



Department of Defense INSTRUCTION

NUMBER 1400.25, Volume 1471

March 27, 2014

Incorporating Change 2, Effective January 31, 2024

USD(P&R)

SUBJECT: DoD Civilian Personnel Management System: Nonappropriated Fund (NAF)
Labor-Management and Employee Relations

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. In accordance with the authority in DoDD 1400.25 (Reference (b)), this volume:

(1) Establishes policy, assigns responsibilities, and prescribes procedures for labor-management and employee relations programs applicable to NAF employees and positions.

(2) Incorporates the applicable elements of Chapter 5 of DoD 1401.01-M (Reference (c)) and cancels that manual in its entirety.

2. APPLICABILITY. This volume:

a. 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 Inspector General of the Department of Defense (OIG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this volume as the "DoD Components").

(1) The Army and Air Force Exchange Service may be considered a DoD Component for purposes of this volume if delegated authority to oversee NAF labor and employee relations policy by the Secretary of the Army or the Secretary of the Air Force, as applicable.

(2) The United States Marine Corps, the Navy Exchange Service Command, and the Commander, Navy Installations Command may be considered DoD Components for the purposes of this volume if delegated authority to oversee NAF labor and employee relations policies by the Secretary of the Navy.

b. Applies to all NAF employees and positions within the DoD, including those NAF positions authorized to receive funding from appropriated funds.

3. POLICY. It is DoD policy that:

a. Managerial and non-managerial personnel will be committed to pursuing solutions that promote improved quality and productivity, efficiency, customer service, mission accomplishment, quality of work life, employee empowerment, organizational performance, and military readiness.

b. Labor-management relationships will focus on supporting and enhancing DoD's national security mission and creating and maintaining a high-performance workplace. All DoD activities will seek to use consensual means of resolving disputes that may arise in a labor-management relationship.

c. Management personnel will provide forward-thinking and supportive leadership and ensure that all NAF employees understand what is expected of them, who is in their immediate chain-of-command, and their work relationships with coworkers.

d. Employees must be informed, as far as possible, of conditions of employment, management and employee responsibilities, employee rights, and avenues of redress. Continued communications in the management-employee relationship is vital to achieving an informed, productive NAF workforce.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES. See Enclosure 3.

6. RELEASABILITY. This instruction is available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

7. SUMMARY OF CHANGE 2. This change:

a. Updates the Directives Division website address, organizational titles, and references as necessary, and removes outdated issuance expiration language.

- b. Requires adherence to DoD Privacy Program and Counter Insider Threat Program policies.
- c. Clarifies the DoD Component responsibilities relating to agency head review, the applicability of the oath of office to NAF employees, and the coordination and notification requirements for business based actions (BBAs).
- d. Updates the prohibited personnel practices.
- e. Includes training and tracking requirements concerning diversity and inclusion and anti-harassment.
- f. Requires the tracking of disciplinary actions including actions against supervisory staff for misconduct based on retaliation against whistleblowers.
- g. Requires performance be the primary criterion for BBAs.

8. EFFECTIVE DATE. This volume is effective March 27, 2014.


Jessica L. Wright
Acting Under Secretary of Defense for
Personnel and Readiness

Enclosures

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REFERENCES

- (a) DoD Directive 5124.02, “Under Secretary of Defense for Personnel and Readiness (USD(P&R)),” June 23, 2008
- (b) DoD Directive 1400.25, “DoD Civilian Personnel Management System,” November 25, 1996
- (c) DoD 1401.01-M, “Personnel Policy Manual for Nonappropriated Fund Instrumentalities,” December 13, 1988, as amended (hereby cancelled)
- (d) DoD Directive 5400.11, “DoD Privacy Program,” October 29, 2014, as amended
- (e) Title 5, United States Code
- (f) DoD 5500.07-R, “Joint Ethics Regulation,” current edition
- (g) Title 5, Code of Federal Regulations
- (h) Title 29, Code of Federal Regulations
- (i) DoD Directive 1440.1, “The DoD Civilian Equal Employment Opportunity (EEO) Program,” May 21, 1987, as amended
- (j) Equal Employment Opportunity Commission Management Directive 715, “Equal Employment Opportunity,” October 1, 2003
- (k) Equal Employment Opportunity Management Directive for 29 C.F.R. Part 1614 (EEO-MD-110), as revised, August 5, 2015
- (l) DoD Instruction 1020.05, “DoD Diversity and Inclusion (D&I) Management Program,” September 9, 2020
- (m) DoD Instruction 1020.04, “Harassment Prevention and Responses for DoD Civilian Employees,” June 30, 2020
- (n) Public Law 107-174, “Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002,” (also known as the “No FEAR Act”) May 15, 2002
- (o) Title 10, United States Code
- (p) DoD Directive 1401.03, “DoD Nonappropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection,” June 13, 2014, as amended
- (q) DoD Instruction 7050.01, “Defense Hotline Program,” October 17, 2017
- (r) DoD Instruction 6055.01, “DoD Safety and Occupational Health (SOH) Program,” October 14, 2014, as amended
- (s) DoD Instruction 6055.07, “Mishap Notification, Investigation, Reporting, and Record Keeping,” June 6, 2011
- (t) DoD Instruction 1438.06, “DoD Workplace Violence Prevention and Response Policy,” January 16, 2014, as amended
- (u) Presidential Memorandum, “Establishing Policies for Addressing Domestic Violence in the Federal Workforce,” April 18, 2012
- (v) DoD Directive 5205.16, “The DoD Insider Threat Program,” September 30, 2014, as amended
- (w) DoD Instruction 1010.04, “Problematic Substance Use by DoD Personnel,” February 20, 2014, as amended
- (x) DoD Instruction 1010.09, “DoD Civilian Employee Drug-Free Workplace Program,” June 22, 2012, as amended

- (y) Deputy Secretary of Defense Memorandum, “DoD Employee Wellness, Satisfaction, and Engagement Initiative,” January 4, 2010
- (z) Title 42, United States Code
- (aa) Public Law 104-193, “The Personal Responsibility and Work Opportunity Reconciliation Act of 1996,” August 22, 1996
- (ab) Section 1909 of Title 41, United States Code
- (ac) Deputy Under Secretary of Defense for Civilian Personnel Policy Memorandum, “Government Charge Card Disciplinary Guide for Civilian Employees,” April 21, 2003¹
- (ad) Section 552 of Public Law 109-364, “John Warner National Defense Authorization Act for Fiscal Year 2007,” October 17, 2006
- (ae) DoD General Counsel Memorandum, “Policies and Procedures Applicable to DoD and United States Coast Guard (USCG) Civilian Personnel Subject to Uniform Code of Military Justice (UCMJ) Jurisdiction in Time of Declared War or a Contingency Operation,” January 20, 2012²
- (af) Manual for Courts-Martial, United States, current edition
- (ag) Section 922 of Title 18, United States Code (also known as the “Domestic Violence Misdemeanor Amendment (Lautenberg Amendment) to the Gun Control Act of 1968”)
- (ah) Executive Order 11478, “Equal Employment Opportunity in the Federal Government,” August 8, 1969 (as amended by Executive Orders 11590, 12106, 13087 and 13152)
- (ai) DoD Instruction 5145.05, “Alternative Dispute Resolution (ADR) and Conflict Management,” May 27, 2016
- (aj) Office of Personnel Management Operating Manual, “Federal Wage System – Nonappropriated Fund,” current edition³
- (ak) Title 38, United States Code (also known as the “Uniform Services Employment and Reemployment Rights Act of 1994”)
- (al) Under Secretary of Defense for Personnel and Readiness Memorandum, “Prohibition on Converting Certain Functions to Contract Performance,” December 1, 2011
- (am) DoD 7000.14-R, “Department of Defense Financial Management Regulation,” Volume 13, “Nonappropriated Funds Policies and Procedures,” current edition

