DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 1920.6C CH-4
ASN(M&RA)
20 September 2011

SECNAV INSTRUCTION 1920.6C CHANGE TRANSMITTAL 4

From: Secretary of the Navy

Subj: ADMINISTRATIVE SEPARATION OF OFFICERS

Encl: (1) Revised Pages 1 and 3 to the Basic Instruction
(2) Revised Enclosure (1)
(3) Revised Pages 4, 5, 6 and 8 of Enclosure (3)
(4) Revised Pages 1, 7 and 10 of Enclosure (4)
(5) Revised Page 10 of enclosure (8)

1. Purpose. To transmit changes per the repeal of section 654 of title 10, United States Code, "Don't Ask, Don't Tell." A complete revision to this instruction will be issued at a later date.

2. Action

a. Remove pages 1 and 3 of the basic instruction and replace with enclosure (1) of this change transmittal.

b. Remove enclosure (1) of the basic instruction and replace with enclosure (2) of this change transmittal.

c. Remove pages 4, 5, 6 and 8 of enclosure (3) of the basic instruction and replace with enclosure (3) of this change transmittal.

d. Remove pages 1, 7 and 10 of enclosure (4) of the basic instruction and replace with enclosure (4) of this change transmittal.

e. Remove page 3 of enclosure (5) of the basic instruction.

f. Remove page 10 of enclosure (8) of the basic instruction and replace with enclosure (5) of this change transmittal.

g. Remove enclosure (9) of the basic instruction.

3. Records Management. Records created as a result of this change transmittal, regardless of media and format, shall be managed per Secretary of the Navy Manual 5210.1 of November 2007.

JUAN M. GARCIA III
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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SECNAVINST 1920.6C CH-3
ASN(M&RA)
19 August 2010

SECNAV INSTRUCTION 1920.6C CHANGE TRANSMITTAL 3

From: Secretary of the Navy

Subj: ADMINISTRATIVE SEPARATION OF OFFICERS

Encl: (1) Revised Pages 4 through 6 of Enclosure (3)
(2) Revised Page 1 of Enclosure (4)
(3) Revised Enclosure (9)

1. Purpose. To comply with revisions to reference (b) of the basic instruction. These revisions increase the seniority of the commander authorized to initiate inquiries and separation proceedings regarding homosexual conduct, revise what constitutes “credible information,” and provide further direction on the categories of information that cannot be used for purposes of homosexual discharges. Reference (b) revisions have been announced to the Navy and Marine Corps via All Navy Message (ALNAV) 025/10.

2. Action

a. Remove pages 4 through 6 of enclosure (3) and replace with enclosure (1) of this change transmittal;

b. Remove page 1 of enclosure (4) and replace with enclosure (2) of this change transmittal; and

c. Remove enclosure (9) and replace with enclosure (3) of this change transmittal.

JUAN M. GARCIA
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SECNAVINST 1920.6C CH-2
ASN(M&RA)PERS-83
22 February 2010

SECNAV INSTRUCTION 1920.6C CHANGE TRANSMITTAL 2

From: Secretary of the Navy

Subj: ADMINISTRATIVE SEPARATION OF OFFICERS

Encl: (1) Revised Page 4 of the Basic Instruction
(2) Revised Page 3 of Enclosure (1)
(3) Revised Page 16 of Enclosure (3)
(4) Revised Pages 34 through 39 of Enclosure (3)
(5) New Page 40 of Enclosure (3)
(6) Revised Page 1 of Enclosure (7)

1. Purpose

a. To revise military service obligation criteria for separation of Reserve officers by modifying paragraph 8 of the basic instruction. This will expand the number of possible exceptions to retaining officers in a commissioned status in order to fulfill the statutory service obligation, to include medical disqualification or failure to meet minimum qualifications for retention or mobilization.

b. To revise the number of years of commissioned time an officer remains in a probationary status, per changes in the National Defense Authorization Act 2008.

c. To revise language in subparagraphs 2b(5)(a) and 2b(5)(b) of enclosure (3), by moving the first clause of subparagraph 2b(5)(a) to subparagraph 2b(5)(b). This will allow separation of lieutenant junior grades (LTJGs) after two failures of selection as permitted by section 12645 of title 10, United States Code (U.S.C.), and allow retention of twice failed of selection lieutenants (LTs) until completion of the Military Service Obligation.

d. To change age limitations in subparagraphs 10a and 10b of enclosure (3), to coincide with current sections 14509, 14510, and 14703 language of title 10, U.S.C.

e. To delegate new transfer authority to Chief of Naval Personnel (CHNAVPERS) and Deputy Commandant (Manpower and

Reserve Affairs) (DC (M&RA)) per section 12641 of title 10, U.S.C., to transfer Individual Ready Reserve (IRR) officers to standby reserve-inactive status, when they cannot or will not return to a drilling status after set periods of time in the IRR. See new subparagraph 11e of enclosure (3).

f. To modify subparagraph 12b of enclosure (3), to allow separation of officers authorized in section 12683(b)(4) of title 10, U.S.C. Discharge would be permitted after notifying members per the provisions of paragraph 2 of enclosure (7) and allowing 30 days time following notification for reconsideration.

g. To add new paragraph 18 to define "Former Member" status.

h. To correct subparagraph 1d of enclosure (7) to apply notification procedures to subparagraph 12b of enclosure (3) vice paragraph 13 of enclosure (3).

2. Action

a. Remove page 4 from the basic instruction and replace with enclosure (1) of this change transmittal.

b. Remove pages 3, 16, and 34 through 39 of enclosure (3) from the basic instruction and replace with enclosures (2), (3), and (4), respectively, of this change transmittal.

c. Add enclosure (5) of this change transmittal as new page 40 to enclosure (3) of the basic instruction.

d. Remove page 1 of enclosure (7) from the basic instruction and replace with enclosure (6) of this change transmittal.

JUAN M. GARCIA
Assistant Secretary of
the Navy (Manpower and Reserve
Affairs)

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SECNAVINST 1920.6C CH-1
PERS-83
SEP 19 2007

SECNAV INSTRUCTION 1920.6C CHANGE TRANSMITTAL 1

From: Secretary of the Navy

Subj: ADMINISTRATIVE SEPARATION OF OFFICERS

Encl: (1) Revised page 1 and pages 3 and 39 of enclosure (3)

1. Purpose. To add an additional reference, update paragraph 1b(10) and insert new paragraph 17 to enclosure (3). The paragraph directly pertains to the administrative separation of chaplains. This paragraph was unintentionally left out of the current version of this instruction.

2. Action. Remove page 1 of the original instruction and pages 3 and 39 of enclosure (3) and replace with enclosure (1).

William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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SECNAVINST 1920.6C CH-4
ASN(M&RA)
15 Dec 2005

SECNAV INSTRUCTION 1920.6C

From: Secretary of the Navy

Subj: ADMINISTRATIVE SEPARATION OF OFFICERS

Ref: (a) 10 U.S.C.
(b) DoD Instruction 1332.30 of 11 Dec 2008
(c) SECNAVINST 1850.4E
(d) DoD Instruction 1336.01 of 20 Aug 2009
(e) OASD (Force Management and Personnel) Memo of 11 JAN 93 (NOTAL)
(f) SECNAVINST 5300.28E
(g) SECNAV M-5510.30 of Jun 2006
(h) Defense Officer Personnel Management Act (DOPMA), P.L. No. 96-513, 94 Stat. 2835 (1980)
(i) SECNAVINST 1412.8B
(j) SECNAVINST 1412.9B
(k) SECNAVINST 1420.1B
(1) DoD Directive 1304.19 of 11 Jun 2004
(m) SECNAVINST 1900.7G
(n) SECNAVINST 1000.7F
(o) DoD Instruction 1304.28 of 11 Jun 2004

Encl: (1) Definitions
(2) Policy Governing Voluntary Separation
(3) Policy Governing Involuntary Separation
(4) Guidelines on Separations For Cause
(5) Guidelines on Characterization of Service
(6) Guidelines on Recommendations - Grade at Retirement
(7) Notification Procedure
(8) Board of Inquiry Procedures

1. Purpose. To revise policies, standards, and procedures for the administrative separation of Navy and Marine Corps officers from the Naval Service per references (a) and (b). This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 1920.6B.

3. Effective Date

a. This instruction is effective immediately and shall control all administrative separation proceedings initiated on or after that date. Proceedings are considered to be initiated on the date a command receives a written request for separation from an officer, or on the date a command delivers to an officer a notice of intent to start separation proceedings.

b. Separation proceedings initiated prior to the effective date of this instruction will be continued under policy and instructions in effect prior to that date.

4. Applicability

a. Under the authority of references (a) and (b), this instruction provides for the discharge, termination of appointments, release from active duty, retirement for length of service, and dropping from the rolls of Navy and Marine Corps officers. The policies, reasons for separation, and provisions for characterization of service set forth in this instruction apply to all officers and warrant officers of the Regular and Reserve components of the Navy and Marine Corps.

b. This instruction does not apply to discharge or dismissal by reason of court-martial sentence under reference (a), or discharge or retirement for physical disability under reference (c).

5. Definition. Definitions and rules of interpretation used in this instruction are provided in enclosure (1).

6. Background. Once individuals have legally accepted a commission or warrant as a Regular or Reserve officer in the Navy or Marine Corps and have executed the oath of office, they have acquired a legal status that continues until it is terminated through a specific, legally authorized process. Neither retirement nor release from active duty affects an individual's status as a commissioned or warrant officer until the officer's commission or warrant has been terminated.

7. Policy. It is Department of the Navy (DON) policy to promote the readiness of the Naval Service by maintaining

authorized strength levels in each grade and competitive category and by maintaining the highest standards of conduct and performance in the officer corps. To meet these objectives, it is necessary to provide for orderly and expeditious administrative separation of officer personnel.

a. The administrative separation policies and procedures in this instruction will support accession, promotion, redesignation, retirement, and resignation policies to:

(1) maintain authorized strength in each competitive category and grade;

(2) ensure planned promotion flow and reasonable career opportunities in each competitive category;

(3) attain and maintain an all Regular active-duty career force in each competitive category, supplemented when necessary with Reserve officers to meet current authorized strength and special skills requirements; and

(4) sustain the traditional concepts of honorable military service and special trust and confidence placed in commissioned officers.

b. Officers being processed for separation for cause shall be processed expeditiously. Such officers should receive sufficient supervision to preclude adverse effects on the good order and discipline in their unit. Further, when local processing has been completed and separation has been recommended, the officer concerned shall be physically separated from the command whenever possible by means of leave, temporary reassignment, or other methods while processing is being completed by the chain of command.

c. Standards and procedures established in execution of these policies are intended to achieve consistency of application in a naval leadership system based on command responsibility, accountability, and discretion. The standards and procedures are set forth in enclosures (2) through (8), under guidance from references (a) through (n).

8. Completion of Statutory Service Obligation. Officers will normally be retained in a commissioned status in order to fulfill the

statutory service obligation referred to in section 651 of reference (a) and subparagraph 4a of enclosure (2). Exceptions to this general rule include, but are not limited to the following:

a. Officers who are or otherwise could be discharged from a Regular component for cause for any reason will normally not be tendered a Reserve commission and therefore will not be transferred to the Ready Reserve to fulfill their statutory service obligation.

b. Reserve officers on active duty who are or could otherwise be discharged for cause for any reason will normally not be transferred to or retained in the Ready Reserve to fulfill their statutory service obligation.

c. Reserve officers requiring separation because they are medically or otherwise unable to meet minimum qualifications for retention or mobilization, may be honorably discharged before completion of the statutory service obligation.

9. Separation Pay. Reference (m) governs entitlement to separation pay for officers who are involuntarily separated under the provisions of this instruction.

10. Processing Time Goals. To support policy objectives and further the efficient administration of officer separations, every effort shall be made to adhere to the following time goals for processing separations. Failure to process an administrative separation within the prescribed time goals shall not create a bar to separation or characterization. Separation processing should be completed:

a. by the date of fulfillment of service obligation for separations upon fulfillment of service obligation.

b. by the convening authority, 30 calendar days from the date a command notifies an officer of the commencement of separation proceedings in cases where no Board of Inquiry (BOI) is required.

c. by the convening authority, 90 calendar days from the date a command notifies an officer of the commencement of separation proceedings in cases where a BOI is required.

d. by the date granted in any extensions. Extensions must be approved in advance by the Show Cause Authority, based on a written request.

11. Establishing Additional Reasons for Separation. Should the need arise to separate officers for a reason not established in enclosures (2) or (3) of this instruction, the Chief of Naval Operations (CNO) and the Commandant of the Marine Corps (CMC) may propose to Secretary of the Navy (SECNAV), the establishment of a new reason for separation to be included in this instruction. Submission for such additional reasons shall contain the basis for separation, recommended characterization of service or description for the separation, and the procedure for the separation. Separation under any proposed reason will not be executed until the proposal has been approved.

12. Provision of Information During Separation Processing. During separation processing, the purpose and authority of the Discharge Review Board and the Board for Correction of Naval Records (BCNR) shall be explained in a fact sheet. It shall include an explanation that a discharge under Other Than Honorable conditions, resulting from a period of continuous unauthorized absence of 180 days or more, is a conditional bar to benefits administered by the Veterans Administration notwithstanding any action by a Discharge Review Board. These requirements are a command responsibility and not a procedural entitlement. Failure on the part of the member to receive or to understand the explanation required by this paragraph does not create a bar to separation or characterization.

13. Responsibilities

a. For all purposes under this instruction, with the exception of cases involving flag and general officers, the Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) is designated to act on behalf of SECNAV.

b. CNO and CMC are responsible for implementing the policies, standards, procedures and goals established in this instruction in a manner that ensures consistency in separation policy including revision or cancellation of conflicting guidance.

c. CNO and CMC shall ensure that only the specific reasons for separations provided in this instruction are used in classifying officer administrative separations. They shall also ensure that these specific reasons appear on appropriate copies of the officer's DD 214, Certificate of Release or Discharge from Active Duty, under reference (d) and are reported using the separation codes of reference (e). In all cases involving drug offenses, the applicable drug offense shall be shown.

d. The Chief of Naval Personnel (CHNAVPERS) and the Deputy Chief of Staff for Manpower and Reserve Affairs (DC (M&RA)) are designated as the Show Cause Authority for the Navy and the Marine Corps respectively, and are delegated the authority to review records to determine whether an officer should be required to show cause for retention in the Naval Service and to convene BOIs as provided in enclosure (8). CHNAVPERS may further delegate this authority to Commander, Navy Personnel Command (COMNAVPERSCOM) and Officers Exercising General Court-Martial Jurisdiction (OEGCMJ) with a Staff Judge Advocate (SJA) assigned. The CMC may further delegate this authority to the Director, Marine Corps Staff. Show Cause Authority may be further delegated within the Marine Corps to generals and lieutenant generals in command. Additionally, CHNAVPERS and DC (M&RA) are delegated the authority of approving Resignation/Discharge Orders and certificates in routine matters. CHNAVPERS may further delegate this authority to Commanding Officer, Naval Reserve Personnel Center (NAVRESPERSCEN).

14. Report. The reporting requirements contained in this instruction are exempt from reports control per SECNAVINST 5214.2B.

Distribution:
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DEFINITIONS

1. Active commissioned service. Service on active duty as a commissioned officer or commissioned warrant officer.

2. Active duty. Full-time duty in the active military service of the United States. This term includes full-time training duty, annual training duty, and attendance, while in the active military service, at a school designated as a service school by law or by SECNAV.

3. Active duty for training. Active duty for reserve training with automatic reversion to inactive duty upon completion.

4. Active-duty list. Separate lists of Navy and Marine Corps officers, required to be maintained by SECNAV under section 620 of reference (a) of all officers on active duty in the Navy and Marine Corps, other than officers described in section 641 of reference (a).

5. Active service. Service on active duty.

6. Active status. The status of a Reserve commissioned or warrant officer who is a member of the Ready Reserve or Standby Reserve-Active, including Reserve officers on the active duty list.

7. Board of Inquiry (BOI). A board convened under section 1182 or section 14903 of reference (a) to receive evidence and make findings and recommendations as to separation for cause and characterization of service for an officer.

8. Board of Officers. A board of at least three commissioned officers, appointed by CHNAVPERS or DC(M&RA), who are senior in grade to any officer being considered by the board, convened pursuant to reference (a) or this instruction. Such boards may be promotion boards reconvened for the particular purpose or may be convened separately under such regulations as CHNAVPERS or CMC may prescribe.

9. BOI report. Includes the BOI summarized record of proceedings (which includes verbatim transcript when directed by the show cause authority) and BOI findings and recommendations (results of the board).

10. Characterization of service. Classification of quality of service rendered.

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

12. Commissioned officer. An officer in any of the Military Services who holds a grade and office under a commission signed by the President, and who is appointed as a Regular or Reserve officer, other than a commissioned warrant officer or retired commissioned officer.

