



Department of Defense INSTRUCTION

NUMBER 1400.25, Volume 1231
July 5, 2011

USD(P&R)

SUBJECT: DoD Civilian Personnel Management System: Employment of Foreign Nationals

References: See Enclosure 1

1. PURPOSE

a. Instruction. This Instruction is composed of several volumes, each containing its own purpose. The purpose of the overall Instruction, in accordance with the authority in DoD Directive (DoDD) 5124.02 (Reference (a)), is to establish and implement policy, establish procedures, provide guidelines and model programs, delegate authority, and assign responsibilities regarding civilian personnel management within the DoD.

b. Volume. This Volume of this Instruction reissues Volume 1231 of DoD Instruction (DoDI) 1400.25 (Reference (b)) to implement DoDD 1400.25 (Reference (c)) by prescribing policies, procedures, and delegations for the employment of foreign nationals in foreign areas and setting forth the principles to follow when U.S. forces in foreign areas are negotiating for the employment of foreign nationals.

2. APPLICABILITY. This Volume applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (hereafter referred to collectively as the "DoD Components").

3. DEFINITIONS. See Glossary.

4. POLICY. It is DoD policy that:

a. Employment systems established under this Volume shall be consistent with applicable U.S. laws and regulations, as well as with host nation laws and regulations except as specified by

treaty or other binding agreement, and must seek to provide the local military command with a workforce that is as stable, efficient, and economical as local conditions allow.

b. International, implementing, and subsidiary agreements and arrangements must address issues that are critical to DoD mission support in foreign countries. A detailed explanation of negotiating principles for international and implementing agreements is in paragraph 1.b. of Enclosure 3. Negotiating principles for subsidiary agreements and implementing arrangements are in section 3 of Enclosure 3. Negotiation of these agreements and arrangements is subject to the guidance in DoDD 5530.3 (Reference (d)).

c. In conjunction with any such agreement or arrangement, a specific official or agency of the host government must be designated as the official contact with U.S. forces on all labor matters.

d. In each country or overseas area where a DoD Component employs or may employ foreign national personnel, the responsible Combatant Commander will establish a joint committee to manage foreign national personnel program development and operations. In countries where fewer than 20 foreign national employees are employed or envisioned, the Combatant Commander may determine that a joint committee is not necessary. This guidance does not apply to DoD Components that have established activities under Chief of Mission (COM) authority at diplomatic missions with human resource (HR) support provided to the DoD by the Department of State (DOS).

e. The Deputy Assistant Secretary of Defense for Civilian Personnel Policy (DASD(CPP)) shall have the authority to appoint a nonvoting DoD advisory representative to joint committees as deemed appropriate.

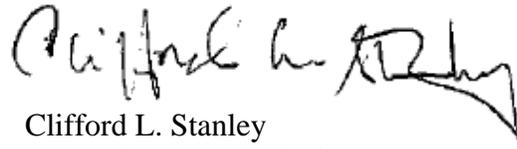
f. Organizations in overseas areas must follow the policies set out in the Memorandum of Agreement (Reference (e)) and the procedures in section 6 of Enclosure 3 of this Volume to request that the DOS exercise the authority contained in section 2669(n) of title 22, United States Code (U.S.C.) (Reference (f)), hereafter referred to as personal services agreement (PSA) authority, to fill overseas positions.

5. RESPONSIBILITIES. See Enclosure 2.

6. PROCEDURES. See Enclosures 3 and 4 for procedures and authorities for the employment of foreign nationals in foreign areas.

7. RELEASABILITY. UNLIMITED. This Volume is approved for public release and is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

8. EFFECTIVE DATE. This Volume is effective upon its publication to the DoD Issuances Website.

A handwritten signature in black ink, appearing to read "Clifford L. Stanley". The signature is written in a cursive style with a large, sweeping flourish at the end.

Clifford L. Stanley
Under Secretary of Defense
for Personnel and Readiness

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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (b) Volume 1231 of DoD Instruction 1400.25, "DoD Civilian Personnel Management System: Employment of Foreign Nationals," December 1996 (hereby cancelled)
- (c) DoD Directive 1400.25, "DoD Civilian Personnel Management System," November 25, 1996
- (d) DoD Directive 5530.3, "International Agreements," June 11, 1987
- (e) Department of State and Department of Defense Memorandum of Agreement, "Memorandum of Agreement Regarding the Department of State's Overseas Personal Services Agreement Authority," July 27, 2004¹
- (f) Sections 3968 and 2669(n) of title 22, United States Code
- (g) Section 8002 of Public Law 110-116, "Department of Defense Appropriations Act for Fiscal Year 2008," November 13, 2007
- (h) DoD 1416.8-M, "DoD Manual for Foreign National Compensation," January 12, 1990
- (i) DoD Instruction 5120.39, "DoD Wage Fixing Authority - Appropriated Fund and Nonappropriated Fund Compensation Programs," September 10, 2008
- (j) DoD Instruction 3000.05, "Stability Operations," September 16, 2009
- (k) Federal Acquisition Regulation, current edition
- (l) Department of State Foreign Affairs Manual 3 FAM 1113.7, The 7000 Series, "Overseas Employees," and 3 FAM 1113.8, The 8000 Series, "Overseas Employment Program"
- (m) Department of State Foreign Affairs Handbooks 3 FAH-1, "Personnel Operations Handbook," and 3 FAH-2, "Foreign Service National"
- (n) Subpart 301.201 of title 5, Code of Federal Regulations
- (o) Chapter 51 and subchapter III of title 5, United States Code
- (p) Subpart 604.170 of the Department of State Acquisition Regulations, current edition
- (q) Joint Publication 1-02, "Department of Defense Dictionary of Military and Associated Terms," current edition

¹ May be obtained from the Office of the Deputy Assistant Secretary of Defense for Civilian Personnel Policy, 703-693-5235, DSN 312-223-5235.

