

Guidance for the Implementation of De-Ba'athification Policy

23 May 2003

1. Who qualifies for an exception?

The Administrator of the Coalition Provisional Authority has the discretion to grant exceptions to the de-ba'athification policy. Although he may choose to delegate this authority, he retains the ability to reverse any decision to grant or refuse an exception.

In considering whether to grant an exception, the CPA will take a number of factors into account, including whether the individual:

- > Is willing to denounce the Ba'ath Party and his past association with it;
- > Was a senior a Ba'ath Party member or simply a 'full' party member;
- > Has exceptional educational qualifications;
- > Left the Ba'ath Party before April 16, 2003;
- > Continues to command the support of his colleagues and respect of their subordinates;
- > Is judged to be indispensable to achieving important Coalition interests at least in the immediate term;
- > Can demonstrate that he joined the party to hold his job or support his family.

As soon as can be arranged, a professional investigator or an administrative law judge attached to the Coalition Authority will determine whether a person meets the above criteria. Meanwhile, exceptions will be determined by the Administrator. Exceptions may either allow the individual to stay on in his current position or specify that he can only continue employment at the ministry in a lower position. The Administrator reserves the right to overturn an exception if new evidence comes to light that is grounds for altering the original decision.

2. Will members of the top three tiers of management be allowed to maintain their current positions pending the start of the exception process?

No. All employees who were 1) in the top four layers of the Ba'ath Party or 2) full Ba'ath Party members in the top three tiers of ministry management (including DCs) must leave their jobs immediately. In unusual circumstances, a temporary exception may be granted if the senior advisor can make the case that removing an individual immediately will seriously harm important U.S. or Coalition interests (such as restoration of law and order in Iraq, the reestablishment of a judicial system, and the repair of power and water systems). Exceptions will not be granted simply to preserve the convenience or efficient running of institutions. If a senior advisor wishes to request a temporary exception, he or she will use the attached form addressed to the CPA Administrator.

3. Will we pay pensions to those who lose their jobs due to their Ba'ath Party involvement?

No. Senior advisors and other ORHA staff may respond to pension queries by saying 1) that the Coalition has no plans to pay the pensions of people who lose their job under the de-ba'athification policy and 2) our unwillingness to do so does not prejudice the ability of a



future Iraqi government to decide otherwise. We reserve the right to revisit this issue if we find the consequences of this approach to be contrary to Coalition interests.

4. Should DGs be included in the top three tiers of management?

Yes. The de-ba'athification policy will be applied down to and including the DG level, regardless of how many tiers of management sit above DGs.

5. How many ministry employees will we investigate for senior Ba'ath Party membership?

We will investigate 1) all employees in the top three tiers of ministry management (to include DGs as stated above) and 2) all individuals for whom we receive at least two independent allegations that they were senior ba'athists.

6. Will people have the right of appeal?

Yes. An appeal mechanism will be created for those who wish to contest the facts of their case (i.e. that they were members of the Ba'ath Party). We will not consider appeals over the denial of an exception.

7. Will ex-members of the Ba'ath Party be exempt from the de-ba'athification policy?

Having left the Ba'ath Party before 16 April 2003 will not in itself be sufficient for an individual to avoid the consequences of the de-ba'athification policy. It may weigh in a person's favor when an exception is being considered.

8. Are those removed from positions of management on account of Ba'ath Party full membership (opposed to being a senior party official) allowed to stay on as ministry employees at lower levels?

As a rule, no. Those removed from positions of management should assume that they must leave employment in their ministry altogether. Willingness to serve in a lower position in the ministry could weigh in favor of an exception should one be sought. But all such requests for an exception must be based on the factors listed in paragraph #1 above. Persons requesting such an exception would have to sign the denunciation form.

9. Will we continue to issue letters of authority to ministry members before the investigative process is complete?

No. There is a moratorium on issuing letters of authority signed by the Administrator of the CPA until we understand the full ramifications of de-ba'athification. Until then, senior advisors may sign specific authorities (i.e. for the payment of salaries) and continue verbally to designate people as having interim authorities to make decisions and implement policies.

10. Will we screen individuals replacing those we fire for Ba'ath Party affiliation?

We will adopt hiring procedures to ensure that the new ministry employees are not ba'athists. Applicants will be required to fill out a questionnaire regarding their past party involvement; it shall be clear that falsification of answers is grounds for termination of their position. New hires will need to sign a form either disavowing or denouncing the Ba'ath Party (depending on whether they were ever affiliated with it). We will also conduct a character reference check that includes questions about the individual's past party affiliation.

11. Should we reclaim property and privileges that Ba'ath Party members gained as a perk of membership?

Yes. Officials who are to be removed from office should first be asked to return ministry property such as cars, computers, cell phones, etc. We should inform these people that a failure to return ministry property could have prosecutable consequences. Such efforts must be complemented by the search for records detailing the ministry property distributed to employees.

12. What sort of support should we provide to advisors seeking to remove the worst ba'athists (i.e. potentially dangerous criminals)?

We will alert CJTF7 that some senior advisors might need the help of MI's to remove and arrest allegedly serious criminals from their ministries. CJTF7 will require appropriate documentation and timely notice.