Responsibility of the unit commander • 8–5, page 37

Medical examination and diagnosis • 8–6, page 37

Line of duty determination • 8–7, page 37

Conditions affecting separation for pregnancy • 8–8, page 37

Section II

Pregnancy Counseling, page 37

General • 8–9, page 37

Statement of counseling • 8–10, page 38

Chapter 9

Alcohol or Other Drug Abuse Rehabilitation Failure, *page 38*

Scope • 9–1, page 38

Basis for separation • 9–2, page 38

Procedures • 9–3, page 38

Characterization of service or description of separation • 9–4, page 38

Separation authority • 9–5, page 38

Authority for separation • 9–6, page 38

Confidentiality and release of records • 9–7, page 38

Contents—Continued

Chapter 10

Discharge in Lieu of Trial by Court-Martial, page 38

- General • 10-1, page 38
- Personal decision • 10-2, page 39
- Preparation and forwarding • 10-3, page 39
- Consideration of request • 10-4, page 39
- Withdrawal of request for discharge • 10-5, page 39
- Medical examination and mental status evaluation • 10-6, page 39
- Discharge authority • 10-7, page 40
- Types of discharge, characterization of service • 10-8, page 40
- Forwarding fingerprints to the FBI • 10-9, page 40
- Disposition of supporting documentation • 10-10, page 40

Chapter 11

Entry Level Performance and Conduct, page 40

- General • 11-1, page 40
- Basis for separation • 11-2, page 40
- Separation policy • 11-3, page 40
- Counseling and rehabilitation requirements • 11-4, page 40
- Separation authority • 11-5, page 40
- Type of separation • 11-6, page 40
- Procedures • 11-7, page 40
- Description of service • 11-8, page 40

Chapter 12

Retirement for Length of Service, page 40

Section I

- GENERAL, page 40*
- Purpose • 12-1, page 41
- Retirement approval authority • 12-2, page 41

Section II

- Statutory Authority, page 41*
- General provisions of laws governing retirement • 12-3, page 41
- Twenty-year retirement law (10 USC 3914) • 12-4, page 41
- Thirty-year retirement law (10 USC 3917) • 12-5, page 41
- Advancement on the retired list (10 USC 3964) • 12-6, page 41

Section III

- Requirements and Procedures, page 42*
- Eligibility • 12-7, page 42
- Service obligations • 12-8, page 42
- Retirement in lieu of PCS • 12-9, page 42
- Retirement of Command Sergeant Major (CSM), Command Sergeant Major (Designate) (CSM(D)), and Sergeant Major (SGM), Master Sergeant (P)(MSG)(P), and First Sergeant (P) (1SG(P)) • 12-10, page 43
- Waivers • 12-11, page 43
- Applying for retirement • 12-12, page 43
- Preparation of DA Form 2339 • 12-13, page 43
- Responsibility of retirement approval authority • 12-14, page 44
- Request for withdrawal of application or change in retirement date • 12-15, page 44
- Grade title on retired list of former command sergeants major • 12-16, page 45
- Grade title on retired list of former first sergeants • 12-17, page 45
- Retirement orders • 12-18, page 45
- Date of retirement • 12-19, page 45
- Place of retirement • 12-20, page 45
- Certificates • 12-21, page 45
- Career recognition • 12-22, page 46
- Rescinded • 12-23, page 46
- Disposition of retirement papers • 12-24, page 46
- References • 12-25, page 46

Section IV

- Computation of Service, page 46*
- Service creditable for retirement • 12-26, page 46
- Periods not creditable for retirement • 12-27, page 47
- Verification of service • 12-28, page 47

Section V

- Medical Examination, page 47*
- General • 12-29, page 47
- Hospitalization/Physical Evaluation Board proceedings • 12-30, page 47
- Reports of medical examination • 12-31, page 47

Chapter 13

Separation for Unsatisfactory Performance, page 47

Section I

- General, page 47*
- Policy • 13-1, page 47
- Criteria • 13-2, page 47
- Separation authority • 13-3, page 48
- Counseling and rehabilitation requirements • 13-4, page 48

Section II

- Procedures, page 48*
- Action by unit commander when soldier is under military control • 13-5, page 48
- Rescinded. • 13-6, page 48
- Commanding officer's report • 13-7, page 48
- Action by intermediate commander • 13-8, page 48
- Action by the separation authority • 13-9, page 48
- Separation authority action after board hearings • 13-10, page 48
- Characterization of service • 13-11, page 48
- Type of separation • 13-12, page 48
- Reentry into Army • 13-13, page 48

Chapter 14

Separation for Misconduct, page 48

Section I

- General Provisions, page 48*
- General • 14-1, page 49
- Policy • 14-2, page 49
- Characterization of service or description of separation • 14-3, page 49
- Authority for discharge or retention • 14-4, page 49

Section II

- Conviction by Civil Court, page 49*
- Conditions which subject soldier to discharge and reduction in grade • 14-5, page 49
- Appeals • 14-6, page 49
- Retention action • 14-7, page 50
- Action following disposition by domestic courts • 14-8, page 50
- Procedure for civil court cases in foreign countries • 14-9, page 50
- Pay and allowances • 14-10, page 50
- Detainers and strength accountabilities • 14-11, page 50

Section III

- Acts or Patterns of Misconduct, page 51*
- Conditions which subject soldiers to discharge • 14-12, page 51
- Procedures • 14-13, page 51
- Separation authority • 14-14, page 51
- Commanding officer's report • 14-15, page 51
- Action by intermediate commanders • 14-16, page 51
- Action by the separation authority • 14-17, page 51

Contents—Continued

Chapter 15

Discharge for Homosexual Conduct, page 51

Section I

Policy, page 51

General Policy • 15-1, page 51

Discharge Policy • 15-2, page 51

Criteria for discharge • 15-3, page 52

Characterization of descriptive of service • 15-4, page 52

Separation authority • 15-5, page 52

Section II

Procedures, page 52

Action by unit or immediate commander • 15-6, page 52

Action by intermediate commanders • 15-7, page 52

Action by separation authority • 15-8, page 52

Administrative separation board • 15-9, page 53

Separation authority action after board hearings • 15-10, page 53

Assignment action for personnel enroute to an oversea area
• 15-11, page 53

Chapter 16

Selected Changes in Service Obligations, page 53

Order to active duty as a commissioned or warrant officer or in a
USAR enlisted status • 16-1, page 53

Discharge for acceptance into a program leading to a commission
or warrant officer appointment • 16-2, page 53

Discharge for the purpose of immediate enlistment or reenlistment
• 16-3, page 54

Discharge of soldiers of Reserve Components on active duty
• 16-4, page 54

Voluntary separation of soldiers denied reenlistment • 16-5,
page 54

Oversea returnees • 16-6, page 54

Early separation due to disqualification for duty in MOS • 16-7,
page 54

Early separation due to reduction in force, strength limitations, or
budgetary constraints • 16-8, page 55

Early release of Reserve Component personnel ordered to IADT
• 16-9, page 55

Separation of soldiers of medical holding detachments/companies
• 16-10, page 55

Separation of personnel assigned to installations or units scheduled
for inactivation or permanent change of station • 16-11,
page 55

Holiday Early Transition Program • 16-12, page 55

Chapter 17

Instruction in Benefits of an Honorable Discharge, page 56

Purpose of instruction • 17-1, page 56

Presentation of instruction • 17-2, page 56

Contents of instruction • 17-3, page 56

Time of instruction • 17-4, page 56

Recording • 17-5, page 56

Chapter 18

Failure to Meet Body Fat Standards, page 69

Policy • 18-1, page 69

Procedures • 18-2, page 69

Appendixes

A. References, page 71

B. Sample Report of Proceedings of Board of Officers*, page 73

C. Addresses of the State Adjutants General, page 79

Table List

Table 1-1: User guidance, page 1

Table 3-1: Types of Discharge Certificates, page 20

Table 8-1: Pregnancy counseling checklist, page 66

Figure List

Figure 1-1: Sample affidavit, page 9

Figure 1-1:, page 14

Figure 2-2: Format for notification of separation when the
notification procedure is used, page 58

Figure 2-3: Request for conditional waiver, page 59

Figure 2-4: Format for notification of separation when the
administrative board procedure is used, page 61

Figure 2-5: Receipt of notification of separation/acknowledgment/
election of rights, page 61

Figure 2-5: Receipt of notification of separation/acknowledgment/
election of rights—Continued, page 62

Figure 2-6: Commanding officer's report to the separation
authority, page 63

Figure 2-6: Commanding officer's report to the separation
authority—Continued, page 64

Figure 5-1: Request for discharge, page 65

Figure 5-2: Request to remain on active duty, page 65

Figure 8-1: Pregnancy counseling checklist, page 66

Figure 8-2: Statement of counseling, page 67

Figure 10-1: Request for discharge for the good of the service,
page 69

Figure 12-1: Announcement of retirement, page 69

Figure B-1: Sample Report of Proceedings of Board of Officers,
page 74

Figure B-2: , page 75

Figure B-3: , page 76

Figure B-4: , page 77

Glossary

Index

RESERVED

Chapter 1 General Provisions

Section I General

1–1. Purpose and scope

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

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

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

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

(3) Achieve authorized force levels and grade distribution.

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

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

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

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

(3) The Army makes a substantial investment in training, time, equipment, and related expenses when persons enter into military service. Separation prior to completion of an obligated period of service is wasteful because it results in loss of this investment and generates a requirement for increased accessions. Consequently, attrition is an issue of significant concern at all levels of responsibility within the Army. Reasonable efforts should be made to identify soldiers who exhibit a likelihood for early separation and to improve their chances for retention through counseling, retraining, and rehabilitation prior to initiation of separation proceedings. Soldiers who do not conform to required standards of discipline and performance and soldiers who do not demonstrate potential for further military service should be separated in order to avoid the high costs in terms of pay, administrative efforts, degradation of morale, and substandard mission performance.

d. This regulation provides—

(1) The authority for separation of soldiers upon expiration of term of service (ETS).

(2) The authority and general provisions governing the separation of soldiers before ETS to meet the needs of the Service and its soldiers.

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

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

1–2. References

Required and related publications are listed in appendix A.

1–3. Explanation of abbreviations and terms

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

1–4. User guidance

The information shown below identifies specific subject areas and locations within this regulation. This information is not intended to be all inclusive or to be regarded as absolute authority.

Table 1–1 User guidance

Subject Area: Administrative Board Procedures

Guidance: soldier must be notified in writing in pending action, possible types of discharge, rights, and available courses of action.

Location: Paragraphs 2–4 to 2–12

Subject Area: Alcohol/Drug Abuse

Guidance: See “Rehabilitation Failure” and “Separation for Misconduct.”

Location: Chapter 9 and paragraph 14–12c

Subject Area: Authority to Separate

Guidance: Dependent upon individual case, may be—

a. Commander in the grade of lieutenant colonel with legal counsel, or

b. SPCMCA, or

c. General officer, or

d. General Court–Martial Authority.

Location: Paragraph 1–21

Subject Area: Convenience of the Government

Guidance: See “Separation for the Convenience of the Government.”

Subject Area: Counseling Requirements

Guidance: soldier must be counseled for many separation reasons to warn of possible separation action. Must be told of possible types of discharge and their effects.

Location: Paragraph 1–18

Subject Area: Bars to Reenlistment

Guidance: Not the basis for separation, but mandates initiation of separation actions, per AR 601–280, chapters 6 or 10.

Location: Chapter 1, section XI

Subject Area: Defective Enlistment's and Induction's

Guidance: Includes—

a. Minority.

b. Erroneous enlistment/reenlistment/extension. (See this topic below.)

c. Fraudulent entry. (See this topic below.)

d. Unfulfilled/defective enlistment or reenlistment contracts. (See this topic below.)

Location: Chapter 7

Subject Area: Defective/Unfulfilled Enlistment/Reenlistment

Guidance: Defective means soldier was qualified for enlistment/reenlistment, but not for specific option—no fraud involved. Unfulfilled means soldier was qualified for enlistment and option, but Army cannot fulfill.

Subject Area: Defective/Unfulfilled Enlistment/Reenlistment

Guidance: soldier must request action within 30 days of the time the defect or unfulfillment is noted, or from the time when it should reasonably have been noted.

Location: Paragraph 7–16

Subject Area: Dependency or Hardship

Guidance: May include parenthood and/or sole parents. Considered as being for the convenience of the Government. Soldier may withdraw application for separation. Supporting evidence required. Also see “Parenthood” and “Separation for the Convenience of the Government.”

Location: Chapter 6

Subject Area: Discharge for the Good of the Service

Guidance: Not the same as for the convenience of the Government. Soldier sentenced to Bad Conduct Discharge or Dishonorable Discharge may request. Soldier will not be coerced to request this discharge. Withdrawal of approved request must be with approval of General Court–Martial Authority.

Location: Chapter 10

Table 1-1**User guidance—Continued**

Subject Area: Disposition of Records and Proceedings**Guidance:** Put in soldier records in accordance with AR 640-10.**Location:** Paragraph 1-15

Subject Area: Drug Abuse**Guidance:** See “Rehabilitation Failure” and “Separation for Misconduct.”**Location:** Chapter 9 and paragraph 14-12 c

Subject Area: Erroneous Enlistment, Reenlistment, or Extension**Guidance:** Defined as one that would not have happened if all relevant facts had been known or if applicable regulations had been followed. Cannot be a result of fraud.**Location:** Paragraph 7-15

Subject Area: Fraudulent Entry**Guidance:** Occurs when soldier knowingly conceals facts which would have made him or her ineligible for enlistment/reenlistment or the specific option.**Location:** Paragraphs 7-17 to 7-22

Subject Area: Homosexual Conduct**Guidance:** See “Separation for Homosexual conduct.”**Subject Area:** Homosexual Conduct**Guidance:** Homosexual conduct is grounds for separation from the Army.**Subject Area:** Indebtedness**Guidance:** soldier will not be kept past ETS to pay debts to individuals or the Government.**Location:** Paragraph 1-27

Subject Area: Leave in Conjunction with Separation**Guidance:** Leave will be granted in accordance with AR 630-5.**Location:** Paragraph 1-11

Subject Area: Misconduct**Guidance:** See “Separation for Misconduct.”**Subject Area:** Notification Procedure**Guidance:** soldier must be notified in writing of pending action, types of possible discharge and the effects, rights and available courses of action.**Location:** Paragraphs 2-2 and 2-3

Subject Area: Parenthood**Guidance:** soldier must be counseled. Soldier must be notified of pending separation. (See “Notification Procedure.”)**Location:** Paragraph 5-8

Subject Area: Pregnancy**Guidance:** Commander must counsel pregnant soldier. Soldier must sign statement of counseling. Soldier may withdraw request for separation.**Location:** Chapter 8

Subject Area: Processing Time Limits**Guidance:** If board action is not required, maximum time is 15 days. If board action is required, maximum time is 50 days. Separation Action Control sheet must be used.**Location:** Paragraphs 1-7 and 1-8

Subject Area: Rehabilitation**Guidance:** Normally, must be attempted prior to separation action. Some rehabilitation actions can be waived.**Location:** Paragraph 1-18

Subject Area: Rehabilitation Failure**Guidance:** To separate for alcohol or drug abuse rehabilitation failure, soldier must be in ADAPCP. Commander can declare as rehabilitative failure. Soldier must be notified of proposed action (see “Notification Procedure”).**Location:** Chapter 9

Subject Area: Retention Past ETS**Guidance:**

- a. May be for—
 - (1) Time lost to be made good.
 - (2) Investigation.
-

Table 1-1**User guidance—Continued**

- (3) Awaiting/undergoing trial.

- (4) Medical care.

- (5) Miscellaneous reasons.

- (6) soldier under jurisdiction of a foreign court.

- b. May not be for indebtedness.

Location: Paragraphs 1-23 to 1-29

Subject Area: Retirement**Guidance:** soldier must complete minimum of 20 years of active Federal service. Some must complete specific service remaining obligations. (Some waivers allowed.) For Retirement in lieu of PCS— Must have 19½ years of active service at time of application. —Request cannot be withdrawn once approved. —Request for change of date is not normally allowed.**Location:** Chapter 12

Subject Area: Separation Action Control Sheet**Guidance:** See “Processing Time Limits.”**Subject Area:** Separation Authority**Guidance:** See “Authority to Separate.”**Subject Area:** Separation for the Convenience of the Government**Guidance:** Includes—

- a. Sole surviving son/daughter. (See separate heading on this topic.)
- b. Parenthood. (See separate heading on this topic.)
- c. Unlawful aliens.
- d. Did not meet medical fitness standards.
- e. Personality disorders.
- f. Concealment of arrest record.

Location: Chapter 5

Subject Area: Separation for Convenience of the Government**Guidance:**

- g. Dependency or hardship.

Location: Chapter 6

Subject Area: Separation for Convenience of the Government**Guidance:**

- h. Pregnancy. (See separate heading on this topic.)

Location: Chapter 8

Subject Area: Separation for Homosexual Conduct**Guidance:** Homosexuals, bisexuals, or persons with such tendencies will not be retained in the service.**Location:** Chapter 15

Subject Area: Separation for Misconduct**Guidance:** Will not be used in lieu of disciplinary action. Will be used if rehabilitation efforts are unsuccessful or inappropriate. soldier must be counseled and rehabilitation attempted if possible. Misconduct may include conviction by a civilian court.**Location:** Chapter 14

Subject Area: Separation for Unsatisfactory Performance**Guidance:** Will not be used if soldier is in entry level status. (See Trainee Discharge Program.) Will be used if commander does not feel the soldier has potential for improvement. Soldier must be counseled and rehabilitation attempted if possible.**Location:** Chapter 13

Subject Area: Separation in a Foreign Country**Guidance:** Soldiers can usually be separated in a foreign country if the major Army oversea commander or the general court-martial convening authority if delegated to him or her approves, and if all necessary documents have been obtained. See special instructions for soldier under investigation by, or sentence of, a foreign court.**Location:** Paragraphs 1-42 to 1-47

Subject Area: Sole Surviving Family Members**Guidance:** Does not necessarily mean an “only child.” soldier must meet specific criteria. Not authorized in all cases even when specific criteria are met.**Location:** Paragraphs 5-4 to 5-7

Subject Area: Entry Level Status Performance and Conduct**Guidance:** Used for soldier who demonstrate unsatisfactory performance and/or conduct while in an entry level status. Commander must counsel soldier and take rehabilitative action if possible.

Table 1-1
User guidance—Continued

Location: Chapter 11

Subject Area: Unfulfilled Enlistment or Reenlistment

Guidance: See “Defective/Unfulfilled Enlistment/Reenlistment.”

Subject Area: Unsatisfactory Performance

Guidance: See “Separation for Unsatisfactory Performance.”

1-5. Statutory authority

Section 1169, title 10, United States Code (10 USC 1169), provides that no regular soldier of the Army may be discharged before his or her term expires except—

- a. As prescribed by the Secretary of the Army.
- b. By sentence of a general or special court-martial.
- c. As otherwise provided by law.

1-6. Applicability

a. This regulation applies to all enlisted soldiers serving on active duty in the Active Army, including Reserve of the Army soldiers serving on extended active duty (EAD). It also applies to Army National Guard of the United States (ARNGUS) and United States Army Reserve (USAR) soldiers serving on active duty under Title 10, US Code, which includes active duty for training (ADT), full-time active duty in the Active Guard Reserve (AGR) Program, active duty for special work (ADSW), temporary tours of active duty (TTAD), and order to active duty for contingency operations or under mobilization conditions. However, except for Chapter 10, this regulation does not apply to soldiers serving on annual training (AT). This regulation does not apply to ARNGUS soldiers serving on full-time National Guard Duty (FTNGD) under title 32, United States Code, or to ARNGUS or USAR soldiers who are not serving on active duty or ADT. Administrative separation of these soldiers is governed by AR 135-178 and/or NGR 600-200.

b. Chapter 12 governs the retirement of Regular Army, ARNGUS, and USAR soldiers who are retiring in their Army enlisted status.

c. All determinations requiring action by Commanding General, U.S. Total Army Personnel Agency, as set forth in this regulation, will be forwarded to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, unless otherwise specified.

d. This regulation has been reviewed by the Per Diem, Travel and Transportation Allowance Committee in accordance with Section III, DOD Directive 5154.13, dated 11 February 1980, as case PDC 1328-82.

1-7. Processing goals

Processing time for separations when the Notification Procedure is used normally will not exceed 15 working days. Processing time when the Administrative Board Procedure is used normally will not exceed 50 working days. Time will be measured from the date the soldier acknowledges receipt of the notification of the proposed separation to the date the separation authority directs separation. (See para 2-2 *h* and 2-4 *i* concerning the receipt of notification.) Shorter processing times are encouraged, particularly for cases in which prompt action is likely. Failure to process an administrative separation within these timeframes will not prevent separation or characterization.

1-8. Separation Action Control Sheet (DA Form 5138-R)

DA Form 5138-R (which is in the back of this volume and is authorized for local reproduction on 8 ½ x 11 inch paper) will be used to insure processing goals are met.

1-9. Suspension of favorable personnel action

When suspensions of favorable personnel action per AR 600-8-2 have been initiated solely because a soldier is being considered for separation under chapter 13, 14, or 15, and the soldier is to be

processed for separation for medical reasons (para 1-35), the soldier's immediate commander will expedite action to remove the suspension action. This will prevent delay in disposition of the case through medical channels.

1-10. Forwarding fingerprints to the Federal Bureau of Investigation (FBI) (Rescinded.)

1-11. Leave in conjunction with separation

Granting of leave in conjunction with separation will be per AR 630-5. Separation processing of these soldiers is prescribed in DA Pam 600-8-11, table 2-1-2.

1-12. Separation orders

a. The authority for separation (AR 635-200) will be included in directives or orders directing soldiers to report to the appropriate TP or TA for separation processing. See AR 310-10.

b. Except as provided in (1) and (2) below, ARNGUS personnel will be released from AD or ADT and returned to the control of the appropriate State National Guard; USAR personnel will be released from AD or ADT and returned to their appropriate USAR status.

(1) ARNGUS.

(a) An ARNGUS soldier who is being separated for any reason for which a Regular Army soldier would be discharged will be discharged from his or her Reserve of the Army status. The soldier will be returned to the appropriate State National Guard authorities for discharge from the ARNG. When a person is to be separated because of a void enlistment per paragraph 7-4 *a*, 7-9, 7-15 *e* or *f*, 7-18, or 7-22, an order will be issued releasing the individual from the custody and control of the Army (state specific reason). The order will return the individual to the appropriate State Adjutant General for disposition. The order will include the statement “This voids individual's enlistment as a Reserve of the Army.”

(b) When an ARNGUS Soldier is to be transferred to the IRR per section VIII, the soldier will be released from active duty. The soldier will be returned to the appropriate State Adjutant General for discharge from his or her State status and transferred to the IRR (appropriate USAR Control Group).

(c) The MPRJ, with a copy of the separation order and documentation of the separation action, will be sent expeditiously to the appropriate State Adjutant General for disposition. In addition, when the soldier is transferred to the IRR, a copy of the order will be sent to Commander, ARPERCEN, ATTN: DARP-PR, 9700 Page Blvd, St. Louis, MO 63132-5200.

(2) USAR.

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

(b) When a USAR soldier is to be transferred to the IRR per section VIII, the soldier will be released from active duty. The soldier will be transferred to the appropriate USAR Control Group to complete his or her military service obligation.

(c) If the soldier is being discharged or transferred to the IRR, the MPRJ, with a copy of the separation order and documentation of the separation action, will be sent expeditiously to Commander, ARPERCEN, ATTN: DARP-PR, 9700 Page Blvd, St. Louis, MO 63132-5200. In all cases, a copy of the separation order will be sent to the soldier's USAR unit of assignment.

1-13. Separation of soldiers with access to Special Intelligence, other compartmented information, or sensitive programs

When a soldier has had access to Sensitive Compartmented Information (SCI), Special Access Programs (SAP), Nuclear Weapon Personnel Reliability Program, Single Integrated Operation Program—Extremely Sensitive Information (SIOP-ESI), or assigned to Presidential Support Activities, and discharge under other than

honorable conditions is being considered, separation must be coordinated with the S2, G2, DSEC, Security Manager, prior to initiation of proposed discharge. The following information will be reported to the S2, G2, DSEC, Security Manager: Name, Grade, SSN, date and place of birth, length of service, and reason for proposed discharge.

1-14. Reduction in grade

When a soldier is to be discharged under other than honorable conditions, the separation authority will direct an immediate reduction to the lowest enlisted grade per AR 600-200, chapter 6, section IV.

1-15. Disposition of proceedings/records

a. When separation is ordered, the approved proceedings will be sent to the commander who has the soldier's records for separation processing per AR 635-10. The original copy of the proceedings will be filed in the permanent section of the soldier's MPRJ, per AR 640-10.

b. If the separation authority recommends involuntary separation of a soldier with 18 or more years of active Federal service, the proceedings, with complete documentation and the recommendation of the separation authority, will be sent to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, for final determination. (See para 1-21 *f* for exceptions.)

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

d. When the soldier is considered for discharge because of fraudulent entry and retention is directed, the retention constitutes a waiver of the fraudulent entry. The following statement will be entered in item 27, DA Form 2-1: (Personnel Qualification Record—Part II) “ Discharge action based on fraudulent entry is waived and retention is authorized on . . . (date) . . . ” The original copy of the approved document will be forwarded to the following authorities for inclusion in the soldier's official military personnel file (OMPF):

(1) For RA personnel—to the Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301.

(2) For ARNGUS personnel—to the appropriate State Adjutant General (see App. C for addresses).

(3) For USAR personnel—to Commander, US Army Reserve Personnel Center, St Louis, MO 63132-5200.

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

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

(2) If the soldier or his or her counsel does not want a copy of the board proceedings or, if a copy is not furnished, a notation will be made on the soldier's copy to accompany the original. Only the Commander, US Army Reserve Personnel Center, ATTN: DARP-PAT-R, St. Louis, MO 63132-5200, may release this copy thereafter.

f. When the separation authority approves a soldier's discharge from a Reserve commission or warrant, he or she will send a copy of the approved proceedings to the Commander, US Army Reserve Personnel Center, ATTN: DARP-PAT-R, St Louis, MO

63132-5200, for appropriate action (AR 135-175). Action prescribed in AR 135-175 will be taken after soldier's separation from an enlisted status.

g. When an ARNGUS trainee is released from ADT per chapters 4, 13, or 15, a copy of the approved proceedings will be sent to the State Adjutant General of the State concerned. (See app C.) However, all proceedings under chapter 9, and any proceedings under chapters 13 or 14 containing limited use evidence (para 3-8 *g*), will be disclosed per AR 600-85, chapter 6, section III, to the appropriate State Adjutant General only if that officer is also federally recognized.

h. When the soldier was the subject of DD Form 553 (Deserter/Absentee Wanted by the Armed Forces), insure that a report of return to military control has been sent to the Commander, US Army Deserter Information Point (USADIP), Fort Benjamin Harrison, IN 46249-5301.

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

Section II Guidelines on Separation

1-16. Scope

This general guidance will be considered when initiating separation action.

1-17. Guidance

a. There is a substantial investment in the training of persons enlisted or inducted into the Army. Reasonable efforts at rehabilitation should be made before starting separation proceedings.

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

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

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

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

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

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

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

(5) The soldier's rehabilitative potential.

(6) The soldier's entire military record. This includes—

(*a*) Past contributions to the Army, 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 court-martial, and records of involvement with civilian authorities.

(*c*) Any other matter deemed relevant by the board or the separation authority. This may include specialized training, duties, and

experience of persons entrusted by this regulation with making recommendations or decisions on separation or retention.

(d) Adverse information from a prior enlistment or period of military service only when such information would have a direct and strong probative value in determining whether separation is appropriate. This would include records of nonjudicial punishment and convictions by court-martial. Such information ordinarily will be used only in those cases involving conduct repeated over an extended time or in cases resulting from a HQDA Bar to Reenlistment. In unusual situations, conduct from a prior enlistment, that does not constitute a pattern of conduct that is manifested over an extended period of time, may be considered in determining whether retention or separation is warranted. An example is where a single incident of misconduct occurring in the prior period of service, by itself, warrants separation and the officials in the soldier's chain of command neither knew, nor reasonably should have known, of the conduct at the time the soldier reenlisted. Commanders who believe that the soldier's case represents an unusual situation within the meaning of this paragraph should request guidance from the Commanding General, ATTN: TAPC-PDT-S, ALEX VA 22331-0479. In cases resulting from selection for a HQDA Bar to Reenlistment, under the Qualitative Management Program, all documents cited by the selection board may be considered without referral to HQ PERSCOM.

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

1-18. Counseling and rehabilitative requirements

a. *General.* Commanders will insure that adequate counseling and rehabilitative measures have been taken before initiating action to separate a soldier for one of the following reasons. Reassignments made in rehabilitation attempts normally will not use permanent change of station of military Army (PCS-MPA), funds (see para c(3) below for exceptions).

- (1) Involuntary separation due to parenthood (para 5-8).
- (2) Personality disorder (para 5-13).
- (3) Entry level performance and conduct (chap 11).
- (4) Unsatisfactory performance (chap 13).
- (5) Minor disciplinary infractions or a pattern of misconduct (para 14-12 a and b).
- (6) Other designated physical or mental conditions (para 5-18).

b. *Counseling.* When a soldier's conduct or performance approaches the point where a continuation of such conduct or performance would warrant initiation of separation action for one of the reasons in a above, he or she will be counseled by a responsible person about his or her deficiencies at least once before initiating separation action. Before initiating separation action there must be evidence that the soldier's deficiencies have continued after the initial formal counseling.

(1) Additional formal counseling is discretionary. Such factors as the length of time since the prior counseling, the soldier's conduct and performance during that period, and the commander's assessment of the soldier's potential for becoming a fully satisfactory soldier, should be considered in determining whether further counseling is necessary. The soldier's counseling or personnel records must establish that the soldier was afforded a reasonable opportunity to overcome the deficiencies.

(2) This counseling will be conducted per paragraph 17-3. It will be comprehensive and will include at least the following:

- (a) Reason for counseling.
- (b) That separation action may be initiated if the behavior continues.
- (c) The type of discharge that could result from the possible separation action and the effect of each type.

(3) Each counseling session required by this paragraph must be recorded in writing. DA Form 4856 (General Counseling Form) normally should be used for this purpose.

c. *Rehabilitation.* At least one of the following measures will be

taken prior to initiation of separation action for one of the reasons established in a (3) through (5) above:

(1) *Replacement stream personnel.* Soldiers will be recycled (reassigned between training companies or, where this is not feasible, between training platoons) at least once.

(2) *Other than replacement stream personnel.* Soldiers will be reassigned at least once, with at least 2 months of duty in each unit. Reassignment should be between at least battalion-size units. This requirement does not prevent reassignment between brigade or larger units when considered necessary by local commanders. If this is not possible because of the circumstances involved in a case, the procedures prescribed in (3) below will apply.

(3) *Permanent change of station transfer.* A permanent change of station may be considered necessary to provide a change in commanders, associates, and living or working conditions to rehabilitate a soldier. If so, the commander exercising general court-martial jurisdiction over the soldier may authorize such reassignment within the same command (or may request HQDA(TAPC-EP-appropriate branch), Alex VA 22331, to accomplish assignment to another command) provided—

(a) The soldier involved is in pay grade(with 2 years of service or less), of corporal or specialist, PFC, or PVT. Soldiers in grade of corporal or specialists with over 2 years of active service and all other personnel who are eligible because of grade and service for transportation of dependents and shipment of household goods are not eligible for reassignment per this paragraph.

(b) A transfer to another station would not be detrimental to the soldier or to the Army. (This includes cases involving indebtedness, soldiers enrolled in ADAPCP, soldiers undergoing special counseling or other rehabilitative type mental health treatment programs, or maladjusted or apathetic soldiers who could not be expected to respond to disciplinary controls or benefit from change of associates, regardless of assignment locale.)

d. *Waivers.* The requirement for a rehabilitative transfer may be waived by the separation authority at any time on or before the date the separation authority approves or disapproves the separation. Waiver authority may be withheld by a higher separation authority in a particular case, class of cases, or all cases. Action to withhold waiver authority will be in writing and will be valid until revoked in writing. Waiver must be based upon the determination of the separation authority that further duty of the soldier would—

- (1) Create serious disciplinary problems or a hazard to the military mission or to the soldier, or
- (2) Be inappropriate because the soldier is resisting rehabilitation attempts, or
- (3) Rehabilitation would not be in the best interests of the Army as it would not produce a quality soldier.

1-19. Restrictions on administrative separation and board hearings

a. Separation action for the reasons indicated in paragraph 1-18 a will not be started until a soldier has been counseled by a responsible person about his or her deficiencies and offered a reasonable opportunity to overcome them.

b. Separation per this regulation normally should not be based on conduct which has already been considered at an administrative or judicial proceeding and disposed of in a manner indicating that separation was not warranted. Accordingly, administrative separations under the provisions of chapters 11, 13, 14 and 15 and AR 604-10 are subject to the following restrictions. No soldier will be considered for administrative separation because of conduct that—

(1) Has been the subject of judicial proceedings resulting in an acquittal or action having the effect thereof. Only HQDA will decide that an action does not have the effect of an acquittal. The convening authority must submit a request for such a determination through command channels to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479.

(2) Has been the subject of a prior administrative board in which the board entered an approved finding that the evidence did not sustain the factual allegations concerning the conduct, except when

the conduct is the subject of a rehearing ordered on the basis of fraud or collusion, or

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

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

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

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

(4) Has been the subject of a judicial proceeding resulting in acquittal based on a finding of not guilty only by reason of lack of mental responsibility. Soldiers in this category will normally be separated utilizing Secretarial plenary authority (para 5-3), unless separation for disability is appropriate. (See AR 635-40.)

c. The provisions of *b* above do not preclude a soldier convicted by a court-martial whose sentence does not include a punitive discharge from being processed for administrative separation under chapters 13, 14, or 15 at any time after sentencing. Conduct that was the subject of such a court-martial may be considered in determining retention or separation and, if appropriate, characterization of service.

1-20. Suspension of execution of approved separation

a. A highly deserving soldier may be given a probation period to show successful rehabilitation before the soldier's enlistment or obligated service expires. The separation authority or higher authority may suspend (except fraudulent entry or homosexual conduct) execution of an approved separation for a period of full-time military duty not to exceed 6 months. (See chap 2.) When there are approved reasons for separation in addition to fraudulent entry, suspension may be authorized only when the added reason is not homosexual conduct and a waiver of the fraudulent entry is obtained. During the period of suspension, the soldier can show that he or she is able to behave properly under varying conditions. The soldier can also show that he or she can perform assigned duties efficiently.

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

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

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

(2) Withhold action in the case of a soldier who is absent without authority or in civilian confinement by delivery under UCMJ, Article 14, until after the soldier's return to military control. The period of probation ceases to run during absence without authority or while in civilian confinement. The provisions of either (1) above or (3) below will be complied with when the soldier returns to military control and before the period of probation expires.

(3) Advise the soldier in writing that vacation action is being considered and the reasons that warrant such consideration. The soldier will be given 3 duty days to consult with counsel and submit a written statement in his or her own behalf or decline to make any statement. The commander taking the action will consider any information the soldier submits. If the soldier identifies specific legal issues for consideration the separation authority will have the matter

reviewed by a soldier of the Judge Advocate General's Corps. The separation authority may either—

(a) Vacate suspension of the approved separation and execute separation, or

(b) Continue to suspend execution of the approved separation for the remainder of the probation period.

Section III

Authority to Order and Accomplish Separation

1-21. Authority to order separation prior to expiration of term of service

a. Except for conviction by a foreign court (paras 1-43 *a* and *d*, and 14-9 *a*) and the early release from active duty of Reserve Component personnel serving AGR tours under 10 U.S.C. 672(d) (para 5-16), commanders who are general court-martial convening authorities (GCMCA) and their superior commanders are authorized to order separation per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. (See para *l* below for delegation of authority to approve discharge in chap 10 AWOL offense cases. See also para 3-7 *c*(3).)

b. A general officer in command who has a judge advocate or legal advisor available is authorized to order the separation or release from AD or ADT of soldiers per this regulation. This includes the authority to convene administrative separation boards when required by this regulation. This general officer cannot order separation or release for lack of jurisdiction (para 5-9), separation in lieu of trial by court-martial (chap 10), per an approved court-martial sentence (chap 3, sec IV) .

c. Commanders who are special court-martial convening authorities are authorized to order the separation or release from AD or ADT under the following:

(1) Chapters 5 (except for lack of jurisdiction para 5-9), 6, 7 (except for the issuance of a discharge under other than honorable conditions based on fraudulent entry), 8, 9, 11, 13, and 16.

(2) Chapter 14 when—

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

(b) An administrative separation board recommends an Entry Level Separation or discharge with a General Discharge Certificate.

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

(3) Chapter 15 when—

(a) Discharge under other than honorable conditions is not warranted under paragraph 15-4 based on the facts known before convening an administrative separation board.

(b) An administrative separation board recommends Entry Level Separation or separation with an honorable or under honorable conditions characterization.

(4) This includes the authority to convene an administrative separation board when required by this regulation for actions either initiated under the notification procedure (chap 2, sec II) or based upon homosexual conduct in which a characterization of service under other than honorable conditions is not authorized under paragraph 15-4 based upon the facts known before convening an administrative separation board. A board convened by a special court-martial convening authority is *not* authorized to recommend discharge under other than honorable conditions. A special court-martial convening authority is *not* authorized to convene administrative separation boards in misconduct actions when a characterization of service under other than honorable conditions is contemplated because such actions must be initiated under the administrative board procedure (chap 2, sec III).

(5) Chapter 10 when authority to approve requests for discharge has been delegated per paragraph 1-21 *l*. This authority is limited to cases in which the soldier—

(a) Has been AWOL for more than 30 days, and
(b) Has been dropped from the rolls of his or her unit as absent in desertion, and
(c) Has been returned to military control, and
(d) Currently is at the personnel control facility (PCF), and
(e) Is charged only with AWOL for more than 30 days. It does not include cases involving any other charged offense, including desertion. This special court-martial convening authority cannot disapprove a request for discharge for the good of the service. The request for discharge must be approved prior to trial (the initial Article 39(a) session for general and special courts-martial, the initial convening of a summary court-martial). A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this paragraph.

d. The following commanders who have a judge advocate or legal advisor available are authorized to order separation from AD or ADT under chapters 8, 11 and 16; and under chapter 18 and chapters 9 and 13 in those cases in which the notification procedures (chap 2, sec II) are used. This includes all paragraph 5-15 and chapters 9 and 13 cases which are not processed by the administrative board procedure (chap 2, sec III).

(1) Commanders in the grade of lieutenant colonel, or above, and

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

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

f. Any soldier who has completed 18 or more years of active Federal service will not be involuntarily discharged or released from active duty without approval of HQDA (TAPC-PDT-SS), except when discharge is under chapter 3 (sec IV). Requests for voluntary separation (e.g., those submitted under chapters 6, 10 or 16) need not be referred to HQDA for approval.

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

h. Unit commanders are authorized to order discharge for immediate enlistment and reenlistment (see para 16-3) under the provisions of AR 601-280.

i. The authority to approve or disapprove requests for voluntary retirement is granted to:

(1) Commanders of all units, installations, and Army Medical Centers which are commanded by or are under the normal command of a general officer, excluding division engineers within the US Army Corps of Engineers.

(2) Commanders of personnel centers, training centers, oversea replacement depots, transportation terminal commands, and all Active Army installations having an authorized strength of 4,000 or more.

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

k. Commanders of Recruiting Battalions (RBNs) in grade of lieutenant colonel or higher are authorized to void enlistments under chapter 7, paragraph 7-15 e.

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

(1) Has been AWOL for more than 30 days, and

(2) Has been dropped from the rolls of his or her unit as absent in desertion, and

(3) Has been returned to military control, and

(4) Currently is at the PCF, and

(5) Is charged only with AWOL for more than 30 days. It does not include cases involving any other charged offense, including desertion. The request for discharge must be approved prior to trial (the initial Article 39 (a) session for general or special courts-martial, the initial convening of a summary court-martial). Authority to disapprove separations for the good of the service (chap 10) remains at the GCMCA or higher authority and may not be delegated. All delegations must be in writing and will be valid until revoked in writing. A copy of the delegation of authority will be made a part of the permanent record of each chapter 10 discharge approved under this authority.

1-22. Action by commanders having separation authority

a. Commanders having separation authority directing separation or release from active duty of a soldier will comply with AR 635-10.

b. Recoupment of the unearned portion of an enlistment or reenlistment bonus is required by law (37 USC 308) when a soldier is separated voluntarily or because of misconduct. In implementation of the law, paragraph 10933, DODPM, contains specific separation reasons for which bonus recoupment is required. Semiannual by name reports reflecting the Army's success at actual recoupment are required by Congress. Individual commanders must screen actions to ascertain recoupment requirements and then counsel soldiers about their repayment responsibilities.

c. Counseling concerning earned education benefits is required by law (10 USC 1046). For voluntary separations under the provisions of chapters 5, (sec II-III) and 8, paragraphs 16-2 and 16-5, and other provisions of chapter 16 that involve separation as an exception to policy more than 90 days before ETS, separation authorities will take an active role in this counseling process as follows—

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

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

Section IV

Separation After Expiration of Term of Service/Period of Active Duty/Active Duty Training

1-23. Time lost to be made good

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

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

(1) Desertion.

(2) Absence without proper authority.

(3) Confinement under sentence.

(4) Confinement while awaiting trial or disposition of soldier's case, if trial results in conviction.

(5) Intemperate use of drugs or alcohol (AR 600-85, para 4-22).

(6) Disease or injury, the result of soldier's misconduct.

b. Time lost during an enlistment period will be made good at the end of the enlistment period. When an enlistment is extended by law, time lost will be made good at the end of the extension. This requirement may be waived by HQDA. Recommendations for waiver of time lost will be submitted to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, when the separation authority considers that because of unusual circumstances, waiver of time lost is in the best interest of the soldier and the Government.

c. Reserve component personnel ordered to IADT will make up time lost. However, commanding officers of training installations can waive this requirement if the soldier has completed the required training and the commander determines that it would not be in the best interest of the service to retain the soldier on active duty for training to make good time lost. Commanding officers of training installations are authorized to indorse the orders extending the initial period of ADT for reservists who must make good the time lost during IADT. One copy of the indorsement will be furnished the State adjutant general or the commander that issued the original ADT orders and the soldier's unit commander.

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

1-24. When investigation is initiated with view to trial by court-martial or soldier is awaiting trial or result of trial

a. A soldier may be retained after his or her term of service has expired when—

(1) An investigation of his or her conduct has been started with a view of trial by court-martial.

(2) Charges have been preferred.

(3) The soldier has been apprehended, arrested, confined, or otherwise restricted by the appropriate military authority. However, if charges have not been preferred, the soldier will not be retained more than 30 days beyond the ETS unless the general court-martial convening authority approves. (See para 1-33.)

b. A soldier who is awaiting trial or result of trial by court-martial when he or she would otherwise be eligible for discharge or release from AD, will not be discharged or released until final disposition of the court-martial charges. For effective date of discharge, see section VI. Soldiers under sentence to an unsuspended dishonorable or bad conduct discharge will not be discharged before appellate review is completed, unless so directed by HQDA. If the soldier is absent without leave at the time appellate review is completed, the punitive discharge may still be carried out. This paragraph does not apply to soldiers processed for discharge under the provisions of chapter 10.

