

## PART 88—TRANSITION ASSISTANCE FOR MILITARY PERSONNEL

Sec.

- 88.1 Purpose.
- 88.2 Applicability and scope.
- 88.3 Definitions.
- 88.4 Policy.
- 88.5 Responsibilities.
- 88.6 Information requirements.

AUTHORITY: 10 U.S.C. chapter 58.

SOURCE: 59 FR 14559, Mar. 29, 1994, unless otherwise noted.

### § 88.1 Purpose.

(a) This part supersedes the Assistant Secretary of Defense For Force Management and Personnel memorandum,<sup>1</sup> “Policy Changes For Transition Assistance Initiatives,” June 7, 1991, establishes policy, and assigns responsibilities for transition assistance programs for active duty military personnel and their families.

(b) Implements transition assistance programs for DoD military personnel and their families as outlined in section 502, Public Law 101-510; section 661 and section 662, Public Law 102-190, and sections 4401-4501, Public Law 102-484.

### § 88.2 Applicability and scope.

This part applies to: (a) The Office of the Secretary of Defense, the Military Departments, the Chairman of the Joint Chiefs of Staff, the Unified Combatant Commands, and the Defense Agencies (hereafter referred to collectively as “the DoD Components”). The term “Military Services,” as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.

(b) All active duty Service members and their families.

### § 88.3 Definitions.

(a) *Involuntary separation.* A member of the Military Service shall be considered to be involuntarily separated if he or she was on active duty or full-time National Guard duty on September 30, 1990 and:

(1) In the case of a Regular officer (other than a retired officer), he or she was involuntarily discharged under other than adverse conditions, as characterized by the Secretary of the separating Service member’s Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the officer’s service, as outlined in Department of Defense Directive 1332.30.<sup>2</sup>

(2) In the case of a Reserve officer who is on the active duty list or, if not on the active duty list, is on full-time active duty (or in the case of a member of the National Guard, full time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the Reserve components, he or she is involuntarily discharged or released from active duty or full-time National Guard duty (other than a release from active duty or full-time National Guard duty incident to a transfer to retired status) under other than adverse conditions as characterized by the Secretary of the separating Service member’s Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the officer’s service, as outlined in Department of Defense Directive 1332.30.

(3) In the case of a Regular enlisted member serving on active duty, he or she is denied reenlistment or involuntarily discharged under other than adverse conditions, as characterized by the Secretary of the separating Service member’s Military Department. Discharge under adverse conditions is determined by referring to the reason for separation as well as the enlisted member’s service, as outlined in Department of Defense Directive 1332.14.<sup>3</sup>

(4) In the case of a Reserve enlisted member who is on full-time active duty (or in the case of a member of the National Guard, full-time National Guard duty) for the purpose of organizing, administering, recruiting, instructing, or training the Reserve components, he or she is denied reenlistment or is involuntarily discharged or released from

<sup>1</sup>Copies may be obtained, at cost, from the Directorate of Transition Support and Services, Office of the Assistant Secretary of Defense for Personnel and Readiness, 4000 Defense Pentagon, Washington, DC 20301-4000.

<sup>2</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>3</sup>See footnote 2 to section 88.3(a)(1).

#### § 88.4

#### 32 CFR Ch. I (7–1–12 Edition)

active duty (or full-time National Guard duty) under other than adverse conditions as determined by referring to the reason for separation as well as the enlisted member's service, as outlined in Department of Defense Directive 1332.14.

(b) *Separation entitlements.* Benefits provided to Service members being involuntarily separated on or before September 30, 1995 as defined in paragraphs (a)(1) through (a)(4) of this section, and their families. Benefits provided to Service members being separated under the Special Separation Benefit or Voluntary Separation Incentive on or before September 30, 1995, as defined in paragraph (c) of this section and their families. These benefits include: Training opportunities under the Job Training Partnership Act as described in section 4465 of Public Law 102-484; priority affiliation with the National Guard and Reserve, as described in section 502(a)(1) of Public Law 101-510, as amended; enrolled in the All-Volunteer Force Educational Assistance Program ("Montgomery G.I. Bill"), as described in section 4404 of Public Law 102-484; extended medical and dental care, as described in section 502(a)(1) of Public Law 101-510, as amended, and sections 4407 and 4408 of Public Law 102-484; continued use of military family housing as described in section 502 (a)(1) of Public Law 101-510, as amended (subject to Status of Forces Agreements overseas); extended and commissary privileges as detailed in section 502(a)(1) of Public Law 101-510, as amended (subject to Status of Forces Agreements overseas); travel and transportation allowances, as detailed in section 503 of Public Law No. 101-510, as amended; continuation of enrollment in Department of Defense Dependents Schools as detailed in section 504 of Public Law 101-510, as amended (subject to Status of Forces Agreements overseas.)

