



**USAID**  
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## ADS Chapter 411

# Employment Rights and Benefits of Employees Who Perform Active Military Duty

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***This is a new ADS chapter.***

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## **ADS 411 – Employment Rights and Benefits of Federal Civilian Employees Who Perform Active Military Duty**

### **411.1 OVERVIEW**

Effective Date: 08/29/2018

The purpose of this policy is to specify the rights and benefits provided to USAID Direct-Hire employees who are members of the Uniformed Services and called to active duty or volunteer for active duty. This includes active duty for training, inactive duty training, and full-time National Guard duty. Section **411.3.13, Employee Assistance Programs (EAPs) and Other Personal Services**, applies to USAID's total workforce (all hiring categories).

### **411.2 PRIMARY RESPONSIBILITIES**

Effective Date: 08/29/2018

- a. The **Office of Human Capital and Talent Management, Human Capital Services Center, Civil Service Staffing (HCTM/HCSC/CSS)**, the **Office of Human Capital and Talent Management, Foreign Service Center, Foreign Service Staffing (HCTM/FSC/FSS)**, and the **Office of Human Capital and Talent Management, Center for Performance Excellence, Executive Resources (HCTM/CPE/ER)** are responsible for providing counsel and guidance to employees who have been called to or volunteer for active military service and their supervisors.
- b. **USAID employees who are called to active duty (or volunteer for active duty or full-time National Guard Duty)** are responsible for notifying USAID of military service. They must follow the procedures in the sections listed below:
- 1) Section **411.3.1** when they will go on non-pay status or separate from USAID,
  - 2) Section **411.3.3** when they believe they are eligible for a reservist differential, and
  - 3) Section **411.3.11** when absent from civilian duty.
- c. The **Bureau for Management, Office of the Chief Financial Officer, Payroll Division (M/CFO/P)** is responsible for computing employee's reservist differential, if appropriate.
- d. **Supervisors** are responsible for working closely with employees called to active duty and performing the supervisory actions stated in section **411.3.14, Employees Absent Because of Uniformed Service can be Considered for Promotion and Other Advantages of Employment**.

e. **Administrative Management Staff (AMS)** provide assistance to employees, as needed, to transition to their military duty, including preparing and authorizing a personnel action in HR Connect if the employee moves to a non-pay status or separates from USAID. Also, they perform the AMS functions shown in sections **411.3.1, Procedures When Employees Go on Non-pay Status, or Separate from USAID, Due to Uniformed Service** and section **411.3.3, Reservist Differential**.

### **411.3 POLICY DIRECTIVES AND REQUIRED PROCEDURES**

Effective Date: 08/29/2018

Federal employees who are members of the Uniformed Services and are called to active duty (or volunteer for active duty or full-time National Guard duty) are entitled to the rights and benefits as listed in this section and must follow the procedures provided below.

#### **411.3.1 Procedures When Employees Go on Non-pay Status, or Separate from USAID, Due to Uniformed Service**

Effective Date: 08/29/2018

The Uniformed Services Employment and Reemployment Rights Act of 1994 ([USERRA – 38 USC Chapter 43](#)) generally requires an agency to place an employee entering the military in a non-pay status unless the employee chooses to be placed on military leave or annual leave, as appropriate, or the employee requests to be separated (section (a) of [5 CFR 353.106](#)). Full-time employees do not earn annual or sick leave in a pay period in which they have accumulated 80 hours of non-pay status. In addition, part-time employees who are in a non-pay status earn less annual and sick leave, since they earn leave based on the number of hours in a pay status.

##### **411.3.1.1 Notification of Uniformed Service**

Effective Date: 08/29/2018

Employees should provide copies of their military orders to their AMS any time they will go on non-pay status or separate due to uniformed service. While submitting the military orders is not required, it is highly encouraged since they will be helpful for determining the benefits for which the employee is eligible. For example, USAID paying the employee's Federal Employees' Health Benefits (FEHB) premiums when the employee is called or ordered to active duty in support of a contingency operation (as defined in [section 101\(a\)\(13\) of Title 10 USC](#)). The military orders are needed to accurately record an employee's status and employment history. The employee's supervisor may obtain copies of the military orders from the AMS. Further, employees should provide their supervisor with as much advance notification of military service as possible, so that they can plan ahead to cover any staffing shortage. Advance notification is required for the employee to be entitled to restoration rights, as described in section **411.3.11**, unless it is precluded by military necessity or the giving of notice is otherwise impossible or unreasonable ([5 CFR 353.204](#)).

