



DEPARTMENT OF THE NAVY

OFFICE OF THE SECRETARY

WASHINGTON, D.C. 20350-1000

SECNAVINST 5370.7B

NIG-00L

7 July 1998

SECNAV INSTRUCTION 5370.7B

From: Secretary of the Navy
To: All Ships and Stations

Subj: MILITARY WHISTLEBLOWER PROTECTION

Ref: (a) SECNAVINST 12700.2, Cooperation with the Office of Special Counsel of the Merit Systems Protection Board
(b) Title 10, United States Code, Section 1034, the Military Whistleblower Protection Act
(c) Title 5, United States Code, Section 552, the Freedom of Information Act (FOIA), as implemented by SECNAVINST 5720.42E, DON FOIA Program
(d) SECNAVINST 5430.92A, Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties Within the DoN
(e) SECNAVINST 5370.5A, DoD/Navy Hotline Program
(f) US Navy Regulations, 1990
(g) OPNAVINST 5510.1H, DON Information and Personnel Security Program Regulation
(h) IGDG 7050.6DI, Guide to Investigating Reprisal and Improper Referrals for Mental Health Evaluations (NOTAL)

Encl: (1) DoD Directive 7050.6, 12 Aug 95
(2) Rights Acknowledgment/Election Format
(3) Sample Military Whistleblower Protection Poster

1. Purpose. To implement enclosure (1) within the Department of the Navy (DON) and extend procedural rights to military members who ask that the Naval Inspector General (NAVINSGEN) or the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC) investigate their complaints of reprisal. This instruction is a complete revision and should be reviewed in its entirety.

2. Cancellation. SECNAVINST 5370.7A.

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3. Applicability

a. The protections in this instruction apply to: active-duty military personnel, both Regular and Reserve; midshipmen of the Naval Academy and in the Reserve Officer Training Corps; Reserve personnel when performing active or inactive duty for training, or engaging in an activity directly related to the performance of a Department of Defense (DoD) duty or function; and all other members of the Armed Forces (as defined in enclosure (1)) who, although not in the Navy or Marine Corps, are assigned to a Navy or Marine Corps unit.

b. The restrictions in this instruction apply to: active-duty military personnel, both Regular and Reserve; all DON civilian personnel, including non-appropriated fund employees; midshipmen of the Naval Academy and in the Reserve Officer Training Corps; Reserve personnel when performing active or inactive duty for training, or engaging in an activity directly related to the performance of a Department of Defense (DoD) duty or function; and all other members of the Armed Forces (as defined in enclosure (1)) who, although not in the Navy or Marine Corps, are assigned to a Navy or Marine Corps unit.

c. Reference (a) is applicable to DON civilian personnel claiming whistleblower reprisal.

4. Background

a. The Military Whistleblower Protection Act (the Act), as amended by section 531 of the FY95 Defense Authorization Act, Pub.L. 103-337, October 5, 1994, provides that no person may restrict a member of the armed forces from making a lawful communication to a Member of Congress or an Inspector General (IG). The Act also prohibits reprisal against military members who:

(1) make "lawful" communications to Members of Congress or an IG; or

(2) make, or prepare to make, communications ("lawful" or "unlawful") to a Member of Congress; a statutory or Service IG; a member of a DoD audit, inspection, investigation, or law enforcement organization; or "any other person or organization (including any person or organization in the chain of command) designated under to regulations or other established administrative procedures for such communications," provided the

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member reasonably believes the information disclosed, or to be disclosed, constitutes evidence of: (1) a violation of law or regulation, including those prohibiting sexual harassment or unlawful discrimination; or (2) mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

b. The terms "lawful" and "unlawful" are not defined in the Act or enclosure (1), which states policy and responsibility for implementing reference (b). A communication may be "unlawful" because release of the information is prohibited by statute or regulation, including information: (1) that is classified; (2) that is a trade secret or commercial in nature; or (3) that concerns a personal privacy interest. The communication of information which is exempt from release under reference (c) may be unlawful.

c. The Act does not immunize military members from responsibility for their own wrongdoing associated with the information contained in the protected communication, but their cooperation may serve as a matter in mitigation.

d. The Act and enclosure (1) give specific procedural rights to a military member who alleges reprisal for making a "protected communication," but only if the member "submits" the complaint of reprisal to the Inspector General, Department of Defense (DoDIG). Consequently, enclosure (1) requires Service Inspectors General (IGs) who receive allegations of reprisal to advise military members, in writing, that "to obtain consideration of the matter under (enclosure (1)), complaints of reprisal must be made ... or forwarded to the (DoDIG)." It then requires the Service IGs to forward those complaints to the DoDIG upon the written request of the member.

e. Procedural rights afforded by the Act and enclosure (1) include:

(1) completion of the investigation within 90 days;

(2) a report format that requires a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews conducted;

(3) provision of a redacted copy of the report of investigation to the member;

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(4) advice and assistance in filing a request for correction of the member's military record;

(5) provision of a copy of the report of investigation to a board for correction of military records and IG assistance in gathering further evidence the board may request;

(6) review of the board's decision by the Secretary of the Military Department;

(7) review of the Secretary's decision by the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)); and

(8) after final action on the complaint, an interview, when possible, with the military member to determine his or her view on the disposition of the matter.

