



## DoD INSTRUCTION 4165.69

### RETURN OF DoD SITES OVERSEAS

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**Originating Component:** Office of the Under Secretary of Defense for Acquisition and Sustainment

**Effective:** December 20, 2021

**Releasability:** Cleared for public release. Available on the Directives Division Website at <https://www.esd.whs.mil/DD/>.

**Reissues and Cancels:** DoD Instruction 4165.69, "Realignment of DoD Sites Overseas," April 6, 2005

**Cancels:** Secretary of Defense Message 142159Z

**Approved by:** Gregory M. Kausner, Performing the Duties of the Under Secretary of Defense for Acquisition and Sustainment

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**Purpose:** In accordance with the authority in DoD Directive 5135.02, and pursuant to Section 2687a of Title 10, United States Code (U.S.C.), and Sections 321 and 322 of Public Law 105-261, this issuance establishes policy, assigns responsibilities, and prescribes procedures for the return of sites used, controlled, and maintained by DoD outside the United States.

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## SECTION 1: GENERAL ISSUANCE INFORMATION

### 1.1. APPLICABILITY.

a. This issuance applies to:

(1) OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff (CJCS) and the Joint Staff, the Combatant Commands, the Office of Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this issuance as the “DoD Components”).

(2) All DoD sites and associated facilities located outside the United States.

(3) The return of overseas sites to the host nation subsequent to posture change actions obtained through the overseas force structure change and host nation notification process as indicated in DoD Instruction (DoDI) 3000.12 and CJCS Instruction 2300.02K.

b. This issuance does not apply to the return of contingency locations as defined by DoD Directive 3000.10; the realignment or return of temporary facilities or sites used while U.S. forces are operating as part of a multi-national force; or property licensed, leased or used by agreement from or with private parties that will be returned in accordance with the terms of the license, lease or other use agreement; or to the disposal of real property owned by the United States. Return of DoD facilities and sites under the foregoing circumstances, including documentation of relevant environmental conditions at such facilities and sites, will be accomplished in accordance with relevant U.S. law, regulations, and international law, including relevant international agreements, applicable property leases, DoD policy, and specific annexes (e.g., environmental) incorporated into operations plans, operations orders, or similar operational directives.

c. This issuance is intended to be consistent with U.S. law and all applicable international agreements. Specific diplomatic, legal, or procedural matters not addressed directly by this issuance or applicable U.S. or international agreements, should be resolved on a case-by-case basis in consultation between the offices of the Under Secretary of Defense for Policy (USD(P)), and the Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)).

### 1.2. POLICY.

a. Overseas sites and associated facilities used, operated, and maintained by the DoD that are no longer required will be promptly nominated for return.

b. With the exception of the expedited returns in accordance with Paragraph 3.3.a., only the USD(A&S) may approve overseas return actions and the timing of public announcements.

c. DoD is required to negotiate and conclude residual value settlement agreements with host nations in accordance with U.S. law.

(1) DoD should seek to ensure that the United States receives the maximum residual value possible for U.S.-funded improvements at sites to be returned (including non-appropriated funded facilities), in accordance with Section 2687a of Title 10, U.S.C., and Paragraph 1.1.a.(3) of this issuance.

(2) DoD must adequately document the rationale and methodology used to calculate the value of improvements to property that will be returned to host nations. Records must also demonstrate efforts undertaken to seek maximum residual value, to include providing the rationale for accepting off-setting value claims made by the host nation. Residual value records must include:

(a) An independent appraisal of the estimated fair market value of the improvements; or the rationale as to why an independent appraisal was deemed not cost effective.

(b) An explanation of the methodology used to calculate the value of improvements.

(c) An evaluation and analysis of the reasonableness of any request by the host nation to reduce value because of the need to undertake actions such as environmental remediation, demolition, or site restoration.

(d) Reference to any applicable provisions contained in the bilateral agreement with the host nation addressing residual value of improvements upon return of the property.