13. Commissioned service. All periods of service as a commissioned officer or a commissioned warrant officer in the Army, Navy, Air Force, or Marine Corps, while on active duty or in an active, inactive, or retired status.

14. Continuous active service. Military service, unbroken by any period in excess of 24 hours.

15. Controlled substance. A drug or other substance included in schedules I, II, III, IV, or V of the Comprehensive Drug Abuse Prevention and Control Act of 1970 (84 Stat. 1236) (NOTAL) as updated and republished under the provisions of that Act, as amended.

16. Convening Authority. SECNAV or his or her delegates authorized to appoint boards under this instruction.

17. Counsel. A lawyer qualified under article 27(b), Uniform Code Military Justice (UCMJ), or a civilian lawyer retained at the officer's expense.

18. Discharge. The termination of an officer's obligation to render service and complete severance from all military status.

19. Dismissal. Separation of a commissioned officer, effected by sentence of a general court-martial, or in commutation of such a sentence, or, in time of war, by order of the President,

or separation of a warrant officer who is dismissed by order of the President in time of war. A complete severance from all military status.

20. Drop from the rolls. A complete severance of military status under specific statutory authority, without characterization of service.

21. Legal advisor. A judge advocate certified per article 27(b), UCMJ, appointed to assist a BOI.

22. Non-probationary officer. A commissioned officer other than a probationary officer.

23. Probationary officer. A commissioned officer on the active duty list with fewer than 6 years of active commissioned service. A Reserve commissioned officer with fewer than 6 years of commissioned service. Regular warrant officers with fewer than 3 years and Reserve warrant officers, including those serving in the grade W-1, with fewer than 6 years of service as a warrant officer.

24. Qualified resignation. A resignation for which the least favorable characterization of service allowed is General (Under Honorable Conditions).

25. Release from active duty. The transfer of a Reserve officer from active duty to inactive duty.

26. Reserve Active-Status List (RASL). Each of the separate lists required to be maintained under section 14002 of reference (a) for the Navy and Marine Corps Reserve which shall include the names of all Reserve officers of each armed force except warrant officers (including commissioned warrant officers) who are in an active status and are not on an active-duty list.

27. Resignation. The request, by officers, to be divested of their commission or warrant. May be classified as unqualified, qualified, or for the good of the service as defined in this enclosure. Upon acceptance by SECNAV and completion of all administrative procedures, it represents a complete severance from all military status.

28. Resignation for the good of the service. A resignation for which the least favorable characterization of service allowed is under Other Than Honorable conditions.

29. Respondent. A commissioned officer required to show cause for retention on active duty or as a member on the RASL.

30. Retention on active duty. The continuation of an individual on active duty as a commissioned or warrant officer of the Regular Navy or Marine Corps or the Naval or Marine Corps Reserve.

31. Separation. A general term which includes discharge, dismissal, dropping from the rolls, termination of an appointment, retirement, or resignation.

32. Separation Processing. Generally, the administrative procedures established under this instruction for the separation of officers. Although separation processing may take a variety of forms, it is always triggered by the written notification of officers of the intent to separate them from the Naval service.

33. Sexual perversion. Includes:

a. lewd and lascivious acts;

b. indecent exposure;

c. indecent act(s) with, or indecent assault on, a person below the age of 16;

d. transvestitism or other abnormal sexual behavior; and

e. other indecent act(s) or offense(s).

34. Show Cause Authority. Any of the following when expressly designated by SECNAV:

a. See paragraph 13.d. of basic instruction.

b. Officers (not below the grade of major general or rear admiral) to determine, based on a record review, that an officer shall be required to show cause for retention in the military service.

35. SECNAV. The Secretary of the Navy.

36. Unlawful drug involvement. Includes:

a. drug abuse - the illegal or wrongful use or possession of controlled substances;

b. drug trafficking - the illegal or wrongful distribution or possession with intent to sell or transfer controlled substances; and

c. drug paraphernalia - the illegal or wrongful possession or distribution of drug paraphernalia as set forth in reference (f).

37. Unqualified resignation. A resignation for which the only characterization of service allowed is Honorable.

POLICY GOVERNING VOLUNTARY SEPARATION

1. Resignation

a. General. Officers serve at the pleasure of the President and no terminal dates are established for their commissions. SECNAV, by virtue of his authority to act for the President, may establish such criteria for the voluntary resignation of an officer's commission as deemed necessary for the maintenance of a sound officer corps.

b. Submission of Requests. CHNAVPERS and DC (M&RA) shall establish procedures for the submission of individual resignation requests.

c. Processing resignation requests. CHNAVPERS and DC (M&RA) may, on behalf of SECNAV, accept voluntary resignations for reasons authorized in paragraph 5 of this enclosure following the guidelines in subparagraphs (1) through (3).

(1) CHNAVPERS and DC (M&RA) may deny, for SECNAV, requests that do not satisfy the criteria set forth in paragraphs 4 and 5 of this enclosure. In addition, requests for voluntary resignation for reasons specified in paragraph 5 of this enclosure will normally be denied when

(a) the officer does not comply with the procedures established by CHNAVPERS and DC (M&RA) for the submission of individual resignation requests.

(b) the officer has not completed all service prescribed in the officer program through which accessed and which was incurred by the officer in consideration for being tendered an initial appointment.

(c) CHNAVPERS or DC (M&RA) has determined that a significant personnel shortage in the officer's competitive category, designator, occupational field, military occupational specialty (MOS), or other authorized officer classification constitutes a compelling military necessity requiring the officer's retention.

(d) the officer has not completed obligated service incurred for advanced education or technical training requiring

additional obligated service, including postgraduate education, service school or college, law school, medical residency, flight training, naval flight officer training, and equivalent programs.

(e) the officer has been officially notified of orders, or has executed orders and has not served the required period of time at the new duty station, as prescribed by CHNAVPERS or DC (M&RA).

(f) the officer has not completed obligated service incurred as a result of

1. transfer into the Regular Navy or Marine Corps,

2. lateral transfer between competitive categories or designators,

3. entering a program, or

4. receiving an incentive pay, continuation pay, or bonus.

(2) A resignation has no effect until accepted by SECNAV or by CHNAVPERS or DC (M&RA) when acting on behalf of SECNAV.

(3) Guidelines for officers being considered for separation for cause under enclosure (3) are contained in paragraph 12 of enclosure (4).

d. Characterization of Service. Generally, officers whose resignations are accepted by SECNAV for any reason set forth in paragraph 5 of this enclosure shall be honorably discharged from the component of which they are members. Discharge may be General (Under Honorable Conditions) or Other Than Honorable when an officer requests such characterization and such characterization is consistent with guidelines contained in enclosure (5) of this instruction.

2. Release of Reserve Officers from Active Duty. CHNAVPERS or DC (M&RA) may, acting for SECNAV, release Reserve officers upon their request from active duty for reasons set forth in

paragraph 5 of this enclosure, unless processing for separation for cause under paragraph 1 of enclosure (3) is warranted.

3. Regular Officers Requesting Reserve Commissions Upon Resignation

a. Regular officers requesting resignation under the provisions of this enclosure who have completed the statutory service obligation referred to in paragraph 4a of this enclosure and who request a Reserve commission upon resignation from the Regular Navy or Marine Corps shall normally be tendered such a commission, provided a requirement exists for the officer's skill in the grade and competitive category in which the officer would serve in the Naval or Marine Corps Reserve. CHNAVPERS and DC (M&RA) shall neither tender nor award Reserve commissions to such officers whose voluntary resignation request is incident to separation in lieu of trial by court-martial under enclosure (3) or in lieu of separation for cause processing under enclosure (4).

b. The Marine Corps Reserve has no limited duty officers (LDOs). Marine Corps Regular LDOs requesting resignation from the Regular Marine Corps who request a Reserve commission shall normally be tendered such a commission in the warrant officer grade they would have held had they been serving as a warrant officer in the Regular Marine Corps, provided a requirement exists for their MOS in that grade in the Marine Corps Reserve.

c. Regular officers whose requests for Reserve commissions are approved shall be assigned in the Ready Reserve upon resignation from the Regular Navy or Marine Corps and acceptance of the appointment in the Naval or Marine Corps Reserve.

4. Statutory Service Obligation

a. Under the guidance provided by DOD Instruction 1304.25 of 25 August 1997, each person who becomes a member of the Armed Forces on or after 1 June 1984 shall serve in the Armed Forces for a total of 8 years. Any part of the service obligation that is not performed on active duty shall be performed in a Reserve component.

b. Except for reasons of dependency or hardship (paragraph 5d(1) of this enclosure), resignation requests from Regular

officers who have not completed the statutory service obligation referred to in paragraph 4a of this enclosure will normally be approved only upon acceptance of a Reserve commission that shall be held at least until completion of such service.

c. Except for reasons of dependency or hardship or for discharge to become a minister (paragraphs 5d(1) and 5h of this enclosure), resignation requests from Reserve officers who have not completed the statutory service obligation referred to in paragraph 4a of this enclosure will normally be denied by CHNAVPERS or DC (M&RA). However, Reserve officers who are serving on active duty may be voluntarily released from active duty for reasons set forth in paragraph 5 of this enclosure and transferred to the Ready Reserve until completion of that obligation, unless medical reasons preclude such transfer. CHNAVPERS or DC (M&RA) shall accomplish such releases from active duty under the provisions of section 12313 of reference (a) and this instruction.

d. CHNAVPERS and DC (M&RA) may waive active obligated service incurred for technical training in cases where members who have completed technical training are permanently disqualified for operational services in their designator, warfare specialty, military occupational specialty, or special qualification through no fault of the member.

5. Reasons for Voluntary Separation

a. Expiration of Statutory Service Obligation. An officer may be separated upon completion of the statutory service obligation referred to in paragraph 4a of this enclosure provided the officer has no other obligated service.

b. Expiration of Obligated Service. An officer may be separated upon completion of all service prescribed in the officer program through which accessed, any other obligation incurred by the officer in consideration for being tendered an initial appointment, and any additional obligated service incurred by the officer while serving on active duty, or in an active status in the Ready Reserve.

c. Change of Career Intention. Some officers who completed their minimum service requirement and then decided to remain on active duty intending to serve full careers may later seek

separation before attaining retirement eligibility to pursue a civilian career. Officers who submit resignations after continuing in service beyond their minimum service requirement shall be separated for Change of Career Intention unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

d. Convenience of the Government. An officer may be separated for the Convenience of the Government for the reasons set forth below. Separation of an officer for the Convenience of the Government is subject to the resolution of any outstanding disciplinary actions involving the officer.

(1) Dependency or Hardship. Separation of an officer may be directed when genuine dependency or undue hardship exists under the following circumstances:

(a) The hardship or dependency is not temporary,

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

(c) Separation will eliminate or materially alleviate the condition, and

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

(2) Pregnancy or Childbirth. A pregnant officer may request separation from active duty. Requests for separation will not normally be approved unless there are extenuating circumstances or the request otherwise complies with criteria for separation contained in this instruction. CHNAVPERS and DC (M&RA) will prescribe the maximum period possible for eligible officers to consider this course of action, in order to minimize subsequent separations for parenthood or dependency and provide prompt replacement of separated personnel. The chain of command shall ensure that servicemembers will be afforded the opportunity to take advantage of available legal assistance for advice regarding their options in establishing paternity.

(3) Conscientious Objection. An officer shall be separated if authorized under DODD 1300.6 of 20 August 1971.

(4) Surviving Family Member. An officer shall be separated if authorized under DODD 1315.15 of 26 September 1988.

(5) Separation of Aliens. An officer who is an alien, an individual who is neither a natural born nor a naturalized citizen of the United States, may be separated on the basis of being an alien who no longer wishes to serve.

(a) The request will normally be denied when retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(b) Notwithstanding the limitations in subparagraph 5d(5)(a), a request for separation may be approved when, in the judgment of CHNAVPERS or DC (M&RA), the applicant has demonstrated overriding and compelling factors of a personal need which justify separation.

(6) Separation to Accept Public Office. Unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure, an officer who has completed the obligated service referred to in paragraph 5b of this enclosure may be separated for the purpose of performing the duties of the President or Vice President of the United States; a Presidential appointee to a statutory office; a member of either of the legislative bodies of the U.S.; a Governor; any other State official chosen by the voters of the entire State or States; or a judge of courts of record of the U.S., the States, or the District of Columbia.

(7) Officers Married to Other Servicemembers. Unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure, an officer may be separated who has completed the obligated service, referred to in paragraph 5b, and who cannot be stationed near enough to the spouse to permit the maintenance of a joint residence.

(8) Separation to Attend College. At the discretion of CHNAVPERS or DC (M&RA), officers may be separated for the purpose of enrolling in a full-time course of study leading to a baccalaureate degree or graduate degree, provided such

separation occurs within 90 days of the date of expiration of the obligated service, referred to in paragraph 5b of this enclosure, and retention is not warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

e. Interservice Transfers. Interservice transfer requests will be processed in accordance with reference (n).

f. Selected Changes in Service Obligations. An officer may be separated under specific programs established by the CNO or CMC permitting separation within 90 days of the date of expiration of active obligated service. Such programs shall have as objectives the maintenance of prudent management flexibility and the conservation of limited resources. An example of such a program is the release of an officer from active duty prior to extended deployment to avoid separation outside the continental United States. The CNO and CMC shall submit to SECNAV for approval and incorporation into this instruction, the reasons for separation under these programs prior to their implementation. The following reasons for separation are authorized under this paragraph when CHNAVPERS or DC (M&RA) determines that such separations are more economical or efficient for the Government:

(1) Separation Upon Completion of Overseas Tours. Officers having less than 90 days of obligated service, referred to in paragraph 5b of this enclosure, remaining upon completion of an overseas tour other than Hawaii, may be separated upon completion of that tour, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

(2) Separation for Major Federal Holidays. Officers whose obligated service, referred to in paragraph 5b of this enclosure, expires during a Federal holiday program established by the CNO or CMC may be separated at the commencement of that program, unless retention is warranted by the criteria set forth in paragraph 1c(1) of this enclosure.

g. Retirement. An officer may be retired if requested and if eligible and authorized under SECNAVINST 1811.3M or SECNAVINST 1820.2B.

h. Discharge of A Reservist to Become A Minister. Officers who becomes a regular or ordained minister of a religious faith

group is entitled, upon their request, to be discharged from the Naval or Marine Corps Reserve per section 12682 of reference (a), if the officers satisfactorily establishes that

(1) they will, or do regularly, engage in religious preaching and teaching,

(2) the ministry is, or will be their main and primary calling--a vocation rather than an avocation,

(3) their standing in the congregation is, and or will be, recognized as that of a minister or leader of a group of lesser members, and

(4) their religious faith group is organized exclusively or substantially for religious purposes.

i. Failure to Receive Initial Appointment Benefits. Newly appointed officers may be separated at their request or with their consent for failure or inability on the part of the Naval Service to give the benefits promised incident to initial appointment; e.g., service credit or entry grade. The screening for mobilization potential specified in paragraph 14 of enclosure (3) for Reserve component officers is not applicable. Newly appointed officers separated for this reason have not served the statutory service obligation prescribed in DOD Instruction 1304.25 of 25 August 1997.

j. Expiration of Term of Active Duty Order In The Case of Reservists. Reservists may be released from active duty at the expiration of their term of service specified in their order to active duty.

6. Expungement of Resignations from Officer Service Record

a. CHNAVPERS and DC (M&RA) will, upon their approval of an officer's written request to withdraw a resignation, expunge the following from the officer's official record:

(1) For officers on active duty - resignations, disapproved resignations, and related correspondence in their entirety.

(2) For officers who resign and subsequently return to

active duty in the Naval Service - portions of resignation correspondence which contain reasons for resignation. Such expungements will include portions from letters of intent to resign and letters of resignation and endorsements.

b. Other resignation-related material such as separation orders, fitness reports, and DD 214s will not be expunged.

POLICY GOVERNING INVOLUNTARY SEPARATION

1. Separation for Cause. Officers who do not maintain required standards of performance or professional or personal conduct may be processed for separation for cause per this instruction when there is reason to believe that one or more of the following circumstances exist. Nothing in this instruction is intended to preclude disciplinary action to include trial by court-martial, when appropriate.

a. Substandard Performance of Duty. Inability of an officer to maintain adequate levels of performance or conduct as evidenced by one or more of the following reasons:

(1) Failure to demonstrate acceptable qualities of leadership required of an officer in the member's grade.

(2) Failure to achieve or maintain acceptable standards of proficiency required of an officer in the member's grade.

(3) Failure to properly discharge duties expected of officers of the member's grade and experience.

(4) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer has been ordered to undergo.

(5) A record of marginal service over an extended time as reflected in fitness reports covering two or more positions and signed by at least two reporting seniors.

(6) Personality disorders, when such disorders interfere with the officer's performance of duty and have been diagnosed by a physician or clinical psychologist per the section on Mental Disorders, International Classification of Diseases and Injuries-9 (ICD-9), Diagnostic and Statistical Manual (DSM-IV) of Mental Disorders, and NAVMED P117, Manual of the Medical Department.

