

Army Regulation 600–37

Personnel—General

Unfavorable Information

**Headquarters
Department of the Army
Washington, DC
10 April 2018**

UNCLASSIFIED

SUMMARY of CHANGE

AR 600–37

Unfavorable Information

This major revision, dated 10 April 2018—

- o Introduces the use of the Army Military Human Resource Record (para 1–1).
- o Adds responsibilities for the Deputy Assistant Secretary of the Army (Manpower & Reserve Affairs) (para 2–2).
- o Adds responsibilities for the Department of the Army Suitability Evaluation Board (para 2–2).
- o Supersedes Army Directive 2014–29, Inclusion and Command Review of Information on Sex-Related Offenses in the Army Military Human Resource Record (chap 3).
- o Introduces Army Military Human Resource Record filing guidance for sex-related offenses (para 3–4).
- o Updates the process for resolving unfavorable information in counterintelligence and personnel security files (para 4–4).
- o Updates the process for disposition of information in law enforcement files (para 5–2).
- o Introduces Organization and Procedures of the Department of the Army Suitability Evaluation Board (chap 6).
- o Introduces appeals standards and guidance (chap 7).

Personnel—General
Unfavorable Information

By Order of the Secretary of the Army:

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General, United States Army
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Official:



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Administrative Assistant to the
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States and the U.S. Army Reserve, unless otherwise stated.

Proponent and exception authority.

The proponent of this regulation is the Deputy Chief of Staff, G–1. The proponent has the authority to approve exceptions or waivers to this regulation that are consistent with controlling law and regulations. The proponent may delegate this approval authority, in writing, to a division chief within the proponent agency or its direct reporting unit or field operating agency, in the grade of colonel or the civilian equivalent. Activities may request a waiver to this regulation by providing justification that includes a full analysis of the expected benefits and must include a formal review by the activity's senior legal officer. All waiver requests will be endorsed by the commander or senior leader of the requesting activity and forwarded through their higher headquarters to the policy proponent. Refer to AR 25–30 for specific guidance.

Army internal control process. This regulation contains internal control provisions in accordance with AR 11–2 and identifies key internal controls that must be evaluated (see appendix B).

Supplementation. Supplementation of this regulation is prohibited without prior approval from the Deputy Chief of Staff, G–1 (DAPE–MPS), 300 Army Pentagon, Washington DC 20310–0300.

Suggested improvements. Users are invited to send comments and suggested improvements on DA Form 2028 (Recommended Changes to Publications and Blank Forms) direct to the Deputy Chief of Staff, G–1 (DAPE–MPS), 300 Army Pentagon, Washington DC 20310–0300.

Distribution. This publication is available in electronic media only and is intended for the Regular Army, the Army National Guard/Army National Guard of the United States, and the U.S. Army Reserve.

History. This publication is a major revision.

Summary. This regulation implements policies regarding unfavorable information considered for inclusion in official personnel files.

Applicability. This regulation applies to the Regular Army, the Army National Guard/Army National Guard of the United

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Glossary

Chapter 1 Introduction

1–1. Purpose

This regulation sets forth policies and procedures to ensure the best interests of both the Army and Soldiers are served by authorizing unfavorable information to be placed in, transferred within, or removed from an individual's Army Military Human Resource Record (AMHRR).

1–2. References

See appendix A.

1–3. Explanation of abbreviations and terms

See glossary.

1–4. Responsibilities

See chapter 2.

1–5. Objectives

Objectives of this regulation are to—

- a.* Apply fair and just standards to all Soldiers.
- b.* Protect the rights of individual Soldiers, and at the same time, permit the Army to consider all available relevant information when choosing Soldiers for positions of significant trust and authority (POSTA) or positions or appointments screened for suitability (PASS) in accordance with Secretary of the Army (SecArmy) Memorandum, dated 12 February 2014.
- c.* Prevent adverse personnel actions based on unsubstantiated derogatory information, irrelevant or untimely information, or mistaken identity.
- d.* Provide a means of correcting injustices if they occur.
- e.* Ensure that Soldiers of poor moral character are not continued in the Army or selected for POSTA or PASS.

Chapter 2 Responsibilities

2–1. Headquarters, Department of the Army Principal Officials

HQDA Principal Officials will—

- a.* Ensure continuous screening of official records for suitability information, and refer unresolvable cases to the Department of the Army Suitability Evaluation Board (DASEB).
- b.* Take necessary action(s) for carrying out the DASEB or Deputy Assistant Secretary of the Army (Review Boards) (DASA (RB)) decisions on cases that have been reviewed or referred to them by higher authority.

2–2. Assistant Secretary of the Army (Manpower and Reserve Affairs)

The ASA (M&RA) will—

- a.* Oversee administration of the DASEB (a continuing board within the Army Review Boards Agency (ARBA)) as the initial appeal authority for unfavorable information entered in the AMHRR under this regulation.
- b.* Ensure the DASA (RB)—
 - (1) Monitors DASEB membership and appoints a president, as required.
 - (2) Prescribes policies governing operations of the DASEB.
 - (3) Approves, disapproves, or refers to higher authority for proper action(s) on all adverse DASEB determinations concerning the filing of unfavorable information in a Soldier's AMHRR.
 - (4) Directs actions on all other DASEB determinations as deemed proper (ensuring compliance with chap 6).
 - (5) Monitors and oversees all DASEB activities not otherwise prescribed.
 - (6) Delegates authority for responsibilities in paragraphs 2–2*b*(1) through (5) to the Director, Military Review Board, as appropriate.
- c.* Also, on behalf of the ASA (M&RA), DASEB will—

(1) Determine whether unfavorable information should be filed in the performance portion of the AMHRR when cases or actions are referred. The DASEB may also recommend potential separation or elimination action(s) to the U.S. Army Human Resources Command (HRC).

(2) Recommend the filing of unfavorable information to the DASA (RB). The DASEB will not recommend filing of unfavorable information that has not been referred to the recipient, even if such filing would be otherwise permissible under this regulation.

(3) Review and evaluate evidence presented to support appeals for removing or transferring unfavorable information from the performance portion of the AMHRR.

(4) Revise, alter, or remove unfavorable information covered by this regulation from the AMHRR that is determined upon appeal to be untrue or unjust, in whole or in part (see chap 7).

(5) Transfer those administrative memorandums of reprimand, admonition, or censure that are determined upon appeal to have served their intended purpose from the performance to the restricted portion of the AMHRR, when such transfer would be in the best interest of the Army. Transfer of such memorandums is subject to stipulations noted in paragraphs 7-2d(3).

(6) Transfer records of non-judicial punishment (proceedings pursuant to Article 15, Uniform Code of Military Justice (UCMJ, Art. 15)) that are determined upon appeal to have served their intended purpose from the performance to the restricted portion of the AMHRR, when such transfer would be in the best interest of the Army. Transfer of such records is subject to stipulations noted in paragraph 7-2d(3).

2-3. Deputy Chief of Staff, G-1

The DCS, G-1 will establish policy pertaining to—

- a. The filing of unfavorable information in the AMHRR (see chap 3).
- b. Removing information under appeal procedures in chapter 7.
- c. Transferring information from the performance portion of a Soldier's AMHRR to the restricted portion of the AMHRR (listed under appeal procedures in chap 7).
- d. Ensuring that the Commanding General, HRC initiates flagging actions under AR 600-8-2, pending a final decision on the proposed filing of unfavorable information in a Soldier's AMHRR.

2-4. Deputy Chief of Staff, G-2

The DCS, G-2 will—

- a. Ensure the U.S. Army Intelligence and Security Command (INSCOM) provides assistance to the DASEB by making necessary records available, as required.
- b. Set forth procedures to release information from counterintelligence and personnel security records to commanders and the DASEB, as required.