Note: Employees who choose to separate from USAID will not be entitled to many of the benefits described in this ADS chapter. However, they will be eligible for reemployment if they meet the requirements described in section **411.3.11**.

### **411.3.1.2 Submission of Personnel Action Request**

Effective Date: 08/29/2018

Upon notification that the employee will go on non-pay status or will separate from USAID, the AMS must prepare and authorize a personnel action in HR Connect as well as submit the military orders, if available, to HCTM. The personnel action must be submitted regardless of how long the employee will be on non-pay status (see [Chapter 15 of the Guide to Processing Personnel Actions](#), Section 4).

### **411.3.1.3 Required Agency Forms**

Effective Date: 08/29/2018

On notification that an employee will go on non-pay status or separate from USAID, the assigned Human Resources (HR) Specialist must provide and consult with the employee on [AID Form 411-1 \(Checklist for Employees Called to Active Duty\)](#) and [AID Form 411-2 \(Checklist for Employees Returning from Active Duty\)](#). The HR Specialist must also provide [AID Form 411-3 \(Federal Employees' Group Life Insurance \(FGLI\) Program Election Form: Extension of Coverage When Called to Active Duty\)](#).

Employees are responsible for completing the forms, as appropriate, and returning them to the HR Specialist to ensure that their personnel actions are processed correctly and timely and so that they can choose their benefits. For assistance, employees can also contact Service Central at (202) 712-1234 and choose option two for HR Support or by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov). On [AID Form 411-1 \(Checklist for Employees Called to Active Duty\)](#), employees can choose to be placed in a non-pay status or separate from USAID. While the employee must submit [AID Form 411-3 \(Federal Employees' Group Life Insurance \(FGLI\) Program Election Form: Extension of Coverage When Called to Active Duty\)](#) before the end of 12 months in non-pay status to continue the FGLI coverage, it can also be submitted along with the [AID Form 411-1 \(Checklist for Employees Called to Active Duty\)](#). For more information on FGLI, see section **411.3.8**.

Employees on non-pay status may still be eligible for certain incentives, such as the [Student Loan Repayment Program](#). For more information, employees can contact Service Central at (202) 712-1234 or by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov).

The HR Specialist provides M/CFO/P with completed copies of [AID Form 411-1 \(Checklist for Employees Called to Active Duty\)](#) and [AID Form 411-3 \(Federal Employees' Group Life Insurance \(FGLI\) Program Election Form: Extension of Coverage When Called to Active Duty\)](#).

To return to duty and be placed back into a pay status with USAID, the employee must complete and submit [AID Form 411-2 \(Checklist for Employees Returning from Active Duty\)](#). The employee must notify the Agency within the time limits described in section **411.3.11** in order to be entitled to full job protection.

### **411.3.2 Pay**

Effective Date: 08/29/2018

Employees performing active military duty will receive compensation from the Armed Forces in accordance with the terms and conditions of their military enlistment or commission. They will not receive any compensation from the Agency unless they meet the conditions for receiving a reservist differential as described in section **411.3.3** if they elect to use military leave (see section **411.3.6**) or annual leave (see section **411.3.4**), or if they use sick leave, as appropriate.

Employees absent from the Agency in order to perform service in the Uniformed Services must be placed in non-pay status (see section **411.3.1** for more information). They cannot receive compensation from the Agency, aside from the incidences described in this ADS chapter (Section 4316(b) of [38 USC Chapter 43](#)).

### **411.3.3 Reservist Differential**

Effective Date: 08/29/2018

Under [5 USC 5538](#), employing agencies must provide a payment – a “reservist differential” – equal to the amount by which an employee’s projected civilian basic pay for a covered pay period exceeds the employee’s actual military pay and allowances for that pay period, when:

- The employee submits military orders to their AMS;
- The HR Specialist determines the employee is eligible for the reservist differential, as described in section **411.3.3.1**; and
- The employee submits their military leave and earnings statements as described in section **411.3.3.5**.

For more information on the reservist differential, see the [Office of Personnel Management’s \(OPM’s\) Web page on Pay & Leave: Pay Administration](#). Then click on the “Reservist Differential” tab. Additional information is in the [OPM Policy Guidance Regarding Reservist Differential under 5 USC 5538](#).