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). The USD(P&R) shall:

- a. Have overall responsibility for developing policies, plans, and programs for the Total Force pursuant to Reference (a).
- b. Approve salaries, wages, and compensation policies for DoD foreign national employees. (See section 8002 of Public Law 110-116 (Reference (g))).

2. PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (PDUSD(P&R)). The PDUSD(P&R), under the authority, direction, and control of the USD(P&R), shall:

- a. Render final determinations regarding unresolved differences among joint committee members that have been referred by the Commanders of the Combatant Commands for resolution.
- b. In coordination with the Secretaries of the Military Departments, render final determinations regarding joint committee issues between Combatant Commands and overseas Service component commands that have been referred by the Commanders of the Combatant Commands for resolution.
- c. Render decisions on Combatant Command requests for public interest determinations.

3. DASD(CPP). The DASD(CPP), under the authority, direction, and control of the USD(P&R), shall:

- a. Develop policy, establish procedures, and assign delegations for the employment of foreign nationals in foreign areas.
- b. Establish the principles to follow when U.S. forces in foreign areas are negotiating for the employment of foreign nationals.
- c. Participate in the negotiation of international agreements and arrangements that include provisions related to the hiring of foreign nationals in foreign areas.
- d. Ensure the prudent exercise of authorities delegated in this Volume and oversee the development and maintenance of foreign national personnel programs worldwide. Matters subject to DASD(CPP) oversight include pay setting; development of new system features or

significant changes in program elements such as retirement systems; classification and pay systems; performance management systems; labor-management arrangements; severance pay; allowances and other benefits; and any other substantial changes in conditions of employment.

e. Maintain, through the DASD(CPP) International Personnel Programs Director (IPPD), close contact with Combatant Command and overseas DoD Component HR management staff involved in system policies, policy changes, and key issues in the management of foreign national personnel programs. Overseas HR officials responsible for these programs shall provide full and comprehensive data to the PDUSD(P&R) through the appropriate Combatant Command on system changes and program operations as required by this Volume and in accordance with DoD 1416.8-M (Reference (h)), Chapter C7.2.

f. Oversee the use of PSAs by overseas DoD activities.

g. Conduct periodic staff assessments at overseas Combatant Command and Service component command headquarters and other locations as necessary to ensure oversight and consistency in foreign national program management and administration. This will include on-site review of processes by the IPPD or represented staff.

h. Visit operating locations that employ foreign nationals to gather information regarding the effects of DoD policies on field activities.

i. Have the authority to appoint a nonvoting DoD advisory representative to joint committees as deemed appropriate.

4. DIRECTOR, CIVILIAN PERSONNEL MANAGEMENT SERVICE (CPMS). The Director, CPMS, under the authority, direction, and control of the USD(P&R), through the DASD(CPP), shall monitor the foreign national compensation program and advise the DASD(CPP) on foreign national total compensation comparability plans and public interest determinations addressing such plans, as necessary and pursuant to DoDI 5120.39 (Reference (i)).

5. MILITARY DEPARTMENT ASSISTANT SECRETARIES OF MANPOWER AND RESERVE AFFAIRS. The appropriate Assistant Secretary of Manpower and Reserve Affairs for each Military Department shall approve joint committee chairs nominated by the Commanders of the Combatant Commands in consultation with the DASD(CPP).

6. OVERSEAS SERVICE COMPONENT COMMANDERS. Overseas Service component commanders, under the authority, direction, and control of the Secretaries of the Military Services, shall appoint the chief of the Component civilian HR function and, as appropriate, the Component country civilian HR chief, to serve as joint committee voting members for countries in which they employ, service, use, or represent foreign national employees. Their responsibilities as joint committee members include working cooperatively with other members to resolve issues and disputes and to help develop the employment system in such a way that it

best serves the mission needs of all U.S. forces activities in country, while respecting host nation laws, customs, and practices to the maximum degree practicable.

7. COMMANDERS OF THE COMBATANT COMMANDS. The Commanders of the Combatant Commands, through the Chairman of the Joint Chiefs of Staff, as appropriate, shall:

a. Designate a Combatant Command civilian human resource advisor (HRA) or appropriate HR official who shall represent the Combatant Commander in all matters related to the employment of foreign nationals in foreign areas. The Combatant Command designee must be knowledgeable about international personnel programs.

b. Establish joint committees on an area or country basis in the Combatant Command area of responsibility. The Combatant Commander may delegate this authority to a subordinate command. If the Combatant Commander delegates this authority to a subordinate command, that command shall assign responsibility for this function to an experienced HR official.

c. Determine the number of joint committees and subcommittees necessary for the conduct of orderly business.

d. For each such joint committee, the Combatant Commander or his or her designee shall nominate a chair for approval by the appropriate Military Department's Secretary for Manpower and Reserve Affairs, in consultation with the DASD(CPP). The Commander of the Combatant Commands shall nominate for the position of Chair only those candidates possessing the following knowledge and attributes:

(1) Direct experience with or general knowledge of international personnel programs.

(2) Direct experience with or general knowledge of civilian human resources management.

(3) Ability to professionally represent the US Forces in dealings with labor unions, host country officials, or other employee representatives or authorities.