(3) All residual value settlement records, including but not limited to negotiation reports, appraisals, fair market value calculation and determination documents, in-kind consideration valuation calculation and determination documents, and disposition and transfer records will be permanently retained in accordance with DoDI 5015.02.

d. If a return includes assets for which the investment was nonappropriated funds, the return of that asset is considered a closure for the purpose of applying the provisions of DoDI 1015.15 regarding the disposition of nonappropriated fund assets and the use of appropriated funds for related expenses.

## SECTION 2: RESPONSIBILITIES

### 2.1. ASSISTANT SECRETARY OF DEFENSE FOR SUSTAINMENT (ASD(S)).

Under the authority, direction, and control of the USD(A&S), the ASD(S):

- a. Provides oversight of the return process.
- b. Implements this issuance and provides additional guidance as necessary.
- c. Provides policy advice and assistance on environmental matters, residual value, and payment-in-kind (PIK) actions regarding return actions.
- d. Reviews overseas return packages, residual value settlement packages, and PIK actions and obtains coordination from: the USD(P); the Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense (USD(C)/CFO); the Under Secretary of Defense for Personnel and Readiness; the General Counsel of the Department of Defense; the Assistant Secretary of Defense for Legislative Affairs (ASD(LA)); and other relevant OSD officials.
- e. Prepares and submits return package to the USD(A&S) for approval or disapproval.
- f. Notifies the Secretaries of the Military Departments, the CJCS, the Combatant Commanders, the USD(P), the Under Secretary of Defense for Personnel and Readiness, the Assistant to the Secretary of Defense for Public Affairs (ATSD(PA)), the General Counsel of the Department of Defense, the USD(C)/CFO, the ASD(LA), and other relevant OSD officials of the USD(A&S)'s decision on return packages.
- g. Prepare correspondence for the Secretary of Defense to the Office of Management and Budget (OMB), congressional committees, and others as appropriate concerning residual value and PIK actions.

### 2.2. USD(P).

The USD(P):

- a. Coordinates with USD(A&S) on overseas return packages.
- b. Forwards overseas return packages to the appropriate office within the Department of State (DOS) to coordinate authority to negotiate and conclude international agreements to return nominated sites, as appropriate, and to request that the relevant U.S. Embassy be notified of intended return actions and initiate host nation consultation, as appropriate.
- c. After DOS coordination, notifies ASD(S) that the return package is ready for submission to the USD(A&S) for approval.

### **2.3. ATSD(PA).**

The ATSD(PA):

- a. Is responsible for public announcement of a decision to realign overseas sites.
- b. Approves the content and timing of related press releases and issues public affairs guidance to the public affairs offices of subordinate DoD Components.

### **2.4. ASD(LA).**

The ASD(LA) notifies the congressional defense committees when required by Section 2687a of Title 10, U.S.C., and Sections 321 and 322 of Public Law 105-261.

### **2.5. CJCS.**

The CJCS:

- a. Coordinates with relevant Combatant Commanders on overseas returns, proposed residual value settlements, and PIK actions.
- b. Forwards Combatant Commanders' overseas return packages, with Joint Staff recommendations, to ASD(S) for coordination and USD(A&S) approval.
- c. Forwards proposed residual value settlement recommendations, including PIK actions, with Joint Staff comments to the ASD(S) for coordination and USD(A&S) approval.

### **2.6. COMBATANT COMMANDERS.**

The Combatant Commanders, through the CJCS:

- a. Review and screen DoD Component return packages, residual value settlements, and PIK actions.
- b. Forward overseas returns, with recommendations, to Joint Staff for review.
- c. Forward recommendations for residual value settlements and PIK actions to the ASD(S) via the Joint Staff.
- d. Develop theater-unique classification guidance and foreign disclosure policy for implementation of this issuance.
- e. Provide oversight and assistance to designated agents, such as in-theater component commanders and sub-unified commanders for the negotiation and implementation of return actions.

f. Coordinate return actions involving North Atlantic Treaty Organization (NATO) infrastructure with the major NATO commanders as required by NATO policy.

g. Determine the appropriate security classification, if any, for overseas returns in their respective areas of responsibility.