(c) *Special separation benefit and voluntary separation incentive.* Voluntary separation programs established in section 661 and section 662 of Public Law 102-190, as amended. Service members separated under these programs are eligible for both transition services and separation entitlements outlined in paragraphs (b) and (d) of this section.

(d) *Transition services.* Preseparation counseling, individual transition planning, employment assistance, excess leave and permissive temporary duty, and relocation assistance for personnel overseas as described in section 502 (a)(1) of Public Law 101-510, as amended.

#### § 88.4 Policy.

It is DoD policy that: (a) Transition assistance programs prepare separating Service members and their families with the skills, tools, and self-confidence necessary to ensure successful reentry into the Nation's civilian work force.

(b) Transition assistance programs be designed to complete the military personnel "life cycle." This cycle begins with the Service member's recruitment from the civilian sector, continues with training and sustainment throughout a Service members' active service in the Armed Forces, and ends when the Service member returns to the civilian sector.

(c) Transition assistance programs include: (1) Transition service as defined in § 88.3 (d) to be provided to Service members and their families for up to 90 days after separation, space and work load permitting.

(2) Separation entitlements as defined in § 88.3 (b) for Service members who are involuntarily separating as defined in § 99.3 (a) or separating under the Voluntary Separation Incentive or Special Separation Benefit Programs as defined in § 88.3 (c).

(d) Service members from one Service shall not be restricted from participating in another Service's transition assistance program unless workload or other unusual circumstances dictate. Every effort will be made to accommodate all eligible personnel, especially if referral to another transition site will require the Service member to travel a long distance and incur significant expense.

(e) [Reserved]

(f) When being discharged, released from active duty, or retiring (hereafter referred to as "separating Service members"), Service members and their families bear primary responsibility for their successful transition into the civilian sector.

(g) Spouses shall be encouraged to participate in transition planning and counseling to the maximum extent possible.

(h) Enhanced transition programs shall be established for Service members and their families who are overseas to help alleviate the special difficulties overseas personnel encounter when job and house hunting.

(i) Installations in the United States shall give priority transition assistance to personnel who recently returned from overseas.

#### § 88.5 Responsibilities.

(a) The Assistant Secretary of Defense for Personnel and Readiness shall; (1) Issue guidance on transition assistance programs for Service members and their families, as necessary.

(2) Coordinate, as necessary, within the Department of Defense to ensure the availability of high quality, equitable, and cost-effective transition programs among the Military Services.

(3) Coordinate with and seek the assistance of the Departments of Labor and Veterans Affairs, and other Federal Agencies to facilitate delivery of high quality transition assistance programs to separating Service members.

(4) Evaluate the level of resources needed to deliver quality transition programs and facilitate efforts to obtain these resources.

(5) Monitor and evaluate the overall effectiveness of transition assistance programs.

(6) Coordinate with theater commanders, through the Chairman of the Joint Chiefs of Staff, on transition assistance programs (job fairs and training conferences, for example) impacting overseas Unified Combatant Commands.

(7) Establish the Department of Defense Service Member Transition Assistance Coordinating Committee, consisting of representatives from the Military Services and Assistant Secretary of Defense for Personnel and Readiness. The purpose of this committee is to provide DoD-level direction and coordination for transition assistance programs.

(8) Collect data to determine systematically the degree to which transition assistance programs satisfy the needs

of transitioning Service members and their families.

(9) Review, modify, and reissue policy guidance, as required.

(b) The Assistant Secretary of Defense for Reserve Affairs shall establish and publish guidance on transition assistance programs for Reserve personnel and their families.

(c) The Assistant Secretary of Defense for Health Affairs shall establish guidance on transitional medical and dental care, including health insurance and preexisting conditions coverage, for Service members and their families.

(d) The Secretaries of the Military Departments shall ensure compliance with the criteria in Public Law 101-510, 102-190, and 102-484, as amended, and the following provisions:

(1) Preparation counseling shall be available no later than 90 days before separation to all separating Service members.

(2) High quality transition counseling and employment assistance programs are established on military facilities with more than 500 Service members permanently assigned or serving at that installation.