2-5. Commanders, Army commands, Army service component commands, direct reporting units, and other commanders

Commanders, ACOMs, ASCCs, DRUs, and other commanders will—

- a. Ensure that subordinate commanders are properly informed, and take appropriate action(s) with reference to unfavorable information concerning members of their commands (prescribed in chaps 3 and 5).
- b. Refer cases to the DASEB, when, because of unusual circumstances or complexities, unfavorable information of a serious nature concerning members or former members of their commands cannot properly be acted upon in accordance with their authority.
- c. Commanders of law enforcement and Army intelligence agencies responsible for maintaining law enforcement and counterintelligence records may release such records as specified in this regulation, and those outlined in AR 20-1, AR 40-66, AR 40-400, AR 190-45, and AR 381-45.
 - d. Law enforcement agencies will (in accordance with AR 190-45, AR 195-2, and chap 5 of this regulation)—
 - (1) Advise the DASEB (or other proper HQDA adjudicating agencies) upon request, when unfavorable information is provided for criminal justice action on an individual.
 - (2) Provide file copies (or extracts thereof) to these requestors, as appropriate.
 - (3) Ensure that the decisions of adjudicating agencies, relative to information provided, are attached to the file report.

Chapter 3

Unfavorable Information in Army Military Human Resources Record

3–1. General

Personnel management decisions will be based on the following:

- a. Review of a Soldier's AMHRR when selecting Soldiers for POSTA or PASS.
- b. The knowledge and best judgment of the commander, board (based on direction given in the applicable memorandum of instruction), or other responsible authority. Both favorable and unfavorable information regarding the Soldier will be considered.

3–2. Policies

a. Except as indicated in paragraph 3–3, unfavorable information will not be filed in the AMHRR unless the recipient has been given:

- (1) The opportunity to review the documentation that serves as the basis for the proposed filing—
 - (a) The documentation will be reviewed by the release authority prior to forwarding to the recipient to ensure personally identifying information and other sensitive information, such as social security numbers and home addresses, has been redacted.
 - (b) Redactions should be minimal; however, to ensure the recipient is afforded full due process rights in providing a meaningful rebuttal.
 - (c) The privileged and confidential nature of information in inspector general (IG) records requires special attention. Provisions for requesting access and use of IG reports are addressed in AR 20–1.
- (2) A reasonable amount of time to make a written statement in response—
 - (a) This statement may include evidence that rebuts, explains, or mitigates the unfavorable information (see para 3–7).
 - (b) The recipient may also elect to decline, in writing, the opportunity to provide a written response.
- b. The issuing authority should fully affirm and document unfavorable information to be considered for inclusion in the AMHRR.
- c. Unfavorable information filed in the AMHRR must meet Title 5, United States Code, Chapter 552a (5 USC 552a), standards of accuracy, relevance, timeliness, and completeness. Access to the AMHRR is governed by AR 600–8–104.
- d. Unfavorable information filed in the AMHRR that indicates sub-standard leadership ability, and a lack of promotion potential, morals, and integrity must be identified early, and shown in those permanent official personnel records that are available to personnel managers and selection board members for use in making POSTA or PASS personnel decisions. Other unfavorable character traits of a permanent nature should be similarly recorded.
- e. Unfavorable information that has been directed for filing in the restricted portion of the AMHRR may be considered for making determinations under this regulation.
- f. Information reflecting a Soldier's refusal to consent to a polygraph examination will not be recorded in the AMHRR.

3–3. Filing of information exempt from the referral procedure

The following information may be filed in the performance portion of the AMHRR without further referral to the recipient:

- a. *Records.* Records of Courts-Martial and Court-Martial Orders and records of proceedings pursuant to UCMJ, Art. 15 (see AR 600–8–104).
- b. *Proceedings of boards of officers.* It must be clear the recipient has been given the opportunity to present evidence and cross-examine witnesses on his or her own behalf.
- c. *Completed criminal investigative reports.* These include criminal reports (or authenticated extracts) that have resulted in adverse administrative or disciplinary action against the person concerned. The investigative report will be referenced when it is not practical to include the entire report (or an extract).
- d. *Certified judgments of civilian convictions (to include the record of arrest) or extracts thereof; authenticated civilian authorities may be included in the Army Military Human Resource Record.* The certified judgment of conviction may include the record of arrest. Records consisting solely of minor traffic violations (as outlined in AR 190–45) are not to be filed in the AMHRR.
- e. *Officer and enlisted evaluation reports.* Administrative processing and the appeal of evaluation instruments are governed by AR 623–3.
- f. *General.* Other unfavorable information of which the recipient had prior official knowledge and an adequate opportunity to refute (as prescribed by para 3–7).

Note. The notation “AR 600–37 complied with” will be entered below the filing authority on unfavorable information.

3-4. Filing of Information on sex-related offenses

a. Filing in the Army Military Human Resource Record. Commanders will ensure that a Soldier's performance-disciplinary folder is annotated when a court-martial conviction, non-judicial punishment, or punitive administrative action for a sex-related offense is received. Punitive administrative action means any adverse administrative action initiated as a result of the sex-related offenses identified below and includes, but is not limited to, memorandums of reprimand, admonishment, or censure from all levels of command.

b. This requirement applies to Soldiers in all components, regardless of grade. Commanders do not have the authority to designate any of these documents be filed in the restricted folder of the AMHRR or locally (see para 3-5).

(1) Sex-related offenses include a violation of the following sections of 10 USC and equivalent articles of the UCMJ:

(a) Section 920 – Art. 120: Rape and sexual assault. This includes rape, sexual assault, aggravated sexual contact and proof of threat.

(b) Section 920a – Art. 120a: Stalking.

(c) Section 920b – Art. 120b: Rape and sexual assault of a child. This includes rape, sexual assault, sexual abuse of a child and proof of threat.

(d) Section 920c – Art. 120c: Other sexual misconduct. This includes indecent viewing, visual recording, or broadcasting.

(e) Section 925 – Art. 125; Forcible sodomy; bestiality.

(f) Section 880 – Art. 80: Attempt (to commit any of the offenses listed in this paragraph).

c. If an action is taken against a Soldier resulting in an Army Law Enforcement Report in a civilian court, the disposition will be recorded on a DA Form 4833 (Commander's Report of Disciplinary or Administrative Action) in accordance with AR 190-45. Any possible action(s) taken against a Soldier may include military action, civilian action, or both.

(1) The appropriate Army Criminal Investigation Division (CID) office will enter the law enforcement report into CID's reporting system (The Army and state requirements to register as a sex offender contributes to this reporting, if applicable).

(2) Cases where an Army Law Enforcement Report does not exist for a conviction in civilian court. Once the Army is made aware of the incident/conviction (that is, sexual offense), the appropriate CID office will generate a DA Form 4833, and enter the report into CID's reporting system (The Army and state requirements to register as a sex offender contributes to this reporting, if applicable).

(3) Records of civil convictions for sexual offenses separate from military action/reports must be recorded in the National Crime Information Center in accordance with AR 195-5 and accessible by all agencies performing a criminal justice junction.

d. Due process guarantee. Unless exempt from referral (see para 3-3), the Soldier will be given notice of the requirement to file the information in the AMHRR, and will be given the opportunity to respond before adverse administrative action is included in the Soldier's performance-disciplinary folder. The Soldier's response will be filed with the adverse administrative action.

e. Mandatory filing in the performance folder. Documents will be filed in the performance-disciplinary folder of the AMHRR.

f. Processing sex-related offenses.

(1) Commanders will coordinate with his or her advising Judge Advocate, who will coordinate with the Office of the Judge Advocate General (OTJAG)-Criminal Law Branch to ensure the offense meets the criteria for a sex-related offense (as stated above in para 3-4b(1)).