5. Policy. Consistent with paragraph D of enclosure (1), it is DON policy that:

a. Members of the Armed Forces shall be free to make a protected communication to a Member of Congress; an IG; a member of a DoD audit, inspection, investigation, or law enforcement organization; or any other person or organization (including any person or organization in the chain of command as defined in paragraph 6) designated under DON regulations or other established administrative procedures to receive such communications. A variety of Navy regulations and instructions contain provisions that permit or require DON personnel to report suspected impropriety, or make other communications, to specified superiors. For example:

(1) References (d) and (e) discuss the DON program to combat fraud, waste and related improprieties, and place emphasis on reporting suspected violations to proper authority. Reference (d) defines proper authority to include the immediate superior of the person submitting the report, his/her commander or commanding officer, and the immediate superior of his/her commander or commanding officer if either is apparently implicated.

(2) Reference (f) includes numerous articles indicating the chain of command is the preferred method of reporting and resolving the matters they address (e.g., articles 0820, 1024, 1114, 1115, 1137, 1143, 1150, 1151, and 1152).

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(3) Reference (g) establishes reporting requirements with respect to information and personnel security.

b. No person shall restrict a member of the Armed Forces from making a protected communication, and members of the Armed Forces shall be free from reprisal for making or preparing a protected communication.

c. Military members who do not elect to file complaints of reprisal with, or who request that their complaints of reprisal not be forwarded to, the DoDIG, but instead request that their complaints be investigated by the NAVINSGEN or the DNIGMC, will be afforded all of the procedural rights specified in enclosure (1), except for review by the ASD(FMP).

d. **No person may take, or threaten to take, an unfavorable personnel action (including a referral for mental health evaluation), or withhold, or threaten to withhold, a favorable personnel action in reprisal against any member of the Armed Forces for making or preparing a protected communication, including an allegation of sexual harassment or unlawful discrimination, to one authorized to receive the communication.** The language in boldface in this paragraph constitutes a regulatory order which is applicable to all DON personnel without further implementation. A violation of these provisions by a person subject to the Uniform Code of Military Justice (UCMJ) (Chapter 47 of title 10, United States Code) is punishable as a violation of Article 92 of the UCMJ. A violation by civilian personnel is punishable under regulations governing disciplinary or adverse action.

6. Protection of Communications Within the Chain of Command or Under Other Established Administrative Procedures

a. The Act, as amended in 1994, protects "lawful" and "unlawful" communications concerning matters described in paragraph 4a(2) when made to any other person or organization (including any person or organization in the chain of command) designated under [DON] regulations or other established administrative procedures to receive such communications.

b. The protection afforded by the Act against reprisal for communications within the chain of command or pursuant to other established administrative procedures recognizes the long-standing Navy and Marine Corps tradition of encouraging utilization of the chain of command to address individual

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complaints and of the equally important right (and, in many cases, obligation) of the individual to bring legitimate matters of concern to the attention of his or her superiors without fear of retaliation. In making a communication that includes classified information, the member shall remain responsible for ensuring that the person to whom the information is transmitted has the proper clearance, and for complying with the requirements for the transmission of classified data set forth in reference (g).

7. Responsibility to Base Allegations Upon Reasonable Belief

a. To receive the protection of the Act, enclosure (1), and this instruction, personnel who make communications described in paragraph 4a(2) must reasonably believe that the information they are disclosing constitutes evidence of the type of wrongdoing described in that paragraph.

b. Reference (h) provides that, in a reprisal investigation, the complainant's motivation for reporting the initial wrongdoing is not at issue. It is irrelevant whether the complainant was motivated by a sense of duty or regulatory requirement, or reported the wrongdoing in retaliation against the chain of command or another official. The investigator should consider only the motives of management for taking or withholding a personnel action. However, reference (h) also provides that if an investigator determines that the complainant either intentionally made false statements or misrepresented the truth in a protected communication or a disclosure of wrongdoing, it is appropriate to refer the matter for appropriate command action and close the reprisal investigation. Before taking such action, the investigator shall obtain the concurrence of NAVINSGEN or DNIGMC, as appropriate.

8. Action

a. The NAVINSGEN and the DNIGMC have overall responsibility for assisting the Secretary of the Navy in ensuring full implementation of paragraph E of enclosure (1) within the DON. They shall:

(1) Ensure that DON personnel who receive complaints of reprisal from military members advise those members in writing of their rights under the Act, enclosure (1) and this instruction; request they execute an acknowledgment and election format substantially similar to enclosure (2); offer to forward their

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complaints to the DoDIG, the NAVINSGEN, or the DNIGMC; and, when members elect to file their complaints with the DoDIG, offer to assist in preparing complaints that meet the content requirements of enclosure (1), page 1-1, paragraph 3.