#### **411.3.3.1 Eligibility for the Reservist Differential**

Effective Date: 08/29/2018

A reservist differential is payable to a covered employee during a period in which the employee meets both of the following conditions:

- The employee is absent from a federal civilian position in order to perform active duty in the Uniformed Services pursuant to a call or order to active duty under section 331, 332, 333, 688, 12301(a), 12302, 12304, 12305, or 12406, of [title 10, United States Code](#), and is serving on such qualifying active duty; and
- The employee is entitled to reemployment rights under the Uniformed Services Employment and Reemployment Rights Act ([USERRA – 38 USC Chapter 43](#)) for such active duty.

Employees who believe that they are eligible for a reservist differential must submit their active duty orders to their AMS. Then the AMS must ensure that the employee's military orders are submitted to HCTM. Based on the military orders, the HCTM HR Specialist determines the employee's eligibility for the reservist differential. If the employee is eligible, the HR Specialist documents the eligibility on a personnel action with the nature of action code "473/Absent – Uniformed Service" and the legal authority "QRD/5 USC 5538," which is used in combination with legal authority "Q3K/5 CFR part 353" (see [Chapter 15 of the Guide to Processing Personnel Actions](#) for more information). The HR Specialist notifies M/CFO/P and provides the division with a copy of the employee's military orders.

#### **411.3.3.2 Pay and Leave Status**

Effective Date: 08/29/2018

The receipt of a reservist differential does not affect an employee's civilian pay and leave status. While absent from the civilian position, the employee is considered to be on leave without pay, unless the employee takes civilian paid leave or other paid time off.

#### **411.3.3.3 Projected Civilian Basic Pay**

Effective Date: 08/29/2018

M/CFO/P, in coordination with the HR Specialist, determines the projected gross amount of civilian basic pay that would otherwise have been payable to an employee for each pay period within a qualifying period if the employee's civilian employment had not been interrupted by military active duty.

The Agency must adjust an employee's projected rate of basic pay as it would have been adjusted (with reasonable certainty) but for the interruption of military active duty. This includes general increases, locality pay increases, and within-grade increases (based on longevity and acceptable performance). It could also include certain career-ladder promotion increases and performance-based basic pay increases, if the reasonable certainty standard is met.

#### **411.3.3.4 Computation of the Reservist Differential**

Effective Date: 08/29/2018



For each biweekly pay period, M/CFO/P compares the projected civilian basic pay to the allocated military pay and allowances. If the allocated military pay and allowances are greater than or equal to the projected civilian basic pay, no reservist differential is paid for that pay period. If the projected civilian pay is greater than the allocated military pay and allowances, then the difference represents the unadjusted reservist differential.

The reservist differential is not paid for periods when the employee is:

- Receiving civilian basic pay for performing work, or
- Using civilian paid leave or other paid time off.

Therefore, the unadjusted reservist differential must be adjusted, or reduced, to take into account any paid hours (paid work or paid time off).

#### **411.3.3.5 Claims Submission**

Effective Date: 08/29/2018

To secure the payment differential, the employee must email (to [payroll@usaid.gov](mailto:payroll@usaid.gov)) an attachment that provides a copy of their military leave and earnings statement for each month within the qualifying period to M/CFO/P. Before sending an email with attached Personally Identifiable Information (PII), which includes data elements such as your name, Social Security Number, contact information, and work location and details, it is important to ensure that each recipient has a need to know and that any attachments containing PII are encrypted. Employees must use an Agency-approved encryption solution. For more information, including access to the encryption solution and instructions, see the [Agency Notice 11174 “Mandatory Encryption of Email Attachments Containing PII.”](#) In the email subject line to [payroll@usaid.gov](mailto:payroll@usaid.gov), employees must include the text “PII attachment” for attached encrypted PII.

If there are any problems accessing the encryption instructions, employees may contact the Chief Information Officer (CIO) Helpdesk at (202) 712-1234 or by email at [cio-helpdesk@usaid.gov](mailto:cio-helpdesk@usaid.gov). An employee will receive an automated response from [payroll@usaid.gov](mailto:payroll@usaid.gov) that includes a ticket number. The preferred way of communicating the password used to encrypt the attached military leave and earnings statement is by calling the payroll (M/CFO/P) hotline at (202) 712-5234 and referencing the ticket number received from [payroll@usaid.gov](mailto:payroll@usaid.gov).

For each biweekly pay period, after comparing the projected civilian basic pay to the allocated military pay and allowances, M/CFO/P informs the employee whether their claim is eligible for the reservist differential.

#### **411.3.3.6 Payment**

Effective date: 08/29/2018

The reservist differential must be paid from the same appropriation or fund that would have been used to pay the employee's civilian salary but for the interruption to perform military active duty. Reservist differentials should be paid at the same frequency as regular civilian salary payments with appropriate documentation.