Note. Offenses determined not to meet the criteria as a sex-related offense will be returned to the unit for processing in accordance with AR 600-8-104.

(2) OTJAG will forward validated offenses by memorandum to: Commander, Army Human Resources Command (AHRC-PLB) (G3), 1600 Spearhead Division Avenue, Fort Knox, KY 40122-5120, or encrypted email to usarmy.knox.hrc.mbx.g3-plans@mail.mil with subject line "Documented Sex-Related Offense for (Rank/Full Name). Memorandum must include Soldier's full name, last four of social security number, grade, servicing Judge Advocate, and OTJAG validation. Packets must include supporting documents for the offense (Article 15/General Officer Memorandum of Reprimand (GOMOR), Court-Martial Conviction) for filing in the AMHRR.

(3) HRC-G3 will forward the memorandum and supporting documents to the appropriate records custodian, as defined in AR 600-8-104, for web uploading to the AMHRR in interactive Personnel Electronic Records Management System.

g. Coding record. The Commander, HRC, will designate and implement an appropriate assignment consideration code (ASCO) for use on Soldiers' record briefs to identify those Soldiers with a court-martial conviction, non-judicial punishment, or punitive administrative action for a sex-related offense. U.S. Army Reserve Command and The Adjutant General for state/territory National Guard will enter the ASCO for Soldiers in their component (Reserve Command Management System - Reserve and/or Standard Installation/Division Personnel System).

h. Command review. Lieutenant colonel-level commanders, or higher authority, will review the history of sex-related offenses documented in the AMHRR for any Soldier permanently assigned to their unit. Commanders will screen the record brief of current and incoming Soldiers for the ASCO indicating that the Soldier has received a court-martial conviction, non-judicial punishment, or punitive administrative action for the sex-related offense. The purpose of this review is to ensure that commanders are aware of the history of sex-related offenses of Soldiers within their organizations.

i. Appeal of filing. A Soldier may appeal the placement of the information in their AMHRR to the Army Board for Correction of Military Records (ABCMR).

3–5. Filing of non-punitive administrative memorandums of reprimand, admonition, or censure

a. Authority for filing in the Army Military Human Resource Record.

(1) Authority to issue and direct the filing of a GOMOR, admonition, and/or censure in the AMHRR (after referral to the person concerned pursuant to para 3–7) of enlisted personnel is restricted to the first general officer (GO) in the chain of command, school commandants, or any GO (to include those frocked to the rank of brigadier general). Immediate supervisors of enlisted personnel also have authority to issue memorandums of reprimand, but only if serving in one of the capacities listed above.

Note. Commanders only have two filing options: filing in the performance portion of the AMHRR or local filing. Commanders do not have the option to file non-punitive memoranda in the restricted portion of the AMHRR. If local filing is intended, the memorandum does not need to be referred to a higher authority for review.

(2) Authority to issue and direct the filing of such memorandums in an officer's AMHRR is restricted to—

(a) The recipient's immediate commander or a higher level commander in the chain of command (if such commander is senior in grade or date of rank to the recipient).

(b) The designated rater, intermediate rater, or senior rater, under the officer evaluation reporting system (see AR 623–3).

(c) The GO (to include one frocked to the rank of brigadier general) who is senior to the recipient, or an officer who exercises general court-martial jurisdiction over the recipient. The GO must be in the same military status as the recipient receiving the GOMOR (for example, 10 USC or 32 USC).

(3) Statements furnished by the recipient following referral will be attached to the memorandum for filing in the AMHRR (see para 3–7).

b. Filing in Army Military Human Resource Records. A memorandum, regardless of the issuing authority, may be filed in the AMHRR, and managed by HRC or the proper State Adjutant General (for Army National Guard personnel) only upon the order of a GO (to include one frocked to the rank of brigadier general) in the same military status as the recipient receiving the GOMOR (for example, 10 USC or 32 USC). The GO must be senior to the recipient, or given direction from an officer having general court-martial jurisdiction over the individual. Memorandums filed in the AMHRR will be filed in the performance folder. Directions for filing in the AMHRR will be contained in an endorsement or addendum to the memorandum.

c. A memorandum containing unfavorable information, to be included in a Soldier's Army Military Human Resource Record will—

(1) Be referred to the recipient concerned for comment (see para 3–7).

(a) The referral will include reference to the intended filing of the memorandum.

(b) This referral will also include and list applicable portions of investigations, reports, and other documents that serve, in part or in whole, as the basis for the memorandum, provided the recipient was not previously provided an opportunity to respond to information reflected in that documentation.

(c) Documents that require the approval from officials or agencies, other than the official issuing the memorandum, will be coordinated with the release authority prior to releasing to the recipient.

(d) Statements and other evidence furnished by the recipient will be reviewed and considered by the officer authorized to direct filing in the AMHRR. The statements and evidence, and/or any applicable written correspondence thereof, will be attached as enclosures to the memorandum.

Note. This will be done before a final determination is made to file the memorandum. Referral acknowledgment must be included with any unfavorable information directed for filing in the AMHRR (see para 3–7).

(e) If the recipient desires to file allied documents with the memorandum, these documents must also be referred to the recipient for comment. This includes statements, previous reprimands, admonitions, or censure. Allied documents must also be specifically referenced in the memorandum or referral document. Care must be exercised to ensure additional unfavorable information is not included in the transmittal documentation, unless it has been properly referred for comment.

(2) Contain a statement that indicates the memorandum has been imposed as an administrative measure, and not as a punishment under UCMJ, Art. 15.

(3) Be signed by (or sent under the cover or signature of) an officer authorized to direct such filing, and in the same military status as the recipient of the GOMOR (for example, 10 USC or 32 USC).

(4) Include a statement indicating the imposing authority's intent for filing. This statement will provide the Soldier direction on how to correct his or her behavior, and will assist the DASEB in its deliberations in the event the Soldier appeals to have the document transferred to the restricted portion of the AMHRR.

(5) Be forwarded for inclusion in the performance portion of the AMHRR, only after considering the circumstances and alternative non-punitive measures. Minor behavior infractions or developmental mistakes will not normally be recorded in a Soldier's AMHRR. Once placed in the AMHRR; however, such information will be permanently filed, unless removed through the appeal process (see chap 7).

(6) Names of victims and third party social security numbers will be redacted from all documents prior to filing locally or in the AMHRR.

d. Decisions against filing memorandums in the Army Military Human Resource Record. If the GO (or general court-martial convening authority) elects not to place the memorandum in the AMHRR, the correspondence will be returned to the issuing authority who will advise the recipient of the decision not to file the memorandum in the AMHRR.

e. Filing memorandums designated for local files. Local filing may only be filed for up to 18 months, or until reassignment of the recipient to another general court martial jurisdiction, whichever is sooner. Such a letter will state the length of time the letter is to remain in the local file, and provide a point of contact for the Soldier to contact after the expiration date to ensure removal. Both the Soldier and his or her unit are equally responsible for removing the letter from the local file after 18 months.

f. Circumstances affecting the imposition or processing of administrative memorandums of reprimand.

(1) If/when a Soldier leaves the chain-of-command or supervision after a commander or supervisor has stated, in writing, the intent to impose a reprimand, but before the reprimand has been imposed, the action may be processed to completion by the losing command. In such cases, the losing command must coordinate reprimanding action(s) with the gaining command prior to imposition.

(2) If/when the reprimanding official leaves the chain-of-command or supervision after stating in writing the intent to impose a reprimand, his or her successor may complete appropriate action on the reprimand. In such cases, the successor must be familiar with relevant information about the proposed reprimand.