¹ Available through the Internet at https://www.acq.osd.mil/dpap/Docs/pcard/04-21-03_Discipline_Guide_Civilians.pdf

² Available through the Internet at <https://www.dcpas.osd.mil/policy/naf/naflabmanagementemployeerelations>

³ Available through the Internet at <https://www.opm.gov/oca/wage/nafnew/index.asp>

ENCLOSURE 2

RESPONSIBILITIES

1. ASSISTANT SECRETARY OF DEFENSE FOR MANPOWER AND RESERVE AFFAIRS (ASD(M&RA)). Under the authority, direction, and control of the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), and in accordance with Reference (a), the ASD(M&RA) has overall responsibility for the development of DoD civilian personnel policy covered by this volume.

2. DEPUTY ASSISTANT SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY (DASD(CPP)). Under the authority, direction, and control of the ASD(M&RA), the DASD(CPP) supports the development of civilian personnel policy covered by this volume and monitors its execution by DoD Components, ensuring consistent implementation and continuous application throughout DoD.

3. DIRECTOR, DEPARTMENT OF DEFENSE HUMAN RESOURCES ACTIVITY. Under the authority, direction, and control of the USD(P&R), the Director, Department of Defense Human Resources Activity provides support to the DASD(CPP), as appropriate, in the execution of the duties and responsibilities of the volume.

4. DoD COMPONENT HEADS WITH NAF EMPLOYEES. The DoD Component heads with NAF employees:

- a. Develop, implement, and oversee required NAF programs and procedures.
- b. Execute laws and regulations applicable to NAF personnel management, including laws and regulations applicable through administrative extension by DoD policy.
- c. Maintain constructive employment relationships and implement a labor-management relations program consistent with Volume 711 of this instruction.
- d. Implement and oversee programs and practices that prevent prohibited personnel practices and promote NAF employees' adherence to required standards of conduct.
- e. Encourage and support work-life and wellness programs for NAF employees.
- f. Establish incentive awards programs to the extent feasible, within resources available, and in consideration of the efficiency objectives, for the purpose of recognizing NAF employees who contribute to the accomplishment of the employing organization's mission and goals.

g. Establish and oversee effective DoD Component BBA guidance and procedures, including a BBA appeals process consistent with the Appendix to Enclosure 3 of this volume.

h. Establish and oversee effective and fair disciplinary action procedures and provide eligible NAF employees an opportunity to present grievances to an appropriate level within the DoD Component.

i. Accomplish coordination and notification of significant DoD Component workforce reductions and realignments, as described in the Appendix to Enclosure 3 of this volume.

j. Ensure compliance with the Privacy Act of 1974, as amended, and DoD policies pertaining to privacy and civil liberties, including DoD Instruction (DoDI) 5400.11 (Reference (d)).

k. Comply with collective bargaining obligations as applicable.

ENCLOSURE 3

PROCEDURES

1. LABOR-MANAGEMENT RELATIONS

a. Chapter 71 of Title 5, United States Code (U.S.C.) (Reference (e)) established the statutory labor-management relations program for Federal Government employees. NAF employees, in accordance with sections 7103(a)(2) and 7103(a)(3) of Reference (e), are included in the statute's coverage and thus, eligible employees, where applicable, are subject to provisions of locally negotiated collective bargaining agreements. Labor-management relations within DoD, for both the appropriated fund and NAF workforce, are administered in accordance with the provisions implemented by Volume 711 of this instruction.

b. Managers, supervisors, employees, and employees' union representatives seek to accomplish DoD missions in an effective, efficient manner. All should be involved in identifying workplace problems and proposing solutions. In this respect, the DoD Components are encouraged to cultivate and promote cooperative labor-management relations with their respective labor organizations.

c. The Defense Civilian Personnel Advisory Service (Labor and Employee Relations Directorate), a component of the Department of Defense Human Resources Activity, will review and approve or disapprove NAF bargaining agreements in accordance with section 7114(c) of Reference (e), prior to implementation. In accordance with Volume 711 of this instruction, when a labor relations issue or matter has DoD-wide, component-wide, or other significant implications, the DoD Components must forward all filings or formal submissions to the Labor and Employee Relations Directorate at least 7 business days before the due date for filing to the Federal Labor Relations Authority, judicial proceedings or reviews, and union or management-initiated court actions or reviews. In matters that raise questions of law, DCPAS shall coordinate with its supporting legal office.

2. RELATIONSHIPS WITH NON-LABOR ORGANIZATIONS REPRESENTING FEDERAL EMPLOYEES. NAF employees may join lawful management and professional associations, and other organizations (e.g., an organization concerned with civic and social interests) that can provide information, views, and services which contribute to improved operations and effectiveness. Employee participation will be consistent with Chapter 3, DoD 5500.07-R (Reference (f)) and the provisions of Volume 251 of this instruction.

3. STANDARDS OF CONDUCT. The nature of many of the activities supported by NAF and administered by the DoD Components is such that civilian employees and assigned military personnel must exemplify the highest standards of personal conduct and integrity. The DoD Joint Ethics Regulation at DoD 5500.07-R (Reference (f)) is applicable to NAF employees. In accordance with the ethics program training requirements set forth in Reference (f), new NAF

employees must receive initial ethics training when first entering on duty at the employee's new organization. NAF employees who are required to file the Office of Government Ethics 450 Confidential Financial Disclosure Report or the Office of Government Ethics 278 Public Financial Disclosure Report will complete annual ethics training each calendar year.

4. LOYALTY TO THE UNITED STATES. The oath of office requirement in Section 3331 of Reference (e) does not apply to NAF employees. Consistent with section 7311 of Reference (e), an individual will not accept or hold a NAF position who:

- a. Advocates the overthrow of the U.S. Government.
- b. Knowingly is a member of an organization advocating overthrow of the U.S. Government.
- c. Participates in a strike against the U.S. Government, including a nonappropriated fund instrumentality (NAFI) of the U.S. Government.