(3) The participation of separating Service members in transition assistance programs shall be coordinated with mission requirements.

(4) Transition assistance programs are allocated the resources necessary to delivery quality transition assistance programs.

(5) The Military Services are represented on the Department of Defense Service Member Transition Assistance Coordinating Committee. Each of the Military Services may invite an installations-level transition manager to participate.

(6) Quarterly reports on the status of transition programs are submitted to the Assistant Secretary of Defense for Personnel and Readiness beginning the second quarter after this publication is published, and continuing each quarter until cancellation of this part.

(7) The Inspector General of each Military Service shall review and report compliance with § 88.5(d)(1) through (d)(6) to the Service Secretary, on an annual basis, due no later than January 31 of the next calendar year.

**§ 88.6 Information requirements.**

The quarterly report requirement in § 88.5(d)(6) has been assigned Report Control Symbol DD-P&R(Q) 1927.

**PART 93—ACCEPTANCE OF SERVICE OF PROCESS; RELEASE OF OFFICIAL INFORMATION IN LITIGATION; AND TESTIMONY BY NSA PERSONNEL AS WITNESSES**

Sec.

- 93.1 References.
- 93.2 Purpose and applicability.
- 93.3 Definitions.
- 93.4 Policy.
- 93.5 Procedures.
- 93.6 Fees.
- 93.7 Responsibilities.

AUTHORITY: E.O. 12333, 3 CFR, 1981 Comp., p. 200; 50 U.S.C. apps. 401, 402.

SOURCE: 56 FR 51328, Oct. 11, 1991, unless otherwise noted.

**§ 93.1 References.**

(a) DoD Directive 5405.2,<sup>1</sup> "Release of Official Information in Litigation and Testimony by DoD Personnel as Witnesses," July 23, 1985, reprinted in 32 CFR part 97.

(b) E.O. 12333, United States Intelligence Activities, 3 CFR, 1981 Comp., p. 200, reprinted in 50 U.S.C. app. 401.

(c) The National Security Agency Act of 1959, Public Law No. 86-36, as amended, 50 U.S.C. app. 402.

(d) Rule 4, Federal Rules of Civil Procedure.

(e) DoD Instruction 7230.7,<sup>2</sup> "User Charges", January 29, 1985.

(f) 28 CFR 50.15.

**§ 93.2 Purpose and applicability.**

(a) This part implements § 93.1(a) in the National Security Agency/Central Security Service including all field sites (hereinafter referred to collectively as NSA). The procedures herein are also promulgated pursuant to the NSA's independent authority, under § 1.12(b)(10) of E.O. 12333 referenced under § 93.1(b), to protect the security of its activities, information and employees. This part establishes policy,

assigns responsibilities, and prescribes mandatory procedures for service of process at NSA and for the release of official information in litigation by NSA personnel, through testimony or otherwise.

(b) This part is intended only to provide guidance for the internal operation of the NSA and does not create any right or benefit, substantive or procedural, enforceable at law against the United States, the Department of Defense, or NSA. This part does not override the statutory privilege against the disclosure of the organization or any function of the NSA, of any information with respect to the activities thereof, or of the names, titles, salaries, or numbers of the persons employed by the NSA. See section 6(a) of the DoD Directive referenced under § 93.1(a).

**§ 93.3 Definitions.**

(a) *Service of process.* Refers to the delivery of a summons and complaint, or other document the purpose of which is to give notice of a proceeding or to establish the jurisdiction of a court or administrative proceeding, in the manner prescribed by § 93.1(d), to an officer or agency of the United States named in court or administrative proceedings.

(b) *Demand.* Refers to the delivery of a subpoena, order, or other directive of a court of competent jurisdiction, or other specific authority, for the production, disclosure, or release of official information, or for the appearance and testimony of NSA personnel as witnesses.

(c) *NSA personnel.* (or NSA person) Includes present and former civilian employees of NSA (including non-appropriated fund activity employees), and present and former military personnel assigned to NSA. NSA personnel also includes non-U.S. nationals who perform services overseas for NSA under the provisions of status of forces or other agreements, and specific individuals hired through contractual agreements by or on behalf of NSA.

(d) *Litigation.* Refers to all pretrial, trial, and post-trial stages of all existing or reasonably anticipated judicial or administrative actions, hearings, investigations, or similar proceedings before civilian courts, commissions,

<sup>1</sup>Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

<sup>2</sup>See footnote 1 to § 93.1(a).