



Department of Defense INSTRUCTION

NUMBER 1400.25, Volume 1408
July 21, 2009

USD(P&R)

SUBJECT: DoD Civilian Personnel Management System: Insurance and Annuities for Nonappropriated Fund (NAF) Employees

References: See Enclosure 1

1. PURPOSE

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

b. Volume. This Volume:

(1) Reissues Volume 1408 of DoD Instruction (DoDI) 1400.25 (Reference (b)) to update DoD policy, responsibilities, and procedures for NAF employee insurance and retirement benefits programs.

(2) Cancels and incorporates Chapter 6 and Appendix 2 of DoD 1401.1-M (Reference (c)).

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

3. POLICY. It is DoD policy that:

a. To help attract and retain qualified, productive employees, the Heads of the DoD Components shall provide eligible employees a retirement system, health and life insurance, and other insurance and benefits as set forth in paragraph 5 of Enclosure 2 and in Enclosures 3 through 6.

b. NAF employee benefit programs shall meet the requirements of applicable laws, Executive orders, and regulations.

c. Regular full-time (RFT) employees shall, unless otherwise stipulated in this Volume, be eligible to participate in the health, retirement, insurance, and other benefit programs outlined in this Volume if they are:

(1) Employed on the U.S. payroll, have a Social Security Number or Individual Tax Identification Number, and are subject to U.S. income tax; and

(2) Not subject to a Status of Forces Agreement provision that precludes eligibility.

d. Employees in an employment status other than RFT shall be eligible to participate in certain employee benefit programs where so stipulated in this Volume or as authorized by the Heads of the DoD Components where permitted.

e. With respect to the matters covered by this Volume, the Commander of the Army and Air Force Exchange Service may make those decisions and take those actions that are the responsibility of the Head of a DoD Component, provided this authority is expressly delegated by both the Secretary of the Army and the Secretary of the Air Force.

4. RESPONSIBILITIES. See Enclosure 2.

5. PROCEDURES

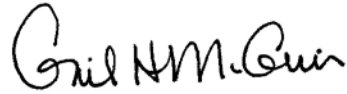
a. According to section 2105(c) of title 5, United States Code (U.S.C.), (Reference (d)), DoD NAF employees are ineligible for the Civil Service Retirement System (CSRS) and the Federal Employees Retirement System (FERS) except as provided by retirement benefit portability law in sections 8347(q)(1) and 8461(n)(1) of Reference (d). Retirement systems for eligible NAF employees are set forth in Enclosure 3. Enclosure 4 provides procedures for the portability of retirement benefits between NAF employers.

b. Section 349 of Public Law (PL) 103-337 (Reference (e)) mandates a uniform DoD-wide health benefits program for DoD NAF employees. On January 1, 2000, the DoD Uniform NAF Health Benefits Program (DoD NAF HBP) replaced the various non-health maintenance organization (non-HMO) plans offered by DoD NAF employers. The DoD NAF HBP is set forth in Enclosure 5.

6. INFORMATION REQUIREMENTS. The reporting requirements in paragraph 6.b. of Enclosure 3 are exempt from licensing in accordance with paragraphs C4.4.2. and C4.4.6. of DoD 8910.1-M (Reference (f)).

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

8. EFFECTIVE DATE. This Instruction is effective immediately.



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Enclosures

1. References
2. Responsibilities
3. Retirement Systems for Eligible NAF Employees
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ENCLOSURE 1

REFERENCES

- (a) DoD Directive 5124.02, "Under Secretary of Defense for Personnel and Readiness (USD(P&R))," June 23, 2008
- (b) Subchapter 1408 of DoDI 1400.25, "DoD Civilian Personnel Management System: Nonappropriated Fund (NAF) Insurance and Annuities," December 1996 (hereby canceled)
- (c) Chapter 6 and Appendix 2 of DoD 1401.1-M, "Personnel Policy Manual for Nonappropriated Fund Instrumentalities," December 13, 1988 (hereby canceled)
- (d) Sections 2105(c), 8171, 8336, 8347, 8414, 8461, 8501-8525, 8701-8716, and 9902 of title 5, United States Code
- (e) Section 349 of Public Law 103-337, "The National Defense Authorization Act for Fiscal Year 1995," October 5, 1994
- (f) DoD 8910.1-M, "Department of Defense Procedures for Management of Information Requirements," June 30, 1998
- (g) DoD Directive 5118.03, "Under Secretary of Defense (Comptroller) (USD(C))/Chief Financial Officer (CFO), Department of Defense," January 6, 1997
- (h) DoD Instruction 5120.39, "DoD Wage Fixing Authority – Appropriated Fund and Nonappropriated Fund Compensation Programs," September 10, 2008
- (i) Chapter 7 of title 42, United States Code
- (j) Sections 401-420 and 4975(e)(3) of title 26, United States Code
- (k) House of Representatives Report 106-162, "Report of the Committee on Armed Services on H.R. 1401," Division A, "Department of Defense Authorization," Title III, "Operation and Maintenance," May 24, 1999
- (l) Section 1043 of Public Law 104-106, "National Defense Authorization Act for Fiscal Year 1996," February 10, 1996
- (m) Parts 847 and 870 of title 5, Code of Federal Regulations
- (n) Public Law 107-107, "National Defense Authorization Act for Fiscal Year 2002," December 28, 2001
- (o) Office of Personnel Management Retirement and Insurance Service Benefits Administration Letter Number 03-102, "Crediting Service with a DoD or Coast Guard Nonappropriated Fund Instrumentality for CSRS or FERS Immediate Retirement Under Public Law 107-107, the National Defense Authorization Act for Fiscal Year 2002," January 22, 2003
- (p) Sections 4301-4335 of title 38, United States Code
- (q) Sections 621-634, and 1001-1461 of title 29, United States Code
- (r) Under Secretary of Defense for Personnel and Readiness Memorandum, "Supplemental Guidance for Department of Defense Nonappropriated Fund Civilian Human Resources at Joint Bases," November 13, 2008
- (s) Federal Labor Relations Authority Decision, 58 FLRA No. 168, "Statutorily Mandated DoD-Wide Uniformity – NAF Health Benefits," July 15, 2003
- (t) Sections 102(a) and 262 of Public Law 104-191, "Health Insurance Portability and Accountability Act (HIPAA) of 1996," August 21, 1996

- (u) House of Representatives Report 105-132, "Report of the Committee on National Security on H.R. 1119," Division A, "Department of Defense Authorization," Title III, "Operation and Maintenance," June 16, 1997
- (v) DoD Directive 4105.67, "Nonappropriated Fund (NAF) Procurement Policy," May 2, 2001
- (w) Titles VI, "Newborns' and Mothers' Health Protection Act of 1996," and VII, "Mental Health Parity Act of 1996", of Public Law 104-204, September 26, 1996
- (x) Title IX of Public Law 105-277, "Women's Health and Cancer Rights Act of 1998," October 21, 1998
- (y) Sections 101, 1580, and 2491 of title 10, United States Code
- (z) Section 7 of title 1, United States Code
- (aa) Parts 160 and 164 of title 45, Code of Federal Regulations
- (ab) Financial Accounting Standard No. 106, "Employers' Accounting for Postretirement Benefits other than Pensions," December 1990
- (ac) Public Law 103-3, "Family and Medical Leave Act of 1993 (FMLA)," February 5, 1993
- (ad) Title X of Public Law 99-272, "Consolidated Omnibus Reconciliation Act of 1985 (COBRA)," April 7, 1986, as amended
- (ae) Part 609 of title 20, Code of Federal Regulations
- (af) DoD Instruction 1015.15, "Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources," October 31, 2007
- (ag) Public Law 107-314, "Bob Stump National Defense Authorization Act for Fiscal Year 2003," December 2, 2003
- (ah) Under Secretary of Defense for Personnel and Readiness Memorandum, "Delegation of Authority Provided by Section 1101 of the National Defense Authorization Act for Fiscal Year 2003," October 22, 2003
- (ai) DoD Instruction 1000.27, "Mass Transportation Benefit Program (MTBP)," October 28, 2008
- (aj) Section 636 of Public Law 104-208, "Omnibus Consolidated Appropriations Act," September 30, 1996, as amended

ENCLOSURE 2

RESPONSIBILITIES

1. UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (USD(P&R)). In accordance with Reference (a), the USD(P&R) shall serve as the Principal Staff Assistant and advisor to the Secretary of Defense for management of the Total Force, which includes DoD NAF employees, and shall develop policies, plans, and programs for Total Force personnel.

2. PRINCIPAL DEPUTY UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS (PDUSD(P&R)). The PDUSD(P&R), under the authority, direction, and control of the USD(P&R), is responsible for policy and oversight of DoD nonappropriated fund instrumentality (NAFI) programs, including human resource programs.

3. DEPUTY UNDER SECRETARY OF DEFENSE FOR CIVILIAN PERSONNEL POLICY (DUSD(CPP)). The DUSD(CPP), under the authority, direction, and control of the PDUSD(P&R), shall oversee NAF personnel policies, including policies pertaining to employee retirement and insurance plans, and ensure their consistent implementation and continuous application throughout the Department of Defense.

4. UNDER SECRETARY OF DEFENSE (COMPTROLLER) (USD(C))/CHIEF FINANCIAL OFFICER (CFO), DEPARTMENT OF DEFENSE. In accordance with DoDD 5118.03 (Reference (g)), the USD(C)/CFO shall serve as the Principal Staff Assistant and advisor to the Secretary of Defense for financial management and shall establish and supervise the execution of uniform DoD policies, principles, and procedures for accounting systems including those involving NAFs.

5. HEADS OF THE DoD COMPONENTS. The Heads of the DoD Components shall:
 - a. Comply with the provisions of this Volume, including:
 - (1) Providing a retirement system to eligible employees as set forth in Enclosure 3.
 - (2) Ensuring the DoD NAF HBP is successfully implemented as set forth in section 3 of Enclosure 5 of this Volume.

 - b. Ensure implementation of laws and regulations applicable to NAF personnel management functions (e.g., employment, pay, leave, labor management, and insurance and annuities), including laws and regulations that are applicable through administrative extension herein.

6. SECRETARY OF THE ARMY. In addition to performing the responsibilities in paragraph 5 of this enclosure, the Secretary of the Army shall, pursuant to DoDI 5120.39 (Reference (h)), provide NAF contracting services to enable OSD to establish and administer a contract with a third-party administrator (TPA) for the DoD NAF HBP.

ENCLOSURE 3

RETIREMENT SYSTEMS FOR ELIGIBLE NAF EMPLOYEES

1. BASIC REQUIREMENT FOR PROVIDING A RETIREMENT SYSTEM

a. In accordance with section 3 of the front matter of this Volume, the Heads of the DoD Components shall provide eligible employees a retirement system consisting of one defined benefit (DB) plan and one 401(k) defined contribution (DC) plan in addition to and in consideration of Social Security benefits provided in accordance with chapter 7 of title 42, U.S.C. (Reference (i)). This provision provides for a reasonable and stable source of retirement income to supplement Social Security benefits. The United States Marine Corps, the Navy Exchange Service Command, and the Commander, Navy Installations Command may each provide separate DB and DC plans for their respective NAF employees if such authority has been delegated by the Secretary of the Navy.

b. No other plan, fund, or program that provides retirement income to employees, or that results in a deferral of income until the termination of employment or beyond, is authorized except as approved by the PDUSD(P&R).