5. POLITICAL ACTIVITY

a. Legal restrictions relating to the political activities of Federal Government Executive Branch employees are prescribed in sections 7321-7326 of Reference (e), referred to in this volume as the "Hatch Act." These principles are hereby administratively extended to NAF employees.

b. An employee, for example, may not use his or her official authority or influence for the purpose of interfering with or affecting the result of an election, nor run for the nomination or as a candidate for election to a partisan political office.

c. Employees continue to retain the right to vote as they choose, express their opinions on political subjects and candidates, and may participate in non-partisan political activity. No inquiries will be made concerning the political affiliation of an employee or applicant for employment, and any disclosures of political affiliation will not be considered in the employment process of the employee or applicant for employment.

d. The U.S. Office of Special Counsel enforces compliance with the Hatch Act, but has no jurisdiction over the NAF workforce. The DoD Components will investigate and take appropriate actions if it is determined that alleged violations of Hatch Act principles have occurred.

6. PROHIBITED PERSONNEL PRACTICES. The principles of section 2302(b) of Reference (e) are hereby administratively extended to the NAF workforce. The DoD Components will ensure that employees are informed of these safeguards, and will investigate complaints and take appropriate actions. Any individual to whom the head of an agency delegates authority for

personnel management, or for any aspect thereof, will be similarly responsible within the limits of the delegated authority. Those authorized to take, recommend, or approve actions will not:

- a. Discriminate for or against any employee or applicant for employment based on factors such as race, color, religion, sex, national origin, age, disability, marital status, or political affiliation;
- b. Solicit or consider employment recommendations based on factors other than personal knowledge of records or characteristics;
- c. Coerce the political activity of any person;
- d. Deceive or willfully obstruct any person from competing for employment;
- e. Influence any person to withdraw from competition for any position to improve or injure the employment prospects of any other person;
- f. Grant any unauthorized preference or advantage to any person to improve or injure the employment prospects of a current employee or outside applicant;
- g. Engage in nepotism;
- h. Take or threaten reprisal for whistleblowing;
- i. Take or fail to take, or threaten to take or fail to take, any personnel action against any employee or applicant for exercising a complaint or grievance right; testifying for or assisting another in exercising such a right; cooperating with or disclosing to an inspector general (IG) or other designated authority; or refusing to obey an order that would require the individual to violate a law;
- j. Discriminate on the basis of conduct which is not adverse to the performance of an employee, applicant, or the performance of others;
- k. Take or fail to take, recommend, or approve a personnel action if taking or failing to take such an action would violate an employment preference requirement; or
- l. Take or fail to take a personnel action, if taking or failing to take action would violate any law, rule or regulation implementing or directly concerning the merit system principles contained in section 2301(b) of Reference (e).
- m. Implement or enforce:
 - (1) Any non-disclosure agreement that does not have a statement clarifying that whistleblower rights supersede agency restrictions on disclosures in any nondisclosure agreements, policies, or forms.

(2) A nondisclosure agreement or policy lacking notification of whistleblower rights.

n. Access medical records in furtherance of any prohibited personnel practice outlined in Section 2302(b) of Reference (e). Subpart E of Part 293 of Title 5, Code of Federal Regulations (Reference (g)) provides guidance for establishing and maintaining employee medical files.

7. EQUAL EMPLOYMENT OPPORTUNITY (EEO) COMPLAINTS

a. As employees within the Executive Branch, DoD NAF employees are covered by the Federal Government's EEO laws and regulations. These prohibit employment discrimination based on race, color, religion, sex, national origin, mental or physical disability, age (40 and over), retaliation, and genetic information. In accordance with part 1614 of Title 29, Code of Federal Regulations (CFR) (Reference (h)) and DoDD 1440.1 (Reference (i)), the DoD Components will provide for the fair, impartial, and timely investigation and resolution of complaints of discrimination in employment, including complaints of sexual harassment. Volume 1614 of this instruction implements the DoD policies governing investigation of formal EEO complaints.

b. The U.S. Equal Employment Opportunity Commission (EEOC) has Federal Government-wide adjudicatory responsibilities in the EEO complaints process. In accordance with Reference (h), EEOC Management Directive 715 (Reference (j)), and EEOC Management Directive 110 (Reference (k)), NAF employees and applicants are included in the EEOC's process and enforcement of laws prohibiting employment discrimination.

8. DIVERSITY AND INCLUSION PROGRAM. DoD Components will establish and implement diversity and inclusion programs applicable to NAF employees in accordance with DoDI 1020.05 (Reference (l)).

9. ANTI-HARASSMENT PROGRAM. DoD Components will establish and implement anti-harassment programs applicable to NAF employees in accordance with DoDI 1020.04 (Reference (m)).

10. NO FEAR ACT. Public Law 107-174 (Reference (n)), also known as the "No FEAR Act," applies to all DoD civilian personnel, including NAF employees. Congress enacted this law with the intent to hold Federal Government agencies more accountable for violations of antidiscrimination and whistleblower protection laws. In accordance with part 724 of Reference (g), the DoD Components will provide written notification of the rights and protections available in accordance with antidiscrimination, whistleblower protection, and retaliation laws. The DoD Components will train employees on such rights and remedies.

11. PROTECTED DISCLOSURE (WHISTLEBLOWER PROTECTION)

a. The confidentiality of NAF employees and applicants making disclosures regarding fraud, waste, and abuse situations must be fully protected in accordance with section 1587 of Title 10, U.S.C. (Reference (o)). The NAF whistleblower protection statute is implemented by DoDD 1401.03 (Reference (p)), which clarifies responsibilities for recommending and directing corrective and disciplinary actions regarding substantiated allegations of reprisal for whistleblowing. Employees and applicants will not be impeded from disclosing information to the appropriate authority, will be free from reprisal in making protected disclosures, and will be informed of the right to report directly to the OIG DoD such incidences that they reasonably believe evidence:

(1) A violation of any law, rule, or regulation; or

(2) Mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific damage to public health or safety.

b. The Defense Hotline Program as described in DoDI 7050.01 (Reference (q)) applies to NAF employees. It encourages DoD personnel to report suspected fraud, waste, abuse, and mismanagement without fear of reprisal. It also establishes the Defense Hotline, operated by the OIG DoD, for reporting instances of fraud or mismanagement in DoD operations.

12. SAFETY AND OCCUPATIONAL HEALTH. The DoD Components must create and maintain a safe and healthful environment for their NAF employees and for the facilities managed for the morale and welfare of military and civilian personnel, their authorized family members, and other authorized personnel. In accordance with DoDI 6055.01 (Reference (r)), strict compliance to safety and health provisions is everyone's responsibility. The accident reporting requirements in DoDI 6055.07 (Reference (s)) apply to NAF employees.

13. VIOLENCE IN THE WORKPLACE

a. DoD Components will develop and implement a workplace violence prevention and response program, including education and training, consistent with DoDI 1438.06 (Reference (t)). Supportive actions include requiring supervisors and employees to immediately report all workplace violence threats to the appropriate military or civilian authorities, fostering an appropriate organizational culture, and publicizing applicable DoD Component employee assistance program (EAP) services, as described in section 16 of this enclosure.

b. The effects of domestic violence can also spill into the workplace. In accordance with Presidential Memorandum (Reference (u)), the Federal Government should be a model employer in providing a safe workplace and support for employees who suffer from domestic violence.