(7) An officer who has been referred to a program of rehabilitation for personal abuse of drugs may be separated for failure, through inability or refusal, to participate in or successfully complete such a program. Nothing in this provision precludes separation of an officer who has been referred to such

a program under any other provision of this instruction in appropriate cases.

(8) An officer who has been referred to a program of rehabilitation for alcohol abuse may be separated for failure, through inability or refusal, to participate in or successfully complete such a program. Nothing in this provision precludes separation of an officer who has been referred to such program under any other provision of this instruction in appropriate cases.

(9) Failure to conform to prescribed standards of dress, weight, personal appearance, or military deportment.

(10) Unsatisfactory performance of a warrant officer, not amounting to misconduct, or moral or professional dereliction.

b. Misconduct, or Moral, or Professional Dereliction. Performance or personal or professional conduct (including unfitness on the part of a warrant officer) which is unbecoming an officer as evidenced by one or more of the following reasons:

(1) Commission of a military or civilian offense which could be punished by confinement of 6 months or more and any other misconduct which would require specific intent for conviction.

(2) Unlawful drug involvement. Processing for separation is mandatory. Exception to mandatory processing may be made on a case-by-case basis by SECNAV.

(3) Sexual perversion.

(4) Intentional misrepresentation or omission of material fact in obtaining appointment.

(5) Fraudulent entry into an Armed Force or the fraudulent procurement of commission or warrant as an officer in an Armed Force.

(6) Intentional misrepresentation or omission of material fact in official written documents or official oral statements.

(7) Failure to satisfactorily complete any course of training, instruction, or indoctrination which the officer has been ordered to undergo when such failure is willful or the result of gross indifference.

(8) Marginal or unsatisfactory performance of duty over an extended period, as reflected in successive fitness reports, when such performance is willful or the result of gross indifference.

(9) Intentional mismanagement or discreditable management of personal affairs, including financial affairs.

(10) Misconduct or dereliction resulting in loss of professional status including withdrawal, suspension, or abandonment of license, endorsement, certification, or clinical medical privileges necessary to perform military duties in the officer's competitive category or Marine Corps Occupational Field. When the loss of professional qualification results solely from the removal of the ecclesiastical endorsement, processing under paragraph 17 of this enclosure is required.

(11) A pattern of discreditable involvement with military or civilian authorities, notwithstanding the fact that such misconduct has not resulted in judicial or nonjudicial punishment under the UCMJ.

(12) Conviction by civil authorities (foreign or domestic) or action taken which is tantamount to a finding of guilty, which would amount to an offense under the UCMJ.

(13) One or more substantiated incidents of serious misconduct resulting from the officer's active participation in extremist or supremacist activities which, in the independent judgment of the Show Cause Authority, is more likely than not to undermine unit cohesion or be detrimental to the good order, discipline, or mission accomplishment of the command or unit. Such misconduct must relate to:

(a) illegal discrimination based on race, creed, color, sex, religion, or national origin.

(b) advocating the use of force or violence against

any Federal, State, or local Government, or any unit or agency thereof, in contravention of Federal, State, or local laws.

(14) An officer who has been referred to a program of rehabilitation, education and counseling for sex offenders may be separated for failure, through inability or refusal, to participate in such a program. Nothing in this provision precludes separation of an officer who has been referred to such a program under any other provision of this instruction in appropriate cases.

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c. Retention is not Consistent with the Interest of National Security. An officer (except a retired officer) may be separated from the Naval Service when it is determined the officer's retention is clearly inconsistent with the interests of national security. This provision applies when a determination has been made under the provisions of reference (g) that administrative separation is appropriate.

d. Separation in Lieu of Trial by Court-Martial

(1) Basis. In cases where an officer is pending a trial by court-martial (charges preferred with respect to an offense for which a punitive discharge is authorized), the officer may submit a request for resignation in lieu of trial by court-martial. This provision may not be used when Rule for

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Courts-Martial (R.C.M.) 1003(d) of the Manual for Courts-Martial provides the sole basis for a punitive discharge unless the charges have been referred to a court-martial authorized to adjudge a punitive discharge.

(2) Characterization of Service. Under Other Than Honorable Conditions, but General (Under Honorable Conditions) may be warranted under the guidelines in enclosure (5). Characterization of service as Honorable is not authorized unless the respondent's record is otherwise so meritorious that any other characterization would be clearly inappropriate.

(3) Procedures

(a) The resignation shall be submitted in writing and signed by the officer.

(b) Officers shall be afforded an opportunity to consult with qualified counsel. If the members refuse to do so, the commanding officer (CO) shall prepare a statement to this effect which shall be attached to the file, and the officers shall state that they have waived the right to consult with counsel.

(c) Unless the officer has waived the right to counsel, the request shall also be signed by counsel.

(d) In the written request, the officers shall state that they understand the following:

1. The elements of the offense or offenses charged,

2. That characterization of service under Other Than Honorable Conditions is authorized, and

3. The adverse nature of such a characterization and possible consequences.

(e) The request shall also include

1. an acknowledgment of guilt of one or more of the offenses charged, or of any lesser included offense, for which a punitive discharge is authorized, and

2. a summary of the evidence or list of documents (or copies thereof) provided to the officer pertaining to the offenses for which a punitive discharge is authorized.

(f) Statements by the officer or the officer's counsel submitted in connection with a request under this subsection are not admissible against the member in a court-martial except as provided by M.R.E. 410, Manual for Courts-Martial.

e. Multiple Reasons. An officer shall be processed for separation for all of the aforementioned reasons which are applicable.

2. Failure of Selection for Promotion. It is DON policy to retain competent and effective officers who satisfy the authorized strength needs, by grade, competitive category, or special skills authorized by CNO or CMC. However, some officers, who may be less qualified to fill skill needs, must be terminated by reason of failure of selection for promotion, by reason of involuntary separation, or retirement for years of service. In execution of this policy, officers may be separated or released from active duty for reason of failure of selection, involuntary separation or years of service as follows:

a. Regular officers above the grade of CWO5

(1) Regular O2s, other than LDOs, who twice fail of selection for and who are not on a list of officers recommended for promotion to O3 shall be Honorably discharged per section 631 of reference (a) on the date requested by the officer and approved by SECNAV, but not later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved.

(2) Regular O3s and O4s, other than LDOs, who twice fail of selection for and who are not on a list of officers recommended for promotion to the next higher grade shall be Honorably discharged per section 632 of reference (a), unless selectively continued to meet requirements in their competitive category and grade per section 637(a) of reference (a), on the date requested by the officers and approved by SECNAV, but not

later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board which considered the officers for the second time is approved, except as provided in paragraph (3) below.

(3) Exception concerning discharge under paragraphs (1) and (2) above: Per DODD 1320.8 of 21 October 1996, Regular officers serving in the grade of O4 who are subject to discharge under section 632(a) of reference (a) shall normally be selected for continuation by selective continuation boards if the officer will qualify for retirement under section 6323 of reference (a) within 6 years of the date of such continuation, unless the officer is being processed for separation for cause.

(4) Regular O5s, unless selectively continued to meet requirements in their competitive category and grade per section 637(b) of reference (a) shall, if not on a promotion list to O6, be involuntarily retired on the 1st day of the month after the month in which they complete 28 years of active commissioned service per section 633 of reference (a). However, O5s who are not on a promotion list may be subject to selective early retirement after two failures of selection to O6 per section 638 of reference (a), unless they have been approved for voluntary retirement, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the selection board is convened or during the following fiscal year.

(5) Regular O6s, unless selectively continued to meet requirements in their competitive category and grade per section 637(b) of reference (a), shall, if not on a promotion list to O7 or retired earlier, be involuntarily retired on the 1st day of the month after the month in which they complete 30 years of active commissioned service per section 634 of reference (a). However, O6s who are not on a promotion list may be subject to selective early retirement (SER) after 4 years in grade per section 638 of reference (a) unless they have been approved for voluntary retirement in the fiscal year in which the SER board convenes, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the SER board is convened or during the following fiscal year.

(6) Unless continued under section 637(b) of reference (a), a Regular officers serving in the grade of O7 who are not on a promotion list to O8 shall, if not retired earlier, be

retired on the 1st day of the 1st month beginning after the date of the 5th anniversary of their appointment to that grade or on the 1st day of the month after the month in which they complete 30 years of active commissioned service, whichever is later, per section 635 of reference (a). Such officers are, however, subject to SER under the provisions of section 638 of reference (a) if they have served at least 3½ years of active duty in the O7 grade and are not on a list for promotion to O8, unless they have been approved for voluntary retirement, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the selection board is convened or during the following fiscal year.

(7) Unless continued under section 637(b) of reference (a), Regular officers serving in the grade of O8 shall, if not retired earlier, be retired on the 1st day of the 1st month beginning after the date of the 5th anniversary of their appointment to that grade or on the 1st day of the month after the month in which they complete 35 years of active commissioned service, whichever is later, per section 636 of reference (a). Such officers are, however, subject to selective early retirement under the provisions of section 638 of reference (a) if they have served at least 3½ years of active duty in the grade of O8, unless they have been approved for voluntary retirement, or they are to be involuntarily retired under any provision of law, during the fiscal year in which the selection board is convened or during the following fiscal year.

(8) Regular officers, other than warrant officers and LDOs, serving in the grades of O4 through O6 on 15 September 1981, or who were on a promotion list to such grades on that day, shall be retired on the date provided under the laws in effect on 14 September 1981, unless promoted or continued after that date under the provisions of reference (h).

(9) A deferral of retirement or separation and continuation on active duty shall be for a period not to exceed 5 years, but shall not extend beyond the date of the officer's 62nd birthday. However, in the case of officers serving in a grade above O8, CNO or CMC may recommend to SECNAV that he request the President to defer the retirement until the 1st day of the month following the month in which the officer becomes 64 years of age. No more than 10 deferments to age 64, for all the armed forces, may be in effect at any one time to meet unusual

requirements of the service.

(10) In the case of an officer serving as a chaplain, SECNAV may defer retirement as required in the best interests of the Navy. Officers serving as Chief or Deputy Chief of Chaplains may, upon approval of SECNAV, have their retirement deferred. Such deferment may not extend beyond the first day of the month following the month in which the officer reaches 68 years of age.

(11) Notwithstanding any other section of this paragraph (failure of selection), officers who are within 2 years of qualifying for retirement under section 6323 of reference (a) on the date on which they are to be discharged shall be retained on active duty until qualified for retirement under that section of law unless sooner discharged or retired for cause under the provisions of this instruction.

b. Reserve officers above the grade of CWO5

(1) Naval Reserve officers on the active-duty list

(a) In the grades of O2 or O3 who twice fail of selection for promotion to a higher grade while on the active duty list shall be involuntarily released from active duty and placed on the RASL no later than the 1st day of the 7th calendar month beginning after the report of the selection board which considered the officer for the second time is approved. However, officers subject to separation under this paragraph may be selectively retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 16 of this enclosure, based on a need for that officer's specific skills and unique qualifications.

(b) In the grade of O4 who twice fail of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the Retired Reserve or if not so transferred, such officers shall be involuntarily released from active duty no later than the 1st day of the 7th calendar month beginning after the report of the selection board which considered the officer for the second time is approved, unless the officer is retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 16 of this enclosure, based on a need

for that officer's specific skills and unique qualifications, or per section 12646 or section 12686 of reference (a).

(c) In the grade of O5 who twice fail of selection for promotion to the next higher grade while on the active-duty list shall, if qualified, be given an opportunity to request transfer to the Retired Reserve. If not so transferred, such officers shall be involuntarily released from active duty no later than the 1st day of the 7th calendar month beginning after the report of the selection board which considered the officer for the second time is approved, unless the officer is retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 16 of this enclosure, based on a need for that officer's specific skills and unique qualifications, or per section 12646 or section 12686 of reference (a).

(d) In the grade of O6 shall be given an opportunity to request transfer to the Retired Reserve if qualified, or will be involuntarily released from active duty at the end of their current obligation unless the officers are retained on active duty by a board convened by CHNAVPERS under the provisions of paragraph 16 of this enclosure, based on a need for that officer's specific skills and unique qualifications. Such officers not qualified to transfer to the Retired Reserve will be involuntarily released from active duty and placed on the RASL and, if not sooner selected for promotion to the next higher paygrade, discharged on the 1st day of the month following the month in which the officers complete 30 years total commissioned service per section 14706 of reference (a), unless retained in an active status under sections 12646 or 12686, or continued in an active status under section 14701 thereof.

(2) Marine Corps Reserve officers on active duty in the grades of O2 and O3, who twice fail of selection for promotion to the next higher grade shall be Honorably discharged no later than the 1st day of the 7th calendar month after the month in which the report of the selection board that considered them for the second time is approved. Officers separating under this guidance who are authorized full payment of nondisability separation pay will enter into a written agreement to serve in the Ready Reserve for a period of not less than 3 years following separation from active duty.

(3) Marine Corps officers on active duty designated for

the Active Reserve (AR) program

(a) In the grade of O2 who twice fail of selection for promotion to a higher grade and whose names are not on a list of officers recommended for promotion to the next higher grade shall be honorably discharged not later than the 1st day of the 7th calendar month beginning after the report of the selection board that considered the officers for the second time is approved. If officers subject to discharge under this paragraph have not completed 8 years commissioned service, they shall be released from active duty and retained in an active status in the Reserve component until the completion of 8 years in a commissioned status.

(b) In the grade of O3 who twice fail of selection for promotion to a higher grade and whose names are not on a list of officers recommended for promotion to the next higher grade shall be involuntarily released from active duty no later than the 1st day of the 7th calendar month beginning after the report of the selection board that considered the officer for the second time is approved.

(c) In the grade of O4 career-designated officers who twice fail of selection for promotion to a higher grade, if not on a promotion list to a higher grade, shall, if not earlier removed from the RASL, be involuntarily released from active duty no later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board that considered the officers for the second time is approved. Release will be deferred, if necessary, to enable the officers to become eligible for an active service retirement with pay, consistent with the service limitations established by section 14506 of reference (a). Under no circumstances will the officers be retained beyond the 1st day of the month following the month in which the officers complete 20 years of active Federal service, at which time they shall be given an opportunity to request transfer to the Retired Reserve or to be honorably discharged.

(d) In the grade of O5 career-designated officers who twice fail of selection for promotion to a higher grade, if not on a promotion list to a higher grade, shall, if not earlier removed from the RASL, be involuntarily released from active duty. Release will occur not later than the 1st day of the 7th

calendar month beginning after the month in which the report of the selection board that considered the officers for the second time is approved. Release will be deferred, if necessary, to enable the officers to become eligible for an active, service retirement, but not later than the first day of the month following the month in which the officers complete 28 years total commissioned service, (unless the officers are chosen for release from active duty by a Selective Early Release from Active Duty (SERAD) Board) at which time they shall be given an opportunity to request transfer to the Retired Reserve, if qualified, or be honorably discharged, as required by section 14507 of reference (a).

(e) In the grade of O6 career-designated AR colonels may only serve on active duty until completing 30 years total commissioned service (unless the officers are chosen for release from active duty by a SERAD Board) at which time they shall be given an opportunity to request transfer to the Retired Reserve, if qualified, or be honorably discharged, as required by section 14507 of reference (a).

(4) Naval Reserve Full-Time Support (FTS) officers on active duty, but not on the active duty list. This category includes Naval Reserve Canvasser Recruiter (CANREC) officers, and temporary recall (Three Year Recall/One Year Recall/Active Duty for Special Work) officers:

(a) In the grade of O1 who have been found not qualified for promotion to a higher grade shall be involuntarily released from active duty and eliminated from an active status at anytime after being found not qualified for promotion per section 14503 of reference (a).

(b) In the grade of O2 who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty and eliminated from an active status not later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board which considered the officers for the second time is approved per sections 14504 and 14513 of reference (a), unless specifically retained on active duty under sections 12686 or 14504(b) thereof. If officers subject to release from active duty and elimination from an active status under this subparagraph have not completed the required minimum

commissioned service per section 651 of reference (a), they shall be released from active duty and retained in an active status until the completion of required service per section 12645 of reference (a).

(c) In the grade of O3 who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty and eliminated from an active status not later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board that considered the officers for the second time is approved per sections 14505 and 14513 of reference (a), unless specifically selected for continuation on the RASL under section 14701 of reference (a) or retained on active duty under section 12646 or 12686 of reference (a).

(d) In the grade of O4 who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty. Release from active duty will occur not later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board that considered the officers for the second time is approved. FTS (formerly TAR) officers will be retained on active duty, if necessary, to enable the officers to become eligible for retirement with pay. Retention of FTS officers on active duty may not extend beyond the 1st day of the month following the month in which the officers first complete 20 years of active service. In no case shall retention of FTS O4s on active duty extend beyond the 1st day of the month following the month in which the officers complete 20 years of commissioned service, unless an extension is addressed in a SECNAV approved continuation and retention plan or the members are retained on active duty per section 12686 or reference (a).