## SECTION 3: PROCEDURES

### 3.1. GENERAL GUIDANCE.

a. If the overseas return involves personnel or forces, the overseas force structure change and host nation notification documentation must be completed prior to submission of a return package.

b. Negotiations with host nations for the return of overseas sites and facilities will be in accordance with this issuance, applicable U.S. law, DoDI 5530.03, and applicable international agreements.

c. After the USD(A&S) has approved return of a site, U.S. funds will not be spent at that site for construction, maintenance, or repair beyond the minimum amount necessary to sustain current operations or for environmental remediation, except as required in accordance with DoDI 4715.08. A reasonable expenditure of funds is authorized to take appropriate actions to prepare a facility properly for an extended period of non-use. This includes the use of funds to document the environmental conditions of the land and facilities being returned to a host nation (See Paragraph 3.4.c.).

(1) The requirements of Sections 321 and 322 of Public Law 105-261 and DoDI 4715.08 will be followed with regard to environmental remediation.

(2) Any studies that provide current and sufficiently detailed information may be used for environmental remediation. The expenditure of funds for new studies will be the minimum necessary to provide such information as authorized or required by Paragraph 3.4.c., for use by residual value negotiators.

d. Every effort should be made to expedite the selection, review, approval, and return process in order to minimize U.S. operating and maintenance expenses at sites proposed for return.

### 3.2. STANDARD RETURN APPROVAL PROCEDURES.

a. The in-theater component commander (through the subordinate unified commander, where applicable) will initiate overseas return packages. These return packages must be fully coordinated with affected Combatant Commands, the Military Departments, the Defense Agencies, installation commanders, and tenant organizations. All proposals will be forwarded to the Combatant Commander.

b. Return packages must include:

(1) Host nation.

(2) Name of parent installation.



(3) Specific site nominated, including the name, real property site unique identifier of the site, and a general description of size and location.

(4) Component and component commander.

(5) Affected tenant command(s) or agencies.

(6) Combatant Command and Commander.

(7) Number of authorized U.S. civilian personnel.

(8) Number of authorized foreign national employees.

(9) Effects on foreign national employees.

(10) Estimate of foreign national employee's severance pay under current agreements.

(11) Proposed return date.

(12) Current estimated fair market value of U.S.-funded improvements and total U.S. investment in the improvements.

(13) Estimated cost savings achieved by the return.

(14) Any known imminent and substantial endangerments to human health and safety from contamination caused by past or present DoD operations.

(15) Estimates of environmental damages, if known at the time of preparation.

(16) Conditions that warrant special consideration regarding the timing of the announcement of the return.

(17) Overseas force structure changes and host nation notification documentation.

c. The Combatant Commander or subordinate unified commander, where applicable, will review and screen the return package to determine whether there are possible alternative uses for the site that are consistent with applicable agreements with the host nation. Once the screening is complete, the Combatant Commander will determine whether to recommend the site for return. Return packages will be sent to the CJCS.

d. The CJCS will review Combatant Commander recommendations and seek coordination of other Combatant Commanders and the Military Departments to afford an opportunity to review return package in light of budget constraints, current defense strategies, and long-range planning. The CJCS will forward coordinated return packages and recommendations to the ASD(S).

e. Upon receipt of a return package, the ASD(S) will coordinate the return package as described in Paragraph 2.1. In addition, to the extent possible, the USD(P) will provide the DOS

any information concerning the effects of planned or possible actions on the local national work force.

f. Following USD(A&S) approval to return a site, the ASD(S) will provide written notification to the Combatant Commander and notify the CJCS, the Military Departments, and the appropriate offices in OSD, including the USD(P), the ATSD(PA), and the ASD(LA). The USD(P) will notify DOS.

g. The USD(P) will work with ATSD(PA) to prepare press guidance. Sufficient time should be taken prior to any public announcement to allow embassies to make pre-publicity notification to the host nation government at least 48 hours in advance of the announcement when possible or for longer periods as appropriate under applicable international agreements.

h. The ASD(LA) will make any required congressional notifications.