14. COUNTER INSIDER THREAT PROGRAM. All NAF employees will report personnel who are exhibiting behaviors of concern and potential risk indicators in accordance with the DoD Insider Threat Program. Insider threat awareness training will be provided to all NAF employees in accordance with DoDD 5205.16 (Reference (v)).

15. DRUG AND ALCOHOL ABUSE TESTING PROGRAMS. NAF employees are covered by the drug abuse testing programs established by the DoD Components in accordance with DoDI 1010.04 (Reference (w)) and DoDI 1010.09 (Reference (x)). The programs must include provisions for employee privacy, confidentiality, counseling, and supervisory training. In accordance with Reference (x), testing of foreign national NAF employees stationed outside the United States will be conducted only as authorized by and consistent with intergovernmental and labor agreements negotiated on a country-to-country basis.

16. EMPLOYEE WELLNESS AND EAP

a. The DoD Components will support wellness and EAP services for NAF employees.

b. Wellness programs promote a healthy lifestyle, such as physical activity, nutrition, healthy choices, and prevention approaches to health care. Per Deputy Secretary of Defense Memorandum (Reference (y)), employee wellness, satisfaction, and engagement initiatives are clear indications of the value placed upon the entire workforce.

c. EAP services, whether in-house or contracted out to third-party administrators, provide a variety of programs to help employees in identifying, coping, and resolving daily life problems (e.g., alcohol and drug abuse, marriage and family issues, and financial and legal concerns). These services also assist local management in addressing resulting employee conduct and job performance problems.

17. WAGE GARNISHMENT

a. NAF employees are subject to the garnishment rules of section 659 of Title 42, U.S.C., (Reference (z)) and section 5520a of Reference (e). U.S. Office of Personnel Management (OPM) implementing regulations, parts 581 and 582 of Reference (g), apply to Executive Branch employees. Additional information on wage garnishment and debt collection by offset is found in section 2 of Enclosure 3 of Volume 1405 of this instruction.

b. Public Law 104-193 (Reference (aa)) established a Federal Case Registry and National Directory of New Hires to track parents who are delinquent with child support payments. Section 653 of Reference (z) requires employers to report employment and payroll information to facilitate the enforcement of child support obligations. DoD Component NAF payroll offices submit this information to the Defense Manpower Data Center (DMDC), a component of DoDHRA. The DMDC, in turn, transmits the information to the Federal Parent Locator Service, a database maintained by the U.S. Department of Health and Human Services.

18. INCENTIVE AWARDS AND RECOGNITION PROGRAMS

a. Recognizing that NAF employees at all levels share responsibility and credit for the efficient and economical operations of the activity in which they are employed, incentive awards programs will be established to the extent feasible, and within the resources available. The DoD Components will issue written criteria and procedures for the purposes of recognizing employees' dedicated service and high quality work performance. The DoD Components will:

(1) Ensure their award spending reinforces the DoD's culture of high performance and frequent recognition.

(2) Monitor such spending to ensure they recognize high performance with meaningful awards.

b. Awards and recognition may be granted to employees as individuals or as members of a team. Awards recognize, for example, superior accomplishments, productivity gains, length of service, suggestions, special acts or services, or sustained performance.

c. For a NAF payband employee, a monetary award may be a pay increase based on the employee's performance rating. Performance-based monetary awards for employees in payband level NF-6 are paid in accordance with Appendix 1 to Enclosure 3 of Volume 1405 of this instruction.

d. NAF employees may receive honorary awards, including those established in accordance with Volume 451 of this instruction. Honorary awards may be granted independently or in addition to other awards.

e. NAF employees may receive time-off awards, commensurate with contributions and accomplishments. Time-off awards will not be transferred between the DoD Components and do not move with an employee to an appropriated fund position. The DoD Components may establish policy prohibiting the transfer of time-off awards between NAFIs within the DoD Component.

19. BBA. The DoD Component heads, or designees, establish the types and numbers of positions and determine when such positions will be filled, vacated, or abolished. The DoD Components will establish procedures that are consistent with the BBA procedures published in the Appendix to this enclosure when reducing staff levels due to changes in business revenue, budget, workload, re-organization, or mission. A BBA appeal can only be accepted when the employee alleges that BBA processes or procedures were not properly applied.

20. REEMPLOYMENT PRIORITY LIST (RPL)

a. General

(1) Each NAF Human Resources Office (HRO) servicing a NAFI that separates employees by BBA must establish and maintain an RPL to provide placement assistance to those separated by BBA.

(2) Separated employees will have priority placement rights in the NAFI from which separated and priority consideration and referral rights at other NAFIs in the local commuting area.

(3) Each servicing HRO is responsible for communicating an RPL registrant's information to other NAFIs within the commuting area, including those NAFIs operated by a different DoD Component.

(4) The servicing HRO must offer priority placement in the NAFI to qualified RPL candidates before creating an external vacancy announcement.

b. Eligibility. Reemployment priority list registration is limited to employees covered in accordance with the BBA procedures described in the Appendix to this enclosure.

c. RPL Eligibility Notice. An employee who is separated by BBA, or per specific notice of a BBA separation, will be advised of his or her RPL registration eligibility.

d. RPL Registration. An employee registers for the RPL by submitting an employment application or other application document(s) required by the NAFI. Registration for the RPL may commence as soon as an employee is given an official BBA notice of separation. The employee must register for the RPL not more than 30 calendar days from the separation date.

e. Removal from the RPL. A registrant will remain on the RPL until:

(1) He or she accepts a continuing DoD NAF position in the Regular employment category, or an appropriated fund career, career-conditional, or excepted service appointment without time limit in any agency;

(2) He or she declines an offer of a position in the same commuting area that is at least comparable (i.e., equivalent grade or payband level, employment category, and work schedule) to the position from which separated; or

(3) One year from the date of separation, whichever comes first.

f. RPL Relationship to Other Preference Programs. Hiring a former NAF employee according to the provisions of the RPL program is a non-competitive recruitment action. Therefore, placement priority takes precedence over other preference programs described in Volume 1403 of this instruction, including military spouse preference.

g. Priority Placement Rights. An individual on the RPL will be offered employment in a vacant position in the same NAFI from which he or she was separated if:

- (1) Management is filling a vacancy by other than detail or position change (i.e., promotion, demotion, or reassignment).
- (2) The position is in the same or lower employment category as the position from which separated.
- (3) The position is in the same or lower grade or payband level as the position from which separated.
- (4) The position is at the same work schedule as the position from which separated.
- (5) The servicing HRO determines the individual is qualified for the vacant position.

h. Priority Consideration and Referral

(1) Reemployment priority list registrants will also be offered priority consideration and referral for NAF jobs at other NAFIs (other than the NAFI from which separated, to include NAFIs in a different DoD Component) within the commuting area if:

- (a) Management is filling a vacancy by other than detail or position change (i.e., promotion, demotion, or reassignment).
- (b) The position is in the same or lower employment category as the position from which separated.
- (c) The position is in the same or lower grade or payband level as the position from which separated.
- (d) The position is at the same work schedule as the position from which separated.
- (e) The servicing NAF HRO determines the individual is qualified for the vacant position.

