SC1403. SUBCHAPTER 1403

EMPLOYMENT
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EMPLOYMENT

References: (a) DoD Directive 1440.1, "The DoD Civilian Equal Employment Opportunity (EEO) Program," May 21, 1987
(b) Assistant Secretary of Defense (Force Management Policy) Memorandum, "Amendment to Executive Order 11478," July 14, 1998
(c) DoD 5200.2-R, "Personnel Security Program," January 1987
(d) Title 5, Code of Federal Regulations, Part 731, "Suitability"
(e) DoD Instruction 1402.5, "Criminal History Background Checks on Individuals In Child Care Services," January 19, 1993
(f) Public Law 99-603, "Immigration Reform and Control Act of 1986," November 6, 1986
(g) through (z), see enclosure 1

SC1403.1. GENERAL POLICY

Recruitment, selection, placement, promotion, and other staffing related nonappropriated fund (NAF) personnel actions must comply with applicable employment laws and regulations. To promote equal opportunity, such staffing actions shall include accurate job qualification requirements and objective selection procedures, and, where practical, job vacancy announcements designed to reach a broad source of applicants.

SC1403.2. EQUAL EMPLOYMENT OPPORTUNITY

NAF employers shall comply with the equal employment opportunity requirements of DoD Directive 1440.1 (reference (a)), and Acting Assistant Secretary of Defense (Force Management Policy) memorandum (reference (b)), which adds sexual orientation to nondiscrimination requirements.

SC1403.3. EMPLOYMENT CATEGORIES

Employees shall be categorized as follows:

SC1403.3.1. Regular

SC1403.3.1.1. Regular employees serve in continuing positions and have a regular schedule of not less than 20 hours per week.

SC1403.3.1.2. While a continuing position generally is established without specific time limitation, a "term appointment" of not less than one year or more than five years may be specified.

SC1403.3.2. Flexible. Flexible employees serve in either continuing or temporary positions. The work may be scheduled in advance or on an "as-needed" basis.

SC1403.4. EMPLOYEE QUALIFICATION AND SUITABILITY REQUIREMENTS

SC1403.4.1. Qualification Requirements. Job qualification requirements must be based on factual job duties and established in a manner that encourages competition for the job with the goal of hiring the most qualified person available.

SC1403.4.2. Suitability Requirements. In addition to routine review of an applicant's job application and associated reference checks, the following requirements shall be met, where applicable:

SC1403.4.2.1. DoD Personnel Security Program. Compliance with DoD 5200.2-R (reference (c)) is required before placing an individual in a position of trust; such positions are designated by Heads of Components. 5 CFR 731 (reference(d)), shall be used as a guide in making suitability determinations. An individual who does not meet suitability requirements may not be employed without prior approval of the local commander.

SC1403.4.2.2. Criminal History Background Checks on Individuals in Child Care Services. The term "child care services" means child protective services (including the investigation of child abuse and neglect reports), social services, health and mental health care, child (day) care, education (whether or not directly involved in teaching), foster care, residential care, recreational or rehabilitative programs, and detention, correctional, or treatment services. DoD Instruction 1402.5 (reference (e)) establishes policy, assigns responsibilities, and prescribes procedures for criminal history background checks for all existing and newly hired individuals involved in the provision of child care services as Federal employees, contractors, or in Federal facilities, to children under the age of 18. The Instruction allows the Department of Defense to provisionally hire such individuals before the completion of a background check; however, at all times while children are in the care of that provisionally hired child care provider, that provider must be within sight and under the supervision of a staff person whose background check has been successfully completed.

SC1403.4.2.3. Citizenship and Immigration Reform and Control Act Requirements. In accordance with Pub. L. 99-603 (reference (f)), employing civilian personnel offices must complete at the time of hire, Immigration and Naturalization Service Form I-9, "Employment Eligibility Verification," for all individuals, U.S. citizens and non-U.S. citizens, to document verification of the prospective employee's identity and authorization to be employed. The Office of Personnel Management (OPM) Operating Manual, "Federal Wage System – Nonappropriated Fund," reference (g), requires that each non-U.S. Citizen prevailing rate employee, employed within the States or the District of Columbia (D.C.), be a bona fide resident (not a temporary resident) of D.C. or one of the States.