Given the need to obtain information about an individual's military pay and allowances and other matters to accurately compute the reservist differential, a reservist differential is considered due and payable on a scheduled date that is no later than eight weeks (four biweekly pay periods) after the normal civilian salary payment date for a given pay period, except that this scheduled date may be pushed back beyond eight weeks if the employee does not provide USAID with a copy of documentation needed to compute the differential, such as military orders and military leave and earnings statement.

Reservist differentials are taxable income for federal income tax purposes. Reservist differentials are treated as wages for federal income tax withholding purposes, regardless of the length of the active duty.

#### **411.3.3.7 Recordkeeping Requirement**

Effective Date: 08/29/2018

HCTM/FSC/FSS, HCTM/H CSC/CSS, and HCTM/CPE/ER must place records that document call or order to active military for reservist differential in the employee's electronic Official Personnel Folder (eOPF) (see Chapter 3 of [OPM's Guide to Personnel Recordkeeping](#)).

#### **411.3.4 Annual Leave**

Effective Date: 08/29/2018

Employees who perform active military duty may request the use of accrued and accumulated annual leave to their credit (under [5 USC 6303](#) and [6304](#)), and such requests must be granted by the Agency. In addition, requests for advanced annual leave may be granted at the Agency's discretion. See [OPM's Fact Sheet: Annual Leave \(General Information\)](#) for more information on annual leave.

Employees who use annual leave will receive compensation from their civilian position for all hours charged to annual leave in addition to their military pay for the same period. Employees who enter into active military duty may choose to 1) have their annual leave remain to their credit until they return to their civilian position, or 2) receive a lump sum payment for all accrued and accumulated annual leave. See [OPM's Fact Sheet: Lump-Sum Payments for Annual Leave](#) for more information on lump sum payments for annual leave.

On the [AID Form 411-1, Checklist for Employees Called to Active Duty](#), employees can choose to have their annual leave remain to their credit or receive a lump sum payment.

**411.3.5 Excused Absence**

Effective Date: 08/29/2018

An employee is entitled to five days of excused absence after returning from active military service in support of the Overseas Contingency Operations (formerly the Global War on Terrorism). Upon receiving notification from an employee on their intent to return to civilian duty on a specific date, the Agency must grant the employee five days of excused absence immediately prior to the employee's actual resumption of duties. If the employee has already returned to duty, the Agency and the employee may agree on another time to use the excused absence. In order to receive the five days of excused absence, members must spend at least 42 consecutive days of active military service in connection with the continuing Overseas Contingency Operations. Further, employees are entitled to five days of excused absence only once in a 12-month period.

For further information on this excused absence, including qualifying military operations, see [OPM's Fact Sheet: 5 Days of Excused Absence for Employees Returning from Active Military Duty](#).

**411.3.6 Paid Time Off**

Effective Date: 08/29/2018

An employee performing service with the uniformed services must be permitted, upon request, to use any accrued annual leave (see section **411.3.4**) under [5 USC 6304](#), military leave under [5 USC 6323](#), earned compensatory time off for travel under [5 USC 5550\(b\)](#), or sick leave under [5 USC 6307](#), if appropriate (consistent with the statutory and regulatory criteria for using sick leave), during such service.

For more information on military leave see [ADS Chapter 480, Leave](#).

**411.3.7 Health Benefits**

Effective Date: 08/29/2018

When employees enter one of the Uniformed Services for 30 days or less, their Federal Employees' Health Benefits (FEHB) will continue without change.

Employees who enter on active duty in one of the Uniformed Services for more than 30 days may continue their coverage for up to 24 months or elect to terminate it.

When the coverage is continued, the Agency will pay the premiums if the employee is called or ordered to active duty on or after September 14, 2001, and is:

- 1) Enrolled in an FEHB plan;
- 2) A member of a reserve component of the armed forces;
- 3) Called or ordered to active duty in support of a contingency operation (as defined in [section 101\(a\)\(13\) of Title 10 USC](#));

- 4) Placed on leave without pay or separated from Agency service to perform active duty; and
- 5) Serving on active duty for a period of more than 30 consecutive days.

If employees do not meet all of the above requirements, the Agency has no authority to pay their premiums while they are on active duty. They are responsible for the enrollee share of the premium during the first 12 months, and the Agency will pay its share. For the continued FEHB coverage of up to 12 months, the employee is responsible for paying both the employee and Agency shares of the premium, plus an additional 2 percent administrative fee.