(2) Priority consideration and referral does not mean that the registrant must be selected. The selecting official is only required to consider the priority candidate before considering other non-priority candidates. This process may include referring an RPL registrant's information to the selecting official before other non-priority candidates, or including the RPL registrant as a candidate on the standard selection certificate indicating his or her RPL priority status.

(3) There is no DoD-wide requirement for a selecting official to provide justification when non-selecting a registrant with a "priority consideration and referral" classification.

However, the DoD Components are encouraged to ensure that selection and non-selection decisions are documented appropriately during the recruitment process.

21. DISCIPLINARY ACTIONS

a. Management officials take disciplinary actions for cause (i.e., to address, deter or correct misconduct). Discipline is timely, progressive where applicable, and used to promote the efficiency of Federal Government service. Examples of misconduct are to include, but are not limited to, tardiness, false statements, disrespectful behavior, absence without leave, insubordination, workplace violence, and theft. The provisions for dealing with conduct issues depend on the severity of the misconduct. Corrective actions range from less consequential remedies such as oral admonishments and letters of reprimand, up to the most severe, separations for cause.

b. Although a written reprimand becomes a part of an employee's official personnel folder (unlike a supervisor's personal memo making note of an oral admonishment), its placement is generally temporary. A reprimand is removed, as determined by the respective DoD Component procedures or, where applicable, the terms of any collective bargaining agreement.

c. More serious corrective actions, taken for cause, become a permanent part of an employee's employment record. These management-initiated personnel actions may place an employee in a non-pay, non-duty status (suspension); reduce an employee's basic pay or level (demotion); or separate the employee from employment.

d. Certain actions are considered non-disciplinary by nature. Examples include separations based on performance, resignation, or change to a lower pay or grade level when voluntarily initiated by an employee; application of a revised prevailing rate schedule when there is no change to the position; separations for abandonment of position; and BBA.

e. The DoD Components will develop and issue internal procedures for processing and effecting disciplinary actions.

(1) Effecting disciplinary personnel actions, as prescribed by the DoD Components' processes, for suspensions, demotions, and separations for cause will include procedures for advance notice of the proposed action to the employee where applicable; reasonable time to review the materials relied upon to support the action and an opportunity to reply; and a written decision. An exception to these procedures are separation actions taken for Regular employment category employees serving on a probationary period and Flexible employment category employees.

(2) Regulations may prescribe a range of disciplinary remedies to assist in consistent and equitable treatment across the workforce (e.g., a table of offenses and prescribed penalties).

(3) When a labor organization has exclusive recognition, the negotiated disciplinary process in the union agreement will govern for the applicable bargaining unit employees.

(4) The DoD Components will track and maintain employee disciplinary action records and files in compliance with applicable laws, regulations, and records retention schedules.

f. Programs using alternative approaches to traditional disciplinary methods may be established (e.g., a “last chance agreement” that provides an employee an opportunity to voluntarily admit to the misconduct and commit to future improvement).

g. Misconduct Governed by Statute

(1) Section 2784 of Reference (o) requires penalties for the misuse or abuse of DoD government charge cards. Additionally, section 1909 of Title 41, U.S.C. (Reference (ab)) requires appropriate adverse personnel actions, including dismissal, for government employees who violate requirements for the use of purchase cards. The DoD Components are required to establish procedures to deal with employees’ improper, fraudulent, or abusive use of government purchase cards and government travel charge cards. A sample range of suggested penalties for charge card offenses is contained in DUSD(CPP) Memorandum (Reference (ac)).

(2) Per enactment of section 552 of Public Law 109-364 (Reference (ad)) and in accordance with General Counsel of the Department of Defense Memorandum (Reference (ae)), DoD civilian employees, including NAF employees, are subject to Uniform Code of Military Justice jurisdiction during a declared war or a contingency operation when accompanying the Military Services in the field. Employee misconduct may result in disposing of an offense in accordance with the Manual for Courts-Martial (Reference (af)).

(3) NAF employees who are working in positions requiring possession of firearms or ammunition are subject to section 922 of Title 18, U.S.C., also known as the “Domestic Violence Misdemeanor Amendment (Lautenberg Amendment) to the Gun Control Act of 1968” (Reference (ag)). Employees are required to disclose to management if they have a qualifying conviction of domestic violence. Providing false information will result in disciplinary action, to include separation from Federal Government employment.

h. Disciplinary Actions Against Supervisory Staff for Retaliation Against Whistleblowers. DoD Components will administer disciplinary action against supervisory staff who take or fail to take an action against an employee in violation of Sections 2302(b)(8), (b)(9), or (b)(14) of Reference (e).

(1) For supervisory staff that commit a first offense in violation of the whistleblower protection standard, the minimal penalty will range from a 3-day suspension up to and including removal from Federal service.

(2) Supervisory staff that commit a second or subsequent offense in violation of the whistleblower protection standard will be considered for removal.

22. DISCIPLINARY ACTION TRACKING. NAF employers will use their human resources information systems to track:

- a. Disciplinary actions taken for misconduct related to government charge cards.
- b. The number and type of all other disciplinary actions taken against NAF employees, including:
 - (1) Placement in a non-pay, non-duty status (suspension);
 - (2) Reduction in level (demotion); or
 - (3) Separation from employment.
- c. Disciplinary actions taken against supervisory staff for misconduct based on retaliation against whistleblowers.

23. ADMINISTRATIVE GRIEVANCES

a. General

(1) Grievances are requests for relief from matters in dispute, concern, or dissatisfaction that are within the control of management. There are certain limitations as stated in paragraph 23.c. of this enclosure. Examples of actions that may be grieved include one's performance rating, certain payband classifications as specified in Volume 1407 of this instruction, separation based on unsatisfactory performance, personnel actions taken for disciplinary reasons, dissatisfactions with working conditions, and employee suitability and fitness determinations.

(2) In order to provide an avenue of redress if denied employment due to unsatisfactory suitability and fitness, DoD Component administrative procedures will provide an NAF applicant, even if not an active employee, the opportunity to grieve the determination through the local HRO or as determined by the Component.

(3) Employees, and NAF applicants if applicable, have the right to present a grievance to management free from restraint, interference, coercion, discrimination, or reprisal. The remedy sought by the grievant must be personal to the employee or applicant and may not include a request for disciplinary or other action affecting another employee.

(4) DoD NAF employees are covered by Executive Order 11478 (Reference (ah)), which prohibits employment discrimination based on an individual's status as a parent. As this form of discrimination is not enforced by the EEOC, it is not processed through that complaints process. NAF employee claims of employment discrimination based on status as a parent may be filed in accordance with the DoD Component's grievance procedures.