(3) If/when a former commander or supervisor discovers misconduct warranting a reprimand, an admonition, or censure without having previously stated in writing the intent to impose a reprimand, he or she may—

(a) Send pertinent information to the Soldier's current commander for action.

(b) Personally initiate and process a memorandum of reprimand, admonition, or censure, as if the former command or supervisory relationship continued. In such cases, the current commander must be familiar with relevant information about the proposed reprimand.

Note. Officials should consider the timeliness and relevance of the adverse information before taking administrative action at a later date.

g. Reprimands and admonitions imposed as non-judicial punishment (see UCMJ, Art. 15) are governed by AR 27–10.

h. Change from enlisted to officer status. If a status change from enlisted to officer was approved on or after 16 December 1980, memorandums of reprimand, admonition, or censure, received while in an enlisted status and filed in the performance portion of the AMHRR, will be moved to the restricted portion of the AMHRR.

3–6. Anonymous communications

Anonymous communications will not be filed in a Soldier's AMHRR or filed locally. If, after investigation or inquiry, unfavorable information is found to be true, relevant, proven, or supported, and not exempted under paragraph 3–3, the information must be referred to the Soldier before such information is filed in the AMHRR or filed locally (see para 3–7).

3–7. Referral of information

a. Except as provided in paragraph 3–3, unfavorable information will be shared with the recipient for acknowledgment of his or her rebuttal opportunity, prior to filing.

b. Recipients will be provided 7 calendar days (active duty Soldiers (all components) or U.S. Army Reserve (USAR) Soldiers in Troop Program Units (TPUs)), or 30 calendar days (Army National Guard/Reserve Soldiers not on active duty) to make a statement, or to decline, in writing, to make such a statement. The notice will state the date by which the statement must be provided. The statement may include evidence that rebuts, explains, or mitigates the unfavorable information. Acknowledgment and rebuttal comments or documents will be submitted generally in the following form:

(1) “I have read and understand the unfavorable information presented against me, and submit the following statement or document(s) on my behalf.”

(2) “I have read and understand the unfavorable information presented against me, and elect not to make a statement.”

c. If a recipient refuses to acknowledge the referral of unfavorable information, the reprimanding official will prepare the following statement: “On (insert date in YYYY/MM/DD format), (insert name in first, middle, last sequence) has been presented with the unfavorable information and refuses to acknowledge by signature.” The memorandum can then be directed for filing (see para 3–5).

Chapter 4

Unfavorable Information in Counterintelligence and Investigative Files

4–1. General

This chapter sets forth provisions for the disposition of unresolved unfavorable information in counterintelligence and investigative files.

4–2. Security clearance

Commanders will ensure that security clearance eligibility is not suspended in lieu of punishment under the UCMJ or other disciplinary measures. Recommendations to deny or revoke a security clearance will not be used as a punishment or disciplinary measure. Action to deny or revoke a security clearance will be taken only by the Department of Defense (DOD) Consolidated Adjudications Facility (CAF) (see AR 380–67).

4–3. Resolution of unfavorable information in counterintelligence and investigative files

a. *Commander’s responsibility.* When commanders receive information that may cast doubt on the suitability of a person to hold a security clearance, he or she will follow the procedures in AR 380–67 for reporting the information. When a commander receives information that may be reportable under the provisions of AR 381–12, he or she will notify the supporting counterintelligence office. In addition, the commander will—

(1) Follow incident procedures in accordance with AR 380–67.

(2) Initiate investigation under AR 15–6, AR 380–67, or AR 600–8–104, and forward the results through the chain-of-command.

(3) Consider the appropriate action under AR 135–175, AR 135–178, AR 600–8–24, AR 635–200, or the UCMJ.

(4) Reassign the person to a non-sensitive position.

(5) Commanders may use additional investigative resources available, such as military police, IG, U.S. Army Criminal Investigation Command (USACIDC), and/or investigating officers or a board of officers who may investigate matters within their assigned area of responsibility. This authority does not include the conduct of counterintelligence investigations.

b. *Suspension of favorable personnel actions.* Suspension of favorable personnel actions (under AR 600–8–2) will be considered. The suspension of favorable personnel actions on a Soldier is mandatory when military or civilian authorities initiate any investigation or inquiry that may potentially result in disciplinary or adverse administrative action.

4–4. Use of counterintelligence and investigative files in personnel actions

a. Counterintelligence and investigative files are not a part of the military personnel records system, as prescribed by AR 600–8–104. However, to ensure that the Army’s interests are protected when selecting a Soldier for a POSTA or PASS, commanders should (in accordance with all Army activities 188/2014)—

(1) Correlate significant verified information with information in personnel files.

(2) Make all information available to personnel decisionmakers.

b. Current counterintelligence and investigative files may have unevaluated or dormant information which was not furnished to the Soldier for comment. These records may have sensitive information that may not be releasable either to the subject, or the board. If disclosed prematurely, the information could jeopardize current investigations or sources of information. For these reasons, counterintelligence and investigative files are not furnished to promotion selection boards or other personnel decision-makers except—

(1) The DASEB, as outlined in chapters 2 and 6. This board merely determines what information will be considered for possible filing in the AMHRR, but does not make personnel decisions.

(2) Personnel managers in highly intensified personnel management areas, as designated by the SecArmy, the Chief of Staff of the Army, or the DCS, G–1.

(3) As the SecArmy may direct.

Chapter 5

Unfavorable Information in Army Law Enforcement Files

5–1. Authorities for filing and using unfavorable information

Statutory or regulatory authorities govern the filing and use of unfavorable material in military police or USACIDC crime records (see AR 190–45, AR 195–5, and AR 195–6; and paras 2–2 and 2–5). This chapter prescribes procedures for the disposition and referral of, and access to, information in Army law enforcement files.

5–2. Disposition of information in law enforcement files

a. Criminal justice action. Copies of criminal investigative case files, military police reports, or information from these files or reports are provided to commanders by law enforcement agencies for criminal justice disposition and ancillary actions.

(1) *Criminal justice disposition.* As a result of command consideration, criminal justice disposition proceeds to one of the categories listed below. To this end, the proper authority may—

- (a) Start court-martial action.
- (b) Start action under the UCMJ, Art. 15.
- (c) Decline to consider further criminal justice proceedings.

(2) *Ancillary action.* The actions described below do not replace criminal justice disposition, but are independent of criminal justice disposition.

- (a) Action to suspend favorable personnel actions reported according to AR 600–8–2.
- (b) Elimination action under AR 135–175, AR 135–178, AR 600–8–24, or AR 635–200.
- (c) Action to suspend or deny access to classified information under AR 380–67 and, if needed, investigation under AR 381–20 to obtain more facts in the case.
- (d) Other administrative action, as appropriate.

b. Non-criminal justice action. Independent of completing a criminal justice disposition (as listed in para 5–2a(1)), Army review of criminal investigative or military police cases about subject personnel, for suitability consideration, may result in action under one or more of the categories listed below.

- (1) Elimination action under AR 135–175, AR 135–178, AR 600–8–24, or AR 635–200.
- (2) Action to suspend or deny access to classified information under AR 380–67 and, if needed, investigation under AR 381–20 to develop the facts of the case.
- (3) Favorable closing of the case.

5–3. Access to law enforcement investigative files

a. AR 25–55, AR 190–45, AR 195–2, and AR 195–6 set forth procedures for gaining access to law enforcement investigative files.

b. Law enforcement records and reports are not a part of the military personnel records system as prescribed by AR 380–67.

(1) To ensure that commanders and supervisors take proper action (see para 5–2), information from criminal investigative and military police files is exchanged between USACIDC, or military police elements, and the commanders whom they support.