The employee may either elect to pay the premiums directly or incur a debt in the amount of the unpaid premiums. To pay the premiums directly, employees must send the full payment in the form of a check or money order payable to "USAID" to USDA, NFC: Administrative Collections: P.O. Box 790342, St. Louis, MO 63179-0342. On the check, employees must include their name, social security number and bill number. They also must include a note that the payment is for "FEHB premiums" and the pay periods for which the payment is being made.

In addition to meeting the above requirements, employees must submit a copy of their military orders to their AMS in order for USAID to pay their premiums.

On the [AID Form 411-1, Checklist for Employees Called to Active Duty](#), employees can choose to continue their coverage for up to 24 months or elect to have their health benefits terminated. Employees who do not want to continue their FEHB enrollment must checkmark the box with the verbiage, "I elect to have my health benefits terminated..." under section 7 of the form. If they do not take action to terminate the coverage, their enrollment will continue for up to 24 months while they are on military duty.

For further information on FEHB coverage, see [OPM's Frequently Asked Questions on FEHB for Federal Civilian Employees Who Perform Active Military Duty](#).

Employees' FEHB is automatically reinstated upon return to employment following active duty.

Additional information about FEHB, as well as the Federal Employees Dental and Vision Insurance Program (FEDVIP), Federal Flexible Spending Account Program (FSAFEDS), and Federal Long Term Care Insurance Program (FLTCIP) is on [OPM's Web page Life Events: I'm called up to/returning from military active duty](#), [OPM's Federal Benefits Fast Facts: Employees Called to Active Duty](#), and [OPM's Federal Benefits Fast Facts: Employees Returning From Active Military Duty](#).

#### **411.3.8 Life Insurance**

Effective Date: 08/29/2018

Employees who enter on active duty or active duty for training in one of the Armed Forces for more than 30 days can continue their Federal Employees' Group Life Insurance (FEGLI) for up to 24 months. FEGLI coverage is free for the first 12 months. However, employees must pay both the employee and agency share of the premiums for their basic coverage, and also pay the entire cost (there is no agency share) for any optional insurance they may have for the additional 12 months of coverage. To elect for the additional 12 months of coverage, employees must complete the [AID Form 411-3 \(Federal Employees' Group Life Insurance \(FEGLI\) Program Election Form: Extension of Coverage When Called to Active Duty\)](#) and submit it to their assigned HR Specialist in HCTM/FSC/FSS, HCTM/HCSC/CSS, or HCTM/CPE/ER. For assistance, including to determine who is the assigned HR Specialist, employees can also contact Service Central at (202) 712-1234 and choose option two for HR Support or by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov) (see section **411.3.1.3** for deadlines in submitting [AID Form 411-3 \(Federal Employees' Group Life Insurance \(FEGLI\) Program Election Form: Extension of Coverage When Called to Active Duty\)](#)).

Additional information about FEGLI is on [OPM's Web page Life Events: I'm called up to/returning from military active duty](#) (click the "Life" tab), [OPM's Federal Benefits Fast Facts: Employees Called to Active Duty](#), and [OPM's Federal Benefits Fast Facts: Employees Returning From Active Military Duty](#).

On the [AID Form 411-3 \(Federal Employees' Group Life Insurance \(FEGLI\) Program Election Form: Extension of Coverage When Called to Active Duty\)](#), employees can elect to terminate their FEGLI coverage at the end of 12 months in non-pay status or elect to continue their FEGLI coverage for an additional 12 months after completion of the first 12 months in non-pay status. Then they must submit the form to their assigned HR Specialist in HCTM/FSC/FSS, HCTM/HCSC/CSS, or HCTM/CPE/ER. For assistance, including to determine who is the assigned HR Specialist, employees can also contact Service Central at (202) 712-1234 and choose option two for HR Support or by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov).

### **411.3.9 Retirement**

Effective Date: 08/29/2018

An employee who is placed in a non-pay status while performing active military duty continues to be covered by the retirement law—i.e., the Civil Service Retirement System (CSRS), the Federal Employees Retirement System (FERS), the Foreign Service Retirement and Disability System (FSRDS), and the Foreign Service Pension System (FSPS). Death benefits will be paid as if he or she were still in the civilian position. If the employee becomes disabled for their civilian position during the non-pay status and has the minimum amount of civilian service necessary for title to disability benefits (5 years for CSRS and FSRDS, 18 months for FERS and FSPPS), the employee will become entitled to disability benefits under the retirement law. Upon eventual

retirement from civilian service, the period of military service is creditable under either CSRS/FSRDS or FERS/FSPS, subject to the rules for crediting military service.