1-25. En route to United States or to territory of origin

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

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

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

1-26. Medical/dental care required or sick in hospital when period of service expires

a. A soldier may only be considered for retention past the set release date when—

(1) Continued health care is required (must be in hospitalized status but not necessarily occupying a bed), and/or

(2) Physical disability processing is required or has been initiated. The request for retention will be submitted per *d* below. Soldiers determined medically fit for retention or separation will not be retained past set release date.

b. A soldier being retired for maximum length of service or maximum age will not be retained on active duty unless his or her medical condition indicates referral of the case to a physical evaluation board. When retention is required, the hospital commander will notify HQDA (TAPC-PDT-S) and request the soldier's retirement orders be rescinded. The request will include the medical diagnosis

and expected date of case referral to the physical evaluation board for processing.

c. No soldier will be retained beyond his or her scheduled release date without written consent. (See affidavit below.) This consent must be signed by the soldier. If the soldier is mentally incompetent or otherwise unable to sign, the next-of-kin or legal representative will be requested to sign for the soldier. The consent affidavit will be filed in the soldier's Military Personnel Records Jacket, US Army (DA Form 201). The soldier retained under this paragraph is subject to favorable or adverse personnel action including actions per this regulation. However, if the soldier later demands discharge, he or she cannot be retained on active duty for the sole purpose of taking such administrative action. An officer authorized by law to administer oaths under the UCMJ, Article 36, will swear the soldier (insuring that the soldier personally appears before the officer), and tell the soldier the following:

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

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

Note. Exception—if the soldier is unable to sign and the next-of-kin or legal representative cannot be located or will not indicate whether or not the soldier will be retained, the soldier will be retained. The hospital commander will notify the nearest military commander exercising GCM authority for Regular Army soldiers, the appropriate State adjutant general for ARNGUS (AGR) personnel, and Commander, ARPERCEN, ATTN: DARP-ARE, 9700 Page Blvd., St Louis, MO 63132-5200 for USAR(AGR) soldiers. The hospital commander will supply full details of the case including actions taken to secure consent for retention.

d. The medical facility commander will—

(1) Send requests for retention, indorsed by the soldier's unit commander, to the nearest military commander exercising general court-martial (GCM) convening authority for the following personnel:

(a) Regular Army personnel.

(b) ARNGUS and USAR personnel on IADT or AGR tours. Retention of ARNGUS personnel must be coordinated with the appropriate State adjutant general.

(2) Include in the request the following information:

(a) Soldier's name, rank, and SSN.

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

(c) Scheduled release date.

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

(e) Medical reason for retention.

(f) Medical recommendation (approval or disapproval).

(3) **(Rescinded.)**

Note. Retention requires approval by the GCM commander. The GCM commander may delegate this authority to other officials on his or her staff. All delegations will be in writing, and will be valid until revoked in writing. Every action taken according to such a delegation will state that it is taken "pursuant to authority delegated by _____ dated _____." A copy of the retention action on Regular Army personnel will be sent to Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249, for filing in the OMPF. A copy of the retention action for ARNGUS personnel will be sent to the appropriate State adjutant general (app C). A copy of the retention action for USAR (AGR) personnel will be sent to Commander, ARPERCEN, ATTN: DARP-FS, 9700 Page Blvd., St. Louis, MO 63132, and for USAR (IADT) personnel to Commander, ARPERCEN, ATTN: DARP-ZSG, 9700 Page Blvd., St. Louis, MO 63132.

e. Retention under this paragraph will not provide a means of completing 18 years of service and, thereby, qualify for retention to 20 years of service and retirement eligibility.

f. Soldiers will be advised concerning the advantages of remaining on active duty (DA Pam 608-2). The soldiers will be furnished the following list of retention advantages:

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

- (a) Medical care and/or hospitalization provided.
 - (b) Receipt of normal benefits such as pay and allowances, to include exchange and commissary privileges.
 - (c) Eligibility for dependent medical care if soldier is on AD or ADT under orders that do not specify a period of 30 days or less.
 - (d) State income tax benefit where allowed by the laws of the States concerned.
- (2) Advantages, if processed and found eligible for disability separation, are shown below.
- (a) If permanently retired, the soldier may choose the retired pay most favorable to him or her computed per Army regulations, or

- under law by which he or she is eligible for retired pay. If temporarily retired, the same selection of pay is authorized, but the minimum pay will not be less than 50 percent of basic pay while temporarily retired.
- (b) If retired, a former soldier and his or her authorized dependents would be eligible for certain medical care. This care is dependent on facilities and staffing availability at Uniformed Service facilities and certain medical care in civilian facilities. (See AR 40-3 and AR 40-121.)
- (c) If discharged for disability, soldier will be entitled to severance pay.
- (d) To the extent retired pay is based on the percent of disability involved, such pay is excluded in computing gross income reportable for taxation.

**WITH THE ARMY OF THE UNITED STATES, SS
AFFIDAVIT**

At . . .

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

“ I, . . . have been fully advised by the undersigned officer of the rights and advantages that may accrue to me by voluntarily remaining on active duty in the Army beyond the scheduled date of my release for the purpose of completing hospital care and/or physical disability evaluation under the provisions of chapter 61, Title 10, USC, and have been further fully advised that if I elect to be discharged or released from active duty as scheduled I will not, after such discharge or release from active duty, be eligible for separation or retirement for physical disability. Wherefore, in consideration of the above, I (do)(do not) desire retention on active duty in the Army beyond the scheduled date of expiration of my term of service.”

(Signature of soldier)

*(Grade and organization of
official administering oath)*

(Signature of official administering oath)

Figure 1-1. Sample affidavit

1-27. Indebtedness

a. A soldier who is eligible for discharge or release from active duty will not be retained—

- (1) To satisfy a debt to the US Government or to an individual.
- (2) To obtain remission or cancellation of debt to the Government. The Secretary of the Army is authorized to remit or cancel only that part of a soldier’s debt that is unpaid before or at the time of the honorable discharge, retirement, or release from active duty.

b. A request for remission or cancellation of indebtedness will be acted on before the date the soldier is eligible for discharge, retirement, or release. (See AR 600-4 and AR 37-104-3.)

1-28. Retention for miscellaneous reasons

Retention beyond a soldier’s ETS to process administrative separation proceedings pursuant to this regulation is not authorized. If it is desired to retain a soldier beyond the ETS for a reason, other than those covered by paragraphs 1-23 through 1-26, request for approval of such action must be submitted as follows.

- a. HQDA (TAPC-PDT-SS), Alexandria, VA 22331-0479, for Regular Army personnel.
- b. The appropriate State adjutant general (app C) for ARNGUS (AGR) personnel.

c. Commander, ARPERCEN, ATTN: DARP-ARE, 9700 Page Blvd, St. Louis, MO 63132-5200, for USAR (AGR) personnel.

1-29. Retained in service while subject to criminal jurisdiction of foreign courts but not physically confined by such courts

Retention in service per this paragraph is intended to permit the Government to fulfill its obligations under current jurisdictional agreements with foreign governments.

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

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

(2) If the accused does not consent to retention, foreign officials will be offered the opportunity of accepting custody of the accused

in time to prevent his or her separation from the service as a soldier absent in the custody of civil authorities.

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

(1) For Regular Army personnel, to Commander US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249.

(2) For ARNGUS (AGR) personnel, to the appropriate State adjutant general (app C).

(3) For USAR (AGR) personnel to Commander, ARPERCEN, ATTN: DARP-ARE, 9700 Page Blvd, St. Louis, MO 63132-5200.

REQUEST FOR RETENTION IN SERVICE

I, (Name, Grade, SSN, Organization), am being subjected to the exercise of criminal jurisdiction of the Government of ... I am presently:

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

... Undergoing trial in a court of the foreign government.

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

I request that I be retained in the service beyond ..., the expiration date of my term of service, until final disposition of the charges against me by the foreign government and completion of administrative action to accomplish my separation from the Army. I have been informed that if my case results in civil conviction, I will be processed for separation under the provisions of AR 635-200, chapter 14, section II, and my service may be characterized as under other than honorable conditions.

I have been advised of my rights under Article 31, UCMJ. I have also been informed that, since I am subject to the UCMJ, it is possible that court-martial charges may be preferred against me if the foreign government does not proceed with its case.

I certify that this request for retention in the service is not the result of coercion, force, or threat of harm, nor have I been promised any benefits by the military authorities of the United States.

Date

Signature of Soldier

Signature of Counseling Officer

c. If the provisions of *a* above cannot be complied with, the case, with full details, will be referred through channels to HQDA(TAPC-PDT-SS), ALEX VA 22331-0479, for instructions. Care will be exercised to insure that each case is submitted before the soldier's ETS.

d. When the foreign country concerned has determined to exercise criminal jurisdiction and it appears probable that the accused may not obtain a fair trial, the commander exercising general court-martial jurisdiction over the accused will follow the procedures in AR 27-50, paragraph 1-7 *a*(1).

Section V

Separation Prior to Expiration of Term of Service

1-30. Discharge or release from active duty prior to expiration of term of service

a. When separation is to be completed before ETS or the period for which ordered to AD or ADT, it will be completed per this regulation or other applicable regulations by the commanders specified in paragraph 1-21. Exceptions are indicated in *b* and *c* below.

b. When discharge or release from AD is to be completed before ETS or the period for which ordered to AD or ADT, time lost need not be made good. The exception is in cases where discharge or release for the convenience of the Government is to be completed per paragraphs 16-6, 16-7, 16-10 and 16-11. In these cases, the ETS of a soldier with time lost will be adjusted to include such lost time (adjusted ETS).

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

d. When the soldier is discharged per chapters 9, 10, 13, 14, or 15 of this regulation, the case file of the soldier will be reviewed by the commander having authority to approve discharge. The commander will decide whether the reporting requirements set forth in AR 190-10 apply. When such conditions exist in a soldier's case file, the report required by AR 190-10 will be submitted.

e. For discharge prior to ETS for immediate reenlistment, see paragraph 16-3.

1-30.1. Not used.

Section VI

Effective Date of Discharge

1-31. Effective date of discharge

a. The discharge of a soldier for the reasons listed in (1) and (2) below is effective at 2400 on the date of notice of discharge. The soldier will be so notified.

(1) Discharge because of ETS.

(2) Discharge to continue on active duty in the same or another status.

b. Release from active duty is effective at 2400 on the date of release when the soldier—

(1) Is transferred to the USAR to complete a reserve obligation.

(2) Is transferred to the temporary disability retired list per AR 635-40.

c. For a soldier who entered on active duty from a reserve component, who reverts to USAR or State ARNG control, release is effective at 2400 on the date of expiration of authorized travel time.

d. Discharge for all reasons other than those set forth in *a*, *b*, and *c* above is effective at 2400 on the date of notice of discharge to the soldier.

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

(1) Actual, as by delivery to the soldier of the discharge certificate.

(2) Constructive, when actual delivery of the discharge order cannot be accomplished owing to the absence of the soldiers to be discharged. Such a situation arises in the cases of soldiers on authorized leave and in those cases covered by paragraph 2-15. Receipt by the soldier's organization at their proper station of the order directing their discharge will be deemed sufficient notice. The soldier's organization will annotate the date of receipt and the reason actual notice was not given on the discharge order and on the back of the certificate. The annotated discharge certificate, discharge order, and copy of DD Form 214 (Certificate of Release or Discharge from Active Duty) reflecting effective date of discharge, will be sent to the soldier at the address provided for that purpose. The annotated discharge order and copy of DD Form 214, further reflecting date of mailing to the soldier, will be included in the personnel file. The personnel file will be sent to the Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249. If the documents mailed to the soldier are returned unclaimed or undeliverable, they will be destroyed.

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

1-32. Mentally incompetent

The effective date of discharge of a mentally incompetent soldier may be constructive, as when he or she has been placed in an institution. (See AR 635-40.)

1-33. When retained in service awaiting trial or result of trial

When soldiers are retained in service per paragraph 1-24, the effective date of his or her discharge or release depends upon the result of the trial or the disposition made of the case. Examples are given below.

a. A soldier who has no lost time to make good under 10 USC

972, who is confined awaiting trial will, if acquitted after ETS, be discharged or released from active duty within 5 days after date of announcement of acquittal. The soldier will be regarded as having been retained in service for the convenience of the Government.

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

c. A soldier who is retained per paragraph 1–24 with a view to trial by court-martial and court-martial charges are not brought or are disposed of without trial, will be separated within 5 days after the decision is made. The soldier will be regarded as having been retained in service for the convenience of the Government.

Section VII Medical Processing

1–34. Separation medical examinations

a. Medical examinations are required for soldiers being processed for separation under chapter 5 (paras 5–3 (involuntary separation only), 5–11, and 5–12 only); chapter 8, 9, 11 (para 11–3*b* only), 12, or 13; chapter 14 (section III only), 15 and 18; and for certain other soldiers as required by AR 40–501, paragraph 8–23 and table 8–3. Medical examinations incident to separation under other provisions of this regulation are not required, but will be administrated if requested in writing by the soldier, but separation will not be delayed until completion of the physical.

b. In addition to medical examinations, mental status evaluations conducted by a psychiatrist or licensed clinical psychologist are required for soldiers being processed for separation under chapter 13, 14 (sec III), or 15. A mental status evaluation is also required when a soldier being processed for discharge under chapter 10 requests a medical examination. The mental status evaluation will be documented in the soldier's medical records on Standard Form 600 (Health Record–Chronological Record of Medical Care.)

c. Detailed information about the reasons for considering a soldier for separation will be provided to attending medical personnel to permit thorough understanding of the contemplated action. Medical personnel will not be used in an investigative capacity to determine facts relative to a soldier's behavior.

d. Except as provided in *e* below, specific responsibilities and procedures for conducting medical examinations and mental status evaluations will be as prescribed in pertinent regulatory guidance issued by The Surgeon General.

e. Soldiers being considered for separation under paragraph 5–13 must be evaluated by a psychiatrist or licensed clinical psychologist. However, a complete medical examination is not required unless clinically indicated or requested by the soldier.

1–35. Disposition through medical channels

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

b. When the medical treatment facility (MTF) commander or attending medical officer determines that a soldier being processed for administrative separation under chapter 7 (sec V), 14, or 15, does not meet the medical fitness standards for retention (AR 40–501, chap 3), he or she will refer the soldier to a Medical Evaluation Board (MEB) in accordance with AR 40–3, chap 7. The administrative separation proceedings will continue, but final action by the separation authority will not be taken, pending the results of the MEB.

c. If the MEB findings indicate referral of the case to a physical evaluation board (PEB) for disability processing under the provisions of AR 635–40, the MTF commander will furnish copies of the approved MEB proceedings to the soldier's GCMA and unit commander. The GCMA may direct, in writing, that the soldier be

processed through the physical disability system when action under the UCMJ has not been initiated, and it has been determined that—

(1) The soldier's medical condition is the direct or substantial contributing cause of the conduct that led to the recommendation for administrative elimination or;

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

d. Disability processing is inappropriate if the conditions in paragraph *c*(1) and (2) do not apply, UCMJ action has been initiated, or the soldier has been medically diagnosed as drug dependent (para 14–12*c*(2)(*c*)). Accordingly, disability processing is inappropriate in separation actions under chapter 10.

e. The authority of the GCMA to determine whether a case is to be processed through medical disability channel, or under administrative separation provisions, will not be delegated.

f. The GCMCA's signed decision to process a soldier through the physical disability system will be transmitted to the MTF commander as authority for referral of the case to a PEB. Copies of the GCMA's decision will be furnished the unit commander and included in the administrative separation proceedings. The unit commander will suspend processing of the administrative separation action pending the conclusion of the PEB. If the soldier is found physically fit, the administrative separation action will be resumed. If the soldier is found physically unfit, the administrative separation action will be abated.

Section VIII Mobilization Asset Transfer Program

1–36. Policy

To retain potential mobilization assets, *only* those soldiers with *no potential* to meet mobilization requirements will be discharged. Soldiers separated because of alcohol or other drug abuse rehabilitation failure, misconduct or homosexual conduct, or with a characterization of service of under other than honorable conditions will not be transferred to the IRR. All other personnel who have not completed their statutory service obligation (10 USC 651) and who meet the criteria in *a* and *b* below will be transferred to the IRR.

a. Except as provided in *d* below, transfer to the IRR to complete a statutory service obligation *is mandatory* for soldiers who have completed initial entry training (IET) and have been awarded an MOS or one station unit training (OSUT) and are separated for one of the following reasons:

(1) Separation of personnel who did not meet procurement medical fitness standards but meet retention standards. (See para 5–11.)

(2) Sole surviving sons or daughters and surviving family members. (See para 5–4.)

(3) Involuntary separation due to parenthood. (See para 5–8.)

(4) Dependency. (See para 6–3 *a*.)

(5) Hardship. (See para 6–3 *b*.)

(6) Parenthod of married service women/sole parents. (See para 6–3 *b*(1) and (2).)

(7) Pregnancy. (See chap 8.)

(8) Failure to meet Army body fat standards. (See chap 18.)

(9) Oversea returnees. (See para 16–6.)

(10) Physical disqualification for duty in MOS. (See para 16–7.)

(11) Reduction in authorized strength. (See para 16–8.)

(12) Separation of soldiers of medical holding detachments/companies. (See para 16–10.)

(13) Separation of personnel assigned to installations or units scheduled for inactivation or permanent change of station. (See para 16–11.)

(14) Holiday early transition program. (See para 16–12.)

(15) Early separation to further education. (See para 5–17.)

(16) Other designated physical or mental conditions. (See para 5–18.)

b. Except as provided in *d* below, the following criteria apply to soldiers who have completed have completed IET and have been awarded an MOS and who are to be separated under one of the reasons cited in (1) or (2) below. Soldiers separated under (2) below

whose service will be characterized as honorable will be transferred to the IRR. Soldiers separated under (1) below with an uncharacterized description of service and (2) below whose service is characterized as under honorable conditions will be transferred to the IRR unless *they clearly have no potential for useful service under conditions of full mobilization*. Before making a “no potential” determination, the separation authority *must* give due consideration to all pertinent factors. This includes the positive motivation that a full mobilization may have on the soldier and the probable maturing effect of 2 or more years in age. The fact that the soldier is being separated from active duty for one of these reasons is not sufficient basis, by itself, for a “no potential” determination.

(1) Entry level performance and conduct (chap 11).

(2) Unsatisfactory performance (chap 13).

c. The criteria in *a* and *b* above also apply to those ARNGUS and USAR soldiers who are separated while serving under a contractual obligation only, as distinct from a 6-year or 8-year statutory obligation.

d. RA soldiers who have completed their statutory service obligation, or who have less than 3 months of such obligation remaining, will be discharged. ARNGUS and USAR. Soldiers who have less than 3 months to serve on their statutory or contractual obligation, whichever expires later, will be discharged.

1–37. Purpose

The purpose of this policy is to retain in the IRR all soldiers who have *some potential* for useful service under conditions of full mobilization. Many soldiers who are separated in peacetime would be retained during a full mobilization.

1–38. Character/description of service

The service of soldiers who are transferred to the IRR under the programs cited in paragraph 1–36 will be characterized as honorable or under honorable conditions, unless an uncharacterized description of service is required for soldiers in entry level status. The character of service will be based upon the soldier’s behavior and performance as set forth in chapter 3.

Section IX

Naturalized Personnel Separated Under Other Than Honorable Conditions

1–39. General

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

1–40. Revocation of citizenship

The citizenship of soldiers of the United States Armed Forces naturalized through active duty service in the Armed Forces during designated periods of military hostilities (8 USC 1440) may be revoked. It may be revoked if such soldiers are later separated from the military service under other than honorable conditions. The Immigration and Naturalization Service, Department of Justice, is responsible for the initiation of citizenship revocation proceedings in such cases.

1–41. Notification to Immigration and Naturalization Service

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

a. The address of proposed residence after discharge.

b. The certificate of naturalization number, if available.

c. The name under which the soldier was naturalized if different than the name at the time of discharge.

d. The date and place of birth.

e. The date and place of naturalization.

Section X

Separation of Soldiers in Foreign Countries

1–42. General

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

1–43. Separation in foreign countries

a. A soldier eligible for separation who is serving in a foreign country may be separated therein, upon approval by the major Army oversea commander provided—

(1) Soldier requests separation in that country.

(2) Soldier’s separation in that country is not precluded by any provision of paragraphs 1–44 *a*, 1–45, and 1–46.

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

(*a*) Consented to the separation of the soldier within its territory, or

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

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

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

d. Requests for separation in an oversea command may be disapproved by the major Army oversea commander, when—

(1) Revocation action per AR 604–5 has been taken against the soldier concerned during the current term of enlistment.

(2) The soldier’s access to defense information is suspended per AR 604–5 when the decision is made whether or not to separate a soldier in a foreign country.

(3) There is cogent reason to believe that the soldier’s presence in the oversea area in a nonmilitary status would endanger the national security.

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

e. Major oversea commanders may delegate authority to the appropriate commanders who are general court-martial convening authorities to approve or disapprove the separation of a soldier in a foreign country as provided by this section. The GCMCA may further delegate the authority to a general officer in command who has a judge advocate or legal advisor available. The delegations are authorized provided the commanders concerned have the expertise to comply with the following requirements:

(1) Change of status reporting requirements.

(2) Immigration procedures of the host government, i.e., visa, residence permit, and work permit.

(3) United States requirements, i.e., surrender of no fee passport and issuance of fee passport.

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

1–44. Soldiers confined pursuant to the sentence of a foreign court

a. Soldiers confined in a foreign penal institution pursuant to the sentence of a foreign court may be separated from the service per chapter 14, section II, during their period of confinement. The soldier will be separated only—

(1) Upon approval of the Secretary of the Army.

(2) After final action (including final appellate action, if any) by the foreign authorities.

(3) Subject to the specific consent of the country concerned to his or her separation in its territory.

b. When the oversea commander considers separation of such soldier before the sentence of confinement is completed, he or she will send a request for approval for such separation to HQDA (TAPC-PDT-SS), Alexandria, VA 22331-0479, with a report which will include the following information:

- (1) Name, grade, SSN.
- (2) Last organization and assignment.
- (3) Offense(s) alleged to have been committed and the pertinent facts and circumstances thereof.
- (4) Court before which tried.
- (5) Date and place of trial.
- (6) Offense(s) of which soldier was convicted.
- (7) Sentence pursuant to which the soldier is confined.
- (8) Matters in mitigation, extenuation, or aggravation.
- (9) Appellate action, if any, and result thereof.
- (10) Whether the action of the foreign court is final or whether further appellate action is possible or contemplated.
- (11) Place and condition of confinement.
- (12) Possibility for parole and facts pertinent thereto.
- (13) Special facts and circumstances, including reasons supporting discharge during confinement.
- (14) Whether consent for separation in the territory of the foreign country has been obtained from that country.
- (15) A report concerning board proceedings as set forth in chapter 2, section III.

1-45. Soldiers under investigation by foreign authorities or sentence by foreign court but not confined pursuant to that sentence

a. Soldiers will not be considered for separation in the foreign country (except per para 1-29 *c*) until final action has been taken by the foreign authorities when—

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

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

b. After final action by the foreign authorities, such soldiers may be considered for separation in the foreign country under paragraph 1-43 or 1-44, whichever is appropriate.

1-46. Separation of soldiers sentenced by foreign courts

The provisions of paragraph 1-44 do not prohibit a commander from initiating action per chapter 14, section II, when a soldier in his or her command is confined in a foreign penal institution. The commander can initiate action with a view toward discharge of such soldier after release from confinement and return to the United States or its territorial possessions.

1-47. Personnel eligible for return from overseas for separation or release from active duty

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

Section XI Bars to Reenlistment

1-48. General

Commanders will initiate separation proceedings in accordance with this regulation against soldiers who have received a local bar to reenlistment under the provisions of AR 601-280, chapter 6. Separation action is not based upon the imposition of a bar to reenlistment, but rather on the soldier's conduct and performance of military duties.

1-49. Separation initiation and processing of locally imposed bars

If at the time of the second 3-month review of a locally imposed bar to reenlistment, the unit commander does not recommend that the bar be removed, the commander will process the soldier for separation per chapters 13, 14, or other appropriate chapters of this regulation. "Processed for separation" means that separation action will be initiated and processed through the chain of command to the separation authority for appropriate action. Compliance with paragraph 1-18 is mandatory. The immediate and intermediate commanders will recommend separation or retention and the characterization of service to be awarded. (See para 2-2 or 2-4.)

Chapter 2 Procedures for Separation

Section I Scope

2-1. Application

a. The procedures in this chapter will be followed when required by the specific reason or reasons for separation. (See figs 2-2, 2-3, 2-4, 2-5, and 2-6.)

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

(1) The basis for each reason must be clearly established.

(2) If a reason for separation set forth in the notice of proposed action requires processing under the Administrative Board Procedure, the entire matter will be processed under section III, this chapter.

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

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

(5) If a conflict in procedures cannot be resolved based on the above, the requirement most favorable to the soldier will be used. **2-1.1.** Not used.

Section II Notification Procedure

2-2. Notice

When the reason for separation requires the Notification Procedure, the commander will notify the soldier in writing that his or her separation has been recommended per this regulation fig 2-2. The commander will cite specific allegations on which the proposed action is based. The commander will also include the specific provisions of this regulation authorizing separation. The soldier will also be advised whether the proposed separation could result in discharge, release from active duty to a Reserve Component, or release from custody and control of the Army. The soldier will be advised of the least favorable characterization of service or description of separation he or she could receive. The soldier will be advised of the type of discharge and character of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander. However, the separation authority is not bound by the recommendations of the initiating or intermediate commander(s) and has complete discretion to direct any type of discharge and characterization of service authorized by applicable provisions of this regulation (see para *f*(4) below). Chapter 3 provides guidance to the appropriate type of discharge and characterization of service. The servicing Judge Advocate will be consulted when limited use evidence (para

3-8 g) is involved. The soldier will be further advised of the following rights:

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

b. To submit statements in his or her own behalf.

c. To obtain copies of documents that will be sent to the separation authority supporting the proposed separation. For a separation under chapter 9 or 14 based upon a positive urinalysis, the soldier will be provided, upon request, a copy of the laboratory documents (as described in AR 600-85, para 10-9). Classified documents may be summarized.

d. To a hearing before an administrative separation board under section III if he or she had 6 or more years of total active and reserve service on the date of initiation of recommendation for separation. This includes creditable service in any US military component, e.g., RA, ARNG, USAR (including IRR), USN, USAF, etc.

e. To waive the above rights in writing. This includes the right to submit a conditional waiver of the right to have his or her case heard before an administrative separation board. (See para 2-5 b and figure 2-3.) Failure to respond (to include the failure to submit matters under b above) within 7 duty days will constitute a waiver of the rights in a through d above. An extension will normally be granted until any documents requested by the soldiers pursuant to c above are provided to the soldier and the soldier has a reasonable opportunity to respond to such documents.

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

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

(2) If the respondent is in civil confinement or absent without leave, the relevant notification procedures apply.

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

(4) The intermediate commander(s), in making recommendations on the type of discharge and characterization of service may recommend any type of discharge and characterization of service authorized for the notified basis of separation, but will normally be limited to considering facts contained within the proposed action. If the intermediate commander(s) consider(s) additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander will state in writing the specific facts and incidents in the soldier's record that warrant such type of discharge and characterization. The soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander. Military legal counsel will be made available to assist in preparation of rebuttal of the additional material. An explanation by the intermediate commander of the reasons for his or her recommendations that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

g. An extension may be granted to the time allowed to consult with counsel upon a timely showing of good cause by the soldier. If he or she elects to waive his or her rights, the soldier will personally sign a waiver. The soldier's consulting counsel will advise him or her and will sign the written waiver as witness, indicating that he or she is a commissioned officer of the Judge Advocate General's Corps. (See figs 2-1 and 2-5.) If the soldier refuses to consult with counsel and/or declines to respond as to the waiver of rights, such declination will constitute a waiver of rights. An appropriate notation will be made on the form provided for the soldier's reply. If the soldier indicates that one or more of the rights will be exercised but

declines to sign the appropriate form, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made.

Sample Certificate of Nonavailability (Date)

HQ, 118th Infantry Division, Fort Jackson, South Carolina. Legally qualified counsel for consultation is unavailable to represent Private (E-2) John A Doe, 000-00-0000, of this command, whose case has been referred to an administrative separation board convened under AR 635-200. Captain Jane R. Cronkite, 000-00-0000, Quartermaster, is appointed counsel for consultation for the above named soldier. Captain Cronkite has performed 10 years of active service. During this time she has acted as recorder and as counsel for respondents before administrative separation boards. She also has served as a summary court and as trial and defense counsel in special court-martial. (State other qualifications.) This officer's mature judgment and her knowledge of administrative board procedures qualify her to act as appointed counsel for consultation in this case.

(Commanding)

g.I. The soldier's commander or other designated individual will personally serve the soldier with the letter of notification. The soldier is required to sign an acknowledgment of receipt. The acknowledgment of receipt will be signed and dated on the date it is served.

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

i. The soldier may withdraw his or her waiver of rights listed in a through e above at any time prior to the date the separation authority orders, directs, or approves the separation.

2-3. Action by separation authority

The action of the separation authority will be recorded.

a. Upon receipt of the recommended action (fig 2-6) the separation authority will determine if there is sufficient evidence to verify the allegations. If there is not sufficient basis for separation, the separation authority will disapprove the recommendation or take other appropriate action under this regulation. If the recommendation is disapproved, the return indorsement will cite reasons for disapproval.

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

(1) Direct retention.

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

(3) Suspend separation per paragraph 1-20.

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

d. The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1-12 for additional instructions on ARNGUS and USAR personnel.)

Section III Administrative Board Procedure

2-4. Notice

When the reason for separation requires the Administrative Board Procedure, the commander will notify the soldier in writing that his or her separation has been recommended per this regulation (fig 2-4). The commander will cite the specific allegations on which the proposed action is based. The commander will also include the

specific provisions of this regulation authorizing separation. The commander will also advise whether the proposed separation could result in discharge, release from active duty to a reserve component, or release from custody and control of the Army. The soldier will be advised of the least favorable characterization of service or description of separation he or she could receive. The soldier will be advised of the type of discharge and the characterization of service recommended by the initiating commander and that the intermediate commander(s) may recommend a less favorable type of discharge and characterization of service than that recommended by the initiating commander. The separation authority is not bound by the recommendations of the initiating or intermediate commander(s) (see para *h*(4) below). However, the separation authority will not authorize the issuance of a type of discharge or character of service less favorable than that recommended by the board (see para 2-6 *d*). Chapter 3 provides guidance and criteria as to the appropriate type of discharge and characterization of service. The servicing Judge Advocate will be consulted when limited use evidence (para 3-8 *g*) is involved. The soldier will be further advised of the following rights:

a. To consult with consulting counsel. Soldiers may also consult with civilian counsel at their own expense.

b. To obtain copies of documents that will be sent to the separation authority supporting the proposed separation. For a separation under chapter 9 or chapter 14 of this regulation, based on a positive urinalysis, the soldier will be provided, upon request, a copy of the laboratory documents (as prescribed in AR 600-85, para 10-9). Classified documents may be summarized.

c. To a hearing before an administrative separation board.

d. To present written statements instead of board proceedings.

e. To request appointment of a military counsel for representation. Respondents may retain civilian counsel at no expense to the Government. If the respondent is absent, the counsel may present the case before an administrative discharge board.

f. To waive the above rights in writing. This includes the right to submit a conditional waiver of the right to have his or her case heard before an administrative separation board. (See para 2-5 *b* and fig 2-3.) Failure to respond within 7 duty days will constitute a waiver of the rights in *a* through *e* above. An extension of the period in which to reply may be granted upon a timely showing of good cause by the soldier. An extension will normally be granted until any documents requested by the soldier (pursuant to *b* above) are provided to the soldier and the soldier has a reasonable opportunity to respond to such documents.

g. To withdraw his or her waiver of the rights listed in *a* through *f* above, anytime before the date the separation authority orders, directs, or approves the separation and to request that the case be presented before a board of officers. The soldier will be given a reasonable time (not less than 3 duty days) to consult with counsel (*a* above) before waiving the rights listed in *b* through *f* above. An extension may be granted to the time allowed to consult with counsel upon a timely showing of good cause. The soldier must personally sign a waiver when electing to waive rights. Consulting counsel will advise the soldier and will sign the written waiver as witness, indicating that he or she is a commissioned officer of the Judge Advocate General's Corps. (See figs 2-1 and 2-5.) If the soldier refuses to consult with a counsel, a statement to this effect will be prepared by the commander and included in the file. Separation action will then proceed as if the soldier had consulted with counsel. If the soldier indicates that one or more of the rights will be exercised but declines to sign the appropriate form, the selection of rights will be noted. An appropriate notation as to the failure to sign will be made. If a soldier elects to present his or her case before an administrative separation board, he or she will be advised that willful failure to appear before the board of officers without good cause will constitute a waiver of rights to personal appearance before the board. If a soldier waives his or her rights, the separation authority may disapprove the waiver. The separation authority will then refer the case to an administrative separation board, direct retention on active duty, or direct discharge according to the type separation

action being processed. If discharge is directed, the character of service will be specified.

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

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

(2) If the respondent is in civilian confinement, absent without leave, or is transferred to the IRR, the relevant notification procedures apply.

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

(4) The intermediate commander(s), in making recommendations on the type of discharge and characterization of service may recommend any type of discharge and characterization of service authorized for the notified basis of separation, but will normally be limited to considering facts contained within the proposed action. If the intermediate commander(s) consider additional unfavorable information outside that contained in the proposed action in making recommendations, the intermediate commander will state in writing the specific facts and incidents in the soldier's record that warrant such type of discharge and characterization. The soldier will be given an opportunity to rebut the additional material prior to the proposed action being forwarded from that intermediate commander. Military legal counsel will be made available to assist in preparation of rebuttal of the additional material. An explanation by the intermediate commander of the reasons for his or her recommendation that refers only to facts contained within the proposed action or to the commander's conclusions based on those facts will not constitute "additional unfavorable information" within the meaning of this paragraph.

h.1. The soldier's commander or other designated individual will personally serve the soldier with the letter of notification. The soldier is required to sign an acknowledgment of receipt. The acknowledgment of receipt will be signed and dated on the date it is served.

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

2-5. Waiver

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

b. A soldier may wish to waive his or her right to a hearing before an administrative separation board contingent upon receiving a characterization of service or description of separation higher than the least favorable characterization authorized for the separation reason set forth in the notice of separation action. Soldiers electing to request a conditional waiver will submit a completed Request for Conditional Waiver (fig 2-3). Commanders will ensure that a soldier is not coerced into waiving his or her right to a hearing before an administrative separation board.

b.1. The separation authority will be the same as if the soldier had not submitted the conditional waiver. The appropriate separation authority may approve or disapprove the conditional waiver. If the conditional waiver is disapproved, the case will be referred to a hearing before an administrative separation board unless there is a subsequent unconditional waiver of the right to a hearing before an administrative separation board under paragraph 2-2 or 2-4. There is no requirement to delay board proceedings pending action by the convening authority on the conditional waiver. However, once the board has made its findings and recommendations, the convening authority may not approve the conditional waiver.

c. Waivers of the board hearings and representation by counsel at

board hearings will not be accepted in the cases of soldiers who have completed 18 years or more active Federal service.

2-6. Separation authority action after board hearings

a. When a case has been referred to and action completed by the board, the board proceedings will be reviewed by a qualified officer fully cognizant of applicable regulations and policies to determine whether the action meets the requirements of this regulation. When the board recommends that a discharge under other than honorable conditions be issued, limited use evidence (para 3-8 *g*) was introduced in the board proceedings, or the soldier identifies specific legal issues for consideration by the separation authority, the proceedings will be reviewed by an officer of the Judge Advocate General's Corps. Upon completion of the review—

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

(*a*) Direct separation of the soldier for misconduct except for soldiers referred to in paragraph 1-21 *f*. (See also para 2-12 *b*(5).)

(*b*) Direct separation of the soldier for unsatisfactory performance if such was the stated provision in the initial letter of notification, except for soldiers referred to in paragraph 1-21 *f*. (See also para 2-12 *b*(5).)

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

(*d*) Unless specifically prohibited, approve separation for misconduct and suspend execution of the separation when the soldier's record shows sufficient potential for full effective duty. (See para 1-20.)

(2) In fraudulent entry actions processed per chapter 7, section V, the separation authority may take one of the following actions (when misconduct by recruiting officials is not in question):

(*a*) Approve board recommendation to separate the soldier, except for soldiers referred to in paragraph 1-21 *f*. (See also para 2-12 *b*(5).)

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

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

(*d*) Take the action specified in *e* below, if appropriate.

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

(*a*) Direct separation of the soldier for unsatisfactory performance, except for soldiers referred to in paragraph 1-21 *f*. (See also para 1-20 and 2-12 *b*(5).)

(*b*) Disapprove the recommendation and direct retention of the soldier.

(*c*) Approve separation for unsatisfactory performance and suspend execution of the separation when the soldier's record shows sufficient potential for full active duty. (See para 1-20.)

(4) The action of the separation authority because of homosexual conduct will be per chapter 15.

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

b. A soldier who has completed 20 or more years of active service creditable toward retirement and for whom separation is recommended to HQDA will be given the opportunity of applying for retirement. However, he or she will be told that authority to submit the application does not assure that it will be approved. DA Form 2339 (Application for Voluntary Retirement) will be attached when the case is sent to HQDA or a statement will be included that the soldier was given the opportunity but declined to apply for retirement. SF 88 (Report of Medical Examination), per chapter 12, will be attached to the application for retirement.

c. When a member of the Reserve Component is to be separated per chapters 13, 14, or 15, the separation authority will decide,

based on board findings, whether the soldier concerned is being separated because of moral or professional derelictions.

d. No separation authority will direct discharge if a board recommends retention. Neither will he or she authorize the issuance of a discharge of less favorable character than that recommended by the board. However, as provided above, a separation authority may direct retention when discharge is recommended, or he or she may issue a discharge certificate of a more favorable character than that recommended.

e. When a board of officers has recommended retention and the separation authority believes that discharge is warranted and in the best interest of the Army, a request for discharge for the convenience of the Government per paragraph 5-3, may be forwarded to HQDA (TAPC-PDT-SS), ALEX, VA 22331-0479. Separation under the provisions of paragraph 5-3 is a different separation reason, based upon different criteria from that considered by the board of officers and does not constitute overturning the board. It is the policy of HQDA not to direct separation per paragraph 5-3 when a duly constituted board has recommended retention unless sufficient justification is provided to warrant separation by the Secretary of the Army, based on all the circumstances, as being in the best interest of the Army. If separated, the soldier will be given an entry level separation or awarded an honorable or general discharge, as appropriate. Before forwarding a request for discharge under this paragraph, the separation authority will:

(1) Notify the soldier in writing of the proposed recommendation using the notification procedure (sec II). This notification will cite this paragraph and paragraph 5-3 as the basis for the action and specify the justifications and reasons which support the action. However, the procedure for requesting consideration by an administrative board (para 2-2 *d*) is not applicable.

(2) Provide the soldier copies of documents, or other evidence, upon which the proposed action is based (classified documents may be summarized).

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

(4) Personally sign the letter to HQDA which sets forth specific reasons justifying the soldier's discharge as being in the Army's best interest. The record of the board proceedings will be attached to the separation authority's letter to HQDA. The separation authority will neither approve nor disapprove the findings and recommendations of the board, since forwarding the case to HQDA under this paragraph constitutes the separation authority's initial action on the case. No further action will be taken on the findings or recommendations of the board of officers unless directed by HQDA. As a minimum, enclosures to the transmittal letter should include the notification letter to the soldier, the soldier's acknowledgement of notification and any response, the report of the board proceedings and any other supporting documents or evidence. Allegations of misconduct or other adverse information concerning the soldier not specified in the notification in (1) above will not be referred to unless the soldier has been further notified that such information will be forwarded for consideration and afforded the opportunity to respond.

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

(1) Direct retention.

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

(3) If there is an apparent procedural error or omission in the record of proceedings that may be corrected without reconsideration

of the findings and recommendations of the board, return the case to the same board for corrective action.

(4) If the board error materially prejudiced a substantial right of the soldier, the separation authority may act only as can be sustained without relying on the proceedings affected by the error. The separation authority may set aside the findings and recommendations and refer the case to a new board for a rehearing. No soldier of the new board will have served on a prior board which considered any of the same matters against the soldier. The new board may be furnished the evidence properly considered by the first board. This evidence will include extracts from its record of testimony of witnesses not deemed by the convening authority to be reasonably available to testify at the rehearing. Additional admissible evidence may be furnished to or obtained by the new board. The separation authority may, upon due notice to the soldier, incorporate new allegations based on later conduct of the soldier. Unless the new board considers substantial additional evidence unfavorable to the soldier, the separation authority may not approve any findings and recommendations of the new board less favorable than those rendered by the first board.

(5) If the separation authority determines that the findings of the first board were obtained by fraud or collusion, the case may be referred to a new board. No member of the new board may have been a member of the first board. The separation authority may not approve findings and recommendations less favorable to the soldier than those rendered by the first board unless the separation authority finds that the fraud or collusion in the first board is attributable to the soldier or an individual acting on the soldier's behalf.

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

g. A soldier subject to discharge because of conviction by civil court or because of adjudication as a juvenile offender may be processed for discharge even though the soldier has filed an appeal or stated his or her intention to do so. However, it will be the general policy to withhold the execution of the approved discharge pending the outcome of the appeal. If the execution of the discharge is considered appropriate without waiting for final action on the appeal, the soldier may be discharged with the appropriate character of service, upon the direction of the Secretary of the Army or at the request of the soldier. (See para 14-6.)

h. The Government may initially introduce limited use evidence (AR 600-85, chapter 6) into separation proceedings accomplished under this regulation or, at its option, may elect to proceed solely with other, independent evidence not subject to limited use. If limited use evidence is initially introduced by the Government and the separation proceedings result in separation, the soldier is entitled to an honorable discharge (para 3-8 a). However, the proceedings may be reinitiated or a rehearing held in accordance with the following guidance. If limited use evidence is introduced by the Government before the board convenes, the separation proceedings may be reinitiated, excluding all references to limited use evidence. If limited use evidence is introduced by the Government after the board convenes, a general court-martial convening authority who is a general officer may set aside the proceedings and refer the case to a new board for rehearing. (See AR 600-85, para 6-4 e.) The reason for the rehearing will not be disclosed to the new board and limited use information will not be initially introduced by the Government. Review and action in the case will be based only on the new record. If a rehearing is not deemed appropriate, the soldier may be separated with an honorable discharge (para 3-8 a). The servicing Judge Advocate will review completed board proceedings that contain limited use evidence and advise the GCMCA whether a rehearing is appropriate.

i. The respondent will be provided a copy of the board's proceedings.

2-7. Composition of board

a. A board convened to determine whether a soldier should be separated under the Administrative Board Procedure will consist of

at least three experienced commissioned, warrant, or noncommissioned officers. Enlisted soldiers appointed to the board will be in grade SFC or above, and senior to the respondent. At least one member of the board will be serving in the grade of major or higher, and a majority will be commissioned or warrant officers. The senior member will be president of the board. The convening authority will appoint a nonvoting recorder. The convening authority may also appoint a nonvoting legal adviser.

b. Care will be exercised to insure that—

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

(2) In the case of a Reserve Component soldier, the membership of the board will include at least one Reserve Component member. Voting members will be senior to the respondent's reserve grade. Enlisted soldiers will not be appointed as members of boards in cases of ARNG or USAR soldiers when a discharge under other than honorable conditions could result. Enlisted soldiers may be appointed as members of boards considering Reserve Component soldiers when only an honorable or general discharge may be issued.

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

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

(5) If the respondent is a member of a minority group, the board will, upon written request of the respondent, include as a voting member, a member who is also a minority group member, if reasonably available. When requested, the appointed board member normally should be of the same minority group as the respondent. However, nonavailability of a member of the same minority group will not prevent convening the board. In the event of non-availability, the reason will be stated in the record of proceedings.

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

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

c. The president will preside and rule finally on all matters of procedure and evidence. The rulings of the president may be overruled by a majority of the board. If appointed, the legal advisor will rule finally on all matters of evidence and challenges except to himself or herself. The appointed legal advisor will pay particular attention to cases that involve limited use evidence (para 3-8 g).

2-8. Effective processing procedures

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

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

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

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

2-9. Witnesses

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

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

2-10. Board procedures

a. A soldier under military control will be notified in writing of the convening date of the board at least 15 days before the hearing. This will allow the soldier and the appointed counsel time to prepare the case. The written notice will state that, if the soldier fails to appear before the board when scheduled, by willfully absenting himself or herself without good cause he or she may be discharged from or retained in the service without personal appearance before a board. The soldier will be notified of the names and addresses of witnesses expected to be called at the board hearing. The soldier will also be notified that the recorder of the board will, upon request of the soldier, try to arrange for the presence of any available witness that he or she desires to call. A copy of the case file, including all affidavits and depositions of witnesses unable to appear in person at the board hearing will be furnished to the soldier or the counsel as soon as possible after it is determined that a board will hear the case. When, for overriding reasons, the minimum of 15 days cannot be granted the president of the board will insure that the reason for acting before that time is fully explained. The reason will be recorded in the proceedings of the board. Requests for an additional delay, normally not to exceed 30 days after initial notice, will be granted if the convening authority or president of the board believes such delay is warranted to ensure that the respondent receives a full and fair hearing. The decision of the president is subject to being overruled by the convening authority upon application by the recorder or the respondent; however, the proceedings need not be delayed pending review.