SC1403.5. ADDITIONAL EMPLOYMENT RESTRICTIONS

SC1403.5.1. Relatives. 5 U.S.C. 3110 (reference (h)) prohibits the employment, appointment, or promotion of relatives of public officials if the public official has appointment or promotion authority, or authority to recommend employees for appointment or promotion in the nonappropriated fund instrumentalities (NAFI) where the relative seeks employment or is employed. A public official may not recommend any decision or act as a deciding official in a grievance or appeal process affecting a relative. Notwithstanding, a public official may prescribe regulations authorizing the temporary employment, in the event of emergencies resulting from natural disasters of similar unforeseen events or circumstances, of individuals whose employment would otherwise be prohibited. Where relatives are hired under such circumstances, extreme care must be taken to ensure the employment decision adheres to the principles of ethical conduct in DoD 5500.7-R, "Joint Ethics Regulation (JER)," reference (i). Further guidance is at 5 CFR 310 (reference (j)).

SC1403.5.2. Minors. Heads of Components and NAF employers must ensure complete compliance with 29 U.S.C. 212 (reference (k)). Implementing regulations are in 29 CFR 570 (reference (l)). The law and the implementing regulations protect young workers from employment that might interfere with their educational opportunities or be detrimental to their health or well-being. All States have child labor laws. When both State and Federal child labor laws apply, the law setting the more stringent standard must be observed. Employers may protect themselves from unintentional violations by keeping on file an age certificate or work permit for each minor employed. Minors shall not be given work declared to be hazardous by the Department of Labor (DOL).

SC1403.5.3. Off-Duty Military Personnel. Enlisted personnel may be employed outside duty hours on other than full-time basis. Heads of Components shall ensure that such employment will not create a conflict of interest or even the appearance of conflict of interest, and is consistent with the JER, reference (i).

SC1403.5.3.1. Compensation for off-duty hours worked shall be commensurate to that authorized in salary and wage schedules for civilian employees who perform similar duties and responsibilities.

SC1403.5.3.2. Active duty commissioned and warrant officers are prohibited from receiving compensation in any form except on an intermittent fee basis for services rendered in such capacities as officials at athletic events and participation in miscellaneous recreational and entertainment activities as approved by appropriate authority.

SC1403.5.4. Employment of Retired Members of the Armed Forces. Retired members of the Armed Forces have a right to seek and to be considered for nonappropriated fund employment in the Department of Defense. Their employment shall be subject to the requirements of DoD Directive 1402.1 (reference (m)).

SC1403.5.5. Volunteers. In accordance with 10 U.S.C. 1588 (reference (n)), certain voluntary services may be accepted in programs providing services to military members and their families. Such programs include family support, child development and youth services, library and education, religious, housing referral, employment assistance, and morale, welfare, and recreation programs. Refer to reference (n) for details.

SC1403.5.6. Personal Services Contracts. Personal services contracts may not be used to hire an individual for a job that requires such services on a continuing basis. Such positions shall be filled using one of the employment categories in Section SC1403.3., above, and graded and paid under the appropriate NAF pay schedule. This does not preclude NAFIs from obtaining sporadic temporary services via proper contracting procedures if an employer and employee relationship is not created between the Department of Defense and the worker. DoD 7000.14-R, Vol. 13 (reference (o)), states the 20 common law factors for determining whether an employer and employee relationship is created. 5 CFR 300 (reference (p)) is a good guideline for determining acceptable practices in this regard.

SC1403.6. EMPLOYMENT AND REEMPLOYMENT RIGHTS OF MEMBERS OF THE UNIFORMED SERVICES

The Uniform Services Employment and Reemployment Rights Act of 1994 (USERRA), Pub. Law 103-353, October 13, 1994, codified in Chapter 43 of 38 U.S.C. (reference (q)), strengthened and expanded the employment and reemployment rights of members of the Uniformed Services in private, State, and Federal employment NAFIs included. Persons afforded protection under USERRA include military veterans as well as members of the Reserve components of the Armed Forces. Under USERRA, eligible Service members are protected from discrimination in employment due to military obligations, are guaranteed prompt reemployment in their civilian jobs, and are provided protection of those employment rights and benefits. USERRA requires DOL's Veterans' Employment and Training Service to provide employment and reemployment assistance to any Federal employee or applicant who requires it. Information about USERRA is also available on the Internet. An interactive system, "The USERRA Advisor," answers many of the most-often asked questions about the law. It can be found in the "E-Laws" section of the DOL's home page. The internet address is http://www.dol.gov.