### **3.3. EXPEDITED RETURN APPROVAL PROCEDURES.**

a. Returns that do not involve personnel; have no anticipated adverse economic, local, national, military, or political effects; and for which the fair market value of improvements are less than \$10 million, may be processed through the expedited procedures in this section. Examples include types of “housekeeping” adjustments incident to managing a site, such as returns and exchanges of land (and incidental relocation of out-buildings) on the border of an installation for road widening, etc., or closure of a satellite facility.

b. Expedited procedures:

(1) The in-theater component commander will notify the Combatant Commander of the proposed return and the use of expedited procedures. The proposal will include affirmation that the return does not involve personnel and has no anticipated adverse economic, local, national, military, or political effects as well as an estimate of the fair market value of improvements to be returned.

(2) The Combatant Commander will coordinate with the applicable U.S. Embassy to confirm the assessment of no adverse effects. If the Combatant Commander concurs with the proposed return and the use of expedited procedures, then the Combatant Commander will notify the USD(P) and the ASD(S) of their intention to effect the return, through the CJCS, at least 60 days in advance of the proposed return. The notification will describe the proposed return, specify the fair market value of the improvements to be returned, and provide the rationale for expediting the process.

(3) The in-theater component commander may proceed with the return and the negotiation of residual value unless either the USD(P) or the ASD(S) object as provided in Paragraph 3.3.b.(4).

(4) If either USD(P) or ASD(S) object to the use of expedited procedures before the expiration of the 60-day period following notification, the return must be processed in accordance with Paragraph 3.2.

(5) The Combatant Commander will submit to the ASD(S) through the CJCS a summary list of parcels returned using these expedited procedures in accordance with Section 2687a(d)(2) of Title 10, U.S.C., and Paragraph 3.5.e. of this issuance.

### **3.4. RESIDUAL VALUE SETTLEMENT NEGOTIATIONS.**

a. Following public notification of a return, the Combatant Commander, designated real estate executive agent with the appropriate level of authority, or other official authorized to negotiate and conclude an agreement, will begin residual value negotiations with the host nation government. DoD negotiators should seek to ensure that the United States obtains the maximum residual value possible.

b. Negotiations should address, at a minimum:

- (1) The schedule for departure of personnel and removal of equipment.
- (2) Joint inspection of facilities to be realigned.
- (3) Disposition of U.S. facilities to be retained at the site.
- (4) Exchange of information on environmental conditions.
- (5) Transfer of facilities.
- (6) Calculation of the current fair market value of the facilities.
- (7) Estimated residual value.

c. For the purposes of establishing a starting point for negotiations with host nation governments on residual value, the applicable in-theater component commander will:

(1) Obtain an independent appraisal of the estimated fair market value of the improvements or document why an appraisal is deemed not cost effective.

(2) Gather data on the site nominated for return including total U.S. investment, documentation of environmental conditions, and assessment of the current value of U.S. improvements to the site. If the site nominated for return includes facilities previously provided as PIK compensation, the value of those facilities at the time provided represents the U.S. investment in those facilities.

d. Residual value compensation from host nations should be sought in the form of direct payment. Residual value payments will be deposited into the Department of Defense Overseas Military Facility Investment Recovery Account as specified in Section 2687a of Title 10, U.S.C. Should a host nation refuse to make residual value compensation in the form of a direct payment, residual value compensation should be sought in the form of a PIK.

e. PIK is non-monetary compensation for the residual value of U.S.-funded improvements. Including PIK in the negotiations may increase the willingness of the host nation to provide residual value compensation. The process for this form of payment includes the following:

(1) If host nation authorities request that compensation to the United States for negotiated residual value be provided in the form of PIK, and the Combatant Commander determines that accepting PIK is in the best interest of the United States, then the Combatant Commander will submit a request to engage in PIK residual value negotiation, through the CJCS, to the ASD(S) for coordination and approval by the USD(A&S). Proposals should include the rationale for negotiating and accepting PIK, the expected benefits to the United States, and an estimate of the value of the U.S.-funded investments under consideration.

(2) Proposals to negotiate PIK should indicate that the acceptance of PIK is a last resort and that discussions of cash payment have been unsuccessful. Proposals should also include a discussion of the adjustments to be made in the Future Years Defense Program or the DoD budget to reflect costs that may no longer be incurred as a result of the PIK. Such proposals will be coordinated at a minimum with the USD(P), the USD(C)/CFO, and the General Counsel of the Department of Defense.