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

(1) The soldier may appear in person, with or without counsel for representation, or, if absent, be represented by counsel at all open proceedings of the board. When the soldier appears before a board without representing counsel, the record will show that the president of the board counseled the soldier. The soldier will be counseled as to type of discharge he or she may receive as a result of the board action, the effects of such a discharge in later life, and that he or she may request representing counsel. The record will reflect the soldier's response.

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

(3) The soldier may request the attendance of witnesses. The soldier may submit a written request for TDY or invitational travel orders for witnesses. Such a request shall contain the following matter:

(a) A synopsis of the testimony that the witness is expected to give.

(b) An explanation of the relevance of such testimony to the issues of separation or characterization.

(c) An explanation as to why written or recorded testimony would not be sufficient to provide for a fair determination.

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

(a) The testimony of a witness is not cumulative;

(b) The personal appearance of the witness is essential to a fair determination on the issues of separation or characterization;

(c) Written or recorded testimony will not accomplish adequately the same objective;

(d) The need for live testimony is substantial, material, and necessary for a proper disposition of the case; and

(e) The significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in the balancing test include the cost of producing the witness, the timing of the request for production of the witness, and potential delay in the proceedings that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

(5) 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.

(6) 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:

(a) When the presiding officer determines that the personal testimony of the witness is not required.

(b) When the commanding officer of a military witness determines that military necessity precludes the witness' attendance at the hearing.

(c) When a civilian witness declines to attend the hearing.

(7) The soldier may or may not submit to examination by the board. The provisions of UCMJ, Article 31, will apply.

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

(9) The soldier may challenge any voting member of the board for cause only.

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

(11) Failure of the soldier to invoke any of the above rights after he or she has been apprised of same will not have an effect upon the validity of the separation proceedings.

c. If the soldier holds Reserve Component status as a commissioned or warrant officer, the board will notify him or her that the action also involves his or her Reserve Component status and could terminate such status.

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

e. Except as modified per this regulation, the board will conform to the provisions of AR 15-6 applicable to formal proceedings with respondents. As an exception to AR 15-6, paragraph 3-7 *b*, expert medical and psychiatric testimony routinely may be presented in the form of affidavits. However, if the soldier desires to present such evidence, he or she is entitled to have the witnesses appear in person, if they are reasonably available.

f. The proceedings of the board will be summarized as fairly and accurately as possible. They will contain a verbatim record of the findings and recommendations (App B).

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

2-11. Evidence

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

b. Newly discovered evidence. If, prior to the beginning of the board hearing, the commander or the board recorder discovers additional evidence, similar in nature to that previously considered by the commander in recommending the separation, that evidence is admissible. Such evidence may be considered by the board as proof

of an amended or new factual allegation in support of a reason for separation which was cited in the commander's recommendation for separation. If the newly discovered evidence solely constitutes a reason for separation which was not included in the notice of proposed separation, it is necessary that the case be returned to the commander for consideration as to whether an additional reason for separation should be included in the notice. When such additional evidence is considered and the board determines that the respondent has not had reasonable time to prepare a response to it, a reasonable continuance must be granted upon the respondent's request.

2-12. Findings and recommendations of the board

a. Findings.

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

(2) The board will then determine per chapter 1, section II, whether the findings warrant separation with respect to the reason for separation. If more than one reason was contained in the notice, there will be a separate determination for each reason.

b. Recommendations.

(1) The board convened to determine whether a soldier should be separated for misconduct will recommend that he or she be—

(a) Separated because of misconduct. Character of service—honorable, general, or other than honorable—to be furnished will be indicated, or

(b) Separated because of unsatisfactory performance (except in fraudulent entry actions) if such was the stated provision in the initial letter of notification. Type of discharge certificate—honorable or general—to be furnished will be indicated, or

(c) Retained in the Service. The recommendation will indicate the type of duty which it is believed he or she can perform satisfactorily. (See para 14-7 for guidance on retention of soldiers convicted by civil court.)

(2) The board convened to determine whether a soldier should be separated for unsatisfactory performance will recommend that he or she be—

(a) Separated because of unsatisfactory performance. Type of discharge certificate—honorable or general—to be furnished will be indicated.

(b) Retained in the Service. The recommendation will indicate the type of duty which it is believed he or she can perform satisfactorily.

(3) The recommendation of the board in a case involving separation because of homosexual conduct will be made per chapter 15.

(4) When the soldier is absent without leave and fails to appear before the board, the discharge authority will be advised of the fact, together with any board recommendation for separation or retention made per (1), (2), or (3) above.

(5) If the soldier holds a Reserve Component commission or warrant, the board will make separate recommendations concerning his or her Reserve Component status, including character of service to be issued. The recommendations should be compatible with enlisted status recommendations. Normally, facts warranting separation from an active enlisted status prescribed in this chapter will also warrant termination of a Reserve Component commission or warrant. Under certain circumstances, it may be reasonable to recommend retention in an active enlisted status but termination of a Reserve Component commission or warrant.

(6) When the board recommends separation, it may also recommend that the separation be suspended per paragraph 1-20. But the recommendation as to suspension is *not* binding on the separation authority.

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

(8) Except when the board has recommended separation because of alcohol or drug abuse rehabilitation failure, misconduct, or homosexual conduct (chaps 9, 14, and 15), or has recommended characterization of service under other than honorable conditions, the

board will recommend whether the respondent should be retained in the IRR as a mobilization asset to fulfill the respondent's total military obligation.

c. The completed report of proceedings will be forwarded to the separation authority. (See app B for sample report of proceedings.) When board action is completed on a soldier with over 18 years of service, the findings and recommendations of the board, with complete documentation and the recommendation of the convening authority, will be forwarded to HQDA(TAPC-PDT-SS), ALEX VA 22331-0479, for final determination when the convening authority recommends discharge.

Section IV

Additional Provisions Concerning Absent Soldiers

2-13. Processing in absence of soldier

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

a. A soldier in the hands of civil authorities does not accrue service creditable for completion of his or her period of enlistment, or order to active duty, except for any period in which he or she was in an authorized leave status. Upon return to military control, a soldier's expiration of term of service will be computed. When a soldier's term of service has expired, his or her separation will be accomplished within 5 days of soldier's return to military control and the soldier will be regarded as having been retained in service for the convenience of the Government. For pay and allowances, see Department of Defense Military Pay and Allowances Entitlements Manual (DODPM).

b. A soldier in a duty status who is delivered to civil authorities, in accordance with AR 600-40 prior to expiration of term of service, will be credited with the period of time in the hands of civil authorities in the computation of the expiration of service date unless finally convicted prior to the expiration of term of service. When the term of service expires, soldier will be separated in absentia by reason of expiration of term of service.

2-14. Civil confinement

a. A soldier confined by civil authorities will receive notice under the Notification Procedure or the Administrative Board Procedure, as appropriate. The notice will be delivered personally to the soldier or sent by certified mail, return receipt requested. When a soldier refuses to acknowledge receipt of notice, the individual who mails the notice will prepare a Sworn Affidavit of Service by Mail which will be inserted in the soldier's personnel file with PS Form 3800 (Receipt for Certified Mail).

b. If delivered personally, receipt will be acknowledged in writing by the soldier. If the soldier does not acknowledge receipt, the notice will be sent by mail as provided in *a* above.

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

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

e. When entitled to an administrative board, the soldier will be notified that the hearing by a board of officers will proceed in his or her absence and that he or she will be represented by counsel.

2-15. Additional requirements for soldiers beyond military control by reason of unauthorized absence

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

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

(2) For commission of a serious offense (para 14–12 *c*) when prosecution of a soldier who is absent without authority appears to be barred by the statute of limitations, UCMJ Article 43 (10 USC 843). Questions concerning the statute of limitations should be referred to the servicing Staff Judge Advocate.

(3) For commission of a serious offense (para 14–12 *c*) when a soldier 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 soldier under a treaty or other agreement.

b. Notice. Before separation is executed under *a* (2) or (3) above, the soldier will be notified of the imminent action by registered mail. This mail, with return receipt requested (or by an equivalent form of notice if such service by US Mail is not available for delivery outside the United States) is sent to the soldier's last known address or to the next-of-kin. The notice shall contain the matter set forth in chapter 2, sections II or III, as appropriate. The notice will state that the action has been suspended until a specific date (not less than 30 days from the date of mailing) to give the soldier the opportunity to return to military control. If the soldier does not return to military control by such date, the separation authority shall take appropriate action per chapter 2, section II or III.

c. Members of Reserve Components.

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

(*a*) Soldier is discharged under conditions other than honorable under an approved sentence of a court-martial or under the approved findings of a board of officers convened by an authority designated by the Secretary of the Army; or

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

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

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

2–16. Exceptional circumstances

If information described in paragraphs *a* or *b* below is received before a discharge under other than honorable conditions is approved or directed for a soldier pending discharge in accordance with paragraph 2–15 *a*(2) or (3), above, an informal inquiry will be conducted to verify the information. After completion of the inquiry, the file will be forwarded to HQDA (TAPC–PDT–SS), ALEX VA 22331–0479, requesting determination as to the final disposition to be taken.

a. An indication that the soldier has not been in continuously unauthorized absence; or

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

Chapter 3 Character of Service/Description of Separation

Section I Separation Certificates

3–1. Statutory authority

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

3–2. Discharge certificates

Discharge certificates are furnished soldiers when they are honorably discharged or are discharged under honorable conditions. Soldiers separated from entry level status are issued DD Form 214 (Certificate of Release or Discharge from Active Duty). Instructions for the completion of the various types of discharge certificates are in AR 635–5. The issuance of discharge certificates is governed by this regulation. The two types of discharge certificates are listed in table 3–1.

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

Individuals who are discharged or released from AD or ADT will be furnished a factual record of their military service on DD Form 214. Instructions for the completion and distribution of DD Form 214 are in AR 635–5.

Table 3–1
Types of Discharge Certificates

DD Form No.: 256A
Type of discharge: Honorable
Character of discharge or separation: Honorable
Given by: Administrative action

DD Form No.: 257A
Type of discharge: General
Character of discharge or separation: Under honorable conditions.
Given by: Administrative action

Section II Types of Characterization or Description

3–4. Types authorized

a. The following types of characterization of service or description of separation are authorized:

(1) Separation with characterization of service as Honorable, General (under honorable conditions), or Under Other Than Honorable Conditions.

(2) Entry Level status. Service will be uncharacterized, and so indicated in block 24 of DD Form 214, except as provided in paragraph 3–9 *a*.

(3) Order of release from the custody and control of the Army by reason of void enlistment or induction.

(4) Separation by being dropped from the rolls of the Army.

b. The types of separation listed above will be used in appropriate circumstances unless limited by the reason for separation.

3–4.1. Not used.

Section III Characterization of Service

3–5. General considerations

a. Characterization at separation will be based upon the quality of the soldier's service, including the reason for separation and guidance in paragraph 3–7, subject to the limitations under the various reasons for separation. The quality of service will be determined according to standards of acceptable personal conduct and performance of duty for military personnel. These standards are

found in the UCMJ, directives and regulations issued by the Army, and the time-honored customs and traditions of military service.

b. The quality of service of a soldier on AD or ADT is affected adversely by conduct that is of a nature to bring discredit on the Army or is prejudicial to good order and discipline, regardless of whether the conduct is subject to UCMJ jurisdiction. Characterization may be based on conduct in the civilian community; the burden is on the soldier to demonstrate that such conduct did not adversely affect his or her 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. As a general matter, 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 will be given to the soldier's age, length of service, grade, aptitude, physical and mental condition, and the standards of acceptable conduct and performance of duty.

e. The type of discharge and character of service are of great significance to the soldier. They must accurately reflect the nature of service performed. Eligibility for veterans' benefits provided by law, eligibility for reentry into service, and acceptability for employment in the civilian community may be affected by these determinations. The type of discharge and character of service will be determined solely by the military record during the current enlistment or period of service, plus any extension thereof, from which the soldier is being separated. The soldier's performance of duty and conduct must be accurately evaluated. The evaluation must be based on the overall period of service and not on any isolated actions or entries on the DA Form 2-1.

3-6. Separation as it affects the soldier

Both the honorable and general discharges entitle a soldier to full Federal rights and benefits provided by law. However, a discharge under other than honorable conditions or a bad conduct discharge may or may not deprive the soldier of veterans' benefits administered by the Veterans Administration; a determination by that agency is required in each case. A Dishonorable Discharge deprives the soldier of all veterans' benefits and may deprive him or her of civil rights.

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

a. Honorable discharge.

(1) An honorable discharge is a separation with honor. The honorable characterization is appropriate when the quality of the soldier's service generally has met the standards of acceptable conduct and performance of duty for Army personnel, or is otherwise so meritorious that any other characterization would be clearly inappropriate. Only the honorable characterization may be awarded a soldier upon completion of his or her period of enlistment or period for which called or ordered to AD or ADT, or where required under specific reasons for separation, unless an entry level status separation (uncharacterized) is warranted. (See para 3-9 a and chap 11.) When a soldier is discharged before ETS for a reason for which an honorable discharge is discretionary, the following considerations apply. Where there have been infractions of discipline, the extent thereof should be considered, as well as the seriousness of the offense(s). A soldier will not necessarily be denied an honorable discharge solely by reason of a specific number of convictions by court-martial or actions under the UCMJ Art 15. Conviction by a general court-martial or by more than one special court-martial does not automatically rule out the possibility of awarding an honorable discharge. An honorable discharge may be furnished when disqualifying entries in the soldier's military record are outweighed by subsequent honest and faithful service over a greater period of time during the current term of service. It is a pattern of behavior

and not the isolated instance which should be considered the governing factor in determination of character of service. Unless otherwise ineligible, a soldier may receive an honorable discharge if he or she has, during his or her current enlistment, period of obligated service, or any extensions thereof, received a personal decoration.

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

b. General discharge.

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

(2) A characterization of under honorable conditions may be issued only when the reason for the soldier's separation specifically allows such characterization. It will *not* be issued to soldiers upon separation at expiration of their period of enlistment, military service obligation, or period for which called or ordered to AD.

c. *Under other than honorable conditions.* A discharge under other than honorable conditions is an administrative separation from the service under conditions other than honorable. It may be issued for misconduct, fraudulent entry, homosexual conduct, security reasons, or for the good of service in the following circumstances:

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

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

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

(b) Abuse of a position of trust.

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

(d) Acts or omissions that endanger the security of the United States or the health and welfare of other soldiers of the Army.

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

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

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

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

(c) Higher authority.

(d) The commander exercising special court-martial convening authority over the soldier who submitted a request for discharge for the good of the service (chap 10) when delegated authority to approve such requests for discharge per paragraph 1-21 l (See para 1-21 c(5).)

(4) No soldier will be discharged per this regulation under other than honorable conditions unless he or she is afforded the right to present his or her case before an administrative discharge board. The soldier will be offered the advice and assistance of counsel. Such discharge must be supported by approved board findings and an approved board recommendation for a discharge under other than honorable conditions. As prescribed in chapter 13, an under other than honorable conditions discharge is not authorized in case of discharge for unsatisfactory performance.

(5) As exception to (4) above, a discharge under other than honorable conditions may be issued without board action if the soldier—

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

(b) Requests discharge for the good of the Service.

(c) Waives his or her right to board action.

(6) A soldier beyond military control by reason of unauthorized absence may be issued an under other than honorable conditions discharge in absentia only as provided for in paragraph 2-15 or chapter 14, except when directed by HQDA. Separation of soldiers

of ARNGUS and USAR will be subject to the limitations of 10 USC 1163.

(7) A soldier who requests discharge as prescribed in chapter 10 may be discharged under other than honorable conditions if he or she has been afforded the opportunity (not less than 72 hours) to consult with a consulting counsel. The soldier must certify in writing that he or she understands that he or she may receive a discharge under other than honorable conditions. The soldier must understand the adverse nature and possible consequences of such a discharge. The soldier must personally sign a request for discharge. A conditional request is not permitted. The consulting counsel will sign as a witness, indicating that he or she is a commissioned officer of the Judge Advocate General's Corps. A soldier may waive consultation with a consulting counsel. Counsel will prepare a statement to this effect, which will be attached to the file and the soldier will state that the right to counsel has been waived.

(8) Consideration required. Members of boards that recommend discharges to be furnished, and commanders that determine the type of discharge to be issued, are urged to consider all facets of a case involving discharge so a fair decision will result.

3-8. Limitations on characterization

Characterization will be determined solely by the soldier's military record which includes the soldier's behavior and performance of duty during the current enlistment or period of service to which the separation pertains, plus any extensions prescribed by law or regulation or effected with the consent of the soldier. The exceptions are provided in this paragraph. In determining the type of discharge certificate (honorable or general) or character of service, the following will be used as guidelines:

a. A soldier is entitled to an honorable discharge if limited use evidence (AR 600-85, chap 6) is initially introduced by the Government in the discharge proceedings, and the discharge is based on those proceedings. (See para 2-6 *h* and 3-8 *g*(1) and see AR 600-85, table 6-1, paragraphs 6-4 *a* and 6-5 *d*. The separation authority will consult with the servicing Judge Advocate in cases involving limited use evidence.

b. The following will not be considered in determining the type and character of separation to be issued:

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

(2) Prior service activities including but not limited to, records of convictions by courts-martial, records of nonjudicial punishment, records of absence without leave, or commission of other offenses for which punishment was not imposed. To the extent that such matters are considered on the issue of retention or separation, the record of proceedings will reflect express direction that such information will not be considered on the issue of characterization. As an exception, personal decorations received during prior service may be considered in characterizing the current period of service. (See para 3-7 *c*(8).)

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

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

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

e. When the sole basis for separation is a serious offense which resulted in a conviction by a court-martial authorized to but not imposing a punitive discharge, the soldier's service may not be characterized Under Other Than Honorable Conditions unless such characterization is approved by HQDA (TAPC-PDT-S).

f. A soldier's record of current enlistment or current period of service, only, will be carefully screened for data which might affect

the final decision as to type of discharge to be awarded. A checklist will be prepared to assist in the overall evaluation. The checklist will include the following data:

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

(2) Promotions and dates thereof.

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

(4) Whether there is a record of time lost; if so, whether due to absence without leave (AWOL), confinement, or other reasons.

(5) Whether there has been disciplinary action under UCMJ, Article 15; if so, list the specific offenses which resulted in such action.

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

(7) Make note of favorable communications or recommendations for the soldier.

(8) Make note of any derogatory data, other than Article 15 actions and courts-martial.

(9) Make note of any citations and awards.

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

(11) Make note of any medical or other data meriting consideration in the overall evaluation (see para *b*(3) above).

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

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

(2) A soldier's voluntary submission to a treatment and rehabilitation program (self-referral).

(3) Admissions and other evidence concerning illegal drug or alcohol use or possession of drugs incidental to personal use occurring prior to initial referral to a treatment and rehabilitation program provided voluntarily by a soldier either as part of initial entry or at a scheduled interview when enrolled in such a program.

(4) Evidence concerning illegal drug or alcohol use or possession of drugs incidental to personal use obtained as a result of a soldier's emergency medical care for an actual or possible drug or alcohol overdose when such use is prohibited by AR 600-85.

h. The limitations in paragraph *g* above do not preclude the following actions:

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

(2) Taking action based on independently derived evidence. This includes evidence of drug or alcohol abuse after initial entry into the treatment and rehabilitation program.

3-9. Uncharacterized separations

a. Entry level status separation.

(1) A separation will be described as an entry level separation with service uncharacterized if processing is initiated while a soldier is in entry level status, except in the following circumstances:

(a) When characterization Under Other Than Honorable Conditions is authorized under the reason for separation and is warranted by the circumstances of the case.

(b) The Secretary of the Army, on a case-by-case basis, determines that characterization of service as Honorable is clearly warranted by the presence of unusual circumstances involving personal conduct and performance of duty. This characterization is authorized when the soldier is separated by reason of selected changes in service obligation, convenience of the Government and Secretarial plenary authority.

(2) Not used.

b. Void enlistments or inductions. A soldier will not receive a discharge, characterization of service at separation, or an entry level separation if the enlistment or induction is void except when a constructive enlistment arises and such action is required under (3)

below. If characterization or an entry level separation is not required, the separation will be described as an order of release from custody and control of the Army.

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

(a) If it was effected without the voluntary consent of a person who has the capacity to understand the significance of enlisting in the Army. This includes enlistment of a person who is intoxicated or insane at the time of enlistment.

(b) If the person is under 17 years of age.

(c) If the person is a deserter from another military service.

(d) If an enlistee's erroneous enlistment is discovered prior to the soldier's departure from the MEPS (para 7-15 e).

(2) Although an enlistment may be void at its inception, a constructive enlistment will arise in the case of a person serving with the Army who—

(a) Submitted voluntarily to military authority.

(b) Met the mental competency and minimum age qualifications at the time of voluntary submission to military authority.

(c) Received military pay or allowances.

(d) Performed military duties.

(3) If an enlistment that is void at its inception is followed by a constructive enlistment within the same term of service, characterization of service or description of separation will be in accordance with paragraph 3-5 and 3-9 as appropriate. However, if the enlistment was void by reason of desertion from another military service, the soldier will be separated by an order of release from the custody and control of the Army regardless of any subsequent constructive enlistment. A constructive enlistment does not preclude the Army from either retaining the soldier or separating the soldier based on the circumstances that occasioned the original void enlistment or any other reason for separation.

Section IV

Dishonorable and Bad Conduct Discharge

3-10. Dishonorable Discharge

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

3-11. Bad Conduct Discharge

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

3-12. Soldiers confined in foreign penal institutions

Soldiers with approved sentences to a dishonorable or bad conduct discharge, who are confined in foreign penal institutions, either before, during, or after trial by a foreign tribunal, will not be discharged until returned to the United States. (See AR 27-50.) In a specific case, if the commander considers that discharge in an overseas area is desired, a request for approval of such discharge may be forwarded to HQDA (TAPC-PDT-SS), Alexandria, VA 22331-0479. A report containing essentially the information outlined in paragraph 1-44 b will be sent with the request. The separation in foreign countries of soldiers so confined will be subject to paragraph 1-44 a.

3-13. Expulsion from the Army

Dishonorable and bad conduct discharges result in expulsion from the Army. For exceptions affecting court-martial jurisdiction, coordinate with the servicing staff judge advocate.

3-14. Reason and authority for discharge

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

3-15. Discharge in absentia

Except as provided in paragraph 3-12, a soldier placed on excess leave without pay pending completion of appellate review (AR 630-5, para 5-2) may be discharged without returning to a military installation when the sentence is affirmed.

a. When appellate review is completed and the affirmed sentence ordered executed, the appropriate discharge documents will be completed and mailed by certified mail. The documents are mailed, return receipt requested, to the address furnished by the soldier. The return address will be shown as Commander, ARPERCEN, ATTN: DARP-PRR-P, 9700 Page Boulevard, St. Louis, MO 63132-5200. If the documents are returned unclaimed or undeliverable, they will be destroyed.

b. Before departure on excess leave, action will be taken to—
(1) **(Rescinded.)**

(2) Complete as much of the preprocessing (AR 635-10) as is appropriate, including partial completion of DD Form 214.

c. Soldiers assigned to an overseas unit who have approved excess leave may be reassigned to the personnel control facility (PCF) closest to their leave address (AR 614-30 and AR 600-62) provided—

(1) Any sentence to confinement has been deferred or served.

(2) Individual is not subject to further trial or investigation within the overseas command.

Section V

Travel and Form of Separation Certificates

3-16. Travel allowance

See Joint Federal Travel Regulations.

3-17. Form of separation certificate to be given

a. Discharge certificate, based upon the character of service rendered and DD Form 214 will be issued to the soldier concerned per AR 635-5.

b. A soldier to be released from military control pursuant to paragraph 5-9 or an administrative determination that he or she is not currently a soldier of the Army will not be "discharged" from the Army. The individual does not have military status. Such individuals will, instead, be released from the custody and control of the Army without being furnished a certificate of discharge. However, a DD Form 214 indicating no creditable service will be furnished the individual (See AR 635-5.)

Chapter 4

Separation for Expiration of Service Obligation

4-1. Policy

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

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

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

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

c. Personnel who are physically unfit for retention (AR 40-501, chap 3), but who were accepted for, or continued in, military service

per AR 635–40, will not be separated because of ETS unless processing for separation because of physical disability is waived.

d. Subject to chapter 1, section VI, a soldier enlisted or ordered to AD normally will be discharged or released from AD on the date he or she completes the period for which enlisted or ordered to AD. Other than those listed in *b* above, some soldiers' term of service expires or they otherwise become eligible for discharge or release from active duty on a Saturday, Sunday, or legal holiday. These soldiers may consent to be discharged or released to or transferred to the USAR on the last working day before their normal date of discharge or release. This includes soldiers within 30 days of the date of ETS who return to CONUS for separation. A soldier listed in *b* above whose term of service expires or who otherwise becomes eligible for separation on a Saturday, Sunday, or legal holiday may consent to be released from active duty and be transferred to the USAR on the last working day before the normal date of discharge or release, if otherwise appropriate. But the soldier may not be discharged on such date. As an exception, soldiers whose early separation will leave them 90 days short of completing their 6-year or 8-year obligation will be discharged. Soldiers whose rate of pay is subject to change on a Saturday, Sunday, or legal holiday upon which they would be separated will not be discharged until their normal separation date unless they request otherwise. The actual date of release or discharge will be recorded in item 12b, DD Form 214. Personnel released from AD transferred to the USAR upon completion of the term of service for which ordered into active Federal service, or released to their Reserve Component upon completion of AD, will not be discharged until completion of their reserve obligation.

e. AR 135–91 defines the various service obligations incurred by military personnel upon initial entry into military service and prescribes the methods of fulfillment. Soldiers who will not continue or reenter on active duty in another status will be released by separation orders to the ARNGUS or the USAR per DA Pam 600–8–11.

f. A noncitizen who incurs a reserve obligation upon entry into military service but who at time of release from AD fails or refuses to give a mailing address within the United States, Puerto Rico, the Virgin Islands, Guam, or the Canal Zone, but gives only an address in a foreign country as a permanent mailing address (item 19, DD Form 214), thus showing his or her intention to reside permanently outside the United States, is not eligible for transfer to the USAR. The soldier will be discharged upon and by reason of having completed the period of service for which enlisted. The soldier will be advised before such discharge that it may permanently bar him or her from United States citizenship.

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

h. ARNGUS and USAR soldiers who successfully complete a period of IADT to which ordered, will out-process per AR 612–201. The service of soldiers specified in this paragraph who are in entry level status will be uncharacterized, even though they have completed their IADT successfully (see para 3–9). When the soldier is eligible for leave, early release may be authorized in lieu of leave for cogent reasons such as death or serious illness of a member of the trainee's immediate family. To warrant early release the reservist must have completed at least 12 weeks IADT, and the training benefits that would result from return to the training center upon completion of leave are not substantial enough to justify return to duty in lieu of early discharge from IADT.

i. Soldiers serving as cadets in military academies whose expiration of enlisted term of service occurs while soldier is serving in such capacity, will be discharged or released, as appropriate.

j. A soldier who, at the time of entry on active duty held an appointment as a USAR commissioned or warrant officer, or who while on active duty accepts appointment and such appointment is still current, will not be transferred to the USAR in his or her enlisted status. The soldier will be discharged. Orders discharging the soldier will be prepared per AR 310–10. The orders will indicate

that the soldier is transferred to the USAR in his or her commissioned or warrant grade. Discharge to enter another military status does not terminate the soldier's military service obligation incurred under 10 USC 651a.

k. The separation authority delegated to commanders by this regulation will not include the authority to discharge a soldier under court-martial sentence to an unsuspended dishonorable or bad conduct discharge before appellate review is complete. (See para 1–24 *b*).

4–3. Counseling required for certain retirement-eligible personnel

a. Each soldier who, upon ETS, will have completed 20 or more years of active Federal service will be counseled by his or her personnel officer. The officer will advise the soldier regarding his or her options and their consequences in accordance with the following if he or she—

(1) Has a service obligation remaining which would require extension of his or her current enlistment, or reenlistment, to complete.

(2) For any reason may be ineligible for immediate or later reenlistment.

b. Counseling will be done during the sixth month before the soldier's ETS, whether or not he or she states an intention to submit an application for retirement.

c. The soldier will be required to sign a statement that he or she has been counseled and fully understands the consequences of being discharged upon ETS rather than extending or reenlisting to complete a service obligation (see para 12–13, and AR 601–280, para 3–2, concerning enlistment extensions), or of retiring if he or she is ineligible to reenlist. DA Form 4657–R (Statement of Retirement–Eligible Soldier–Remaining Service Obligation) and DA Form 4658–R (Statement of Retirement–Eligible Soldier–Not Eligible to Reenlist) will be reproduced locally on 8½ x 11-inch paper. They are in the back of this volume. DA Form 4657–R will be used for personnel affected by *a*(1) above. DA Form 4658–R will be used for personnel affected by *a*(2) above. The statement will be completed in triplicate. All copies will be signed by the soldier. The original signed statement will be sent to the Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249, for file in the soldier's OMPF as a permanent document. A copy of the statement will be filed in the soldier's MPRJ as an action-pending document and a copy will be forwarded to HQDA(TAPC–EP–(appropriate Career Branch symbol)), ALEX VA 22331–0400. (See AR 614–200, table 1–1, for correct office symbol.)

d. The following information will be provided to the soldier during the counseling session:

(1) Under 10 USC 3914 and 3917 a soldier of the Regular Army must be on AD at the time of application for retirement and at the time of retirement. There is no statutory requirement that USAR or Army National Guard of the United States soldiers be on AD at the time of retirement. Soldiers whose reenlistment is precluded for any reason will not be retained beyond the last day of the month in which their ETS falls, except per AR 601–280, chapter 2. Nor can they have their enlistments extended solely because of failure to apply for, or late application for retirement, or to complete a medical examination in conjunction with retirement. (See chap 12, sec V.)

(2) A soldier who elects to be discharged upon ETS rather than reenlist or extend enlistment, as appropriate to complete a service obligation (para 12–8) will not be eligible to enlist until 93 days following discharge. The subsequent reenlistment may be in a grade lower than the grade held at the time of discharge. Thus, retirement during that term of service would also have to be in the lower grade unless the soldier is promoted to a higher grade during such period of service before retirement, or is eligible to retire under 10 USC 3917 (30 or more years of active Federal service).

(3) Retirement cannot be retroactive. Therefore, a soldier who is discharged, later reenlists, and then retires, cannot be placed in a

retired pay status for the period between his discharge and subsequent reenlistment. Retired pay will be based on the grade in which retired.

(4) Soldiers precluded from reenlistment for any reason (such as provisions of the Qualitative Management Program, AR 601–280, chap 10) would forfeit retirement eligibility altogether. There would be no way for them to regain an active duty status for the purpose of applying for retirement.

e. The failure to counsel a soldier under this paragraph will not alter his or her status or entitlement to any benefits.

4–4. Characterization of service

A soldier being separated upon expiration of enlistment or fulfillment of service obligation will be awarded a character of service of honorable, unless the soldier is in entry level status and service is uncharacterized.

4–5. Separation authority

Separations will be accomplished by the TP or TA processing the soldier for separation (AR 635–10), per the separation orders issued by the appropriate commander. (See AR 310–10.)

Chapter 5 Separation for Convenience of the Government

Section I General

5–1. Characterization of service or description of separation

a. Unless the reason for separation requires a specific characterization, a soldier being separated for the convenience of the Government will be awarded a character of service of honorable, under honorable conditions or an uncharacterized description of service if in entry level status.

b. No soldier will be awarded a character of service of under honorable conditions under this chapter unless the soldier is notified of the specific factors in his or her service record that warrant such a characterization, using the notification procedure. Such characterization is normally inappropriate for soldiers separated under the provisions of paragraph 5–4, 5–11, 5–12, 5–15, 5–16, or paragraph 5–17.

5–2. Exclusion from applicability

Permanent residence aliens, who have enlisted in the Regular Army for a period of 3 years or more and who desire to fulfill naturalization requirements through military service, will not be involuntarily separated per this chapter before completing 3 full years of active duty service. The soldier can be involuntarily separated if—

- a.* Soldier's performance or conduct does not justify retention.
- b.* Soldier is to be transferred to inactive duty in a Reserve Component to complete a Reserve service obligation.
- c.* The Secretary of the Army authorizes separation.

Section II Secretarial Authority

5–3. Secretarial Plenary Authority

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

b. Secretarial separation authority is normally exercised on a case-by-case basis, but may be used for a specific class or category of soldiers. When used in the latter circumstance, it is announced by

special HQDA directive that may, if appropriate, delegate blanket separation authority to field commanders for the class or category of soldiers concerned.

c. Individual cases that may be submitted to HQDA for consideration of separation under Secretarial plenary authority include those processed under paragraphs 1–19*b*(4), 2–6*e*, and 15–10*a*(2). Other bases for separation under this paragraph include, but are not limited to, HIV infection (AR 600–110), refusal to submit to medical care (AR 600–20), and when religious practices cannot be accommodated (DA Pam 600–75).

d. Separation under this paragraph may be voluntary or involuntary. When involuntary separation proceedings are initiated, the notification procedure (chap 2, section II) will be used; however, the provision for requesting an administrative board (para 2–2*d*) is not applicable. Unless waived by HQDA, medical examinations are required for soldiers being processed for involuntary separation (para 1–34*a*).

e. Blanket or individual requests for separation under this paragraph will be submitted to HQDA (TAPC–PDT–S), 2461 Eisenhower Avenue, Alexandria, VA 22331–0479. Chain of command forwarding endorsements must include rationale to support determination that early separation is in the best interest of the Army or, if applicable, the soldier(s), as well as a statement whether the counseling requirements of paragraph 1–22 have been met. In addition, chain of command forwarding endorsements on individual cases must include recommendations concerning characterization or description of service (para 5–1) and, when applicable, transfer to the IRR (chap 1, sec VIII), reentry eligibility (RE) code to be assigned, recoupment of enlistment/reenlistment bonus, and award of separation pay.

Section III Surviving Sons or Daughters

5–4. General

a. Commanders specified in paragraph 1–21 will approve requests for separation for the convenience of the Government of soldiers who qualify per this section as surviving sons or daughters. The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD with transfer to the IRR, or discharged. (See para 1–12 for additional instructions on ARNGUS and USAR personnel.)

b. Separation under this section is not authorized—

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

(2) When a soldier who qualified per this section has waived status as surviving son or daughter. A soldier who has waived such status may request reinstatement of that status; however, reinstatement will not necessarily provide a basis for separation under this section. Each case will be considered on its individual merits. A soldier who has been advised of this section and who enlists, reenlists, or otherwise voluntarily extends his or her active duty period after the date of notification of the family casualty on which the surviving status is based, will be considered to have automatically waived his or her rights for separation under this section.

(3) When a soldier—

- (*a*) Has court-martial charges pending.
- (*b*) Has been tried and convicted by court-martial and the case is being reviewed or appealed.
- (*c*) Is serving a sentence (or otherwise undergoing punishment) imposed by court-martial.
- (*d*) Is being processed for involuntary administrative separation for cause.

5–5. Definitions

The following definitions apply to terms used in this section—

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

- (1) Was killed in action.

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

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

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

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

5-6. Procedures

Request for separation must be submitted in writing by the soldier concerned. All requests will include the following information—

a. Name, grade, SN or SSN, branch of Service (Army, Navy, Air Force, Marine Corps, or Coast Guard), relationship, and date of death or disability of the family member upon whom request is based.

b. Department of Veterans' Affairs claim number, if appropriate.

5-7. Characterization of service or description of separation

(See para 5-1.)

Section IV

Other Convenience of the Government Separation Policies

5-8. Involuntary separation due to parenthood

a. Soldiers will be considered for involuntary separation when parental obligations interfere with fulfillment of military responsibilities. Specific reasons for separation because of parenthood include inability to perform prescribed duties satisfactorily, repeated absenteeism, late for work, inability to participate in field training exercises or perform special duties such as CQ and Staff Duty NCO, and nonavailability for worldwide assignment or deployment according to the needs of the Army. See AR 600-20, chapter 5, section V, concerning soldiers' responsibilities for care of family members as related to military responsibilities.

b. Separation processing may not be initiated under this paragraph until the soldier has been adequately counseled concerning deficiencies and has been afforded the opportunity to overcome them. (See AR 600-20, and para 1-18, AR 635-200.)

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

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

e. Commanders specified in paragraph 1-21 are authorized to order separation under this paragraph. See paragraph 1-12 for additional instructions for ARNGUS and USAR soldiers. The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or discharged.

5-9. Lack of jurisdiction

The general court-martial convening authority will direct the discharge or release from active military service, or will release the individual concerned from military control. This authority will not be delegated.

a. The discharge or release of an individual from the Army may be ordered by a US court or judge thereof. The office upon whom such an order or writ is served will report it immediately to The Judge Advocate General, per AR 27-40.

b. Upon the final judicial determination of a military judge, a president of a special court-martial, or military appellate agency that an individual is not currently a soldier of the Army, and where a commander reasonably believes that the Army may lack jurisdiction over a soldier presently under his or her jurisdiction, the general court-martial convening authority will immediately initiate thorough inquiry. All allegations and relevant facts and circumstances will be examined. AR 15-6 will not apply to such inquiries.

(1) If the claim of lack of jurisdiction is based upon recruiter

misconduct, inquiry to appropriate recruiting officials will be included.

(2) If the claim of lack of jurisdiction is based on other provisions of this regulation (such as minority or erroneous or fraudulent enlistment), the inquiry and later action on the claim will be conducted per procedures outlined in those specific provisions. Those paragraphs will be cited as the authority for the action taken.

c. The general court-martial convening authority will determine whether retention or release from military control, or release from active service is warranted.

(1) *Retention.* In making determinations on retention, paragraph 7-21 b should be considered. Only individuals with waivable disqualifications (AR 601-210 or AR 601-280) will be considered for retention.

(2) *Release from military control or from active military service.* If the general court-martial convening authority concludes that the Army lacks jurisdiction over the individual and determines that separation is warranted, he or she will take action per paragraph 1-12 b for ARNGUS or USAR personnel. Regular Army personnel will be released from military control per this paragraph.

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

Commanders specified in paragraph 1-21 are authorized to dispose of cases involving aliens not lawfully admitted to or residing in the United States, who did not conceal their true citizenship status at enlistment. Such individuals will be reported to the nearest office of the Immigration and Naturalization Service. If these individuals are subject to deportation proceedings at this time, or upon discharge from the service, or if their custody is desired by immigration officials, they will be reported to the commander having discharge authority. This commander will then order the discharge for the convenience of the Government. Commanders responsible for separation processing will notify immigration officials of the discharge action so that they may take the individual into custody, if they so desire. The character of service and discharge certificate furnished will reflect service rendered by the individual after enlistment. (See paras 3-7 and 5-1.)

5-11. Separation of personnel who did not meet procurement medical fitness standards

a. Soldiers who were not medically qualified under procurement medical fitness standards when accepted for enlistment, or who became medically disqualified under these standards prior to entry on AD or ADT for initial entry training, will be separated. Medical proceedings, regardless of the date completed, must establish that a medical condition was identified by appropriate military medical authority within 6 months of the soldier's initial entrance on AD for RA, or during ADT for initial entry training for ARNGUS and USAR, which—

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

(2) Does not disqualify him or her for retention in the military service under the provisions of AR 40-501, chapter 3.

b. As an exception, a soldier who is found after entry on active duty not to have been qualified under procurement medical fitness standards at the time of enlistment may request to be retained in the Service with the exception of existed prior to service (EPTS) pregnancies) subject to the following conditions. Enlistees who are confirmed to be HIV positive will be processed in accordance with AR 600-110. Approval or disapproval of requests for retention under this paragraph is delegated to the separation authority cited in paragraph 1-21 c. No soldier has a right to be retained under this paragraph. Soldiers not retained will be processed for separation. Soldiers will not be retained under this paragraph unless:

(1) The separation authority cited in paragraph 1-21 c determines, after considering the findings of an Entrance Physical Standards Board, that the soldier's disqualifying condition will not prevent the soldier from performing satisfactorily throughout his or her period of enlistment in the PMOS for which being trained.

(2) The soldier signs a statement requesting to complete the period of service for which enlisted despite his or her being subject to separation under paragraph *a* above.

c. The criteria in chapter I, section VIII, will govern whether the soldier will be released from AD, with transfer to the IRR, or discharged. In the case of an ARNGUS or USAR soldier found to be pregnant upon entry on IADT, the soldier will be released from active duty and returned to her ARNG or USAR unit for disposition in accordance with AR 135–91, paragraph 4–23. The soldier will be separated within 72 hours following approval by the separation authority (para 1–21). (See para 1–12 for additional instructions on ARNGUS or USAR personnel.)

d. Soldiers who do not meet the medical fitness standards for retention will be processed per AR 635–40.

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

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

5–12. Discharge for failure after enlistment to qualify medically for flight training

Soldiers who enlist per AR 601–210 for the Warrant Officer Flight Training (WOFT) option and who, after enlistment, fail to qualify medically for flight training may be discharged from the Army. The following conditions apply:

a. Eligibility for discharge will be determined by the Commander, US Army Aeromedical Center, Fort Rucker, AL 36362 (AR 612–201, para 3–3 *d*), that—

(1) The medical condition would permanently disqualify the soldier for flight training, and

(2) The condition does not disqualify the soldier for retention in the military service per AR 40–501, chapter 3.

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

c. Applications for discharge will be processed promptly and separation will be accomplished within 72 hours following approval by the discharge authority. (See para 1–21.)

d. Soldiers who do not meet retention medical fitness standards will be processed per AR 635–40.

e. This paragraph is not to be used for personality disorder cases, which will be processed per paragraph 5–13.

f. A soldier who meets the requirements of *a* above and elects to complete the period of service for which he or she enlisted must submit a written request to be retained on AD (fig 5–2). The request is submitted to the unit commander within 30 days of the date the Commander, US Army Aeromedical Center, finds the soldier medically disqualified for flying.

g. The determination made by the Commander, US Army Aeromedical Center, the soldier’s request for discharge (fig 5–1) or retention (fig 5–2), and other pertinent papers will be filed in the soldier’s DA Form 201 as permanent material.

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

5–13. Separation because of personality disorder

Under the guidance in chapter I, section II, a soldier may be separated for personality disorder (not amounting to disability (AR 635–40)), that interferes with assignment to or performance of duty, when so diagnosed as indicated in *a* below.

a. This condition is a deeply-ingrained maladaptive pattern of behavior of long duration that interferes with the soldier’s ability to perform duty. (Exceptions: combat exhaustion and other acute situational maladjustments.) The diagnosis of personality disorder must have been established by a physician trained in psychiatry and psychiatric diagnosis, or a licensed clinical psychologist. It is described in the Diagnostic and Statistical Manual (DSM–III–R) of

Mental Disorders (section on mental disorders, International Classification of Diseases and Injuries –8), 3d Edition, Revised, Work Group to Revise DSM–III, Americal Psychiatric Association, Washington, DC, 1987.

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

c. Separation because of personality disorder is authorized only if the diagnosis concludes that the disorder is so severe that the soldier’s ability to function effectively in the military environment is significantly impaired. Separation for personality disorder is not appropriate when separation is warranted under chapter 4, 5, 7, 9, 10, 11, 13, 14, or 15; AR 604–10; or AR 635–40.

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

e. Separation processing may not be initiated under this paragraph until the soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. (See para 1–18.)

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

g. For separation authority, see paragraph 1–21.

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

5–14. Concealment of arrest record

a. Policy. A soldier who concealed an arrest record (not followed by a civil court conviction and not reflecting charges pending at the time of enlistment) for any (juvenile or adult) offense and such concealment does not amount to a fraudulent entry (chap 7) may be separated. Separation is based on the false statements made in enlistment documents regarding the existence of an arrest record. In determining whether discharge is appropriate, the following will be considered:

(1) Concealing a pattern of arrests strongly suggests that the soldier was intentionally attempting to mislead recruiting officials regarding enlistment eligibility. The pattern may include misdemeanors and lesser offenses in addition to a felony.

(2) The age of the individual when enlisted, when arrested, and the period of time that elapsed since the arrest.

(3) The nature and the circumstances surrounding the arrests.