SC1403.7. EMPLOYMENT PREFERENCE REQUIREMENTS

These requirements are at Table 1.

SC1403.T1. EMPLOYMENT PREFERENCES

Employment Preferences in the Order of Selection Priority	Legal or Regulatory Basis for Preference	Eligibility	Basic Policy
1. NAF Reemployment Priority Lists (RPL)	DoD 1401.1-M, Chapter 5	NAF employees who were separated by Business Based Action.	Separated employees shall have priority placement in the NAF activity from which separated and priority consideration rights at other NAF activities in the same commuting area. Separated employee can remain on the RPL until reemployed, but not longer than 1 year from the date of their separation. Selection of an individual on the RPL is a noncompetitive recruitment action. Preference is in accordance with RPL provisions in Chapter 5., DoD 1401.1-M.

SC1403.T1. EMPLOYMENT PREFERENCES--Continued

Employment Preferences in the Order of Selection Priority	Legal or Regulatory Basis for Preference	Eligibility	Basic Policy
2. Military Spouses	DoD Instruction 1404.12, "Employment of Spouses of Active Duty Military Members Stationed Worldwide"	Spouses of active duty military members of the Armed Forces.	Preference applies to jobs graded at NF-3 and below, and to positions paid at hourly rates. Preference applies to any job that is open to competition in accordance with merit staffing practices. Spouse preference may be exercised once for each permanent relocation of the military sponsor. The spouse must have been married to the military sponsor before relocation to the new duty station.
3. Involuntarily & Certain Voluntarily Separated Members, i.e., a member of the Armed Forces who separates under the "Special Separation Benefits (SSB)" program or the "Voluntary Separation Incentive (VSI)," program of the Armed Forces & their Dependents	Chapter 58, Section 1143 (d) of title 10, United States Code	Members of the Armed Forces, and their dependents, who were on active duty on Sept. 30, 1990, and who were involuntarily separated under honorable conditions on or after Oct. 1, 1990. Service members and their families who separate from the Military Services under the VSI or SSB programs. Preference eligibles shall be identified by possession of a DD Form 1173 over-stamped with "TA."	Preference is the same as Military Spouse (except that Military Spouse preference has priority over this preference).
4. Family Members in Foreign Areas	DoD Instruction 1400.23 and DoD 1401.1-M, Chapter 7.	Family members of active duty military members and civilian employees stationed in foreign areas.	Preference is for all NAF jobs. Preferences apply when not at variance with the Status of Forces Agreements, country-to-country agreements, treaties, or as prescribed by DoD Instruction 1400.23.

SC1403.8. PROBATIONARY PERIOD

SC1403.8.1. The probationary period, during which ability and fitness for the job is observed, applies to employees when employed in a Regular position in one of the six major NAF employers (Army, Navy Personnel Command, Marine Corps, Navy Exchange

Service Command, Air Force, and Army and Air Force Exchange Service). The period may last up to one year during which the employee may be separated if management determines that the employee's work performance or conduct has failed to demonstrate the necessary fitness or qualifications for continued employment. Affected employees shall be given written notice as to the reasons for the separation and the effective date of the action. Probationary periods do not apply to employees who have already completed a probationary period in the same field of work with one of the six NAF employers. An exception to this rule is that a probationary period may be applied, even if the field of work has not changed, if there has been a break-in-service of one year or more immediately before employment by a different NAF employer.

SC1403.8.2. An employee is also required to serve a probationary period as stated in subsection SC1403.8.1., above, upon initial appointment to a supervisory and/or managerial position. An employee who does not satisfactorily complete the probationary period shall be returned to a position of no lower in grade or payband and pay than the one held prior to appointment to the supervisory or managerial position. Such action is not considered a disciplinary action.