2. RETIREMENT PLAN PROVISIONS

a. Tax Qualification Requirements. Employees in tax-qualified plans do not include plan benefits in gross income until the benefits are distributed, even though employers and employees fund the plan, and vested benefits are nonforfeitable. Therefore, in order that a covered employee is not considered to be in receipt of taxable income until benefits are distributed, NAF DB and DC plans shall meet applicable tax qualification requirements. The Army and Air Force Exchange Service (AAFES) Supplemental Deferred Compensation Plan shall meet the tax deferral requirements applicable to such nonqualified plans. Tax qualification requirements are stated in sections 401-420 of title 26, U.S.C., (Reference (j)) and may also be found in related Internal Revenue Code (IRC) provisions and supporting regulations and interpretations issued by the Department of the Treasury or the Internal Revenue Service (IRS).

b. IRS Determination Letter. An IRS determination of a plan's tax qualification is not a legal requirement. However, because of the complexity of the IRC, the importance of meeting the tax qualification requirements, and the need to ensure that contributions to NAF DB and DC plans are not prematurely treated as taxable income for participants and beneficiaries, NAF DB and DC plan sponsors shall obtain a favorable IRS determination letter with regard to the tax qualification of the plan and its trust. Sponsors of the AAFES Supplemental Deferred Compensation Plan shall seek an IRS ruling letter appropriate to nonqualified plans. Receipt of such letters does not relieve the Heads of the DoD Components from the burden of continually operating their plans in compliance with applicable IRC provisions and related regulations; it is the actual operation of the plan and the plan documentation language that determines the tax status of the plan.

c. Plan Document Requirements. The terms, conditions, benefits, rights, and features of each plan shall be set forth in an official plan document, which may be amended or restated from time to time. The Heads of the DoD Components and fiduciaries shall administer the plan in strict compliance with the provisions of the official plan document, except where a provision in the plan document is contrary to law; discretion to do otherwise is prohibited. Amendments or restatements shall be executed to change any plan document provision that is contrary to law or this enclosure, except where a provision of this enclosure has become contrary to law and therefore must be changed.

3. COORDINATION OF PLAN PROVISIONS WITH OSD AND CONGRESS

a. House of Representatives Report 106-162 (Reference (k)) requests that the Secretary of Defense not implement any changes to NAF retirement plans without consulting with the House and Senate Committees on Armed Services (HASC and SASC). To assist the Department in meeting this Congressional request, the Heads of the DoD Components shall coordinate, before implementation, with the PDUSD(P&R) through the DUSD(CPP), the following changes if they are not mandated by applicable law or DoD policy:

(1) A change that affects benefits, rights, or eligibility.

(2) A change to the structure of the trust fund such as consolidating or aggregating trust funds, but not trust fund changes that concern investment strategy or investment policy.

b. The Office of the PDUSD(P&R) (OPDUSD(P&R)) shall consult with the HASC and SASC. The rationale for the proposed change shall be included in the Component's coordination request package. The rationale shall include a business justification that addresses, as appropriate, such factors as cost, comparability with private sector and federal plans, equity, recruitment and retention, and total compensation.

c. When implementing a change other than one described in paragraphs 3.a.(1) and 3.a.(2) of this enclosure, NAF employers shall provide written notification of the change to OPDUSD(P&R) via the DoD NAF Personnel Policy Division, Civilian Personnel Management Service. The DoD NAF Personnel Policy Division shall maintain a list of administrative or non-substantive NAF plan changes for periodic OPDUSD(P&R) transmittal to the HASC and SASC for information.

4. PARTICIPATION ELIGIBILITY

a. NAF employees shall be eligible for their NAF employer's DB and DC plans in accordance with the eligibility requirement stated in paragraphs 3.c. and 3.d. of the front matter of this Volume, except that regular part-time (RPT) employees shall also be eligible for DC plan participation and the Heads of the DoD Components may provide DB plan participation to RPT employees who have a regular work schedule of at least 20 hours per week.

b. While the Heads of the DoD Components shall offer DB and DC retirement plans in accordance with section 1 of this enclosure, they may provide for voluntary or involuntary employee participation consistent with applicable laws and regulations.

c. An employee who moves from a NAF retirement-covered position to an appropriated fund (APF) position covered by CSRS or FERS on or after January 1, 1987, without a break in service of more than 1 year, is eligible to continue to participate in the NAF retirement plan as a civil service employee. This provision allows an employee who is eligible for a retirement portability election to remain in the NAF retirement plan in accordance with sections 8347(q)(2) and 8461(n)(2) of Reference (d). A CSRS or FERS annuitant who is participating in a NAF retirement plan and who moves to a DoD civil service position on or after November 24, 2003, is not eligible for a portability election, unless the annuitant retired under section 8336(d)(1) or 8414(b)(1)(A) of Reference (d) and elects pursuant to section 9902(h)(2) of Reference (d) to be subject to CSRS or FERS as a DoD reemployed annuitant. Otherwise, a CSRS or FERS annuitant is, in accordance with section 9902(h)(1) of Reference (d), not considered an employee for the purposes of either CSRS or FERS and is not eligible for a NAF retirement portability election.

5. CREDITABLE SERVICE

a. General. Credited NAF service for retirement shall be limited to all service for which employee contributions, deposits, or redeposits were made. An exception to this limitation is that credit may be granted during a waiting period that does not exceed 1 year after the date of hire if the employee elects to join the plan within 30 days of termination of the waiting period. Service in any position paid from APFs is not creditable for NAFI retirement purposes, except that:

(1) Honorable active U.S. military service is creditable as provided in paragraph 5.b. of this enclosure.

(2) Service in a FERS-covered position is creditable as provided in section 1043 of PL 104-106 and part 847.431 of title 5, Code of Federal Regulations (CFR) (References (l) and (m)).

(3) A NAF employer may credit APF service for a NAF immediate annuity in the same manner as NAF service is credited for a CSRS or FERS immediate annuity in accordance with section 1132 of PL 107-107 (Reference (n)).

(a) If the NAF employer chooses to provide for such credit, the credit is at the option of an employee who is vested but not otherwise eligible for an immediate annuity. No employee or employer deposits shall be made to the NAF retirement fund for the APF service credit. The annuity shall be actuarially reduced to offset the additional cost to the retirement fund resulting from the employee using APF service to qualify for an immediate annuity.

(b) A NAF employer who chooses to provide for such credit shall provide for consistent application and communication with employees regarding this option. The communication shall include an explanation of how opting to use APF service for a NAF immediate annuity may impact the possible receipt of CSRS or FERS benefits that would eventually be forthcoming if APF service were not used. NAF employers may use Office of Personnel Management Retirement and Insurance Service Benefits Administration Letter Number 03-102 (Reference (o)), which concerns credit for NAF service for CSRS or FERS, for guidance in crediting APF service for a NAF immediate annuity.

b. Military Service Credit. Credit for military service shall be granted in accordance with sections 4301-4334 of title 38, U.S.C. (Reference (p), commonly known as the “Uniformed Services Employment and Reemployment Rights Act (USERRA)”). The tax qualification rules referenced in paragraph 2.a. of this enclosure, specifically those set forth in section 414(u) of Reference (j), explain retirement plan requirements that must be satisfied with regard to military service and to section 4301 of Reference (p). In addition to meeting USERRA mandates, NAF employers may grant military service credit using the provisions of CSRS and FERS as guidelines, and may determine the amount of the employee payment for such service credit consistent with sound fiscal and retirement plan funding considerations.

c. Treatment of Sick Leave and Annual or Vacation Leave

(1) Sick Leave. Unused sick leave hours accumulated by an employee at the time of his or her NAF retirement may be added to the employee’s credited service to calculate the length of service for pension computation. Unused sick leave shall not, however, be considered credited service for determining vesting or eligibility to retire. The dollar value of accumulated sick leave shall not be added to earnings for the purpose of calculating the pension amount, and cash payout of such value is prohibited.

(2) Annual Leave. Accumulated annual or vacation leave shall not be added to the employee’s credited service to calculate pension amount, vesting, or eligibility to retire except as provided by subparagraph 5.c.(3) of this enclosure. The dollar value of accumulated annual or vacation leave shall not be added to earnings for the purpose of calculating the pension amount, except where the PDUSD(P&R) has “grandfathered” this calculation benefit for certain AAFES and Marine Corps NAF employees who were enrolled in their respective AAFES or Marine Corps NAF retirement plans before September 1, 2007.

(3) Provisions Concerning Separation by Business-Based Action (BBA)

(a) Mandatory Use of Annual Leave to Reach Eligibility for Retirement and Health Insurance. To enable employees separated by BBA to reach eligibility for a retirement annuity or retiree health insurance, employees shall be carried in an annual leave status beyond the scheduled separation date to the extent such leave is available in the employee’s annual leave account, except annual leave shall not be used to reach vesting status. This provision is an exception to NAF employee annual leave policy, which restricts granting annual leave immediately prior to termination of employment.

(b) Discretionary Use of Annual Leave to Reach Eligibility for Optional Retirement and Health Insurance. For employees separated by BBA, employers may extend the provisions of subparagraph 5.c.(3)(a) of this enclosure to apply to optional retirement even if the employee is already eligible for early retirement.

(c) Discretionary Use of Sick Leave with Regard to Calculation of a Deferred Annuity. Employers may add unused sick leave to credited service in the calculation of a deferred annuity for an employee who is separated by BBA. The addition of unused sick leave to credited service shall be calculated in the same way that it is calculated for normal retirement, and the restrictions set forth in subparagraph 5.c.(1) of this enclosure shall apply.

6. ADMINISTRATIVE EXTENSION OF CERTAIN REQUIREMENTS OF THE EMPLOYEE RETIREMENT INCOME SECURITY ACT (ERISA). In the interest of continued protection of the assets and integrity of NAF retirement plans, the Department of Defense shall follow the reporting and disclosure principles of sections 1021-1031 of title 29, U.S.C., (Reference (q)), which address employee communications and annual financial and actuarial reports. (Title 29, U.S.C., is commonly known as "ERISA." Sections 1021-1031 of Reference (q) are commonly known as "Title I of ERISA.") The minimum requirements to comply with these principles are:

a. Employee Communications. NAF employers shall provide participants with:

- (1) A current summary plan description (SPD) of pertinent plan provisions.
- (2) Prior notice explaining reductions in benefits, rights, or features of the plan.
- (3) A statement of benefits, upon request, that includes the participant's vesting status and the earliest date the participant could be fully vested.
- (4) A statement of benefits upon termination of employment that includes the benefit accrued and payable at normal retirement age, information on commencing benefit payments, and, if applicable, information on how a delay in benefit commencement would result in adverse consequences.
- (5) A written statement to a participant or beneficiary whose claim for benefits is denied.
- (6) Information on procedures for making a claim for benefits and appealing any adverse decision. This information may be included in the SPD.

b. Annual Actuarial Valuation Reports and Independently-Audited Financial Reports

(1) The Heads of the DoD Components shall provide a copy of their full annual actuarial valuation reports for DB plans and other post-employment benefits, including medical benefits and life insurance, to the DUSD(CPP) through the Chief of the DoD NAF Personnel Policy

Division, Civilian Personnel Management Service, OPDUSD(P&R). They shall also provide a copy of their full annual independently-audited financial reports for DB and DC plans.

(2) Copies of these accounting, auditing, and actuarial reports shall be submitted not later than 9 months after the end of the plan year. The copies shall be of the complete final reports that include the appropriate signatures and explanatory notes. (The audited financial report would include the independent auditor's signed opinion and explanatory notes to the financial statement; the actuarial valuation report would include the signature of an enrolled actuary.) Actuarial assumptions shall be reasonable both individually and in the aggregate.