(4) The nature of the soldier’s service since enlistment.

b. Discharge authority. Discharge or retention of the soldier will be directed by commanders specified in paragraph 1–21. When retention is authorized, DA Form 2–1 will be annotated to reflect that concealment of the arrest has been waived. After waiver there will be no further cognizance of the concealment of arrest, nor will any further action be taken.

c. Evidence. When information is received which indicates the soldier may have concealed an arrest record, an investigation into the circumstances is required. From this investigation, a decision to discharge or retain can be made. To prove an arrest record as required in this paragraph, bona fide evidence must be obtained from the appropriate law enforcement agency. A typical example of bona fide evidence includes the following:

(1) A completed DD Form 1584 (DOD National Agency Check Request) (ENTNAC), with a “rap sheet” listing incidents of arrest. Further contact with agencies or departments which made the arrest may be necessary. An ENTNAC is completed on each individual shortly after entrance into the Army, and should be examined by unit commanders.

(2) A completed DA Form 3286 (Statement for Enlistment) or

other evidence which shows clearly that the individual concealed an arrest record.

d. Procedures. The notification procedure will be used (chap 2, sec II).

e. Characterization of service or description of separation. See paragraph 5-5.

5-15. Rescinded

5-16. Early release of Reserve Component personnel serving AGR tours under 10 U.S.C. 672(d).

a. General. USAR or ARNGUS AGR soldiers serving tours under 10 U.S.C. 672(d) may be released from active duty for the convenience of the Government, prior to completion of their AGR tour, under the following circumstances:

(1) AGR soldiers may be voluntarily released from active duty, at their request, when such release is fully justified and determined to be in the best interest of the Government.

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

b. Procedure. The notification procedure (chap 2, sec II) will be used for soldiers involuntarily released from active duty under this paragraph. However, the procedure for requesting an administrative board (para 2-2 *d*) is not applicable.

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

d. Separation authority. Notwithstanding the provisions of paragraph 1-21, only the Chief, National Guard Bureau, the Chief, Army Reserve, the Commander, ARPERCEN, or higher authority within the office of the Secretary of the Army are authorized to order release from active duty under this paragraph. This authority may not be further delegated.

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

5-17. Early separation to further education

Soldiers may be discharged or released from active duty for the convenience of the Government, up to 90 days before ETS, in order to attend a specific term at a college, university, vocational school, or technical school.

a. Soldiers serving initial enlistments of less than 3 years, members of the ARNGUS or USAR serving on ADT, and former senior ROTC cadets ordered to active duty because of breaches of contract are ineligible for separation under this paragraph.

b. To qualify for early separation, eligible soldiers must—

(1) Not be mission essential to their assigned organizations, as determined by commanders concerned.

(2) Clearly establish that the specific school term for which they seek early separation is academically the most opportune time for them to begin or resume their education, and that delay of school enrollment until normal ETS would cause undue personal hardship.

(3) Provide a statement from an appropriate school official (for example, a registrar or director of admissions) indicating acceptance for enrollment (without qualification or in a probationary status) in a full-time resident course of instruction. The statement must also reflect that the latest acceptable registration date for the school term falls within the 3-month period preceding the soldier's ETS.

(4) Show that they are able to pay, or have already paid, any school entry fees.

c. The college or university must offer courses of instruction leading to an associate, baccalaureate, or higher degree, and must be approved by the Department of Veterans' Affairs. The vocational or technical school must offer a course of instruction of no less than 3

months duration, and must be approved by the Department of Veterans' Affairs.

d. The effective date of early separation under this paragraph normally will not be earlier than 10 days prior to the class starting date, except when soldiers may be separated up to 30 days prior to the date classes convene if evidence is submitted that the 10-day period is clearly insufficient. This is not intended as authority to permit separation a full 30 days prior to class starting date in every case, but to provide reasonable latitude in justifiable cases to authorize separation on a date that will give the soldier adequate time to register and enter the school on time. Examples include soldiers returning from overseas and those who must move their families to the school location.

e. Accrued leave will be used to the maximum extent possible, as transition leave, in conjunction with early separation under this paragraph.

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

g. Commanders specified in paragraph 1-21 are authorized to order separation under this paragraph. The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD with transfer to the IRR, or discharged.

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

5-18. Other designated physical or mental conditions

a. Commander specified in paragraph 1-21 may approve separation under this paragraph on the basis of other physical or mental conditions not amounting to disability (AR 635-40), and excluding conditions appropriate for separation processing under paragraph 5-11 or 5-13, that potentially interfere with assignment to or performance of duty. Such conditions may include, but are not limited to, chronic airsickness or seasickness, enuresis, sleepwalking, dyslexia, severe nightmares, claustrophobia, and other disorders manifesting disturbances of perception, thinking, emotional control or behavior sufficiently severe that the soldier's ability to effectively perform military duties is significantly impaired.

b. When a commander determines that a soldier has a physical or mental condition that potentially interferes with assignment to or performance of duty, the commander will refer the soldier for a medical examination and/or mental status evaluation in accordance with AR 40-501. A recommendation for separation must be supported by documentation confirming the existence of the physical or mental condition.

c. Separation processing may not be initiated under this paragraph until the soldier has been counseled formally concerning deficiencies and has been afforded ample opportunity to overcome those deficiencies as reflected in appropriate counseling or personnel records. (See para 1-18.)

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

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

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

g. Commanders specified in paragraph 1-21 are authorized to order separation under this paragraph. See paragraph 1-12 for additional instructions for ARNGUS and USAR soldiers. The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or discharged.

Chapter 6 Separation Because of Dependency or Hardship

6-1. General

Separation under this chapter is for the convenience of the Government.

6-2. Separation authority

See paragraph 1-21.

6-3. Criteria

Soldiers of the Active Army and the Reserve Components serving on AD or ADT may be discharged or released (para 6-10) because of genuine dependency or hardship.

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

b. Hardship. Hardship exists when in circumstances not involving death or disability of a member of the soldier's (or spouse's) immediate family, separation from the Service will materially affect the care or support of the family by alleviating undue and genuine hardship. (See para 6-5 for definition of "immediate family" soldier.)

(1) *Parenthood of married soldiers.* A married soldier who becomes a parent by birth, adoption or marriage (stepparent), and whose child (or children) under 18 years of age reside within the household, may apply for separation under hardship. The soldier must submit evidence (per para 6-7b(5)) that the roles of parent and soldier are incompatible and that they cannot fulfill their military obligation without neglecting the child or children.

(2) *Sole parents.* Soldiers who are sole parents, and whose children under 18 years of age reside within the household, may apply for separation under hardship. A "sole parent" is defined as a parent who is single by reason of never having been married, or is divorced or legally separated and has been awarded child custody by judicial decree or court order, or is a widow or widower.

(3) *Intent.* It is not the intent of the Army's policy regarding service women who are parents or soldiers who become sole parents, to arbitrarily allow the separation of an enlisted woman who remained in the service during her pregnancy and then requests release immediately after receiving the medical and monetary benefits related to her confinement (prenatal and postnatal absence) and delivery.

(4) *Supporting evidence.* Supporting evidence will be provided as per paragraph 6-7 b(5). Paragraph 6-7 b(5) minimizes the supporting evidence for these two policies. However, soldiers must meet the application criteria in paragraph 6-4, in addition to the requirement that there be unexpected circumstances beyond the soldier's control justifying separation. An example of unexpected circumstances beyond the soldier's control is the birth of a child with a serious birth defect requiring constant care. Inability to obtain an approved dependent care plan does not qualify the soldier for separation under this provision.

6-4. Application of criteria

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

(1) Conditions have arisen or have been aggravated to an excessive degree since entry on AD or ADT.

(2) Conditions are not of a temporary nature.

(3) Every reasonable effort has been made by the soldier to alleviate the dependency or hardship conditions without success.

(4) Separation from active military service of the soldier is the only readily available means of eliminating or materially alleviating the dependency or hardship conditions.

b. Circumstances outlined in (1) and (2) below do not justify separation because of dependency or hardship. However, the existence of these circumstances does not prevent separation because of dependency or hardship, provided the application meets the criteria in *a* above.

(1) Pregnancy of an enlisted man's wife is not considered a disability for which his separation is justified. However, this does not prevent separation because of a permanent medical disability resulting from pregnancy.

(2) Undue and genuine hardship does not necessarily exist because of altered income or because the soldier is separated from his

or her family, or must suffer the inconvenience normally incident to military service.

6-5. Conditions affecting determination regarding separation for dependency or hardship

a. In determining the eligibility for separation, "members of the immediate family" include only spouse, children, father, mother, brothers, sisters, only living blood relative, or any person who stood "in loco parentis" to the soldier (or spouse) before entry into the service. "In loco parentis" is any person who has stood in the place of a parent to the soldier (or spouse) for a continuous period of at least 5 years before he or she reached 21 years of age.

b. When a soldier is eligible for separation per this chapter, separation will not be disapproved because of the soldier's indebtedness to the Government or to an individual.

c. When soldiers are eligible for separation, their separation will not be disapproved because their services are needed by their organization.

d. Soldiers will not be separated because of dependency or hardship until proper disposition is made of the case, if they are—

(1) Under charges.

(2) In confinement.

(3) Recommended for separation per chapters 13 or 14.

(4) Being processed for discharge per paragraph 5-8 or chapter 9 or 11.

(5) Being investigated under the military personnel security program.

(6) Being processed for discharge or retirement for physical disability.

Note. However, the application will be accepted and processed to final decision.

e. A sentence to confinement (not including dishonorable or bad conduct discharge) will be fully served unless terminated by proper authority before a separation for dependency or hardship may be given.

f. A soldier may request withdrawal of application at any time before the effective date. The separation authority, based on the evidence provided by the soldier, may withdraw approval of separation before its effective date.

g. Commanders authorized to approve separation under this chapter will withdraw approval before its effective date when—

(1) The separation is being achieved by fraud by the soldier.

(2) An error is discovered which would have prevented approval.

(3) The soldier who has been approved for separation based on sole parenthood later marries.

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

h. The separation authority will insure that this chapter is not used solely to procure a reassignment, a curtailment of assignment, or an avoidance of an assignment. A soldier whose separation is not approved and requires a new PCS assignment will be reported immediately available for assignment per AR 614-200, paragraph 2-28.

6-6. Application for separation

Separation from the service because of dependency or hardship must be requested in writing by the soldier.

a. Submitting the application.

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

(2) A person assigned to an overseas unit who is temporarily in the United States on leave or temporary duty (TDY) will submit an application to the commander of the Army installation (except Military Entrance Processing Stations (MEPS) and recruiting main stations) nearest the soldier's leave address or the installation to which temporarily assigned. In addition, no attachments are authorized for personnel to Army Medical Centers unless the applicant is a patient or being treated at that medical facility, or commuting distance to garrison or troop unit would create additional hardship to the applicant.

(3) A person assigned to a unit or installation within the United States who is temporarily in an overseas command on leave or TDY will submit an application to the commander in which located. The commander specified in paragraph 1–21 will specify the unit to which the soldier will be attached while the application is being considered. However, attachment to the nonpermanent party element of transfer points or stations is not authorized.

(4) Soldiers on orders for overseas shipment, either as individuals or as members of units, who apply for dependency or hardship separation before departure from unit of assignment will be held at the losing station pending final disposition of the application. (See AR 614–30.)

(5) Soldiers on orders for reassignment from one CONUS installation to another CONUS installation (either as individuals or as members of units) who apply for dependency or hardship separation before departure from unit of assignment will comply with reassignment orders if considered appropriate by the losing commander. The soldier will be held at the losing installation if the application reflects sufficient grounds for approval. If not, the soldier will be advised to submit the application upon arrival at the gaining installation.

(6) Application for dependency or hardship separation from personnel enroute overseas may be accepted at the Army installation (except Military Entrance Processing Stations (MEPS) and recruiting main stations) nearest the soldier's leave address, if an interview reveals information which may justify separation. The soldier will be attached at that installation until a final decision is made on the application. In addition, no attachments are authorized for personnel to Army Medical Centers unless the applicant is a patient or is being treated at that medical facility, or commuting distance to garrison or troop unit would create additional hardship to the applicant. The losing commander, and the US Army Military Personnel and Transportation Assistance Office at the Aerial Port of Embarkation (APOE) through which the soldier is scheduled to travel, will be notified of the attachment and any later decision. The US Army Military Personnel and Transportation Assistance Office will notify the gaining commander and the Passenger Liaison Office, MTMC. Soldiers en route overseas who arrive at the APOE and have not been previously attached to another installation for the same purpose, may be referred to the US Army Military Personnel and Transportation Assistance Office at the APOE, and to the Army installation nearest the port for consideration of the application, if an interview reveals information which may justify separation for dependency or hardship. The soldier will be attached to the installation nearest the aerial port until final determination is reached on the application.

(7) Soldiers assigned to a CONUS unit who are on leave within CONUS normally will submit their application for separation to their commanding officer per paragraph (1) above. However, when exceptional circumstances require the soldier's continued presence and if the commanders concerned agree, attachment to an installation to submit an application for separation is authorized. Attachment to the nonpermanent party element at the transfer points or stations is not authorized.

b. Forwarding to the separation authority. Forwarding indorsements prepared by commanders having custody of the applicants records will contain the following information if it does not appear elsewhere in the inclosures:

(1) Amount and type of allotments the soldier has in effect, together with the name and relationship of each allottee.

(2) A statement whether a determination of dependency for benefits under the Dependent's Assistance Act of 1950 (DOD Military Pay and Allowances Entitlements Manual) has been requested and the decision of the Allotments and Deposits Operations, US Army Finance and Accounting Center.

(3) Date of current enlistment, entry on AD or ADT, and ETS.

(4) Whether the applicant is under charges, in confinement, or under investigation or consideration for separation per AR 635–40, AR 604–10, or chapters 9, 11, 13, or 14, or paragraph 5–8.

6–7. Evidence required

The supporting evidence for an application for separation because of dependency or hardship normally will be in affidavit form. The evidence must substantiate the dependency or hardship conditions.

a. The evidence required will depend on the nature of the claimed hardship. The application should include, as a minimum, the following affidavits:

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

(2) An affidavit or statement by or on behalf of the soldier's dependents substantiating the dependency or hardship claim.

(3) Affidavits by at least two agencies or individuals, other than members of the soldier's family, substantiating the dependency or hardship claim.

b. Additional evidence may be required as follows:

(1) When the basis for the application is financial difficulty, a detailed statement is required to establish the monthly income and expenses of the family.

(2) When the basis for the application is death of a soldier of the soldier's family, a death certificate or other valid proof of death should be furnished.

(3) When the basis for the application is disability of a member of the soldier's family, a physician's certificate should be furnished showing the diagnosis, prognosis, and date of disability. Preprinted medical statement forms which require only a physician's signature will not be issued or used for hardship applications. Medical statements and certificates will be prepared by the physician.

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

(5) When the basis for separation is sole parenthood of soldiers, the supporting evidence will be in affidavit form. It will support the applicant's claim that unexpected circumstances, or circumstances beyond his or her control have occurred since acquired parenthood which prevent fulfillment of military obligations without neglect of the child. Affidavits from the soldier's immediate commander or officer who is the job supervisor, as appropriate, will be considered sufficient to substantiate the applicant's claim. Evidence in *a*(2) and (3) above is not required for these applications. However, sole parenthood resulting from divorce or legal separation will be substantiated by a judicial decree or court order awarding child custody to the soldier.

6–8. Procedure

The separation authority (para 1–21) will consider the facts upon which the request is based. Any additional information required to determine the validity of the reason for separation will be requested from the soldier, or the American National Red Cross (para 6–9). The specific reason for denial of an application will be included in the return indorsement.

a. The personnel officer of an Army installation (para 6–6 *a*(2) and (3)), except Military Entrance Processing Stations (MEPS) and recruiting main stations, will give all assistance required to any soldier desiring to apply for separation. In addition, no attachments are authorized for personnel to Army Medical Centers unless the applicant is a patient or is being treated at that medical facility, or commuting distance to garrison or troop unit would create additional hardship to the applicant. Assistance will consist of explaining the requirements of this chapter, assisting in preparing evidence, and notifying the soldier's parent unit. The commander who authorized leave or TDY will be notified, by electrically-transmitted message, of the date and reason for the attachment and will be requested to reply by message whether or not AR 600–31 is applicable to the soldier. If a tracer message is required, the theatre commander will be included as an information addressee. If MINIMIZE is in effect, messages will be dispatched by mail. No attachments are authorized for soldiers on leave from or en route to other CONUS installations without prior approval of the individual's commander. In these

cases the coordination will be between the commanders concerned, without referral to MILPERCEN.

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

(1) With the exception of United States Army Europe (USAREUR), Eighth United States Army (EUSA), and Western Command (WESTCOM), notify the commander who authorized leave or TDY of approval by electrically-transmitted message within 24 hours of the approval of hardship separation. Request reassignment orders, personnel and financial records (only after application is approved) be forwarded by MOM/First Class/Priority mail (AR 340-3). Also, expeditious shipment of personal property will be requested. When applicable, the message will contain the name of an individual, if other than unit commander or ISG, with whom the soldier may have left any personal property. The soldier will remain attached pending receipt of reassignment orders. If MINIMIZE is in effect, the message will be dispatched by mail. If a tracer message is required, include the MACOM as an information addressee. In all cases which involve soldiers of USAREUR, EUSA, or WESTCOM, notification and request for reassignment orders, records, and shipment of personal property will be made by electrically-transmitted message to the following:

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

(b) For EUSA. Commander, 8th Personnel Command, Yongson, Korea, ATTN: EAPCMP. (APO SF 96301 to be included if dispatched by mail).

(c) For WESTCOM. Commander, WESTCOM, Honolulu, HI, ATTN: APAG (Fort Shafter, HI 96858 to be included if dispatched by mail).

(2) Accomplish the preprocessing procedures (AR 635-10), including the medical examination. If possible, the records interview processing and completion of DD Form 214WS (Worksheet for Certificate of Release or Discharge from Active Duty) will also be accomplished.

(3) Authorize the soldier to proceed home on ordinary and/or excess leave (AR 630-5), provided the soldier so desires. The soldier will be advised that separation documents and final pay will be mailed to the address furnished. The partially completed records will be suspended pending receipt of the original records.

(4) Upon receipt of the original records, reassign the soldier to the USA separation transfer point or installation for separation processing.

c. If the application is disapproved, notify the soldier in writing of the specific reason for denial. The soldier will then be released from attachment to revert to emergency or ordinary leave for return to his or her assignment. Notify the commander by electrically-transmitted message of the date of departure and forward the disapproved application to the commander for inclusion in the personnel file as a temporary document. If MINIMIZE is in effect, the message will be dispatched by mail.

d. The USA separation transfer point or MILPO commander or chief will—

(1) Upon reassignment, report the soldier as assigned, and upon separation, submit the SIDPERS separation transaction.

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

(3) Dispose of records per AR 635-10.

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

f. Procedure 1-1, DA Pam 600-8-11, establishes detailed instructions for processing applications.

6-9. Service of American Red Cross

a. Requests for supplemental factual information pertaining to applications for separation of soldiers because of dependency or hardship may be made to the American Red Cross. Such requests originating within military agencies will be restricted to specific information when probable separation is warranted.

b. The following procedures will be followed when a military agency requests assistance from the American Red Cross:

(1) The military agency requesting assistance will prepare a brief containing sufficient information to identify the applicant for separation. The brief will also include the name, address, and relationship of the dependent or dependents on whom the information is desired.

(2) If the Red Cross representative is serving the organization or installation concerned, the brief, together with a request for the specific information will be forwarded to the representative.

(3) If no Red Cross representative is serving the organization or installation, the request will be sent to the following address:

Armed Forces Reporting Unit
National Headquarters
American Red Cross
17th & D Sts., NW
WASH DC, 20006

(4) Contents of reports furnished by the Red Cross will be disclosed only per AR 340-17 and AR 340-21.

c. Soldiers or their dependents may request local chapters of the American Red Cross to assist in obtaining necessary evidence to substantiate applications for separation. The American Red Cross does not, however, make formal reports to military agencies unless requested by appropriate military commanders.

6-10. Type of separation

The criteria in chapter 1, section VIII, will govern whether soldiers separated for dependency, hardship, or parenthood of married service women or sole parents, will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1-12 for additional instructions on ARNGUS and USAR personnel.)

6-11. Characterization or description of service

If the soldier is still in Entry Level Status, service will be described as uncharacterized. If the soldier is beyond Entry Level Status, service will be characterized as honorable or under honorable conditions as set forth in chapter 3, section III. Before characterization of service as under honorable conditions, the soldier shall be notified of the specific factors in the service record that warrant such characterization. The Notification Procedure (chap 2, sec II) will be used.

Chapter 7 Defective Enlistments /Reenlistments and Extensions

Section I General

7-1. General

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

7-2. Separation authority

See paragraph 1-21.

Section II Minority

7-3. Statutory authorities

a. Section 505, Title 10, United States Code.

b. Section 1170, Title 10, United States Code.

7-4. Criteria

a. Upon receipt of satisfactory proof of date of birth, a soldier will be released from the custody and control of the Army because of void enlistment if the soldier enlisted while under 17 years of age

and has not yet attained that age. (See para 1–12 *b* for instructions on ARNGUS and USAR personnel.)

b. Unless under charges for a serious offense committed after attaining the age of 17 years, the soldier will be discharged for minority upon application of the parents or guardian of a regular soldier made within 90 days after the soldier's enlistment if—

(1) There is satisfactory evidence that the soldier is under 18 years of age, and

(2) The soldier enlisted without the written consent of his or her parents or guardian.

7–5. Evidence required

a. In support of an application for discharge or for release from custody and control of the Army under this chapter, the following evidence of age is required:

(1) A duly authenticated copy of a municipal or other official record of birth of the soldier, or

(2) If no official record of birth of the soldier can be obtained, an affidavit of the parent(s) or guardian must be furnished stating specifically why an official record cannot be obtained. The affidavit must be accompanied by one of the following:

(*a*) A baptismal certificate; a certified copy or photostat of school records, preferably the first term of school; the affidavit of the physician or midwife in attendance at the birth of the soldier; or a notarized transcript from the records of the hospital in which the soldier was born, or

(*b*) Affidavits of at least two persons not related to the soldier, testifying from their personal knowledge as to the date of birth.

b. In case of an enlistment under an assumed name, the identification of the soldier with the person mentioned in the record of birth or the affidavits must be shown by the affidavit of the parents or guardian.

c. Birth or baptismal certificates will be examined carefully for alterations other than those made officially. Care will be taken to note the “date of filing.” A delayed birth certificate with date of filing subsequent to the soldier's enlistment or one with no filing date is not acceptable unless supported by substantial evidence to establish the date and place of filing.

d. If the parents are divorced or otherwise legally separated, the application for discharge must be accomplished by a copy of the court order or other evidence showing that the parent submitting the application has custody of the soldier. If either parent has lost control of the soldier by judgment of a court, appointment of a guardian, desertion of family, or waiver, an application from such parent for the discharge of the soldier will not be considered.

e. Although a guardian usually is not recognized as such unless legally appointed, a person who has assumed support of a minor and performed the duties of guardian for 5 years immediately preceding the enlistment will be recognized as a guardian. An affidavit supporting “guardianship” under these conditions will be submitted with the birth certificate.

7–6. Procedure

a. When a commander authorized to order minority discharge or release from custody and control of the Army because of minority receives an application from either the parents or guardian, with the supporting evidence required in paragraph 7–5, the commander will take action as specified in the Notification Procedure, chapter 2, section II. The signatures on the application for separation and consent statement will be closely examined to determine whether the applicant actually signed the statement.

b. Applications, together with recommendations, may be forwarded to HQDA(TAPC–PDT–SS), ALEX VA 22331–0479, under the following circumstances:

(1) Any doubtful case.

(2) When additional evidence is required and the final decision for soldiers stationed overseas would be materially expedited by processing the case in CONUS.

7–7. Minors under charges or in confinement

When minors who are otherwise eligible for minority discharge under paragraph 7–4 *b*, are under court–martial charges, serving a court–martial sentence, are in military confinement for a serious offense, they will not be discharged for minority until proper disposition has been made in the case. Although the facts indicate that, in other circumstances, the soldiers would be discharged for a reason other than minority (misconduct or unsatisfactory performance) it is desirable to avoid action by boards of officers, or trial and confinement of a soldier who otherwise is eligible for minority discharge. It is quite proper to go to considerable lengths to determine that no board or trial should be held and to remit any sentence imposed. Immediate action will be taken, however, to discharge such soldiers.

7–8. Indebtedness or confinement by civil authorities

Indebtedness to the Government or to a soldier, or confinement by civil authorities will not prevent discharge or release from custody and control of the Army for minority when a soldier is eligible therefor.

7–9. Void service

Upon determination that a period of service is void per paragraph 7–4 *a*, the discharge authority (para 1–21) will issue an order releasing the soldier from custody and control of the Army. As a response to the “additional instruction” lead line, the order will state that the soldier's enlistment is void because of minority. Copies of the order will be issued to the soldier and will also be filed in the Military Personnel Records Jacket as permanent material. A DD Form 214 will be issued. A discharge certificate will not be issued. (See para 1–12 *b* for instruction on ARNGUS and USAR personnel.)

7–10. Minors stationed in area other than area in which enlisted

A soldier serving in an area other than the area in which enlisted will not be discharged or released from custody and control of the Army until returned to the appropriate territory or area (AR 635–10). As a response to the “additional instructions” lead line, reassignment orders will include the statement, “You are a minor being returned for discharge” or “You are a minor and are being returned for release from custody and control of the Army”, as appropriate, so that such separation may be accomplished promptly upon arrival.

7–11. Pay and allowances

a. Except as provided in *b* below, a soldier discharged or released from custody and control of the Army on account of minority—

(1) May retain whatever pay and allowances already received during the period or minority enlistment or period of service. But no pay or allowances may be paid after the date of determination of minority. (See chap 4, DODPM, part 1.)

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

(3) May receive a donation of not more than \$25.00 if otherwise without funds to meet immediate needs. (See chap 4, DODPM, part 4).

(4) In addition to (1) through (3) above, a soldier who is confined in an Army or contract prison at the time of discharge or release from custody and control of the Army on account of minority is also entitled to civilian clothing not to exceed \$40 in cost.

b. Soldiers who enlisted in the Regular Army after reaching age 17 and who are discharged for minority before their 18th birthday, are entitled to pay and allowances to include the date of discharge (rule 6, table 1–4–1, DODPM).

7–12. ARNGUS and USAR personnel

a. ARNGUS personnel will be discharged from their Reserve of the Army status and returned to the control of the appropriate State National Guard authorities for discharge from their State contractual commitment.

b. USAR personnel will be discharged.

7-13. Type of separation

A soldier under paragraph 7-4 *a* will receive an order of release from custody and control of the Army. The separation of a soldier under paragraph 7-4 *b* will be described as an entry level separation.

7-14. Entitlement

The entitlements portion of this chapter pertaining to pay and allowances has been approved by the Secretary of Defense in accordance with 37 USC 1001.

Section III Erroneous Enlistments, Reenlistments, or Extensions

7-15. Erroneous enlistments, reenlistments, or extensions

a. A soldier may be separated on the basis of an erroneous enlistment, induction, or extension of enlistment per guidance in chapter 1, Section II. For the purpose of this chapter, the term enlistment means both an original enlistment and any subsequent enlistments (reenlistments). An enlistment, induction, or extension of enlistment is erroneous if—

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

(2) It was not the result of fraudulent conduct on the part of the soldier; and

(3) The defect is unchanged in material respects.

b. When it is discovered that a soldier's enlistment or extension was erroneous because he or she failed to meet the qualifications for enlistment (AR 601-210) or reenlistment (AR 601-280), the unit commander will initiate action to obtain authority to retain, discharge, or release the soldier from AD or ADT, as appropriate (*c* below), based on erroneous enlistment or extension. Correspondence containing the following information will be forwarded through channels to the appropriate separation authority:

(1) Facts relating to and circumstances surrounding the erroneous enlistment or extension.

(2) The desire of the soldier regarding retention or separation.

(3) A specific recommendation for retention or separation, and the reasons, by each commander in the chain of command.

c. The commander specified in paragraph 1-21 will take action as follows:

(1) If doubt exists whether an enlistment or extension was erroneous, forward the case, containing the above information to the Commander, USAEEA, 9700 Page Boulevard, St. Louis, MO 63132-5295, requesting such determination.

(2) If it is determined that the enlistment or extension was erroneous, separation, when deemed appropriate, will be accomplished without referral of the case to the Commander, USAEEA.

(3) If it is determined that the enlistment or extension was erroneous, but retention is determined to be in the best interest of the Service and the disqualification is waivable (AR 601-210 or AR 601-280) by a headquarters other than MILPERCEN, retention may be directed. In such cases, the following statement will be entered in item 27 of DA Form 2-1: "Separation considered and retention is authorized on (date)." The original copy of the document authorizing retention will be forwarded to the Commander, US Army Enlisted Records and Evaluation Center, ATTN: PCRE-R, Fort Benjamin Harrison, IN 46249-5301. This copy will be included in the soldier's official personnel record. A copy also will be placed in the soldier's field MPRJ.

(4) If it is determined that the enlistment or extension was erroneous, but retention is considered to be in the best interest of the Service, and the disqualification is waivable at HQDA or nonwaivable (per AR 601-210 or AR 601-280), forward the case, including the information in *b* above and the reasons for recommending retention to the Commander, USAEEA, 9700 Page Boulevard, St. Louis, MO 63132-5295. Approval will be granted only in exceptionally meritorious cases. Where recommendations are not favorably considered by the Commander, USAEEA, separation will be directed.

Where Commander, USAEEA grants a waiver for retention, actions required in paragraph *c*(3) above will be accomplished.

d. Except as provided in *e* and *f* below, Army soldiers will be discharged unless they request transfer to the US Army Reserve, have completed 12 weeks of active duty and have been awarded an MOS. Soldiers discharged under this paragraph will not be held to a statutory service obligation.

e. If, before an enlistee's departure from a MEPS, it is discovered that he or she was erroneously enlisted or if the enlistee reveals information which if known could have resulted in rejection for enlistment, the enlistment will be voided as follows. The MEPS commander will revoke any orders already issued assigning the individual to a RECSTA or other unit of assignment and will issue an order assigning the individual to the adjacent Recruiting Battalion (RBN) for the purpose of separation. The RBN commander will accomplish the voidance of the enlistment by the issuance of an order (AR 310-10) releasing the individual from the custody and control of the Army. The order will reflect that the individual's enlistment is void by reason of erroneous enlistment and that his or her release from the custody and control of the Army is being accomplished by reason of a void enlistment. Neither a discharge certificate nor a DD Form 214 will be furnished. Distribution of the order will be as follows:

(1) One copy will be filed as a permanent document in the soldier's DA Form 201 (MPRJ).

(2) One copy will be furnished to the soldier.

(3) One copy will be furnished to the Commander, USAREC, ATTN: USARCES-RA, Fort Sheridan, IL 60037-6110.

f. If the soldier is AWOL, in desertion, or absent in the hands of civil authorities upon discovery and establishment that his or her enlistment was erroneous, because of the criteria in *e* above, the enlistment may be voided by the separation authority (para 1-21). The separation authority will not issue a discharge certificate but will issue an order releasing the soldier from custody and control of the Army and a DD Form 214. The order will reflect that the soldier's enlistment is void because of erroneous enlistment and that release from custody and control of the Army is accomplished because of a void enlistment. A copy of the orders will be filed as a permanent document in the soldier's DA Form 201. Pay and allowances entitlement will be as prescribed in DODPM, table 1-4-1. (See para 1-12 *b* for instructions on ARNGUS and USAR personnel.) Distribution of DD Form 214 will be as shown in AR 635-5, except that copy number 1 will be placed in the MPRJ when the whereabouts of the soldier is unknown. See AR 190-9 for action to cancel DA Form 3835 (Notice of Unauthorized Absence From the US Army). When the absent soldier does not meet the criteria for a void enlistment, discharge action will be taken. The provisions of paragraph 2-15 must be complied with in these cases.

g. If an enlistment is erroneous per this paragraph and the provisions of paragraph 7-16 also apply, action will be taken first per this paragraph to determine whether the soldier will be separated or retained because of erroneous enlistment. If retention is authorized, action then will be taken per paragraph 7-16.

h. This section is not applicable to—

(1) Soldiers who are eligible for separation per paragraph 5-10 (except erroneously enlisted aliens whose enlistment should be voided under *e* above, paragraph 5-11, or section II of this chapter.

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

i. Separation will be processed under the Notification Procedure.

j. Soldiers separated under this paragraph will be awarded an honorable character of service or order of release from custody and control of the Army unless an entry level status separation is required under chapter 3, section III.

7-15.1. Not used.

Section IV Defective or Unfulfilled Enlistment or Reenlistment Agreements

7-16. Defective or unfulfilled enlistment or reenlistment agreements

Claims of defective or unfulfilled enlistment agreements are processed under this section and per AR 601-210, paragraph 8-5, or AR 601-280, chapter 5, section IV.

a. Defective enlistment agreements. A defective enlistment agreement exists when the soldier was eligible for enlistment in the Army but did not meet the prerequisites for the option for which enlisted. This situation exists in the following circumstances:

(1) A material misrepresentation by recruiting personnel, upon which the soldier reasonably relied and thereby was induced to enlist for the option, or

(2) An administrative oversight or error on the part of the recruiting personnel in failing to detect that the soldier did not meet all the requirements for the enlistment commitment, and

(3) The soldier did not knowingly take part in creation of the defective enlistment.

b. Unfulfilled enlistment commitment. An unfulfilled enlistment commitment exists when the soldier received a written enlistment commitment from recruiting personnel for which the soldier was qualified, but which cannot be fulfilled by the Army and the soldier did not knowingly take part in the creation of the unfulfilled enlistment commitment.

c. Action when discovered during processing and training. When a defective enlistment agreement or unfulfilled enlistment commitment is discovered while an individual is being processed at the reception station or undergoing basic or initial advanced individual training, the continental United States (CONUS) commander exercising special courts-martial jurisdiction, or any higher commander, may approve a request for discharge. Before approving the request for discharge, the following actions should be taken to resolve individual cases and to determine alternate options available.

(1) Maximum use of the United States Army Recruiting Command (USAREC) Liaison Office is encouraged to obtain information about all options available for which the soldier is qualified. Alternate options can then be determined and guaranteed to the soldier. Installations without a USAREC Liaison NCO should contact HQ USAREC (USARCRO-PP), Ft. Sheridan, IL 60037-6010, (AUTOVON: 459-1356) to obtain information about available alternate options.

(2) To obtain waivers of low mental test scores or to obtain assistance in coordinating an alternate option, contact HQDA(TAPC-EPT), ALEX VA 22331-0479 (AUTOVON: 221-8478).

(3) Insure that waivers are completed where appropriate.

d. Action when discovered after initial assignment. When it appears to the soldier's unit commander, after the period prescribed in *c* above that the soldier's enlistment commitment was either defective when made or cannot be fulfilled, he or she will submit all pertinent facts in the case to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, for determination.

e. Procedures. When the special court-martial convening authority (*c* above) or the CG, USPERSCOM (*d* above) finds an enlistment was defective or cannot be fulfilled, soldiers covered by (1) and (2) below may request separation.

(1) A nonprior service Regular Army soldier serving on first enlistment may request immediate discharge.

(2) A Regular Army soldier serving on a second or later enlistment, having been discharged from a previous enlistment before ETS to reenlist, may request separation. The separation will be effective when his or her active service in the current enlistment and last preceding enlistment equals the period stated in the last preceding enlistment contract or agreement.

(3) When soldiers are under charges, in confinement, or have been recommended for separation under other administrative separation proceedings, they will not be separated because of a defective

enlistment agreement until proper disposition is made of the case. However, the application will be accepted and processed to final decision.

(4) Separation is not authorized when the soldier fails to bring the defect to the attention of his or her commander within 30 days after the defect was discovered or reasonably should have been discovered by the soldier.

f. If an enlistment is also erroneous per paragraph 7-15 (failure to meet basic qualifications for enlistment or reenlistment, as distinct from failure to meet the prerequisites for the particular enlistment option), action will be taken first per paragraph 7-15. If retention is authorized under that paragraph, action then will be taken under this paragraph, if appropriate.

g. This paragraph is not applicable to soldiers who do not meet the medical fitness standards for retention in AR 40-501, chapter 3, and who are eligible for processing under AR 635-40.

h. Army soldiers will be discharged unless they request transfer to the US Army Reserve, have completed 12 weeks of active duty, and have been awarded a military occupational specialty (MOS). Soldiers discharged under this paragraph will not be held to a statutory service obligation.

i. Commanders specified in paragraph 1-21 are authorized to order the separation of personnel pursuant to the foregoing.

j. Soldiers separated under this paragraph will be awarded an honorable character of service unless an entry level separation is required under chapter 3, section III.

17-16.1. Not used.

Section V Fraudulent Entry

7-17. Incident of fraudulent entry

a. Fraudulent entry is the procurement of an enlistment, reenlistment, or period of active service through any deliberate material misrepresentation, omission, or concealment of information which, if known and considered by the Army at the time of enlistment or reenlistment, might have resulted in rejection. This includes all disqualifying information requiring a waiver. However, the enlistment of a minor with false representation as to age and without proper consent will not in itself be considered a fraudulent enlistment. The following tests must be applied in each case of suspected fraudulent enlistment or reenlistment. These tests will establish whether the enlistment or reenlistment was fraudulent.

(1) *First test.* Commanders will determine if previously concealed information is in fact disqualifying. This information will be evaluated using the criteria for enlistment or reenlistment in AR 601-210 or AR 601-280. Any waivable or nonwaivable disqualification concealed, omitted, or misrepresented constitutes fraudulent entry. This includes concealing information with alleged or actual recruiter connivance. If, however, the newly revealed information does not amount to a disqualification from enlistment or reenlistment under the appropriate regulation, then there is no fraudulent enlistment or reenlistment. Hence, the enlistment or reenlistment is valid and separation may not be directed.

(2) *Second test.* Commanders must verify the existence and true nature of the apparently disqualifying information. Verification of the actual offense may reveal that the enlistee was not disqualified and, therefore, is not a fraudulent enlistee. For example, if the soldier alleged that he or she was convicted of burglary and placed on probation, inquiries must be made whether he or she was actually convicted of burglary. In fact, he or she may have initially been charged with burglary but it may have been reduced to trespass which is a minor non-traffic offense for enlistment purposes. If it is the sole record which the soldier has, he or she is not disqualified for enlistment or reenlistment. Hence, the enlistment or reenlistment is valid and separation may not be directed. To conduct an inquiry using these tests to establish existence of fraud, a delay of 30 days is considered reasonable.

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

(1) *Concealment of prior service.* The establishment of the identity of Army personnel and verification of prior service in any of the US Armed Forces normally requires only comparison of fingerprints and examination of records. Accordingly, commanders will not request field investigations to establish evidence of prior military service. When additional evidence (such as a statement of service or certificate of service) is required from the custodian of the records to establish prior service, an inquiry will be forwarded to the Commander, US Army Enlisted Records and Evaluation Center, Fort Benjamin Harrison, IN 46249-5301. The request will include the name(s), SSN, and all available information concerning the alleged period of service.

(a) To support an administrative action, a statement of service is sufficient evidence.

(b) If trial by court-martial is contemplated (para 7, part IV, MCM 1984), a certificate of service is required.

(2) *Concealment of true citizenship status.*

(a) When information is received from the Immigration and Naturalization Service that a warrant for the soldier's arrest has been issued or that deportation proceedings are pending upon completion of military service, the soldier will not be considered for retention.

(b) The nearest office of the Immigration and Naturalization Service will be informed when a soldier will be discharged or released from control of the Army. Arrangements can then be made, if desired, to take him or her into custody.

(c) A report of the facts, together with a report of action taken, will be submitted to HQDA(DAMI), WASH DC 20310-1051, through intelligence channels.

(3) *Concealment of conviction by civil court.* A soldier who concealed his or her conviction by civil court of a felonious offense normally will not be considered for retention. If information concerning the existence of a civil criminal record is required from the FBI, the contact with the FBI must be made by HQDA. Accordingly, the inquiry will be addressed to HQDA(TAPC-PDT-SS), ALEX VA 22331-0479. The inquiry will include fingerprint card, date and place of birth, and complete address. Specific details of case will be obtained by direct communications with the appropriate civil law enforcement agency, other than the FBI, by the commander concerned. When information is required from both sources, the inquiries will be dispatched concurrently.

(4) *Concealment of record as a juvenile offender.*

(a) A soldier who concealed his or her adjudication as a juvenile offender for a felonious offense normally will not be considered for retention.

(b) The evidence must clearly show that the soldier gave a negative answer to a specific question about having a record of being a juvenile offender, or denied that civil custody, as a result of such record, existed at time of entry into the Service.

(5) *Concealment of medical defects.* Concealment of a medical defect or disability is not normally considered fraudulent entry within the scope of this chapter. However, the concealment is fraudulent if it was done to obtain medical treatment or hospitalization, monetary benefits, disability retirement, or veteran's benefits to which the soldier was not entitled.

(6) *Concealment of absence without leave or desertion from prior service.*

(a) From one of the other Services. When a soldier of the Army is discovered to be a deserter from another Service, the commander will report the circumstances to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, and request disposition instructions. After determining if the Service desires custody of the soldier, the CG, USPERSCOM, will direct that the soldier be—

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

2. Considered for discharge per this section.

(b) From the US Army.

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

showing the reason for the drop and the period of service to which held. No discharge certificate will be furnished. Appropriate disposition will be made of the desertion charges for the untermiated period of service.

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

(c) *Procedure when DD Form 553 has been circulated.* When the soldier was the subject of DD Form 553 a report of action taken will be furnished the US Army Deserter Information Point (USADIP), Fort Benjamin Harrison, IN 46249-5301, when—

1. Custody reverts to another Service

2. The soldier is released from control of the US Army, or

3. The soldier is discharged from the US Army from prior or current service.

(7) *Concealment of Preservice and prior service homosexual conduct.* A soldier who concealed preservice homosexual conduct will not be considered for retention. If information concerning the existence of preservice homosexual conduct is acquired, procedure in paragraph 15-6 will be followed.

(8) *Misrepresentation of intent with regard to legal custody of children.* Soldiers who were applicants without a spouse at the time of enlistment and who executed the certificate required by AR 601-210 will be processed for separation for fraudulent entry if custody of the children is regained by court decree, as provided by State law, or as a result of the children resuming residency with the soldier instead of the legal custodian. Because the soldier certified at enlistment that the custody arrangement was intended to remain in full force and effect during the term of enlistment, the burden is on the soldier to demonstrate that the regaining of custody is not contrary to statements made at the time of enlistment.

(9) *Concealment of other disqualifications.* A soldier who conceals other disqualifications, will be considered for discharge per this chapter. This concealment includes assuming the identity of another individual through the use of birth certificate, discharge certificate, or any other record belonging to another. Exceptions to this policy are the concealment of minority (sec II) and a concealed true name. However, if a true name is used to conceal a disqualification as outlined in this paragraph, it will be considered fraudulent entry.

7-18. Authority

When court-martial charges are not pending or contemplated, commanders exercising separation authority will take one of the following actions:

a. Void the fraudulent entry by issuing orders releasing the soldier from Army control in all cases involving desertion from another military service.

b. When a soldier enlisted or reenlisted with a waivable disqualification (AR 601-210, AR 601-280, AR 140-111, or NGR 600-200), recommend, if the separation authority is SPCMCA, or direct if the separation authority is the GCMCA, retention of the soldier in meritorious cases. The GCMCA will act according to instructions contained in paragraph 7-22 d.

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

d. Convene a board of officers under the Administrative Board Procedures as specified in chapter 2, when the separation authority considers discharge under other than honorable conditions appropriate, or the soldier has 6 or more total years of service and requests a hearing before an administrative board (chap 2, sec III).

e. Process the case through medical channels, if appropriate, when the conditions of paragraph 1-35 have been met.

7-19. Trial by court-martial

This section does not prevent trial by court-martial for violations of UCMJ, Article 83, when in the best interest of the Service. If trial

by court-martial is not considered appropriate under any Article of the UCMJ, separation action as authorized in paragraph 7-18 will be taken.

7-20. Responsibilities

a. The unit commander will—

(1) Initiate action as specified in the Notification Procedure or the Administrative Board Procedure, as appropriate.

(2) Initiate action to obtain substantiating evidence as required. (See para 7-21.)

(3) Request a medical evaluation if such is requested by the soldier. (See para 1-34 *a.*)

(4) Forward the action and necessary inclosures to the separation authority for a determination whether a fraudulent enlistment had occurred.

b. The separation authority will—

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

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

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

(4) When the sole reason for separation is fraudulent entry, suspension of separation is not authorized under paragraph 1-20.