(4) Appropriate demeanor to conduct negotiations and interest-based discussions with host country officials.

e. Establish the membership structure, roles and responsibilities, and operational procedures of joint committees consistent with the guidelines in section 5 of Enclosure 3.

f. Seek to resolve DoD Component differences to achieve a unified U.S. forces position.

g. Refer any joint committee issues between the Combatant Command and the overseas Service component commands for which the Combatant Command determines higher headquarters review is needed to the PDUSD(P&R). The PDUSD (P&R) shall render a decision

on such issues, in coordination with the Secretaries of the Military Departments, based on mission requirements.

h. Serve as the primary point of contact for the DASD(CPP) IPPD on all matters related to joint committee operations in their area of responsibility.

i. Notify the DASD(CPP) IPPD of all planned or contemplated international negotiating sessions that relate to foreign national employment in overseas areas in their area or responsibility.

j. In coordination with the DASD(CPP), determine the requirement to establish foreign national employment systems in foreign areas that lack a functioning government.

ENCLOSURE 3

PROCEDURES

1. BASIC PRINCIPLES. Although the rules of foreign national employment systems will vary based on negotiated agreements and host nation conditions, the system for any foreign country shall satisfy these basic principles:

a. Prevailing practices, local laws, and customs shall be followed in the employment and administration of foreign nationals when the practices, laws, and customs are not in conflict with applicable U.S. law, applicable treaties, international agreements, or other higher level agreements, and are compatible with the basic management and mission needs of U.S. forces.

b. DoD representatives participating in the negotiation of international agreements and implementing agreements establishing the basic parameters for such systems will be guided by the following requirements.

(1) U.S. Military presence in a foreign country is generally not considered to be on a permanent basis, and needs for foreign national employees may be reduced in the future due to external or internal changes. Therefore, care must be taken to ensure that the employment system will allow for timely reductions of foreign national personnel at reasonable costs. Negotiators shall make every effort to include in employment systems exemptions from reinstatement by host nation labor courts, tribunals, or councils when employment must be terminated due to organizational reasons such as base closures, reorganizations, and funding reductions. Reasonable compensation in lieu of reinstatement can be offered as an alternative.

(2) U.S. Military missions, functions, and operations are critical to U.S. and host nation national security and should not be hampered by industrial actions such as strikes, slowdowns, and other labor tactics, even if such are permissible under host nation laws. Wherever possible, negotiated employment systems should have specific clauses prohibiting or restricting strike actions as basic features.

(3) Security must be a major consideration in foreign national employment systems, including provisions for assessing the suitability of potential employees, the unequivocal right to terminate the services of employees considered by the United States or the host nation to be a security risk, and the right to institute higher security measures when the responsible U.S. commander deems it necessary. To the maximum degree possible, there should be no authority of the host nation to return an employee deemed a security risk by U.S. forces to duty. Where the host nation seeks to retain such rights, negotiators shall seek to establish provisions that permit a reasonable financial settlement or placement in organizations outside U.S. forces.

(4) The employment system should be patterned after appropriate host nation labor law, to the extent that it is not inconsistent with the international agreement, U.S. law and regulation, or the military requirements of U.S. forces.

(5) Negotiators should seek to establish limitations on applicability of host nation rules regarding collective bargaining, third-party review, and binding arbitration to ensure that the military mission can be accomplished at all times at a fair and reasonable cost. Host nation entities should not have the unrestricted right to direct reinstatement of employees who have been terminated for justified reasons of performance or conduct, or to meet other valid needs of U.S. forces.

(6) Levels of compensation and pay increases must be subject to limitations required by U.S. law and regulation. Every effort must be made to ensure that decisions regarding these elements are within the sole authority of U.S. forces, and they are exempt from collective bargaining, third-party review, and binding arbitration.

(7) On installations where the host nation controls the physical access to U.S. forces installations and workplaces, the host nation should grant newly hired foreign national employees who meet security requirements access within a few days but not to exceed 5 days after notification of selection.

(8) There should be no host nation-imposed civil or criminal penalties or fines arising from employment of foreign nationals.

(9) U.S. forces must retain the right to determine numbers, duties, qualifications, position classification, and suitability of the workforce.

(10) U.S. forces must have the right to hire family members of Service members or members of the civilian component and others authorized to work in the host nation. Such hiring must be in accordance with the respective employment system.

(11) U.S. forces must have the authority to establish administrative policies and procedures necessary for the effective management, use, and supervision of foreign national employees.

(12) In countries with labor cost-sharing arrangements, the foregoing principles may be subject to reconsideration.

c. Situations may occur where U.S. forces will need to operate in a foreign area that lacks a functioning government. This is particularly true in operations envisioned pursuant to DoDI 3000.05 (Reference (j)). In such circumstances, time is of the essence, and the lack of a host nation authority with which to negotiate makes it impossible to establish a normal employment system as described in this Volume. Where it is necessary to employ foreign nationals quickly in a situation such as this, the responsible command may establish a provisional system that contains the following minimum elements:

(1) Classification and pay system based on the U.S. nonappropriated fund process, or rates of pay as set in an existing system in a comparable foreign area, or rates of pay as set by DOS for locally employed staff (LES) when the local economy cannot be used to make pay determinations.

(2) An employment contract for each employee that states basic conditions of employment. The employment contract should be concluded for a temporary period only, with the option for multiple temporary extensions.

(3) A guarantee of due process in the case of disciplinary actions, termination of employment, and other disputes between the employee and the employer, with final decision made by the responsible military chain of command.