If an employee separates to enter active military duty, he or she generally will receive retirement credit for the period of separation when the employee exercises restoration rights to their civilian position. In order to receive the credit, the employee must make a deposit to the retirement fund to cover the period of active duty. Under CSRS, the deposit amount is the lesser of 1) 7% of the civilian pay that would have been paid had the employee not left their civilian position; or 2) 7% of the basic military pay. Under FERS, the deposit amount is the lesser of 1) 0.8% of the civilian pay; or 2) 3% of the basic military pay.

If the separated employee does not exercise the restoration right, but later re-enters federal civilian service, the military service may be credited under the retirement system, subject to the normal rules governing credit for military service.

#### **411.3.10 Thrift Savings Plan**

Effective Date: 08/29/2018

For purposes of the civilian Thrift Savings Plan (TSP) account, no contributions can be made, either by the Agency or the employee, for any time in a non-pay status or for a period of separation. HR Specialists should refer to the following Thrift Savings Plan Bulletins for Agency TSP Representatives: [No. 11-4](#), dated March 28, 2011, and [No. 11-6](#), dated April 4, 2011. For additional information, HCTM may contact the Federal Retirement Thrift Investment Board at (202) 942-1460. Employees should refer to the following TSP Fact Sheets: [TSP Fact Sheet – Effect of Non-pay Status on Your TSP Account](#) and the [TSP Fact Sheet – TSP Benefits That Apply to Members of the Military Who Return to Federal Civilian Service](#). Both fact sheets are available from the [TSP Internet Web site on Military Service](#).

If employees are subsequently reemployed in or restored to a position covered by FERS/FSPS or CSRS/FSRDS pursuant to [38 USC Chapter 43](#), they may make up missed contributions. FERS/FSPS employees are entitled to receive retroactive Agency Automatic (1 percent) Contributions and, if they make up their own contributions, retroactive Agency Matching Contributions. In addition, FERS/FSPS employees are entitled to receive retroactive Agency Matching Contributions to their civilian TSP accounts if they contributed to their Uniformed Services TSP account from military basic pay. For additional information, see the [TSP Fact Sheet – TSP Benefits that Apply to Members of the Military Who Return to Federal Civilian Service](#).

Also, if FERS employees separate and their Agency Automatic (1 percent) Contributions and associated earnings are forfeited because they did not meet the TSP vesting requirement, the employees are entitled to have these funds restored to their accounts after they are reemployed. In addition, if employees separate and their accounts are disbursed as automatic cash outs, the employees may return to the TSP an amount equal to the full amount of the payment after they are reemployed. For

additional information, see the [TSP Fact Sheet – TSP Benefits that Apply to Members of the Military Who Return to Federal Civilian Service](#).

### **411.3.11 Return to Duty and Reemployment**

Effective Date: 08/29/2018

An employee who enters active military duty (voluntarily or involuntarily) from any position, including a temporary position, is entitled to full job protection, provided that their cumulative service in the Uniformed Services while employed by the Federal Government does not exceed five years (except that the five-year period does not include service described in section (a) of [5 CFR 353.203](#)) and that he or she applies for reemployment by contacting Service Central at (202) 712-1234 or by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov) within the following time limits:

- Employees who served less than 31 days must report back to work at the beginning of the next scheduled workday following their release from service and the expiration of eight hours after a time for safe transportation back to the employee's residence.
- Employees who served more than 30 days but less than 181 days must apply for reemployment within 14 days of release by the military.
- Employees who served more than 180 days have 90 days to apply for reemployment.

Employees who served less than 91 days must be restored to the position they are qualified for that they would have attained had their employment not been interrupted. Employees who served more than 90 days have essentially the same rights, except that the Agency has the option of placing an employee in a position for which they are qualified and is of like seniority, status, and pay.

A returning employee who was absent for more than 30 days must provide documentation that shows the timeliness of the application for reemployment, as well as the length and character of service. Documentation should be submitted to Service Central for HR by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov). This documentation can be discharge papers, leave and earnings statements, school completion certificates, endorsed orders, or letters from a proper military Human Resources office. If documentation is unavailable, the Agency must restore the employee until it becomes available ([5 CFR 353.206](#)). If employees have additional questions, they can call Service Central at (202) 712-1234, option 2.