(5) The DoD Components will track and maintain administrative grievance records and files in compliance with applicable laws, regulations, and records retention schedules.

b. Procedures. For grievances not resolved at the informal levels, the DoD Components will establish internal administrative procedures for the prompt and equitable resolution of grievances. This will include specified time limits (e.g., timely filing by the grievant(s) as well as timely management consideration, attempts to resolve, and responses) for processing the grievance case. Specific procedural stages will include, but are not limited to: informal problem-solving, initial management response, fact finding and investigation, and final decision by a deciding official. Additionally, DoD Component procedures will comply with the following:

(1) Whenever appropriate, all parties are encouraged to discuss and resolve disputes informally at the lowest levels. Policies regarding alternative dispute resolution techniques are addressed in DoDI 5145.05 (Reference (ai)). These practices are designed to help parties resolve conflicts as an alternate to administrative proceedings and adjudication. They include problem solving, mediation, facilitation, conciliation, and third-party settlements.

(2) A representative, designated in writing, may accompany a grievant in the administrative grievance process. As determined by management, the choice of representative may be denied if it results in a conflict of interest or position. Costs associated with the representation will be borne by the employee or applicant. Employees must be permitted a reasonable amount of official duty time, if otherwise in a duty status, to present grievances and to communicate with management and the servicing NAF HRO.

(3) A designated deciding official will be assigned at an organizational level higher than the employee(s) involved in the grievance (unless the deciding official is the head of a DoD Component, installation, or activity) or at an organizational level not having a direct interest in the matter being grieved. The deciding official may designate an impartial third-party to examine the grievance; conduct fact finding; and, when authorized, make recommendations concerning its disposition. The final decision authority for administrative grievances will terminate within the respective DoD Component.

c. Disputes Not Processed in Accordance with the Administrative Grievance Process

(1) When a labor organization has exclusive recognition, the negotiated process in the union agreement will govern the grievance procedures for the applicable bargaining unit employees.

(2) In accordance with section 847.107 of Reference (g), an individual whose rights or interests under the Civil Service Retirement System (CSRS) or Federal Employee Retirement System (FERS) are affected by the employing agency's decision regarding eligibility to make a retirement portability of benefits election will not be reviewed under employee grievance procedures. The exclusive remedy for review of those agency decisions rests with the U.S. Merit Systems Protection Board (MSPB).

(3) Crafts and trades classification appeals are processed in accordance with Volume 1407 of this instruction and subchapter 7 of the OPM Operating Manual (Reference (aj)).

(4) Non-grievable actions will be specified in the DoD Component's administrative grievance procedures. Actions considered non-grievable under administrative procedures include, but are not limited to:

- (a) The content of published, higher authority policy.
- (b) Separation of a Regular category employee during the probationary period.
- (c) Separation of a Flexible category employee.
- (d) Content of performance standards.
- (e) Granting or not granting an incentive award.
- (f) Termination of a temporary promotion.
- (g) Informal disciplinary counseling and oral admonishments.
- (h) Non-selection from a properly constituted job referral list.
- (i) Matters subject to, or that the employee or applicant has also raised in, other dispute resolution procedures (e.g., EEO discrimination complaints, IG complaints, and BBA appeals).

24. MSPB JURISDICTION. NAF employees possess no MSPB appeal rights for actions such as separations for cause and unfavorable suitability determinations. However, statutes do authorize MSPB review for NAFIs in the following situations:

a. Appeals related to CSRS and FERS retirement portability elections, as discussed in paragraph 23c(2) of this enclosure.

b. Complaints regarding violation of employment rights in accordance with chapter 43 of Title 38, U.S.C., also known as the "Uniform Services Employment and Reemployment Rights Act of 1994" (Reference (ak)).

APPENDIX TO ENCLOSURE 3

BBA

1. GENERAL

a. BBAs allow NAFIs to make necessary workforce adjustments to streamline operations and improve efficiencies. A BBA is used to adjust resources in response to changes in business revenue, budget, workload, organization, or mission. A BBA may also be used when there is a lack of funding, transfer of function, dissolution of a NAFI, privatization of function, or closures due to construction or renovations.

b. BBAs are not used to address an employee's performance or conduct deficiencies.

c. Employees are affected by a BBA only if so identified after an objective, fair, and equitable ranking against other employees in the same employment category and group of affected positions.

d. Thoughtful and careful BBA planning is important not only to ensure policy compliance but also to help minimize the adverse effect of workforce restructuring. BBAs that result in the reduction of employees' working hours from full-time to part-time, or in a change in employment category from Regular to Flexible, could affect employees' eligibility for benefits such as annual and sick leave, insurance coverage, and retirement benefits.

e. BBAs involving the conversion of civilian work to contract performance should take into consideration USD(P&R) Memorandum (Reference (al)) which provides clarification regarding section 2461 of Reference (o).

2. COVERAGE

a. Regular category employees who have completed a probationary period, as defined in Volume 1403 of this instruction. This includes Regular category employees serving in a supervisory or managerial probationary period, provided they completed a qualifying probationary period before the supervisory or managerial assignment.

b. Flexible employment category employees who have been on the rolls of the NAFI conducting the BBA for at least 3 continuous years. Flexible employees are not covered by BBA furlough procedures.

3. EXCLUDED FROM COVERAGE

- a. Regular category employees currently serving an initial probationary period.
- b. Employees with less than satisfactory performance ratings.
- c. Flexible category employees who have been on the rolls of the NAFI conducting the BBA for less than 3 continuous years. A change in a Flexible category employee's work schedule is not covered by BBA procedures.

4. TYPES OF BBAs

- a. Reduction in Rate of Pay. Such actions could result from reorganization, realignment of workload, elimination of duties or responsibilities from a position, lack of funds, or from a need to be competitive with pay in other organizations or the local labor market.
- b. Furlough of a Regular Category, Non-Probationary Employee. Furlough occurs when an organization must reduce costs as a result of downsizing, lack of funding, diminished work, or change in revenues. This may be due to closure of activities because of renovations, constructions, or a government shutdown due to lack of funding appropriation. Furloughed employees are placed in a non-duty, leave-without-pay status for the furlough period. Furloughs may be implemented on the basis of consecutive days, 30 days or less, or on an intermittent basis, such as 1 or 2 days a week or in a pay period. An employee may be placed on an extended furlough only when the DoD Component plans to recall the employee to his or her position within 1 year. A furlough may not exceed 1 year.
- c. Change to Lower Grade or Payband Level. This reduction could result from a restructure due to technology implementation, change in position responsibilities, or change in business scope.
- d. Change from Regular Category to Flexible Employment Category. A change from the Regular employment category to the Flexible employment category could result from such business needs as reorganization, realignment of workload, change in workload, or change in revenues.
- e. Change from a Regular Full-Time Work Schedule to a Regular Part-Time Work Schedule. This reduction in the number of regularly scheduled hours results in an employee in the Regular employment category being changed from a full-time status to a part-time status.
- f. Separation. This results in removal from the rolls of the employing NAFI.