(3) The Office of the DUSD(CPP) shall provide the latest annual actuarial and financial reports to the Office of the USD(C)/CFO for review and comment.

7. FUNDING FOR DB AND DC PLANS AND OTHER POST-EMPLOYMENT BENEFITS (OPEB)

a. Basic Requirement. DB plan funding and DC plan contributions shall be in accordance with applicable fiduciary and tax qualification requirements.

b. OPEB Prefunding. Enclosure 5 of this Volume states the requirement for NAF employers to annually identify and record the amount of their unfunded OPEB liability. The Heads of the DoD Components are encouraged to analyze the advantages and disadvantages of prefunding this liability. An actuary should be obtained to assess prefunding costs and benefits. The likely consequences of not prefunding, with regard to the affordability of benefit levels, should be considered. The Heads of the DoD Components should initiate prefunding when their analysis indicates it is prudent to do so. Establishing a trust fund to hold prefunded amounts and related investment returns is not required as OPEB benefits do not vest. However, OPEB funds not held in an irrevocable trust should, at a minimum, be designated as OPEB funds and set aside in a separate account to pay for OPEB.

c. Use of APFs. No DoD APFs shall be expended in connection with NAF DB, DC, and OPEB benefits except where authorized by law or DoD policy.

8. FIDUCIARY RESPONSIBILITY: PLAN ADMINISTRATION AND MANAGEMENT OF PLAN ASSETS

a. General

(1) In general, a fiduciary is any person who performs any of these functions (section 4975(e)(3) of Reference (j)):

(a) Exercises discretionary authority or control over the management of a plan or any authority or control over the management or disposition of plan assets.

(b) Renders investment advice to a plan for a fee or other direct or indirect compensation or has the authority or responsibility to do so.

(c) Has any discretionary authority or responsibility regarding plan administration whether or not it is used.

(2) Fiduciaries are charged with a high standard of care in managing the plan and its assets. In the broadest sense, everyone in the chain of responsibility for NAF retirement plans and their funds has a fiduciary responsibility for them. However, to identify individuals who can be held personally responsible or liable for losses suffered by a plan or its beneficiaries, the concept of fiduciary responsibility takes on a narrower application.

(3) Each Component's regulations shall identify the positions that fall into the category of a fiduciary.

b. Requirement. With regard to the management of a NAF retirement plan, DoD shall use the fiduciary responsibility provisions of Title I of ERISA and those stated in supportive regulations or other interpretive information issued by the Department of Labor (DOL), the Department of the Treasury, or IRC. These provisions include, but are not limited to, those concerning management of plan assets, plan and trust establishment, loyalty, the prudent man standard of care, adherence to plan documents, prohibited transactions, bonding, and liability for breach of fiduciary responsibility.

c. Designation of Fiduciaries. The Heads of the DoD Components shall designate one or more persons or positions that shall be individually or collectively the named fiduciary with respect to the plan. In the absence of the designation of a named fiduciary, the Head of the Component shall be the named fiduciary.

d. Allocation of Fiduciary Responsibility. A named fiduciary may allocate fiduciary responsibilities to others, but the named fiduciary remains responsible for selecting and monitoring the conduct of such person. Each NAF plan document shall designate the administrator. In addition, each fiduciary with respect to a plan shall be liable for a breach of fiduciary responsibility of a person to whom he or she has allocated fiduciary responsibilities with respect to the same plan if:

(1) He or she participates knowingly in or knowingly undertakes to conceal an act or omission of such other fiduciary knowing such act or omission is a breach.

(2) By his or her failure to comply with fiduciary requirements in the administration of his or her specific responsibilities that give rise to his or her status as a fiduciary, he or she has enabled such other fiduciary to commit a breach.

(3) He or she has knowledge of a breach by such other fiduciary, unless he or she makes reasonable efforts under the circumstances to remedy the breach.

e. Investment of DB and DC Plan Funds

(1) General. Any investment use of retirement funds shall comply with applicable fiduciary and tax qualification requirements, including applicable regulations or other interpretive information issued by DOL, the Department of the Treasury, or IRC. The prohibited transactions restrictions on acquisition of employer securities shall not be construed to restrict investment of Federal Government securities. Investments of retirement funds may be made to instruments of the private sector such as common and preferred stocks, corporate and municipal bonds (generally minimum investment grade), options, and real estate.

(2) Trust Requirement. Except as otherwise provided in subparagraph 8.e.(3) of this enclosure, all assets of a DB and a DC plan shall be held in trust by one or more trustees authorized by applicable State or Federal law to be trustees. Such trustee or trustees shall be either named in the trust instrument or in the plan document, or be appointed by a person who is a named fiduciary. Upon acceptance of being named or appointed, the trustee or trustees shall have exclusive authority and discretion to manage and control the assets of the plan, except to the extent that:

(a) The plan expressly provides that the trustee or trustees are subject to the direction of a named fiduciary who is not a trustee, in which case the trustees shall be subject to proper direction of such fiduciary that is made in accordance with the terms of the plan and that is not contrary to applicable law.

(b) The authority to manage, acquire, or dispose of assets of the plan is delegated to one or more investment managers who accept fiduciary responsibility with respect to the investment of plan assets allocated to them in accordance with the terms of the trust or plan document.

(3) Trust Requirement Exception. The requirements of subparagraph 8.e.(2) of this enclosure shall not apply to:

(a) Any assets of a plan that consist of insurance contracts or policies issued by an insurance company qualified to do business in a State.

(b) Any assets of an insurance company qualified to do business in a State.

(c) Any assets of a plan held by an insurance company qualified to do business in a State.

ENCLOSURE 4

PORTABILITY OF NAF RETIREMENT BENEFITS BETWEEN NAF EMPLOYERS

1. BASIC RULE. When a NAF employee who is participating in a Component's NAFI retirement plan terminates employment for reasons other than retirement and is employed by another DoD Component NAFI within 90 calendar days, and the gaining NAFI offers a different retirement plan, the employee may carry forward into the gaining NAFI's retirement plan his or her credited service accrued for retirement annuity purposes.

a. The employee shall carry forward all prior-credited service as accrued up to the date of termination or subsequent termination. However, if the gaining NAFI retirement plan does not cover part-time employees, then crediting part-time service from a different NAFI is not required.

b. Upon retirement from the gaining DoD Component NAFI, the employee's retirement annuity shall be the same as if the entire period of combined creditable RFT NAFI service had been creditable under the gaining DoD Component NAFI retirement plan. The retirement annuity so determined under the gaining NAFI retirement plan shall then be reduced by the amount or amounts that would be payable under the losing NAFI retirement plan or plans.

c. The losing NAFI shall not transfer and the gaining NAFI shall not require the transfer of any funds (including pension assets) for credited service.

d. Portability of NAF retirement benefits between NAF employers shall not apply to a terminating employee who is eligible and has since commenced receiving or is about to receive a retirement annuity from the losing NAFI plan. In this event, the employee shall be considered a new employee with the gaining DoD Component NAFI.

e. An employee shall be eligible to withdraw his or her own contributions from the losing NAFI retirement plan, but shall not be eligible to receive his or her retirement benefits from the losing NAFI retirement plan or plans until actual retirement from the gaining NAFI.

f. Exception for Base Realignment and Closure (BRAC) 2005 Joint Basing Actions. The requirement for retention of accrued service for retirement annuity purposes was waived for BRAC 2005 joint basing actions requiring movement of NAF employees to a NAF position in a different DoD Component. Guidance on providing affected employees the opportunity to remain in their current NAF employer's retirement system upon movement to a NAF position in the gaining Component is in USD(P&R) Memorandum (Reference (r)).

2. TREATMENT OF PARTICIPANTS NOT VESTED IN THE LOSING PLAN

a. When an employee terminates employment with the losing NAFI before becoming vested, the employee shall not be entitled to any benefits from the losing NAFI, except for a withdrawal

of his or her own contributions. However, credited service rendered for the losing NAFI shall be carried forward and counted when determining the employee's accrued benefits and shall further be counted in determining the employee's position on the vesting schedule of the gaining NAFI retirement plan, except that the position on the vesting schedule is not applicable for determining any eligibility for a disability annuity as the requirements for such vesting are those of the gaining NAFI's retirement plan only.

b. When the terminated employee withdraws his or her contributions before becoming vested, the retirement benefits due from the gaining NAFI plan shall be reduced and offset by the amount specified in subparagraph 3.b.(4) of this enclosure.

3. COMPUTATION OF RETIREMENT ANNUITY RESULTING FROM "NAF TO NAF" RETIREMENT PORTABILITY

a. The retirement annuity shall be computed using the gaining NAFI's retirement plan computation formula. It shall be based on all accrued credited service as rendered under the prior DoD Component NAFI employee retirement plan or plans, plus all service creditable under the gaining DoD Component's NAFI retirement plan or plans.

b. The resultant annuity, based on all credited service (including service rendered before the employee became vested), shall be offset at the time pension payments commence by the amount or amounts that would be payable under the losing DoD Component NAFI retirement plan or plans at age 62 without regard to whether the employee has or has not withdrawn his or her prior contributions and after application of the Social Security offset.

(1) If the employee is 62 at the time of termination from the losing DoD Component NAFI, the amount of the offset shall be the amount that would be payable if the employee had retired and commenced immediate receipt of the annuity at the time of that termination.

(2) If retirement benefits are to commence before age 62, the gaining NAFI shall actuarially reduce the amount of the offset (to be applied from the losing NAFI or NAFIs) to reflect the early payment of benefits.

(3) For purposes of determining the offset, the annuity amount accrued during the prior periods of employment shall be as reported in accordance with section 4 of this enclosure. The offset calculation shall be based upon the annuity formula in effect at the time of termination of employment from the prior DoD Component NAFI. In calculating this annuity, the Social Security offset shall be applied as of the date of termination.

(4) To the extent the employee was not vested at his or her prior termination date from a losing NAFI, the annuity amount for which the losing NAFI shall be liable, assuming such employee withdrew his or her contributions, shall be equal to zero. However, as stated in section 2 of this enclosure, credited service shall be carried forward and counted when determining the employee's accrued benefits with the gaining NAFI, subject to these offsets:

(a) When an employee was not vested at his or her prior termination from a losing NAFI and when such terminated employee withdraws his or her prior contributions, the gaining NAFI shall reduce benefits otherwise due by an offset.

(b) The offset shall be equal to the annuity amount that the employee's own contributions would have been sufficient to fund for him or her, assuming such contributions had continued on deposit since initially contributed.

4. TRANSFER OF RETIREMENT INFORMATION BETWEEN NAF EMPLOYERS

a. In the case of each affected or potentially affected employee, it is the responsibility of the gaining DoD Component NAFI retirement plan administrator to request from the losing DoD Component NAFI retirement plan administrator a statement setting out:

(1) The employee's name (last, first, middle initial), Social Security number, date of birth, beginning and ending periods of NAFI RFT employment, RPT employment, and number of years (including partial years) of accrued credited service for annuity accrual purposes under the losing DoD Component's NAFI retirement plan.

(2) The salary or wage history of the employee, including an explanation of the years used in calculating average compensation upon which the annuity calculation is based.

(3) The actual calculation of the resultant accrued annuity amount, assuming commencement of such benefit at age 62. If a terminating employee previously withdrew his or her employee contribution, two separate calculations shall be provided.

(a) The annuity such participant would have received had he or she left all employee contributions in the plan. (This amount shall represent the amount of the actual offset to such gaining NAFI retirement plan.)