2. EMPLOYMENT SYSTEMS. Requests to establish foreign national employment systems in a foreign area must be sent through the Combatant Command with geographic responsibility for the area concerned to the Office of the Chairman of the Joint Chiefs of Staff for transmission to the USD(P&R). The DASD(CPP), on behalf of the USD(P&R), shall approve the type of employment system to be used. Foreign national employment systems in foreign countries fall into three general categories.

a. Direct Hire. Under the direct-hire system, U.S. forces are the legal employer of the foreign nationals and assume responsibility for all administrative and management functions related to foreign national employment. The presence of one or more of the following conditions may influence a decision to use direct hire:

(1) The host government has no objection to a direct-hire system.

(2) The number of persons to be employed is likely to be very small for the short and long term, will have little or no effect on the local economy, and may not warrant long and costly negotiation that may be required to establish an indirect-hire arrangement.

(3) The provisions of a treaty or host country agreement provide U.S. forces with the legal authority to employ foreign nationals and to follow local law and customs when possible.

(4) The host government does not desire or is unable to discharge the responsibilities inherent in an indirect-hire system.

b. Indirect Hire. Under indirect hire, the host government serves as the legal employer of U.S. forces' foreign nationals. Although the host government is the official legal employer of the foreign national personnel, it grants operational control to U.S. forces for the day-to-day management of such personnel. Conditions that may influence a decision to use this system are:

(1) The host government is desirous and capable of discharging the responsibilities inherent in an indirect-hire agreement.

(2) A large number of employees will be required for a limited time, which may result in a disruption in the local labor market when the employees' services are no longer required.

(3) Direct hire of foreign nationals could disrupt the local market, and the host government is in the best position to cope with the situation.

(4) The host government funds a part or all of the foreign national employment costs and prefers an indirect-hire system.

c. Hybrid. The host government plays a significant role in the development and operation of the system but does not take overall responsibility and does not act as the legal employer. Such a system is appropriate when the host government desires to participate in the system but does not wish to be considered the legal employer.

3. SUBSIDIARY AGREEMENT AND IMPLEMENTING ARRANGEMENT. An agreement of this type should provide complete and detailed coverage of all aspects of the management and administration of foreign national personnel. The following principles must be applied when negotiating subsidiary agreements and implementing arrangements:

a. Responsibility for Recruitment

(1) Direct Hire. Under this system, the responsibility for recruitment shall be vested in U.S. forces. However, the agreement may provide for assistance from the host government through its existing facilities. This can take the form of a host government's assistance in obtaining qualified applicants and referring them to U.S. forces for selection. U.S. forces keep the management right to decide the number of employees needed and to accept or reject any applicant so referred for a position.

(2) Indirect Hire. Usually, the host government, through its existing facilities, is responsible for recruiting civilian workers and concluding the employment contract. At the request of U.S. forces, the host government refers qualified applicants to U.S. forces for selection. U.S. forces shall maintain the right to accept or reject any applicant so referred. Additionally, U.S. forces should be permitted, with the consent of the host government, to initiate their own recruit actions for qualified personnel as necessary.

(3) Hybrid. U.S. forces should be permitted to recruit qualified personnel directly, or have the option of using existing host nation facilities to obtain candidates.

b. Security Measures

(1) U.S. forces must take measures to protect their security. Agreements shall provide for appropriate investigative requirements for the employment of foreign nationals in accordance with DoD regulations on security requirements for U.S. Government employment or for access to sensitive defense information, facilities or information systems.

(2) The agreement shall provide that U.S. forces will not employ an individual if the employment is inconsistent with the interests of national security. U.S. forces shall be authorized to terminate the employment of any foreign national that is considered to be a security

risk and to reject any host nation reinstatement or reemployment order, as long as the person is treated fairly.

(3) Since the discharge of foreign nationals on the grounds of security may cause grievances and labor unrest, carefully devised procedures shall be instituted to ensure there is no misuse of this authority.

c. Host Government Control on Personnel Requirements. U.S. forces keep the management right to decide personnel levels and skills. U.S. forces should avoid host nation control on personnel requirements, unless a valid reason for such control exists, such as:

(1) A shortage of qualified personnel in the labor market.

(2) Protection of the local economy from disruption caused by U.S. forces absorbing a disproportionate share of available labor.

(3) An emergency condition.

(4) Host nation funding of part or all of the foreign national employment costs and maintenance of an employment level commensurate with its willingness to provide funding. In such cases, U.S. forces should reserve the right to fund additional positions if the need exists.

d. Importation of Workers. U.S. forces should not import workers from a third country into a host nation when personnel requirements can be satisfied by local labor. If personnel needs in any occupational category cannot be satisfied, U.S. forces should make arrangements with the host government to allow importation of workers from other countries who are acceptable to the host government in the skills and numbers required. The host government should be asked to issue such workers the necessary documentation for residence and working permits, if required. Third country employees are subject to the same investigative requirements as specified in subparagraph 3.b.(1) of this enclosure. A periodic assessment shall be made of the need for continued employment of third country nationals.

e. Employment Conditions. Foreign nationals shall be afforded conditions of employment that are based on prevailing practices, local law, and customs and are generally comparable to those enjoyed by persons with similar skills and in similar occupations in the general economy of the host nation. Employment conditions offered shall be favorable enough to meet existing fair standards in the labor market but not so advantageous as to create a privileged group within the country. Alternate provisions may be necessary when prevailing practices are inconsistent with local laws or in instances where U.S. laws or operational requirements of U.S. forces make adherence to prevailing practices, local law, and customs difficult or impossible.

f. Employee Compensation. In the operations of a civilian personnel program, changing conditions and prevailing practices may require changes in wage/salary schedules, wage/salary rates, and other compensation elements. U.S. forces must comply with U.S. statutory limitations when such are placed on the amount or percentage of annual salary adjustments covering foreign national personnel.