(2) AR 190–45, AR 195–2, and AR 195–6 set forth procedures to preclude the release of unfavorable information for purposes other than those described in paragraph 5–2.

- (3) Safeguards will be established to preclude unauthorized release of information in accordance with AR 195–2.

c. Criminal record data related to uses described by paragraph 5–2 are not provided to Army selection boards or other personnel decision makers before an initial determination of guilt (based on criminal justice disposition). Exceptions are as follows:

- (1) DASEB as outlined in chapters 2 and 6, subject to restrictions that may be imposed concerning secondary release.
- (2) Personnel managers of intensified personnel management areas, specifically designated by the SecArmy, the Chief of Staff of the Army, or the DCS, G–1.
- (3) As the SecArmy may direct.

Chapter 6

Organization and Procedures of the Department of the Army Suitability Evaluation Board

6–1. Board membership and voting procedures

a. The DASEB is a standing, continuous board within ARBA. The DASEB typically consists of officers in the grade of colonel; however, voting members on any case will be senior in grade to the recipient. The board membership will include at least one enlisted member in the grade of sergeant major when considering cases involving enlisted personnel. If the recipient is senior to the enlisted member(s) of the Board, three colonels will vote the case. The DASEB is authorized direct communication with all commanders, agencies, and individuals.

b. A quorum of three members will be actively involved in every step of the case's adjudication. Determination recommendations will be by majority vote. The DASEB may find that adverse suitability information can best be resolved by returning the case to the Soldier's chain of command.

c. No DASEB member will vote on a case in which he or she was personally involved, or in which he or she knowingly has any bias. In any event where a DASEB member is/was personally involved in a case, he or she will be removed from said case, and replaced with another suitable board member.

d. The Director, Military Review Boards, will make the final decision regarding the DASEB's recommendation to transfer unfavorable information from the performance to the restricted file in the AMHRR.

e. The DASA (RB) will make the final decision regarding the DASEB's recommendation to remove unfavorable information from the AMHRR.

6–2. Department of the Army Suitability Evaluation Board Filing Determinations

a. The DASEB will deliberate to determine whether unfavorable information requested by a commander or agency without filing authority should be filed in the AMHRR and, if so, whether to be placed in the performance or restricted portion.

b. The DASEB will only consider and recommend the filing of unfavorable information for cases in which the recipient has been afforded an opportunity to explain or rebut the unfavorable information, and has not provided a satisfactory explanation or rebuttal.

c. The DASEB may edit unfavorable information for cases in which the recipient has satisfactorily explained a portion of the unfavorable information in the rebuttal. The DASEB will then recommend the filing of the edited unfavorable information.

d. The DASEB may determine that the unfavorable information should not be included in either the performance or restricted portion of the AMHRR. In such cases, the DASA (RB) will make the final determination, as they are the approval authority for DASEB determinations not to file unfavorable information in the AMHRR. This authority will not be further delegated. The DASEB will close such cases and notify the commander or agency of the outcome.

e. The DASEB makes determinations upon appeal of unfavorable information filed in a Soldier's AMHRR. The DASEB may determine to revise, alter, or remove such unfavorable information if it is determined to be untrue or unjust, in whole or in part (see chap 7).

f. The DASEB makes determinations, upon appeal, on requests to transfer unfavorable information from the performance to the restricted portion of the AMHRR (see chap 7). The DASEB may recommend the transfer of those administrative memorandums of reprimand when such transfer would be in the best interest of the Army. Transfer of such memorandums is further subject to the stipulations stated in paragraph 6–1d, paragraph 6–1e, and chapter 7.

6–3. Department of the Army Suitability Evaluation Board process

a. *The Department of the Army Suitability Evaluation Board will review and consider the recipient's response or rebuttal to the proposed filing of a case summary of unfavorable information in his or her Army Military Human Resource Record.* The DASEB will adequately document its findings, conclusions, and recommendations. The DASEB will adjudicate cases under the following circumstances:

(1) Commanders who do not have filing authority for unfavorable information may submit requests for a filing determination. This normally is any commander below the rank of brigadier general who does not have General Court-Martial Convening Authority.

(2) Agencies who possess, or are aware of, unfavorable information about a Soldier may submit a request for a filing determination when the information cannot be filed under the provisions of other regulatory policies or procedures.

(3) Filing authorities who directed the filing in the AMHRR of an administrative memorandum of reprimand, admonition, or censure, may request its revision, alteration, or removal if later investigation determines it was untrue or unjust, in whole or in part.

(4) Soldiers who believe unfavorable information filed in their AMHRR is untrue or unjust may submit an appeal to request the removal of that information on the basis that it is untrue or unjust. Such appeals must include sufficient clear and convincing evidence that shows the unfavorable information is either untrue or unjust in whole or in part.

(5) Soldiers who believe that unfavorable information filed in their AMHRR, in the form of a memorandum of reprimand, admonition, or censure, or records or proceedings pursuant to UCMJ, Art. 15, have served their intended purpose, may submit an appeal in the case of an UCMJ, Art. 15, to request its transfer to the restricted portion of the AMHRR in accordance with paragraph 7–2d(3). Such appeals must include evidence that—

- (a) The intended purpose has been served.
- (b) The Soldier has received at least one evaluation report (not academic) since its imposition.
- (c) The transfer is in the best interest of the Army.
- (d) The Soldier’s chain of command at the time of the imposition and/or imposing authority support the transfer in the form of a memorandum.

Note. In cases where an imposing authority/unit no longer exists, the Soldier’s next higher command/unit may support the transfer.

(6) Soldiers who have had an appeal denied under paragraphs 6–3a may submit a request for reconsideration no earlier than 1 year from the date of notification of denial. The request for reconsideration must include evidence not previously considered.

b. Case analysis.

(1) The DASEB will review and evaluate the records of each case referred to the board to determine if—

(a) Documents that contain unfavorable information submitted for filing considerations have sufficient credible evidence to support a finding, by preponderance of the evidence, that the unfavorable information is valid.

(b) Unfavorable information is of such a serious nature that it should be made a part of the AMHRR. In doing so, the DASEB will consider serious individual incidents, as well as a pattern of lesser incidents, that may reflect unfavorably on the Soldier’s character, integrity, trustworthiness, or reliability.

(2) The DASEB will presume that once an official document has been properly filed in the AMHRR, it is administratively correct and was filed pursuant to an objective decision made by a competent authority. Thereafter, the burden of proof rests with the recipient responsible for providing clear and convincing evidence to support the document is either untrue or unjust, in whole or in part, thereby warranting its alteration or removal from the AMHRR; or has served its intended purpose, and it is in the best interest of the Army to transfer it to the restricted portion of the AMHRR.

(3) The DASEB will review all cases, regardless of prior decisions made by commanders, courts-martial, elimination boards, or other authorities.

Note. AR 15–6 does not apply to DASEB proceedings.

(4) The DASEB will not consider appeals that merely allege an injustice or error without supporting evidence.

(5) The DASEB will consider appeals for the transfer of unfavorable information to the restricted portion of the AMHRR when the recipient has submitted proof that the intended purpose has been served and the transfer is in the best interest of the Army. Criteria for consideration include the following:

- (a) (Required) Time elapsed since the filing.
- (b) (Required) The Soldier has indicated remorse for the actions which caused the unfavorable information to be filed.
- (c) (Required) At least one positive evaluation report, other than an academic evaluation, has been received since the filing.
- (d) (Required) There is no evidence or indication of a repeat of the offense.
- (e) (Recommended) Memorandum from the original imposing authority supporting the transfer.
- (f) (Optional) Memorandum of support from the current chain of command and the chain of command at the time of imposition.