(b) The annuity amount actually due the employee, if any, and the date benefits are scheduled to commence.

b. The gaining DoD Component NAFI retirement plan administrator shall record the applicable employee statistics, as provided by the losing NAF employer, in the affected employee's retirement plan records.

c. The gaining NAFI shall notify the losing NAFI or NAFIs of the employee's actual retirement date and the date annuity benefits are to commence.

d. It is the responsibility of the losing DoD Component NAFI retirement plan administrator to promptly provide the data request by the gaining NAFI.

(1) If prior knowledge indicates that the data is needed, the losing NAFI shall furnish any data necessary to provide full and fair disclosure to the gaining NAFI.

(2) If a terminated employee was not vested at his or her termination date, the losing NAFI shall specify the annuity amount that the employee's own contributions would have been sufficient to fund for him or her, assuming such contributions had continued on deposit since initially contributed. In addition to specifying this amount, the losing NAFI shall further specify to the gaining NAFI whether or not a benefit is actually due for contributions not previously withdrawn.

ENCLOSURE 5

DoD NAF HBP

1. LEGAL REQUIREMENT FOR A DoD NAF HBP. Consistent with Reference (e), a single, uniform HBP shall exist for DoD NAF employees.

2. ROLE OF THE DoD NAF EMPLOYEE BENEFITS COMMITTEE. The DoD NAF Employee Benefits Committee (hereafter referred to as the “Benefits Committee”) is sponsored by the DUSD(CPP), chaired by a member of the DoD NAF Personnel Policy Division and composed of representatives from that division and the DoD NAF Components. The Benefits Committee shall:

a. Convene as necessary to review DoD NAF HBP matters and develop policy recommendations to present to the PDUSD(P&R) through the DUSD(CPP). Proposed policy changes shall be coordinated with the DoD NAF Components through normal staff procedures.

b. Recommend the kinds and levels of benefits the DoD NAF HBP shall provide based upon such factors as cost, mainstream private and public sector practice, and health benefits as an element of the total compensation package necessary to recruit and retain productive employees.

c. Monitor and evaluate the appropriateness and use of plan benefits and the effectiveness of TPA performance. The TPA’s duties and relationship with the Benefits Committee and NAF employers are stated in section 4 of this enclosure.

3. ROLES AND REQUIREMENTS OF THE HEADS OF THE DoD COMPONENTS

a. To ensure DoD-wide uniformity and equity according to Reference (e), the Heads of the DoD Components are not authorized to establish HBPs, provisions, or policy for NAF employees except as may be otherwise stated in this enclosure. The Heads of the DoD Components or their designees may request that the Benefits Committee consider proposed changes to the DoD NAF HBP by submitting their requests and supporting rationale in writing to the Chair of the Benefits Committee. As the Benefits Committee is responsible for recommending policy changes to the PDUSD(P&R) pursuant to paragraph 2.a. of this enclosure, the Heads of the DoD Components shall appoint a representative to the Benefits Committee and grant the representative authority to vote on proposed Committee recommendations on behalf of the Component.

b. Consistent with Federal Labor Relations Authority Decision 58 (Reference (s)) on negotiability issues, the Heads of the DoD Components and their subordinate organizations are not authorized to bargain over union proposals on health plan provisions that are not in compliance with DoD policy for the DoD NAF HBP. Proposals contrary to DoD NAF HBP policy, including those pertaining to the employer’s share of premium rates, are contrary to law

because they are inconsistent with the statutory mandate for uniformity, and are thus outside of the Components' duty to bargain.

c. Pursuant to subparagraph 5.a.(2) of Enclosure 2 of this Volume, the Heads of the DoD Components are responsible for ensuring that the DoD NAF HBP is successfully implemented and maintained by the NAF employers to include:

(1) Funding the DoD NAF HBP through timely payment of preferred provider organization (PPO), indemnity, and dental plan claims; TPA fees associated with administering PPO, indemnity, and dental plans; and premiums to applicable HMOs. This responsibility includes ensuring proper employee payroll deductions for premiums, building and maintaining employer reserve funds to cover unpredicted increases in the cost of claims, and funding claims that DoD NAF HBP participants may present after a TPA claims-processing contract terminates.

(2) Complying with requirements for NAF employer cost-sharing as described in section 10 of this enclosure.

(3) Resolving administrative issues concerning Component employees and retirees.

(4) Providing advice and assistance to employees and retirees on the provisions of the DoD NAF HBP, including distributing communication materials (such as premium information and TPA-provided SPDs) and assisting in proper completion of applicable forms. The requirements for communications are further explained in section 8 of this enclosure.

(5) Determining initial enrollment eligibility based on section 8 of this enclosure.

(6) Reviewing enrollees' appeals of claims that the TPA has denied. All reviews shall follow the appeals procedures stated in the contract between the Department of Defense and the TPA. The Head of the DoD Component or designee is the final level of employee appeal and is responsible for communicating the appeal decision to the employee, documenting the appeal decision, and providing a copy to the Chair of the Benefits Committee.

(7) Implementing the administrative simplification mandates of section 262 of Public Law 104-191 (Reference (t), commonly known as the "Health Insurance Portability and Accountability Act Of 1996 (HIPAA)") within their Components to protect the privacy of an individual's health information. This includes designating a Component privacy official and performing the functions outlined in section 7 of this enclosure.

4. TPA ROLES AND RELATIONSHIPS

a. TPA Contract

(1) The Department of Defense accepts the approach set forth in page 313 of House of Representatives Report 105-132 (Reference (u)), which requires that the DoD NAF HBP be subject to the competitive bidding process.

(2) The contract between the Department of Defense and the TPA shall be consistent with DoDD 4105.67 (Reference (v)).

(3) The TPA shall not provide an insured medical product as the DoD NAF HBP shall be self-funded by the NAF employers as discussed in section 10 of this enclosure. An insured dental plan may be offered as discussed in section 5 of this enclosure.

b. TPA Duties

(1) Tasks accomplished by the TPA concern the administration of PPO, indemnity, and dental plans, but not HMO plans. (While the DoD NAF HBP includes HMO plans as explained in section 5 of this enclosure, the TPA does not provide or administer them. An HMO plan is an insured product procured separately by a NAF employer.)

(2) TPA tasks include administering and paying claims; providing information and assistance on setting premiums and reserve funds; interfacing directly with each of the NAF employer's designees to obtain necessary data and funding in accordance with DoD NAF HBP policy; providing expert advice on health benefits management matters; establishing SPD content consistent with DoD direction; publishing and distributing SPDs, as the Department of Defense requires; developing and printing employee communications; providing administrative assistance during open enrollment and plan selection periods; and providing reports necessary to evaluate use of PPO, indemnity, and dental plans. The TPA shall also assist the Department of Defense in complying with applicable provisions of Reference (u) and in meeting other legal requirements.

c. TPA Interface with NAF Employers. Each NAF employer shall:

(1) Deal directly with the TPA to ensure administrative matters affecting its employees are properly executed and in conformance with DoD NAF HBP policy.

(2) Establish claims and administrative fee payment account arrangements with the TPA to ensure timely flow of employer funds for payment of claims and administrative fees.

5. HEALTH PLANS AND BENEFITS

a. General. The DoD NAF HBP consists of PPO, indemnity, dental, and HMO plans. A PPO or an indemnity plan shall be available in each area where eligible employees and retirees

live. To benefit from the cost advantages of a managed care plan, the PPO plan shall be offered, rather than the indemnity plan, wherever practical. The indemnity plan shall be offered only in geographic areas where the PPO plan is not offered. Where NAF employers offer HMOs, eligible employees and retirees who are not eligible for Medicare may choose either the HMO or the non-HMO plan. Special rules pertaining to coverage of retirees eligible for Medicare are at subparagraphs 5.b.(2) and 8.d. of this enclosure.

b. DoD NAF HBP Rules Pertaining to HMOs

(1) New HMO Contracts or Agreements. The Heads of the DoD Components shall submit all new HMO contracts or agreements to the Benefits Committee for approval before they are executed. These contracts or agreements shall permit enrollment of all DoD NAF participants (regardless of DoD NAF employer) who meet the eligibility requirements in section 6 of this enclosure and who live in the geographic area serviced by the HMO. All provisions of the HMO contract shall apply uniformly to the participants regardless of NAF employer including premium tier structure and employee share of the total premium.

(2) Medicare-Eligible Retirees not Eligible for HMOs. Once the retiree is eligible for Medicare, the retiree and his or her family must change to the applicable non-HMO NAF health plan. The Heads of the DoD Components may submit a written request to the Chairman of the Benefits Committee asking the Committee to offer an exception permitting Medicare-eligible retirees to participate in an HMO.

c. DoD NAF HBP Dental Plans

(1) Comprehensive Dental Plan for NAF HBP Medical Plan Enrollees. This plan is offered as an option to all PPO and indemnity plan enrollees, and to enrollees in HMOs that do not offer dental benefits through a rider purchased by the NAF employer.

(2) “Stand-Alone” Insured Dental Plan. A stand-alone insured dental plan shall be offered subject to the TPA making such a plan available that is acceptable to the Department. It is offered as an option for DoD NAF employees in regular positions who meet the active employee eligibility requirements in paragraph 6.b. of this enclosure but who are not participating in a NAF HBP medical plan. There is no employer contribution to the stand-alone dental plan; 100 percent of the premium is paid by the employee. Retirees are not eligible to enroll in the stand-alone dental plan and there is no opportunity to continue this coverage at the time of retirement. There is no provision for temporary continuation of coverage (TCC) for the stand-alone dental plan.

d. SPDs. Sections 1001-1461 of Reference (q) do not apply to the DoD NAF HBP. However, the Department of Defense shall follow the ERISA requirement that participants in health plans receive a written SPD. The SPD is a key reference document explaining plan provisions, eligibility requirements, benefit coverage, and procedures to file a claim for payment of benefits. Each DoD NAF HBP plan has a separate SPD. This enclosure does not contain the detailed information provided in the SPDs.

(1) The TPA shall prepare and forward the non-HMO SPDs to the Benefits Committee for approval. After approval, the TPA shall issue the SPDs to the NAF employers' points of contact to distribute to the participating employees and retirees.

(2) NAF employers shall ensure that each HMO provides a copy of the plan's certificate of coverage, applicable riders, SPD, and schedule of co-payments to the applicable NAF employers and covered participants.

e. Application of Laws Requiring Certain Health Benefits. The DoD NAF HBP shall use the standards of:

(1) Title VI of Public Law 104-204 (Reference (w)) to provide for mother and newborn hospitalization of not less than 48 hours following a birth by vaginal delivery or 96 hours for delivery by cesarean section, unless the attending doctor, in consultation with the mother, discharges earlier.

(2) Title IX of Public Law 105-277 (Reference (x)) to provide medical and surgical benefits for women who elect reconstructive surgery following medically-necessary mastectomies covered by the DoD NAF HBP.

(3) Title VII of Reference (w) to remove annual maximums and lifetime aggregate dollar limits for mental healthcare.

6. ELIGIBILITY REQUIREMENTS

a. General. The eligibility requirements specified in this paragraph and in the SPDs are the only criteria that establish eligibility. NAF employers shall not require employees or retirees to participate in a separate benefit program, such as life or disability insurance, to be eligible for the DoD NAF HBP. Eligible employees, retirees, and eligible dependents shall not be excluded from enrollment or coverage because of a preexisting condition.

b. Active Employees. Section 3 of the front matter of this Volume states the eligibility requirements for active employees, except that RPT employees having a regular work schedule of at least 20 hours per week are also eligible to participate in the DoD NAF HBP.

c. Retirees

(1) Eligibility for Post-Retirement Medical (PRM) and Dental Coverage. Employees are eligible to continue participating in a DoD NAF HBP medical plan (HMO or non-HMO; subparagraph 5.b.(2) of this enclosure applies to HMO enrollment) after retirement and the DoD NAF HBP comprehensive non-HMO dental plan if they meet the enrollment, participation, and retirement annuity requirements at subparagraphs 6.c.(1)(a), (b), and (c) of this enclosure.