(1) When an indirect-hire system or a hybrid system is adopted, it is usually beneficial to have the employment conditions and a broad outline of the procedures for developing the wage and salary schedules written as a supplement to the subsidiary agreement or implementing arrangement. The subsidiary agreement can then provide for any changes in the supplement that are required through mutual agreement without renegotiating the old agreement or negotiating a new basic agreement. The preferred methodology is described in Reference (h).

(2) In indirect-hire systems, pay plans, including job criteria and wage and salary schedules, shall typically follow rules and practices established by the host nation for its own public sector or defense department employees, and shall be compatible with U.S. forces requirements and personnel utilization practices. Depending on existing bilateral agreements, contractual agreements on pay plans may be concluded by U.S. forces or their delegated representative with the host government, or by the host government with trade unions or other employee representative groups, subject to concurrence of U.S. forces. U.S. forces shall decide the proper classification and pay rate under existing pay plans for each employee.

(3) In hybrid systems, pay plans, including job criteria and wage and salary schedules, shall follow prevailing practices in the general economy to the greatest extent possible and shall be compatible with U.S. forces special requirements and personnel use practices. Differences between mission requirements, conditions of employment, allowances, and fringe benefits prevailing in the general economy and those afforded foreign national personnel of U.S. forces shall be considered in establishing foreign national pay schedules. Depending on existing bilateral agreements, contractual agreements on pay plans may be concluded by U.S. forces or their delegated representative with the host government, or by the host government with trade unions or other employee representative groups, or directly by U.S. forces with trade unions or other employee representative groups. All agreements shall be subject to the concurrence of U.S. forces. U.S. forces shall decide the proper classification and pay rate under existing pay plans for each employee.

(4) In direct-hire systems, it is customary to use either variations of the classification and grading systems used for U.S. employees or those systems used locally, and to decide wage and salary schedules based on local prevailing rates and practices. Complete authority to decide the grade, classification, and pay for positions and to assign employees to such positions shall be vested in the U.S. forces.

g. Social Security Coverage

(1) Unless local conditions dictate otherwise, foreign nationals shall be covered under the existing social security program of the host government.

(2) In the case of direct-hire employees, there is currently no legal authority for the U.S. Government to pay the employer's share of the social security contribution, unless the treaty or subsidiary agreement so provides. When the direct-hire, indirect-hire, or hybrid system is used, the treaty or subsidiary agreement should provide that foreign nationals will be covered by the existing social insurance and worker's compensation benefits of the host nation. When

employees are so covered, the U.S. forces will make the employer's contribution to social insurance, either directly or by reimbursement to the host government.

h. Complaints. On matters concerning an existing arrangement within U.S. forces areas of responsibility, U.S. forces shall establish adequate procedures, appropriate to the local situation, to deal directly with complaints and resolve them quickly at the lowest possible level. The host government should receive complaints that fall within the area of its responsibility, as well as suggestions for changes to the agreement between the host government and U.S. forces.

i. Labor-Management Relations. The basic principles set forth in paragraph 1.a. of this enclosure apply to labor-management relations and to other aspects of employment. Policies governing the relationship between U.S. forces and the organization(s) representing U.S. forces foreign national employees, including dispute-resolution procedures and, where appropriate, those matters subject to collective bargaining shall be set forth in the agreement with the host government. If there is not a no-strike clause in the international agreement or implementing arrangement, when possible and particularly in those countries where government employees are not permitted to strike, an explicit statement shall be sought to the effect that foreign national employees do not have the right to strike against U.S. forces.

j. Administrative Costs. A method of determining the administrative costs incurred by the host government in providing personnel and in assuming certain administrative responsibilities and services under an indirect-hire or hybrid system must be developed. The extent to which these costs will be borne by U.S. forces, the manner in which payments for any assessed costs will be made by U.S. forces, and the extent to which it may be mutually desirable for U.S. forces to audit expenditures for administrative costs should be agreed upon.

4. DIVISION OF RESPONSIBILITIES. The recommendations contained in paragraphs 3.a. through 3.j. of this enclosure, as they relate to the indirect-hire system, envision an arrangement by which the host government assumes the status of the legal employer, employs the personnel, performs certain administrative functions, and furnishes the personnel to U.S. forces on a reimbursable basis. In a system of this type, the host government and U.S. forces each have certain responsibilities and functions. The recommended division of the more important of these, if agreed on, must be delineated in the subsidiary agreement, as follows:

a. Host Government. The host government shall:

- (1) Recruit personnel and refer qualified applicants to U.S. forces for selection.
- (2) Appoint those applicants who are selected.
- (3) Maintain personnel records.
- (4) Prepare payrolls and pay personnel.

(5) Complete personnel actions requested by U.S. forces, such as, but not limited to, promotions, transfers, or separations.

(6) Negotiate with labor organizations. In areas of agreed U.S. forces responsibilities and in matters related to the provisions of the basic treaty and subsidiary agreement, no binding obligation should be concluded in any negotiation between the host government and the labor organizations without concurrence of U.S. forces.

b. U.S. Forces. U.S. forces shall:

(1) Establish number and types of positions required, and transmit requests for personnel to host government.

(2) Determine the proper classification of individual positions within an established wage and salary structure.