HCTM/FSC/FSS, HCTM/HCSC/CSS, and HCTM/CPE/ER must place military service documentation that supports personnel determinations such as creditable service for leave accrual, reduction-in-force, retirement, or veterans' preference in the employee's eOPF (see Chapter 3 of [OPM's Guide to Personnel Recordkeeping](#)).

On receiving notification that an FS employee is returning to duty, the HR Specialist in HCTM/FSC/FSS must notify Human Capital and Talent Management, Foreign Service Center, Assignments and Career Counseling (HCTM/FSC/ACC). HCTM/FSC/ACC adds the employee to the eligible bidders list.

The Bureau/Independent Office to which the employee was last assigned is responsible for providing a comparable position when the employee returns to duty.

An employee performing active military duty is protected from Reductions In Force (RIFs) and may not be discharged from employment for a period of one year following separation (six months in the case of a reservist called to active duty under [10 USC 12304](#) for more than 30 days, but less than 181 days, or ordered to an initial period of active duty for training of not less than 12 consecutive weeks), except for poor performance or conduct or for suitability reasons.

An employee who was on a time-limited appointment serves out the remaining time, if any, left on the appointment ([5 CFR 353.209](#)). A Foreign Service employee on a non-career appointment also serves the unexpired portion of their limited appointment (see [ADS Chapter 414, Foreign Service \(FS\) Appointments](#)). The military activation period does not extend the civilian appointment.

#### **411.3.12 Appeal Rights**

Effective Date: 08/29/2018

An employee or former employee of an agency in the executive branch (including the U.S. Postal Service) who is entitled to restoration in connection with military duty may appeal an agency's failure to properly carry out the law directly to the Merit Systems Protection Board (MSPB), or the employee may first submit a complaint to the Department of Labor, which will attempt to resolve it. If resolution is not possible, the department may present the case to the Office of the Special Counsel, which may represent the employee in an appeal to the MSPB.

For more information, see the [MSPB Uniformed Services Employment and Reemployment Rights Act \(USERRA\) Information Sheet](#) and the [Department of Labor's Veterans' Employment and Training Services USERRA Fact Sheet 3](#).

#### **411.3.13 Employee Assistance Programs (EAPs) and Other Personal Services**

Effective Date: 08/29/2018

Employee Assistance Programs are designed to help employees and their families in coping with stress and in positively responding to, and overcoming problems stemming from either work or personal sources including stress and disruption associated with a call to active military duty. EAPs provide short-term confidential counseling and referral services to help with alcohol and substance abuse issues as well as family, financial, emotional, and dependent care problems. These services are available to all USAID employees and their families, including those who have been called to active military



duty (or who volunteer for such duty), regardless of hiring mechanism. The exception is childcare subsidy programming, which is only available to Direct-Hire employees who meet certain criteria.

The USAID Staff Care Program provides services designed to strengthen personal and organizational resilience and assist employees in the U.S. and around the world to live healthier and more productive lives. Many of the staff care programs are designed to assist with challenges such as families facing separation for extended periods of deployment (military or otherwise), and other challenges such as relocation and living abroad which are unique to USAID. Resilience is the ability to effectively prepare for, manage and bounce back from difficult experiences and circumstances. Staff care professionals are experienced in working across cultures; in providing self-care training and consultations; in facilitating organizational strengthening; in coaching supervisors, managers and executives; and in offering employee and family support. The services provided include:

- Confidential Counseling. Counselors are available for matters such as alcohol and substance abuse issues, relationship support, stress management, building individual resilience, depression, anxiety, grief and dealing with profound life changing events.
- Legal and Financial Consultations. Free, one-hour per issue telephonic financial counseling. Free, one-hour per issue legal consultations with U.S. attorneys and referrals for international attorneys.
- Specialized Services. Coaching, training, critical incident response and customized work-group support to build organizational resilience, strengthen group dynamics, and/or promote recovery after emergencies, disasters or other traumatic events.

For more information, please visit the [Staff Care Web site](#).

#### **411.3.14 Employees Absent Because of Uniformed Service Can be Considered for Promotion and Other Advantages of Employment**

Effective Date: 08/29/2018

Employees absent on military duty must be considered for any incident or advantage of employment that they may have been entitled to had they not been absent (section (c) of [5 CFR 353.106](#)).

Upon return or restoration, an employee is entitled to be treated as though he or she had never left for purposes of rights and benefits based upon length of service. This means that the employee must be considered for career ladder promotions, and the time spent in the military will be credited for seniority, successive within-grade increases, probation, career tenure, annual leave accrual rate, and severance pay.