(a) Enrollment. Employees must be enrolled in a DoD NAF HBP medical plan (HMO or non-HMO) on the day before retirement to be eligible for medical and dental coverage

following retirement. Employees who wish to take dental coverage into retirement must also be enrolled in the dental plan associated with their medical plan option (PPO, indemnity, or HMO) on the day before they retire.

(b) Participation. An employee must have 15 years of cumulative participation in any combination of DoD NAF employer medical plans existing before January 1, 2000, and the DoD NAF HBP (HMO or non-HMO plans) to be eligible for medical and dental coverage following retirement. Employees who wish to continue dental coverage into retirement must also have 15 years of cumulative participation in the dental plan associated with medical plan participation (PPO, indemnity, or HMO). Participation in either the medical or dental plan does not have to be continuous and is not affected by breaks in service.

1. Credit for Federal Employees Health Benefits (FEHB) Program Participation. Continuous participation in FEHB as of the day before a move from a DoD APF position to a DoD NAF position on or after January 1, 1987, without a break in service of more than 3 days is credited toward the 15-year participation requirement for medical and dental plan participation. However, once enrolled in FEHB PRM coverage, the retiree is ineligible to enroll in NAF HBP PRM unless NAF HBP PRM enrollment is based solely on qualifying NAF HBP participation.

2. Circumstances Providing Waivers of the 15-Year Participation Requirement

a. Involuntary Movement from a DoD APF Position to a DoD NAF Position. The medical and dental plan requirement of 15 years participation for eligibility for post-retirement coverage is waived for employees who had 5 years of continuous enrollment in FEHB on the day before being involuntarily moved from a DoD APF position to a DoD NAF position. The move must have occurred on or after January 1, 1987, without a break in service of more than 3 days. For the purposes of this enclosure, an involuntary move occurs when the employee's APF position is abolished in the APF employment system and reestablished in the NAF employment system without a substantial change in duties.

b. Movement from APF to NAF Positions Pursuant to the Uniform Funding and Management (UFM) Program. The medical and dental plan requirement of 15 years participation for eligibility for post-retirement coverage is waived for employees who had 5 years of continuous enrollment in FEHB on the day before moving from a DoD APF position to a DoD NAF position pursuant to the UFM authority granted by section 2491 of title 10, U.S.C. (Reference (y)). The employee must have been the incumbent of a position that the employer moved from APF to NAF pursuant to the UFM funding authority and must have moved between the positions without a break in service of more than 1 day. Employers are required to document waivers of the 15-year participation requirement for the purpose of UFM and be prepared to report this information to OSD as requested.

c. Participation in a NAF Employer's Dental Plan Prior to January 1, 2000. The requirement for 15 years of dental plan participation for post-retirement dental plan coverage is waived for employees who participated in a NAF employer's dental plan when the NAF employer first offered it prior to January 1, 2000, and who have continuously participated

in the DoD NAF HBP dental plan (HMO or non-HMO) since it was implemented on January 1, 2000.

(c) Retirement Annuity. The retiring employee must receive an immediate NAF annuity by a monthly annuity check or a lump-sum annuity payment to be eligible for medical and dental coverage following retirement. The annuity may also be from CSRS or FERS provided the employee elected to remain covered by CSRS or FERS as a NAF employee pursuant to section 8347(q) or section 8461(n) of Reference (d).

(2) Continuation of PRM Eligibility Provisions in Effect on December 31, 1999. Before implementation of the DoD NAF HBP on January 1, 2000, each major NAF employer applied its own separate PRM eligibility criteria. The criteria were in some cases more generous to employees than the PRM criteria stated in paragraph 6.c. of this enclosure. Examples of more generous PRM criteria include eligibility for PRM without requiring receipt of an immediate NAF annuity, and eligibility for PRM with less than 15 years of participation in the DoD NAF employer medical plan existing before January 1, 2000. At the time of DoD NAF HBP implementation, the Heads of the DoD Components were permitted to apply more generous PRM eligibility criteria that were in effect in the NAF employer plan on December 31, 1999. The two groups eligible for continuation of an employer's more generous eligibility provisions are:

(a) Employees Participating in the Employer's Previous Health Plan on December 31, 1999. The Heads of the DoD Components are permitted to apply the employer's more generous PRM eligibility criteria to employees who were participating in the employer's health plan on December 31, 1999, and who enrolled in the DoD NAF HBP during the 1999 open enrollment period. The Heads of the DoD Components exercised discretion to apply the criteria to ALL of those employees or only to those within that group who were close, as determined by the DoD Component, to meeting the PRM eligibility criteria of the NAF employer's former plan. For example, the DoD Component may have chosen to apply the DoD NAF employer's more generous PRM eligibility criteria only to those employees who were within 5 years of reaching PRM eligibility. The DoD Component was required to apply such determinations uniformly. An employee's personnel folder shall contain documentation of eligibility for the employer's more generous PRM eligibility provisions.

(b) Individuals Receiving PRM Coverage as of December 31, 1999. An employer's more generous PRM eligibility criteria shall continue to apply to those retirees and former employees receiving PRM coverage on December 31, 1999, who elected during the 1999 DoD NAF HBP open enrollment period to participate in the DoD NAF HBP. If PRM coverage was not elected or the coverage is canceled, it cannot be reinstated or elected during subsequent open enrollment periods.

(3) PRM or Post-Retirement Dental Coverage Election and Termination. If employees do not elect post-retirement coverage when they retire, medical and dental coverage terminates. If a retiree cancels post-retirement coverage for any reason or fails to pay applicable premiums, the coverage terminates. A retiree shall not have PRM or post-retirement dental coverage

reinstated or be eligible to elect to enroll during subsequent open enrollment or plan selection periods.

(4) TRICARE-for-Life. Medicare-eligible retirees who are eligible for TRICARE-for-Life may suspend DoD NAF HBP medical plan enrollment for the purpose of enrolling in TRICARE-for-Life. This provision also applies to eligible surviving dependents. At the time of enrollment in TRICARE-for-Life, enrollees must also suspend DoD NAF HBP dental plan participation if covered by the DoD NAF HBP dental plan. Those who involuntarily lose TRICARE-for-Life may return to DoD NAF HBP medical (and dental if applicable) coverage immediately; otherwise, they may do so during the next open enrollment period.

d. Dependents. Dependents of enrollees include a spouse, unmarried children (including stepchildren and foster children) under age 19, unmarried children under age 25 who are full-time students and dependent upon the enrollee for support, and children over the maximum age who are incapable of self-support due to a disability. Consistent with section 7 of title 1, U.S.C. (Reference (z)), the word “spouse” refers only to a husband or wife of the opposite sex. Further details on eligibility criteria for dependents are published in the SPDs.

7. HIPAA

a. Applicability. Sections 102(a) and 262 of Reference (t) apply to the DoD NAF HBP. Accordingly, requirements regarding HIPAA provisions for certification of periods of coverage, special enrollment periods for certain circumstances (see subparagraph 8.f.(1) of this enclosure), restrictions against basing eligibility or premium contribution rates on health status-related factors, and protection of an individual’s privacy are incorporated into this enclosure or the SPDs, as appropriate.

b. Privacy Regulations. The DoD NAF HBP is subject to the privacy rules of Reference (t). These rules are found at parts 160 and 164 of title 45, CFR (Reference (aa)), and require the DoD NAF HBP to implement appropriate administrative, technical, and physical safeguards for protected health information (PHI). The Heads of the DoD NAF Components are responsible for implementing HIPAA privacy rules within their Components including training requirements. The NAF Components shall provide each plan participant a HIPAA privacy notice that details the employee’s rights, responsibilities of the DoD NAF HBP, and the employer’s duties in protecting the privacy of DoD NAF HBP plan participants.

(1) Privacy Officer. The Chair of the Benefits Committee or designee shall serve as the DoD NAF HBP Privacy Officer and shall be responsible for oversight of DoD NAF HBP compliance with the HIPAA privacy rules. Employees who believe their PHI has been used or disclosed in violation of the HIPAA privacy rules may file a complaint with the DoD NAF HBP Privacy Officer. The Privacy Officer may investigate and adjudicate the complaint, or may forward it to the DoD Component privacy official (subparagraph 7.b.(2) of this enclosure) for investigation and adjudication. The Privacy Officer shall maintain records of all complaints, investigation results, and the final resolution. Employees may also file complaints with the Secretary of Health and Human Services.

(2) Privacy Official. Each DoD NAF Component shall designate a privacy official who responds to HIPAA privacy complaints forwarded by the DoD NAF HBP Privacy Officer. The privacy official processes the complaints through the Component's grievance procedure(s). Privacy officials shall provide the Privacy Officer with a written report of any investigation and the disposition of all HIPAA privacy complaints received. Privacy officials shall also implement privacy procedures for HIPAA compliance, provide training for employees who have access to PHI, and institute appropriate physical and technical safeguards for PHI.

c. Certificates of Creditable Coverage. In accordance with Reference (t), the TPA shall provide certifications of periods of creditable DoD NAF HBP coverage to individuals who cease to be covered by the DoD NAF HBP. HMOs shall provide certificates of creditable coverage to DoD NAF HBP participants with HMO coverage.

8. ENROLLMENT AND COMMUNICATIONS

a. Initial Enrollment of Active Employees. Eligible employees may enroll themselves and eligible dependents (described in paragraph 6.d. of this enclosure) in the DoD NAF HBP within 31 days of their initial eligibility date (due to new employment or to a change in employment category that results in eligibility, such as a change from the flexible to regular employment category). Employees who do not elect to enroll during this eligibility period may elect to enroll during a subsequent open enrollment period or a special enrollment period as required by Reference (t) (subparagraph 8.f.(1) of this enclosure).

b. Open Enrollment Period for Employees. An open enrollment period for employees shall be held biennially. DoD NAF employers may not offer any other open enrollment periods. Retirees are not eligible to enroll during open enrollment periods. (See subparagraph 6.c.(4) of this enclosure for an exception to this policy for retirees who enroll in TRICARE-for-Life). During an open enrollment period:

(1) Eligible NAF employees who are not participating in the DoD NAF HBP may enroll in either an HMO plan (if available) or a non-HMO plan.

(2) Employees who are already enrolled in DoD NAF HBP medical coverage or who enroll during the open enrollment period may also enroll in the dental plan associated with their HMO or non-HMO plan.

(3) Employees enrolled in self-only coverage may change to family coverage.

c. Plan Selection Period for Enrolled Employees and Retirees. A plan selection period during which employees and retirees who are already enrolled in the DoD NAF HBP (HMO or non-HMO) may switch medical plans shall be held annually. Employees and retirees who are not already enrolled in the DoD NAF HBP (HMO or non-HMO) may not enroll during a plan selection period. During a plan selection period:

(1) Eligible employees and retirees may switch from one HMO to another HMO provided in the geographic area where they live, from a non-HMO plan (PPO or indemnity) to an available HMO, or from an HMO to the non-HMO plan applicable to the geographic area where they live.