(3) Upon receiving USD(A&S) approval to negotiate PIK, the ASD(S) will notify the Combatant Commander of the approval and, in accordance with Section 2687a of Title 10, U.S.C., as applicable, prepare correspondence for USD(A&S) signature notifying Congress of the intent to negotiate PIK.

### **3.5. RESIDUAL VALUE SETTLEMENT REPORTING.**

a. At the conclusion of negotiations, the Combatant Commander will prepare a residual value settlement package summarizing the agreed residual value including, at a minimum, the date residual value negotiations began and concluded, the present day value of U.S. investments, final negotiated residual value including any PIK, and justification for any differences between the investments made and the negotiated residual value. The Combatant Commander will submit the report to the ASD(S) through the CJCS.

b. Proposed settlements for residual value must be reviewed by the OMB when the fair market value of the U.S. improvements totals more than \$10 million. The ASD(S) will prepare correspondence for Secretary of Defense or Deputy Secretary of Defense signature and forward proposed settlements meeting this criterion to the OMB for review pursuant to Section 2687a of Title 10, U.S.C.

c. If the host nation is a NATO member and PIK has been accepted as compensation for residual value, the proposed settlement package will contain:

(1) A description of the agreed-upon construction, repair, or facility improvement project.

(2) A certification that the project is needed by U.S. forces.

(3) An explanation of how the project will aid in the achievement of the mission of those forces.

(4) A certification that if the project were to be carried out by the DoD, appropriations would be necessary and that it would be necessary to provide for the project in the next Future Years Defense Program.

d. The Secretary of Defense must notify the appropriate congressional committees of the proposed PIK settlement in accordance with Section 2687a of Title 10, U.S.C. The Combatant Commanders must wait at least 30 days from the time the proposed settlement is submitted to Congress before concluding an agreement for return with a NATO host nation.

e. Implementing agreements with host nations for returns will be executed by the Combatant Commander or his designated agent in accordance with applicable U.S. laws, regulations, and DoD policy, and consistent with applicable international agreements.

f. The Combatant Commanders must provide an annual update on the status of return actions and residual value negotiations to the ASD(S), who will provide a copy to the USD(P).

### **3.6. SUPPORTING DOCUMENTATION.**

All residual value settlement records, including but not limited to negotiation reports, appraisals, fair market value calculation and determination documents, in-kind consideration valuation calculation and determination documents, and disposition and transfer records will be permanently retained in accordance with DoDI 5015.02.

## GLOSSARY

### G.1. ACRONYMS.

<b>ACRONYM</b>	<b>MEANING</b>
ASD(LA)	Assistant Secretary of Defense for Legislative Affairs
ASD(S)	Assistant Secretary of Defense for Sustainment
ATSD(PA)	Assistant to the Secretary of Defense for Public Affairs
CJCS	Chairman of the Joint Chiefs of Staff
DoDI	DoD instruction
DOS	Department of State
NATO	North Atlantic Treaty Organization
OMB	Office of Management and Budget
PIK	payment-in-kind
U.S.C.	United States Code
USD(A&S)	Under Secretary of Defense for Acquisition and Sustainment
USD(C)/CFO	Under Secretary of Defense (Comptroller)/Chief Financial Officer, Department of Defense
USD(P)	Under Secretary of Defense for Policy

### G.2. DEFINITIONS.

These terms and their definitions are for the purpose of this issuance.

<b>TERM</b>	<b>DEFINITION</b>
<b>current value</b>	The estimated value, in dollars, of facilities or other capital improvements located on a site. Generally, the current value of facilities (sometimes referred to as the “present day cost of investments”) is calculated by taking the sum of all U.S.-funded construction or improvements made to the facility, and adjusting that sum for inflation, currency fluctuation, age, condition, location replacement cost, and current market trends for similar facilities in the area.