(5) Comply with paragraph 1-35 as appropriate.

7-21. Unit commander's report

a. When the evidence to support a deliberate misrepresentation, omission, or concealment of facts which might have resulted in rejection has been obtained, the unit commander will forward a military letter through the chain of command to the separation authority. The unit commander will inclose a statement by the soldier concerning his or her rights (para 2-2 and 2-4). The letter will also include any other statements or evidence submitted by the soldier and include the following:

(1) Name, grade, SSN, age, date and term of enlistment, and prior service.

(2) Statement whether the soldier holds Reserve status as a commissioned or warrant officer. If affirmative, show grade and date of appointment.

(3) Primary MOS evaluation score, if available.

(4) Record of trials by court-martial.

(5) Record of other disciplinary action, including nonjudicial punishment.

(6) Recommendation for discharge, voidance of fraudulent entry or retention if it is determined that fraudulent entry did occur. A recommendation will be made as to the type of discharge certificate to be awarded.

(7) Report of medical examination when such examination is requested by the soldier. (See para 1-34 *a.*)

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

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

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

(3) Patterns of offenses which indicate soldier is undesirable for service in a military environment.

(4) Age at time of offenses.

(5) Educational level—High school graduate, GED.

(6) Aptitude area scores.

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

c. In each instance in which it is alleged that the fraud was aided by a recruiting official, a copy of the Unit Commander's Report will

be forwarded to: Commander, USAREC, ATTN: USARCES-RI, Fort Sheridan, IL 60037-6110. For cases of connivance by reenlistment NCO's, a copy of the report will be forwarded to the appropriate general court-martial convening authority.

7-22. Action by separation authority prior to board proceedings

Upon receiving the recommended action, the separation authority will determine whether fraudulent entry has been completely verified and proven. If further substantiating facts and evidence are required, they will be obtained, or confirmed as unobtainable, and final determination made. If fraudulent entry is verified, action will be taken to suspend the soldier's pay and allowances per DODPM, part one, chapter 4. If the fraudulent entry is verified, the separation authority will take one of the following actions:

a. Direct discharge and issuance of an honorable or general discharge certificate.

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

c. If discharge under other than honorable conditions appears warranted, or the soldier has completed 6 or more years of active and reserve service and requests a hearing before an administrative separation board, direct that a board be convened to determine whether the soldier should be discharged.

d. Subject to the provisions below, recommend, if the separation authority is the SPCMCA, or direct, if the separation authority is the GCMCA, that the fraudulent entry be waived and the soldier retained.

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

(2) In cases of waivable disqualifications that are clearly meritorious and fully justifiable, the GCMCA may grant a waiver of the fraudulent entry to permit retention. The GCMCA or SPCMCA must personally interview the soldier and determine that he or she has demonstrated the ability to serve as a fully productive member of the Army, and that retention will serve the best interest of the Army. As an exception, the GCMCA may delegate authority to battalion commanders to conduct the personal interview of soldiers in reception or basic training battalions at TRADOC installations. In making a retention decision, the GCMCA will carefully consider the guidelines outlined in paragraph 7-21 *b.*

(3) The GCMCA's decision to waive the fraudulent entry to permit retention will be reported and documented as specified in paragraph 1-15.

e. Direct that the fraudulent entry be voided as required by paragraph 7-18 *a.* The orders issuing authority will issue orders releasing the individual from custody and control of the Army. (See para 1-12 *b* for instructions for ARNGUS and USAR personnel.) See paragraph 7-24 regarding the DD Form 214. When this individual is in an AWOL status, or in desertion or in hands of the civil authorities, the following additional action will be taken:

(1) A copy of orders will be forwarded to the individual's last known address.

(2) When the soldier was the subject of DD Form 553, a report of action taken will be furnished the US Army Deserter Information Point (USADIP), Ft Benjamin Harrison, IN 46249-5301.

7-23. Type of discharge

A soldier discharged under the provisions of this chapter will be furnished DD Form 256A (Honorable Discharge Certificate), DD Form 257A (General Discharge Certificate), or assigned a character of service of under other than honorable conditions, or, if in entry level status, have his or her service described as uncharacterized, as appropriate. (See chap 3, sec III.) In addition to chapter 3, section III, the following factors will be considered in determining the character of service to be issued during the current period of service:

a. Evidence of preservice misrepresentation which would have

precluded, postponed, or otherwise affected the soldier's enlistment eligibility.

b. 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.

c. The offense of fraudulent enlistment (10 USC 883; Art 83, UCMJ) occurs when the soldier accepts pay or allowances following enlistment procured by willful and deliberate false representation or concealment of his or her qualifications. Thus, upon receipt of pay and allowances, it becomes an in-service activity by the soldier and may be considered in characterizing his or her period of service, even though he or she is not tried for the offense.

d. When the individual is in an AWOL status, or in desertion or in the hands of civil authorities, the provisions of chapter 2, section IV, must be followed.

7-24. Preparation of DD Form 214 when service is voided
DD Form 214 will be prepared and distributed per AR 635-5, paragraph 2-7 *d*, on all individuals released from custody and control due to void service, except for those individuals described in paragraphs 7-17 *b*(6) and 7-15 *e*.

Chapter 8 Separation of Enlisted Women—Pregnancy

Section I General

8-1. Policy

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

8-2. Separation authority

Commanders specified in paragraph 1-21 are authorized to order separation per this chapter.

8-3. Characterization or description of service

If the soldier is still in Entry Level Status (see glossary) her service will be described as uncharacterized. If soldier is beyond Entry Level Status, service will be characterized as honorable or under honorable conditions per chapter 3, section III. Prior to characterization as under honorable conditions, the soldier shall be advised of the specific factors in the service record that warrant such a characterization and the notification procedure shall be used.

8-4. Type of separation

The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1-12 for additional instructions on ARNGUS and USAR personnel.)

8-5. Responsibility of the unit commander

a. The unit commander will direct an enlisted woman who believes that she is pregnant, or whose physical condition indicates that she might be pregnant, to report for diagnosis by a physician at the servicing Armed Forces medical treatment facility.

b. When service medical authorities determine that an enlisted woman is pregnant, she will be counseled and assisted as required by section II.

8-6. Medical examination and diagnosis

a. Examination for pregnancy will be conducted as a complete medical examination. Standard Forms 88 and 93 will be used. If the woman is found to be pregnant, no additional medical examination is required before separation if medical examination is accomplished

per AR 40-501, chapter 8, section III, and there is no change in the enlisted woman's medical condition other than her pregnancy.

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

c. When pregnancy is the only medical condition upon which separation is based, separation will be accomplished without a medical or physical evaluation board. If there are medical conditions which disqualify the enlisted woman for retention, processing will be accomplished per AR 40-3 and AR 635-40.

8-7. Line of duty determination

A line of duty determination is not required for pregnancy.

8-8. Conditions affecting separation for pregnancy

a. Separation will not be accomplished within an overseas command unless the enlisted woman's home is located there.

b. If an enlisted woman believes that she is pregnant while en route overseas, commanders of Military Personnel Transportation Assistance Offices will process her per AR 614-30, chapter 3.

c. If during the processing for separation under another chapter or regulation an enlisted woman is found to be pregnant, she will not be separated under this chapter. Separation will be accomplished under the chapter or regulation under which separation processing was initiated. In such cases, a notation of pregnancy will be made on Standard Form 88.

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

e. Except as provided in *f* below, it is not the intent of the pregnancy separation policy that enlisted women would be separated under this chapter when the pregnancy terminates before separation is accomplished. The fact of pregnancy termination must be verified by a medical officer.

f. In circumstances of an abnormal pregnancy course, when a soldier carries a pregnancy for 16 weeks or more, but then has an abortion, miscarriage, or an immature or premature delivery before separation is accomplished, the soldier will have the option to be retained or be separated per this chapter. The duration of time she carried the pregnancy is defined as starting approximately at conception and ending when the products of conception are delivered or considered disappeared. A medical officer must verify the duration of the pregnancy. The soldier will be counseled concerning her option. If she chooses to separate, the separation authority may set the separation date. The soldier's decision will be recorded as a signed statement and included in the records.

g. An enlisted woman who elects to remain on AD when counseled (para 8-9) may, if she is still pregnant, subsequently request separation. Separation authority must separate the soldier, but may set the separation date. The subsequent request must comply with guidance in paragraph 8-9 *a*.

h. An enlisted woman who requested separation in writing may subsequently request withdrawal of the separation request. The separation authority, based on the circumstances of the case and the best interest of the Army, will determine in writing if the soldier is to be separated, as previously requested, or is to be retained.

Section II Pregnancy Counseling

8-9. General

If an enlisted woman is pregnant, she will be counseled by the unit

commander using the Pregnancy Counseling Checklist (fig 8–1). The unit commander will explain that the purpose of the counseling is to provide information concerning options, entitlements, and responsibilities and that she may—

a. Upon request, be separated per this chapter. She may request a specific separation date. However, the separation authority and her military physician will determine the separation date. The date must not be later than 30 days before expected date of delivery, or the latest date her military physician will authorize her to travel to her HOR or EOD destination, whichever is earlier. The separation authority will approve request according to this chapter.

b. Remain on active duty.

8–10. Statement of counseling

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

b. The soldier will be granted at least 7 days to consider the options available. She will indicate her election by completing part two of the Statement of Counseling.

c. Copies of the completed Statement of Counseling and the Pregnancy Counseling Checklist will be filed in the MPRJ as an action pending document.

Chapter 9 Alcohol or Other Drug Abuse Rehabilitation Failure

9–1. Scope

This chapter provides the authority and outlines the procedures for discharging soldiers for alcohol or other drug abuse rehabilitation failure. The soldier is entitled to request a hearing before an administrative separation board if he or she has 6 or more years of total active and reserve military service per paragraph 2–2 *d.* A soldier who has less than 6 years of military service is not entitled to a board. Discharge is based on alcohol or other drug abuse such as the illegal, wrongful, or improper use of any controlled substance, alcohol, or other drug when—

a. The soldier is enrolled in ADAPCP.

b. The commander determines that further rehabilitation efforts are not practical, rendering the soldier a rehabilitation failure. This determination will be made in consultation with the rehabilitation team. (See AR 600–85).

c. **(Rescinded.)** *Note 1.* When not precluded by the limited use policy, offenses of alcohol or other drug abuse may properly be the basis for discharge proceedings under chapter 14. However, the evidentiary aspect of the limited use policy is applicable to discharge under paragraph 14–12 or other separation provisions. Soldiers processed for separation under other provisions of this regulation, who also are or become subject to separation under this chapter and whose proceedings on other grounds ultimately result in their retention in the service, will be considered for separation under this chapter. *Note 2.* When the commander determines that a soldier who has never been enrolled in ADAPCP lacks the potential for further useful service, the soldier will be screened per AR 600–85. If found nondependent, the soldier will not be rehabilitated but will be considered for separation under other appropriate provisions of this regulation.

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

9–2. Basis for separation

a. A soldier who is enrolled in the ADAPCP for alcohol/drug abuse may be separated because of inability or refusal to participate in, cooperate in, or successfully complete such a program in the following circumstances:

(1) There is a lack of potential for continued Army service and rehabilitation efforts are no longer practical, or

(2) Long-term rehabilitation is necessary and the soldier is transferred to a civilian medical facility for rehabilitation.

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

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

9–3. Procedures

The immediate commander will—

a. Take action as specified in the Notification Procedure (chap 2, sec II).

b. Separation action will be initiated only when a soldier is under military control. The exception is a soldier confined by civil authorities whose military record indicates that he or she should be processed for separation under this chapter. (See chapter 2, section IV for completing proceedings initiated before a soldier departs absent without leave.)

9–4. Characterization of service or description of separation

The service of soldiers discharged under this section will be characterized as honorable or under honorable conditions. An honorable or general discharge certificate will be furnished per chapter 3, section III, unless the soldier is in entry level status and an uncharacterized description of service is required. An honorable discharge is mandated in any case in which the government initially introduces into the final discharge process, limited use evidence as defined by AR 600–85, paragraph 6–4. (See para 2–6 *h* for procedures for reinitiation or rehearing, if appropriate.)

9–5. Separation authority

a. The commanders specified in paragraph 1–21 are authorized to take final action on cases processed under this chapter.

b. The separation authority will approve separation of cases processed without an administrative board if the documentation in the file indicates that—

(1) Required rehabilitative efforts have been made.

(2) Further rehabilitative efforts are not practical, rendering the soldier a rehabilitation failure.

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

(4) An administrative board is not required or has been waived.

c. For actions processed under the administrative board procedure, the separation authority will—

(1) Approve separation when recommended by the board if the criteria in paragraph *b*(1) through (3) above are established and direct characterization of the soldier's service per paragraph 9–4. The separation authority may not authorize the issuance of a discharge certificate of less favorable character than that recommended by the board.

(2) Approve retention when recommended by the board.

(3) Disapprove a recommendation of separation by the board and direct retention of the soldier.

d. For discharge suspension, see paragraph 1–20.

9–6. Authority for separation

The authority for separation (AR 635–200, para 9–6) will be included in directives or orders directing soldiers to report to the appropriate STP for separation.

9–7. Confidentiality and release of records

Records of separation proceedings and action under this chapter, including separation documents referencing reason and authority for separation, are confidential by operation of Federal law. Records may be disclosed or released only per AR 600–85, chapter 6, sections III and IV.

Chapter 10 Discharge in Lieu of Trial by Court-Martial

10-1. General

a. A soldier who has committed an offense or offenses, the punishment for which, under the UCMJ and the MCM, 1984, includes a bad conduct or dishonorable discharge, may submit a request for discharge in lieu of trial by court-martial. The provisions of RCM 1003(d), MCM 1984, do not apply to requests for discharge per this chapter unless the case has been referred to a court-martial authorized to adjudge a punitive discharge. The discharge request may be submitted after court-martial charges are preferred against the soldier, or, where required, after referral, until final action by the court-martial convening authority. A soldier who is under a suspended sentence of a punitive discharge may likewise submit a request for discharge in lieu of trial by court-martial.

b. The request for discharge for the good of the Service does not prevent or suspend disciplinary proceedings. Whether proceedings will be held in abeyance pending final action on a discharge request per this chapter is a matter to be determined by the commander exercising general court-martial jurisdiction over the individual concerned.

c. If disciplinary proceedings are not held in abeyance, the general court-martial convening authority may approve the soldier's request for discharge in lieu of trial by court-martial after the soldier has been tried. In this event, the officer who convened the court, in his or her action on the case, should not approve any punitive discharge adjudged. The officer should approve only so much of any adjudged sentence to confinement at hard labor or hard labor without confinement as has been served at the time of the action.

10-2. Personal decision

a. Commanders will insure that a soldier will not be coerced into submitting a request for discharge in lieu of trial by court-martial. The soldier will be given a reasonable time (not less than 72 hours) to consult with consulting counsel (para 3-7 *c*(7)) and to consider the wisdom of submitting such a request for discharge.

b. Consulting counsel will advise the soldier concerning—

- (1) The elements of the offense or offenses charged.
- (2) Burden of proof.
- (3) Possible defenses.
- (4) Possible punishments.
- (5) Provisions of this chapter.
- (6) Requirements of voluntariness.
- (7) Type of discharge normally given under the provisions of this chapter.
- (8) Rights regarding the withdrawal of the soldier's request.
- (9) Loss of Veterans Administration benefits.
- (10) Prejudice in civilian life because of the characterization of the discharge. Consulting counsel may advise the soldier regarding the merits of this separation action and the offense pending against the soldier.

c. After receiving counseling (*b* above), the soldier may elect to submit a request for discharge in lieu of trial by court-martial. The soldier will sign a written request, certifying that he or she has been counseled, understands his or her rights, may receive a discharge under other than honorable conditions, and understands the adverse nature of such a discharge and the possible consequences. The soldier also must be advised that, pursuant to a delegation of authority per paragraph 1-21 *l*, a request for discharge under this chapter may be approved by the commander exercising special court-martial convening authority (a lower level of approval than the GCMCA or higher authority) but the authority to disapprove a request for discharge under this chapter may not be delegated. The soldier's written request also will include an acknowledgement that the soldier understands the elements of the offense(s) charged and is guilty of the charge(s) or of a lesser included offense(s) therein contained which also authorize(s) the imposition of a punitive discharge (fig

10-1, para 2). The consulting counsel will sign as a witness, indicating that he or she is a commissioned officer of the Judge Advocate General's Corps, unless the request is signed by a civilian counsel representing the soldier. A soldier may waive consultation with counsel. If the soldier refuses to consult with counsel, a statement to this effect will be prepared by the counsel and included in the file. The soldier shall also state that the right to consult with counsel was waived. Separation action may then proceed as if the soldier had consulted with a counsel or the general court-martial convening authority may disapprove the discharge request.

10-3. Preparation and forwarding

a. A request for discharge in lieu of trial by court-martial will be submitted in the format shown in figure 10-1.

b. The discharge request will be forwarded through channels to the separation authority specified in paragraph 1-21 *a* or paragraphs 1-21 *c*(5) and 1-21 *l*. The discharge request must be reviewed by the office of the staff judge advocate prior to approval by the separation authority specified in paragraphs 1-21 *c*(5) and 1-21 *l*. Commanders through whom the request is forwarded will recommend either approval or disapproval and state the reasons for the recommendation. If approval is recommended, the type discharge to be issued will be recommended also.

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

- (1) A copy of the court-martial Charge Sheet (DD Form 458).
- (2) Report of medical examination and mental status evaluation, if conducted.
- (3) A complete copy of all reports of investigation.
- (4) Any statement, documents, or other matter considered by the commanding officer in making his or her recommendation, including any information presented for consideration by the soldier or consulting counsel.

(5) A statement of any reasonable ground for belief that the soldier is, or was at the time of misconduct, mentally defective, deranged, or abnormal. When appropriate, evaluation by a psychiatrist will be included.

d. When a soldier is under a suspended sentence of discharge, a copy of the court-martial orders, or a summary of facts which relate to the conduct upon which the request is predicated, will be forwarded.

10-4. Consideration of request

Commanders having discharge authority per paragraph 1-21 must be selective in approving of requests for discharges in lieu of trial by court-martial. The discharge authority should not be used when the nature, gravity, and circumstances surrounding an offense require a punitive discharge and confinement. Nor should it be used when the facts do not establish a serious offense, even though the punishment, under the Uniform Code of Military Justice, may include a bad conduct or dishonorable discharge. Consideration should be given to the soldier's potential for rehabilitation and his or her entire record should be reviewed before taking action per this chapter. Use of this discharge authority is encouraged when the commander determines that the offense is sufficiently serious to warrant separation from the Service and the soldier has no rehabilitation potential.

10-5. Withdrawal of request for discharge

Unless trial results in an acquittal or the sentence does not include a punitive discharge, even though one could have been adjudged by the court, a request for discharge submitted per this chapter may be withdrawn only with the consent of the commander exercising general court-martial jurisdiction. (See chapter 2, section IV for provisions for completing proceedings initiated before a soldier departs absent without leave.)

10-6. Medical examination and mental status evaluation

A medical examination is not required but may be requested by the soldier under AR 40-501, chapter 8. A soldier who requests a

medical examination must also have a mental status evaluation before discharge.

10-7. Discharge authority

The separation authority will be a commander exercising general court-martial jurisdiction or higher authority (para 1-21 a). However authority to approve discharges in cases in which the soldier—

- a. Has been AWOL for more than 30 days, and
- b. Has been dropped from the rolls of his or her unit as absent in desertion, and
- c. Has been returned to military control, and
- d. Currently is at the PCF, and
- e. Is charged only with AWOL for more than 30 days may be delegated to the commander exercising special court-martial convening authority over the soldier (paras 1-21 c(5) and 1-21 l. The request for discharge must be approved prior to trial (the initial Article 39(a) session for general and special courts-martial, the initial convening of a summary court-martial). (See also para 3-7 c(3).)

10-8. Types of discharge, characterization of service

A discharge under other than honorable conditions normally is appropriate for a soldier who is discharged for the good of the Service. However, the separation authority may direct a general discharge certificate, if such is merited by the soldier's overall record during the current enlistment (chap 3, sec III). For soldiers who have completed entry level status, characterization of service as honorable is not authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be improper. When characterization of service under other than honorable conditions is not warranted for a soldier in entry level status, service will be uncharacterized.

10-9. Forwarding fingerprints to the FBI (Rescinded.)

10-10. Disposition of supporting documentation

The request for discharge under the provisions of this chapter will be filed in the MPRJ as permanent material and disposed of per AR 640-10. Material should include appropriate documentation (para 10-3 c) and the separation authority's decision. Statements by the soldier or soldier's counsel submitted in connection with a request per this chapter are not admissible against a soldier in a court-martial except as authorized under Military Rule of Evidence 410, Manual for Courts-Martial.

Chapter 11 Entry Level Performance and Conduct

11-1. General

This chapter sets policy and provides guidance for the separation of personnel because of unsatisfactory performance or conduct (or both) while in entry level status.

11-2. Basis for separation

Separation of a soldier in entry level status may be warranted on grounds of unsatisfactory performance or unsatisfactory performance or unsatisfactory conduct (or both) as evidenced by—

- a. Inability.
- b. Lack of reasonable effort.
- c. Failure to adapt to the military environment.
- d. Minor disciplinary infractions.

11-3. Separation policy

- a. This policy applies to soldiers who—
 - (1) Enlisted in the Regular Army, ARNG, or USAR.
 - (2) Are in entry level status and, before the date of the initiation of separation action, have completed no more than 180 days of creditable continuous AD or IADT or no more than 90 days of

Phase II under a split or alternate training option. See the Glossary for precise definition of entry level status.

(3) Have demonstrated that they are not qualified for retention. The following conditions are illustrations of conduct and/or performance that disqualify soldiers.

(a) Cannot or will not adapt socially or emotionally to military life.

(b) Cannot meet the minimum standards prescribed for successful completion of training because of lack of aptitude, ability, motivation or self-discipline.

(c) Have demonstrated character and behavior characteristics not compatible with satisfactory continued service.

(d) (Rescinded.)

(4) Have failed to respond to counselling (DA Form 4856).

b. Enlisted women who become pregnant while in entry level status—

(1) Will be involuntarily separated under this chapter when the training activity commander with separation authority, in conjunction with the medical officer (obstetrician) determines that they cannot fully participate in the required training for the MOS concerned because of their physical condition. The commander will furnish the training requirements to the obstetrician. Women separated for pregnancy which occurred after entry on AD or IADT are entitled to maternity care in a military medical facility only per AR 40-3, paragraph 4-44.

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

c. *Rescinded.*

d. Nothing in this chapter precludes separation under another provision of this regulation when such separation is warranted. For example, if homosexual conduct is involved, the case will be processed under chapter 15. However, if separation of a soldier in entry level status is warranted by reason of unsatisfactory performance (see chap 13) or unsatisfactory conduct (see para 14-12), separation processing will be accomplished under this chapter.

11-4. Counseling and rehabilitation requirements

Before initiating separation action on a soldier, commanders will insure that the soldier receives adequate counseling and rehabilitation. See *chapter 1, section II*. Counseling and rehabilitation requirements are important when entry level performance and conduct are the reason for separation. Because military service is a calling different from any civilian occupation, a soldier should not be separated when this is the sole reason unless there have been efforts at rehabilitation.

11-5. Separation authority

The commanders specified in paragraph 1-21 are authorized to order separation. Separation will be accomplished within 3 duty days following approval by the separation authority.

11-6. Type of separation

The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or be discharged. (See paragraph 1-12 for additional instructions on ARNGUS and USAR personnel.)

11-7. Procedures

The commander will take action as specified in the Notification Procedure (chap 2, sec II).

11-8. Description of service

Service will be described as uncharacterized under the provisions of this chapter.

Chapter 12 Retirement for Length of Service

Section I GENERAL

12-1. Purpose

a. This chapter sets policies and procedures for voluntary retirement of soldiers because of length of service.

b. It governs the retirement of Army soldiers (RA, ARNGUS, and USAR) who are retiring in their enlisted status. AR 635-100, chapter 4, governs the retirement of eligible Regular Army soldiers in commissioned or warrant officer grades.

c. Prior service soldiers serving on active duty as officers, who are not qualified for retirement in their commissioned or warrant officer status, may qualify for retirement per this chapter. For procedures, see AR 635-100, chapter 3, section VII.

12-2. Retirement approval authority

a. The following individuals are authorized to approve or disapprove requests for voluntary retirement:

(1) Commanders specified in paragraph 1-21. This authority may be delegated to the commander's deputy or other official within the headquarters. This delegation must be in writing.

(2) The Commander, U.S. Total Army Personnel Command (CDR, PERSCOM). The authority of the CDR, PERSCOM, covers all units, activities, or organizations which do not come under the jurisdiction of a commander specified in paragraph 1-21 or (3) below. This authority also covers all CSM and CSM (D) retirement applications, less those who fall under the provisions of paragraph 12-9.

(3) The Commanding General, U.S. Army Reserve Personnel Center (CG, ARPERCEN). The authority of CG, ARPERCEN covers those ARNGUS and USAR soldiers who are not on extended active duty.

(4) The Active Component Senior Army Advisor of a particular state or territory for ARNGUS active Guard/Reserve enlisted soldiers serving on full-time National Guard Duty under 32 USC 502(f). This authority may be delegated by the Chief, National Guard Bureau, ATTN: NGB-ARM to another commissioned officer in the grade of lieutenant colonel or above who is serving on active duty under 10 USC within a state's Army National Guard headquarters. This delegation must be in writing.

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

Section II Statutory Authority

12-3. General provisions of laws governing retirement

a. Soldiers of the Regular Army must be on active duty when they retire (10 USC 3914 and 3917). There is no statutory requirement that ARNGUS and USAR soldiers be on AD when they retire.

b. Retirement will be in the regular or reserve grade the soldier holds on the date of retirement (10 USC 3961). (See para 12-16 for instructions pertaining to former Command Sergeants Major E9, who are serving as Sergeants Major, E9 when they retire.) (See para 12-17 for instructions pertaining to former First Sergeants, E8, who are serving as Master Sergeants, E8, when they retire.)

c. Years of service for retirement are computed by adding all active Federal service in the Armed Forces and service computed under 10 USC 3925.

d. The date of retirement is the first day of the month (5 USC 8301). For the Regular Army, ARNGUS, and USAR soldier retiring from an active duty status, the date of retirement is the first day of the month following the month in which the soldier is released from active duty. For the ARNGUS and USAR soldier not on active duty, the date of retirement is the first day of the month following the month in which retirement orders are issued.

12-4. Twenty-year retirement law (10 USC 3914)

a. A soldier of the Regular Army, ARNGUS, or the USAR who has completed 20, but less than 30 years of active Federal service (AFS) in the US Armed Forces may, at the discretion of the Secretary of the Army, be retired at his or her request. The soldier must have completed all required service obligations at the time of retirement. Upon retirement, the soldier is transferred to the USAR Control Group (Retired). He or she remains in that status until active service before retirement and the period served in the USAR Control Group (Retired) after retirement equals 30 years. He or she will perform active duty as prescribed by law.

b. A soldier who holds a current commission in the USAR will be transferred to the Retired Reserve in the status he or she elects, if otherwise eligible. Dual status in the USAR as commissioned officer and as an enlisted soldier is not authorized. When a soldier retires in the elected status, the status may not be changed. Transfer to the Retired Reserve to complete obligated service in an enlisted status vacates commissioned status in the USAR.

c. A soldier who retires under 10 USC 3914 and has been awarded the Medal of Honor, Distinguished Service Cross, or Navy Cross for Extraordinary heroism will have his or her retired pay increased 10 percent. However, the total retired pay (including the increase) may not exceed 75 percent of the basic pay upon which computed. (A soldier who is retired for physical disability under 10 USC 1201 or 1202 and is otherwise eligible for retirement under 10 USC 3914 is entitled to the 10 percent increase in retired pay based on this criteria. A soldier who has been awarded the Distinguished Flying Cross, the Soldier's Medal, or equivalent Navy decoration may be credited with extraordinary heroism if it is determined that the heroism was equivalent to that required for award of the Distinguished Service Cross. In all cases involving extraordinary heroism, a copy of the order which awards the decoration and the separate citation if not contained in the order will be submitted to HQDA(TAPC-PDA), 200 Stovall Street, Alexandria, VA 22332-0400 for verification and determination. Previous letters of determination more than 2 years old will be submitted for confirmation and will be accompanied by the order awarding the decoration.

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

A Regular Army soldier who has completed at least 30 years of active Federal service in the US Armed Forces will, upon request, be placed on the retired list.

12-6. Advancement on the retired list (10 USC 3964)

a. As used in this paragraph, active duty means full-time duty in the active military service of the United States. It includes full-time training duty and annual training duty, but does not include full-time National Guard duty (10 USC 101(22)). Active service means service on active duty or full-time National Guard duty (10 USC 101(24)).

b. Retired soldiers who have less than 30 years of active service are entitled, when their active service plus service on the retired list total 30 years, to be advanced on the retired list to the highest grade in which they served on active duty satisfactorily (or, in the case of ARNGUS soldiers, in which they served on full-time duty satisfactorily) (10 USC 3964). This provision applies to warrant officers, RA enlisted soldiers, and Reserve enlisted soldiers who, at the time of retirement, are serving on active duty (or full-time National Guard duty). When these soldiers complete 30 years of service, their military personnel records are reviewed to determine whether service in the higher grade was satisfactory (see *d* below). Soldiers advanced to a higher grade will be notified by the CDR, ARPERCEN.

(1) For advancement to a commissioned officer grade, the soldier must have served on active duty in this grade for not less than 6 months (10 USC 1370).

(2) For advancement to a warrant officer grade, the soldier must have served on active duty in this grade for at least 31 days (10 USC 1371).

c. Soldiers retired after completing 30 or more years of active service are entitled to be advanced on the retired list, at retirement,

to the highest grade in which they served on active duty satisfactorily (or, in the case of ARNGUS soldiers, in which they served on full-time duty satisfactorily). The requirements of *b*(1) and (2) above also apply.

d. Grade determinations for purposes of advancement on the retired list are made by the Army Grade Determination Review Board, on behalf of the Secretary of the Army, per AR 15-80. Criteria for satisfactory and unsatisfactory service and grade determination considerations are contained in AR 15-80.

e. Cases of soldiers who are eligible for advancement on the retired list at retirement will be sent to HQDA (TAPC-PDT-R). The case should be sent for determination at least 75 days before requested retirement date. This will include—

(1) Cases covered in *c* above.

(2) Cases of soldiers retiring in an enlisted status who have served on active duty in any Armed Force in an enlisted grade higher than their current grade.

f. Soldiers advanced to a higher commissioned grade may be restored to their former enlisted status on the retired list (10 USC 3965). The soldier must apply to the Secretary of the Army within 3 months of advancement.

g. For personal reasons, soldiers may not want to advance to a higher grade. Before such advancement a soldier may apply for a specified period of deferment and for placement or retention on the retired list in his or her current status. The application for deferment will include the following statement over the soldier's personal signature:

Note.

"I understand that subsequent advancement will not be retroactive and that increased pay or other entitlements accruing therefrom will be based on the actual date of advancement."

(1) Soldiers who are retiring after completion of 30 years active Federal service who are eligible for advancement on the retired list to a higher grade may request deferment. The request should be submitted through channels to the retirement approval authority. That commander must receive the request at least 30 days before the requested retirement date.

(2) Retired soldiers may apply for deferment to the Commander, U.S. Army Reserve Personnel Center, 9700 Page Blvd., St Louis, MO 63132-5200. That headquarters must receive the application at least 30 days before the soldier completes 30 years service (active Federal service plus service on the retired list).

h. Paragraph 12-16 and 12-17 explain the eligibility of former Command Sergeants Major, and former First Sergeants, for placement on the retired list in those grade titles. This paragraph does not apply in such cases.

Section III Requirements and Procedures

12-7. Eligibility

a. A soldier who has completed 20 years AFS and who has completed all required service obligations is eligible to retire. Unless restricted in this section, soldiers who have completed 19 or more years of AFS may apply for retirement. The request must be made within 12 months of the requested retirement date.

b. The soldier must complete at least 20 years of active Federal service and all service obligations (para 12-8) by the requested retirement date. (See para 12-12 about applying for retirement.)

c. Soldiers who are under suspension of favorable personnel action per AR 600-8-2 are not precluded from submitting applications for retirement. Requests for retirement will be considered on a case-by-case basis by the local retirement approval authority.

12-8. Service obligations

a. General. This paragraph applies to soldiers retiring under 10 USC 3914. (This includes soldiers who have completed 20, but less than 30, years of active Federal Service.)

b. Tours. Soldiers will be required to serve as indicated in (1) and (2) below.

(1) CONUS. The soldier will serve 1 year in the current assignment or at the current duty station, whichever occurs first. This one year period begins when the soldier reports for duty. This includes soldiers who have returned from overseas on a permanent change of station.

(2) Overseas. (See AR 614-30.)

(a) Soldiers accompanied by dependents who traveled at Government expense must complete the prescribed "with dependents" tour or at least 12 months from the date of the arrival of dependents, whichever is longer.

(b) Unaccompanied soldiers must complete the prescribed "all others" tour.

(c) Soldiers who have no dependents must complete the tour prescribed for the country in which serving.

(3) The requirements in (1) and (2) above are waived for soldiers whose reenlistment is prevented per AR 601-280, chapter 10. Personnel with DA imposed bars to reenlistment who have at least 20 years of active Federal service at ETS will not extend their active duty commitment to complete a service obligation.

(4) Personnel who have incurred a service obligation, other than OCONUS returnees, and who have reached the retention control point (RCP) for their grade will be retired on the first day of the month following the month the RCP is met.

c. Schools. Soldiers who have attended a military or civilian course of instruction must complete any service obligation voluntarily incurred because of instruction.

d. Promotions. Soldiers who have an approved retirement are in a nonpromotable status. They will not be promoted unless a request for withdrawal of their retirement application has been approved. (See para 12-15.)

(1) Soldiers who are promoted to the grade SFC, MSG/1SG, or SGM/CSM incur a 2-year service obligation (AR 600-200). This obligation will be from the effective date of promotion. It must be completed before voluntary retirement.

(2) The following are excluded from the 2-year service obligation:

(a) Soldiers who have completed 30 or more years of active Federal service on the requested retirement date.

(b) Soldiers who are already eligible through prior service for a higher grade at the time of retirement.

(c) Soldiers who are 55 or older.

(3) A promoted individual may not be administratively reduced only to terminate a promotion service obligation (AR 600-200, para 7-43 *g*).

e. Soldiers whose current ETS is prior to completion of service obligation will be counseled per paragraph 4-3.

12-9. Retirement in lieu of PCS

a. A soldier who receives an alert or orders for permanent change of station (PCS) may request retirement in lieu of PCS subject to the following conditions:

(1) Soldiers having 19 years, 6 months or more of AFS when notified of permanent change of station may request a retirement date. The soldier will receive official notification per DA Pam 600-8-10, procedure 3-1. If the soldier elects to retire, the retirement application (DA Form 2339) must be submitted and approved within 30 days of receipt of official alert notification of permanent change of station. The retirement date will not be later than 6 months from the date of notification, or the first day of the month following the month in which 20 years of active Federal service is completed, whichever is later. All service obligations must be fulfilled not later than the approved retirement date.

(2) Soldiers who would have less than 20 years of AFS upon arrival in a new assignment may sign a Declination of Continued Service Statement (DCSS) (DA Form 4991-R) *only if* all the criteria in *(a)*, *(b)*, and *(c)* below are met. Soldiers electing to complete a DCSS per AR 601-280, chapter 3, will be required to retire immediately upon attaining retirement eligibility, whether or not they have completed the current term of service. The DCSS must be submitted and approved within 30 days of receipt of official alert

notification of permanent change of station. The retirement application (DA Form 2339) will be submitted not earlier than 12 months prior to the established retirement date. Commanders and servicing personnel officers will ensure soldiers electing to execute a DCSS are properly identified and counseled.

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

(b) Soldier does not reenlist or extend to acquire sufficient time to serve the prescribed "all others" tour for OCONUS assignment, and will have at least 20 years AFS at or prior to ETS. This does not apply to soldiers who cannot acquire sufficient time due to their RCP.

(c) Soldier will have at least 20 years AFS at ETS.

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

c. Applications for retirement instead of PCS which are approved will not be withdrawn, nor will the retirement date be changed. The soldier must retire on the approved retirement date.

d. The retirement approval authority will set up procedures to insure written acknowledgement by the soldier of the reassignment notification. The written acknowledgement will be used as confirmation of receipt of assignment instructions. Soldiers in grade SGM/CSM and MSG/1SG (promotable), as an exception to DA Pam 600-8-10, procedure 3-1, will be officially notified telephonically of permanent change of station. If the soldier elects to retire in lieu of PCS, the provisions of a(1) or (2) are applicable.

e. Assignment instructions or orders will be deleted only after request for retirement is approved, or DCSS is signed.

f. Soldiers who request retirement in lieu of PCS will normally remain at the same duty station in an authorized position. Utilization will be in the best interest of the Army. A move may be necessary for such reasons as deletion of position, reorganization or disciplinary problems. Soldiers will not be slotted below the grade currently held. To facilitate proper utilization, soldiers may be reassigned within the installation. Where this is not possible, soldiers will be reassigned to the nearest military installation where they can be used. Soldiers will not be reassigned solely to move them to the installation nearest their requested place of retirement. Soldiers moved for the convenience of the government under these conditions will not be required to complete a one year CONUS service obligation.

12-10. Retirement of Command Sergeant Major (CSM), Command Sergeant Major (Designate) (CSM(D)), and Sergeant Major (SGM), Master Sergeant (P)(MSG)(P), and First Sergeant (P) (1SG(P))

a. All CSMs and CSM(Ds) SGM, MSG(P) and 1SG(P) who require waivers, i.e., time on station, school commitments, time in grade, will submit applications for retirement through command channels, so as to arrive at HQDA (TAPC-PDT-S), at least 9 months prior to requested retirement date. Failure to comply with this timeframe could result in disapproval of the retirement application or establishment of a later retirement date. An exception to this policy is a CSM or CSM(D) retiring with 30 years active Federal service or attaining 55 years of age.

b. All other soldiers in the above categories will be approved for retirement by the retirement approval authority identified in paragraph 1-21.

c. All categories listed above will be furnished a retirement control number (RCN) upon approval of such application. RCN must be included in the retirement order. RCN will be obtained from HQDA (TAPC-PDT-S) for each approved application. RCN may be obtained telephonically.

12-11. Waivers

a. Exceptions to service obligations (paras 12-7 and 12-8) may be granted. They are granted when the best interest of the service is involved or when substantial hardship exists or would result if the

soldier is not retired. Substantial hardship is a situation or circumstance which imposes undue suffering on the soldier or the immediate family. Requests for exception to service obligation must be submitted by the soldier only. The request must be fully defined and documented.

b. Soldiers who are selected for attendance at the Sergeants Major Academy and complete the letter of acceptance incur a service obligation to attend the Academy. Requests for exception to this obligation must be requested by the soldier with full justification and forwarded through command channels as indicated below.

c. Requests for waivers will be forwarded through the soldier's commander to HQDA (TAPC-PDT-SR), ALEX VA 22331-0479. Attach DA Form 2339 (Application for Voluntary Retirement), with sections I and II completed and signed per paragraph 12-13, to the request. Commanders will comment on the justification submitted and make appropriate recommendation.

12-12. Applying for retirement

a. Submit requests for retirement on DA Form 2339 (see para 12-13) to the appropriate retirement approval authority listed below. Approval authority will notify soldier in writing of effective date of approved retirement.

(1) Soldiers of the Regular Army, US Army Reserve, or Army National Guard on AD submit requests to the office having custody of their personnel records.

(2) US Army Reservists not on AD submit requests to US Army Reserve Personnel Center.

(3) Army National Guard not on active duty submit requests through the State Adjutant General to the US Army Reserve Personnel Center.

b. Before applying for retirement, the soldier should be firm in his or her decision to retire on a certain date. (See para 12-15.)

c. The retirement approval authority is authorized to set a minimum time for submission of retirement applications. Soldier's retirement application will be submitted at least 2 months before the retirement date.

d. Personnel officers will—

(1) Require each soldier who wants to apply for retirement to read this chapter.

(2) Insure that each applicant understands section V. This includes the provisions that the soldier will not be held on active duty beyond the requested retirement date to complete a medical examination.

(3) Furnish a copy of DA Pam 600-5 to each applicant.

12-13. Preparation of DA Form 2339

Each soldier requesting retirement will, with the help of the personnel officer, complete section I, DA Form 2339, including date and signature. Applications not including this information are invalid. Each item will be completed in full. Not applicable "(NA)" or "none" will be entered where appropriate. When a waiver to a service obligation is requested, justification will be included as an inclosure.

a. The officer having custody of the applicant's personnel records will assist the soldier in preparing the application. Special attention will be given to items 4, 6, 14, and 19.

(1) *Item 4.* Enter the first day of desired retirement month *not* the last day of the preceding month.

(2) *Item 6.* Enter the highest grade (permanent or temporary) in which the soldier served on active duty and the branch of Armed Forces in which served.

(3) *Item 14.*

(a) Insure that all service claimed is correct. A soldier must have at least 20 years of creditable active Federal service to be eligible for retirement. (See sec IV.)

(b) Enter all uninterrupted service on one line (such as Regular Army (RA) enlisted service with no breaks between enlistments, or continuous active Federal service as a commissioned officer, regardless of grade).

(4) *Item 19.* If soldier elects to be processed for retirement at a location of choice TP or TA (AR 635-10, para 2-19), enter the complete designation and location of such TP or TA. (For example:

U.S. Army Transition Point, Fort Sheridan, IL 60037-5000.) The soldier must check the appropriate election and sign his or her name. This does not apply to soldiers not on active duty.

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

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

(2) *Item 27.* Also enter type tour "all other" or "with dependents" as applicable and DEROS.

(3) *Item 28.* Will be completed only when soldier elects retirement in lieu of PCS. Enter the date soldier was notified of alert for permanent change of station. When applicable, enter date of Declination of Continued Service Statement and include as inclosure to DA Form 2339.

(4) *Item 30.* Require the applicant to sign all copies.

(5) *Item 31.* Enter the statements and information required by (a), (b), (c), and (d) below, as applicable.

(a) If the application is being submitted per paragraph 12-9, enter the following statement: "Approved for retirement in lieu of PCS." This statement will be typed on all copies of the DA Form 2339 and signed by the retirement approval authority or the designated representative.

(b) If the soldier will be taking transition leave in conjunction with retirement, enter the following statement:

... (rank) ... (name) has requested and had approved days of transition leave (days delay en route chargeable as leave (DDALV)) to be taken in conjunction with the requested retirement action. This leave will begin ... (date) and end on ... (date).

(c) If the soldier currently is serving as a SGM, but formerly served as CSM, enter whichever of the following statements is applicable (see para 12-16):

"SGM, ... (name) served satisfactorily as CSM, from ... (date) to ... (date). He/she was released from the CSM Program solely because of assignment limiting physical condition incurred in line of duty (LD)."

SGM, ... (name) served as CSM, "from ... (date) to ... (date). He/she (was released from the CSM Program due to inadequate performance of duty) or (voluntarily withdrew from the CSM Program for reasons other than an assignment limiting physical condition incurred in LD)."

(d) If soldier is currently serving in the grade of MSG, but formerly served as 1 SGM, enter the following statement (see para 12-17):

"MSG ... (name) served satisfactorily as 1 SGM from ... (date) to ... (date)."

c. The personnel officer will send a signed copy of the application as soon as section I and section II are completed to HQDA (TAPC-EP-(Career Management Branch)), ALEX VA 22331-0400. Soldiers of the USAR on active duty will submit a signed copy of the application to ARPERCEN (TARP-AR), U.S. Army National Guard soldiers on active duty will submit a signed copy of the application to the State Adjutant General. For Regular Army soldiers who are being considered by HQDA Selection Board for promotion to the next higher grade, an additional copy will be sent to HQDA (TAPC-MSP-E), ALEX VA 22332-0400. The submission of these copies of the application will not be delayed until the medical examination or verification of service is completed.

d. The personnel officer will verify the soldier's service (para 12-28) and that actions related to increased retired pay for extraordinary heroism have been accomplished (para 12-4 c).

e. The personnel officer will insure that the soldier's enlistment does not expire before the requested retirement date. If the enlistment will expire before requested date of, or eligibility for, voluntary retirement, the retirement approval authority may extend it through the last day of the month preceding the requested retirement date. Enlistment will not be extended more than 12 months, per AR 601-280, chapter 3. For example:

(1) Soldiers who have reached retirement eligibility (20 years of

active Federal service) may be extended up to 12 months if the soldier qualifies for such extension per AR 601-280.