(2) Eligible employees and retirees who live in areas covered by the indemnity plan may opt into the PPO plan that covers a nearby area or reverse an earlier such decision and opt back into the indemnity plan.

d. Enrollment of Medicare-Eligible Retirees. Medicare-eligible retirees (whether or not they are enrolled in Medicare) who have one or more covered dependents who are ineligible for Medicare may elect either the indemnity plan family coverage or the PPO plan family coverage (if the PPO plan is available in their area) during plan selection periods. They may also make this election if they move from an area not covered by the PPO plan to one that is covered, effective 31 days after the move. The retiree and the covered dependent(s) shall remain in or be enrolled in the indemnity plan at the time the covered dependent(s) become eligible for Medicare. At this point there is no further option to elect the PPO plan.

e. Enrollment of Dependents

(1) Optional Dependent Enrollment. As provided in paragraph 8.a. of this enclosure, employees may cover eligible dependents under DoD NAF HBP family coverage within 31 days of the employee's initial eligibility date. NAF employees and retirees who are already enrolled in the DoD NAF HBP may move from self to family coverage or add a new dependent to their existing family coverage within 31 days of a change in family status (for example, a marriage, birth, or adoption). Failure by an employee to change to family coverage or add a dependent within the 31-day eligibility period shall require the employee to wait for the next open enrollment period or for a special enrollment period defined by Reference (t). (See subparagraph 8.f.(1) of this enclosure.) Retirees are not eligible for open enrollment periods. (See subparagraph 6.c.(4) of this enclosure for an exception to this policy for retirees who enroll in TRICARE-for-Life). Retirees who fail to enroll a dependent in the 31 days following a change in family status are only eligible to add the dependent after a qualifying event covered by HIPAA special enrollment rules (for example, a change in family status or the dependent's loss of other insurance coverage).

(2) Required Dependent Enrollment Based on a Qualified Medical Child Support Order (QMCSO). The DoD NAF HBP shall honor a court-issued QMCSO requiring an employee or enrolled retiree to provide health insurance coverage for their child (or children) if the child (or children) meets the DoD NAF HBP description of eligible dependent (paragraph 6.d. of this enclosure). If an enrolled employee or retiree fails to enroll an eligible child as required by the QMCSO, the employer shall enroll the affected child (or children) in family coverage. If the employee named in the QMCSO is eligible to participate in the DoD NAF HBP but is not enrolled, the NAF employer shall enroll the employee to provide coverage for the child (or children). This provision does not apply to retirees who are not already enrolled in the DoD NAF HBP.

f. Special Enrollment Rules

(1) Special HIPAA Enrollment Periods. As required by Reference (t), employees and eligible dependents that declined enrollment because of other health insurance coverage may, if eligibility requirements are met, enroll in the DoD NAF HBP within 31 days of the end of the other health insurance coverage. In accordance with the HIPAA requirement for a dependent special enrollment period, participating employees and retirees shall be permitted to enroll eligible spouses and dependents acquired through marriage, birth, adoption, or placement for adoption. Enrollment must occur within 31 days of the qualifying event. Employees are permitted to enroll themselves to cover new dependents or provide coverage to dependents that lost other health insurance coverage; retirees must already be enrolled in self-only or family coverage to initiate or change dependent coverage.

(2) Employees Affected by a Reduction in Hours Resulting from Troop Deployment. Where troop deployment results in a BBA that reduces an employee's hours and the employee then drops DoD NAF HBP enrollment, the employee shall be permitted to re-enroll outside of an open enrollment period if:

- (a) The employee meets all normal eligibility requirements;
- (b) The employer issues a personnel action increasing the employee's hours; and
- (c) The employee re-enrolls within 31 days from the effective date of the personnel action increasing the employee's hours. (Otherwise, the employee must wait until the next open enrollment period.)

g. Communications. The TPA is responsible for preparing and distributing open enrollment period and plan selection period materials including SPDs. NAF employers are responsible for explaining this material and other enrollment rules to employees and retirees. NAF employers are also responsible for giving copies of communications materials and enrollment forms to new employees, acting as liaisons between employees and the TPA, explaining claims procedures when necessary, and assisting employees with interpretation of DoD NAF HBP coverage.

9. PREMIUMS

a. Determination of Premium for PPO, Indemnity, and Dental Plans. The Benefits Committee shall develop and recommend premium amounts for each plan year (January 1 to December 31) to the DUSD(CPP). The rules for reaching this determination are:

(1) There are two enrollment classes: single and family. Employee and retiree claims shall be pooled together within these classes to develop premiums.

(2) Annually, before the open enrollment or plan selection period, the TPA shall provide to the Benefits Committee the projected total premium amount (to include both employer and employee share) for both single and family medical premiums and single and family dental

premiums for the following plan year. The projected total premium shall take into account such factors as the past claims experience for all NAF employers, projected rates of inflation, pending legislative changes affecting health benefits, and other risk factors that could influence the cost of health benefits coverage. The projected total premium amount shall include the cost for baseline TPA administrative costs. The calculation of the projected total premium amount shall not include PRM prefunding costs, employer overhead costs, and costs that exceed baseline TPA administrative expense.

b. Employer and Employee Premium-Sharing Arrangements for PPO, Indemnity, and Dental Plans. The employer share of the DoD NAF HBP-established premium shall be 70 percent. Employees and retirees shall pay 30 percent.

c. Employer and Employee Premium-Sharing Arrangements for HMOs. The Benefits Committee has no role in establishing HMO premiums since HMO plans are insured products procured separately by one or more NAF employers. However, the employer share of the total DoD NAF HBP HMO premium shall not exceed 70 percent with the HMO enrollee paying the remaining amount of the applicable premium.

d. Continuation of PRM Premium-Sharing Practices in Effect on December 31, 1999. Before the DoD NAF HBP was implemented on January 1, 2000, AAFES paid 100 percent of the premium for enrolled retirees regardless of age. Four other major NAF employers paid 100 percent of the premium for a specified period of time for enrolled individuals who met certain age and service requirements. The Heads of the DoD Components may continue to apply PRM premium-sharing practices in effect on December 31, 1999, if they are more generous than those required by paragraph 9.b. of this enclosure for PPO, indemnity, and dental plans. (For example, an employer who previously paid 100 percent of the PRM premium for retirees age 62 to age 65 may continue that practice for that age group, but the employer share of 70 percent and employee share of 30 percent would apply to retirees under age 62 and over age 65.) The two groups eligible for continuation of an employer's more generous PRM premium-sharing practice are:

(1) Active Employees

(a) The Heads of the DoD Components or their designees have discretion whether to continue to apply a NAF employer's more generous PRM premium-sharing provisions to active employees who:

1. Participated in the employer's health plan on December 31, 1999; and
2. Enrolled in the DoD NAF HBP during the 1999 open enrollment period.

(b) The Heads of the DoD Components have discretion to apply the more generous premium-sharing provisions to all employees who meet the criteria in subparagraph 9.d.(1)(a) of this enclosure or only to those who meet that criteria and who are close, as determined by the DoD Component, to meeting the employer's PRM eligibility criteria in effect on December 31, 1999.

(2) Individuals Receiving PRM Coverage on December 31, 1999. The Heads of the DoD Components have discretion whether to continue to apply more generous PRM premium-sharing provisions to those who:

(a) Received PRM coverage through the DoD NAF employer's health plan on December 31, 1999; and

(b) Enrolled in the DoD NAF HBP during the 1999 open enrollment period.

e. Disabled Retirees who are Eligible for PRM. In individual cases when unusual circumstances exist, employers may choose to pay up to 12 months of PRM premiums for totally disabled employees who retire with PRM coverage.

10. EMPLOYER FUNDING

a. General. The DoD NAF HBP PPO, indemnity, and dental plans are self-funded by the NAF employers. The TPA provides claims administration and other services for those plans but does not provide an insurance product. Where health benefits coverage is provided under HMO contracts, the funding arrangement is an insured product.

b. NAF Employer Sharing of Claims Cost and Administration Fees for PPO, Dental, and Indemnity Plans. The cost of DoD NAF HBP PPO, indemnity, and dental plan claims and monthly administration fees shall be shared among NAF employers. (HMO costs are not shared.)

(1) The percent of the total PPO, indemnity, and dental plan claims costs to be paid by a NAF employer is equal to the percent of the total "covered lives" (enrolled employees and retirees, plus their covered dependents) attributable to that employer for those plans.

(2) The percent of the total shared PPO, indemnity, and dental plan TPA service fees to be paid by a NAF employer is equal to the percent of the enrollees (employees and retirees, but not dependents) attributable to that employer (because these fees are charged per enrollee without regard to total covered lives). Direct billing fees related to TCC of medical benefits (section 17 of this enclosure), late fees, and report fees are the responsibility of the affected NAF employer and are not shared among all of the NAF employers.

(3) During the plan year, NAF employers shall pay the actual claims cost attributable to their respective covered lives. Therefore, financial reconciliation among NAF employers is necessary to accomplish cost sharing pursuant to subparagraphs 10.b.(1) and 10.b.(2) of this enclosure. Annually, NAF employers shall pay other NAF employers consistent with cost-sharing reconciliation instructions issued the first quarter of each plan year by the DoD NAF Personnel Policy Division. These instructions shall cover the recently completed plan year and be based on reports provided by the TPA. (See subparagraph 10.b.(4) and the cost-sharing provisions of paragraph 10.b. of this enclosure.) The instructions shall designate payers, payees, and reconciliation amounts owed. NAF employers shall pay the total amount required within 30

calendar days of the issue date of the instructions (unless an error is identified that may require the DoD NAF Personnel Policy Division to amend the instructions). Payments shall be made by electronic fund transfer. NAF employers shall obtain the required automated clearing house set-up information (e.g., bank routing number, check and/or savings account number) from one another to effect payment. Payments shall be made without regard to any other unsettled accounts between payers and payees except when affected employers mutually agree to a settlement that includes other accounts.

(4) The TPA shall provide quarterly cost-sharing reports to each NAF employer and the DoD NAF Personnel Policy Division. (NAF employers are responsible for identifying and reporting any report errors to the DoD NAF Personnel Policy Division and the TPA.)

(a) Quarterly Cost-Sharing Reconciliation Report for Claims. This report shall indicate by employer the total claims cost for the quarter and year-to-date. It shall also indicate the total number of covered lives for each employer. The cost-sharing reconciliation shall be based on the year-to-date average of covered lives for each month.

(b) Quarterly Cost-Sharing Reconciliation Report for Shared Fees. This report shall indicate by employer the total shared fees for the quarter and year-to-date. It shall also indicate the total number of enrollees for each employer. The cost-sharing reconciliation shall be based on the year-to-date average of enrollees for each month.

c. PRM Liability. Pre-funding of PRM liability is encouraged but not required. Each NAF employer shall annually determine and record the amount of its unfunded PRM liability in accordance with Financial Accounting Standard 106 (Reference (ab)).

11. COVERAGE DURING LEAVE WITHOUT PAY (LWOP). During a period of approved LWOP, an employee may elect to continue coverage under the DoD NAF HBP medical (HMO and non-HMO) and dental plan provided the employee continues to pay the required employee share of the premium. The employer shall continue to pay the employer's share of the premium. Such coverage shall not be continued beyond 12 months from the date the LWOP began, except in the case of authorized LWOP for military service or in other circumstances considered appropriate by the applicable Head of the DoD Component or designee.