(6) The DASEB may obtain information from the recipient, Soldiers in the chain of command, or anyone thought to have firsthand knowledge relevant to the case. The DASEB is authorized direct communication with commanders, agencies, and individuals regarding matters before the board. The DASEB may request and consider any files, records, and reports believed to have relevance to a case under consideration. These include criminal records, official personnel files, counterintelligence and investigative files, law enforcement, and other investigative files. Except as set forth in 10 USC 1556, an recipient will be provided copies of all correspondence and communications (including summaries of verbal communications) between DASEB and any entity or person outside ARBA pertaining to the recipient’s case or potentially having a material effect on the recipient’s case. The recipient will be given a reasonable opportunity to respond to such information before the DASEB renders a decision or recommendation.

(7) The DASEB does not permit recipients or those on their behalf, to appear in person before the board.

(8) The DASEB will document its findings and conclusions, and will state its recommendations in their record of proceedings. The recipient will receive a copy of the record of proceedings with the final decision.

c. Case decisions.

(1) The DASEB makes determinations and recommendations based on a majority vote of the board members, following the process outlined above.

(2) The DASEB makes initial filing decisions based on its case review and analysis, and will determine one of the following:

(a) The unfavorable information is already adequately reflected in the AMHRR so as to be meaningful to personnel managers and selection boards. Therefore, the case may be closed without further action except to properly notify the sender of this determination.

(b) The unfavorable information is either not of such a serious nature or is not of the type that should be filed in the AMHRR. Therefore, the case may be closed without further action, except to properly notify the sender of the DASEB determination that the information will not be filed.

(c) The unfavorable information is of such a serious nature as to warrant filing in the AMHRR. In such cases, a notification memorandum will be sent to the recipient, in which his or her rights are explained.

Note. The memorandum will include the unfavorable information proposed for filing in the AMHRR.

(d) The recipient must be given an opportunity to review the evidence against them, and to submit a written rebuttal or explanation for the board's consideration before any adverse finding or recommendation is made. Once the DASEB reviews the response, it will make a filing recommendation to the DASA (RB) for final filing decision action.

(e) The adverse suitability information can best be resolved by returning the case to the current chain of command.

(3) The DASEB makes removal decisions based on its case review and analysis, and will determine one of the following:

(a) The unfavorable information is determined to be untrue or unjust, in whole or in part; therefore, there is sufficient reason to remove the document from the recipient's AMHRR.

(b) The unfavorable information is determined to be untrue or unjust, in whole or in part; therefore there is sufficient reason to require alteration of the unfavorable information as determined by the DASEB.

(c) The unfavorable information is determined to be true and just, and will remain in the recipient's AMHRR.

(d) The DASEB determines the case does not meet the criteria for consideration by the board, and returns the appeal without action.

Chapter 7

Appeals

7-1. Appeal authority

The DASEB is the initial appeal authority and makes recommendations for removal, alteration, or transfer of unfavorable information entered in the AMHRR. This chapter sets forth the policies and procedures whereby a person may seek removal of unfavorable information from his or her AMHRR, or transfer of unfavorable information from the performance file to the restricted file of his or her AMHRR.

7-2. Policies and Standards

An officer who directed the filing in the AMHRR of an administrative memorandum of reprimand, admonition, or censure, may request its revision, alteration, or removal if later investigation determines such information is untrue/unjust in whole or in part. The basis for such determination must be provided to the DASEB in sufficient detail so as to justify the request. The officer who directed the filing of such a letter in the AMHRR may not initiate an appeal on the basis that the memorandum has served its intended purpose. However, a memorandum of support may be submitted with the recipient's appeal.

a. Applicability.

(1) *Appeals for removal.* This regulation applies to appeals for the removal of memorandums of reprimand, admonition, or censure, already filed in the recipient's AMHRR.

(2) *Appeals for transfer.* This regulation applies to appeals for the transfer of memorandums of reprimand, admonition, or censure, for the transfer of records of proceedings under UCMJ, Art. 15, from the performance file to the restricted file of the recipient's AMHRR.

(3) *Appeals involving documents with regulatory appeal authority.* This regulation does not apply to documents that have their own regulatory appeal authority, such as evaluation reports or records of courts martial.

(4) *Appeals for Article 15 removal* (see AR 27–10). The DASEB will not consider appeals to remove a records of proceedings under UCMJ, Art. 15, from the AMHRR. The authority to adjudicate such claims rests with the ABCMR, under AR 15–185.

b. Who may appeal? The DASEB will consider all appeals from Soldiers in the Regular Army, the Army National Guard of the United States/Army National Guard, the U.S. Army Reserves (in grades E–6 and above), officers, and warrant officers. The DASEB will consider appeals from Soldiers in grades below E–6 only as an exception to policy granted by the DCS, G–1.

c. Veterans and retirees. The DASEB will not accept or consider appeals from individuals no longer in the military or members of the Inactive Ready Reserve. Those individuals must submit their requests to the ABCMR using DD Form 149 (Application for Correction of Military Record) (see para 7–7).

d. Burden of proof and level of evidence required.

(1) *General.* Once an official document has been properly filed in the AMHRR, it is presumed to be administratively correct, and to have been filed pursuant to an objective decision by a competent authority.

(2) *Removals.*

(a) There is no time restriction for submitting an appeal for removal of unfavorable information from the AMHRR.

(b) The recipient has the burden of proof to show, by clear and convincing evidence, to support assertion that the document is either untrue or unjust, in whole or in part.

(c) Evidence submitted in support of the appeal may include, but is not limited to: an official investigation showing the initial investigation was untrue or unjust; decisions made by an authority above the imposing authority overturning the basis for the adverse documents; notarized witness statements; historical records; official documents; and/or legal opinions.

(d) The DASEB will not consider appeals that merely allege an injustice or error without supporting evidence or a compelling argument. Appeals such as these will be returned without action.

(e) The DASA (RB) is the final decision authority for removal of unfavorable information from the AMHRR. This authority will not be further delegated.

(3) *Transfers.*

(a) Soldiers must have received at least one evaluation (other than academic) since imposition.

(b) The recipient bears the burden of providing substantial evidence that the intended purpose of the document has been served in support of a request for the transfer of any official or records of proceedings pursuant to UCMJ, Art. 15.

(c) The recipient must indicate how the transfer of the unfavorable information would be in the best interest of the Army, thereby warranting transfer of the document to the restricted file of the AMHRR. Such evidence may include, but is not limited to: statements of support from the imposing authority, the Soldier's current chain of command, the Soldier's chain of command at the time of imposition, and/or other memorandums of support; subsequent evaluation reports (other than academic); notarized witness statements; official documents; court documents; statements of remorse; documents demonstrating rehabilitation; other documents proving the intended purpose of the document has been served; and legal documents.

(d) The DASEB will not consider appeals that merely allege that the intent of the document has been served without supporting evidence. Appeals such as these will be returned without action.

(e) The transfer of an unfavorable document to the restricted portion of the AMHRR will not normally serve as the sole basis for promotion reconsideration by a special selection board, unless approved as an exception to policy granted by the DCS, G–1 (based on the DASEB's recommendation, and the DASA (RB)'s concurrence).

(f) If the DASEB denies an appeal, a copy of the memorandum of notification regarding the denial will be placed in the commendatory and disciplinary portion of the performance record. The appeal itself and the record of the proceedings will be placed in the restricted portion of the AMHRR.

7–3. Processing appeals–Army Military Human Resource Record

a. Preparation and submission.

(1) All appeals must be submitted by, or on behalf of, the recipient in writing.

Note. A sample Department of the Army Suitability Evaluation Board Appeal memorandum can be found at ARBA's website: <http://arba.army.pentagon.mil/unfavorable.html/>

(2) All appeals must be accompanied by relevant, substantive evidence (see para 7–2d).