(2) Soldiers who have reached retirement eligibility, but are not qualified for extension per AR 601-280, may be extended through the last day of the month during which ETS occurs.

(3) Soldiers who, at ETS, will have completed 18 years of active Federal service, but less than 20 years, may be extended to reach retirement eligibility. The soldier's eligibility per AR 601-280 does not matter except as shown below. The period of extension will be only through the last day of the month in which the soldier becomes retirement eligible. When a request is to be approved, the approval and oath of extension will be completed before retirement orders are issued. Soldiers in the following categories are not eligible to extend for retirement without a waiver from HQDA:

(a) Persons refusing to act to meet length of service requirements per AR 601-280, paragraph 3-2.

(b) *(Rescinded.)*

(c) Persons with a locally initiated bar to reenlistment approved by HQDA per AR 601-280, chapter 6.

f. Soldiers with 18 or more years of active Federal service who receive a DA-imposed bar to reenlistment may be extended to complete 20 years of service per AR 601-280, paragraph 10-10.

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

h. After retirement orders are issued, the personnel officer will notify the retirement approval authority and HQDA if a waiver has been granted. The officer will get the decision of that commander or HQDA either to revoke the orders or to let them stand. The officer will notify the soldier of the decision before the effective date of retirement.

12-14. Responsibility of retirement approval authority

Commanders specified in paragraph 1-21 will insure that—

a. No soldier is retired who has not completed at least 20 years of active Federal service which is creditable for retirement (sec IV).

b. Soldiers who submit applications instead of PCS are not permitted to withdraw their applications or change the requested retirement date.

c. Retirement orders are issued as far in advance of the retirement date as possible. This gives the soldier ample time to arrange for movement of dependents and transportation of household goods.

d. Paragraph 12-13 b(5) (a) and (c) are complied with.

e. HQDA (TAPC-PDT-S), State Adjutant General, and ARPERCEN (TARP-PAR-P) are notified of any change in the soldier's status that would prevent retirement.

12-15. Request for withdrawal of application or change in retirement date

a. An eligible soldier's application will not be withdrawn unless it is established that retaining the soldier on active duty will be for the convenience and best interest of the Government, or will prevent an extreme hardship to the soldier or immediate family. The hardship must have been unforeseen at the time of application. An application for retirement may not be withdrawn after travel has been performed for retirement.

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

c. Requests for withdrawal of applications or change in retirement date must be fully documented. The request will be forwarded with one copy of the DA Form 2339, through channels, to reach the retirement approval authority at least 30 days before the previously requested retirement date. The retirement approval authority will disapprove those requests which clearly do not meet established criteria or which are not fully documented. When the retirement approval authority recommends approval, the request will be forwarded to reach HQDA (TAPC-PDT-SR) at least 20 days before the previously requested retirement date. The retirement approval authority will inform the unit commander of this referral. Approval

or disapproval action should be received by the unit commander by the third day before the date that applies in (1), (2), or (3) below. If not received, the unit commander will query the retirement approval authority or HQDA (TAPC-PDT-SR) by telephone (even when Condition MINIMIZE is in effect).

(1) Date soldier is to depart oversea command for return to CONUS or area of residence.

(2) Date soldier is to depart his or her duty station for authorized or location of choice transfer activity.

(3) Previously requested retirement date when the retirement approval authority has approved a request for retirement in the oversea command.

d. Requests for exception to policy not supported by required documentation i.e., DA Form 2339 or DA Form 4991-R will be returned without action.

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

a. Noncommissioned officers holding the grade of sergeant major, at retirement will be placed on the retired list in the grade title "command sergeant major" if—

(1) They were released from the Command Sergeants Major Program on or after 13 July 1967 only because of an assignment limiting physical condition incurred in the line of duty. (This includes soldiers who voluntarily request release for this reason.)

(2) They served satisfactorily as command sergeants major.

b. Soldiers released from the Command Sergeants Major Program because of the following reasons cannot be placed on the retired list in the grade title of command sergeant major. When information in field records is insufficient to determine the soldier's eligibility for such grade title, inquiry will be made to HQDA (TAPC-EPZ-E).

(1) Soldiers released because of inadequate performance of duty.

(2) Soldiers who voluntarily withdrew for reasons other than indicated in *a* above.

(3) Soldiers holding grade MSG/ISG or below on date of retirement.

c. Retirement orders on eligible soldiers will show active duty as SGM, and placement on the retired list as CSM.

12-17. Grade title on retired list of former first sergeants

Noncommissioned officers holding the grade of master sergeant, at retirement, whose records show successful service as first sergeant, will be placed on the retired list in the grade title "first sergeant." The following are the only criteria for such placement on the retired list:

a. The soldier must be serving in, and retiring in grade of MSG.

b. The soldier must possess Special Qualification Identifier "M."

c. The soldier must have served as first sergeant in grade of MSG. No minimum time period is specified. Service in the duty position of first sergeant while in grade SFC does not meet this requirement.

12-18. Retirement orders

a. The retirement approval authority or the agency that normally issues orders on personnel of the soldier's unit of assignment, may issue retirement orders. When MILPERCEN, HQDA, is the retirement approval authority, retirement orders will be issued by the normal orders issuing agency for the soldier's unit of assignment. The following standard orders formats contained in AR 310-10 will be used to retire soldiers for length of service.

(1) Format 602: to announce the retirement under 10 USC 3917 of soldiers with 30 or more years active Federal service.

(2) Format 600: to announce the retirement under 10 USC 3914 of soldiers with 20 or more, but less than 30 years active Federal service.

b. Retirement orders direct relief from active duty on the last day of the month and placement on the retired list on the first day of the following month. Relief from active duty and retirement occur on the dates specified in the orders unless the orders are amended or revoked by proper authority. If the orders are amended or revoked,

this must take place before 2400 hours (local time) on the date of relief from active duty.

c. Once an order has been issued, it will not be amended or revoked except for extreme compassionate reasons, the definitely established convenience of the Government, or when a change in the soldier's status prevents retirement on the specified date. Orders may not be modified, amended, or revoked on or after the effective date of retirement in the absence of fraud, mathematical miscalculation, or substantial new evidence affecting the soldier's basic eligibility for retirement. The following cases will be promptly forwarded to HQDA (TAPC-PDT-SS) with full substantiating information:

(1) When circumstances require that retirement orders be revoked before the effective date of retirement.

(2) When circumstances require that retirement orders be amended before the effective date of retirement and the soldier has been reassigned outside the jurisdiction of the retirement approval authority who issued the orders.

(3) When it appears that retirement orders require modification, amendment, or revocation after the effective date of retirement.

d. The soldier must have the retirement orders, or copy of verification message containing the retirement order number. The soldier's MPRJ must contain copies of the retirement orders, before his or her departure from the oversea command or CONUS station of assignment for retirement processing.

12-19. Date of retirement

Soldiers retiring for service may be placed on the retired list only on the first day of a month, with release from active duty on the last day of the preceding month (5 USC 8301). A soldier will be retired on the date requested, or on the first day of the month thereafter, provided he or she is medically and otherwise qualified for retirement.

12-20. Place of retirement

a. Except as provided in *b* and *c* below and DA Pam 600-8-11, table 2-1-2, soldiers are required to be processed for retirement at the authorized and directed STP or STA specified in AR 635-10. Exceptions are provided in *b* and *c* below and DA Pam 600-8-11, table 2-1-2.

b. A soldier may elect, per AR 635-10, paragraphs 2-18 and 2-19, to be processed for retirement at a location of choice STP. If a soldier later wishes to retire at the authorized and directed place of retirement, he or she will submit justification for this change to the retirement approval authority. The soldier will submit the justification before leaving the unit of assignment. If retirement orders have been issued and the soldier's retirement approval authority approves the request, that commander will immediately advise the STP chiefs or commanders at the location of choice and the authorized and directed STP or STA of this change. The retirement orders need not be amended. Format 434, AR 310-10, will not be used. The soldier who has elected to be processed for retirement at a location of choice may later decide to be processed from the authorized and directed STP or STA. A change from one location of personal choice to another location of choice is *not* authorized.

c. See AR 630-5 for guidance on being absent from the home station in a leave status on the date of retirement.

d. A soldier serving on foreign service who wants to retire in the oversea area of assignment (subject to approval of oversea commander or other commander if overseas separation authority is delegated as provided in paragraph 1-43 *e.*) must mark this in the retirement application. If required, the retiree should secure a passport from the nearest United States Consulate.

12-21. Certificates

The TP or TA will prepare and issue the following certificates per AR 635-5 to each soldier upon retirement. These certificates are sensitive items. They will be transmitted, stored, and destroyed in a manner that will prevent their unauthorized use. The certificates are available through normal publications supply channels from the USAAGPC, Baltimore, MD. Requisitions will be honored only from

TP or TA listed in AR 635–10 and from approval authorities shown in paragraph 12–2.

- a. DD Form 363A (Certificate of Retirement).
- b. DA Form 3891 (Certificate of Appreciation of Wives of Retirees).
- c. DA Form 3891–1 (Certificate of Appreciation for Husbands of Retirees).
- d. DD Form 2542 (Presidential Certificate of Appreciation).

12–22. Career recognition

Appropriate ceremonies will be set up per AR 600–25, paragraph 3–4. When the installation or duty station commander decides that the retiring soldier’s career merits special recognition, the commander can issue an additional extended retirement order. This citation should have the same number on it as the retirement order plus the prefix EXT. It should highlight the key career events. The information can be gathered from field documents and by interview. This announcement may be placed on bulletin boards, included in the retiree’s file, read at ceremonies, and presented to the soldier in appropriate binder. A sample order is at figure 12–1.

12–23. Rescinded

12–24. Disposition of retirement papers

One copy of the retirement orders (including any amendments for revocations) will be placed in the Military Personnel Records Jacket, with the following essential papers:

- a. The original DA Form 2339 (Application for Voluntary Retirement).
- b. The complete medical examination report (para 12–31).
- c. Verification of service, if any obtained (para 12–28).
- d. Determinations of extraordinary heroism (para 12–4 c).
- e. Grade determinations for concurrent advancement on the retired list (para 12–6 c).
- f. Approved or disapproved requests for waiver or of exception to service obligations (para 12–11).
- g. Approval or disapproval action on requests for withdrawal of application or change in retirement date (para 12–15).
- h. Determinations concerning grade title of former command sergeants major (para 12–16).
- i. Copy 2, DA Form 3713 and addendum, if appropriate. *Note.* As this copy is used to determine eligibility for advancement to a higher grade, it must be in the MPRJ when MPRJ is forwarded to USA Enlisted Records and Evaluation Center, ATTN: PCRE–RP–R, Fort Benjamin Harrison, IN 46249–1006.
- j. Other essential papers showing actions and reasons for actions taken.

12–25. References

Additional information concerning retirement is contained in the following publications:

Decorations and Awards	AR 672–5–1
Identification cards, tags and badges	AR 640–3
Preparation of DD Form 214	AR 635–5
Preretirement leave	AR 630–5
Records disposition	635–10
Retirement ceremony	AR 600–25
Retirement processing	AR 635–10
Selection of home	Paragraph U5130, JFTR
Shipment of household goods	Paragraph U5365, JFTR
Transportation of dependents	Paragraph U5230, JFTR

Section IV

Computation of Service

12–26. Service creditable for retirement

Years of service creditable for retirement are computed by adding all active service in the US Armed Forces and service computed under 10 USC 3683 (10 USC 3925). All service below is creditable for retirement under this chapter and is creditable for basic pay

purposes. For other service creditable for basic pay, see Department of Defense Military Pay and Allowances Entitlements Manual. Whenever “ active Federal service” is specified, it includes active duty for training and other full–time training duty (37 USC 101(18)). Service below is creditable for retirement if performed as a commissioned officer, commissioned warrant officer, warrant officer, Army field clerk, flight officer, or soldier unless otherwise specified.

a. Army.

- (1) US Army (Regular).
- (2) Women’s Army Corps.
- (3) Active Federal service in the—
 - (a) Regular Army Reserve.
 - (b) Army of the United States.
 - (c) US Army Reserve.
 - (d) Organized Reserve Corps.
 - (e) Officers Reserve Corps.
 - (f) Enlisted Reserve Corps.
 - (g) Army National Guard.
 - (h) Army National Guard of the United States.
 - (i) Army Nurse Corps as it existed before 16 April 1947.
- (4) All active service performed under an appointment under the act of 22 December 1942 (chapter 805, 56 Stat. 1072) or the act of 22 June 1944 (chapter 272 Stat. 324).
- (5) All active full–time service, except as a student or apprentice, with the Medical Department of the Army as a civilian employee—
 - (a) In the dietetic or physical therapy categories, if the service was performed after 6 April 1917 and before 1 April 1943.
 - (b) In the occupational therapy category, if the service was performed before appointment in the Army Nurse Corps of the Women’s Medical Specialist Corps before 1 January 1949.
- (6) Cadet, US Military Academy.
- (7) Women’s Army Auxiliary Corps (active service performed after 13 May 1942 and before 20 September 1943).
- (8) Phillippine Scouts.
- (9) Officer Training Camp as a soldier.
- (10) Fraudulent enlistment, if enlistment was not voided.
- (11) Civilian Conservation Corps (active duty as commissioned officer).

b. Navy.

- (1) US Navy (Regular).
- (2) Active Federal service in the—
 - (a) US Naval Reserve.
 - (b) Naval Militia.
 - (c) Naval Reserve Force.
 - (d) Navy Nurse Corps as it existed before 6 April 1947.
- (3) V–12 Program of World War II (service in dual status as soldier on active duty as midshipman in the program).
- (4) Midshipman, US Naval Academy.

c. Air Force.

- (1) US Air Force (Regular).
- (2) Active Federal service in the—
 - (a) Air Force of the United States.
 - (b) US Air Force Reserve.
 - (c) Air National Guard.
 - (d) Air National Guard of the United States.
- (3) Aviation Cadet.
- (4) Cadet, US Air Force Academy.

d. Marine Corps.

- (1) Marine Corps (Regular).
- (2) Active Federal service in the—
 - (a) US Marine Corps Reserve.
 - (b) Marine Corps Reserve Force.
- e. *Coast Guard.*
 - (1) US Coast Guard (Regular).
 - (2) Active Federal service in the US Coast Guard Reserve.
 - (3) Midshipman, US Coast Guard Academy.

f. *Public Health Service.* Active Federal service as commissioned officer in the Reserve Corps of the Public Health Service.

g. *Minority service.* All service performed under an enlistment or induction entered into before reaching the age prescribed by law for

that enlistment or induction when such service is otherwise creditable.

12-27. Periods not creditable for retirement

None of the following periods are creditable for retirement under this chapter.

- a. All time required to be made good (10 USC 972). See paragraph 1-23.
- b. Periods of service voided by the Government other than those voided because of minority.
- c. Time in a nonpay (noncasualty) status under 37 USC 552(C).
- d. Service in a Reserve Component not on—
 - (1) Active duty.
 - (2) Active duty for training.
 - (3) Other full-time training duty.

12-28. Verification of service

a. Each soldier of the Regular Army will be interviewed by the officer having custody of his or her records when the soldier completes 18 years' service for basic pay. The interview determines if the soldier has had service (active Federal service or inactive service in any branch of the Armed Forces) in addition to that shown in the Military Personnel Records Jacket (DA Form 201) or Personal Financial Records, US Army (DA Form 3716). Further verification is not required for soldiers whose only claimed service is Army service which is clearly substantiated in their MPRJ or PFR.

b. Army service claimed by the soldier which is not clearly substantiated in his MPRJ or PFR will be verified as follows:

(1) Claimed National Guard service will be verified with the Adjutant General of the State or territory. (See app C for list of addresses.)

(2) If breaks in the applicant's Army service or periods of prior Army service have been previously verified, one copy of DA Form 2339 will be submitted to the Commander, U.S. Army Enlisted Records and Evaluation Center, ATTN: PCRE-RP-R, Fort Benjamin Harrison, IN 46249-5301, requesting verification. It is important that inclusive dates for all service claimed, both active Federal service and inactive service, be furnished.

c. Other service claimed by the applicant will be verified by certified statements of service and other official statements. These statements will be furnished from the addresses below. Statements will contain all dates of active duty, active duty for training or other full-time training duty, and all time lost. The original or certified copies will be attached as enclosures to an application for retirement.

(1) Navy. Military Personnel Records Center, GSA (Navy) 9700 Page Boulevard, St. Louis, MO 63132.

(2) Air Force. Military Personnel Records Center, GSA (Air Force), 9700 Page Boulevard, St. Louis, MO 63132.

(3) Marine Corps. Military Personnel Records Center, GSA (Marine Corps), 9700 Page Boulevard, St. Louis, MO 63132.

(4) Coast Guard. Military Personnel Records Center, GSA (Coast Guard), 9700 Page Boulevard, St. Louis, MO 63132.

(5) National Guard. Adjutant General of the State concerned.

d. The signature of the commander or personnel officer at the close of section II, DA Form 2339 certifies that the service claimed by the soldier in items 14 through 18, DA Form 2339, is correct. Exceptions are indicated in items 25 or 31.

Section V

Medical Examination

12-29. General

a. Active Army soldiers retiring after more than 20 years active duty are required to undergo a medical examination. This includes Army Reserve and Army National Guard soldiers on active duty. The examination will provide a better health assessment of the soldier and continue the cardiovascular attention. The examination will also record the soldier's state of health and protect the interest of the soldier and the Government.

b. Examination will be accomplished not earlier than 4 months prior to the anticipated date of commencement of transition leave and not later than 1 month before the scheduled date of retirement.

c. The examining physician will inform the soldier of the results of the medical examination, either verbally or in writing. A copy of the SF 88 may be furnished on request on an individual basis.

d. The immediate commander of each soldier requesting retirement will insure that medical examination procedures are followed per AR 40-501 and DA Pamphlet 600-8-9.

12-30. Hospitalization/Physical Evaluation Board proceedings

If a soldier who has requested retirement becomes hospitalized or has an identified medical problem, he or she might be referred to a physical evaluation board. The commander of the medical treatment facility, or a senior medical officer who has detailed knowledge of medical fitness and unfitness standards, disposition of patients, and disability separation processing to whom the commander has delegated such authority will make this decision. If referral to a physical evaluation board will result, the medical treatment facility commander or designated representative will notify HQDA (TAPC-PDT-SR), 2461 Eisenhower Avenue, Alexandria, VA 22331-0479 by mail or message as soon as possible. The notification will request a change of retirement date if appropriate and furnish a copy of the request to the retirement approval authority. If the physical evaluation board is not necessary, but additional medical care is, the retirement will be processed as a nondisability retirement. Continuing medical problems will be treated up to and after the retirement date. Retirement dates will not be changed to continue medical treatment that will extend past the approved retirement date. If referral to a physical evaluation board results, approved retirement dates will not be changed until approved by HQDA (TAPC-PDT-SR).

12-31. Reports of medical examination

a. A medical examination report for retirement will consist of the originals of the following:

(1) Report of Medical Examination (SF 88).

(2) Report of Medical History (SF 93).

(3) Electrocardiogram properly mounted and identified on clinical record—Electrocardiographic Report (SF 520).

(4) Report of any consultation accomplished.

(5) Complete report of medical board proceedings, if accomplished (AR 40-3)—Medical Board Proceedings (DA Form 3947), Clinical Record—Narrative Summary (SF 502) and Report of Medical Examinations (SF 88).

b. One copy of the complete report of medical examination of medical board proceedings will be filed in the Health Record (DD Form 3444 series). Additional copies will be placed in the Health Record for distribution by the transfer activity per AR 635-10.

Chapter 13

Separation for Unsatisfactory Performance

Section I

General

13-1. Policy

A soldier may be separated per this chapter when it is determined that he or she is unqualified for further military service because of unsatisfactory performance. (See chap 1, sec II.) This reason will not be used if the soldier is in entry level status.

13-2. Criteria

a. Commanders will separate a soldier for unsatisfactory performance when it is clearly established that—

(1) In the commander's judgment, the soldier will not develop sufficiently to participate satisfactorily in further training and/or become a satisfactory soldier, or

(2) (Rescinded.)

(3) The seriousness of the circumstances is such that the soldier's retention would have an adverse impact on military discipline, good order, and morale, and

(4) It is likely that the soldier will be a disruptive influence in present or future duty assignments, and

(5) It is likely that the circumstances forming the basis for initiation of separation proceedings will continue or recur, and

(6) The ability of the soldier to perform duties effectively in the future, including potential for advancement or leadership, is unlikely, and

(7) *Rescinded*

b. Commanders will initiate separation action only when the soldier is under military control. As an exception, commanders may initiate this action when a soldier is confined by civil authorities and his or her military record indicates that he or she should be processed for separation by reason of unsatisfactory performance. (See chapter 2, section IV for completing proceedings initiated before a soldier departs absent without leave.)

c. *Rescinded*.

d. This provision applies to soldiers who are pregnant and whose substandard duty performance is not caused solely by pregnancy. Substandard duty might include failure to report to duty without medical or military authorization, or refusal of CONUS reassignment during the first 6 months of pregnancy.

e. Commanders will consider soldiers meeting the criteria of *a* above, and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under this chapter, when the underlying misconduct and the soldier's performance warrant separation. When appropriate, commanders may start separation action while the soldier is serving a sentence to confinement at the installation detention facility.

f. Initiation of separation proceedings is required for soldiers without medical limitations who have two consecutive failures of the Army Physical Fitness Test per AR 350-41, or who are eliminated for cause from Noncommissioned Officer Education System courses, unless the responsible commander chooses to impose a bar to reenlistment per AR 601-280, chapter 6.

13-3. Separation authority

The commanders specified in paragraph 1-21 are authorized to take final action in cases processed under this chapter.

13-4. Counseling and rehabilitation requirements

Before initiating separation action against a soldier, commanders will insure that the soldier has received adequate counseling and rehabilitation. Because military service is a calling different from any civilian occupation, a soldier should not be separated when unsatisfactory performance is the sole reason unless there have been efforts at rehabilitation. Paragraph 1-18 prescribes the counseling and rehabilitation requirements.

Section II Procedures

13-5. Action by unit commander when soldier is under military control

When separation for unsatisfactory performance is appropriate, the unit commander will—

a. Take action specified in the Notification Procedure (chap 2). Also, see figure 2-5.

b. Forward the case recommending separation for unsatisfactory performance.

c. Insure that a medical examination and mental status evaluation is obtained per paragraph 1-34.

d. When appropriate, forward the case recommending that the soldier be processed through medical channels. This is required when UCMJ action is not initiated and when the soldier has an incapacitating physical or mental illness which was the direct or

substantial contributing cause of the conduct for which action is being considered.

13-6. Rescinded.

13-7. Commanding officer's report

When the immediate commander determines that separation for unsatisfactory performance is in the best interest of the Service, he or she will report the fact. It will be reported in letter form (fig 2-6) to the separation authority specified in paragraph 1-21 through the intermediate commander.

13-8. Action by intermediate commander

The intermediate commander will take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the soldier to another organization, or direct disposition by other means. In case of reassignment, forward the commanding officer's report to the new organization commander for information.

b. Forward the report recommending approval. Recommendation will be made as to characterization of service (see para 2-2 f(4)).

c. *Rescinded*.

13-9. Action by the separation authority

On receiving a recommendation for separation for unsatisfactory performance, the separation authority (para 1-21) will take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the soldier to another organization. In this case the commanding officer's report will be forwarded to the new organization commander for information.

b. Disapprove the recommendation and return the case to the originator for disposition by other means. The return indorsement will include reasons for considering separation for unsatisfactory performance inappropriate.

c. Take other appropriate action under this regulation.

d. If the soldier has less than 6 years of total active and/or reserve military service, or has properly waived his or her right to consideration by a board—

(1) Approve separation for unsatisfactory performance, or

(2) Approve separation for unsatisfactory performance and suspend execution of the separation (para 1-20).

e. If the soldier has 6 or more years of total active and/or reserve military service and has not executed a waiver, convene a board of officers, as prescribed in chapter 2, to determine whether the soldier should be separated for unsatisfactory performance.

13-10. Separation authority action after board hearings

See chapter 2.

13-11. Characterization of service

The service of soldiers separated because of unsatisfactory performance will be characterized as honorable or under honorable conditions as warranted by their military record. (See para 3-5 and 3-7.) An honorable characterization of service is generally required when limited use evidence is initially introduced by the Government. (See para 3-8 *a* and *g*.)

13-12. Type of separation

The criteria in chapter 1, section VIII, will govern whether the soldier will be released from AD or ADT with transfer to the IRR, or discharged. (See para 1-12 for additional instructions on ARNGUS and USAR personnel.)

13-13. Reentry into Army (Rescinded.)

Chapter 14 Separation for Misconduct

Section I General Provisions

14-1. General

This chapter establishes policy and prescribes procedures for separating personnel for misconduct because of minor disciplinary infractions, a pattern of misconduct, commission of a serious offense, conviction by civil authorities, desertion, and absence without leave.

14-2. Policy

a. Action will be taken to separate a soldier for misconduct when it is clearly established that—

(1) Despite attempts to rehabilitate or develop him or her as a satisfactory soldier, further effort is unlikely to succeed.

(2) Rehabilitation is impracticable or soldier is not amenable to rehabilitation (as indicated by the medical or personal history record).

(3) The provisions of paragraph 1-35 have been complied with, if applicable.

b. Separation action may be taken when a soldier is not under military control (per chapter 2, section IV).

c. Commanders will not take action prescribed in this chapter instead of disciplinary action solely to spare an individual who may have committed serious misconduct from the harsher penalties which may be imposed under the UCMJ.

d. Before taking action against a soldier under section III because of minor disciplinary infractions or a pattern of misconduct, commanders will insure that the soldier has received adequate counseling and rehabilitation. See paragraph 1-18.

e. (**Rescinded.**)

f. Misconduct involving fraudulent entry will be considered under chapter 7. Misconduct involving homosexual conduct will be processed under chapter 15.

g. Commanders will consider soldiers meeting the criteria of section III, this chapter, and convicted by court-martial, but not sentenced to a punitive discharge, for administrative separation under section III, when the underlying misconduct warrants separation. When appropriate, commanders may initiate separation action while the soldier is serving a sentence to confinement at the installation detention facility.

14-3. Characterization of service or description of separation

a. A discharge under other than honorable conditions is normally appropriate for a soldier discharged under this chapter. However, the separation authority may direct a general discharge if such is merited by the soldier's overall record (chap 3, sec III). When the sole basis for separation is a serious offense which resulted in a conviction by court-martial that did not impose a punitive discharge, the soldier's service may not be characterized under other than honorable conditions unless approved by HQDA (TAPC-PDT-SS).

b. When a soldier has completed entry level status, characterization of service as honorable is *not* authorized unless the soldier's record is otherwise so meritorious that any other characterization clearly would be inappropriate. A characterization of honorable may be approved only by the commander exercising general court-martial jurisdiction or higher authority unless authority is delegated per paragraph 1-21 *c*(2). A commander exercising general court-martial jurisdiction may delegate authority to the special court-martial convening authority to approve separation with service characterized as honorable when the sole evidence of misconduct is command directed urinalysis results, which cannot be used for characterization of service as specified in chapter 6, AR 600-85, or when an administrative discharge board has recommended separation with an Honorable discharge (see para 2-12 *b*(1)).

c. If characterization of service under other than honorable conditions is *not* warranted for a soldier in entry level status (chap 3, sec III) service will be described as (uncharacterized).

d. An honorable characterization of service is generally required when limited use evidence is initially introduced by the Government. (See para 3-8 *a* and *g.*)

14-4. Authority for discharge or retention

a. The separation authority is authorized to order discharge or direct retention in military service when disposition of a soldier has been made by a domestic court of the United States or its territorial possessions.

b. Upon determination that a soldier is to be separated with a discharge under other than honorable conditions, the separation authority will direct reduction to the lowest enlisted grade by the reduction authority. (See AR 600-200, chap 6, sec IV.)

c. The separation authority is authorized to suspend execution of an approved administrative discharge to afford a highly deserving soldier a probationary period not to exceed 6 months to demonstrate successful rehabilitation. See paragraph 1-21 for delegation of authority.

Section II Conviction by Civil Court

14-5. Conditions which subject soldier to discharge and reduction in grade

a. A soldier may be considered for discharge when initially convicted by civil authorities, or when action is taken that is tantamount to a finding of guilty, if one of the following conditions is present. This includes similar adjudications in juvenile proceedings.

(1) A punitive discharge would be authorized for the same or a closely related offense under the MCM, 1984, as amended; or

(2) The sentence by civil authorities includes confinement for 6 months or more, without regard to suspension or probation. Adjudication in juvenile proceedings includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

b. Initiation of separation action is *not* mandatory. Although the conditions established in *a*(1) or (2) are present, the immediate commander also must consider whether the specific circumstances of the offense warrant separation. See paragraph 14-7 for guidance on retention.

c. If separation action is initiated by the immediate commander, the case will be processed through the chain of command to the separation authority for appropriate action.

d. A soldier convicted by a civil court or adjudged a juvenile offender by a civil court will be reduced or considered for reduction (AR 600-200), as it applies to reductions in grade for misconduct (conviction by civil court).

14-6. Appeals

A soldier will be considered as having been convicted, or adjudged a juvenile offender, even though an appeal is pending or is filed later. A soldier subject to discharge under this regulation will be considered and processed for discharge even though he or she has filed an appeal or has stated his or her intention to do so. However, execution of the approved discharge will be withheld until the soldier has indicated in writing that he or she does not intend to appeal the conviction or adjudication as a juvenile offender, or until the time an appeal may be made has expired, or until the soldier's current term of service, as adjusted (see para 1-23), expires (see limitation of para 14-9) whichever is earlier. If an appeal has been made, discharge will be withheld until final action has been taken or until the soldier's current term of service, as adjusted (para 1-23), expires (see limitation of para 14-9). Upon request of the soldier, or when the commander believes it is appropriate, a soldier may be discharged prior to final action on an appeal. In such cases, the entire file will be forwarded to HQDA (TAPC-PDT-SS),

Alexandria, VA 22331-0479, for final decision. The recommendation of the separation authority for immediate discharge as an exception will fully substantiate the circumstances and the recommendation.

14-7. Retention action

Retention should be considered only in exceptionally meritorious cases when clearly in the best interest of the Army. However, cases may arise which warrant consideration with a view toward retaining the soldier in the service.

a. In deciding whether retention should be recommended or approved, consider the gravity of the offense, related events, and any matters in extenuation. The military record of the soldier before the offense should be considered, as well as prospects for rehabilitation.

b. If retention is desired and civil custody exists, such as parole or probation, which would interfere with the soldier's military duties, the civil authorities will be requested to relinquish such custody during the soldier's term of military service. If the civil authorities decline to relinquish custody, as a general rule, the soldier will be discharged. The soldier will also be discharged if the conditions for relinquishment of custody will cause an undue burden to the Army.

14-8. Action following disposition by domestic courts

a. When discharge is contemplated. When a soldier is under military control, the unit commander will take action as specified in the Administrative Board Procedure (chap 2, sec III), except that the use of the Notification Procedure (chap 2, sec II) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3-7 *c.* Chapter 2, section IV, prescribes additional actions to be taken when soldier is confined, and the Administrative Board Procedure will be used, except that the use of the Notification Procedure is authorized if characterization of service under other than honorable conditions is not warranted.

b. Board hearing waived or completed. The separation authority may—

(1) Disapprove recommendation for discharge and direct retention.

(2) Approve recommendation for retention.

(3) Approve recommendation for discharge, and approve the type discharge certificate recommended by the board or a more favorable one than that recommended. He or she may not direct a discharge of a lesser character than that recommended by the board. When the board has been properly waived, the type of discharge certificate to be issued will be determined per paragraph 14-3.

(4) Approve recommendation for discharge and suspend execution of the discharge.

14-9. Procedure for civil court cases in foreign countries

a. Discharge of soldiers convicted by a foreign tribunal may be approved by major oversea commanders. This authority may be delegated to a general officer with a JA (judge advocate) on his or her staff. Every action taken in such delegation will state the authority. When a soldier is convicted by a foreign tribunal, and the soldier returns to the United States before the initiation or completion of discharge proceedings per this paragraph, discharge proceedings will be initiated or completed per paragraph 14-5. The proceedings will be completed as if the soldier had been convicted by the domestic court of the United States or its territorial possession. (See paras 14-4 and 14-8.) However, the recommendation for discharge will include the items specified in *b*(1) through (4) below. In such cases, the authorities specified in paragraph 1-21 may approve and order discharge under this paragraph if the soldier has been assigned to their command. However, HQDA authorization is required before soldiers who have completed 18 or more years of active Federal service may be discharged. This provision is not intended to relieve oversea commanders of their responsibility to promptly initiate and process civil court cases on soldiers of their command.

b. Commanders will forward the board proceedings, or waiver, through channels to the major overseas commander. Cases will be

processed through the chain of command to the commander in the United States authorized to approve discharge. In both situations, the recommendation regarding discharge will include—

(1) Information concerning the civil record and military service of the soldier.

(2) A statement from the court indicating that the soldier has been initially convicted.

(3) A statement as to the character of discharge desired (include statement as to whether para 2-4 has been complied with).

(4) A report of the trial proceedings submitted by the official US observer, if any, attending the trial or a transcript of the record of trial, if obtainable.

c. Army personnel confined in foreign prisons will not be discharged from military service until the term of imprisonment is completed and they return to the United States. Normally, soldiers disposed of by a foreign tribunal, but not confined, or who are confined but whose release from confinement is imminent will be returned to the United States, or its territorial possessions for discharge. It is general policy that the soldier will be returned to CONUS. Very unusual cases may be forwarded through command channels to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479, with supporting reasons as to why a soldier should be authorized discharge in a foreign country. Only most unusual situations will be considered. If discharge in a foreign country is desired, either by the commander or the soldier concerned, this paragraph and chapter 1, section X will be complied with before such requests are submitted to HQDA.

d. If HQDA authorized discharge in a foreign country, the oversea commander accomplishing the discharge will inform the nearest US diplomatic or consular mission of such action.

e. A soldier may not be retained in the service beyond ETS without his or her consent (para 1-29) to complete board action under chapter 2, section III. When the soldier has not requested retention per paragraph 1-29 and it appears that compliance with chapter 2, section III, cannot be accomplished before the soldier's ETS, the case with full details will be submitted through channels to HQDA (TAPC-PDT-SS), ALEX VA 22331-0479. The case will be submitted in time to permit appropriate consideration before the soldier's ETS. There is no authorization to begin last minute administrative discharge action and then to request special consideration or retention beyond ETS to complete board action.

14-10. Pay and allowances

See AR 37-104-3.

14-11. Detainers and strength accountabilities

a. Detainers When a detainer is lodged with the civil authorities with a view toward having the soldier returned to military control upon release from confinement, the communication to the civil authorities will clearly show the reason for the detainer. A mere statement that the individual is wanted by the Army can lead to erroneous conclusions. The absence of detailed information may deprive the soldier of parole consideration. Civil authorities may believe that the soldier is wanted for trial when the Army only wants to restore the soldier to duty. When a detainer has been lodged with civil authorities and a decision is later made to accomplish administrative discharge, the civil authorities will be notified, in writing, to remove the detainer and that such detainer be cancelled. Notification will be made when discharge is accomplished. Verbal notification may be made, but must be confirmed in writing at the earliest date.

b. Strength accountability

(1) A soldier sentenced to confinement for 6 months or more in a domestic, civil, or foreign institution will be dropped from military strength when his or her sentence begins (AR 680-1, para 13). However, the soldier's chain of command retains administrative responsibility for processing separation action.

(2) When discharge is approved by separation authority but suspended due to appellate action in paragraph 14-6, the soldier will be administratively reassigned to the nearest Personnel Control Facility

(PCF) per AR 600–62 and AR 630–10. The soldier's MPRJ and DA Form 201 will be forwarded to the commander of the PCF.

Section III Acts or Patterns of Misconduct

14–12. Conditions which subject soldiers to discharge

Soldiers are subject to separation per this section for the following:

a. Minor disciplinary infractions. A pattern of misconduct consisting solely of minor military disciplinary infractions. If separation of a soldier in entry level status is warranted solely by reason of minor disciplinary infractions, the action should be processed under Entry Level Status Performance and Conduct (chap 11).

b. A pattern of misconduct. A pattern of misconduct consisting of—

(1) Discreditable involvement with civil or military authorities.

(2) Conduct prejudicial to good order and discipline. Discreditable conduct and conduct prejudicial to good order and discipline includes conduct violative of the accepted standards of personal conduct found in the UCMJ, Army regulations, the civil law, and time-honored customs and traditions of the Army.

c. Commission of a serious offense. Commission of a serious military or civil offense, if the specific circumstances of the offense warrant separation and a punitive discharge would be authorized for the same or a closely related offense under the MCM.

(1) An absentee returned to military control from a status of absent without leave or desertion may be separated for commission of a serious offense. (See paragraph 1–45 for civil offenses under investigation by foreign authorities.)

(2) Other personnel (first-time offenders below the grade of sergeant, or with less 3 years of total military service, Active and Reserve) may be processed for separation as appropriate.

(a) First-time drug offenders. Soldiers in the grade of sergeant and above, and all soldiers with 3 years or more of total military service, Active and Reserve, will be processed for separation upon discovery of a drug offense.

(b) Second-time drug offenders. All soldiers must be processed for separation after a second offense.

(c) Medically-diagnosed drug dependent soldiers. All soldiers will be processed for separation upon completion of actions required by AR 600–85.

14–13. Procedures

The administrative board procedures (chap 2, sec III) will be used; however, the use of the notification procedure (chap 2, sec II) is authorized if characterization of service under other than honorable conditions is not warranted under paragraph 3–7 *c*.

14–14. Separation authority

Commanders specified in paragraph 1–21 are authorized to convene boards and order separation under this chapter.

14–15. Commanding officer's report

When the immediate commander determines that separation for acts or patterns of misconduct is in the best interest of the Service, he or she will report the fact. It will be reported in letter form (fig 2–6) to the separation authority specified in paragraph 1–21 through the intermediate commander.

14–16. Action by intermediate commanders

Intermediate commanders may take one of the following actions in cases of misconduct, except for cases of abuse of illegal drugs .

a. Disapprove the recommendation and direct reassignment of the soldier to another organization or direct disposition by other means. In case of reassignment, the commanding officer's report will be sent to the new organization commander for information.

b. Approve the commanding officer's recommendation and send the report to the separation authority. Recommendation will be made as to characterization of service (see para 2–2 or 2–4).

c. Recommend separation for unsatisfactory performance, if the reason for separation is determined to be a pattern of misconduct

and it is caused by the conditions in paragraph 13–2 *a*, and unsatisfactory performance was stated as a basis for separation in the initial letter of notification. Commanders exercising special court-martial jurisdiction may disapprove the recommendation relating to misconduct and take further action per paragraph 13–9.

14–17. Action by the separation authority

On receiving a recommendation for separation for misconduct, the separation authority may take one of the following actions:

a. Disapprove the recommendation and direct reassignment of the soldier to another organization. In case of reassignment, the commanding officer's report will be forwarded to the new organization commander for information.

b. Disapprove the recommendation and return the case to the originator for disposition by other means. Include the reasons for considering separation for misconduct inappropriate, or in the alternative, take other appropriate action under this regulation.

c. Disapprove the recommendation relating to misconduct and take action himself or herself. The case can be referred to the appropriate separation authority (para 1–21 *c* or *d*) to determine whether the soldier should be separated for unsatisfactory performance if the reason for separation is based substantially on any of the conditions described in paragraph 13–2 *a* and the misconduct is not so serious that a discharge under other than honorable conditions appears appropriate. Unless unsatisfactory performance was stated as a basis for separation in the initial letter of notification, new proceedings per chapter 13 must be initiated to accomplish such separation.

d. Convene a board of officers as prescribed in chapter 2, section III, to determine whether the soldier should be separated for misconduct.

e. When the board hearing has been properly and effectively waived, direct separation of the soldier for misconduct.

f. When the board hearing has been waived approve separation of the soldier for misconduct and suspend execution of the separation (para 1–20).

g. Direct that the case be processed through medical channels, if appropriate when the provisions of paragraph 1–35 have been complied with.

Chapter 15 Discharge for Homosexual Conduct

Section I Policy

15–1. General Policy

AR 600–20 contains general policies concerning homosexual conduct, including statutory provisions, pertinent definitions, and commander guidelines for fact-finding inquiries. AR 195–2 provides guidance on criminal investigation of sexual misconduct. AR 380–67 offers guidance on personal security and clearance matters related to homosexual conduct.

15–2. Discharge Policy

a. Homosexual conduct is grounds for separation from the Army under the criteria set forth in paragraph 15–3. This includes pre-service, prior service, or current service homosexual conduct. The term homosexual conduct includes homosexual acts, a statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts, or a homosexual marriage or attempted marriage. A statement by the soldier that demonstrates a propensity or intent to engage in homosexual acts is grounds for discharge not because it reflects the soldier's sexual orientation, but because the statement indicates a likelihood that the soldier engages in or will engage in homosexual acts. A soldier's sexual orientation is considered a personal and private matter, and is not a bar to continued service unless manifested by homosexual conduct as described in paragraph 15–3.

b. The foregoing does not preclude—

(1) Retention of the soldier in the Army when it is determined that the purpose of the soldier's homosexual conduct is to avoid or terminate military service.

(2) Trial by court-martial in appropriate cases. Conviction by a court-martial which did not impose a punitive discharge does not prevent initiation of administrative discharge proceedings under this chapter.

(3) Separation, in appropriate circumstances, for another reason specified in this regulation.

(4) When discharge under this chapter has been approved, retention of the soldier for a limited period of time in the interests of national security. In such cases the separation authority will submit a request for retention, with full particulars and rationale, to HQDA (TAPC-PDT-S), Alexandria, VA 22331-0479. Retention approved under this paragraph does not constitute suspension of separation as described in paragraph 1-20.

15-3. Criteria for discharge

Except as indicated, a soldier will be discharged if one or more of the following findings have been made and are approved by the separation authority:

a. The soldier has engaged in, attempted to engage in, or solicited another person to engage in a homosexual act or acts unless there are further approved findings that—

(1) Such acts are a departure from the soldier's usual and customary behavior.

(2) Such acts under all the circumstances are unlikely to recur.

(3) Such acts are not accomplished by the use of force, coercion, or intimidation.

(4) Under the particular circumstances of the case, the soldier's continued presence in the Army is consistent with the interest of the Army in maintaining proper discipline, good order, morale.

(5) The soldier does not have a propensity or intent to engage in homosexual acts, or intend to engage in homosexual acts. In determining whether retention is appropriate, separation boards/authorities must ensure that all of the foregoing limited conditions are met. Additionally a determination as to whether retention is warranted under the limited circumstances is required if the soldier clearly and specifically raises such limited circumstances. However, the soldier bears the burden of proving, by a preponderance of the evidence, that retention is warranted under the limited circumstances.

b. The soldier 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 soldier 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 the soldier that he or she is a homosexual or bisexual, or words to that effect, creates a rebuttable presumption that the soldier engages in, attempts to engage in, has a propensity to engage in, or intends to engage in homosexual acts. The soldier shall be advised of this presumption and given the opportunity to rebut the presumption by presenting evidence that demonstrates he or she does not engage in, attempt to engage in, have a propensity to engage in, or intend to engage in homosexual acts. The soldier bears the burden of rebutting the presumption. In determining whether a soldier has successfully rebutted the presumption, some or all of the following may be considered:

(1) Whether the soldier has engaged in homosexual acts.

(2) The soldier's credibility.

(3) Testimony from other about the soldier's past conduct, character and credibility.

(4) The nature and circumstances of the soldier's statement.

(5) Any other evidence relevant to whether the member is likely to engage in homosexual acts.

c. The soldier 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).

15-4. Characterization of descriptive of service

a. When the sole basis for separation is homosexual conduct, a

discharge under other than honorable conditions may be issued only if such characterization is warranted in accordance with chapter 3, section III, and if there is a finding that during the current term of service the soldier attempted, solicited, or committed a homosexual act—

(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 conditions 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.

b. In all other cases, the type of discharge will reflect the character of the soldier's service (chap 3, sec III).