Civil Service employees who are absent because of Uniformed Service are eligible to apply for job opportunity announcements announced through the Agency's Merit Staffing Program. For more information see [ADS Chapter 418, Merit Staffing Program for Civil Service \(CS\) Employees](#). In addition, Civil Service employees may provide an updated resume to their supervisor, with notification that the employee wishes to be considered for promotion opportunities in the immediate organization unit, should such positions become available. Then the supervisor must forward the resume to HCTM/HCSC/CSS when a promotion opportunity in the immediate organization unit is announced. For assistance, including to determine who is the assigned HR Specialist, supervisors can also contact Service Central at (202) 712-1234 and choose option two for HR Support or by email at [hr-helpdesk@usaid.gov](mailto:hr-helpdesk@usaid.gov).

Career and career-candidate Foreign Service and Senior Foreign Service employees who are absent because of Uniformed Service may be considered for promotion when requirements in [ADS Chapter 463, Foreign Service Promotion Eligibility Requirements and Performance Boards](#) are met. Further, career-candidate Foreign Service employees can be considered for "tenuring" when requirements in [ADS 414mad, The Tenure Policy and Process for Foreign Service Career Candidates](#) are met.

#### 411.4 MANDATORY REFERENCES

##### 411.4.1 External Mandatory References

Effective Date: 08/29/2018

- a. [3 FAM 3440 \(Military Leave\)](#)
- b. [5 CFR, Part 353, Restoration to Duty From Uniformed Service or Compensable Injury](#)
- c. [5 USC Sec 5538, Non-reduction in pay while serving in the Uniformed Services or National Guard](#)
- d. [5 USC 5550\(b\), Compensatory time off for travel](#)
- e. [5 USC 6303, Annual leave; accrual](#)
- f. [5 USC 6304, Annual leave; accumulation](#)
- g. [5 USC 6307, Sick leave; accrual and accumulation](#)
- h. [5 USC 6323, Military Leave; Reserves and National Guardsmen](#)
- i. [10 USC 12304, Selective Reserve and certain Individual Ready Reserve Members; order to active duty other than during war or national emergency](#)

- j. [10 USC, Subtitle A, Part I](#)
- k. [38 USC Chapter 43, Employment and Reemployment Rights of Members of the Uniformed Services](#)
- l. [OPM Policy Guidance Regarding Reservist Differential under 5 USC 5538](#)

**411.4.2 Internal Mandatory References**

Effective Date: 08/29/2018

- a. [ADS 414, Foreign Service \(FS\) Appointments](#)
- b. [ADS 418, Merit Staffing Program for Civil Service \(CS\) Employees](#)
- c. [ADS 463, Foreign Service Promotion Eligibility Requirements and Performance Boards](#)
- d. [ADS 480, Leave](#)
- e. [ADS 481, Family and Medical Leave \(FML\)](#)

**411.4.3 Mandatory Forms**

Effective Date: 08/29/2018

- a. [AID Form 411-1, Checklist for Employees Called to Active Duty](#)
- b. [AID Form 411-2, Checklist for Employees Returning from Active Duty](#)
- c. [AID Form 411-3, Federal Employees' Group Life Insurance \(FGLI\) Program Election Form: Extension of Coverage When Called to Active Duty](#)

**411.5 ADDITIONAL HELP**

Effective Date: 08/29/2018

There are no additional help documents for this chapter.

**411.6 DEFINITIONS**

Effective Date: 08/29/2018

See the [ADS Glossary](#) for all ADS terms and definitions.

**Contingency Operation**

Defined in [section 101\(a\)\(13\) of Title 10, United States Code, Part I](#) – a military operation that –

- 1) Is designated by the Secretary of Defense as an operation in which members of the Armed Forces are or may become involved in military actions, operations, or

hostilities against an enemy of the United States or against an opposing military force; or

- 2) Results in the call or order to, or retention on, active duty of members of the Uniformed Services under section 688, 12301(a), 12302, 12304, 12304(a), 12305, or 12406 of this title, chapter 15 of this title, [section 712 of Title 14](#), or any other provision of law during a war or during a national emergency declared by the President or Congress. (**Chapters [201](#) and [411](#)**)

**excused absence**

An administratively authorized absence from duty without loss of pay or charge to leave. (**Chapter 411**)

**reservist differential**

A payment equal to the amount by which an employee's projected civilian basic pay for a covered pay period exceeds the employee's actual military pay and allowances for that pay period. (**Chapter 411**)

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