(e) In the grade of O5 who twice fail of selection for promotion to a higher grade shall, if not on a promotion list to a higher grade, be involuntarily released from active duty. Release from active duty will occur not later than the 1st day of the 7th calendar month beginning after the month in which the report of the selection board that considered the officer for the second time is approved. FTS officers will be retained on active duty, if necessary, to enable the officer to become eligible for retirement with pay. Retention of FTS officers on active duty may not extend beyond the 1st day of the month

following the month in which the officers first become eligible for retirement with pay (including early retirement). In no case shall retention of FTS O5s on active duty extend beyond the 1st day of the month following the month in which the officers complete 28 years of commissioned service, unless the officers are selected for continuation on the RASL under section 14701 of reference (a) or retained on active duty under section 12646 or section 12686 of reference (a).

(f) In the grade of O6 who are on active duty and whose names are not on a list of officers recommended for promotion to the next higher grade shall be involuntarily released from active duty upon completion of 30 years of commissioned service not later then the 1st day of the month following the month in which they complete that service, per sections 14507, 14514 and 14706 of reference (a), unless continued on the RASL under section 14701 of reference (a) or retained on active duty under section 12646 or section 12686 of reference (a).

(5) Naval and Marine Corps Reserve (not on active duty); elimination from an active status

(a) A Reserve officer in an active status serving in the grade of O2, who twice fails of selection to the next higher grade and whose name is not on a list of officers recommended for promotion, shall be eliminated from an active status not later than the 1st day of the 7th month after the month in which the report of the selection board that considered the officer for the second time is approved per sections 6389, 12645, 14504 and 14513 of reference (a), unless retained under sections 12646 or 12686 or 14504(b)(1).

(b) Subject to completion of obligated service under section 651 of reference (a), a Reserve officer in an active status serving in the grade of O3 who twice fails of selection for promotion to the next higher grade and whose name is not on a list of officers recommended for promotion shall be eliminated from an active status not later than the 1st day of the seventh month after the month in which the report of the selection board that considered the officer for the second time is approved per sections 14505 and 14513 of reference (a), unless retained under section 12646 or 12686 or continued in an active status per section 14701 of reference (a).

(c) Reserve officers in an active status serving in the grade of O4 who twice fails of selection for promotion to the next higher grade and whose names are not on a list of officers recommended for promotion shall be eliminated from an active status on the later of

1. the 1st day of the month after the month in which the officers complete 20 years of commissioned service, or

2. the 1st day on the 7th month after the month in which the President approves the report of the board which considered the officers for the second time unless retained under section 12646 or 12686 or continued in an active status under section 14701 of reference (a).

(d) Reserve officers serving in the grades of O5 or O6 in an active status whose names are not on a list of officers recommended for promotion to the next higher grade shall be eliminated from an active status (if not earlier removed from the RASL) upon completion of 28 or 30 years of commissioned service, respectively, not later than the 1st day of the month after the month in which the officers complete such service, per sections 14507, 14514 and 14706 of reference (a), unless retained under section 12646, 12686, or 14703 or continued in an active status under section 14701 of reference (a).

(e) Officers of the Naval or Marine Corps Reserve in an active status in the permanent grade of O7, shall, 30 days after they complete 30 years of total commissioned service computed under section 14706 of reference (a) or on the 5th anniversary of the date of their appointment to that grade, whichever is later, be transferred to the Retired Reserve, if qualified and applies therefore, or discharged from the Naval or Marine Corps Reserve if not qualified or does not apply for such transfer, under sections 14508(a) and 14514 of reference (a). Officers who have been recommended for promotion and who would otherwise be removed from an active status under this paragraph shall be retained in that status until they have been appointed or have refused appointment to the permanent grade of O8.

(f) Officers of the Naval or Marine Corps Reserve in an active status in the permanent grade of O8 shall, 30 days after they complete 35 years of total commissioned service

computed under section 14706 of reference (a) or on the 5th anniversary of the date of their appointment to that grade, whichever is later, be transferred to the Retired Reserve, if qualified and applies therefore, or discharged from the Naval or Marine Corps Reserve, if not qualified or does not apply for such transfer, under sections 14508(b) and 14514 of reference (a).

(g) Notwithstanding paragraphs 3b(5)(a) through (f) above, Naval Reserve officers who are described in former sections 6397 or 6403 of reference (a), relating to Nurse Corps officers and women officers, will be treated as they would have been treated under those sections as in effect before 1 October 1996, if that treatment would result in the date for the officers' separation from an active status being a later date than the date established under the law in effect on or after 1 October 1996.

(6) Notwithstanding any other provision in this paragraph, the following provisions of sections 12646 and 12686 of reference (a) are applicable to Reserve officers in an active status:

(a) As per section 12646 of reference (a), Reserve officers who are entitled to be credited with at least 18 but less than 19 years of service computed under section 12732 of reference (a) on the date prescribed for discharge or transfer from an active status, may not be discharged or transferred from an active status without their consent before the earlier of the following dates:

1. The date on which they are entitled to be credited with 20 years of service computed under section 12732 of reference (a), or

2. The 3rd anniversary of the date on which they would otherwise be discharged or transferred from an active status.

(b) As per section 12646 of reference (a), Reserve officers who are entitled to be credited with at least 19, but less than 20 years of service computed under section 12732 of reference (a) on the date prescribed for discharge or transfer from an active status may not be discharged or transferred from

an active status without their consent before the earlier of the following dates:

1. The date on which the are entitled to be credited with 20 years of service, computed under section 12732 of reference (a), or

2. The second anniversary of the date on which they would otherwise be discharged or transferred from an active status.

(c) Section 12646 sanctuary does not apply in cases of separation for cause, disability, or reaching maximum age 60.

(d) Per section 12686 of reference (a), unless specifically authorized by SECNAV, Reserve officers on active duty (other than for training) who are within 2 years of qualifying for retirement under section 6323 of reference (a) on the date on which they would otherwise be removed from an active status, shall not be involuntarily released from active duty before qualifying for retirement under that section. Officers who are retained on active duty under this provision may not be removed from an active status while they are on that active duty, except when separated for cause or physical disability.

(e) Per section 12686 of reference (a), unless specifically authorized by SECNAV, Reserve officers who are on active duty and are within 2 years of becoming eligible for retired pay under section 6323 of reference (a), may not be involuntarily released from that duty before they become eligible for that pay, except when separated for cause, for physical disability, or when eligible for retired pay under section 12731 of reference (a).

(f) Per section 14513 of reference (a), normal separation of Reserve officers in an active status who are not on active duty shall be via either transfer to the Retired Reserve, if such officers are eligible and so request, or discharge. Transfer to the inactive status list shall only be used when CHNAVPERS or CMC makes a finding the officers have a specific skill which cannot be met by the Active and Reserve forces in time of mobilization.

c. LDOs

(1) Permanent LDOs. The separation and retirement of Regular permanent LDOs are governed by section 6383 of reference (a).

(a) Unless selectively continued to meet requirements of their competitive category and grade per procedures under references (i) or (j), Regular permanent LDOs below O5 in the Navy and Regular permanent LDOs in the Marine Corps shall be retired on the last day of the month following the month in which they complete 30 years of active Naval Service, exclusive of active duty for training in a Reserve component. Under no circumstances may LDO officers remain on active duty beyond age 62.

(b) Permanent LDOs serving in the grade of O3 or O4 who have twice failed of selection for promotion to the next higher grade and are not on a promotion list to a higher grade shall be retired, if eligible to retire, or Honorably discharged on the date requested by the officers and approved by SECNAV, but not later than the 1st day of the 7th calendar month beginning after the month in which the President approves the report of the board in which the officers failed of selection for the second time. Permanent LDOs serving in the grade of O3, who twice fails of selection to O4, or an O4 who twice fails of selection to O5, may be selectively continued on active duty upon the recommendation of a selection board convened by SECNAV until the completion of 20 years of active service.

(c) Unless continued by a selection board convened by SECNAV, Regular permanent LDOs in the grade of O5 in the Navy who have twice failed of selection for promotion to the grade of O6, and are not on a list of officers recommended for promotion to the grade of O6 shall, if eligible for retirement as a commissioned officer, be retired on the date requested by the officers and approved by SECNAV but not later than the 1st day of the 7th calendar month beginning after the month in which the President approves the report of the board in which the officers are considered as having failed of selection for the second time. If the officers are not eligible for retirement as a commissioned officer, they shall be retired not later than the 1st day of the 7th calendar month beginning after the month in which the officers become eligible for retirement as a commissioned officer.

(2) Temporary LDOs

(a) The appointments of temporary LDOs who are not selectively continued on active duty under reference (i) or (j) are terminated on the earlier of the following dates

1. the last day of the month following the month in which the officers complete 30 years of active Naval Service, other than active duty for training, or

2. a date requested by the officers, and approved by SECNAV, providing the requested retirement date does not exceed the required statutory retirement date resulting from the second failure to select for promotion per reference (i).

a. Temporary LDOs with a permanent Regular warrant officer status whose LDO appointment is terminated will be afforded the option of voluntary retirement in lieu of reversion to permanent warrant officer status. Temporary LDOs who revert to a permanent warrant officer status are subject to involuntary retirement or Honorable discharge as a warrant officer under applicable statutes and as provided for under paragraph 3d of this enclosure.

b. Temporary LDOs with a permanent Regular enlisted status whose appointment are so terminated will be afforded the option of voluntary retirement in lieu of reversion to permanent enlisted status and where applicable, Honorable discharge by reason of expiration of enlistment.

(b) Temporary LDOs who are not eligible for retirement under section 6323 of reference (a) and who have twice failed of selection to the next higher temporary grade, may either be retained on active duty in the temporary grade held if within 2 years of retirement eligibility, per enclosure (2) of reference (i), as of 30 June of the fiscal year in which the second failure of selection occurs, or may be reverted to permanent warrant officer or enlisted status if not within 2 years of attaining retirement eligibility.

d. Permanent Regular Warrant Officers

(1) Unless selectively continued on active duty in the Navy under reference (i), or in the Marine Corps under reference

(1), permanent Regular warrant officers who have at least 30 years of active service shall be retired on the 1st day of the 1st month beginning after a period of 60 days have run from the date that they complete that service.

(2) Unless retired or separated sooner under some other provision of this instruction, permanent Regular warrant officers who have twice failed of selection for promotion to the next higher permanent Regular warrant officer grades shall

(a) if they have more than 20 years of active service on

1. the date when SECNAV approves the report of the board under section 576(e) of reference (a), or

2. the date when their name was removed from a promotion list under section 579 of reference (a), whichever applies, be retired not later than the 1st day of the 7th calendar month beginning after the applicable date above.

(b) If they have at least 18 but not more than 20 years of active service on

1. the date when SECNAV approves the report of the board under section 576(e) of reference (a), or

2. the date when their name was removed from a promotion list under section 579 of reference (a), whichever applies, be retired not later than the date determined under the next sentence unless they are selected for promotion to the next higher Regular warrant officer grade before that date. The date of retirement of warrant officers under the preceding sentence shall be on a date specified by SECNAV, but not later than the 1st day of the 7th calendar month beginning after the date upon which they complete 20 years of active service.

(c) If they have less than 18 years of active service on

1. the date when SECNAV approves the report of the board under section 576(e) of reference (a), or

2. the date when their name was removed from a

promotion list under section 579 of reference (a), whichever applies, be Honorably discharged from the Regular Navy or Marine Corps not later than the 1st day of the 7th calendar month beginning after the applicable date.

(d) Notwithstanding paragraph 3d(2)(c), immediately above, if on the date on which warrant officers are to be separated under that paragraph the warrant officers have at least 18 years of active service, they shall be retained on active duty until retired under paragraph 3d(2)(b) in the same manner as if the warrant officers had had at least 18 years of service on the applicable date under paragraph 3d(2)(b).

(3) Notwithstanding paragraph 3d(2)(c), permanent Regular warrant officers with less than 18 years of active service creditable toward retirement who are subject to discharge as a result of having twice failed of selection to the next higher permanent Regular warrant officer grades, and who hold a temporary appointment in a grade above CWO5, shall continue serving on active duty until qualified for retirement under reference (a).

(4) Notwithstanding paragraph 3d(2)(c), permanent Regular warrant officers with less than 18 years of active service creditable toward retirement who are subject to discharge as a result of having twice failed of selection to the next higher permanent Regular warrant officer grades, may request enlistment and, in the discretion of SECNAV, be enlisted in a grade prescribed by SECNAV, but not in a grade lower than that held immediately before original appointment as warrant officers. In making recommendations to SECNAV, CHNAVPERS and CMC shall consider the individual's record of service as warrant officers, the length of service performed as warrant officers, and the relationship of inventory to approved authorizations in the Navy enlisted classification or military occupational specialty in which the individuals would serve in an enlisted status.

(5) SECNAV may defer, for not more than 4 months, the retirement or separation of any Regular warrant officers if, because of unavoidable circumstances, evaluation of their physical condition and determination of their entitlement to retirement or separation for physical disability require hospitalization or medical observation that cannot be completed

before the date on which they would otherwise be required to be retired or discharged.

e. Permanent Reserve Warrant Officers

(1) Permanent Reserve warrant officers who have at least 30 years of active service, other than active duty for training, or have completed at least 30 years of service computed under section 12732 of reference (a), shall be transferred to the Retired Reserve or the Naval or Marine Corps Reserve Retired List, as appropriate, not later than 6 months after they complete that service. Warrant officers of the Naval or Marine Corps Reserve who are subject to separation under this paragraph, may be selectively retained to meet requirements identified for their grade, competitive category, and designator per procedures described in references (j) or in this instruction.

(2) Unless retired or separated under some other provision of this instruction, Reserve warrant officers (exclusive of CWO4) who have twice failed of selection for promotion to the next higher permanent warrant officer grades, who are not on a promotion list, and who have

(a) performed more than 20 years of active service or who have performed at least 20 years of service computed under section 12732 of reference (a) on

1. the date when SECNAV approves the report of the promotion selection board, or

2. the date when their name was removed from a promotion list, whichever applies, shall be transferred to the inactive status list, or upon their request, to the Retired Reserve or Naval or Marine Corps Reserve retired list, as appropriate.

(b) performed at least 18 but less than 20 years of service computed under section 12732 of reference (a) on

1. the date when SECNAV approves the report of the promotion selection board, or

2. the date when their name was removed from

the promotion list, whichever applies, shall not be discharged or transferred from an active status without their consent before the earlier of the following dates unless sooner separated for cause under paragraph 1 of this enclosure:

a. The date on which they are entitled to be credited with 20 years of service computed under section 12732 of reference (a).

b. If they have at least 19 years of service computed under section 12732 of reference (a), the second anniversary of the date on which they would otherwise be discharged or transferred from an active status.

3. If they have at least 18 but less than 19 years of service computed under section 12732 of reference (a), the third anniversary of the date on which they would otherwise be discharged or transferred from an active status

(c) performed less than 18 years of service computed under section 12732 of reference (a) on

1. the date when SECNAV approves the report of the selection board, or

2. the date when their names are removed from the promotion list, whichever applies, may request enlistment and in the discretion of SECNAV be enlisted in a grade prescribed by SECNAV, but not in a grade lower than that held immediately before original appointment as warrant officers. In making recommendations to SECNAV, CHNAVPERS and DC (M&RA) shall consider the individual's record of service as warrant officers, the length of service performed as warrant officers, and the needs of the Service in the Navy enlisted classification or military occupational specialty in which the individual would serve in an enlisted status.

(d) Not requested transfer to the Naval or Marine Corps Reserve retired list as provided in paragraph 3e(2)(a), is not eligible for retention in an active status as provided in paragraph 3e(2)(b), and does not request enlistment as provided in paragraph 3e(2)(c), or is denied enlistment, shall be Honorably discharged from the Naval or Marine Corps Reserve.

(3) Reserve warrant officers on active duty (other than active duty for training) who, on the date when they would be otherwise discharged or removed from an active status without their consent under paragraph 3e(2), and have competed 18 or more years of active service, shall not be involuntarily released from active duty before qualifying for retirement under that section, unless the officers are not physically qualified, are being separated for cause, or whose release have been approved by SECNAV.