SC1403.9. PLACEMENT ASSISTANCE

SC1403.9.1. Reemployment Priority List (RPL). In accordance with Chapter 5 of DoD 1401.1-M (reference (r)), each civilian personnel office servicing a NAF activity that separates employees by business-based action (BBA) shall establish a RPL to provide placement assistance. Those separated by BBA shall immediately be placed on the RPL and remain on the RPL until reemployed, but not longer than 1 year from the date of separation.

SC1403.9.2. DoD and Office of Personnel Management Interchange Agreement. Consistent with 5 U.S.C. 2105(c)(1)(D) (reference (s)), OPM and the Deparment of Defense entered into an agreement entitled, "Agreement for the Movement of Personnel Between the Civil Service System and the NAF System in DoD." The Agreement is at Figure 1 at the end of this Subchapter. It permits Federal Agencies to noncompetitively appoint NAF employees to career or career-conditional appointments, subject to conditions stated in the Agreement.

SC1403.9.3. Civilian Assistance and Re-Employment (CARE) for NAF Employees Affected by Workforce Restrictions. Subchapter 1417 of this Manual provides additional policy on placement assistance for NAF employees.

SC1403.10. REINSTATEMENT AND TRANSFER

SC1403.10.1. Reinstatement. This is the reemployment of a former DoD NAFI Regular employee who had separated from NAFI employment. Any NAFI may reinstate the former employee any time after the date of the separation. A reinstatement may be noncompetitive when to the same or lower grade or payband level previously held with a DoD NAFI.

SC1403.10.2. Transfer. This is the movement of an employee without a break in service between DoD NAFIs. A transfer may be noncompetitive when to the same or lower grade or payband level.

SC1403.11. DETAILS

A detail is a temporary assignment of an employee for a specified period, to a position different from the employee's regular assignment, including higher or lower graded positions, with the employee returning to the regular assigned duties at the end of the detail. Merit promotion procedures shall be initiated where appropriate. A detail to a lower-level position shall not adversely affect the employee's salary, classification, or job standing.

SC1403.12. SUPERVISION OF APPROPRIATED FUND EMPLOYEES BY A NAF EMPLOYEE

There is no legal prohibition against the supervision of DoD appropriated fund employees by a DoD NAF employee.

SC1403.13. EMPLOYEE RECORDS AND FILES

SC1403.13.1. General. Employee records and files shall be kept and maintained in compliance with 29 U.S.C. 211 of (reference (t)). Proper records shall be maintained on all employees, including all official personnel documents effected during an employee's service, using 5 CFR 293, "Personnel Records," (reference (u)) as a guide. Subpart E, "Employee Medical File System Records," of reference (u), provides guidance for establishing and maintaining employee medical files.

SC1403.13.2. Disposition. Records disposition shall be accomplished in accordance with instructions contained in the official records disposition schedule for DoD NAF Employee Personnel Records (Job Number NCI-330-80-3 (reference (v))) as approved by the General Services Administration, National Archives and Records Service, on June 29, 1983, as may be amended. When an employee separates from NAFI employment, voluntarily or involuntarily, their personnel folder shall be marked "Inactive" and filed in the appropriate file. Inactive folders are retained by the employing NAFI until disposition in accordance with the aforementioned record disposition schedule. When a separated employee is employed by another NAFI, including employees who transfer or who are reinstated, his or her personnel folder shall be forwarded to the new employer upon notification.

SC1403.13.3. Access. An employee's right to review his or her records and the protection of his or her privacy shall be in accordance with DoD Directive 5400.11(reference (w)). To expedite requests for information on retirement benefits or personnel data, DoD Components shall advise separating employees, in writing, where they may obtain the desired information or record.

SC1403.13.4. Merged Records Personnel Folder (MRPF) and Employee Medical Folder (EMF) Portability. OPM-designated folders, Standard Form 66-C, "Merged Records Personnel Folder" (MRPF) and Standard Form 66-D, "Employee Medical Folder" (EMF), shall be used to retain the personnel and medical records of employees who have moved between civil service and NAF positions within the Department of Defense pursuant to Pub. L. 101-508 (1990), Section 7202 (reference (x)). Ownership, maintenance, and retention of NAF records in MRPFs and EMFs for such employees are governed by the Memorandum of Understanding between the U.S. Office of Personnel Management, the National Archives and Records Administration, and the DoD Nonappropriated Fund Employment System" (reference (y)), and OPM Operating Manual, "The Guide to Personnel Recordkeeping" (reference (z)).