(3) Determine the amount of increase to the wage and salary schedule, provided indirect-hire foreign national personnel do not automatically fall under the host nation public sector employment and pay system.

(4) Select personnel from applicants referred by the host government.

(5) Submit time and attendance reports to the host government's agency preparing the payrolls.

(6) Assign, supervise, control, and train personnel.

(7) Determine promotions, demotions, transfers, and separations and submit requests for action to the host government.

(8) Audit payrolls prepared by the host government.

(9) Consult or dialogue with employee associations or labor organizations, if appropriate under the existing indirect-hire arrangement.

c. Hybrid System. If the hybrid system is selected, a careful review of the responsibilities in paragraphs 4.a. and b. should be conducted and an appropriate division established.

5. JOINT COMMITTEES. The Commanders of the Combatant Commands shall establish joint committees with overseas Service component representation as applicable to the situation. The purpose of these joint committees is to prevent unilateral action inconsistent with controlling treaties, agreements, or directives.

a. For direct-hire employees (paid from either appropriated or nonappropriated funds), the joint committees shall establish a uniform plan on salaries, wages, fringe benefits, and other

terms of employment for foreign national employees. The terms of employment established shall be in accordance with the provisions of controlling treaties, administrative and labor management agreements, and this Volume. Negotiations with labor organizations shall not extend to such areas of discretion and policy as mission, budget, security, organization and assignment of personnel, the technology of performing work, or schedules of compensation, except to the extent provided by treaty, agreement, or directive.

b. For indirect-hire employees, the joint committees shall be responsible for coordinating negotiations with officials from host governments and for ensuring the uniform application of agreed committee positions.

c. For hybrid employment systems, the joint committees shall establish a uniform plan on all terms of employment within their authority under the controlling agreement, coordinate negotiations with officials from host governments or labor organizations, and ensure the uniform application of agreed committee positions.

d. Procedures and detailed instructions to be followed in the administration of foreign national employee compensation are in Reference (h).

e. Each overseas Service component commander employing foreign nationals in the area or country where joint committees have been established shall appoint a representative (not to exceed one on a joint committee or subcommittee) in accordance with this Volume. In countries or areas where only one overseas Service component employs foreign national personnel, the Combatant Commander shall establish a joint committee with one overseas Service component representative and one Combatant Command representative. Exceptions to this requirement include situations wherein a bilateral agreement with a host country establishes an alternate arrangement. Joint committees shall afford full consideration to the participation, wherever appropriate, of other parties (nonvoting), such as other DoD activities (e.g., Army and Air Force Exchange Service and Navy Exchange), other allied forces, or other U.S. Government departments or agencies, in achieving a unified position to prevent unilateral action inconsistent with controlling treaties, agreements, or directives. Joint committees may appoint subject matter experts, labor advisors, or any other functionary that is deemed appropriate for the conduct of committee business. Such experts or advisors may be selected from among the committee membership, membership of any subordinate committee, or may be a member of an overseas Service component involved in the joint committee process. Joint committees shall operate under the authority of the Combatant Commander whose representative shall seek to resolve DoD Component differences to achieve a unified U.S. forces position. Commanders of the Combatant Commands are responsible for establishing a written charter that defines membership structure, roles and responsibilities, and operational procedures of joint committees consistent with these basic guidelines:

f. Joint committees will consist of the Combatant Command civilian HRA or appropriate Combatant Command designee, a chair, overseas Service component representatives as applicable, and a DASD(CPP) advisory member if one has been designated. Members shall have the following roles and responsibilities:

(1) Combatant Command Civilian HRA or Designee. The Combatant Command designee is a nonvoting member, acting under the authority of the Combatant Commander, who shall:

(a) Designate a chair from among the overseas Service component representatives for each joint committee. The appropriate Military Department's Assistant Secretary for Manpower and Reserve Affairs shall approve the designation of the chair, in consultation with the DASD(CPP).

(b) Ensure that decisions made on joint committees are consistent with the Combatant Commander's overall mission and consider implications that joint committee decisions will have throughout the Combatant Command area of responsibility. In cases where the Combatant Commander or his or her joint committee designee consider final joint committee decisions to be inconsistent with the interests of the Combatant Command and are unable to resolve the differences, or if the Combatant Command considers an issue to be of such importance that it requires higher headquarters review, the matter shall be referred to the PDUSD(P&R) who will render a final determination in coordination with the Secretaries of the Military Departments.

(c) Provide full and comprehensive data to the PDUSD(P&R) on system changes and program operations as required by this Volume and in accordance with Reference (h).

(d) Report unresolved differences among voting joint committee members to the PDUSD(P&R) for final determination.

(e) Serve as the primary point of contact for the DASD(CPP) IPPD on all matters related to foreign labor and joint committee operations.

(f) Notify the DASD(CPP) IPPD of the time and place of regular or special joint committee meetings and proposed agenda items.

(g) Forward minutes from all joint committee meetings to the DASD(CPP) IPPD.

(h) Establish a written charter for each joint committee in accordance with this Volume.

(2) Committee Chair. The committee chair is a voting joint committee member who shall:

(a) Establish, after coordination with the Combatant Command civilian HRA or designee and overseas Service component representatives, the schedule for joint committee meetings, and ensure that meetings are conducted in an orderly and productive fashion.

(b) Develop written standing operating procedures for his or her joint committee, subject to coordination with the Combatant Command civilian HRA or designee and overseas Service component representatives.

(c) Establish the agenda for each joint committee meeting in consultation with the other committee members.