5. BBA CONSIDERATION FACTORS. Before resorting to BBAs, careful planning is necessary to lessen adverse effects, prepare employees, and to avoid administrative and morale problems. It is important to consider whether the cause of the reduction or realignment is a temporary or permanent situation. Other initiatives that may be considered before BBAs are:

- a. Hiring freeze.
- b. Freezing of promotion actions.
- c. Reassignment to vacant positions in other business units.
- d. Limiting conversions of Flexible category employees to Regular category status.
- e. Separating Flexible or Regular category employees during probationary period.
- f. Providing retirement incentives to encourage employees to retire voluntarily.
- g. Reducing employees' work hours at their request.
- h. Reducing Flexible category employees' hours.
- i. Reducing hours of operations during non-peak periods.

6. PLANNING A BBA

- a. Identify the Competitive Area (CA) subject to the BBA.
- b. Identify employees in the CA who are serving or returning from uniformed service and who must be accorded retention protection in accordance with part 353 of Reference (g).
- c. Identify employees in the CA who are away from work receiving workers' compensation benefits.
- d. Ensure employees' performance ratings are current.
- e. Prepare a communication plan that includes effective employee counseling regarding employee benefits and placement assistance program.
- f. Identify management officials authorized to implement the BBA and decide BBA appeals.

7. BBA PROCEDURES

a. Determining the CA. The designated DoD Component authorizing official identifies the BBA CA based upon the DoD Component needs. The CA may be established for the entire NAFI, business unit, functional level, or activity. It must be defined and published in DoD Component or installation policies for all employees and managers. The CA may be limited to a functional grouping of employees in an occupational series, grade, or pay level. Establishment or change in the CA must be done at least 30 days before implementing a BBA.

b. Determining Affected Employees. Covered employees must be ranked to determine the order in which they will be affected (unless all employees will be equally affected, such as in the case of separation due to base closure) by the BBA. Ranking is also not required if there is only one employee in the respective competitive area with a particular title, series, and grade or band to be affected. The ranking process must include performance and seniority (length of creditable service).

c. Determining the Performance Criterion. Performance will be the primary criterion for the BBA. At a minimum, performance ratings from an employee's last two annual performance periods must be used, if available. The most recent rating must be at least 30 days old at the time the official BBA notice is issued. If there is only one performance rating available, then it must be used. If there is no rating, then a rating must be issued and used. The DoD Components may also use the equivalent rating of record, consistent with the requirements of Enclosure 3 of Volume 1404 of this instruction, for covered employees who transferred from another NAFI.

d. Determining Other Criterion. A NAFI may establish additional BBA criteria and clearly define the ranking process using the added criterion.

e. Determining Creditable Service for BBA Purposes. This includes:

(1) All DoD NAF service as a Regular category employee in one or more DoD NAFIs.

(2) Permanent DoD civil service employment of an employee who moved between a DoD civil service and a DoD NAF position on or after January 1, 1966 without a break-in-service of more than 3 days.

(3) DoD NAF service as a Flexible category employee, providing the service was over at least 3 continuous years in the NAFI implementing the BBA.

f. Determining Employee Benefits and Entitlements. Employees affected by a BBA will be provided with information regarding changes in employment, benefit programs, and entitlements. Employees may be eligible for the following benefits depending on the type of BBA:

(1) Lump sum annual leave pay out.

(2) Compensatory time off pay out.

(3) Severance pay based on creditable service per Volume 1405 of this instruction.

(4) Placement assistance.

(5) Unemployment compensation.

(6) Annual leave to reach eligibility for optional or normal retirement and health benefits in accordance with the provisions of Volume 1408 of this instruction.

(7) Temporary continuation of health benefits coverage in accordance with the provisions of Volume 1408 of this instruction. Furlough is considered leave without pay for benefits coverage.

8. PROHIBITED NOTICE PERIOD. BBA notices of separation, other than for cause, must not be issued or made effective on or between December 15 and January 3.

9. NOTIFICATION REQUIREMENT.

a. Announcing certain BBA separations, closure of installations, and realignments outside the local commuting area, as described in this section, will be coordinated and cleared within DoD before public notification of actions or release of information outside DoD.

b. The DoD Components will accomplish coordination and notification consistent with the requirements in Volume 351 of this instruction. The DoD Component will coordinate any proposed report to Congress with the USD(P&R), through the DASD(CPP), before submission to Congress if the BBA meets any of the following criteria:

(1) A BBA that proposes the involuntary separation of 50 or more employees during a fiscal year at an installation, facility, or activity.

(2) Any BBA related to base realignment and closure.

(3) Any BBA separation that is likely to be of special interest to Congress or the public. BBA separations that are likely to be of special interest to Congress or the public cover a variety of situations such as heavy union involvement, considerable interest to the impacted community, involvement of a variety of special interest groups, and other similar instances. DoD Components may need to consult with the Defense Civilian Personnel Advisory Service to determine if a particular BBA separation meets this criteria.

(4) Realignment of 50 or more NAF employees outside the local commuting area that may result in a BBA or in involuntary separations.

10. BBA APPROVAL AUTHORITY. The DoD Component heads are authorized to approve BBAs. Approval authority may be re-delegated in writing to the lowest practical managerial level when the BBA will result in separation of fewer than 50 NAF employees or is necessitated by actions of a base realignment and closure.

11. ADVANCE BBA NOTICE

a. The Table describes the minimum advance notice periods for employees covered by BBA procedures. The minimum advance notice periods differ between Regular and Flexible category employees and whether the BBA is a separation or not. Advance notice will be in writing.

Table. BBA Minimum Advance Notice Periods

EMPLOYMENT CATEGORY	*MINIMUM NOTICE PERIOD	
	Non-Separation	Separation
Regular	7 days	30 days
Flexible Employees must have been on the NAFI's rolls for 3 years. Flexible employees are not covered by BBA furlough procedures.	24 hours	7 days
*When emergency conditions occur (e.g., breakdown of equipment or other situations requiring suspension of operations, government shutdown due to lack or loss of funding, or an unanticipated reduction in business such as occurs with a sudden deployment of troops), no advance notice is required. However, NAFIs must make every effort to provide a minimum of 24 hours advance notice. If advance notice of the action is not possible, NAFIs will provide written notice as soon as possible after the action.		

b. The notice must contain:

- (1) Employee's position title, series, grade or payband level, and rate of pay.
- (2) Description of the BBA and the reason for the action.
- (3) Statement that the action taken is non-disciplinary.
- (4) Advice on severance pay entitlement, if applicable.
- (5) Advice on loss of benefits, if applicable.
- (6) Information on claiming unemployment compensation, if applicable.
- (7) An explanation of the employee's right to appeal, including how, where, and to whom to send the appeal and the applicable time limits.
- (8) Additional information required if the action is separation:
 - (a) Statement that the action does not preclude reemployment.

(b) Information on the placement assistance available through a reemployment priority list in accordance with section 17 of Enclosure 3 of this volume.