<b>TERM</b>	<b>DEFINITION</b>
<b>facility</b>	A building, structure, or linear structure whose footprint extends to an imaginary line surrounding a facility at a distance of 5 feet from the foundation that, barring specific direction to the contrary such as a utility privatization agreement, denotes what is included in the basic record for the facility (e.g., landscaping, sidewalks, utility connections). This imaginary line is commonly referred to as the “5-foot line.” A facility will have a real property unique identifier received from Data Analytics and Integration Support and is entered into a Service real property inventory system as a unique real property record.
<b>fair market value</b>	The value of improvements at their highest and best use.
<b>host nation</b>	A foreign nation in which U.S. facilities nominated or under negotiation for return are located.
<b>independent appraisal</b>	Analysis of specific market data using industry-accepted methods to determine the most probable value a property should realize in a competitive and open market when utilized at its highest and best use.
<b>installation</b>	A base, camp, post, station, yard, center, homeport for any ship, or other location under the jurisdiction of the Secretary of a Military Department or the Secretary of Defense, including any leased location, which is located within any of the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, the Commonwealth of the Northern Mariana Islands, or Guam. In the case of an activity in a foreign country, an installation is any property under the operational control of the Secretary of a Military Department or the Secretary of Defense, without regard to the duration of operational control.
<b>in-theater component commander</b>	The commander of U.S. forces within a particular Military Department in an applicable theater area (e.g., Commander, United States Air Forces in Europe).
<b>overseas</b>	Sites located outside the United States.
<b>PIK</b>	Compensation received from a host nation in the form of construction, repair, and base support projects instead of cash.
<b>real property</b>	Land and improvements to land (e.g., buildings, structures, and linear structures).

<b>TERM</b>	<b>DEFINITION</b>
<b>return</b>	The return, or partial return, of real property assets at overseas sites operated or maintained by U.S. personnel or forces to host nation control. It also applies to the conversion to standby status of overseas sites operation or maintained by the United States.
<b>residual value</b>	The negotiated monetary or non-monetary compensation DoD receives from host nations for DoD-funded facilities or other capital improvements returned to the host nation under a return action.
<b>site</b>	Any parcel of land, regardless of size, provided to the DoD for its use or operations. “Overseas sites” refers to sites located outside the United States. “Site” may also be used to describe the land area encompassing a DoD installation in its entirety or any part thereof.
<b>small parcel</b>	A portion of an installation representing less than 5 percent of the overall installation in land area or infrastructure value.
<b>sub-unified commander</b>	The commander of a sub-unified command having functions and responsibilities similar to those of the Combatant Commanders and exercising operational control of commands and forces within the assigned operational area (e.g., Commander, United States Forces Japan; Commander, Iceland Defense Force).
<b>United States</b>	The 50 States, the District of Columbia, the Commonwealth of Puerto Rico, Guam, the Virgin Islands, American Samoa, and any other commonwealth, territory, or possession of the United States.



## REFERENCES

- Chairman of the Joint Chiefs of Staff Instruction 2300.02K, “Coordination of Overseas Force Structure Changes and Host Nation Notification,” April 2, 2019
- DoD Directive 3000.10, “Contingency Basing Outside the United States,” August 27, 2021
- DoD Directive 5135.02, “Under Secretary of Defense for Acquisition and Sustainment (USD(A&S)),” July 15, 2020
- DoD Instruction 1015.15, “Establishment, Management, and Control of Nonappropriated Fund Instrumentalities and Financial Management of Supporting Resources,” October 31, 2007, as amended
- DoD Instruction 3000.12, “Management of U.S. Global Defense Posture (GDP),” May 6, 2016, as amended
- DoD Instruction 4715.08, “Remediation of Environmental Contamination Outside the United States,” November 1, 2013, as amended
- DoD Instruction 5015.02, “DoD Records Management Program,” February 24, 2015, as amended
- DoD Instruction 5530.03, “International Agreements,” December 4, 2019
- Public Law 105-261, “Strom Thurmond National Defense Authorization Act for Fiscal Year 1999,” October 17, 1998<sup>1</sup>
- United States Code, Title 10, Section 2687a

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<sup>1</sup> See also Section 324 of Public Law 102-484, also known as the “National Defense Authorization Act, 1993,” (Sense of the Congress on Overseas Environmental Restoration), available in Selected Defense Related Laws under Base Closures and Realignments and Real Property Issues at [www.house.gov/hasc/reports](http://www.house.gov/hasc/reports).