(d) Ensure that accurate minutes are taken at each joint committee meeting and that all other committee members receive an official copy of the minutes, normally within 30 calendar days of the meeting.

(e) Seek to facilitate unanimous agreement among joint committee members. Notwithstanding this responsibility, the chair cannot act unilaterally on behalf of the committee.

(3) Overseas Service Component Representatives. Overseas Service component representatives are voting committee members who shall represent the interests of their respective overseas Service component commanders and vote on all matters related to terms of employment of foreign nationals in a manner consistent with these interests.

(4) DASD(CPP) Advisory Representative. If appointed by the DASD(CPP) to serve on a joint committee as a nonvoting member, the advisory representative shall ensure proper functioning and accountability of joint committees on behalf of the DASD(CPP). This representative may choose to attend all committee meetings and may request relevant information from committee members.

6. PSA AUTHORITY. Reference (e) authorizes use of the DOS PSA authority for locally employed personnel abroad at certain DoD activities, in accordance with the authority provided to DOS under section 2669(n) of Reference (f). The guidance applies to DoD activities that have established activities under COM authority at diplomatic missions with HR support provided to the DoD by the DOS.

a. Under the auspices of DOS, the COM is the principal officer in charge of the diplomatic mission who has the responsibility to determine the size, composition, and mandate of U.S. Government staffing at overseas diplomatic missions, and to direct the establishment and implementation of uniform HR management policies, procedures, and practices to the maximum extent possible.

b. The PSA authority allows the DoD to hire individuals without regard to statutory provisions that relate to the making of Government contracts. Applicable requirements of Federal acquisition law and the Federal Acquisition Regulation (Reference (k)) have been waived to avoid possible conflicts with local labor law and to permit administration of PSAs as an employment system. PSAs are not personal services contracts and do not require approval by the activity contracting officer.

c. The DoD complement and composition of civilian positions supported through PSAs may not be changed without COM approval. Use of PSA authority at DoD activities is subject to DOS policies, procedures, and regulations on HR management abroad, as established in the DOS Foreign Affairs Manual (Reference (l)) and Foreign Affairs Handbooks (Reference (m)), and other applicable DOS guidance.

d. Authority to use PSAs does not preclude DoD activities under COM authority from using overseas limited appointments under subpart 301.201 of title 5, Code of Federal Regulations (Reference (n)) for the employment of eligible U.S. citizen family members when position authorization has been obtained and subject to COM approval.

e. PSAs will have an initial employment period of 1 year, with up to nine extension increments of 1 year, subject to approval by the appropriate DoD authority.

f. Individuals hired under PSA authority are not considered to be employees as defined in chapter 51 and subchapter III of title 5, U.S.C. (Reference (o)).

g. Employment under PSAs.

(1) Use of PSA authority by DoD activities abroad is subject to:

(a) Approval by the COM.

(b) Certification by the DoD activity head or designated local funds manager for the activity that sufficient funds are available to support the position.

(c) Subscription under the DOS International Cooperative Administrative Support Services system for LES HR services.

(d) Approval by the DOS HR officer and designated DoD official (e.g., DoD activity head at post or a designated representative).

(2) PSAs shall not be used for the employment of individuals employed in the United States or recruited/hired in the United States.

(3) PSAs may be used to employ U.S. citizens and host nation and third country nationals recruited locally and hired abroad. PSAs may also be used to employ family members and other members of household in compliance with anti-nepotism regulations.

(4) Employees hired under PSAs may NOT:

(a) Enter into any agreement on behalf of the DoD.

(b) Exercise any contracting authority.

(c) Make decisions involving inherently governmental functions, such as performing signatory authority (e.g., certification of vouchers, position classification, or personnel actions), planning, budgeting, programming, selecting personnel, etc.

(d) Supervise direct-hire U.S. citizen employees.

(e) Perform cashier functions unless approved by the Department of the Treasury.

(5) Employees hired under PSAs may:

(a) Make recommendations in areas considered to be governmental functions, as long as final decision-making authority is reserved for authorized DoD employees.

(b) Supervise other direct-hire non-U.S. citizen employees, and other non-U.S. citizens hired under PSAs.

(6) LES personnel subject to host nation labor laws (e.g., foreign nationals, or U.S. citizens who are ordinarily resident in the host nation) who are hired under PSAs will be compensated in accordance with governing local compensation plans established by DOS. U.S. citizens not subject to host nation labor laws (e.g., command-sponsored dependents who do not have ordinarily resident status) who are hired under PSAs will be compensated in accordance with applicable U.S. Government compensation provisions and pay schedules.

h. Documentation of PSAs.

(1) Documentation associated with PSAs will be in accordance with DOS policies, procedures, and practices.

(2) DoD activities must ensure that proper internal controls are in place (i.e., the same officer shall not serve as funds certifying official and approving/authorizing official).

(3) Completed documentation will reflect certification that the DoD has a continuing program need for the requirement, the DoD has identified funds for the position recruited and staffed under PSA provisions, the DoD representative at the post is acting in accordance with instructions and authorities granted by the employing DoD activity, and the agreement provisions comply with appropriate regulations and procedures.

(4) The DOS Form JF-62-A, "Personal Services Agreement Action" (available at <http://www.state.gov/m/a/dir/forms/index.htm> and at all posts), will be used as the cover sheet for all DoD PSAs.

(a) Block 3 (Contract Number). Posts must keep in mind that the standardized acquisition instrument identification numbering system shown in subpart 604.170 of the DOS Acquisition Regulations (Reference (p)) should not be used, since PSAs are not subject to Federal acquisition provisions.