(3) For active duty Soldiers (all components) and USAR Soldiers in TPU, appeals must be submitted to the DASEB at Army Review Boards Agency. The DASEB mailing address is: 251 18th Street South, Suite 385, Arlington, VA 22202–3531.

(4) For Army National Guard Soldiers not on active duty, appeals must be submitted through the applicable state Adjutant General and the Chief, National Guard Bureau, to the DASEB.

- (5) Retired, Separated, or Soldiers in the Individual Ready Reserve do not appeal to the DASEB; they must appeal to the ABCMR to remove from or move unfavorable information within their AMHRR (see para 7-7).
- (6) The appeal process is administrative and non-adversarial in nature.

Note. The provisions of AR 15-6 do not apply.

(7) Recipients, or those acting on their behalf, are not authorized to appear in person before the DASEB.

b. Recipient awareness of the Department of the Army Suitability Evaluation Board process.

(1) The DASEB may request and consider any files, records, and reports believed to have relevance to a case under consideration.

(2) The DASEB may obtain corroboration from Soldiers in the chain of command, or anyone thought to have first-hand knowledge relevant to a case.

(3) The DASEB may contact an recipient by official correspondence for specific information as necessary.

(4) The DASEB may contact (whenever practical) the imposing authority for input regarding an appeal .

(5) The DASEB will adhere to the notice requirements to recipients (see para 6-3).

c. Filing authority to redress actions.

(1) An officer who directed the filing in the AMHRR of an administrative memorandum of reprimand, admonition, or censure, may request its revision, alteration, or removal, if evidence or information indicates the basis for the adverse action was untrue or unjust, in whole or in part.

(2) An officer who directed such a filing must provide the DASEB a copy of the new evidence or information to justify the request.

7-4. Processing appeals—locally filed

Procedures for requesting removal of such locally filed unfavorable documents.

a. All appeals must be submitted by the recipient, in writing.

b. All appeals must be accompanied by relevant, substantive evidence, justifying why the document should be removed prior to its specified removal date.

c. Appeals to remove a locally filed memorandum of reprimand, admonition, or censure involving unfavorable information from the Soldier's local file, prior to the designated removal date, should be directed to the individual who initially directed the filing of the memorandum, or a higher-level commander in the chain- of-command for action on the request.

7-5. Amendment rights

This regulation does not limit or restrict a Soldier's right to request amendment of his or her records under the Privacy Act. Nor does it limit or restrict the authority of the DASEB to act as an Access and Amendment Authority.

7-6. Appeal review priorities

Appeals are processed in the order of priority established by the DASEB.

a. For officers appealing.

(1) First-priority are appeals pertaining to officers who have been:

(a) Twice non-selected for promotion and given a directed discharge, release, or mandatory retirement date within 6 months.

(b) Selected for release within 6 months by an HQDA elimination board or an Active Guard Reserve continuation board.

(c) Recommended for elimination within 6 months. (*Note.* This also applies to officers who have applied for, and have been denied, voluntary indefinite category.)

(2) Second-priority is all other officers.

b. For noncommissioned officers appealing.

(1) First-priority are appeals pertaining to noncommissioned officers (NCOs) who have been:

(a) Twice non-selected for promotion in the primary zone of consideration and are within 6 months of discharge release from service (expiration term of service) or mandatory retirement date.

(b) Selected for release under the HQDA or Army National Guard Qualitative Management Program, or the USAR Qualitative Retention Program.

(c) Selected for release from Active Guard Reserve by an Active Guard Reserve continuation board.

(d) Identified for referral within 6 months to an Active Guard Reserve continuation board.

(2) Second-priority are appeals pertaining to NCOs who have been non-selected for promotion in the primary zone of consideration at least once, but who do not have a mandatory release date within 6 months.

(3) Third-priority is all other NCOs.

7-7. Correction of military records – Army Board for Correction of Military Records

a. AR 15-185 contains policy and procedures for applying to the ABCMR for the purpose of correcting military records. Applications should be sent to the ABCMR to correct an error or remove an injustice only after all other means of administrative appeal have been exhausted, including available appeal actions provided in this regulation.

b. Soldiers, Veterans, or their authorized representatives, may appeal adverse DASEB decisions to the ABCMR.

c. If the Soldier or veteran is deceased or incompetent, the surviving spouse, next of kin, or a legal representative may apply. The application must include documentation to prove this relationship, such as a certified copy of a marriage license, death certificate, or power of attorney, as appropriate.

Appendix A

References

Section I

Required Publications

AR 15–6

Procedures for Administrative Investigations and Boards of Officers (Cited in para 4–3a(2).)

AR 15–185

Army Board for Correction of Military Records (Cited in para 7–2a(4).)

AR 20–1

Inspector General Activities and Procedures (Cited in para 2–5c.)

AR 25–55

The Department of the Army Freedom of Information Act (Cited in para 5–3a.)

AR 27–10

Military Justice (Cited in para 3–5g.)

AR 40–66

Medical Record Administration and Health Care Documentation (Cited in para 2–5c.)

AR 40–400

Patient Administration (Cited in para 2–5c.)

AR 135–175

Separation of Officers (Cited in para 4–3a(3).)

AR 135–178

Enlisted Administration Separations (Cited in para 4–3a(3).)

AR 190–45

Law Enforcement Reporting (Cited in para 2–5c.)

AR 195–2

Investigation Criminal (Cited in para 2–5d.)

AR 195–5

Evidence Procedures (Cited in para 3–4c(3).)

AR 195–6

Department of the Army Polygraph Activities (Cited in para 5–1.)

AR 380–67

Personnel Security Clearances (Cited in para 4–2.)

AR 381–12

Threat Awareness and Reporting Program (Cited in para 4–3a.)

AR 381–20

The Army Counterintelligence Program (Cited in para 5–2a(2)(c).)

AR 381–45

Investigative Records Repository (Cited in para 2–5c.)

AR 600–8–2

Suspension of Favorable Personnel Actions (FLAG) (Cited in para 2–3d.)

AR 600–8–24

Officer Transfers and Discharges (Cited in para 4–3a(3).)

AR 600–8–104

Army Military Human Resource Records Management (Cited in para 3–2c.)

AR 623–3

Evaluation Reporting System (Cited in para 3–3e.)

AR 635–200

Active Duty Enlisted Administrative Separations (Cited in para 4–3a(3).)

Section II

Related Publications

A related publication is a source of additional information. The user does not have to read it to understand this regulation. CFRs and USCs are available at <https://www.gpo.gov/fdsys/.ucmj>, Articles are available <http://www.au.af.mil/au/awc/awcgate/ucmj.htm>.

AR 11–2

Managers' Internal Control Program

AR 25–30

Army Publishing Program

DODI 1000.13

Identification (ID) Cards for Members of the Uniformed Services, Their Dependents, and Other Eligible Individuals (Available at <http://www.esd.whs.mil/portals/54/documents/dd/issuances/dodi/100013p.pdf?ver=2017-12-14-105107-170>.)

SecArmy Memorandum, dated 12 February 2014

Ensuring the Quality of Sexual Response Coordinators, Sexual Assault Prevention and Response Victim Advocates and Others in Identified Positions of Significant Trust and Authority (Available at http://www.sexualassault.army.mil/policy_orders.aspx.)

UCMJ, Art. 15

Uniform Code of Military Justice

UCMJ, Art. 80

Attempts

UCMJ, Art. 90a

Stalking

UCMJ, Art. 120

Rape and Carnal Knowledge

UCMJ, Art. 120a

Stalking

UCMJ, Art. 120b

Rape and sexual assault of a child

UCMJ, Art. 120c

Other sexual misconduct

UCMJ, Art. 125

Forcible sodomy; bestiality

10 CFR

Nuclear Regulatory Commission

32 CFR

National Defense

5 USC 552a

The Privacy Act

10 USC

Armed Forces

10 USC 552

The Privacy Act of 1974

10 USC 1556

Ex parte communications prohibited

32 USC

National Guard

Section III

Prescribed Forms

DA Form 4833

Commander's Report of Disciplinary or Administrative Action (Cited in para 3–4*c*.)