E1. ENCLOSURE 1

REFERENCES, continued

(g) OPM Operating Manual, "Federal Wage System, Nonappropriated Fund"
(h) Section 3110 of title 5, United States Code
(i) DoD 5500.7-R, "Joint Ethics Regulation"
(j) Title 5, Code of Federal Regulations, Part 310, "Employment of Relatives"
(k) Section 212 of title 29, United States Code
(l) Title 29, Code of Federal Regulations, Part 570, "Child Labor Regulations, Orders and Statements of Interpretation"
(m) DoD Directive 1402.1,, "Employment of Retired Members of the Armed Forces," January 21, 1982
(n) Section 1588 of title 10, United States Code
(o) DoD 7000.14-R, "Financial Management Regulation Nonappropriated Fund Policy and Procedures," Volume 13, August 1994
(p) Title 5, Code of Federal Regulations, Part 300, Subpart E, "Use of Private Sector Temporaries"
(q) Chapter 43 of title 38, United States Code
(r) DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," December 1988
(s) Section 2105 of title 5, United States Code
(t) Section 211 of title 29, United States Code
(u) Title 5, Code of Federal Regulations, Part 293, "Personnel Records"
(v) DoD Nonappropriated Fund Employee Personnel Records, Approved by General Services Administration, National Archives and Records Service, June 29, 1983
(w) DoD Directive 5400.11, "Department of Defense Privacy Program," June 9, 1982
(x) Public Law 101-508, Section 7202, "Portability of Benefits for Employees Converting to the Civil Service System"
(y) Memorandum of Understanding between U.S. Office of Personnel Management, the National Archives and Records Administration, and the DoD Nonappropriated Employment System, August 1982
(z) OPM Operating Manual, "The Guide to Personnel Recordkeeping"

SC1403.F1. EMPLOYMENT PREFERENCES

U.S. OFFICE OF PERSONNEL MANAGEMENT

NOTICE AND POSTING SYSTEM

Notice No: Provisional 315- 1 Washington, DC 20415

Date: August 15, 1994

Notice of OPM Policy Information

AGENCIES: THIS NOTICE PROVIDES ADVANCE POLICY INFORMATION RELATIVE TO PERSONNEL INTERCHANGE AGREEMENTS.

Heads of Departments and Independent Establishments:

1. OPM has approved amendments to two agreements permitting movement of personnel between excepted service agencies and the competitive civil service.

2. Department of Defense Nonappropriated Fund Instrumentalities (NAFI). The interchange agreement, originally approved on September 21, 1991, for a 3-year period, has been extended indefinitely. Please remember that eligible NAFI employees may be appointed in any agency and receive credit for their NAFI service toward career tenure. However, NAFI service may be credited for other purposes only if the employees move within the Department of Defense without a break in service longer than 3 days. Otherwise, NAFI pay may not be used as an employee's highest previous rate, leave accrued during NAFI service may not be transferred, and NAFI service may not be credited toward leave accrual, retirement or service computation date for reduction in force.

3. Nuclear Regulatory Commission (NRC). The interchange agreement has been amended to cover both current NRC employees and NRC employees who are appointed noncompetitively within 1 year following an involuntary separation without personal cause. Coverage of NRC's interchange agreement is now identical to that of all other interchange agreements.

4. Agencies may consider NRC and NAFI employees for noncompetitive appointments in accordance with the instructions provisionally retained in section 6-2 of FPM Chapter 315. This information will be included in an appropriate information issuance after that chapter is terminated on December 31, 1994.

Lorraine A. Green
Deputy Director

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UNITED STATES
OFFICE OF PERSONNEL MANAGEMENT
WASHINGTON, D.C. 20415

OFFICE OF THE DIRECTOR

DEC 13 1993

Mr. Thomas F. Garnett, Jr.
Director, Workforce Relations
(Civilian Personnel Policy/
Equal Opportunity)
Office of the Assistant Secretary
(Personnel and Readiness)
Department of Defense
Washington, DC 20301-4000

Dear Mr. Garnett:

We have approved your request for indefinite extension of the interchange agreement permitting movement of employees between the nonappropriated fund instrumentalities (NAFI) of the Department of Defense (DOD) and the competitive civil service. The agreement was established September 21, 1991, for a 3-year period.