3. Not Qualified for Promotion. The Secretary of the Navy delegates to the Chief of Naval Operations (CNO) and to the Commandant of the Marine Corps (CMC) the authority to determine whether O-1s and W-1s are qualified for promotion.

a. Under sections 630 and 14503 of reference (a), officers serving in the grade of O1 who are found not qualified for promotion to O2 shall be honorably discharged at the end of the 18-month period beginning on the date on which the officers are first found not qualified for promotion.

b. Per section 5596 of reference (a), temporary LDOs serving in the grade of O1 who are found not qualified for promotion to the next higher grade may, prior to the expiration of the 18 month period referred to in paragraph a. above, have their appointment terminated by SECNAV and be reverted to their permanent warrant or enlisted status.

c. Per section 6383(e)(2) of reference (a), LDOs on the active duty list of the Navy, or on the active duty list of the Marine Corps, who are serving in the grade of O1, who are found not qualified for promotion to the next higher grade, shall be honorably discharged on the date requested by the officers and approved by SECNAV, but not later than the 1st day of the 7th calendar month beginning after the month in which the officers were found not qualified for promotion.

d. Per section 6383 (e)(1) of reference (a), LDOs on the active duty list of the Navy, or on the active duty list of the Marine Corps, who are serving in the grade of O2, who are considered as having failed of selection to the next higher grade, shall be honorably discharged on the date requested by the officers and approved by SECNAV, but not later than the 1st day of the 7th calendar month beginning after the month in which

the President approves the report of the selection board in which the officers are considered as having failed of selection for promotion to the higher grade for the second time.

e. Per section 1165 of reference (a), non-retirement eligible warrant officers, with less than 36 months of continuous active service since the date of original appointment who are serving in the grade of W1 and found not qualified for promotion to CWO2 may be honorably discharged by SECNAV, upon the recommendation of CMC or CNO, not later than the end of the 36-month period beginning on the date on which the warrant officers were first appointed. Per section 12241(c) of reference (a), non-retirement eligible Reserve warrant officers, with less than 60 months of service since the date of original appointment who are serving in the grade of W1 and found not qualified for promotion to CWO2 may be honorably discharged by SECNAV, upon the recommendation of CMC or CNO, not later than the end of the 60 month period beginning on the date on which the warrant officers were first appointed. All non-retirement eligible warrant officers that have been found not qualified for promotion to CWO2 and were not separated pursuant to section 1165 or section 12241(c) of reference (a), shall be reconsidered for promotion to CWO2, upon the W1's request, after 1 year from the date that the W1 was determined not qualified for promotion.

f. Per section 1166 of reference (a), non-probationary warrant officers or retirement eligible warrant officers serving in the grade of W1 who have been found not qualified for promotion to CWO2, shall be referred to a BOI for a determination on whether the W1 is fit for continued service. A determination of not qualified for promotion to CWO2 is evidence of unfitness for continued service.

(1) A non-probationary W1 that is determined to be unfit for continued service by a BOI, convened pursuant to section 1166 of reference (a), shall be discharged.

(2) A non-probationary W1 that is determined to be fit for continued service by a BOI, convened pursuant to section 1166 of reference (a) shall be reconsidered for promotion to CWO2, upon the W1's request, after 1 year from the date that the W1 was determined not qualified for promotion. W1s that are again determined not qualified for promotion to CWO2 shall not be again referred to a BOI and will be reconsidered for

promotion to CWO2, upon the W1's request, after 1 year from the date the W1 was last determined not qualified for promotion, until the W1 is promoted, retired, or separated under some other provision of law.

(3) A retirement eligible W1 that is determined to be unfit for continued service by a BOI, convened pursuant to section 1166 of reference (a), shall be retired. Per section 1371 of reference (a), recommendations for a retirement grade determination are neither appropriate nor required.

(4) A retirement eligible W1 that is determined to be fit for continued service by a BOI, convened pursuant to section 1166 of reference (a), shall be reconsidered for promotion to CWO2, upon the W1's request, after 1 year from the date that the W1 was determined not qualified for promotion. W1s that are again determined not qualified for promotion to CWO2 shall not be again referred to a BOI and will be reconsidered for promotion to CWO2, upon the W1's request, after 1 year from the date the W1 was last determined not qualified for promotion, until the W1 is promoted, retired, or separated under some other provision of law.

g. Regular officers subject to separation solely under the provisions of paragraphs 4a or b who have not satisfied their statutory military obligation, as described in section 651 of reference (a), shall be required to accept an appointment in a Reserve component in an active status.

h. Reserve officers subject to separation solely under the provisions of paragraph 4a or b who have not satisfied their statutory military obligation, as described in section 12645 of reference (a), may be so separated without regard to military obligation.

i. The authority to separate officers under this section shall not be used when separation for cause under the provisions of reference (a) and paragraph 1 of this enclosure is appropriate.

4. <u>Failure to Accept an Appointment to O2</u>

a. Officers who fail to accept a permanent or temporary appointment to the grade of O2 shall be processed for an

honorable discharge using the notification procedure of enclosure (7).

b. As provided in DOD Instruction 1304.25, CHNAVPERS or DC (M&RA) may not separate officers under this section until the officers have satisfied the obligated service, referred to in paragraphs 1c(1) and 4a of enclosure (2), except in the case of Reserve officers, who may be separated under section 14503(c) of reference (a) under regulation prescribed by the Secretary of Defense.

5. Parenthood. Officers may be separated by reason of parenthood if it is determined the officers are unable to perform their duties satisfactorily or are unavailable for worldwide assignment or deployment.

6. Force Management Considerations. When necessary to meet budgetary requirements or to control end strength, promotion flow points, or grade allowances, or for any other reason, as approved by SECNAV, CHNAVPERS:

a. May convene Board of Officers to consider commissioned officers for involuntary release from active duty or, subject to section 651 of reference (a), separation from the naval service. CHNAVPERS shall justify selective release from active duty or separation in plans submitted for SECNAV approval.

b. May release Reserve officers from active duty or, subject to section 651 of reference (a), separate probationary officers, and non-probationary officers who have not completed their minimum service obligation, who have failed to complete an initial course of instruction necessary to obtain a designator or professional or warfare qualification. To the extent practicable, officers shall be advised that this policy is in effect prior to the commencement of such an initial course of instruction.

c. Subject to sections 12646 and 12686 of reference (a), officers identified in paragraph a or b will be released from active duty or separated, as appropriate, not later than the 1st day of the 7th calendar month beginning after the month in which the report of the board was approved or the officer was determined to have the course of instruction.

7. Release from Active Duty

a. When determined to be in the best interest of the service, SECNAV may release a Naval or Marine Corps Reserve officer from active duty, without the requirement for the officer to be heard by a Board of Officers or any other formal board before the release.

b. The following statutory limitations exist regarding the release of Reserve officers from active duty:

(1) Under section 12313(b) of reference (a), Reserve officers may be released from active duty (other than for training) in time of war or national emergency declared by Congress or the President only upon the recommendation of a Board of Officers approved by CHNAVPERS or DC (M&RA), as appropriate, unless the officers waive the board or their release is otherwise authorized by law. Specific procedures governing the convening of such boards will be established by SECNAV as required. This subparagraph does not apply to either the Navy or Marine Corps during a period of demobilization or reduction in strength of that service.

(2) Under section 12312 of reference (a), Reserve officers serving on active duty under an active duty agreement executed under section 12311 of reference (a) may not be involuntarily released from active duty during the period of the agreement because of a reduction in actual personnel strength or for any other reason unless such release is recommended by a Board of Officers, except when they are

(a) dismissed or discharged under the sentence of a court-martial,

(b) released because of an unexplained absence without leave for at least 3 months,

(c) released because of a conviction and sentence to confinement in a Federal or State penitentiary or correctional institution and the sentence has become final, or

(d) released under paragraph 3 of this enclosure for having twice failed of selection for promotion.

(3) Under section 12686 of reference (a), Reserve officers who are on active duty (other than for training) and have completed 18 or more years of active service shall not be involuntarily released from that duty except in the case of physical disability or separation for cause before they become eligible for retired pay, other than under the retirement system in Chapter 1223 of reference (a), unless their release is approved by SECNAV.

c. All Marine Corps AR field grade officers (excluding officers within 2 years of becoming eligible for retirement with pay) are subject to release from active duty when selected for early release from active duty by DC (M&RA)-directed Selective Early Release from Active Duty (SERAD) Board per subparagraph d of this paragraph. Non-career-designated AR officers and statutory tour AR officers serving on active duty shall be released from active duty upon expiration of active service, as specified in the active duty agreement under which serving. There are no approved general officer billets in the AR competitive category. An AR O6 who desires to compete for the grade of Reserve O7 and is otherwise eligible to compete for O7 except for being a member on the AR program must be released from active duty in the AR program at least 60 days prior to the convening date of the Reserve general officer selection board.

d. When required, DC (M&RA) shall convene SERAD Boards, which shall recommend the early release from active duty of Marine Corps AR officers in the grades of O4, O5, and O6. Specific procedures governing the convening of SERAD Boards, including the number of officers in each field grade that will be considered by a particular SERAD Board will be established by DC (M&RA).

(1) Normally, O4 and O5s shall become SERAD-eligible when they attain 3 years time-in-grade, and O6s shall become SERAD-eligible when they attain 2 years time-in-grade.

(2) Any officer who is selected for early release from active duty as a result of the action of a SERAD Board and who is not on a promotion list will be released from active duty by the end of the fiscal year for which that SERAD Board was convened. If necessary, involuntary release will be deferred to enable the officer to qualify for retirement with pay. Such deferments will end on the earlier of either:

(a) the 1st day of the month following the month in which the officer qualifies for retirement with pay, or

(b) the day on which the officer must be removed from an active status under section 14506 or 14507 of reference (a) (the officer will then be given the opportunity to request transfer to the Retired Reserve or to be honorably discharged).

e. When required, CHNAVPERS shall convene a SERAD Board which shall recommend the early release from active duty of FTS O5s. CHNAVPERS shall establish numbers for the SERAD board by grouping FTS O5s by their competitive category and their promotion fiscal year group. The board must review the record of all eligible FTS officers in each competitive category as of the board's convening date. Normally, FTS O5s shall become SERAD-eligible during the 4th fiscal year after their date of rank. FTS O5s who are not on a promotion list, have attained 20 or more years of commissioned service as defined in enclosure (1), and are selected by a SERAD board, shall be involuntarily released from active duty by 1 September of the SERAD fiscal year (i.e., the fiscal year in which the SERAD board was convened), or the 1st day of the 7th month following the month in which the SERAD board's report is approved--whichever is later. FTS O5 SERAD selectees who would have less than 20 years of active service on 1 September of the SERAD fiscal year, will be released from active duty on the 1st day of the month after the month in which they attain 20 years active service. If necessary, officers selected for SERAD will be retained on active duty to enable the officers to qualify for retirement with pay (including early retirement). Retention of SERAD-select FTS O5s on active duty may not extend beyond the 1st day of the month following the month in which the officers qualify for retirement with pay (including early retirement). Retention of SERAD-select FTS O5s on active duty will not extend beyond the 1st day of the month following the month in which the officers complete 28 years of commissioned service, unless the officers are selected for continuation on the RASL under section 14701 of reference (a) or retained on active duty under section 12686 thereof. FTS O5s considered but not selected by a SERAD board will not be considered again while in the grade of O5.

f. FTS officers in the grade of O6, if not on a promotion list to a higher grade, shall be involuntarily released from

active duty at the end of 3 years time in grade, unless specifically retained by a FTS Captain Selective Retention Board. CHNAVPERS shall convene a FTS Captain Selective Retention Board under the provisions of paragraph 16 of this enclosure whenever required to retain those FTS captains best fitted to meet requirements. Officers initially retained by such a board will be released from active duty not later than the 1st day of September of the 5th fiscal year following the fiscal year of promotion, unless retained by a second FTS Captain Selective Retention Board until their completion of 30 years of commissioned service. FTS officers subject to involuntary release from active duty under this subparagraph will be retained on active duty, if necessary, to enable the officers to become eligible for retirement with pay under section 6323 of reference (a). In no case shall retention of FTS O6s on active duty extend beyond the 1st day of the month following the month in which the officers complete 30 years of commissioned service, unless the officers are selected for continuation on the RASList under section 14701 of reference (a).

g. FTS officers above the grade of O6 will be involuntarily released from active duty on the 1st day of the month following the fourth anniversary of the officer's effective date of rank to the grade of O7.

h. When required, CHNAVPERS shall convene an Involuntary Release from Active Duty (IRAD) Board to control end strength ceilings, grade allowances, or other requirements of the CANREC program. CANREC officers selected for IRAD shall be involuntarily released from active duty not later than the 1st day of the 7th calendar month beginning after the month in which the report of the IRAD board was approved, unless the officers are retained on active duty under section 12686 of reference (a). Additionally, CANREC officers may be released from active duty at the end of their specified orders for performance or other reasons as promulgated in BUPERSINST 1001.40A.

i. Temporary recall officers not on the active duty list (Three Year Recall/One Year Recall/Active Duty for Special Work) shall be released from active duty not later than the end of their specified orders unless specifically extended by subsequent orders or retained under section 12686 of reference (a).

8. Selective Early Retirement of Regular Officers in the Grades of Above O4. Under the provisions of section 638 of reference (a) and DODD 1332.32 of 30 September 1996, Regular officers in the grades above O4 may be considered for early retirement by a selection board convened by SECNAV under the provisions of reference (1). The purpose of the selective early retirement provision is to provide a means to manage an officer grade imbalance or strength overage in a competitive category such as may occur during a reduction in force. Selective early retirement shall not be used in cases where separation for cause under the provisions of reference (a) and this instruction is warranted. CHNAVPERS or DC (M&RA) shall justify selective early retirement in promotion plans submitted to SECNAV per reference (1).

9. Selective Early Removal of Reserve officers from the RASL. Under the provisions of section 14704 of reference (a), whenever SECNAV determines that there are too many Reserve officers on the RASL in any grade and competitive category who have at least 30 years of commissioned service under section 14706 of reference (a) or at least 20 years of service computed under section 12732 of reference (a), such officers may be eliminated from an active status by action of a continuation board which SECNAV may convene under section 14101(b) of reference (a).

10. Age Restrictions for Reserve officers

a. Age in Grade Restrictions. Reserve officers who have not been recommended for promotion to O7 or above and are not a member of the Retired Reserve will be involuntarily separated under section 14515 of reference (a), unless the officers are sooner separated or continued in an active status under another provision of law, as follows: they will be transferred to the Retired Reserve, if they so request and are qualified, or if not so qualified, honorably discharged from the Naval or Marine Corps Reserve not later than the last day of the month in which the officers reach the following maximum ages in grade, established by sections 14509, 14510, and 14511 of reference (a):

Below O8 ---------- 62 years
O8 ---------- 64 years

b. Retention Beyond Maximum Age in Grade. Except as provided in section 12686 of reference (a), Reserve officers will not be retained in an active status past the age in grade restrictions outlined in paragraph 10a, except as follows:

(1) Under section 14703 of reference (a), SECNAV may, with the officer's consent, retain in an active status any Reserve officers appointed in the Medical Corps, Dental Corps, Nurse Corps, or Chaplains Corps or appointed in the Medical Service Corps and designated to perform as a veterinarian, optometrist, podiatrist, allied health officer, or biomedical sciences officer. Retention may be authorized as specified in an approved SECNAV retention and continuation plan, or individually, if approved by SECNAV upon recommendation of CHNAVPERS or CMC, for whose skills a military requirement exists which cannot be met by a Regular or Reserve officers on active duty under age 62 or Reserve officers in the Ready Reserve under that age, provided that such officers are not subject to discharge, transfer or release from active duty under sections 14503, 14504, 14505, or 14506 of reference (a). Reserve officers will not be retained in an active status, or retained on or recalled to active duty in a retired status, solely for the purpose of increasing retired pay or as a reward for long, distinguished service. When service under these limitations is rendered after eligibility for retired pay has been achieved, such service shall be credited to the officers, under section 12308 of reference (a). Officers may not be retained in an active status under this paragraph later than the date on which the officers become 68 years of age.

(2) Under section 14512(b) of reference (a), SECNAV may defer the retirement under sections 14510 or 14511 of Reserve officers in a grade above O6 and retain the officers in an active status until they become 64 years of age. Officers so deferred shall be involuntarily separated under section 14515 of reference (a), as described in paragraph 10a of this enclosure, not later than the last day of the month in which the officers reach the age of 64. Not more than 10 officers may be deferred at any one time, distributed between the Navy Reserve and the Marine Corps Reserve.

11. Removal from the RASL. Under sections 10149 and 10152 of reference (a), Reserve commissioned officers on the RASL may be

List by CHNAVPERS or DC (M&RA) under the following circumstances:

a. Officers who have attained eligibility to receive non-Regular retired pay at age 60 per section 12731 of reference (a) and who, during an anniversary year, failed to earn 50 points (including membership points) per DOD Instruction 1200.15 of 18 September 1997.

b. Officers who have completed their military service obligations under section 651 of reference (a) and have earned less than 27 retirement points (including membership points) per anniversary year and for whom no shortage of officers with their skills exists in their competitive categories and grades. However, reserve officers may not be removed from the RASL for failure to meet this standard if training during the anniversary year is denied by reason of lack of funds or facilities to provide appropriate training or if circumstances of an unusual nature exist which preclude the officers from attaining at least 27 retirement points.

c. Officers who have completed their military service obligations under section 651 of reference (a) and who lack mobilization potential identified per screenings required by section 10149 of reference (a) and DoD Directive 1200.7 of 18 November 1999.

d. Officers required by law to be separated and who are retirement eligible, but whose retirements have not been completed by the date of required separation. Transfer to the Inactive Status List under this authority is an interim measure and is not to be used in lieu of final separation actions requiring retirement or discharge.

e. Officers who have been in the IRR for excessive periods of time, under guidelines established by CHNAVPERS or DC (M&RA), and who, after notification, do not become active members of the drilling Reserve.