Section IV

Referenced Forms

Unless otherwise indicated, DA forms are available on the Army Publishing Directorate (APD) website (<http://armypubs.army.mil/>).

DA Form 11–2

Internal Control Evaluation Certification

DA Form 2028

Recommended Changes to Publications and Blank Forms

DD Form 149

Application for Correction of Military Record

Appendix B

Internal Control Evaluation

B-1. Function

This function covered by this evaluation is the administration of the Manager's Internal Control Program.

B-2. Purpose

The purpose of this evaluation is to assist commanders, security managers, and those involved with unfavorable information to accurately understand procedures outlined in this regulation. It is not intended to cover all controls.

B-3. Instructions

These key internal controls must be formally evaluated at least once every 5 years or whenever the internal control administrator changes. Certification that this evaluation has been conducted must be accomplished on DA Form 11-2 (Internal Control Evaluation Certification). Evaluation test questions are outlined in paragraph B-2, and are intended as a starting point for each applicable level of internal control evaluation. Answers must be based on the actual testing of key controls (for example, document, analysis, direct observation, sampling, simulation, or other). Answers that indicate deficiencies must be explained and corrective action indicated in supporting documentation.

B-4. Test questions

- a.* Who determines if unfavorable information should be filed in the performance portion of the AMHRR once cases / actions are referred?
- b.* Unfavorable information will not be filed in the AMHRR unless what individual has been given an opportunity to review the documentation?
- c.* When can anonymous communications be filed in a Soldier's AMHRR?
- d.* The DASEB is a board within what and consists of officers of what rank?
- e.* Who is the initial appeal authority for entering unfavorable information in the AMHRR?

B-5. Supersession

This evaluation replaces the management control evaluation checklist previously published in AR 11-2, dated 1 August 1994.

B-6. Comments

Help to make this a better tool for evaluating internal controls. Submit comments to Deputy Chief of Staff, G-1 (DAPE-MPS), 300 Army Pentagon, Washington DC 20310-0300.

Glossary

Section I

Abbreviations

ABCMR

Army Board for Correction of Military Records

ACOM

Army command

AMHRR

Army Military Human Resource Record

ARBA

Army Review Boards Agency

ASA (M&RA)

Assistant Secretary of the Army (Manpower and Reserve Affairs)

ASCC

Army service component command

ASCO

assignment consideration code

CAF

Consolidated Adjudications Facility

CID

Criminal Investigation Division

DA

Department of the Army

DASA (RB)

Deputy Assistant Secretary of the Army (Review Boards)

DASEB

Department of the Army Suitability Evaluation Board

DCS

Deputy Chief of Staff

DOD

Department of Defense

DRU

direct reporting unit

GO

general officer

GOMOR

General Officer Memorandum of Reprimand

HQDA

Headquarters, Department of the Army

HRC

U.S. Army Human Resources Command

IG

inspector general

INSCOM

U.S. Army Intelligence and Security Command

NCO

noncommissioned officer

OTJAG

Office of the Judge Advocate General

PASS

positions or appointments screened for suitability

POSTA

positions of significant trust and authority

SecArmy

Secretary of the Army

TPU

Troop Program Unit

UCMJ

Uniform Code of Military Justice

USACIDC

U.S. Army Criminal Investigation Command

USAR

U.S. Army Reserve

Section II**Terms****Ancillary action**

Action attendant to or subsequent to criminal justice action.

Army Military Human Resource Record

Reports, forms, and records (in documents or data banks) maintained by the Army pursuant to AR 600–8–104 for consideration when making personnel management decisions affecting the person concerned.

Clear and convincing evidence

Evidence of the measure or degree of proof which will produce in the mind a firm belief or conviction as to the facts sought to be established. The requirement of clear and convincing evidence does not call for unanswerable or conclusive evidence. Whether the evidence is clear and convincing requires weighing, comparing, testing, and judging its worth when considered in connection with all the facts and circumstances in evidence.

Counterintelligence and personnel security, law enforcement, and other investigative files

Reports, dossiers, and case materials (in documents or data banks) that belong to intelligence, law enforcement, or other investigative agencies. (Examples: files of the U.S. Army Investigative Records Repository, the USACIDC Crime Records Center, those pertaining to investigations conducted by General Court-Martial Convening authorities, and IG files at all IG files at all echelons.)

Crime records

Criminal Investigation Command reports of investigation, military police reports, and other reports maintained by (or belonging to) USACIDC. (Example: Criminal Investigation Command and military policy reports kept at the USACIDC Crime Records Center.)

Favorable personnel action

Any personnel or career management decision that enhances a Soldier's status or position. Included are as follows:

- a. Promotions.
- b. Regular Army appointments.
- c. Selection for schooling.
- d. Entry or continuation on active duty.
- e. Awards, decorations, and commendations.
- f. Voluntary reassignment.
- g. Voluntary retirement.

- h. Voluntary separation or release from active duty.
- i. Reenlistment.

Note. Although the granting of a security clearance is a “favorable personnel action,” it is not governed by this regulation.

Major commands

In addition to the designated ACOMs, separate Department of the Army agencies and activities, continental United States armies, the U.S. Army Recruiting Command, the U.S. Military Entrance Processing Command, and Army General and Special Staff agencies are considered major commands for the purpose of processing cases under this regulation.

Non-sensitive position

Any position so designated within the DOD, the occupant of which could not bring about, by virtue of the nature of the position, a materially adverse effect on the national security.

Personally identifiable information

Any information about an individual which can be used to distinguish or trace an individual's identity such as name, social security number, date, and place of birth, mother's maiden name, and biometric records.

Preponderance of the evidence

Evidence which is of greater weight or more convincing than the evidence offered in opposition to it; that is, evidence which as a whole shows that the fact sought to be proved is more probable than not. Preponderance of the evidence may not be determined by the number of witnesses, but by the greater weight of all evidence.

Punitive administrative action

Any adverse administrative action initiated as a result of identified sex-related offenses including, but not limited to, memorandums of reprimand, admonishment, or censure from all levels of command.

Recipient

A Soldier who has had unfavorable information referred to them for refusal, explanation, or comment; who has received a memorandum of reprimand, admonition, or censure in accordance with this regulation; or who has otherwise been the subject of an adverse action, the resolution of which may implicate the provisions of this regulation.

Sensitive position

Any position so designated within the DOD, the occupant of which could bring about, by virtue of the nature of the position, a materially adverse effect on the national security.

Substantial evidence

Evidence which is sufficient for a reasonable, prudent fact finder to accept as adequate to support a conclusion. It is more than a mere scintilla of evidence but less than a preponderance of evidence.

Suitability

All vetting functions to include fitness, common access card credentialing functions, the Personnel Reliability Program, information technology vetting of privileged users, health care personnel, Army Civilian police and security guards, continued reliability of positions having duties and responsibilities associated with law enforcement and security, unescorted access to arms, ammunition, and explosives and other access to credentials.

Unfavorable information

Any credible derogatory information that may reflect on a Soldier's character, integrity, trustworthiness, or reliability and includes letters of reprimand and UCMJ, Art. 15.

Unresolvable cases

Cases where, because of unusual circumstances or complexities, unfavorable information of a serious nature concerning members or former members of a command cannot properly be acted upon in accordance with the commander's authority.

Section III

Special Abbreviations and Terms

This section contains no entries.

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