15-5. Separation authority

a. Commanders specified in paragraph 1-21 are authorized to order discharge for homosexual conduct.

b. HQDA approval is required before soldiers who have completed 18 or more years of active Federal service may be discharged. See paragraph 1-21f.

Section II Procedures

15-6. Action by unit or immediate commander

a. If the unit/immediate commander, or another commander in the soldier's chain of command, receives credible information that there is a basis for discharge for homosexual conduct, the commander will cause a fact-finding inquiry to be conducted in accordance with AR 600-20.

b. If the unit/immediate commander determines, based on the fact-finding inquiry, that a basis for discharge exists, he/she will—

(1) Submit a report, in memorandum format (fig 2-6), through any intermediate commander(s) to the separation authority.

(2) Take action required by the administrative board procedure (chap 2, sec III). In the case of a soldier who has made a statement that he or she is a homosexual or bisexual, or words to that effect, the memorandum for notification of discharge (fig 2-4) will specifically advise the soldier of the rebuttable presumption provisions of paragraph 15-3b.

(3) Ensure that a medical examination and mental status evaluation are conducted as prescribed by paragraph 1-34.

15-7. Action by intermediate commanders

Intermediate commanders will take one of the following actions:

a. Disapprove the unit/immediate commander's recommendation when there is insufficient evidence that one or more of the circumstances for which discharge is authorized (para 15-3) has occurred.

b. Approve the unit/immediate commander's recommendations and forward it to the separation authority, with a recommendation for characterization or description of service (para 2-4h(4)).

15-8. Action by separation authority

On receipt of a recommendation for discharge for homosexual conduct, the separation authority may take one of the following actions:

a. Disapprove the recommendation when there is insufficient evidence that one or more of the circumstances for which discharge is authorized (para 15-3) has occurred.

b. Disapprove the recommendation for discharge for homosexual conduct, and take other appropriate action, under this regulation, to determine whether the soldier should be separated for another reason of which the soldier has been duly notified.

c. Convene an administrative separation board, as prescribed in chapter 2, section III, to determine whether the soldier should be discharged for homosexual conduct.

d. When the soldier has waived the right to a hearing by an administrative separation board—

(1) Direct retention of the soldier if the separation authority determines that there is insufficient evidence to support discharge for homosexual conduct, unless there is another basis for separation of which the soldier has been duly notified.

(2) Direct discharge of the soldier if the separation authority determines that one or more of the circumstances for which discharge is authorized (para 15-3) has occurred, unless retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

e. Process the case through medical channels when the conditions of paragraph 1-35 have been met.

15-9. Administrative separation board

The board will follow the procedures outlined in chapter 2, section III, except as follows:

a. The board will make no inquiry nor finding concerning sexual orientation.

b. If the board finds that one or more of the circumstances authorizing discharge under paragraph 15-3 is supported by the evidence, *the board will recommend discharge* unless the board finds that retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

c. If the board does not find that there is sufficient evidence that one or more of the circumstances authorizing discharge (para 15-3) has occurred, the board will recommend retention unless the case involves another basis for separation of which the soldier has been duly notified.

15-10. Separation authority action after board hearings

The separation authority will follow the procedures specified in paragraph 2-6. Exceptions are shown below.

a. If the board recommends retention—

(1) Approve the finding and direct retention; or

(2) Forward the case to HQDA (TAPC-PDT-S), Alexandria, VA 22331-0479, when the board has recommended retention and the separation authority believes discharge is warranted and in the Army's best interest. HQDA may authorize separation per paragraph 5-3.

(3) Return the case to the board for compliance with this regulation if findings required by paragraph 15-3 have not been made.

b. If the board recommends discharge—

(1) Approve the finding and direct discharge; or

(2) Disapprove the finding on the basis that there is insufficient evidence to support the finding; or retention is warranted under the limited circumstances described in paragraph 15-3a(1) through (5).

Page 60. Paragraph 16-2b. Immediately after "baccalaureate degree." insert "Soldiers will not be separated under the provisions of this chapter to earn a subsequent baccalaureate or advance degree."

Page 60. Add paragraph 16-2b(1)(g) as follows:

(g) Unless a 4- or 3-year scholarship winner, have satisfactorily completed or received credit for at least 2 years of college work.'

15-11. Assignment action for personnel enroute to an overseas area

a. When action prescribed in this chapter has been initiated against a soldier assigned to an overseas replacement station, he or she will be transferred to the Army garrison at that or another installation to await final action on the case.

b. If the discharge authority disapproves the recommendation for separation, the soldier will again be assigned to the overseas replacement station for compliance with his or her original order.

Chapter 16 Selected Changes in Service Obligations

16-1. Order to active duty as a commissioned or warrant officer or in a USAR enlisted status

a. Soldiers may be discharged for the purpose of—

(1) Being ordered to active duty as a commissioned or warrant officer in any branch of the Armed Forces.

(2) Being ordered to an Active Guard/Reserve (AGR) tour with the Army as a USAR commissioned or warrant officer. The soldier must agree to serve at least 1 year in AGR status to be eligible for separation under this paragraph.

(3) Being ordered to an AGR tour in a USAR enlisted status to meet special HQDA requirements as prescribed by AR 135-18, paragraph 6-3.

b. Before such discharge, the separation authority (para 1-21) must have documentary evidence from the proper authority. The evidence must prove that soldier *will* be ordered to AD if discharged from his or her enlisted status. Discharge will be effective the day preceding the date of entry on duty as a commissioned or warrant officer or in a USAR enlisted status.

c. The service of a soldier discharged per this paragraph will be characterized as honorable unless an entry level separation is required under chapter 3, section III.

16-2. Discharge for acceptance into a program leading to a commission or warrant officer appointment

a. Soldiers may be discharged for the purpose of acceptance into a program leading to a commission or warrant officer appointment in any branch of the Armed Forces. This includes Reserve Officer Training Corps (ROTC), Officer Candidate School (OCS), and other officer accession programs of the USN, USAF, and so forth that require enlistment in those branches of the Armed Forces. Discharge may be approved upon presentation of documentary evidence from the proper authority showing that the soldier has been accepted for an officer commissioning or appointment program, subject to discharge from his or her Army enlisted status. In addition, the soldier must meet the service requirements prescribed in b(1) (a), below. Discharge is contingent upon enlistment in the appropriate branch of the Armed Forces and entry into an officer accession program. Soldiers accepted for admission to any Service Academy or Academy Preparatory School are not eligible for discharge under this paragraph. (See AR 612-205.)

b. Soldiers may be discharged for the purpose of entry into Army Senior ROTC as a scholarship cadet or nonscholarship advanced course cadet, with a course of study leading to a baccalaureate degree.

(1) To qualify for discharge under this section, soldiers must—

(a) Have completed at least 2 years of AD for soldiers on their initial enlistment, as well as 3 months of AD for every 1 month of specialized training received (for example, MOS or language), as of the date of discharge. Soldiers on their second and subsequent enlistments must have completed 3 months of AD for every 1 month of the most recent specialized training received. Waiver of the service obligation for training may be granted by HQDA (TAPC-EPT), ALEX VA 22331-0457, on a case-by-case basis.

(b) Not be under suspension of favorable personnel actions per AR 600-8-2.

(c) Meet ROTC procurement medical fitness standards (AR 40-29 and AR 40-501), specified academic and administrative criteria (AR 145-1), and any other prerequisites for ROTC enrollment prescribed by AR 145-1 or established by the U.S. Army ROTC Cadet Command.

(d) Provide a statement from an admissions official of the school they desire to attend, indicating acceptance for enrollment and specifying the registration date for the pertinent school term.

(e) Provide a statement from the Professor of Military Science (PMS) at the school they desire to attend, indicating acceptance for ROTC participation. The PMS statement will also verify that the soldier is qualified for the ROTC program, and that academic and administrative waivers, if any, have been granted.

(f) For scholarship winners, provide a copy of the HQ ROTC Cadet Command notification of award of the scholarship. Soldiers who are conditional scholarship winners must furnish documentary evidence from HQ ROTC Cadet Command that they are fully qualified prior to requesting discharge. Scholarship recipients require no further review or documentation to qualify for discharge.

(2) Before approving discharge under this section, the separation authority (paragraph 1–21) will ensure that the soldier—

(a) Meets the criteria stipulated in (1) above.

(b) Has served honorably and possesses officer attributes (for example, leadership potential, exemplary conduct, and appearance).

(c) Understands that the discharge is contingent upon enlistment in the USAR in the grade of cadet for assignment to the USAR Control Group (ROTC), and execution of the ROTC student contract (scholarship or nonscholarship).

(d) Has been counseled that breaching the terms of the USAR enlistment contract or ROTC student contract will subject him or her to involuntary order to AD to complete the contractual obligation, and, if a scholarship cadet, may, in lieu of AD, require repayment of scholarship benefits received.

c. Discharge will be effective the day preceding enlistment in the appropriate branch of the Armed Forces for *a* above, and the day preceding enlistment in the USAR for *b*, above. Discharge documents will not be delivered to the soldier until verification is made that such enlistment has taken place. For both *a* and *b* above, discharge normally will not take place more than 30 days before the starting date of the school term or officer training program for which the soldier has been accepted.

d. The service of soldiers discharged under this paragraph will be characterized as honorable.

16–3. Discharge for the purpose of immediate enlistment or reenlistment

Soldiers who are accepted for enlistment or reenlistment as set forth below will be discharged. Soldiers so discharged will be enlisted or reenlisted on the day following discharge. The discharge certificate will not be delivered to the soldier until after enlistment or reenlistment is accomplished.

a. Commanders specified in paragraph 1–21 are authorized to order discharge for reenlistment per AR 601–280.

b. The service of a soldier discharged per this paragraph will be characterized as honorable unless entry level separation is required under chapter 3, section III.

16–4. Discharge of soldiers of Reserve Components on active duty *(Rescinded.)*

16–5. Voluntary separation of soldiers denied reenlistment

Soldiers denied reenlistment may be voluntarily separated before ETS as provided in *a*, *b*, or *c* below—

a. *DA imposed bars to reenlistment (AR 601–280, chap 10).*

(1) Soldiers who perceive that they will be unable to overcome an HQDA bar to reenlistment will be discharged upon their request, unless disapproval of the request is required or permitted under other provisions of this regulation (for example, para 1–24). Soldiers may request discharge at any time after receipt of the HQDA bar to reenlistment from unit commanders or upon notification that an appeal of the bar to reenlistment was disapproved.

(2) The soldier's request will be submitted on DA Form 4941–R (Statement of Option). (See AR 601–280 paras 10–6 *c* and 10–7 *c*.)

b. *Locally imposed bars to reenlistment (AR 601–280, chap 6).*

(1) Soldiers who perceive that they will be unable to overcome a locally imposed bar to reenlistment may request immediate separation. (See *g* below.)

(2) The soldier's request will be submitted on DA Form 4187 (Personnel Action). (See AR 601–280 para 6–5 *f*.)

c. *DA Form 4991–R (Declination of Continued Service Statement (DCSS)). (See AR 601–280, chap 3.)*

(1) Soldiers who decline to meet service remaining requirements and who have signed a DCSS may request immediate separation. Soldiers who have signed a DCSS and are subsequently alerted for schooling or an assignment for which they have sufficient service remaining, must request early separation within 30 days of the alert, or else comply with the reassignment instructions. (See *g* below.)

(2) The soldier's request will be submitted on a DA Form 4187 (Personnel Action). (See AR 601–280 para 3–2.)

d. Separation under this paragraph will be accomplished as soon as practicable, but not later than 6 months from the date of approval of the request, notwithstanding any existing service obligation that cannot be fulfilled by the separation date.

e. Overseas tours will be curtailed to the extent necessary to permit early separation under this paragraph. Approved requests for separation are irrevocable.

f. Nothing in the paragraph precludes separation of a soldier for another reason authorized by this regulation.

g. Commanders specified in paragraph 1–21 are authorized to deny or approve the request, and order separation under this paragraph.

h. Soldiers with a DA imposed bar to reenlistment will be discharged. For soldiers with a locally imposed bar to reenlistment or who have signed a DCSS, the criteria in chapter 1, Section VIII, will govern whether the soldier is released from AD, with transfer to the IRR, or discharged.

i. The service of soldiers separated under this paragraph will be characterized as honorable, unless an uncharacterized description of service is required for soldiers in entry level status who are separated under *b* above.

16–6. Oversea returnees

Commanders specified in paragraph 1–21 are authorized to order separation of soldiers returned to the United States, a possession of the United States, or area of residence in which enlisted or ordered to active duty.

a. Soldiers in the United States or area of residence on TDY or emergency leave from oversea organization who, upon completion of TDY or leave, are within 60 days of ETS, will be discharged or released as appropriate. Those who desire to extend or reenlist can do so as an exception to policy in AR 601–280, paragraph 4–3 *i*, provided they are otherwise eligible.

(1) Affected soldiers will be reassigned to a separation transfer point (STP) nearest their home for separation processing. Separation processing will not be accomplished before completion of leave or TDY. Records and allied papers will be forwarded to such STP.

(2) Affected soldiers will be instructed that upon completion of leave or TDY they will report to the STP to which assigned for separation processing.

b. This paragraph is not to be construed as authority for early return. It authorizes separation for the purpose stated only, to preclude nonproductive reassignments for short periods of time.

c. The service of a soldier separated under this paragraph will be characterized as honorable.

16–7. Early separation due to disqualification for duty in MOS

To preclude nonproductive utilization for short periods of time, soldiers who become medically or administratively disqualified for duty in their primary, secondary, and additional MOS, and who do not intend to reenlist, may be separated prior to expiration of term of service. The following criteria apply—

a. Soldiers with 6 months or less remaining until expiration of term of service may be considered for separation under this paragraph.

b. Separation is voluntary. The soldier must sign a statement that he or she is willing to accept early separation.

c. The soldier cannot be reclassified into another MOS without retraining. Excluded from this category are individuals who can be retrained within a period of 30 days either by on-the-job training or formal training conducted at the installation to which they are currently assigned.

d. For medical disqualification, the soldier must be determined by appropriate medical authority to have assignment limitation due to physical impairments. Such impairments must prevent duty in the soldier's awarded MOS for more than 60 days.

e. For administrative disqualification, the disqualification must not be the fault of the soldier. Grounds for separation include deletion of the soldier's MOS from the Army inventory, loss of security clearance required to perform duties normally related to the MOS, and disqualification from the Personnel Reliability Program (AR 50-5).

f. This paragraph does not apply to the following—

(1) Personnel who have a medical condition that warrants processing under AR 635-40.

(2) Reserve Component personnel ordered to IADT.

(3) Soldiers who lose MOS qualifications due to their own misconduct. (See AR 600-200 para 2-31 c(2) and (3).)

g. Separation under this paragraph will not occur more than 3 months before the date of expiration of term of service.

h. Commanders specified in paragraph 1-21 are authorized to order the separation of eligible personnel under this paragraph.

i. The service of a soldier separated per this paragraph will be characterized as honorable.

16-8. Early separation due to reduction in force, strength limitations, or budgetary constraints

Soldiers may be separated prior to expiration of enlistment or fulfillment of active duty obligation when specifically authorized as set forth below.

a. When authorization limitations, strength restrictions, or budgetary constraints require the Regular Army (RA) or Reserve Component (RC) active duty enlisted force to be reduced in number, the Secretary of the Army, or his designee, may authorize voluntary or involuntary early separation. Statutory authority for Secretarial separation direction is 10 USC 1169 or 1171 for RA soldiers, and 10 USC 12313(a) or 12681 for RC soldiers.

b. Commander, PERSCOM (for RA) and Chief, NGB, Chief, Army Reserve, and Cdr, ARPERCEN (for RC) will implement the Secretarial decision by issuing separation instructions pertaining to a specific class or category of soldiers. For purposes of postservice benefits, early separation under this paragraph is considered to be for the convenience of the Government.

c. Soldiers to whom this paragraph applies will be notified of early separation through appropriate channels by commanders specified in paragraph 1-21. Notification will be based on information and instructions furnished by PERSCOM/NGB/OCAR or ARPERCEN.

d. Soldiers separated under this paragraph will be discharged or released from active duty, as appropriate. Specific separation dates will be as prescribed in PERSCOM/NGB/OCAR/ARPERCEN implementation instructions.

e. Soldiers who are within 2 years of qualifying for retirement per chapter 12 on the scheduled separation date will not be processed under this paragraph unless directed by the Secretary of the Army.

f. The service of soldiers separated under this paragraph will be characterized as honorable, except when an uncharacterized description of service is required for soldiers in entry level status, per chapter 3, section III.

16-9. Early release of Reserve Component personnel ordered to IADT (Rescinded.)

16-10. Separation of soldiers of medical holding detachments/companies

a. Hospital commanders who are separation authorities (para 1-21) may order separation of those soldiers assigned to medical holding detachments or companies who have less than 3 months to serve to ETS following completion of hospitalization. Soldiers must sign a statement that they are willing to accept separation under this

paragraph. Reserve Component personnel ordered to IADT are not eligible for separation under this paragraph.

b. The service of soldiers separated per this paragraph will be characterized as honorable.

16-11. Separation of personnel assigned to installations or units scheduled for inactivation or permanent change of station

Soldiers of all components assigned to units scheduled for PCS, inactivation or demobilization, or to installations scheduled for inactivation, who cannot be effectively utilized within other units at the same station, will be separated from service as set forth below. The exception is indicated in *c* below.

a. Those having 90 days or less to serve beyond effective date of inactivation or change of station may be separated from AD by a commander specified in paragraph 1-21, provided the soldier desires separation. Separation will be accomplished during the 30-day period preceding the effective date of inactivation or change of station, but in no case will a soldier be separated more than 90 days before ETS.

b. Those whose normal term of service expires during the 90-day period preceding the effective date of activation or change of station may be separated by a commander specified in paragraph 1-21 any time during the 90-day period, provided the soldier desires separation.

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

d. Oversea commanders returning personnel to the United States for separation per this authority may add normal travel time required to the 90 days. However, care will be taken to insure that soldiers do not arrive in the United States with more than 90 days remaining in their term of service. This paragraph is not to be construed as authority for early return. It authorizes separation only to prevent nonproductive reassignments for short periods of time.

e. The service of soldiers separated per this paragraph shall be characterized as honorable.

16-12. Holiday Early Transition Program

The Christmas-New Year holiday period is established in an annual DA circular in the 612 series. The specific holiday early transitioning schedule is announced in a Milper message.

a. Soldiers may be considered for early release prior to the expiration of their terms of service in conjunction with the Christmas-New Year holiday period when specifically authorized and subject to the following criteria.

(1) Early transition normally begins on 1 December, or the first Monday thereafter, and extends to a date preceding Christmas, approximately one week, sufficient to permit the soldier adequate travel time. Soldiers whose established ETS dates fall between the first Monday in December and the announced date in January which terminates the holiday period are normally eligible for early transition. Holiday early release is voluntary. Soldiers who do not volunteer for early release will be required to sign a statement that they are not willing to accept separation under this paragraph. A soldier who declined separation in writing may subsequently change his or her mind concerning early separation under this paragraph. The separation authority, based on the circumstances of the case and the best interest of the Army, will determine if the soldier is to be retained, as previously requested, or is to be separated.

(2) Transition leave (AR 630-5, para 10-3) is authorized in conjunction with the holiday early release program provided the immediate commander approves. Soldiers must have an original ETS within the program dates. Transition leave cannot be used to place a soldier in the program. Soldiers with AWOL or other time to be made good who have an adjusted ETS (i.e. ETS adjusted for AWOL) which falls within the program dates, are eligible.

(3) Soldiers who are permanent resident aliens currently serving a 3-year enlistment and desire to fulfill naturalization requirements through military service should not volunteer for this early transition program. See paragraph 4-2 *b*.

(4) The following personnel are not eligible for early release under this program:

(a) Reserve component soldiers performing ADT under special training programs or serving fixed tours of active duty in support of the Army.

(b) Soldiers scheduled for retirement.

(c) Soldiers under suspension of favorable personnel actions per AR 600–31.

(d) Soldiers whose normal ETS does not fall between the first Monday in December and the date in January which terminates the holiday period.

b. Oversea commanders returning soldiers to the United States for separation under this paragraph may add normal travel time to permit the orderly transition from active duty on soldier's target early release date. However, care will be taken to ensure that soldiers do not arrive in the United States with more than 10 days remaining in their term of service. This paragraph is not to be construed as authority for early return. It authorizes early transition in conjunction with the holiday period only.

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

d. The service of soldiers separated per this paragraph will be characterized as honorable.

c. After any court-martial in which the soldier is not discharged, first positive drug test, and so forth.

17–5. Recording

The DA Form 2–1 (Personnel Qualifications—Part II) of each individual receiving instruction in the benefits of an honorable discharge will be annotated in item 19 (Specialized Training) as follows: “UCMJ (date) and Bfts of Hon Disch (date).”

Chapter 17 Instruction in Benefits of an Honorable Discharge

17–1. Purpose of instruction

a. The high rate of enlisted personnel receiving other than honorable discharges is a concern of commanders at all levels. The consequences of receiving other than an honorable discharge can have a lasting adverse effect on the individual soldier. Every effort must be made to ensure that soldiers are made aware of such consequences. This chapter prescribes a program of instruction concerning the benefits derived from receiving an honorable discharge from the Army. The program affects all Active Army enlisted personnel, Reserve Component (Army National Guard of the United States (ARNGUS), and U.S. Army Reserve (USAR) enlisted personnel on active duty 180 days or more.

b. This training should assist commanders in their efforts to minimize misconduct. Many soldiers gain the false impression that an unfavorable discharge can be easily recharacterized by petitioning the Army Discharge Review Board. This is not the case, since only a small percentage of such petitions have been acted upon favorably. Many soldiers can be discouraged from the type of conduct that warrants an unfavorable discharge.

17–2. Presentation of instruction

Commanders will ensure that this instruction is presented in a manner that will create the most lasting impression on each soldier who receives this training.

17–3. Contents of instruction

a. The instruction will include a comprehensive explanation of the following—

(1) The types of discharge certificates.

(2) The basis for issuance of each type of certificate.

(3) The possible effects of the various certificates on reenlistment, civilian employment, veterans' benefits, and related matters.

(4) The unlikelihood that the soldier will be successful in any attempt to have the character of his or her service changed.

b. Not used.

17–4. Time of instruction

This training will be given to enlisted personnel upon entry into the Service or within 60 days thereafter. It will be given again—

a. Upon completion of 6 months of service.

b. After the second article 15 (company grade) or first field grade article 15 in an enlistment.

(Letterhead)

(Office Symbol)

(Date)

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

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

1. Under the provisions of AR 635–200,*(indicate specific chapter, section, and paragraph)*, I am initiating action to separate you for*(indicate narrative reason)*. The reasons for my proposed action are: (state specific, factual details which constitute the basis for the proposed action).
2. I am recommending that you receive a(n)*(characterization of service) (entry level separation)*. My recommendation and your reply will be submitted to the Commander, (cite unit designation of separation authority) who will make the final decision in your case.
3. The intermediate commander(s) and the separation authority are not bound by my recommendation as to characterization of service. The separation authority may direct that your service be characterized as honorable or under honorable conditions, or you may receive an entry level separation (uncharacterized).
4. If my recommendation is approved, the proposed separation could result in (discharge, release from active duty to a Reserve Component (see para 1–36), or release from custody and control of the Army).
5. You have the right to consult with consulting counsel and/or civilian counsel at no expense to the Government within a reasonable time (not less than 3 duty days).
6. You may submit written statements in your behalf.
7. You may obtain copies of documents that will be sent to the separation authority supporting the proposed separation. (Classified documents may be summarized.)
8. You are entitled to a hearing before an administrative board if you have 6 or more years of active and reserve military service at the time of separation.
9. You may waive the rights listed above in paragraphs 5, 6, 7, and 8 in writing and you may withdraw any such waiver at any time prior to the date the separation authority orders, directs, or approves your separation.
10. If entitled to have your case heard before an administrative separation board, you may submit a conditional waiver of that right.
11. You are required to undergo a complete medical examination in accordance with AR 40–501. Arrangements have been made for this examination and you are to report to (location) at (time) on (date). (See para 1–34.)¹
12. You are required to undergo a mental status evaluation in accordance with AR 40–501. Arrangements have been made for this examination and you are to report to (location) at (time) on (date). (See para 1–34.)¹
13. Execute the attached acknowledgement (fig 2–5) and return it within 7 duty days from the date of your receipt of this memorandum. Any statement you desire to submit in your behalf must reach me within 7 duty days after you receive this letter, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to respond within 7 duty days will constitute a waiver of the rights in paragraphs 5, 6, 7, and 8.

Encl Listing

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

Notes:

¹To be used when required by paragraph 1–34.

Figure 2-2. Format for notification of separation when the notification procedure is used—Continued

AUTHORITY: Section 301, title 5 USC and section 3013, title 10, USC.

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

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

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

Figure 2-2. Format for notification of separation when the notification procedure is used

(Letterhead)

(Office Symbol)

(Date)

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

(Address of Endorsing Office)

FOR: (Appropriate Commander in Basic Memorandum)

1. I have been advised by my consulting counsel of the basic for the contemplated action to separate me for . . . under AR 635-200, (chapter (enter appropriate chapter)), and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights. I understand that I am entitled to have my case considered by an administrative separation board (because I will have 6 or more years of active and reserve service at the time of separation) (because I am being considered for a separation under other than honorable conditions).

2. Prior to completing this form, I have been afforded the opportunity to consult with consulting counsel and to consider whether or not to submit a conditional waiver.¹

3. I(*Name*) (*SSN*) hereby voluntarily waive consideration of my case by an administrative separation board contingent upon my receiving a characterization of service or description of separation no less favorable than (honorable) (under honorable conditions—otherwise referred to as a 'General' discharge). This waiver(*does*) (*does not*) apply to my Reserve Officer status.²

4. Statements in my own behalf (*are*) (*are not*) submitted herewith (Encl . . .).

5. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person.

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

7. I understand that if the separation authority refuses to accept this conditional waiver of a hearing before an administrative separation board that my case will be referred to an administrative separation board. In this case:

a. I(*request*) (*waive*) personal appearance before an administrative separation board.

b. I(*request*) (*waive*) (consulting counsel) (and) representation by (counsel for representation) (or) (. . .) as my military counsel (and) (civilian counsel at no expense to the Government).

c. I understand that my willful failure to appear before the administrative separation board by absenting myself without leave will constitute a waiver of my rights to personal appearance before the board.

Figure 2-3. Request for conditional waiver—Continued

8. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. (I further understand that, as the result of issuance of a discharge under other than honorable conditions, I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.)³ I understand that if I receive a discharge/character of service which is less than honorable, I may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, I realize that an act of consideration by either board does not imply that my discharge will be upgraded.

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

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

10. I have retained a copy of this statement.

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

Encl Listing

(Signature of individual)

(Typed name, SSN, and grade)

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

(Signature of counsel)

(Typed name, SSN, grade, branch)

Notes:

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

²To be used if the soldier holds status as a Reserve commissioned or warrant officer.

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

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

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

AUTHORITY: Section 301, title 5 USC and section 3013, title 10 USC.

PURPOSE: To be used by the commander exercising separation authority over you to determine approval or disapproval of your request and in case of disapproval to indicate the soldier's options as pertain to rights available to him or her in contemplated administrative separation cases.

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

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

Figure 2-3. Request for conditional waiver

(Letterhead)

(Office Symbol)

Date

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

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

1. Under the provisions of AR 635–200, (*indicate specific chapter, section and paragraph*), I am initiating action to separate you for(*indicate narrative reason*). The reasons for my proposed action are: (state specific, factual details which constitute the basis for the proposed action).
2. I am recommending that you receive a(n)(*characterization of service*) (entry level separation). The intermediate commander(s) and the separation authority are not bound by my recommendation as to characterization of service. The separation authority may direct that your service be characterized as honorable, under honorable conditions, under other than honorable conditions, or you may receive an entry level separation (uncharacterized). However, the separation authority may not direct the issuance of a type of discharge or characterization of service less favorable than that recommended by the board should you request a hearing before an administrative board.
3. If my recommendation is approved, the proposed separation could result in (discharge, release from active duty to a Reserve Component (see para 1–36), or release from custody and control of the Army).
4. You have the right to consult with consulting counsel (*and*) (*or*) civilian counsel at no expense to the Government within a reasonable time (not less than 3 duty days).
5. You may obtain copies of documents that will be sent to the separation authority supporting the proposed separation. (Classified documents may be summarized.)
6. You may request a hearing before an administrative board or you may present written statements instead of board proceedings.
7. You may request appointment of military counsel for representation or representation of military counsel of your choice, if reasonably available. You may also retain civilian counsel at no expense to the Government.
8. You may waive the rights listed above in paragraphs 4, 5, 6, and 7 in writing and you may withdraw any such waiver any time prior to the date the separation authority orders, directs, or approves your separation.
9. You may submit a conditional waiver of your right to have your case heard by an administrative separation board.
10. You are required to undergo a complete medical examination in accordance with AR 40–501. Arrangements have been made for this examination and you are to report to (*location*) at (*time*) on (*date*). (See para 1–34.)¹
11. You are required to undergo a mental status evaluation in accordance with AR 40–501. Arrangements have been made for this examination and you are to report to (*location*) at (*time*) on (*date*). (See para 1–34.)¹
12. Execute the attached acknowledgement (fig 2–5) and return it within 7 duty days from the date of your receipt of this memorandum. Any statement you desire to submit in your behalf must reach me within 7 duty days after you receive this letter, unless you request and receive an extension for good cause shown. Unless an extension is granted, failure to respond within 7 duty days will constitute a waiver of the rights in paragraphs 4, 5, 6, and 7.

Encl Listing

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

Notes:

¹To be used when required by paragraph 1–34.

Data Required by the Privacy Act of 1974

(5 USC 552a)

AUTHORITY: Section 301, title 5 USC and section 3013, title 10, USC.

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

ROUTINE USES: Upon completion of processing actions, the statement is filed in the MPRJ. So long as filed in the MPRJ, this personal information may be used by other appropriate Federal agencies and State and local government authorities where the use of the information is compatible with the purpose for which the information is collected. Release of any information from this form is subject to the restrictions of 42 USC 290ee–3; 42 USC 290dd–3, and 42 Code of Federal Regulations, Part 2. Under these statutes and regulations, disclosure of information that would identify the client as an abuser of alcohol or other drugs is authorized within the Armed Forces or to those components of the Veterans Administration furnishing health care to veterans. AR 600–85 further limits disclosure within the Armed Forces to those individuals

Figure 2-4. Format for notification of separation when the administrative board procedure is used—Continued

having an official need to know (for example, the physician or the client's unit commander). All other disclosures require the written consent of the client except disclosures (1) to medical personnel outside the Armed Forces to the extent necessary to meet a bona fide medical emergency; (2) to qualified personnel conducting scientific research, management for financial audits, or program evaluation; or (3) upon the order of a court of competent jurisdiction.

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

Figure 2-4. Format for notification of separation when the administrative board procedure is used

(Letterhead)

(Office Symbol) *(Date)*
SUBJECT: Separation Under AR 635-200 (*enter appropriate chapter*)
(Address of endorsing office)
FOR: *(Appropriate commander in basic Memorandum)*

1. I have been advised by my consulting counsel of the basic for the contemplated action to separate me for (*reason*) under AR 635-200, (*chapter number*), and its effects; of the rights available to me; and the effect of any action taken by me in waiving my rights. I understand that if I have 6 years of total active and reserve military service at the time of separation, under AR 635-200, Chapter (*enter appropriate chapter*), I am entitled to have my case considered by an administrative separation board. (I understand that if I have less than 6 years of total active and reserve service at the time of separation and am being considered for separation under AR 635-200, Chapter 7, section V (*fraudulent entry*) I am not entitled to have my case heard by an administrative separation board unless I am being considered for a discharge under other than honorable conditions.) (I understand that if I have less than 6 years of total active and reserve military service at the time of separation and am being considered for separation for reason of misconduct under AR 635-200, Chapter 14, I am not entitled to have my case heard by an administrative separation board unless I am being considered for a discharge under other than honorable conditions.) (I understand that if I am being considered for separation under AR 635-200, Chapter 15 (*homosexual conduct*), I am entitled to have my case heard by an administrative separation board.)¹

2. I (*request*) (*waive*) consideration of my case by an administrative separation board. (This waiver (*does not*) apply to my Reserve Officer status.) (I am a Reserve (commissioned or warrant) officer. My Reserve grade is (*grade*) and my date of appointment is (*date*)²

3. I have been advised of my right to submit a conditional waiver of my right to have my case considered by an administrative separation board.³

4. I (*request*) (*waive*) personal appearance before an administrative separation board.

5. Statements in my own behalf (*are*) (*are not*) submitted herewith (*Encl*).

6. I (*request*) (*waive*) (*consulting counsel*) (*and*) representation by (*counsel for representation*) (*or*) as my military counsel (*and*) (*civilian counsel at no expense to the Government*).

7. I understand that my willful failure to appear before the administrative separation board by absenting myself without leave will constitute a waiver of my rights to personal appearance before the board.

8. I understand that I may expect to encounter substantial prejudice in civilian life if a general discharge under honorable conditions is issued to me. (I further understand that, as the result of issuance of a discharge under other than honorable conditions, I may be ineligible for many or all benefits as a veteran under both Federal and State laws and that I may expect to encounter substantial prejudice in civilian life.)⁴ I understand that if I receive a discharge/character of service which is less than honorable, I may make application to the Army Discharge Review Board or the Army Board for Correction of Military Records for upgrading; however, I realize that an act of consideration by either board does not imply that my discharge will be upgraded.

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

(10. I understand that if I am being considered for separation for fraudulent entry my enlistment may be voided under certain circumstances and that all pay and allowances will be suspended immediately upon verification of the fraudulent entry.)⁵

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

Figure 2-5. Receipt of notification of separation/acknowledgment/election of rights

11. I have retained a copy of this statement.

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

Encl Listing

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

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

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

Notes:

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

²To be used if the soldier holds status as a Reserve commissioned or warrant officer.

³If the soldier desires to submit a conditional waiver of the right to have his or her case considered by an administrative separation board, use figure 2-3.

⁴To be used if the member has been recommended for discharge for fraudulent entry, misconduct, or homosexual conduct.

⁵To be used if the soldier is considered for separation for fraudulent entry. Renumber later paragraphs if this paragraph is used.

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

AUTHORITY: Section 301, title 5 USC and section 3013, title 10, USC.

PURPOSE: To be used by the commander exercising separation authority over you to determine approval or disapproval of your request and in case of disapproval to indicate the soldier's options as pertain to the rights available to him or her in contemplated administrative separation cases.

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

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

Figure 2-5. Receipt of notification of separation/acknowledgment/election of rights—Continued

(Letterhead)

(Office Symbol)

(Date)

SUBJECT: Separation Under AR 635–200 (*enter appropriate chapter*)

(Address of endorsing office)

FOR: *(Next higher commander)*

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

- a. Name/grade/ssn:
- b. Date of birth:
- c. Date of enlistment:
- d. Length of term for which enlisted:
- e. Prior service, if any:
- f. Soldier (does) (does not) hold a Reserve status as a commissioned or warrant officer. (If so, include grade and date of appointment.)
- g. Specific, factual reason(s) for action recommended:
- h. Aptitude area scores and DMOS:
- i. Results of the Common Task Test (CTT):
- j. Record of counseling including records of NCOER counseling (DA Form 2166–7–1), if applicable:
- k. Description of rehabilitation attempts, if applicable:
- l. Record of trials by court–martial:
- m. Record of other disciplinary action including nonjudicial punishment (include offenses, findings and sentence):
- n. Report of Mental Status Evaluation or psychiatric report (is) (is not) attached, if applicable:
- o. Report of Medical Examination (is) (is not) attached, if applicable:
- p. Statement why the commander does not consider it feasible or appropriate to accomplish other disposition:
- q. Promotion and dates thereof:
- r. Reductions and dates thereof:
- s. Whether there is a record of time lost; if so, whether due to absence without leave, confinement, or other reasons:
- t. Note favorable communications or recommendations for the soldier:
- u. Note other derogatory data other than Article 15 action and courts–martial:
- v. Make note of any citations and awards:
- w. Where derogatory information has been revealed, make note of any evidence of rehabilitation:
- x. Make note of any medical or other data meriting consideration in the overall evaluation to separate the soldier and in the determination as to the appropriate characterization of service:
- y. Other information considered pertinent:

Figure 2-6. Commanding officer's report to the separation authority

-
2. When a soldier is being processed for separation for alcohol or other drug abuse rehabilitation failure include—
 - a. A statement that the commander, in consultation with the rehabilitation team, has determined that further rehabilitative efforts are not practical, rendering the rehabilitation a failure. Documentation indicating this must be included with the statement.
 - b. A chronological history of the soldier's alcohol/drug abuse. Inclusion of limited use evidence (AR 600–85, para 6–3) is discretionary. (If limited use evidence is included, the provisions of paras 2–6h and 3–8a apply.)
 - c. Circumstances (*to include dates*) concerning soldier's referral, initial screening interview, medical evaluation (*when conducted*), and enrollment in the ADAPCP.
 - d. A summary of the rehabilitation efforts made before and after a soldier was enrolled in the ADAPCP to include—
 - (1) Dates of detoxification (*if applicable*).
 - (2) Extent (*to include dates*) of counseling and other rehabilitation efforts made by the installation ADAPCP facility.
 - (3) Extent (*to include dates*) of counseling and other rehabilitation efforts made by the unit chain of command.
 - e. Explanation of how criteria in AR 635–200, paragraph 9–1 are met.
 3. A statement that the soldier clearly has no potential for useful service under conditions of full mobilization, if applicable. (See para 1–36.)¹
 4. Memorandum of notification and acknowledgement are attached as enclosures.

Encl Listing

(Initiating commander's signature)
(Type name, SSN, and grade)

Notes:

¹To be used when required by the policy in Mobilization Asset Transfer Program (see para 1–36).

Figure 2-6. Commanding officer's report to the separation authority—Continued

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

AUTHORITY: Section 301, title 5, USC and section 3013, title 10, USC.

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

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

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

(Date)

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

1. I, . . . , enlisted for Warrant Officer Flight Training under the provisions of AR 601–210, table H–12. Having been found by the Commander, United States Army Aeromedical Center, to be medically disqualified for Class 1A flying, I request discharge under provisions of AR 635–200, paragraph 5–12.

2. I have been counseled concerning an alternate training course. I do not desire to serve in the US Army.

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

Figure 5-1. Request for discharge

Data Required by the Privacy Act of 1974

AUTHORITY: Section 301, title 5 USC and section 3013, title 10, USC.

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

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

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

(Date)

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

1. I, . . . , enlisted for Warrant Officer Flight Training under the provisions of AR 601–210, table H–12. Having been found by the Commander, United States Army Aeromedical Center to be medically disqualified for Class 1A flying, I understand that I have the option of being retained on active duty for the remainder of my enlistment.

2. Being medically qualified for military service under the provisions of AR 40–501, chapter 3, I hereby request retention on active duty in an enlisted status. I have been counseled concerning an alternate training course and understand that I may select a training course for which qualified and for which a quota exists.

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

Figure 5-2. Request to remain on active duty

Notice: Required by the Privacy Act of 1974 (5 U.S.C. 552a). Prior to soliciting any personal information in the course of counseling a soldier, the counselor (see para 8-5) will advise the soldier substantially as follows:

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

The purpose of this counseling is to inform you of the options, entitlements, and responsibilities in connection with your pregnancy.

Figure 8-1. Pregnancy counseling checklist

**Table 8-1
Pregnancy counseling checklist**

For information on your entitlement to	The basic facts are—	For more information see—
1. Retention or separation 2. Maternity care	You may choose to remain in the Service, or separate. If you remain on active duty, you will receive treatment in a military facility, or in a civilian facility if there is no military maternity care available within 30 miles of your location.	AR 635-200, paragraph 8-9. AR 40-3, paragraph 2-35 for care while on active duty; AR 40-3, paragraph 4-44, for care after separation.
3. Leave	If you separate, you are authorized treatment only in a military facility which has maternity care. You are NOT authorized care in a civilian facility at Government expense. You may request ordinary, advance, and excess leave in order to return home, or other appropriate place, for the birth of your child or to receive other maternity care. Such leave usually terminates with onset of labor. Nonchargeable convalescent leave for postpartum care is limited to the amount of time essential to meet your medical needs.	AR 630-5, chapter 9, section II.
4. Maternity clothing and uniforms.	Military maternity uniforms will be provided to soldiers.	AR 670-1, chapter 24, section IV, for maternity uniforms.
5. BAQ and Government quarters. 6. Assignments.	Availability depends on the status of quarters at your installation. You will not normally receive PCS orders directing movement overseas during your pregnancy. However, you will be considered available for unrestricted worldwide assignment upon completion of post-partum care. If overseas, you remain assigned overseas.	Post housing office. AR 614-30, paragraphs 2-5 and 2-8.
7. Separation for unsatisfactory performance, misconduct, or parenthood.	If your performance or conduct warrant separation for unsatisfactory performance or misconduct, or if parenthood interferes with your duty performance, you may be separated involuntarily even though you are pregnant.	AR 635-200, paragraphs 5-8 and 13-2, and chapters 11 and 14.
8. Family care counseling.	You must have an approved Family Care Plan on file stating actions to be taken in the event you are assigned to an area where dependents are not authorized or you are absent from your home on military duty. Failure to develop an approved care plan will result in a bar to reenlistment.	DA Pam 600-8, Procedure 9-6. AR 601-280, chapter 6.

Notes:

* Should you desire assistance in gathering additional information on the above subjects, I will assist you in locating the appropriate information. Further, if you desire, I will assist you in contacting the American Red Cross or other appropriate agencies.

I affirm that I have been counseled by . . . (*grade*) . . . (*name*) . . . this date on all items on the attached counseling checklist and I understand my entitlements and responsibilities. I understand that if I elect separation I may receive maternity care at Department of Defense expense, on a space available basis for up to 6 weeks postpartum for the birth of my child *only in* a military medical treatment facility which has maternity care capability and that I may elect a separation date no later than 30 days prior to expected date of delivery, or latest date my physician will authorize me travel, whichever is earlier. Further, I understand that many military medical treatment facilities cannot provide maternity care and that unforeseen circumstances or medical emergency could force me to use civilian medical treatment facilities following separation from active duty. Should this happen, I fully understand that UNDER NO CIRCUMSTANCES can CHAMPUS, any military department, or the Veterans Administration reimburse my civilian maternity care expenses. Such costs will be a matter of my personal responsibility. Further, I understand that the separation authority, in conjunction with my military physician and the needs of the Army, will determine my separation date. I also understand that if I should remain on active duty, I will be expected to fulfill the terms of my enlistment contract. If I elect to remain on active duty, I understand that I must remain available for unrestricted service on a worldwide basis when directed and that I will be afforded no special consideration in duty assignments or duty stations based on my status as a parent.

(*Date*)

(*Signature of soldier*)

TO: Soldier Concerned FROM: Commander, Unit *Date* CMT 1
Request your election of appropriate option indicated below and return within . . . days.

(*Signature*)

(*Name (type or printed)*)

(*Rank, Commanding Branch*)

TO: Commander, Unit FROM: Soldier Concerned *Date* CMT 2
. . . During the counseling session there was no coercion on the part of the counselor influencing my decision.

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

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

1 Copy MPRJ (Action Pending)

(*Signature*)

1 Copy Soldier

(*Name (typed or printed)*)

1 Copy File

(*Grade, SSN*)

Figure 8-2. Statement of counseling

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

AUTHORITY: Section 301, title 5 USC and section 3013, title 10, USC.

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

ROUTINE USES: Request, with appropriate documentation including the decision of the discharge authority, will be filed in the MPRJ as permanent material and disposed of in accordance with AR 640–10, and may be used by other appropriate Federal agencies and State and local governmental activities where use of the information is compatible with the purpose for which the information was collected.

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

Figure 10-1. Request for discharge for the good of the service—Continued

(Date)

SUBJECT: Request for Discharge for the Good of the Service
TO:

1. I (*Name, SSN*) hereby voluntarily request discharge for the good of the Service under AR 635-200, chapter 10. I understand that I may request discharge for the good of the Service because of the following charge(s) which has (have) been preferred against me under the Uniform Code of Military Justice, each of which authorize(s) the imposition of a bad conduct or dishonorable discharge:

2. I am making this request of my own free will and have not been subjected to any coercion whatsoever by any person. I have been advised of the implications that are attached to it. By submitting this request for discharge, I acknowledge that I understand the elements of the offense(s) charged and am guilty of the charge(s) against me or of (a) lesser included offense(s) therein contained which also authorize(s) the imposition of a bad conduct or dishonorable discharge. Moreover, I hereby state that under no circumstances do I desire further rehabilitation, for I have no desire to perform further military service.