(b) Block 7 (Effective Date). The effective date of the agreement is the date on which the employee will commence employment under the agreement. Effective dates may follow, but will not precede, the funding date reflected in Block 35. Effective dates should correspond with the beginning of a pay period.

(c) Block 8 (Authority). The authority for all PSAs is “22 USC 2669(n)”.

(d) Block 34 (Funds Certifying Officer). The DoD activity head or the local designated DoD funds manager must certify that funds are available for the fiscal year in which the agreement is signed, or the effective date if it is in a subsequent fiscal year. The employee and the DoD authorizing official/activity head must obtain this certification prior to signature.

(e) Block 35 (Date). This is the date for signature by the funds certifying officer. Funding dates must occur prior to effective date (Block 7).

(f) Block 36 (Personnel/Administrative Officer). Certification may be made by the post’s HR manager, HR/financial management officer, management officer, or American foreign service officer designated to perform HR functions at the post.

(g) Block 38 (Employing Department or Agency). Add typed name and title of DoD activity head and obtain signature. Strike “For use by Foreign Affairs Agencies” at the bottom of the form.

(5) The individual under a PSA is not required to sign subsequent DOS Forms JF-62-A modifying the basic agreement, provided the modifications are simply to implement salary or benefit revisions as mandated by Reference (l) or to extend the periods of the agreement.

(6) Posts may also use the DOS PSA-Limited Form DS-1990, “PSA - Limited Personal Services Agreement Time and Attendance Record, and Payment Voucher” (available at <http://www.state.gov/m/a/dir/forms/index.htm>) to employ short-term (less than 30 workdays per year) DoD employees. Forms should reflect the statement “Issued on behalf of DoD”. Authority is section 2669(n) of Reference (f).

ENCLOSURE 4

AUTHORITIES

1. GENERAL. The basis for setting pay for foreign national employees is found in Reference (f).

2. DELEGATIONS

a. The authority to establish salaries, wages, fringe benefits, related compensation items, and other terms of employment for foreign national employees in the geographic areas of responsibility of the Combatant Commands in subparagraphs 2.b.(1) through 2.b.(6) of this enclosure is delegated to the Secretaries of the Military Departments for further delegation to overseas Service component commanders in accordance with Reference (i). This authority may not be further delegated beyond the overseas Service component commander.

b. The geographic Combatant Commanders are delegated the authority to establish joint committees in their areas of responsibility. These committees will serve as the means whereby overseas Service component commanders jointly exercise their delegated authority to establish salaries, wages, fringe benefits, related compensation items, and other terms of employment for foreign national employees.

c. Compensation in areas where overseas Service component commanders do not exercise their delegated authority will be set and adjusted by the Director, CPMS, and subject to approval by the (PDUSD(P&R)).

3. LIMITATIONS. Limitations on delegations of authority:

a. The responsible Combatant Commander shall refer unresolved differences about terms of employment, salaries, wages, fringe benefits, and related compensation matters for foreign national employees to the PDUSD(P&R).

b. When an overseas Service component commander concludes that specific situations warrant deviation from prevailing practice, sometimes referred to as public interest determinations, he or she shall forward a request to deviate from prevailing practice to the responsible Combatant Commander for review. The Combatant Commander will recommend approval or denial of the request and forward this recommendation to the PDUSD(P&R) for final determination. The public interest determination cannot be used to waive statutorily imposed budget limitations on annual adjustments.

c. The annual total pay for a position established under the delegated authorities may not be more than the maximum payable rate for Executive Level IV. The amount in the host nation currency will be determined by converting the maximum rate using the official budget rate in

effect on the date of the adjustment to the maximum rate or the beginning of the calendar year, whichever is later.

d. In accordance with the provisions in Reference (e), authority to approve PSAs on behalf of the DASD(CPP) is delegated to the heads of DoD activities at diplomatic missions in overseas areas operating under COM authority.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

COM	chief of mission
DoDD	DoD Directive
DoDI	DoD Instruction
DOS	Department of State
DASD(CPP)	Deputy Assistant Secretary of Defense for Civilian Personnel Policy
HR	human resource
HRA	human resource advisor
IPPD	International Personnel Programs Director
LES	locally employed staff
PDUSD(P&R)	Principal Deputy Under Secretary of Defense for Personnel and Readiness
PSA	personal services agreement
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purpose of this Volume.

executive level IV. A pay rate in the Executive Schedule, which is a pay schedule consisting of the highest-ranked appointed positions in the executive branch of the U.S. government.

foreign national employee. An individual who is employed by or performing work for U.S. forces outside the United States, its territories, and possessions in a system of employment established in accordance with this Volume or a predecessor authority. In accordance with Reference (o), U.S. citizens shall not be hired into appropriated fund positions under the authority contained in this Volume.

host country. Defined in Joint Publication 1-02 (Reference (q)).

host nation. Defined in Reference (q).

international agreement and implementing agreement. A treaty, a status of forces implementing agreement, or similar document that provides for the establishment or use of military bases and facilities in the territory of another nation. These instruments are negotiated by the DOS, based

on guidance and technical advice provided by the DoD. The treaty or agreement usually addresses the subject of employment or use of foreign nationals in cases where such is contemplated. Agreements at this level are typically written in broad terms but may contain specific provisions outlining broad policy goals and features of the contemplated employment system.

subsidiary agreement and implementing arrangement. An agreement negotiated with a host nation that provides a detailed description of the U.S. forces foreign national employment system in that country. It may take the form of a country-to-country agreement, a contract, or other arrangement that establishes a foreign national hiring system.