12. COVERAGE DURING MILITARY SERVICE

a. USERRA. Reference (p) covers NAF employees who leave their jobs to perform duty with the Uniformed Services. Employees who are on LWOP while performing military duty may elect to continue to participate in the DoD NAF HBP medical and dental plan for up to 24 months by paying the employee share of the DoD NAF HBP premium. In accordance with Reference (p), employees who elect not to continue DoD NAF HBP coverage while on military duty are entitled to be reinstated to DoD NAF HBP coverage when they return to NAF employment without waiting for an open enrollment period. For reservists who are called or

ordered to active duty on or after September 14, 2001, in support of a contingency operation as defined in section 101(a)(13) of Reference (y), paragraph 12.b. of this enclosure applies.

b. Military Reservists in Contingency Operations. DoD NAF employers shall pay the employee's share, in addition to the employer's share, of the DoD NAF HBP medical premium for enrolled employees who are called to active duty (voluntarily or involuntarily) in support of a contingency operation for up to 24 months. To be eligible for payment of the employee's share of the DoD NAF HBP medical premium under this provision, reservists must be placed on LWOP or separated from NAF employment to perform active duty for a period of more than 30 consecutive days. These provisions apply to employees who are enrolled in the DoD NAF HBP HMO or non-HMO medical plans and elect to continue that enrollment, and who are called to active duty on or after September 14, 2001. NAF employers shall pay premiums for employees covered by the DoD NAF HBP in the same manner as required for DoD civil service APF employees including retroactive reimbursement of premiums previously paid by eligible employees.

13. FAMILY AND MEDICAL LEAVE ACT (FMLA) COVERAGE

a. NAF employees are covered by Public Law 103-3 (Reference (ac)), pursuant to which eligible employees are entitled to a total of 12 administrative workweeks of unpaid leave during any 12-month period for specified family and medical needs. During approved periods of FMLA leave, employees who are enrolled in the DoD NAF HBP (HMO or non-HMO) may continue DoD NAF HBP coverage (medical and dental). Employee and employer contributions shall be shared in the same manner as required by paragraphs 9.b. and 9.c. of this enclosure.

b. Payments shall be made in accordance with the LWOP rules in section 11 of this enclosure. In accordance with Reference (ac), employees who do not continue DoD NAF HBP coverage while on FMLA are entitled to be reinstated to DoD NAF HBP coverage under the same terms as prior to taking the leave upon their return to duty immediately after the leave.

14. COVERAGE FOLLOWING EMPLOYEE MOVE FROM NAF TO APF POSITION. An enrolled NAF employee who moves to a DoD APF position without a break in service of more than 3 days shall have DoD NAF HBP medical benefits (and dental benefits if applicable) continued without charge to the employee for 31 days, or until the employee becomes covered by FEHB, whichever comes first.

15. COORDINATION OF BENEFITS. The amount of benefits payable under the DoD NAF HBP shall take into account any coverage an employee, retiree, or dependent has under any other group plan. The SPDs provide details regarding how benefits are coordinated.

a. Active Employees. Benefits shall be coordinated to ensure that DoD NAF HBP reimbursement to active employees takes into account payments made by other group plans.

Under this approach, active employees shall not receive a total benefit greater than that provided under the DoD NAF HBP plan.

b. Retirees. When retirees or their dependents become eligible for Medicare (whether or not enrolled in Medicare), medical benefits from the DoD NAF HBP shall be offset by Medicare payments through the Government exclusion approach to coordination of benefits as explained in the SPDs. When a retiree or his or her covered dependents are eligible for Medicare (whether or not enrolled in Medicare), DoD NAF HBP benefits are secondary to Medicare for the person or persons eligible for Medicare. As Medicare does not apply overseas, the indemnity plan shall apply in overseas areas as primary coverage.

16. CONTINUATION OF COVERAGE FOR SURVIVING DEPENDENTS. Eligible surviving dependents may continue DoD NAF HBP coverage at a cost and length of time commensurate with the sponsoring employee or retiree's PRM eligibility status or years of DoD NAF HBP participation.

a. Eligibility

(1) Dependent. For the purpose of continuation of coverage for survivors, dependents (described in paragraph 6.d. of this enclosure) include children conceived before and born after the employee or retiree dies. If the surviving spouse remarries, neither the new spouse nor any dependents acquired upon remarriage are eligible for the DoD NAF HBP.

(2) Dependent Participation Requirement. Surviving dependents must have been enrolled in the DoD NAF HBP medical plan (HMO or non-HMO) (and dental plan if continuation of dental plan coverage is desired and the dependent is eligible) as dependents on the day of the employee or retiree's death.

(3) Employee Participation Requirement. The employee must have had a minimum of 90 days of participation in a DoD NAF HBP plan. DoD NAF HBP participation requirements include HMO and non-HMO participation. Enrollment in a NAF employer medical plan existing before January 1, 2000, counts toward the participation requirement. Enrollment in the FEHB program also counts toward the participation requirement if the employee moved from a DoD APF to a DoD NAF position after January 1, 1987, without a break in service of more than 3 days.

b. HMO Participants. Surviving dependents who are eligible for continued coverage pursuant to paragraph 16.a. of this enclosure, and who are enrolled in an HMO at the time of the employee or retiree's death, must enroll within 31 days in the non-HMO plan covering the geographic area where they live to retain DoD NAF HBP survivor coverage.

c. Cost and Length of Coverage. The NAF employer shall pay 100 percent of the medical (and dental if applicable) premium for eligible survivors for the first 4 months of health benefit coverage following the employee or retiree's death. Following the 4 months of employer-paid coverage, survivors are eligible to continue coverage as explained in Table 1. Coverage for the

surviving spouse continues as provided in Table 1 regardless of remarriage. Coverage for dependent children continues for the length of coverage provided in Table 1, or until the child no longer meets the eligibility criteria in paragraph 6.d. of this enclosure, whichever comes first.

Table 1. Surviving Dependent Coverage

SURVIVING DEPENDENT OF:	TYPE AND LENGTH OF COVERAGE:	COST TO SURVIVOR:
<p>1. An employee who:</p> <p style="padding-left: 20px;">a. Had less than 15 years of cumulative participation in the DoD NAF HBP medical plan; or</p> <p style="padding-left: 20px;">b. Was not participating in the applicable defined benefit retirement plan at the time of death.</p>	<p>TCC in non-HMO DoD NAF HBP medical plan for up to 36 months. (Information on TCC is at section 17 of this enclosure.)</p> <p>No dental coverage.</p>	<p>No cost for first 4 months.</p> <p>Survivor pays the full cost of the total (employee and employer share) medical premium, plus an administrative fee of 2 percent of the total premium for up to 32 additional months.</p>
<p>2. An employee who does not meet the PRM requirements in subparagraphs 6.c.(1)(b) and 6.c.(1)(c) of this enclosure, but:</p> <p style="padding-left: 20px;">a. Had 15 or more years of cumulative participation in the DoD NAF HBP medical plan; and</p> <p style="padding-left: 20px;">b. Was participating in the applicable defined benefit retirement plan at the time of death.</p>	<p>Same medical coverage as employee.</p> <p>Same dental coverage, if employee also had 15 cumulative years in a DoD NAF HBP HMO or non-HMO dental plan.</p>	<p>No cost for first 4 months.</p> <p>After 4 months, the survivor pays the same premium rate as an active employee.</p>
<p>3. A retiree receiving PRM, or an employee who met the PRM participation and annuity eligibility requirements of subparagraphs 6.c.(1)(b) and 6.c.(1)(c) of this enclosure. (A survivor retirement annuity is NOT required for the dependent to continue DoD NAF HBP coverage.)</p>	<p>Same medical and dental coverage applicable to retiree or employee, including continuation of applicable eligibility provisions in subparagraph 6.c.(2) of this enclosure.</p>	<p>No cost for first 4 months.</p> <p>After 4 months, the survivor pays the PRM premium rate applicable to the retiree or employee. This rate includes continuation of applicable PRM premium-sharing practices in paragraph 9.d of this enclosure.</p>

17. TCC. Plan participants who become ineligible to participate in the DoD NAF HBP for any reason other than termination for cause are eligible for the TCC provision applicable to their HMO or non-HMO plan of benefits.

a. TCC Concerning HMO Medical Plans. Employees, retirees, and dependents enrolled in an HMO who become ineligible to participate in the DoD NAF HBP shall be offered TCC under the HMO's continuation of coverage policies. HMOs and NAF employers must provide participants with information on the HMO TCC provisions. This coverage and its duration may be different than that provided under the non-HMO medical plans. Special provisions for surviving dependents of employees or retirees enrolled in HMOs are in paragraph 16.b. of this enclosure.

b. TCC Concerning Non-HMO Medical Plans. Title X of Public Law 99-272 (Reference (ad), commonly known as the "Consolidated Omnibus Budget Reconciliation Act of 1985 (COBRA)"), which requires that employers provide for TCC of health benefits, does not apply to the DoD NAF HBP non-HMO plans. However, plan participants who become ineligible to participate in those plans for any reason other than termination for cause are eligible for DoD NAF HBP medical plan "COBRA-like" TCC for themselves and covered dependents pursuant to the provisions of subparagraphs 17.b.(1) through 17.b.(3) of this enclosure. TCC is not permitted for the DoD NAF HBP dental plan.

(1) General TCC Eligibility Requirements. The PPO and indemnity SPDs provide detailed requirements, definitions, and TCC application procedures. Participants eligible for TCC are:

(a) Employees. NAF employees who have been enrolled in the DoD NAF HBP medical plan for at least 90 days prior to the date of non-eligibility and who lose coverage for any reason other than termination for gross misconduct.

(b) Retirees. Employees who retire without obtaining eligibility for PRM.

(c) Dependents. Dependents that either lose DoD NAF HBP coverage because the sponsoring employee or retiree loses coverage, or who otherwise become ineligible to participate. (See the special continuation of coverage provisions for surviving dependents in section 16 of this enclosure.)

(2) Length and Cost of TCC Coverage for PPO and Indemnity Plan Participants. Table 2 describes the length and cost of TCC offered to PPO and indemnity medical plan participants.

(a) Disabled Employees. As shown in Table 2, totally disabled employees receive up to 36 months of TCC coverage; disabled employees with 5 or more years of cumulative DoD NAF HBP participation shall receive up to 12 months of that coverage at no charge. Participation includes HMO and non-HMO enrollment, enrollment in a NAF Component health plan, and enrollment in the FEHB program if the employee moved from a DoD APF position to a DoD NAF position after January 1, 1987, without a break in service of more than 3 days. The term "total disability" and procedures for providing proof of disability are described in the SPDs.

(b) TCC Termination. TCC coverage terminates earlier than described in Table 2 if the participant becomes eligible for Medicare or other health benefits coverage or if a disabled employee ceases to be totally disabled.

(3) Survivors of TCC Participants. Surviving dependents of TCC participants are ineligible for continuation of coverage beyond the maximum length of coverage provided by Table 2. The TCC participant’s death does not trigger an additional period of coverage.

Table 2. TCC—Medical Plan

ELIGIBLE INDIVIDUAL	LENGTH OF MEDICAL PLAN COVERAGE	COST TO INDIVIDUAL
Employee, retiree, or dependent meeting criteria in subparagraph 17.b.(1) of this enclosure.	Up to 18 months from the date coverage ends.	102 percent of the total premium (includes administrative fee of 2 percent of the premium).
Totally disabled employee with less than 5 years of cumulative participation in a DoD NAF HBP medical plan.	Up to 36 months from the date coverage ends.	102 percent of the total premium (includes administrative fee of 2 percent of the premium).
Totally disabled employee with 5 or more years of cumulative participation in a DoD NAF HBP medical plan. TCC does not apply to disabled employees who are eligible to retire with PRM coverage. (See paragraph 9.e. of this enclosure.)	Up to 36 months from the date coverage ends.	No cost for up to 12 months. (NAF employer pays total premium cost – 102 percent of premium). 102 percent of the total premium (includes administrative fee of 2 percent of the premium) for up to 24 additional months.

c. BRAC and Workforce Reduction. When an employee has been separated from NAF employment because of BRAC or workforce reduction, the employer may pay the employer’s share of the premium (HMO or non-HMO) and applicable administrative fees for the employee for up to 18 months or may require the employee to pay the full cost of the coverage to include any applicable administrative fee. The employer may not pay any portion of the employee’s share. If the employee’s separation is a direct result of an approved BRAC action, the employer may use NAF funds or APF in BRAC accounts to pay the employer’s share of the NAF HBP medical premium and administrative fee. To be eligible, the employee affected by BRAC or workforce reduction must:

(1) Have been separated by BBA or resign or retire (if not eligible for PRM) after receiving a BBA separation notice.