12. Separation and Retirement of Reserve officers in an Inactive Status in the Standby Reserve. Under section 12683 of reference (a), CHNAVPERS and DC (M&RA) may honorably discharge or retire Reserve officers in an inactive status in the Standby Reserve under the following circumstances:

a. The officers have been on the Inactive Status List (Standby Reserve) for at least 1 year.

b. In cases where officers are not eligible for Retired Reserve benefits at age 60, and are not eligible or have not been approved for return to the Ready Reserve, they may be honorably discharged following notification of intent to separate, and allowing the member 30 days in which to respond or object to the discharge, in order to be considered for further retention.

c. In cases where officers are qualified for Retired Reserve benefits at age 60, the officers shall be notified and offered options of returning to the Ready Reserve (if appropriate) or transferring to the Retired Reserve. If no response is received within the specified time period, the officers may be transferred to the Retired Reserve if qualified.

13. Separation of Reserve officers Not on Active Duty for Lack of Mobilization Potential

a. Under reference (a), sections 12641, 12642, and 12683, SECNAV shall, when necessary, convene a board of officers to screen reserve officers not on active duty for their potential and availability for mobilization to active duty. Such screening will include, but is not limited to, officers in the following categories:

(1) Officers who have been found by Chief, Bureau of Medicine and Surgery (BUMED) to be not physically qualified for active duty or retention in the Naval or Marine Corps Reserve. Such officers shall be afforded an opportunity for full and fair hearing before a Physical Evaluation Board prior to final action on their cases.

(2) Officers who have been found by BUMED to be militarily unfit or unsuitable as a result of a medical finding not constituting physical disability. Such officers are not entitled to a hearing before a Physical Evaluation Board.

(3) Officers who fail to undergo a physical examination as required by current regulations.

(4) Officers who fail to keep the command or activity to which the officers are attached informed of the officer's current mailing address.

(5) Officers who fail to respond to or comply with official correspondence within a reasonable period of time.

(6) Officers who decline to accept a permanent appointment to the next higher grade within 6 months of approval of the report of the promotion selection board that recommended the officers for promotion.

(7) Officers who have lost professional qualifications for the designation/MOS held and for whom no other designation/MOS is appropriate.

(8) Officers who fail to mobilize when ordered to do so.

(9) Officers who fail to maintain physical readiness standards.

(10) Officers who fail to maintain prescribed service standards.

b. Prior to the convening of a board referred to in this paragraph officers considered will be notified and afforded an opportunity to submit matters for consideration by the board.

c. CHNAVPERS or CMC, upon recommendation of the Board that officers referred to in this paragraph should be separated for lack of mobilization potential, shall take the following action:

(1) Transfer the officers to the Inactive Status List if the officers are not qualified or do not request transfer to the Retired Reserve, or

(2) Recommend to SECNAV the officers be transferred to the Retired Reserve if the officers are qualified and request such transfer, or

(3) Recommend to SECNAV the officers be Honorably discharged from the Naval or Marine Corps Reserve.

14. Release from Active Duty of Naval Reserve officers on the Active Duty List by Reason of Retirement Eligibility. Naval Reserve commissioned officers and warrant officers on the active duty list who are eligible to retire with pay under the provisions of any retirement law will be released from active duty with a minimum of 6 months advance notice not later than the 1st day of the month following the month in which they become eligible to retire unless:

a. earlier separation is dictated under any other provisions of this instruction, or

b. they officially request retirement in lieu of release from active duty, or

c. they are retained on active duty through the administrative Retention Board and consent to being so retained, or

d. the conditions described in section 12313(b) of reference (a) pertain. To obtain retirement benefits, officers must officially request and be approved for retirement. Officers eligible to retire under section 12731 of reference (a) and qualified for retired pay who are retained on active duty must have prior approval of SECNAV in order to receive active status credit per section 12308 of reference (a).

15. Boards authorized by this instruction. Boards that are convened by CHNAVPERS or CMC under this instruction shall be convened per regulations prescribed by CHNAVPERS or CMC as appropriate.

16. Secretarial Authority. Nothing in this instruction shall be interpreted as preventing SECNAV from separating, releasing from active duty, or requiring officers to show cause for retention where otherwise authorized by law or regulation.

17. Removal of Ecclesiastical Endorsement. Officers in the Chaplain Corps who can no longer continue professional service as a chaplain because an ecclesiastical endorsing agency has withdrawn its endorsement shall be processed for separation per reference (o) and this instruction using the notification procedure contained in reference (o). Processing solely under

this paragraph is not authorized when there is reason to process for separation for cause under any other provision of this instruction, except when authorized by the Secretary in unusual circumstances based upon a recommendation by CHNAVPERS.

18. Former Members. Members of the Navy and Marine Corps Reserve who have achieved eligibility to receive non-regular retired pay per section 12731 of title 10, U.S.C., but are required per this instruction to be discharged rather than transferred to the Retired Reserve, become "Former Members". Having been discharged, these individuals no longer possess any military status. They do, however, remain entitled to receive benefits approved in chapter 54 of title 10, U.S.C. Additionally, their age 60 compensation will necessarily be adjusted to account for any reduced pay grade resultant from a "Retired Grade Determination," and the fact that they were required to separate earlier from the Naval service.

GUIDELINES ON SEPARATIONS FOR CAUSE

1. Advance Notification. COs shall report to CHNAVPERS or DC(M&RA), as appropriate, all incidents (including information received through any source, e.g., Naval Criminal Investigative Service, Naval Inspector General) involving any officers whose performance or conduct is such that processing for separation may be appropriate under this instruction.

2. Action of the Show Cause Authority. CHNAVPERS or DC (M&RA), as the show cause authorities, shall review and evaluate the record of the officers concerned and:

a. Evaluate all information presented about the case under consideration.

b. Determine whether the record contains sufficient information as to one or more of the reasons specified in this instruction to require the officers to show cause for retention before a BOI. A statement of the reason(s) for making such a determination shall be provided to the officers in writing. No recommended characterization of service shall be made except when appropriate under subparagraph 2c of this enclosure.

c. If the show cause authority recommends that probationary commissioned officers be separated with an Honorable or General (under Honorable conditions) discharge, per enclosure (5) (Guidelines on Characterization of Service), processing shall be initiated using notification procedures outlined in enclosure (7).

d. Close the case if the show cause authority determines that the record does not contain sufficient information to require the officers concerned to show cause for retention. If the show cause authority closes the case, all proceedings shall cease.

3. Processing for Separation. CHNAVPERS or DC (M&RA) shall initiate processing for separation under the following circumstances:

a. Cases referred to them under paragraph 1, when considered appropriate under this instruction.

b. When they receive information involving officers whose performance or conduct is such that processing is considered appropriate under this instruction.

c. Officers on the active duty list above the grade of CWO5 reported to SECNAV by a selection board under references (j) or (k), whose record indicates the officers should be required to show cause for retention on active duty because of substandard performance of duty, misconduct, moral, or professional dereliction, or because their retention is clearly inconsistent with the interests of national security.

d. Reserve officers not on the active-duty list above the grade of CWO5 reported to SECNAV by a selection board under chapters 1403 and 1405 of reference (a) and this instruction whose record indicates the officers should be separated because of substandard performance of duty, misconduct, moral, or professional dereliction, or because their retention is clearly inconsistent with the interests of national security.

e. Every warrant officer reported to SECNAV by a selection board under references (i), (j), or this instruction whose records/reports establish, in the opinion of the board, their unfitness or unsatisfactory performance in their warrant grade or that their retention is clearly inconsistent with the interests of national security.

4. Probationary and Non-probationary Officers

a. Probationary Officers

(1) Probationary officers being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation under the notification procedures in enclosure (7). Neither a hearing nor a board proceeding is required. In cases where deemed

appropriate, a recommendation may be made to SECNAV by CHNAVPERS or DC (M&RA) to separate such probationary officers with an Honorable or General characterization of service. This is in addition to the authority to either close a case after initial review, or refer it to a BOI. SECNAV may approve the separation and characterization, or reject the recommendation and direct that the case be referred to a BOI.

(2) Notwithstanding any other provision of this instruction, probationary officers, other than W-1's, may, upon approval of SECNAV, be discharged when there is a need to reduce the number of officers in either the Navy or the Marine Corps to meet budgetary or force size requirements. The provisions of enclosure (7) do not apply to the discharge of probationary officers under this authority. This authority will be exercised per procedures established by CHNAVPERS and DC (M&RA) and submitted for approval to SECNAV prior to implementation.

(3) Notwithstanding any other provision of this instruction, an inactive duty probationary officer undergoing initial qualification training, who fails to successfully complete the program required for retention of the appointment or issuance of the subsequent required reappointment, as appropriate, may be honorably discharged by CHNAVPERS and DC (M&RA), after notification per enclosure (7) of this instruction.

(4) SECNAV may refer any case which he considers appropriate to a BOI.

b. Non-probationary Officers. Non-probationary officers being considered for separation for one or more of the reasons contained in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) shall be processed for separation per the BOI procedures in enclosure (8).

5. Permanent Reserve Warrant Officers

a. Reserve warrant officers with less than 5 years of service as a warrant officer may be separated from the Naval or Marine Corps Reserve at any time without the benefit of a hearing or board procedure for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3). The notification procedure contained in

enclosure (7) shall be used.

b. Reserve warrant officers, regardless of length of commissioned service or service as a warrant officer, may be separated from the Naval or Marine Corps Reserve at any time without the requirement of a hearing or board procedure for any reason discussed in paragraphs 11 (Age Restrictions) or 14 (Lack of Mobilization Potential) of enclosure (3).

c. Reserve warrant officers with more than 5 years of service as a warrant officer may be separated for any reason discussed in paragraphs 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3) only upon recommendation of a BOI as provided in enclosure (8).

6. LDOs and Warrant Officers with Temporary Promotions or Appointments. As prescribed by section 5596 of reference (a), SECNAV may at any time terminate the temporary promotion or appointment of LDOs or warrant officers of the naval service without the requirement for a hearing or a board of officers. The notification procedure of enclosure (7) shall be used. Accordingly, individuals whose temporary appointments are terminated revert to their permanent status as warrant officers or enlisted members. The provisions of this instruction apply to the administrative processing of individuals who revert to warrant officer status. The provisions of SECNAVINST 1910.4B apply to the administrative processing of individuals who revert to enlisted status.

7. Permanent Regular Warrant Officers

a. Permanent Regular warrant officers who, from the date when they accepted their original permanent appointments as warrant officers in that component, have not completed 3 years of continuous active service may, under section 1165 of reference (a), have their appointments terminated at any time without the requirement of a hearing or board proceedings. The notification procedure of enclosure (7) shall be used.

b. Permanent Regular warrant officers who have completed 3 or more years of continuous active service from the date when they accepted their original permanent appointments as warrant officers may have their appointments terminated because of any reason contained in paragraphs 1 (Separation for Cause) or 6

(Parenthood) of enclosure (3) only upon recommendation by a BOI as provided in enclosure (8).

c. Permanent Regular warrant officers, who are not eligible for retirement, may apply for enlistment in the highest enlisted grade previously held under section 515 of reference (a) if Honorably discharged (such discharge not to include General under honorable conditions) because of any reason contained in paragraph 1a (Substandard Performance of Duty) of enclosure (3). Other bases listed in paragraph 1 of enclosure (3) that represent separation for cause, including Misconduct, will bar application for enlistment under section 515 of reference (a). Permanent Regular warrant officers with 3 or more years of continuous active service from the date of acceptance of original permanent appointment who are identified by a promotion selection board as being unfit or unsatisfactory in the performance of duty shall be afforded the opportunity to appear before a BOI prior to separation or termination of appointment.

8. Retention to Fulfill Statutory Service Obligation

a. At the discretion of SECNAV, Regular officers who have not fulfilled the statutory obligation referred to in paragraph 4a of enclosure (2), and who are Honorably discharged from the Regular component by SECNAV for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3), may be tendered a Reserve commission and transferred to the Ready Reserve to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

b. At the discretion of SECNAV, Reserve officers on active duty or in an active status not on active duty who have not completed the statutory obligation referred to in paragraph 4a of enclosure (2), and who would otherwise be Honorably discharged from the Naval or Marine Corps Reserve by SECNAV for reasons set forth in paragraph 1a (Substandard Performance of Duty) or paragraph 6 (Parenthood) of enclosure (3), may be released from active duty and transferred to the Ready Reserve or be retained in the Ready Reserve if not on active duty, to fulfill that obligation, unless medical reasons preclude availability to meet mobilization requirements.

c. To assist SECNAV in deciding whether the action referred

to in paragraphs 8a or 8b should be taken, CHNAVPERS or CMC shall include in the endorsement to SECNAV under the provisions of enclosure (7) or enclosure (8) an assessment of the officer's potential for future mobilization.

9. Dropping from the Rolls

a. Under sections 1161, 12684, and 6408 of reference (a), the President or SECNAV, depending upon the applicable statute, may drop from the rolls of an Armed Force a Regular or Reserve officer who

(1) has been absent without authority for at least 3 months,

(2) has been sentenced to confinement in a Federal or State penitentiary or correctional institution after having been found guilty of an offense by a court other than a court-martial or other military court, and whose sentence has become final, or

(3) except for warrant officers, W-1, has been sentenced to confinement for more than 6 months by a court-martial, when the officers have served in confinement for a period of 6 months and their sentence becomes final.

For purposes of this section, finality of the sentence of a civilian or military court will occur upon completion of all appeals to which the defendant is entitled by law.

b. Action to initiate dropping officers from the rolls shall normally be undertaken by CHNAVPERS or the DC (M&RA), on a case-by-case basis, after a finding that one or more of the above conditions exist, and the return of the officers to military control for processing for separation for cause under this instruction will serve no useful purpose.

(1) Dropping from the rolls of officers of Regular components or Reserve officers of flag or general rank will be accomplished by action of the President.

(2) Dropping from the rolls of officers of Reserve components, other than officers of flag grade, will be accomplished by action of SECNAV.

c. Neither a hearing nor a board is required in order to drop officers from the rolls. However, officers so considered shall be notified of such prospective adverse action (or reasonable efforts shall be made to provide such notification if actual notification cannot be made) and provided the opportunity to respond within 30 days of receipt of notification. Upon completion of the dropping from the rolls action, notification will be addressed to the officers concerned. No certificate of discharge is issued upon separation by dropping from the rolls since such service is not characterized. For the purpose of any Federal benefit based upon characterization of service, dropping from the rolls shall be considered as a discharge under Other Than Honorable conditions. Except for members who are absent without authority, members who are entitled to retired pay may not be dropped from the rolls unless they are ineligible to receive their retired pay under authority of subchapter II, chapter 83, of title 5, U.S.C.

10. Special Provisions

a. No officers shall be discharged under Other Than Honorable conditions, under this instruction, without first being afforded the opportunity to have their case heard before a BOI.

b. If proceedings by a BOI are mandatory in order to release officers from active duty or discharge the officers, such action will not be taken except upon the approved recommendation of such a board.

11. Limitations

a. Subject to subparagraph 11c, officers who are processed for separation because of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) or Parenthood (paragraph 6 of enclosure (3)) and who are determined to have established that they should be retained on active duty may not again be processed for separation for the same reasons within the 1-year period beginning on the date of that determination.

b. Subject to subparagraph 11c, officers who are processed for separation for Misconduct, Moral, or Professional Dereliction (subparagraph lb of enclosure (3)), or in the Interest

of National Security (subparagraph 1d of enclosure (3)) and who are determined to have established that they should be retained on active duty may again be required to show cause for retention at any time.

c. Officers may not again be processed for separation under subparagraphs 11a or 11b solely because of performance or conduct which was the subject of previous proceedings, unless the findings and recommendations of the board that considered the case are determined to have been obtained by fraud or collusion.

d. Whenever evidence of preservice misconduct is presented to a board, the board may consider it only for the purpose of deciding whether to recommend separation or retention of the respondent. Such evidence shall not be used in determining the recommendation for characterization of service. The board shall affirmatively state in its report that such evidence was considered only for purposes of determining whether it should recommend retention or separation of the officers.

e. Performance or conduct identified more than 5 years prior to the initiation of processing for separation under paragraph 3 of this enclosure shall not form the basis for processing under this enclosure. Performance or conduct is deemed to have been "identified" when it is reported to the respective Service's Show Cause Authority. "Initiation of processing" is deemed to have occurred when officers are officially notified of administrative separation processing by the respective Service's Show Cause Authority.