(c) Information regarding hiring preference for certain contractor jobs, if applicable, in accordance with Volume 1417 of this instruction.

(d) Information about civilian assistance benefits and eligibility in accordance with Volumes 1702 and 1417 of this instruction.

(e) Information on eligibility for Civil Service positions for 1 year from date of separation, in accordance with the terms of the DoD/OPM Interchange Agreement described in Volume 1403 of this instruction.

12. BBA FILE. The file must contain the determination of the ranking order in which employees were adversely affected. Subject to the provisions of section 552a of Reference (e), also known as “The Privacy Act of 1974,” the BBA file will be made available for review upon request only by an affected employee or by those whose official duties require access. The BBA file must include:

- a. Management or authorizing official’s statement describing the business case that necessitated the action, accompanied by the proper supporting documents.
- b. Process used to determine the order of the BBA.
- c. Listing of the names of all employees included in the BBA and the actions taken on each.
- d. Copies of the written notices to affected employees.
- e. Copies of the procedures used at the time of the BBA.
- f. Record of any appeals.

13. APPEALS OF BBAs

a. General. Covered employees have a right to appeal within 7 days after the effective date of the BBA if they believe BBA regulations and procedures were not properly applied. Management decisions regarding the budget, workload, organization and mission are reserved to management and are not appealable. If an employee alleges that the action resulted from an act of discrimination or reprisal (i.e., whistleblowing), the action may only be contested through the appropriate DoD Component EEO discrimination or retaliation complaint procedure (e.g., EEO and OIG DoD).

b. Representation. An employee may be accompanied, represented, and advised by a representative of his or her own choosing, provided the person is willing and free to do so. The employee must designate his or her representative in writing and provide the designation to the first stage deciding official. The representative's service must not result in a conflict of interest as determined by the installation commander. All costs for the representative will be borne by the appealing employee.

c. Use of Official Time. The employee, and his or her designated representative, may use reasonable amounts of official duty time to prepare and present appeals. The scheduling of the use of official time is subject to supervisory determination, taking into account the NAFI's mission requirements.

d. "Made Whole" Provision. An appeals decision in favor of an employee requires that the employee be "made whole." However, if it is clear that the same action would have been taken against the employee if the regulatory or procedural error had not been made, the "made whole" provision does not apply.

14. BBA APPEAL PROCEDURES. The DoD Components must make every effort to resolve appeals promptly and fairly at the lowest managerial level possible. Appeals procedures must be in writing, clearly communicated to the NAF workforce, and include information on how and where employees are to submit appeals.

a. First Stage.

(1) First stage BBA appeals must be submitted in writing, not later than 7 days after the effective date of the BBA, to the lowest level of management that is authorized to grant relief.

(2) The DoD Component must provide a written decision to the employee within 7 days of receipt of the BBA appeal.

(3) The management decision must summarize the issue, the consideration given, and advise the employee of the right to seek relief at the next stage within 7 days from the date of receipt of the decision.

(4) The decision notification will identify the designated management official who will decide the second stage appeal.

b. Second Stage.

(1) Second stage BBA appeals must be submitted in writing not later than 7 days from the date of receipt of the first stage decision.

(2) The second stage deciding official must be at a level above the official who considered the appeal at the first stage. Upon receipt of the appeal, the second stage reviewing

official may designate an impartial third-party to review the facts and make a recommendation to the deciding official.

(3) A written decision must be provided to the employee within 45 days of receipt of the second stage appeal. The decision must summarize the issue and the consideration given.

(4) There is no further review or appeal above this level for covered Flexible category employees.

(5) The DoD Component must advise Regular category employees of:

(a) The right to request a review of the written appeal record by a level above the installation commander or principal management official.

(b) How, where, and to whom to file the request.

(c) Time limits for filing.

c. Third Stage (Applies to Regular Category Employees Only)

(1) The third stage reviewer must be at a level above the installation commander or principal management official.

(2) The third stage reviewer must make a final decision, based on the written record, within 30 days of receipt of the appeal.

(3) There is no further review or appeal above this level, either within the DoD Component or DoD.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

ASD(M&RA)	Assistant Secretary of Defense for Manpower and Reserve Affairs
BBA	business based action
CA	competitive area
CSRS	Civilian Service Retirement System
DASD(CPP)	Deputy Assistant Secretary of Defense for Civilian Personnel Policy
DMDC	Defense Manpower Data Center
DoDHRA	Department of Defense Human Resources Activity
EAP	employee assistance program
EEO	equal employment opportunity
EEOC	Equal Employment Opportunity Commission
FERS	Federal Employee Retirement System
HRO	Human Resources Office
IG	inspector general
MSPB	Merit Systems Protection Board
NF	NAF White-Color Occupational Category Payband
NAF	nonappropriated fund
NAFI	nonappropriated fund instrumentality
OIG DoD	Office of the Inspector General of the Department of Defense
OPM	Office of Personnel Management
RPL	reemployment priority list
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 purposes of this instruction.

appropriated funds. Defined in section 010202 of DoD 7000.14-R (Reference (am)).

award. A monetary or non-monetary recognition for deserving employees or team achievements that contribute to or improve the efficiency of operations.

BBA. A reduction in employment category or pay rate, a furlough, or separation action initiated by management for non-disciplinary reasons.

CA. A NAFI business unit established before conducting a BBA – used to identify and rank employees in the same employment category and positions.

day. A calendar day.

employment category. Regular or Flexible employment category, as described in Volume 1403 of this instruction.

Flexible employment category. Defined in Volume 1403 of this instruction.

furlough. Placement of a Regular category employee in a temporary non-duty, leave-without-pay status because of lack of work, funds, or other non-disciplinary reasons.

last chance agreement. A signed contract between an employee and the employing activity used as an alternative approach to discipline. Typically, the employer offers to hold disciplinary action in abeyance while the employee, by complying with the terms of the agreement, is given one final opportunity to demonstrate appropriate conduct.

local commuting area. Defined in Volume 351 of this instruction.

made whole. To place the employee back into the position as if the BBA regulations and procedures had not been improperly applied. This may include restoration to duty, pay, and benefits rights, as applicable.

NAF. Defined in section 010213 of Reference (am).

NAF employee. Defined in section 2105 of Reference (e).

NAFI. Defined in section 010214 of Reference (am).

partisan political office. Defined in section 7322 of Reference (e).

probationary period. Defined in Volume 1403 of this instruction.

Regular employment category. Defined in Volume 1403 of this instruction.

reprimand. Written communication from management to an employee that identifies unacceptable conduct. A reprimand serves as official documentation of the misconduct and that its continuation may subject the employee to further disciplinary action.

time-off award. An incentive award in which time-off from duty is granted without loss of pay or charge to leave and for which the number of hours granted is commensurate with the employee's contribution or accomplishment.

work schedule. Full-time or part-time, as defined by the DoD Component for NAF positions.

workplace violence. Violent acts directed toward a person at work or on duty (e.g., physical assaults, threats of assault, harassment, intimidation, or bullying).