3. Prior to completing this form, I have been afforded the opportunity to consult with appointed counsel for consultation (¹in addition, I have consulted with (military counsel of my own choice who was reasonably available) (civilian counsel retained at no expense to the Government)). (²Although I have received a lawful order to see consulting counsel, I persist willfully in my refusal to see him.) (³I have consulted with counsel for consultation who has fully advised me of the nature of my rights under the Uniform Code of Military Justice, (the elements of the offense(s) with which I am charged, any relevant less included offense(s) thereto, and the facts which must be established by competent evidence beyond a reasonable doubt to sustain a finding of guilty; the possible defenses which appear to be available at this time; and the maximum permissible punishment if found guilty) (and of the legal effect and significance of my suspended discharge). (Although he has furnished me legal advice, this decision is my own.) (I understand that, pursuant to a delegation of authority per paragraph 1-21 1, my request for discharge for the good of the service may be approved by the commander exercising special court-martial convening authority (a lower level of approval than the general court-martial convening authority or higher authority) but the authority to disapprove a request for discharge for the good of the service may not be delegated.))⁴

4. I understand that, if my request for discharge is accepted, I may be discharged under conditions other than honorable. I have been advised and understand the possible effects of an Under Other Than Honorable Discharge and that, as a result of the issuance of such a discharge, I will be deprived of many or all Army benefits, that I may be ineligible for many or all benefits administered by the Veterans Administration, and that I may be deprived of my rights and benefits as a veteran under both Federal and State law. I also understand that I may expect to encounter substantial prejudice in civilian life because of an Under Other Than Honorable Discharge. I further understand that there is no automatic upgrading nor review by any Government agency of a less than honorable discharge and that I must apply to the Army Discharge Review Board or the Army Board for Correction of Military Records if I wish review of my discharge. I realize that the act of consideration by either board does not imply that my discharge will be upgraded.

5. I understand that, once my request for discharge is submitted, it may be withdrawn only with consent of the commander exercising general court-martial authority, or without that commander's consent, in the event trial results in an acquittal or the sentence does not include a punitive discharge even though one could have been adjudged by the court. Further, I understand that if I depart absent without leave, this request may be processed and I may be discharged even though I am absent.

6. I have been advised that I may submit any statements I desire in my own behalf, which will accompany my request for discharge. Statements in my own behalf (are) (are not) submitted with this request.

7. I hereby acknowledge receipt of a copy of this request for discharge and of all inclosures submitted herewith.

(Signature of respondent)

Having been advised by me of (the basis for his or her contemplated trial by court-martial

Figure 10-1. Request for discharge for the good of the service—Continued

and the maximum permissible punishment authorized under the Uniform Code of Military Justice) (the significance of his or her suspended sentence to a bad conduct or dishonorable discharge); of the possible effects of an Under Other Than Honorable Discharge if this request is approved; and of the procedures and rights available to him or her, . . . personally made the choice indicated in the foregoing request for discharge for the good of the Service.

(Signature of counsel)

Notes:

- ¹ To be used when appropriate. Such counseling is not to be use in lieu of consultation with consulting counsel.
- ² To be used only when a soldier under military control refuses to obey an order to see consulting counsel. (See para 10-2)
- ³ To be used in all cases when a soldier had consulted with consulting counsel.
- ⁴ To be used when authority to approve a request for discharge for the good of the service has been delegated per paragraph 1-211.

Figure 10-1. Request for discharge for the good of the service

EXT-ORDERS S121-23

20 June 1982

The retirement of Command Sergeant Major John J. Smith, (duty position), is announced with the deepest regret but with greatest appreciation for his long and distinguished career of 30 years.

Sergeant Major Smith was born in 1930 in Fairfax, Georgia. He enlisted in 1952 and completed basic combat training at Fort Jackson, South Carolina. He participated as a soldier of the Third Infantry Division in the first United Nations counter-offensive campaigns of the Korean War. Following, and until 1963, he served in a diversified range of command and staff positions with the Second, Fourth, and Eighth Infantry Divisions. Between troop assignments, Sergeant Major Smith graduated from the Non-Commissioned Officers Academy, and served three years at Fort Jackson as a Drill Instructor. A two-year tour in Taiwan with the Military Assistance Advisory Group ended in 1965. Sergeant Major Smith graduated from the Sergeants Major Academy and was assigned to The Infantry Career Branch, Soldiers Management Directorate, United States Military Personnel Center. Vietnam duty followed, with assignments in the First Infantry Division and Headquarters, USARV. He participated in four Vietnam campaigns, including the 1969 Tet counter-offensive. From 1969 to 1972, Sergeant Major Smith was assigned as an Enlisted Advisor in the Office of the Joint Chiefs of Staff and served in several top-level Non-Commissioned Officer positions. In 1972 he was selected as a Command Sergeant Major and served as the Command Sergeant Major of the Ninth Infantry Division and Headquarters, TRADOC. During his illustrious career, Sergeant Major Smith has been honored for valor on the battlefield and for meritorious service in positions of great responsibility. His many awards and decorations include the Silver Star, four awards of the Meritorious Service Medal, two awards of the Army Commendation Medal, and two awards of the Combat Infantryman Badge. Command Sergeant Major Smith's many friends and fellow soldiers join together on this day in wishing him the best of health and happiness in his well-earned retirement.

*PAUL A. DOE
Major General, USA
Commanding*

Figure 12-1. Announcement of retirement

Chapter 18 Failure to Meet Body Fat Standards

18-1. Policy

Soldiers who fail to meet the body fat standards set forth in AR 600-9 are subject to separation per this chapter when such condition is the sole basis for separation.

18-2. Procedures

- a.* Separation action may not be initiated under this chapter until

the soldier has been given a reasonable opportunity to comply with and meet the body fat standards. Soldiers who have been diagnosed by health care personnel as having a medical condition that precludes them from participating in the Army body fat reduction program will not be separated under this chapter. If no medical condition exists, initiation of separation proceedings is required for soldiers who do not make satisfactory progress in the program after a period of 6 months, unless the responsible commander chooses to impose a bar to reenlistment per AR 601-280, chapter 6. Also, initiation of separation proceedings is required for soldiers who fail

to meet screening table weight and body fat standards during the 12-month period following removal from the weight control program, provided no medical condition exists. Per DAJA-AL 1995/090, soldiers without medical limitations who exceed the screening table weight and body fat standards after the 12-month period but prior to 36 months following removal from the program, and who do not meet the standards during the 90-day period prescribed by AR 600-9, will be processed for separation.

b. Separation action under this chapter will not be initiated against a soldier who meets the criteria for separation under other provisions of this regulation. For example, a soldier who, wholly apart from failure to meet body fat standards, is an unsatisfactory performer will be processed for separation under the provisions of chapter 13.

c. The notification procedure (chap 2, section II) will be used for separation under this chapter.

d. The provisions of chapter 1, section VIII, will govern whether the soldier will be released from AD with transfer to the IRR or be discharged. See paragraph 1-12 for additional instructions on ARNGUS and USAR personnel.

e. The service of soldiers separated per this chapter will be characterized as honorable.

f. Except as provided in paragraph 1-21*f*, commanders specified in paragraph 1-21 are authorized to order separation per this chapter.

Appendix A References

Section I Required Publications

AR 40-501

Standards of Medical Fitness. (Cited in paras 1-34 *a*, 1-35 *a*, 4-2 *c*, 5-11 *a*(2), 5-12 *a*(2), 7-16 *g*, 8-6 *a*, 10-6, 12-29 *d*, 13-2 *a*(7) and 14-2 *a*(3).)

AR 310-10

Military Orders. (Cited in paras 12-18 and 12-20.)

AR 600-85

Alcohol and Drug Abuse Prevention and Control Program. (Cited in paras 1-15 *g*, 1-23 *a*(5), 1-35 *e*, 2-6 *h*, 3-8 *a* and *g*, 9-1, 9-4, 9-7, 14-3 *b*, 14-12 *c*.)

AR 635-5

Separation Document. (Cited in paras 1-31 *f*, 3-2, 3-3, 3-17, 7-15 *f*, 7-24, 12-21, 12-25.)

AR 635-5-1

Separation Program Designators. (Cited in para 3-14.)

AR 635-10

Processing Personnel for Separation. (Cited in paras 1-15 *a*, 1-22 *a*, 3-15 *b*(2), 4-5, 6-8 *b*(2) and *d*(3), 7-10, 12-13 *a*(4) and *b*(1), 12-20 *a* and *b*, 12-21, 12-25 and 12-31 *b*.)

AR 635-40

Physical Evaluation for Retention, Retirement or Separation. (Cited in paras 1-31 *b*(2), 1-32, 1-35, 4-2 *c*, 5-11, 5-12, 5-13, and 6-6 *b*, 7-15 *g*(2), 7-16 *g*, 8-6 *c* and 16-7 *b*(1).)

DA Pam 600-8-11

Military Personnel Office Separation Processing Procedures. (Cited in paras 1-34 *a*, 4-2 *e*, 6-8 *f*, and 12-20 *a*.)

Section II Related Publications

A related publication is merely a source of additional information. The user does not have to read it to understand this publication.

AR 15-6

Procedure For Investigating Officers and Boards of Officers

AR 15-80

Boards, Commissions, and Committees; Army Grade Determination Review Board

AR 18-12-4

Catalog of Standard Data Elements and Codes; Personnel

AR 25-400-2

Modern Army Recordkeeping System

AR 27-40

Litigation

AR 27-50

Status of Forces Policies, Procedures, and Information

AR 37-104-3

Military Pay and Allowance Procedures; Joint Uniform Military Pay System, Army (JUMPS-Army)

AR 40-3

Medical, Dental, and Veterinary Care

AR 40-121

Uniformed Services Health Benefits Program

AR 135-18

The Active Guard/Reserve (AGR) Program

AR 135-91

Service Obligations, Methods of Fulfillment, Participation Requirements, and Enforcement Procedures

AR 135-175

Separation of Officers

AR 135-178

Separation of Enlisted Personnel

AR 145-1

Senior ROTC Program: Organization, Administration, and Training

AR 190-9

Military Absentee and Deserter Apprehension Program

AR 190-10

Threats to the President and Other Government Officials Reporting Requirements

AR 190-47

The United States Army Correctional System

AR 340-3

Official Mail Cost Control Program

AR 340-17

Release of Information and Records from Army Files

340-21

The Army Privacy Program

AR 380-67

The Department of the Army Personnel Security Program

AR 600-4

Remission or Cancellation of Indebtedness for Enlisted Members

AR 600-8-2

Suspension of Favorable Personnel Actions (Flags)

AR 600-9

The Army Weight Control Program

AR 600-20

Army Command Policy

AR 600-25

Salutes, Honors, and Visits of Courtesy

AR 600-62

United States Army Personnel Control Facilities and Procedures for Administering Assigned and Attached Personnel

AR 600-110

Identification, Surveillance, and Administration of Personnel Infected with Human Immunodeficiency Virus (HIV)

AR 600-200

Enlisted Personnel Management System

AR 601-210

Regular Army and Army Reserve Enlistment Program

AR 601-280

Total Army Retention Program

AR 604-5

Department of the Army Personnel Security Program Regulation

AR 604-10

Military Personnel Security Program

AR 612-201

Processing, Control and Distribution of Personnel at U.S. Army Reception Battalions and Training Centers

AR 614-30

Oversea Service

AR 614-200

Selection of Enlisted Soldiers for Training and Assignment

AR 630-5

Leaves and Passes

AR 635-100

Officer Personnel

AR 640-3

Identification Cards, Tags, and Badges

AR 640-10

Individual Military Personnel Records

AR 670-1

Wear and Appearance of Army Uniforms and Insignia

AR 672-5-1

Military Awards

DA Pam 600-8

Military Personnel Office Management and Administrative Procedures

Department of Defense Military Pay and Entitlements Manual (DODPM)

Joint Federal Travel Regulation (JFTR) Uniform Code of Military Justice (UCMJ)

Appendix B
Sample Report of Proceedings of Board of Officers*

DEPARTMENT OF THE ARMY
COMPANY A
4th BATTALION, 96th INFANTRY
FORT JACKSON, SC 29207

15 May 1982

SUBJECT: Discharge for Misconduct Under AR 635-200, Chapter 14

THRU Commander
 4th Battalion, 69th Infantry
 Fort Jackson, SC 29207

TO: Commander
 118th Infantry Division and Fort Jackson
 Fort Jackson, SC 29207

1. It is recommended that Private (E2) John A. Doe, 000-00-0000, be required to appear before a board of officers convened under the provisions of AR 635-200, chapter 14, paragraph 14-12 (a) and (b), for the purpose of determining whether he should be discharged before the expiration of his term of service.

2. In support of the recommendation, the following information concerning Private Doe is provided:

a. He enlisted 15 March 1981 for a term of 3 years and has no prior service. He is 20 years old.

b. He has no Reserve commission or warrant.

c. Discharge is recommended because of frequent incidents of a discreditable nature with military authorities and habitual shirking. (Include narrative statement of basis for discharge and results of counseling sessions.)

d. His duty MOS is 11B, and his MOS evaluation score is 85. His aptitude area scores are as follows:

APT	SCORE
CO	A-92; B-89
EL	79
GM	105
MM	89
CL	85
GT	87
FA	100
ST	85
OF	70
SC	76

e. During the period 1 August 1981, to date, this soldier has been assigned to various duty assignments (three different companies) in the battalion commensurate with his training and ability and has served under different superior officers and noncommissioned officers. In each instance, his performance of duty has been unsatisfactory. His military superiors and the psychiatric examiner agree that further rehabilitative efforts would be useless. His assignments in this battalion have been as listed below.

(1) 1 August 1981 - 3 November 1981 - Company C.

(2) 4 November 1981 - 1 March 1982 - Company B.

(3) 2 March 1982 - Date - Company A.

f. He has been counseled as indicated below.

(1) 8 September 1981 and 8 October 1981, by Captain Winfield M. Elrod, Commanding Officer, Company C, 4th Battalion, 96th Infantry.

(2) 19 December 1981, by Lieutenant Titus L. Moody, Executive Officer, Company B, 4th Battalion, 96th Infantry.

(3) 3 March 1982, by Captain William P. Peters, Commanding Officer, Company A, 4th Battalion, 96th Infantry.

(4) 2 April 1982, by Captain (Major) Howard X. Cross, Headquarters 118th Infantry Division.

Figure B-1. Sample Report of Proceedings of Board of Officers—Continued

g. As discharge is recommended for the reasons stated in *c* above, separation for unsatisfactory performance is not considered appropriate. Private Doe's performance is characterized by intentional shirking of his duties and by behavior rendering him repeatedly subject to punitive action. His behavior is not due to an incapacity to become a satisfactory soldier within the meaning of misconduct. There appear to be no grounds for other disposition.

h. Private Doe has two convictions by summary court-martial and one by special court-martial. He was convicted by summary court on 8 September 1981, for 7 days' AWOL and on 23 April 1982, for damaging US property through neglect. He was convicted by special court-martial on 10 May 1982, for 6 days' AWOL and disrespect to a noncommissioned officer while in execution of office. Private Doe has been punished in this company on three separate occasions under the provisions of Article 15, UCMJ (Incl 5).

5 Incl

1. Ltr of notification
2. Ltr of acknowledgement
3. Med exam (SF 88, SF93, DA Form 3822-R)
4. Court-martial order(s)
5. Rec of Art 15 proceedings (DA Form 2627)

(Name)
Captain
Infantry
Commanding

*This is an example of a recommendation for discharge for misconduct. If individual is being recommended for discharge for unsuitability, sample will be changed accordingly. All documents which are not evidence will be numbered consecutively with Roman numerals and made inclosures. Items which are evidence will be numbered consecutively (or lettered if submitted by respondent) (AR 15-6, paras 3-15 and 3-16).

Note. The first three inclosures must be included in all cases. Inclosures 4 and 5 must be included if appropriate. Other inclosures may be added as desired.

AJ Doe, John A. (Enl) 000-00-0000 (15 May 82) 1st Ind
SUBJECT: Discharge for Misconduct Under AR 635-200, Chapter 14

HQ, 4th Battalion, 96th Infantry, 118th Infantry Division, Fort Jackson, SC 29207 18 May 82

TO: Commander, 118th Infantry Division, Fort Jackson, SC 29207

Recommend approval.

FOR THE COMMANDER:

5 Incl
nc

(Name)
Captain Infantry Adjutant

Note. See AR 15-6, appendix A, for sample letter of appointment of board of officers and referral of a respondent to a continuing board for a hearing under AR 635-200.

Figure B-1. Sample Report of Proceedings of Board of Officers

HEADQUARTERS
118th INFANTRY DIVISION

FORT JACKSON, SC 29207

25 May 82

SUBJECT: Notification to Appear Before Board of Officers

TO: Private John A. Doe, 000-00-0000
Company A, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

1. Under the provisions of Army Regulation 15-6, paragraph 5-5, and Army Regulation 635-200, notice is hereby given that a Board of Officers appointed by letter of appointment, this Headquarters, dated 1 May 1982, will hold a hearing at Building T-4321 at 0900 hours on 15 June 1982, to determine whether you should be discharged because of misconduct before the expiration of your term of service. If you fail to appear before the board due to being absent without leave, you may be discharged from or retained in the service by the discharge authority without personal appearance before the board.

2. The following witnesses are expected to be called:
Captain Winfield M. Elrod
Company C, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

1LT Titus L. Moody
Company B, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

Sergeant Robert H. Brown
Company C, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

Sergeant First Class Robert F. Jones
Company A, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

Captain William P. Peters
Company A, 4th Battalion, 96th Infantry
Fort Jackson, SC 29207

3. The recorder will endeavor to arrange for the presence of any reasonably available and necessary witnesses whom you may desire to call, upon written request from you for such action.

4. Attached is a copy of a deposition from Captain Duane Evans, who will be unable to appear in person at the board hearings.

1 Incl
as

ALBERT A. FAKIAN
2LT, Artillery
Recorder

I hereby certify that the above is a true and correct copy of the original notification and was delivered by me personally to the individual concerned on 25 May 1982.

ALBERT A. FAKIAN
2LT, Artillery
Recorder

Notes:

Note. Include Privacy Act Statement concerning respondent as inclosure (see AR 15-6, para 3-8 e).

Figure B-2.

SUMMARY OF PROCEEDINGS

The board was appointed by letter of appointment, Headquarters, 118th Infantry Division and Fort Jackson, SC, dated 1 May 1982, a copy of which is attached.

The respondent was referred to this board for a hearing by letter, Headquarters, 118th Infantry Division and Fort Jackson, SC, dated 15 May 1982.

The board convened at Fort Jackson, SC, on 15 June 1982. The board met pursuant to the foregoing letter of appointment at 0900 hours on 15 June 1982.

PERSONS PRESENT:

Major Walter C. Brown, 000-00-0000, Infantry, President
Major Robert Johnson, 000-00-0000, Infantry, Member
Captain Lewis B. Johnson, 000-00-0000, Infantry, Member
Second Lieutenant Albert A. Fakian, 000-00-0000, Infantry (Recorder)
First Lieutenant George F. Huffnagle, 000-00-0000, JAGC (Counsel of Respondent)
Captain James R. Cronkhite, 000-00-0000, Infantry (Counsel for Respondent)

PERSONS ABSENT:

None.

Private John A. Doe, 000-00-0000, Company A, 4th Battalion, 96th Infantry, appeared before the board with his counsel (ILT George F. Huffnagle) (Captain James R. Cronkhite).

The letter appointing the board and the applicable substance of the regulations under which it was convened were read aloud by the recorder.

Private John A. Doe was asked if he desired to challenge any member of the board for cause; he replied he did not.

A true copy of written advance notification to Private John A. Doe, dated 25 May 1982, was received and read and is hereto appended.

Private John A. Doe was present during all open sessions of the board with his counsel and was afforded full opportunity to cross-examine adverse witnesses, to present evidence in his own behalf, and to testify in person or submit a written statement.

A letter, subject: Discharge for Misconduct Under AR 635-200, Company A, 4th Battalion, 96th Infantry, with two indorsements (inclosures withdrawn), was offered in evidence by the recorder. There being no objection, the letter was admitted in evidence.

A certificate of ILT Paul O. Macy, dated 12 May 1982, was offered in evidence by the recorder. There being no objection, the certificate was admitted in evidence.

A duly authenticated extract copy of the respondent's service record containing record of convictions by court-martial was offered in evidence by the recorder. There being no objection, the document was admitted in evidence.

True copies of summarized records of proceedings under Article 15, UCMJ (DA Form 2627) pertaining to nonjudicial punishment imposed upon the respondent on 10 April 1982, 18 March 1982 and 29 March 1982, were offered into evidence by the recorder, and admitted into evidence.

The following witnesses called by the board were sworn and testified in substance as follows:

Captain Winfield M. Elrod, Company C, 4th Battalion, 96th Infantry.

I am the company commander of Company C, 4th Battalion, 96th Infantry. Private Doe was assigned to my company from 1 August 1981 until 5 November 1981. Before his assignment to my company, he had been in basic training. I initially assigned Doe to a squad in the company, and apparently he performed satisfactorily for the first month. About that time, he went AWOL for 7 days. Thereafter, Doe developed a bad attitude toward his job and the Army. I assigned Doe to another platoon as assistance supply clerk, and then as assistant to the company clerk where the first sergeant could keep an eye on him, but he performed unsatisfactorily in all of them. I then assigned Doe as an armorer-artificer's helper under the direct supervision of Sergeant Brown, and that is where Doe remained until his transfer out of my company. I gave him nonjudicial punishment under Article 15 two times, once for being late to formation, and once for insubordination to a noncommissioned officer. As time passed, he became more sullen and uncooperative.

Figure B-3.

CROSS-EXAMINATION

I counseled Doe several times, but he refused to say what was bothering him. I counseled him the first time when he was punished for his AWOL. About a month later, I counseled him again and explained to him that he was going to have to change his ways for his own good and for the good of the Army. I counseled him in those instances when I imposed nonjudicial punishment upon him. I told him that his prior record indicated that he could perform the duties required of him and that his tour would be much better if he did his job. He did not respond to my counseling.

Note. All subsequent testimony should be recorded similarly. After all testimony has been recorded, continue as shown below.

A statement signed by the respondent, dated 14 May 1982, to the effect that he had been advised of the basis of this action, desired to have a board hearing, and desired counsel, was offered in evidence by the recorder. There being no objections, the document was admitted in evidence.

The recorder stated that he had nothing further to offer. The rights of the respondent were explained to him by the president of the board. The respondent elected to take the stand as a witness. He was sworn and testified in substance as follows.

DIRECT EXAMINATION

I have been in the Army since 15 March 1981. I am 20 years old. I lived in Jersey City, NJ, and went to school there up to the 9th grade. Before I finished the 9th grade, I was 16 years old, so I quit. I got mixed up with a bad crowd. So to improve my chance in life, I enlisted in the Army in 1981. At first, I liked the Army, but then I got tired of being bossed around all the time. The sergeants gave me a bad time. Everything was jump, jump, jump. At first I did my work, but I didn't make PFC, so I figured it was no use and wanted out. I guess I don't want a bad discharge, but I don't want all those rotten details either.

CROSS-EXAMINATION

I have heard what the officers and sergeants have said about me. The only way I can explain it is that they don't understand me. They were always pushing me around.

The recorder made an argument.

Counsel for the respondent made an argument.

Then the recorder made a closing statement.

Neither the recorder nor the respondent having anything further to offer, the board was closed.

Attached is the verbatim record of the findings and recommendations of the board.

The board adjourned at 1400 hours on 15 June 1982.

VERBATIM FINDINGS AND RECOMMENDATIONS

FINDINGS: In the board proceedings concerning Private (E2) John A. Doe, 000-00-0000, the board carefully considered the evidence before it and finds:

1. Private Doe is undesirable for further retention in the military service because of frequent incidents of a discreditable nature with military authorities.
2. Private Doe is undesirable for further retention in the military service because of habitual shirking.
3. His rehabilitation is not deemed possible.

RECOMMENDATIONS:

In view of the findings, the board recommends that Private Doe be discharged from the Service because of misconduct under other than honorable conditions.

(President)

(Member)

(Member)

(Recorder)

Figure B-4.

Appendix C Addresses of the State Adjutants General

States

Alabama

P.O. Box 3711,
Montgomery, AL 36193-4701

Alaska

Diamond Center Tower
800 East Diamond Blvd.
Suite 3-450
Anchorage, AK 99515-2097

Arizona

5636 East McDowell Rd.
Phoenix, AZ 85008-3495

Arkansas

Camp Robinson
North Little Rock AR 72118-2200

California

2829 Watt Avenue
Sacramento, CA 95821-4405

Colorado

300 Logan St.
Denver, CO 80203-4072

Connecticut

360 Broad St.
Hartford, CT 06105-3795

Delaware

First Regiment Rd.
Wilmington, DE 19808-2191

District of Columbia

NG Armory, 2001 East Capitol St.
Washington DC 20003-1719

Florida

State Arsenal
St Augustine, FL 32084-1008

Georgia

Department of Defense, Mil. Div., P.O. Box 17965
Atlanta, GA 30316-0965

Hawaii

3949 Diamond Head Rd.
Honolulu, HI 96816-4495

Idaho

P.O. Box 45
Boise, ID 83707-0045

Illinois

1301 North MacArthur Blvd.
Springfield, IL 62702-2399

Indiana

Mil. Dept. of Indiana, P.O. Box 41326
Indianapolis, IN 46241-0326

Iowa

Camp Dodge, 7700 Northwest Beaver Drive
Johnston, IA 50131-1902

Kansas

P.O. Box C-300
Topeka, KS 66601-0300

Kentucky

Boone National Guard Center
Frankfort, KY 40601-6168

Louisiana

HQ Bldg., Jackson Barracks
New Orleans, LA 70146-0330

Maine

Camp Keyes
Augusta, ME 04333-0033

Maryland

Military Dept., 5th Regiment Armory
Baltimore, MD 21201-2288

Massachusetts

25 Haverhil St.
Camp Curtis Guild
Reading, MA 01867-1999

Michigan

2500 South Washington Ave.
Lansing, MI 48913-5101

Minnesota

Veterans Service Bldg.
St Paul, MN 55155-2098

Mississippi

P.O. Box 5027
Jackson, MS 39216-1027

Missouri

1717 Industrial Dr.
Jefferson City, MO 65101-1468

Montana

P.O. Box 4789
Helena, MT 59604-4789

Nebraska

1300 Military Road
Lincoln, NE 68508-1090

Nevada

2525 South Carson St.
Carson City, NV 89701-5502

New Hampshire

State Mil Res., #1 Airport Rd.
Concord, NH 03301-5353

New Jersey

Eggert Crossing Road, CN 340
Trenton, NJ 08625-0340

New Mexico

P.O. Box 4277
Santa Fe, NM 87502-4277

New York

330 Old Niskayuna Rd.
Latham, NY 12110-2224

North Carolina

4105 Reedy Creek Road
Raleigh, NC 27607-6410

North Dakota

Fraine Barracks, P.O. Box 5511
Bismarck, ND 58502-5511

Ohio

2825 West Granville Rd.
Columbus, OH 43235-2712

Oklahoma

3501 Military Circle, NE.
Oklahoma City, OK 73111-4398

Oregon

2150 Fairgrounds Rd., NE.
Salem, OR 97303-3241

Pennsylvania

Department of Military Affairs
Annville, PA 17003-5002

Rhode Island

1051 North Main St.
Providence, RI 02904-5717

South Carolina

1 National Guard Road
Columbia, SC 29201-3117

South Dakota

2823 West Main
Rapid City, SD 57702-8186

Tennessee

Houston Barracks, P.O. Box 41502
Nashville, TN 37204-1501

Texas

P.O. Box 5218
Austin, TX 78763-5218

Utah

P.O. Box 1776
12953 Minuteman Drive
Draper, UT 84020-9545

Vermont

Bldg. #1, Camp Johnson
Winooski, VT 05404-1697

Virginia

501 East Franklin Street
Richmond, VA 23219-2317

Washington

Camp Murray
Tacoma, WA 98430-5000

West Virginia

1703 Coonskin Dr.
Charleston, WV 25311-1085

Wisconsin

P.O. Box 8111
Madison, WI 53708-8111

Wyoming

P.O. Box 1709
Cheyenne, WY 82003-1709

Territories (U.S.)

Guam

622 East Harmon Industrial Park Road
Box 94, NAS
FPO, SF 96637-1293

Puerto Rico

P.O. Box 3786
San Juan, PR 00904-3786

Virgin Islands

FAB
Alexander Hamilton Airport
St. Croix
US VI 00850

Glossary

Section I Abbreviations

AD active duty	FBI Federal Bureau of Investigation	SPCMCA special court–martial convening authority
ADAPCP Alcohol and Drug Abuse Prevention and Control Program	GCM general court–martial	SPD separation program designator
ADT active duty for training	GCMCA general court–martial convening authority	SQT Skill Qualification Test
AFS active Federal service	HQDA Headquarters, Department of the Army	SSN social security number
AGR Active Guard/Reserve	IADT initial active duty training	TA transition activity
ARNG Army National Guard	IRR individual ready Reserve	TAPA Total Army Personnel Agency
ARNGUS Army National Guard of the United States	MACOM major Army commander	TDY temporary duty
ARPERCEN U.S. Army Reserve Personnel Center	MCM Manual for courts–martial	TP transition point
AWOL absent without leave	MEPS military enlistment processing station	UCMJ Uniform Code of Military Justice
BT basic training	MOS military occupational specialty	USADIP United States Army Deserter Information Point
CG commanding general	MPRJ military personnel records jacket	USAEEA United States Army Enlistment Eligibility Activity
CONUS continental United States	OMPF official military personnel file	USAR United States Army Reserve
CTT Common Task Test	OSUT one station unit training	USAREC United States Army Recruiting Command
DA Department of the Army	PCF personnel control facility	USC United States Code
DCSS Declination of Continued Service Statement	PCS permanent change of station	VA Veterans Administration
DOD Department of Defense	PCS–MPA permanent change of station–military personnel account	WOFT Warrant Officer Flight Training
DODPM Department of Defense Military Pay and Entitlements Manual	RA regular Army	Section II Terms
DRC District Recruiting Command	RBN Recruiting Battalion	Active duty for training Includes initial active duty for training (IADT) and special active duty for training (special ADT).
DSM Diagnostic and Statistical Manual	RCM Rule of Court–Martial	Administrative Board Procedure The process of an administrative separation action where the respondent will have a right to a hearing before a board of officers. It is initiated in the same manner as the Notification Procedure.
EPTS existed prior to service	SADT special active duty for training	Administrative Separation Board A board of officers, or officers and NCOs, appointed to make findings and to recommend retention in the service or separation. The board states the reason and recommends
ETS expiration of term of service	SGM sergeant major	
	SJA staff judge advocate	
	SPCM special court–martial	

the type of separation or discharge certificate to be furnished.

Administrative separation

Discharge or release from AD upon expiration of enlistment or required period of service, or before, as prescribed by the Department of the Army (DA) or by law. If one of the bases for separation includes a continuous unauthorized absence of 180 days or more, the consulting counsel will advise the soldier that a discharge under other than honorable conditions is a conditional bar to benefits administered by the Veterans Administration, notwithstanding any action by a Discharge Review Board. Separation by sentence of a general or special court-martial is not an administrative separation.

Appointed counsel for consultation

A qualified counsel who is a commissioned officer of the Judge Advocate General's Corps. The officer is appointed to consult with and advise, at the outset of any initiated separation proceedings, per this regulation, other than chapters 4 and 12 and other administrative separation proceedings where required by applicable Army regulations. Nonlawyer counsel may be appointed when the soldier is deployed aboard a vessel or his or her place of assignment is more than 250 miles from sufficient judge advocate resources. When a nonlawyer counsel is appointed, appropriate authority will certify on the permanent record that a lawyer with these qualifications is not available and states the qualifications of the substituted nonlawyer counsel. (See fig 2-1 for example of certificate of nonavailability.) This officer will advise the soldier concerning the basis for his or her contemplated separation and its effect, the rights available and the effect of any action taken by him or her, in waiving such rights. A soldier will also be advised that enlistment may be voided if he or she is being considered for separation for fraudulent entry (desertion from another military service). Consulting counsel may advise the soldier regarding the merits of the contemplated separation action when the counsel believes such advice is proper. The soldier should be informed that the counsel cannot represent the soldier before a board of officers unless also appointed as counsel for representation. Counsel will advise the soldier that if he or she is separated under other than honorable conditions, there is no automatic upgrading by any government agency. Upgrading is considered only upon application to the Army Board for Correction of Military Records or the Army Discharge Review Board. Consideration by either of these boards does not guarantee upgrading character of service that is under other than honorable conditions. Communications between the soldier and consulting counsel regarding the merits of the separation action are privileged communications between the attorney and client.

Appointed counsel for representation

A counsel appointed to represent a soldier who is being processed for separation during the course of any hearing before a board of officers. Such counsel will be a lawyer per Article 27(B)(1), Uniform Code of Military Justice, unless—

a. The respondent expressly declines appointment of counsel qualified under Article 27(b)(1) of the UCMJ and requests a specific nonlawyer counsel; or

b. The separation authority assigns a nonlawyer counsel as assistant counsel. The appointed counsel for representation and the appointed counsel for consultation need not be the same individual.

Basic training

Initial entry training which provides nonprior service personnel instructions in basic skills common to all soldiers. BT precedes advanced individual training (AIT).

Character of Service for Administrative Separation

A determination reflecting a soldier's military behavior and performance of duty during a specific period of service. The three characters are: Honorable; General (under honorable conditions); and Under other than Honorable Conditions. The service of soldiers in entry level status is normally described as uncharacterized.

Contractually obligated soldier

A soldier who is serving under enlistment contract or extension (has completed statutory service obligation, or has not acquired one). (See AR 135-91, para 2-2.)

Convening authority

a. The separation authority, or
b. A commanding officer who is authorized by this regulation to process the case except for final action and who otherwise has the qualifications to act as a separation authority.

Detainer

A written notice to civil authorities that the person in their custody is a soldier of the Army. The notice states that military authorities desire to take custody when the person is released.

Discharge

Complete severance from all military status gained by the enlistment or induction concerned.

Entry level status

a. For Regular Army soldiers, entry level status is—

(1) The first 180 days of continuous AD.

(2) The first 180 days of continuous AD following a break of more than 92 days of active military service.

b. For ARNG and USAR soldiers, entry level status begins upon enlistment in the ARNG or USAR. It terminates—

(1) For soldiers ordered to IADT for one

continuous period—180 days after beginning training.

(2) For soldiers ordered to IADT for the split or alternate training option—90 days after beginning Phase II (AIT). (Soldiers completing Phase I (BT or BCT) remain in entry level status until 90 days after beginning Phase II.)

c. Service that is creditable per table 1-1-2, DODPM, is excluded from the period of entry level status.

Improper recruiting practice

Any intentional action(s) or omission(s), or negligence into the performance of duty by a USAREC soldier, which violate(s) law, regulation, directive, or policy and which occurs during the processing of a prospect or applicant for enlistment and which result(s) in the enlistment or attempted enlistment of a person who does not meet all established enlistment prerequisites, for either initial enlistment or the specific option/military occupational specialty in which enlisted.

Juvenile offender

A person initially adjudged guilty of an offense by a domestic court of the United States or its territorial possessions, or by a foreign court. It does not matter whether a sentence has been imposed or suspended, or any other subsequent proceedings in the case. The law of the jurisdiction of the court will be determinative of whether a given proceeding constitutes an adjudication of guilt. Adjudication as a juvenile offender includes adjudication as a juvenile delinquent, wayward minor, or youthful offender.

Soldier, enlisted person

An enlisted man or woman of the Army. This includes all persons enlisted in any component of the Army, in active Federal service, or active duty for training unless otherwise indicated or obviously inappropriate.

Military behavior

The conduct of the individual while a soldier of the Army.

Military record

An account of a soldier's behavior while in military service. This includes personal conduct and performance of duty.

Minority group

Any group distinguished from the general population in terms of race, color, religion, gender, or national origin.

Notification procedure

The initiation of an administrative separation process in which the respondent is notified in writing of the proposed separation, the basis of it, the results of separation, and his or her rights. This term is commonly used when the respondent does not have a right to a hearing before an administrative separation board.

One station unit training

Initial entry training in which elements of BT

and AIT are provided in the same unit, under one cadre for the total period of training. In OSUT, elements of BT and AIT are either integrated (provided simultaneously) or are nonintegrated (provided in distinct BT/AIT phases).

Preponderance of the evidence

Evidence which, after a consideration of all of the evidence presented, points to a certain conclusion as being more credible and probable than any other conclusion. Where the evidence is equally consistent with two or more opposing propositions, it is insufficient.

Prior enlistment or period of service

Service in any component of the Armed Forces that ends with the issuance of a discharge certificate or certificate of service.

Recruiting official

As used in this regulation includes recruiter, recruiting guidance counselor, retention NCO, and any other personnel that process individuals for enlistment or reenlistment in the Army.

Release from active duty

Termination of AD status and transfer or reversion to an ARNGUS or to inactive duty status. Personnel enlisted or inducted who have a Reserve obligation under Title 10 of the United States Code, the Military Selective Service Act of 1967, as amended, or any other provision of law are transferred to a US Army Reserve (USAR) Control Group. Unit members of the ARNGUS and USAR revert from an AD or ADT status to their components to complete unexpired enlistments or unfulfilled obligations.

Respondent

A soldier who has been notified that action has been initiated to separate him or her under this regulation.

Separation

An all inclusive term applied to personnel actions resulting from release from active duty, discharge, retirement, dropped from the rolls, release from military control of personnel without a military status, or death.

Separation authority

The official authorized by Army regulations to take final action on specified types of separations.

Transition Activity

An activity designated to accomplish separation processing of military soldiers assigned to that installation only.

Transition Point

A centralized activity at an installation listed in AR 635-10, appendix B, to accomplish

separation processing of military soldiers assigned to—

a. Activities at the same installation or satellite on the same installation.

b. That activity from another installation specifically for separation.

Statutorily obligated soldier

A soldier who is serving by reason of law. (See AR 135-91, chap 2.)

Section III

Special Abbreviations and Terms

There are no special terms.

Index

This index is organized alphabetically by topic and subtopics. Topics and subtopics are identified by paragraph numbers.

Administrative boards, 2-4

Alcohol/Drug Abuse, 9-1, 14-12 c

Authority to separate, 1-21

Bars to reenlistment, 16-5

Convenience of the Government separation, 5-1, 5-3, 5-4, 5-8, 5-9, 5-10, 5-11, 5-12,

Counseling requirements, 1-18

Defective enlistments/reenlistments/extensions, 7-16

Defective/unfulfilled enlistment/reenlistment/extension, 7-16

Dependency/Hardship, 6-3

Discharge for the good of the service, 10-1

Disposition of records and proceedings, 1-15

Drug abuse, 9-1, 14-12 c

Erroneous enlistment or extension, 7-15

Failure to Meet Body Fat Standards, 18-1

Fraudulent entry, 7-17

Homosexual conduct, 15-1

Indebtedness, 1-27

Instruction in Benefits of an Honorable Discharge, 17-1

Leave policies, 1-11

Medical evaluation, 1-34

Misconduct, 12-12 b

Notification procedures, 2-2

Parenthood, 5-8, 6-3

Pregnancy, 8-1

Processing time limits, 1-7

Rehabilitation, 1-18

Rehabilitation failure, 1-18 d

Retention past ETS, 1-24, 1-28

Retirement, 12-3

Separation authority, 1-210

Separations

Convenience of the Government

Concealment of arrest record, 5-14

Dependency, 6-3 a

Did not meet medical fitness standards, 5-11

Failure to maintain Army weight standards, 5-15

Failure to medically qualify for flight training, 5-12

Lack of jurisdiction, 5-9

Parenthood, 5-8, 6-3

School attendance, 5-16

Sole surviving family member, 5-4

Unlawful aliens, 5-10

Separations, others

Alcohol abuse, 9-1, 14-12 c

Defective/erroneous enlistment, 7-15

Drug abuse, 9-1, 14-12 c

Entry level status, 11-2

Expiration of term of service, 4-2

Fraudulent enlistment/reenlistment, 7-17

Good of the Government, 10-1

Homosexual conduct, 15-1

Misconduct, 14-12 b

Retirement, 12-2

Selected changes in service obligation, 16-1, 16-2, 16-3, 16-5, 16-6, 16-8,

Unsatisfactory performance, 13-2

STATEMENT OF RETIREMENT-ELIGIBLE SOLDIER - REMAINING SERVICE OBLIGATION

For use of this form, see AR 635-200; the proponent agency is MILPERCEN

1. My current ETS is _____
(Date)
2. My current service obligation (as indicated below) will not be completed until _____
(Date)
 - ___ 12 Months at current station.
 - ___ 12 Months from arrival of dependents at my current station.
 - ___ Military or civilian course of instruction.
 - ___ Promotion lock-in.
3. I understand that if I do not reenlist or extend my enlistment, as appropriate, in order to complete my service obligation, I will be discharged upon my ETS and may forfeit my retirement eligibility.
4. I understand that if I am discharged upon my ETS because I failed to reenlist or extend my enlistment, as appropriate, I will not be eligible to enlist until 93 days following the date of my discharge and that such reenlistment will be subject to enlistment authorization and grade determination procedure prescribed in AR 601-210 and may be at least one grade lower than that in which I was discharged upon my ETS.
5. I fully realize that if I am discharged upon my ETS and later reenlist, I may only retire in the grade in which then serving and my retirement will not be retroactive to the date of my prior discharge.
6. I understand that I may submit my retirement application no earlier than 12 months, and no later than two months, prior to my ETS (or desired retirement date if it is earlier than my ETS). If circumstances beyond my control prevent me from applying within this time frame, I understand that I must consult my commanding officer or personnel officer about requesting an exception to policy or an extension of service (Paragraph 12-13, AR 635-200).

TYPED NAME OF INDIVIDUAL	SIGNATURE	DATE
GRADE SSN		
TYPED NAME OF COMMANDING OFFICER	SIGNATURE	DATE
GRADE SSN BRANCH		

STATEMENT OF RETIREMENT- ELIGIBLE SOLDIER - NOT ELIGIBLE TO REENLIST

For use of this form, see AR 635-200; the proponent agency is MILPERCEN

1. My current ETS is _____
(Date)
2. I understand that I will not be eligible to reenlist following my ETS for the following reasons: *(Cite appropriate reason or regulatory authority.)*

3. I understand that, although I will be retirement eligible upon my ETS, I will be precluded from applying for retirement once I have been released from active duty.

4. I understand that I may submit my retirement application no earlier than 12 months, and no later than two months, prior to my ETS *(or desired retirement date if it is earlier than my ETS)*. If circumstances beyond my control prevent me from applying within this time frame, I understand that I must consult my commanding officer or personnel officer about requesting an exception to policy or an extension of service. *(Paragraph 12-13, AR 635-200)*.

TYPED NAME OF INDIVIDUAL		SIGNATURE	DATE
GRADE	SSN		
TYPED NAME OF COMMANDING OFFICER		SIGNATURE	DATE
GRADE	SSN	BRANCH	

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SEPARATION ACTION CONTROL SHEET

For use of this form, see AR 635-200; the proponent agency is MILPERCEN

NAME *(Last, First, Middle Initial)*

SSN

UNIT

DATE PREPARED

ITEM NO.	ACTION	DATE	DAYS REQUIRED	TOTAL ELAPSED DAYS
1.	Notification to service member of initiation of separation procedures.			
2.	Service member acknowledges receipt of notification.			
3.	Service member indicates election of rights.			
4.	Unit Commander's recommendation for separation forwarded to:			
5.	Separation case received at:			
6.	Actions completed <i>(Specify):</i> and/or case forwarded to:			
7.	Separation case received at:			
8.	Actions completed <i>(Specify):</i> and/or case forwarded to:			
9.	Service member entitled to and elected hearing before Administrative Board. Board convened on:			
10.	Separation case received at:			
11.	Final Disposition <i>(Specify):</i>			
12.	Service member separated from the service.			
13.	Total days required to process case.			

REMARKS

Unclassified

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