12. Final Disposition of Cases Processed Under Board Procedures. SECNAV shall take final action in any case wherein the commission or warrant of officers are to be terminated or the officers are to be discharged under board action. In addition to directing retention on active duty SECNAV may take the following actions:

a. Retirement and Resignation. Officers (Regular or Reserve, Temporary or Permanent) who are being considered for removal from active duty per this instruction and who are eligible for voluntary retirement under any provision of law on the date of such removal, may, upon approval by SECNAV, be retired in the highest grade in which they served satisfactorily

as determined by SECNAV under the guidelines of enclosure (6). Such a retirement is considered voluntary for purposes of determination of the officer's retirement. Officers who are not eligible for retirement may submit a request for a qualified or unqualified resignation or a resignation for the good of the service. Eligibility for retirement pay of officers convicted by a court other than a court-martial or other military court shall be determined per subchapter II, chapter 83, 5 U.S.C..

(1) Requests for such resignations and retirements shall be addressed to SECNAV, via CHNAVPERS or the DC (M&RA), as appropriate.

(2) CHNAVPERS or DC (M&RA) shall, unless the request is denied, submit the request to SECNAV with the case file and recommendations. CHNAVPERS and DC (M&RA) shall normally deny, on behalf of SECNAV, such resignations and requests for retirement while actions against the officer under the UCMJ are pending.

(3) Unless the requested characterization of service is consistent with the guidelines contained in enclosure (5) of this instruction, such resignations will normally be denied.

(4) Under section 6329 of reference (a), no officers of the Navy or Marine Corps may be retired because of misconduct for which trial by court-martial would be appropriate.

(5) A request for resignation or retirement has no effect unless accepted or approved by SECNAV.

b. Discharge. Officers (Regular or Reserve, Temporary or Permanent) discharged for cause per this enclosure, if ineligible for voluntary retirement under any provision of law on the date of such removal, shall, at the direction of SECNAV, be

(1) honorably discharged in the grade then held when the only basis for discharge is Substandard Performance of Duty under subparagraph 1a of enclosure (3), or Parenthood under paragraph 6 of enclosure (3).

(2) discharged with an appropriately characterized discharge under guidelines in enclosure (5) when the grounds for

discharge are Misconduct, Moral, or Professional Dereliction, or because Retention is not Consistent With the Interests of National Security under subparagraphs 1b, or 1c of enclosure (3).

c. SECNAV may retain the officers under the provisions of paragraph 8 of this enclosure.

GUIDELINES ON CHARACTERIZATION OF SERVICE

1. General Guidance. Characterization of service incident to separation for cause will be based on the officer's record of performance and conduct including particularly the acts or omissions giving rise to separation for cause.

a. When the separation is solely for reasons constituting substandard performance of duty or solely for removal of ecclesiastical endorsement, the characterization must be Honorable.

b. The serious nature of misconduct, moral, or professional dereliction on the part of commissioned officers require the separation normally be under Other Than Honorable Conditions. However, characterization as General (Under Honorable Conditions) may be warranted under the guidelines below. Characterization as Honorable is not authorized unless the officer's record is otherwise so meritorious that under the particular circumstances any other characterization would be clearly inappropriate.

c. When separation is for reasons of national security, the characterization should be based on the seriousness of the acts or omissions and the guidelines below.

2. Characterization of Service

a. Honorable. Officers whose quality of service have generally met the standards of acceptable conduct and performance of duty for officers of the Naval Service, or are otherwise so meritorious that any other characterization would be clearly inappropriate, shall have their service characterized as Honorable.

b. General (Under Honorable Conditions). If an officer's service has been honest and faithful but significant negative aspects of the officer's conduct or performance of duty outweigh the positive aspects of the officer's military record, it is appropriate to characterize that service as General (Under Honorable Conditions).

c. Under Other Than Honorable Conditions. This characterization is appropriate when the officer's conduct or performance of duty, particularly the acts or omissions that

give rise to the reasons for separation, constitute a significant departure from that required of officers of the Naval Service. Examples of such conduct or performance include acts or omissions which, under military law, are punishable by confinement for 6 months or more; abuse of a special position of trust; an act or acts which bring discredit upon the armed services; disregard by a superior of customary superior-subordinate relationships; acts or omissions that adversely affect the ability of the military unit or the organization to maintain discipline, good order, and morale or endanger the security of the United States or the health and welfare of other members of the Armed Forces; and deliberate acts or omissions that seriously endanger the capability, security, or safety of the military unit or health and safety of other persons.

d. Limitations

(1) Service will be characterized as Honorable when the grounds for separation are based solely on preservice activities, other than intentional misrepresentation, or omission of facts, in obtaining an appointment or in official statements or records.

(2) Service will be characterized as Honorable when the sole reason for discharge is personal abuse of drugs, as defined in reference (f), and the evidence of the unlawful drug involvement is developed as a result of the officer's volunteering for treatment under a self-referral program for treatment of drug abuse per reference (f).

(3) Conduct in the civilian community of members of a Reserve component who are not on active duty or active duty for training may form the basis for characterization as Under Other Than Honorable Conditions only if such conduct affects directly the performance of the members' military duties. Such conduct may form the basis for characterization as General (Under Honorable Conditions) only if such conduct has an adverse impact on the overall effectiveness of the Naval Service, including military morale and efficiency. If a member tests positive for the presence of illegal drugs in the member's body while in an active or inactive duty status, the drug abuse shall be deemed to have affected directly the member's readiness and performance of military duties.

e. Service will be characterized as Honorable or General (Under Honorable Conditions), consistent with the guidance in paragraphs 1 and 2, when the sole basis for separation is homosexual conduct unless aggravated acts are included in the findings. A separation under Other Than Honorable Conditions may be issued if there is a finding the officers attempted, solicited, or committed a homosexual act

(1) by using force, coercion, or intimidation,

(2) with a person under 16 years of age,

(3) with a subordinate in circumstances that violate customary military superior-subordinate relationships,

(4) openly in public view,

(5) for compensation,

(6) aboard a military vessel or aircraft, or

(7) in another location subject to military control, under aggravating circumstances noted in the finding, that have an adverse impact on discipline, good order, or morale comparable to the impact of such activity aboard a military vessel or aircraft.

GUIDELINES ON RECOMMENDATIONS - GRADE AT RETIREMENT

1. Satisfactory Service in the Grade Currently Held. Officers who retire from the Naval Service may be retired in the highest grade that they served on active duty satisfactorily, as determined by SECNAV. This determination will be made by SECNAV without a BOI in those cases, forwarded per paragraph 1c or 2 of this enclosure, where the officers have submitted voluntary retirement requests. In any other case where CHNAVPERS or DC (M&RA) determines that retirement in lesser grade may be appropriate, a BOI shall be tasked, per enclosure (8), to recommend whether the officers should be retired in the current grade or a lesser grade. In making this recommendation, the BOI must determine the grade in which the officers last served satisfactorily for a period of not less than 6 months. The BOI determination is merely a recommendation and the final decision as to retirement grade rests with SECNAV. Finally, the procedures in this enclosure do not apply to officers retiring in the grades of O9 and O10. DOD Instruction 1320.4 of 14 March 1995 provides procedures applicable to officers retiring in grades O9 and O10.

a. General Guidance. A recommendation that officers have or have not served satisfactorily in the grade currently held should be based on a determination made after considering all relevant factors, such as the nature of the misconduct and its effect on professional performance. If a BOI is held, the record must support such a determination. In the case of retirement-eligible officers, the BOI or officials reviewing the retirement request should recommend retirement in a lesser paygrade if the BOI or reviewing officials determine the officer's misconduct was serious enough to constitute a significant departure from the conduct required of officers of the Naval Service. Examples of such misconduct include, but are not limited to: abuse of special position of trust; an act or acts which bring discredit upon the armed services; disregard by a superior of customary superior-subordinate relationships; acts or omissions that adversely affect the ability of the military unit or the organization to maintain discipline, good order, and morale or endanger the security of the United States or the health and welfare of other members of the Armed Forces; and deliberate acts or omissions that seriously endanger the capability, security, or safety of the military unit or health and safety of other persons. However, when the officer's

record, in spite of the misconduct, is otherwise so meritorious as to demonstrate the officer served satisfactorily in the grade currently held, the recommendation should be for retirement in that grade.

b. Specific Factors. In considering whether an officer served satisfactorily in the grade currently held, the following factors should normally be considered:

(1) Nature and severity of the misconduct.

(2) The misconduct and its relation to, and effect on, the performance of military duties.

(3) All fitness reports and other portions of the service record which reflect performance in the current grade. In this regard it is appropriate to consider whether the misconduct was known by reporting seniors, and if not, what effect, if any, it might have had on the officer's record.

(4) Time in current grade, and relation between such time and the time of misconduct.

(5) Other relevant matters presented either by the record or the officer.

(6) Chain of command recommendations.

c. Forwarding Procedures. All voluntary retirement requests from officers who have been the subject of any substantiated adverse finding or conclusion from an officially documented investigation or inquiry (except minor infractions as determined by CHNAVPERS or DC (M&RA)) shall be forwarded to SECNAV for a retirement grade determination if: for officers in paygrades O7 and O8, the investigation or inquiry was completed subsequent to the officer's most recent Senate confirmation; or, for officers in paygrades O5 and O6, the investigation or inquiry was completed within 2 years of the date the voluntary retirement request is submitted. However, CHNAVPERS or DC (M&RA) may, in their discretion, forward a case completed prior to the 2 years before the date of the voluntary retirement request if circumstances warrant.

(1) Prior to forwarding a voluntary retirement request to SECNAV, CHNAVPERS or DC (M&RA) shall notify the officer in writing of the following:

(a) That the officer's voluntary retirement request is being forwarded to SECNAV for a retirement grade determination.

(b) The factual basis supporting the substantiated adverse finding or conclusion from the officially documented investigation or inquiry.

(c) The recommended retirement grade.

(d) That the officer may submit a rebuttal or decline to make a statement.

(e) That the officer has the right to confer with counsel as provided in paragraph 3 of enclosure (7).

(f) That the officer will, upon request, be provided copies of the records or documents to be forwarded to SECNAV, provided the documents would not be exempt from release under any provisions of the Freedom of Information Act and Privacy Act. Classified documents may be summarized.

(g) That the officer has the right to waive subparagraphs (d), (e), and (f), and that failure to respond shall constitute waiver of the rights in these paragraphs.

(h) That the officer has a specified period of time to respond to the notification as provided in paragraph 4 of enclosure (7).

(2) The officer's response shall be forwarded to CHNAVPERS or DC (M&RA) with appropriate command recommendations. CHNAVPERS or DC (M&RA) shall review the request and all related material and forward the case file to SECNAV, via CNO or CMC for officers in paygrade O7 or O8, with a retirement grade recommendation.

d. The final determination of retirement grade rests exclusively with SECNAV. Commanders are not authorized to enter into agreements in which an officer is to be retired at a particular grade level.

2. Retirement-Eligible Officer

a. Any officer being considered for administrative show cause proceedings per this instruction who is eligible for voluntary retirement under any provision of law may request voluntary retirement. The request shall be submitted via CHNAVPERS or DC (M&RA) and shall include the following information:

(1) A statement that the officer understands that a BOI will not be convened to make a recommendation to SECNAV on retirement grade.

(2) A statement that the officer understands that SECNAV may retire him or her in a lesser paygrade than currently held; and the retirement grade will be the highest grade in which the officer served satisfactorily, as determined by SECNAV.

(3) A statement that the officer has consulted with counsel, including counsel's name, grade, and branch of service. If civilian counsel is retained, provide name and address.

(4) A statement that the officer admits that his or her performance of duty was substandard, and if the officer is being required to show cause for misconduct, that he or she admits committing the misconduct.

(5) A statement that the request is voluntary and may be withdrawn only with the permission of SECNAV.

(6) A statement by the officer that he or she does or does not desire to provide supplemental material to SECNAV for consideration. Any supplemental material provided by the officer will be attached to the request.

b. The request shall also include a copy of the investigation or other documentation pertaining to the misconduct.

c. The request shall be forwarded with appropriate command endorsements. Each endorsement shall include a recommendation to approve or disapprove the request and a statement indicating the highest grade in which the officer served satisfactorily. Any relevant information or investigative material not included

in the original request should also be included. Any new factual material shall be provided to the officer for review and comment.

NOTIFICATION PROCEDURES

1. The Notification Procedure Shall Be Used When

a. Probationary officers are processed for separation for any reason specified in paragraph 1 (Separation for Cause) or 6 (Parenthood) of enclosure (3).

b. Action is taken to terminate the appointment of temporary LDOs or temporary warrant officers for any reason specified in paragraph 1 (separation for Cause) or 6 (Parenthood) of enclosure (3).

c. Action is taken to process Regular or Reserve officers for separation for the reason specified in paragraph 5 (failure to Accept Appointment to O2) of enclosure (3).

d. Action is taken to separate Inactive Duty Reserve Officers per paragraph 12b (Separation and Retirement of Reserve officers in an inactive Status in the Standby Reserve) of enclosure (3).

2. Notification. The Show Cause Authority (Navy) or the Officer Recommending Separation (Marine Corps) shall notify the officers in writing of the following:

a. The reason or reasons specified in enclosure (3) for which the action was initiated, including the specific factual basis supporting the reason.

b. The recommended characterization of service is Honorable or General (Under Honorable Conditions).

c. That the officers may submit a rebuttal or decline to make a statement.

d. That the officers may tender a resignation in lieu of separation processing per subparagraph 12a of enclosure (4).

e. That the officers have the right to confer with appointed counsel as provided in paragraph 3 of this enclosure.

f. That the officers will, upon request, be provided copies of the records of documents to be forwarded to SECNAV to support the

proposed separation, provided the documents would not be exempt from release under any provisions of the Freedom of Information Act and Privacy Act. Classified documents may be summarized.

g. That the officer has the right to waive subparagraphs c, d, e, and f, and that failure to respond shall constitute waiver of the rights in these subparagraphs:

h. That the officers have a specified period of time to respond to the notification as provided in paragraph 4.

3. Right to Counsel

a. A respondent has the right to consult with qualified counsel when the Notification Procedure is initiated, except under the following circumstances:

(1) The respondent is attached to a vessel or unit operating away from or deployed outside the United States or away from its overseas homeport, or to a shore activity remote from Judge Advocate resources,

(2) No qualified counsel is assigned and present at the vessel, unit, or activity,

(3) The CO does not anticipate having access to qualified counsel from another vessel, unit, or activity, for at least the next 5 days, and

(4) The CO determines the needs of the Naval Service require processing before qualified counsel will be available.

b. Nonlawyer counsel shall be appointed whenever qualified counsel is not available under paragraph 3a. An appointed nonlawyer counsel shall be a commissioned officer with no prior involvement in the circumstances leading to the basis of the proposed separation, and no involvement in the separation process itself. The nonlawyer counsel shall be encouraged to seek advice by telephone or other means from any judge advocate on any legal issue relevant to the case whenever practicable. When a nonlawyer counsel is appointed, the appointing letter shall state that qualified counsel is unavailable for the applicable reasons in paragraph 3a of this enclosure and the needs of the Naval Service warrant processing before qualified

counsel will be available; a copy of the appointing letter will be attached to each copy of the written notice of separation processing. The respondent may also consult with a civilian counsel at the respondent's own expense. Respondent's use of a civilian counsel does not eliminate the requirement to furnish counsel in paragraph 3a or 3b of this enclosure. Consultation with civilian counsel shall not delay orderly processing per this instruction.

4. Response

a. The respondent shall be provided a reasonable period of time, normally 5 working days, but more if in the judgment of the CO additional time is necessary, to act on the notice. An extension may be granted by the CO upon a timely showing of good cause by the officer.

b. If the respondent fails to acknowledge receipt of notification or submit a timely reply, that fact shall constitute a waiver of rights and an appropriate notation shall be recorded on a retained copy of the appropriate form.

c. If the respondent declines to respond as to the selection of rights, such declination shall constitute a waiver of rights and an appropriate notation will be made in the case file. If the respondent indicates that one or more of the rights will be exercised, but declines to sign the appropriate notification statement, the selection of rights will be noted and notation as to the failure to sign will be made.

5. Submission to SECNAV

a. The CO shall forward the case file to SECNAV via CHNAVPERS or DC (M&RA), as appropriate. The case file shall contain a copy of the written notification to the respondent, documentation substantiating the conduct or performance, and any written statement which the respondent desires to make. If the respondent tenders a resignation, it shall accompany the case file.

b. CHNAVPERS or DC (M&RA) shall forward the case file to SECNAV with recommendations on each reason for separation and the facts supporting it, the recommendation for separation, and

a recommendation for acceptance or rejection of a resignation, if one is tendered.

c. CHNAVPERS or DC (M&RA) may disapprove the separation of probationary commissioned officers when the reasons for separation are solely in the category of Substandard Performance of Duty (subparagraph 1a of enclosure (3)) and there is not sufficient evidence to support one or more of those reasons.