The 3-year limit was intended to allow DOD time to develop new policies for non-disciplinary adverse actions and reduction in force for NAFI employees. We could not approve an interchange agreement without time limit while such a key part of the NAFI personnel system was changing. We have reviewed your revised policy directive and find that it will afford NAFI employees due process rights and safeguards against arbitrary actions comparable to those available in the competitive service.

This letter is DOD's authority to continue to use the agreement, indefinitely. We will notify other agencies of this extension and of NAFI employees' continuing eligibility for noncompetitive appointments.

Sincerely,

Lorraine A. Green

Lorraine A. Green
Deputy Director

AGREEMENT FOR THE MOVEMENT OF PERSONNEL
BETWEEN THE CIVIL SERVICE SYSTEM AND
THE NONAPPROPRIATED FUND INSTRUMENTALITY (NAFI)
SYSTEM IN THE DEPARTMENT OF DEFENSE

In accordance with the authority provided in Section 6.7 of the Civil Service Rules, and pursuant to the following agreement with the Department of Defense, employees serving in Nonappropriated Fund Instrumentalities (NAFI) of the Department may be appointed to positions in the competitive civil service, and employees serving in positions in the competitive civil service may be appointed to NAFI positions, subject to the following conditions:

1. Type of appointment held before movement.

To be eligible for movement under this agreement, employees must be currently serving under a competitive career or career-conditional appointment or under a NAFI appointment or have been involuntarily separated from such appointment without personal cause within the preceding year. NAFI employees must be or have been serving in continuing NAFI positions under appointments without time limits.

2. Qualification requirements.

NAFI employees must meet the qualification standards and requirements for the positions to which they are to be appointed in accordance with OPM established regulations for transfer of employees within the competitive service. Employees in the competitive service must meet the regular standards and requirements established by DOD for appointment to NAFI positions.

3. Length of service requirement.

NAFI employees must have served continuously for at least 1 year in NAFI positions before they may be appointed to positions in the competitive civil service under the authority of this agreement. Employees in the competitive civil service must have completed the 1-year probationary period required in connection with their career or career-conditional appointments in the competitive service before they may be appointed to NAFI positions, without serving a trial period, under the authority of this agreement.

4. Selection.

NAFI employees may be considered for appointment to positions in the competitive civil service in the same manner that employees of the competitive service may be considered for transfer to such positions. Employees in the competitive service may be considered for appointment to any NAFI position on the basis of their qualifications.

5. Type of appointment granted after movement.

NAFI employees who are appointed to competitive positions under the terms of this agreement will have career or career-conditional appointments, depending upon whether they meet the 3-year service requirement for career tenure. The service which commences with a permanent NAFI appointment will be accepted toward meeting the competitive service requirement. Employees of the competitive service who are appointed to NAFI positions under the terms of this agreement will receive appointments without time limit under DOD Directive No. 1401.1-M.

6. Probationary and trial periods.

Employees appointed under this agreement, who have previously completed a probationary or trial period, will not be required to serve a new probationary or trial period.

7. Status.

NAFI employees who are appointed in the competitive civil service under the terms of this agreement will receive competitive civil service status. Thereafter, such employees will be entitled to the benefits and privileges provided by the Civil Service Rules and by OPM's regulations and instructions for persons having competitive civil service status. Employees of the competitive civil service who are appointed to NAFI positions under the terms of this agreement will have whatever privileges are normally provided to persons who initially receive appointments, under DOD Directive No. 1401.1-M, to continuing NAFI positions.

- 3-

8. Effective date.

This agreement becomes effective 30 days from the date on which it is signed by both parties and shall expire, unless renewed, 3 years thereafter. The agreement may be terminated prior to its expiration date 30 days following notice from the Department of Defense or OPM and may be modified at any time with the mutual consent of the Department of Defense and OPM.

Richard B. Cheney
Secretary of Defense

21 Aug 1991
(Date)

Constance Berry Newman
Director
Office of Personnel Management

11 April 1991
(Date)