(2) Have been enrolled in the DoD NAF HBP for at least 6 months and be enrolled at the time of separation by BBA.

18. CONVERSION OF MEDICAL BENEFITS COVERAGE. Employees, retirees, and dependents whose DoD NAF HBP coverage ceases may convert without a medical exam to a personal medical policy where offered by the TPA. The personal policy shall take effect on the day after DoD NAF HBP coverage ceases (or any TCC coverage ends). The SPDs provide detailed policy application requirements.

ENCLOSURE 6

OTHER INSURANCE BENEFITS, MISCELLANEOUS BENEFITS,
AND BENEFIT WAIVERS

1. LIFE, ACCIDENTAL DEATH, AND DISMEMBERMENT INSURANCE

a. General. The Heads of the DoD Components or their designees shall offer group insurance plans to eligible NAF employees. Section 3 of the front matter of this Volume states the eligibility requirements except that the Heads of the DoD Components may also offer term life, accidental death, and dismemberment insurance to RPT employees having a regular work schedule of at least 20 hours per week. Participation shall be voluntary except that the Heads of the DoD Components or their designees may require employee enrollment in this coverage as a condition of deployment in support of contingency operations.

b. Cost Sharing. Costs for basic life insurance shall be shared between the employer and employee. The employee shall pay the full cost of optional insurance including optional dependent life coverage.

c. Insurance Amounts

(1) Group Life Insurance. This shall be term insurance only and be offered in basic and optional amounts using the types and levels of coverage provided by the Federal Employees' Group Life Insurance Program (FEGLI) as a guideline. FEGLI provisions are stated in sections 8701-8716 of Reference (d) and part 870 of Reference (m).

(2) Accidental Death and Dismemberment (AD&D). This coverage shall be provided in an amount equal to the basic life insurance coverage subject to common industry practice with regard to schedules for dismemberment and exclusions, except that a NAF employer may reduce the AD&D benefit of older employees if such reduction is in accordance with sections 621-634 of Reference (q). (Sections 621-634 of Reference (q) are commonly known as the "Age Discrimination in Employment Act.")

d. Conversion to Individual Policy. Group life insurance contracts for NAF employee coverage shall include a provision that permits employee conversion to an individual policy without medical examination or evidence of insurability if such a provision is offered by the insurance provider. To be eligible for such conversion the employee must be ineligible to continue to participate in the group life plan because of termination or other change in employment status, and must apply for conversion within 31 calendar days of termination of the group life coverage or within any longer period specified by the group policy. The whole cost of the individual policy shall be borne by the insured. NAF employers shall notify employees of their conversion rights when they take effect.

e. Emergency-Essential Employees. An employee who declines life insurance offered by a NAF employer and is subsequently designated by proper authority as an emergency-essential

employee according to section 1580 of Reference (y), shall upon designation be given a 31-day opportunity from the date of designation to enroll in the NAF life insurance program. For this purpose an emergency-essential employee must:

- (1) Provide support for military operations in a combat zone after evacuation of nonessential personnel.
- (2) Perform the support duty in the combat zone.
- (3) Be officially designated as emergency-essential.

f. USERRA Requirements. Reference (p) requires that to the extent an employer offers life insurance coverage to employees on furlough or a leave of absence, the employer is required to provide those same benefits to an employee during a period of service in the Uniformed Services. Also, NAF employers may pay the full premium cost of life insurance (basic and optional) for a period not to exceed 12 months for an employee put in a nonpay status while on military duty.

g. Life Insurance Benefits for Retirees

(1) Eligibility

(a) Participation Requirement. To be eligible for the retiree group term life insurance program (which may exclude AD&D coverage), the employee must meet the employer's requirement for participation in the group life insurance program for active employees. NAF employers shall establish a consistently-applied requirement that is not less than 5 or more than 15 years of participation. Also, the employee must be insured by the active employee program on the day before retirement. NAF employers may use an employee's participation in FEGLI or another NAF employer's life insurance program toward satisfying the participation requirement if such credit is consistently applied to all eligible employees.

(b) Waiver of Participation Requirement. The participation requirement shall be waived for employees who had 5 years of continuous enrollment in FEGLI on the day before being involuntarily moved from a DoD APF position to a DoD NAF position. The move must have occurred on or after January 1, 1987, without a break in service of more than 3 calendar days. For the purpose of this Volume, an involuntary move occurs when the employee's APF position is abolished in the APF employment system and reestablished in the NAF employment system without a substantial change in duties. Also for the purpose of this Volume, an involuntary move occurs when the employee's APF position is moved from APF to NAF according to the authority in section 2491 of Reference (y).

(2) Amount of Group Life Insurance for Retirees. This shall be term insurance only. It may be less than but shall not exceed the amount of basic and optional life insurance in force on the day before retirement. The retiree's amount of life insurance shall be reduced upon the retiree's attainment of certain ages using corresponding FEGLI provisions for retirees as a guideline. FEGLI regulations concerning retiree coverage are at subparts 870.706 and 870.707

of Reference (m). The Heads of the DoD Components may provide group life insurance to NAF retirees without charge unless the retiree has the option to maintain coverage above the reduced fixed coverage and elects to do so, in which case he or she shall be charged the full amount of the premium for the additional insurance.

2. DISABILITY INSURANCE. To safeguard employees during their temporary inability to perform normal occupational duties because of a non-work-related disability, the Heads of the DoD Components may offer disability insurance consistent with mission requirements and prudent fiscal considerations.

3. WORKERS' COMPENSATION

a. Entitlement. NAF employees shall be provided workers' compensation benefits in accordance with the provisions of section 8171 of Reference (d). Off-duty enlisted personnel employed by NAFIs are not NAF civilian employees for the purpose of section 3 of this enclosure.

b. Coordination With Other Benefits. Retirement or disability annuities shall be offset by the amount of workers' compensation indemnity benefits payable. Workers' compensation income received by a survivor annuitant that is derived from an employee's illness or injury incurred on the job shall also be used as an offset against the survivor annuity payable under the retirement plan.

4. UNEMPLOYMENT BENEFITS

a. Entitlement. In accordance with sections 8501-8525 of Reference (d) and part 609 of title 20, CFR (Reference (ae)), DOL, on behalf of the Federal Government, has entered into agreements with each of the United States, the District of Columbia, the Commonwealth of Puerto Rico, and the Virgin Islands. These agreements provide that benefits shall be paid by a State to any unemployed Federal civilian employee, including a DoD NAF employee, whose wages have been assigned to the State in which the employee had his or her last official duty station. Therefore, the law of the State under which the claim is filed determines benefit amounts, number of weeks benefits shall be paid, and other conditions.

b. Funding. Using only NAF funds, NAFIs shall bear the total cost of paying unemployment benefits resulting from NAFI employment, except that in accordance with DoDI 1015.15 (Reference (af)), NAFIs are prohibited from using NAF funds to fund unemployment compensation resulting from a BRAC action because APF may finance such cost. There is no payroll deduction from a Federal employee's wages for unemployment insurance protection. NAFIs may be charged for improper unemployment compensation payments and, therefore, shall implement procedures to reduce improper payments. These procedures shall include providing State agencies with timely, accurate, and complete wage and separation information to preclude adverse or improper eligibility or compensation decisions. They shall also include provisions for

appealing State decisions to pay benefits to former employees whom the NAFI believes are not entitled to such benefits.

5. LONG TERM CARE (LTC) INSURANCE

a. General. In order that employees and retirees may purchase LTC insurance at group rates, the DoD Components are encouraged to offer group LTC programs to NAF employees and retirees. Employees and retirees shall pay the full cost of the premium without any subsidization by the NAF employer. However, if the Federal Government begins to pay a share of the premium for an APF participant's coverage under the Federal Long Term Care Insurance Program (FLTCIP), NAF employers may pay a comparable percentage share of the premium for a NAF participant's coverage under the NAF employer's LTC program.

b. FLTCIP. In accordance with section 1101 of Public Law 107-314 (Reference (ag)), the Secretary of Defense has discretionary authority to determine which, if any, DoD NAF employees and retirees shall be eligible to apply for LTC insurance under FLTCIP. In accordance with USD(P&R) Memorandum (Reference (ah)), this authority is delegated to the DUSD(CPP). Any Military Department or NAF organization request for FLTCIP coverage of NAF employees shall be sent to the DUSD(CPP).

6. MASS TRANSPORTATION BENEFIT PROGRAM

a. Requirement. In accordance with DoDI 1000.27 (Reference (ai)), the DoD Components shall provide mass transportation benefits to employees, including NAF employees, to the extent authorized by law and regulation, and shall appoint an office of primary responsibility (OPR) to manage the benefit program. NAFIs shall coordinate with the applicable Component OPR to meet the requirements of Reference (ai).

b. Funding. Enclosure 4 of Reference (ai) addresses the use of appropriated funds to support NAFIs in meeting the requirements of the mass transportation benefit program.

7. PROFESSIONAL LIABILITY INSURANCE

a. General. Section 636 of Public Law 104-208 (Reference (aj)) authorizes the Department of Defense to reimburse up to one-half of the cost of liability insurance for qualified employees. Although this legal requirement does not extend to NAF employees, the DoD Components may extend this benefit to their NAF workforces consistent with the manner in which they extend coverage to APF employees, at a rate not to exceed that applicable to the APF workforce.

b. Funding. If the DoD Components extend this benefit to their qualified NAF employees, NAF dollars must be used to fund the reimbursement.

8. FLEXIBLE SPENDING ACCOUNTS (FSAs)

a. General. FSAs permit employees to set aside pre-tax funds to pay for certain healthcare and dependent care expenses. The Heads of the DoD Components may offer healthcare flexible spending accounts and dependent care flexible spending accounts to NAF employees. The establishment and operation of such accounts shall comply with IRC and related regulations.

b. Funding. NAF employers are not authorized to make an employer payment or a monetary addition to an employee's FSA, except as required by applicable IRC and CFR provisions for claim funding within the employee's annual funding obligation before the employee has fully funded the obligation; in such cases, the employer shall take appropriate action to obtain full reimbursement from the employee. Also, NAF employers are not authorized to reimburse an employee for any dollar amounts forfeited in accordance with IRC and CFR provisions but may pay TPA fees on behalf of employees.

9. WAIVER OF BENEFITS. Eligible employees who decline to participate in retirement or insurance plans provided according to this Volume shall be required to sign a waiver that explains the benefits declined or that refers the employee to documents that explain the benefits declined. The waiver shall also explain how a decision to decline a benefit affects the employee's subsequent ability to enroll in the respective benefit plan, including any waiting period and evidence of insurability requirements. The signed waiver or a memorandum for the record signifying the employee's refusal to sign a waiver shall be placed in the employee's official personnel folder. Use of automated electronic systems to satisfy the intent of these requirements is encouraged.