6. Action of SECNAV

a. SECNAV shall determine whether there is sufficient evidence supporting the allegations set forth in the notification for each of the reasons for separation.

b. If there is sufficient factual basis for separation, SECNAV may order the officer separated. If the officer tenders a resignation, SECNAV may accept or reject it.

c. If SECNAV determines the recommended Honorable or General (Under Honorable Conditions) characterization of service is inappropriate, he may refer the case directly to a BOI.

d. SECNAV may retain the officer under the provisions of paragraph 8 of enclosure (4).

BOARD OF INQUIRY (BOI) PROCEDURES

1. Purpose. The purpose of a BOI is to give officers a full and impartial hearing at which they may respond to and rebut the allegations which form the basis for separation for cause/retirement in the current grade or a lesser grade and present matters favorable to their case on the issues of separation/characterization of service.

2. Convening Authority. The Show Cause Authority shall convene, or direct to be convened, a BOI upon determination that an officer should be required to show cause for retention. A BOI shall also be convened by such authority when required under the provisions of enclosures (3), (4), or (6).

3. Active Duty Orders and Expenses. In no case shall the affording of a hearing to officers, who are not otherwise on active duty at that time, place the officers on, or return the officers to, active duty. There is no authority for the issuance of any form of initial orders to active duty for the sole purpose of facilitating appearance by officers for a hearing. There is no authority for the payment or reimbursement of any expenses which may be incurred by officers, or by any person on their behalf, in connection with any administrative separation proceeding under these regulations.

4. Membership, Recorder, Legal Advisor. BOIs shall consist of not less than three officers in the same Armed Force as the respondent.

a. In the case of Regular commissioned officers other than temporary LDOs and warrant officers, members shall be highly qualified and experienced officers in the grade of O5 or above, except that at least one member shall be in the grade of O6 or above. Each member shall be senior in grade to any officer to be considered by the board. They shall be Regular officers on the active duty list.

b. In the case of Reserve commissioned officers other than warrant officers, members shall be highly qualified and experienced officers serving on active duty or in an active status in the grade of O5 or above, except that at least one member shall be in the grade of O6 or above. Each member shall be senior in grade to any officers to be considered by the

board. At least one member must be a Reserve officer. This last requirement shall not apply in cases where the respondents are Reserve officers serving in their initial period of obligated service.

c. For Navy cases, a BOI must have at least one member from the same competitive category as the respondent. This is especially important when considering an officer for substandard performance. However, in cases involving small competitive categories, isolated geographic locations, or for reasons of operational necessity, competitive category membership may be waived by the convening authority if no suitable officer is reasonably available. For Marine Corps cases, the concept of "competitive category" is not a criterion applied in assembling BOIs.

d. In the case of temporary LDOs and warrant officers, the members comprising the board shall be senior to the respondent unless otherwise directed by SECNAV.

e. At least one member shall be an unrestricted line officer. Such officers should have command experience, whenever possible.

f. The convening authority is not limited to officers under their direct command in selecting qualified officers to sit on a BOI.

g. When a sufficient number of highly qualified and experienced active duty officers are not available, the convening authority shall complete Board membership with available retired officers who meet the criteria of paragraph 4.a. and 4.b. other than the active duty or active status list requirement, and who have been retired for fewer than 2 years.

h. Officers with personal knowledge pertaining to the particular case shall not be appointed to the Board considering the case. No officer may be a member of more than one board convened under this instruction to consider the same officer.

i. The senior member shall be the presiding officer, and rule on all matters of procedure and evidence, but may be overruled by a majority of the Board. Board members are subject to challenge for cause only. If appointed, the legal advisor

shall rule finally on all matters of procedure, evidence and challenges except challenges to themselves. The convening authority will rule finally on all challenges for cause to the legal advisor.

j. The convening authority shall appoint a nonvoting Recorder to perform such duties as appropriate. The recorder shall not participate in closed sessions of the Board.

k. The convening authority may appoint a nonvoting legal advisor to perform such duties as the Board desires. The legal advisor shall not participate in closed sessions of the Board.

5. Notice to Respondent. The respondents shall be notified in writing at least 30 days before the hearing of their case before a BOI, of each of the reasons for which they are being required to show cause for retention in the Naval Service, the least favorable characterization of service which may be recommended by the Board, and of the rights of a respondent. When the Board is required in the case of a retirement-eligible officer, to consider whether to recommend the respondent be retired in the current grade or a lesser grade, the respondent shall be informed of all reasons therefore, and the right to present evidence that their service, in the grade currently held, has been satisfactory.

6. Rights of a Respondents. The respondents shall be given the following rights, which may be exercised or waived:

a. In addition to the 30 days provided in paragraph 5, the respondents may, for good cause, further petition in a timely manner for a continuance not to exceed 30 calendar days. Requests for continuance will be decided by the convening authority if made prior to the convening of the BOI. Once the BOI is convened, the senior member may rule on such requests or refer them to the convening authority for decision. Any requests for continuance which would delay the completion of the BOI hearing beyond a total of 60 calendar days from the date of notification to the respondents per paragraph 5 must be approved by the Show Cause Authority.

b. The right to counsel, as provided in paragraph 7.

c. The opportunity to present matters in their own behalf. If suspected of an offense, the officers should be warned against self-incrimination under article 31, UCMJ, before testifying as a witness. Failure to warn the officers shall not preclude consideration of the testimony of the officers by the BOI.

d. Full access to, and copies of, records relevant to the case, except that information or material shall be withheld if CHNAVPERS or DC (M&RA) determines that such information should be withheld in the interest of national security. When information or material is so withheld, a summary of the information or material will be provided to the extent the interests of national security permits.

e. The names of all witnesses in advance of BOI proceedings. Failure to provide any information or the name of a witness shall not preclude the board from considering the information or hearing the witness, provided the respondents have had the opportunity to examine any statement, or talk with any witness presented, prior to consideration by the Board.

f. The right to challenge any member for cause. The respondents may submit for appropriate action, any relevant matter which, in their view, indicates that a particular member or members should not consider the case. A member shall be excused if found by the legal advisor, or by the convening authority if a legal advisor has not been appointed, to be unable to render a fair and impartial decision in the respondent's case. If such an excusal results in the membership of the Board falling below the number required in paragraph 4 of this enclosure, the convening authority shall appoint a new member who is qualified per that paragraph. Such new member may be challenged in the same manner as the member who was previously appointed and excused.

g. The right to request from the Convening Authority or the BOI the appearance before the Board of any witness whose testimony is considered to be pertinent to the case, as provided in paragraph 9.

h. The right to submit, at any time before the board convenes or during the proceedings, any matter from the respondent's service record, letters, answers, depositions, sworn or unsworn statements, affidavits, certificates, or stipulations. This includes, but is not limited to, depositions of witnesses not deemed to be reasonably available or witnesses unwilling to appear voluntarily.

i. The respondents and counsel may question any witness who appears before the BOI. Testimony of witnesses shall be under oath or affirmation.

j. The right to give sworn or unsworn testimony. The respondents may only be examined on sworn testimony. The respondents should be warned against self-incrimination as required by article 31, UCMJ. Failure to so warn the respondents shall not preclude consideration of the testimony by the BOI.

k. The respondents or counsel may present oral or written argument, or both, on the matter to the Board.

l. The respondents shall be provided with a copy of the BOI report. In cases involving classified matter withheld in the interests of national security, any record or information to be provided the respondent will be edited prior to delivery to them to remove classified material and preserve its integrity.

m. The respondents may submit a statement in rebuttal to the findings and recommendations of the BOI for consideration by CHNAVPERS and SECNAV.

n. The respondents may appear in person, with or without counsel, at all open proceedings of the Board.

o. Failure of the respondents to invoke any of these rights shall not be considered as a bar to the BOI proceedings, findings, or recommendations.

7. Counsel

a. Respondents are entitled to have appointed as counsel by the convening authority, a lawyer certified per article 27(b), UCMJ.

b. Respondents may request military counsel of their choice provided the requested counsel is reasonably available.

c. The determination as to whether individual counsel is reasonably available shall be made per the procedures set forth in section 0131 of JAGINST 5800.7D for determining the availability of Individual Military Counsel for courts-martial. Upon receipt of notice of the availability of the individual counsel, the respondents must elect between representation by appointed counsel and representation by individual counsel. Respondents may be represented in these proceedings by both appointed counsel and individual counsel only if the Convening Authority, in their sole discretion, approves a written request from the respondents for representation by both counsel; such written request must set forth in detail why representation by both counsel is essential to insure a fair hearing.

d. Respondents may also engage civilian counsel at no expense to the government, in addition to, or in lieu of, military counsel. Consultation with, or retention of civilian counsel, shall not delay orderly processing per this instruction.

e. Respondents should be advised that retained counsel will be expected to comply with any established board schedule absent extraordinary circumstances.

8. Waiver. Respondents may waive any of the aforementioned rights before the BOI convenes or during the proceedings. Failure to appear, without good cause, at a hearing constitutes waiver of the right to be present at the hearing. Failure to respond after being afforded a reasonable opportunity to consult with counsel constitutes a waiver of the rights in paragraph 6 of this enclosure.

9. Witnesses

a. Witnesses whose testimony will add materially to the case shall be invited to appear to offer testimony before the Board if such witnesses are reasonably available.

b. Witnesses not within the immediate geographical area of the Board are considered not reasonably available, except as provided for in subparagraph d.

c. Statements or depositions shall be admitted and considered by BOI from witnesses not reasonably available to testify during a board proceeding.

d. The convening authority shall request that COs make available, for personal appearance before a BOI, active duty or civilian witnesses under their jurisdiction whose personal appearance is essential to a fair determination, unless they

(1) are unavailable within the meaning of Military Rule of Evidence (M.R.E.) 804(a), or

(2) decline an invitation to testify before a Board. Civilian employees may be directed to appear by their supervisors. Military personnel can be ordered to appear by their CO.

e. Respondents will specify in their request for witnesses to the convening authority or, once proceedings have commenced, the BOI, the type of information the witness is expected to provide. Such a request shall contain the following matter:

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

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

(3) An explanation as to why written, recorded, telephonic, or video teleconferencing testimony would not be sufficient to provide for a fair determination.

f. Requests for witnesses may be denied if not requested in a timely manner.

g. Witnesses not on active duty must appear voluntarily and at no expense to the government, except as provided for by subparagraph i.

h. The convening authority shall make all final decisions on the appearance of witnesses.

i. If the convening authority determines that the personal appearance of a witness is necessary, they will authorize expenditure of funds for production of the witness only if the presiding officer (after consultation with a judge advocate) or the legal advisor (if appointed) advises that

(1) the testimony of a witness is not cumulative.

(2) the personal appearance of the witness is essential to a fair determination on the issues of separation or characterization.

(3) written, recorded, telephonic, or video teleconferencing testimony will not accomplish adequately the same objective.

(4) the need for live testimony is substantial, material, and necessary for a proper disposition of the case; and the significance of the personal appearance of the witness, when balanced against the practical difficulties in producing the witness, favors production of the witness. Factors to be considered in relation to the balancing test include, but are not limited to, the cost of producing the witness, the timing of the request for production of the witness, the potential delay in the proceeding that may be caused by producing the witness, or the likelihood of significant interference with military operational deployment, mission accomplishment, or essential training.

j. If it is determined the personal testimony of a witness is required, the hearing will be postponed or continued, if necessary, to permit the attendance of the witness.

k. The hearing may be postponed or continued to provide the respondents with a reasonable opportunity to obtain a written statement from the witness or arrange for video teleconferencing/teleconferencing if a witness requested by the respondent is unavailable in the following circumstances:

(1) When the presiding officer determines the

personal testimony of the witness is not required,

(2) When the CO of a military witness determines that military necessity precludes the witness' attendance at the hearing, or

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

10. Hearing. Hearings by BOIs must be conducted in a fair and impartial manner to ensure the respondents have the opportunity to present their case. At the discretion of the convening authority, a BOI may be convened to hear the cases of multiple respondents.

a. BOIs are not courts-martial and the rules of evidence do not apply.

b. Oral or written matter not admissible in a court of law may by accepted by BOIs.

c. Oral or written matter presented may be subject to reasonable restrictions as to authenticity, relevance, materiality, and competency as determined by the BOI.

d. Except for closed sessions during which the board will deliberate on the evidence presented, the proceedings of the board should normally be open to the public at the discretion of the convening authority. Once convened, the senior member may close the proceedings upon motion by either side upon good cause shown.

11. Decision of BOI. The board will make the following determination, by majority vote, based on the evidence presented at the hearing.

a. A finding on each of the reasons for separation specified (note: where a reason for separation is based on an approved finding of guilty by a court-martial or a civilian criminal conviction, such a finding of guilty or criminal conviction shall be binding on the BOI; however, in all other cases, a finding on a reason for separation shall be based on a preponderance of the evidence) and one of the following:

(1) The respondent is recommended for separation from the Naval Service for the specific reason or reasons provided in paragraph 1 (Separation for Cause) or paragraph 6 (Parenthood) of enclosure (3) supported by a preponderance of the evidence. Based on those reasons, the evidence presented, the overall record of service, and consistent with enclosure (5), the board must recommend a characterization of service.

(2) That none of the reasons specified are supported by sufficient evidence presented to warrant separation for cause and the case is, therefore, closed.

b. In the case of a retirement-eligible officer, if separation is recommended, the board shall recommend whether the officer should be retired in the current grade or a lesser grade. The board must recommend the grade in which the officer last served satisfactorily for a period of not less than 6 months.

12. Record of Proceedings. The convening authority shall make a separate record of proceedings for each respondent.

a. It shall include:

(1) a transcript of the BOI's proceedings, including the evidence of record; and

(2) a report of the findings and recommendations of the board. In all cases, the transcript shall be in summary form unless a verbatim transcript is directed by the show cause authority.

b. In addition, it shall include:

(1) the individual officer's service and background.

(2) each of the specific reasons from enclosure (3) for which the officer is required to show cause for retention.

(3) each of the acts, omissions, or traits alleged.

(4) the position taken by the respondent with respect to the allegations, reports, or other circumstances in question and the acts, omissions, or traits alleged.

(5) the findings on each of the reasons for separation specified.

(6) the recommendations of the Board the respondent be separated and receive a specific characterization of service, or, if retirement-eligible, the officer be retired in the current grade or in a lesser grade per subparagraph 11.c., or the finding of the Board that separation for cause is not warranted and that the case is closed.

(7) A copy of all documents and correspondence relating to the convening of the Board, e.g., witness requests.

c. The BOI transcript shall be authenticated by the signature of the senior member of the board only. The report of the findings and recommendations shall be signed by all members of the board and by the counsel for respondents (or by the respondents themselves if counsel was not elected) immediately upon completion of the BOI.

d. Any nonconcurring member(s) shall sign the report and submit separate minority report(s) which will include the extent of nonconcurrence with the Board report as to each finding and recommendation and the reasons therefore.

e. The counsel for respondent (or respondent if no counsel was elected) shall be provided a copy of the record of proceedings and shall be provided an opportunity to submit written comments to CHNAVPERS or DC (M&RA) within 10 days of service. Such comments will be submitted via the respondent's chain of command, however, the respondent may submit a copy directly to CHNAVPERS or DC (M&RA). A certificate of service should be included with the record of proceedings verifying submission to respondent's counsel or respondent.

f. Per section 1182(c) of reference (a), as amended by P.L. 107-314, when a board of inquiry has made a recommendation that an officer not be retained on active

duty, that officer may be required to take leave, to begin at any time following the officer's receipt of the BOI report and the expiration of any period allowed for submission by the officer of a rebuttal to that report. The leave may be continued until the date on which action by SECNAV concerned on the officer's case is completed or may be terminated at any earlier time.

13. Action on the Record of Proceedings of the BOI. The record of proceedings shall be submitted via the convening authority to CHNAVPERS or DC (M&RA), as appropriate, for termination of proceedings or review and endorsement prior to forwarding to SECNAV for final determination. This submission shall include any minority report and rebuttal or statement of the respondent. The record of proceedings of a BOI convened solely to determine the grade in which a retirement-eligible officer should be retired shall be forwarded directly to CHNAVPERS or DC (M&RA) for a forwarding endorsement to SECNAV, who will make the final determination of the grade in which an officer shall be retired. If a retirement-eligible officer who has not submitted a voluntary retirement request has failed to show cause for retention, the BOI shall make a recommendation concerning retirement grade as set forth in subparagraph 11.c.

14. Action on the Report of the BOI

a. The report of a BOI that recommends separation shall be delivered to SECNAV, with any desired recommendations of CHNAVPERS or DC (M&RA), for final determination.

b. If the BOI closes the case, all proceedings will be terminated.

c. If the BOI recommends separation or retirement, SECNAV may

(1) direct retention,

(2) direct separation of the respondent for the specified reasons, and a characterization of service not less favorable than that recommended by the BOI, or

(3) direct retirement of the respondent in the highest grade satisfactorily held as determined by SECNAV.