(2) Ensure that the person conducting a reprisal investigation under a DoDIG, NAVINSGEN, or DNIGMC tasking requirement is outside the immediate chain of command of both the member submitting the allegation and the person(s) alleged to have taken the retaliatory action.

(3) Ensure the investigator operating under a DoDIG, NAVINSGEN, or DNIGMC tasking requirement submits a draft of the report of investigation to an attorney assigned to the Office of the General Counsel, or a Navy or Marine Corps Judge Advocate, for a legal sufficiency review.

(4) Review and determine the adequacy of investigations tasked by DoDIG, NAVINSGEN, or the DNIGMC, ensuring that the investigation is conducted in accordance with reference (h) and such other investigative guidance as NAVINSGEN or the DNIGMC may provide.

(5) Take such other action as may be necessary to implement the policy set forth in paragraph 5 and the requirements of this paragraph, including approval of requests for time extensions for the conduct of investigations, provision of redacted copies of reports of investigation, provision of advice and assistance to members who seek correction of their naval records, and such additional investigative assistance as the Board for Correction of Naval Records or the Secretary of the Navy may request.

b. Commander, Naval Legal Service Command and, within the Marine Corps, the officer exercising General Court-Martial jurisdiction (or delegee) shall:

(1) Make judge advocates available to assist and advise military members of their rights and responsibilities under the Act, enclosure (1), and this instruction, with emphasis on the procedures for making or preparing a communication that qualifies for protection under the Act and for filing complaints of reprisal.

(2) Make judge advocates available to assist and advise commanders and commanding officers in meeting their

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responsibilities under this instruction, with emphasis on the provision of training designed to ensure compliance with the Act, enclosure (1), and this instruction.

c. Commanders and Commanding Officers shall:

(1) Take specific action to publicize the contents of enclosure (1). At a minimum, they shall publicize the prohibitions of paragraph 5(d), the definitions contained in enclosure (1), the procedures for filing a complaint with the DoDIG, NAVINSGEN, or the DNIGMC, and prominently display in command spaces accessible to all military personnel, posters similar to enclosure (3) (full size color copies are available through NAVINSGEN, or DNIGMC).

(2) Ensure that military members assigned to their command who make an allegation of reprisal are advised in writing of their rights under the Act, enclosure (1), and this instruction; request they execute an acknowledgment and election statement substantially similar to enclosure (2); offer to forward the complaint of reprisal to the DoDIG, to the NAVINSGEN (if the member is attached to a Navy activity), or to the DNIGMC (if the member is attached to a Marine Corps activity); and forward the complaint if so requested by the member.

(3) Make personnel available to perform investigations and reviews for legal sufficiency at the request of NAVINSGEN or DNIGMC, or investigators tasked by them.

(4) Ensure fair, impartial, and timely investigation and resolution of complaints of reprisal in those cases where members of their command do not elect to forward their complaints of reprisal to the DoDIG, NAVINSGEN, or DNIGMC for investigation, in order to encourage trust in the chain of command and promote the policy underlying the Act.

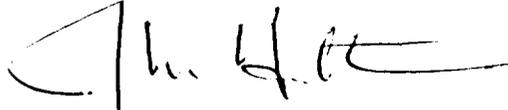
(5) Take such other action, including periodic training, as may be necessary to meet the requirements of, and implement the policy underlying, the Act, enclosure (1), and this instruction.

d. Heads of DoD audit, inspection, investigation, or law enforcement organizations shall ensure there are personnel within their organizations who are cleared to receive classified information that may be communicated to their organizations under to the Act, enclosure (1), or this instruction.

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9. Reports. The reporting requirements contained in this instruction are exempt from reports control by SECNAVINST 5214.2B.



Jerry MacArthur Hultin
Acting

Distribution:
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and 71000000100



Department of Defense
DIRECTIVE

SECNAVINST 5370.7B
7 JUL 1990

August 12, 1995
NUMBER 7050.6

IG, DoD

SUBJECT: Military Whistleblower Protection

- References:
- (a) DoD Directive 7050.6, subject as above, September 3, 1992 (hereby canceled)
 - (b) Chapter 47 and Sections 892, 1034, 1552, and 1553 of title 10, United States Code
 - (c) DoD Directive 6490.1, "Mental Health Evaluations of Members of the Armed Forces," September 14, 1993
 - (d) Section 552 and Appendix III of title 5, United States Code
 - (e) DoD Directive 5505.6, "Investigations of Allegations Against Senior Officials of the Department of Defense," July 12, 1991
 - (f) DoD Directive 7050.1, "Defense Hotline Program," March 20, 1987

A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to:

1. Update policy and responsibilities for military whistleblower protection under Section 1034 of reference (b).
2. Include complaints of sexual harassment or unlawful discrimination as "protected communications," as defined in enclosure 2, definition 8.
3. Expand the scope of persons and activities to whom a protected communication may be made, to include any person or organization (including any person or organization in the chain of command) designated under Component regulations or other established administrative procedures to receive such communications.
4. Include referral for mental health evaluations under reference (c) as a "personnel action," as defined in enclosure 2, definition 7.

B. APPLICABILITY AND SCOPE

This Directive applies to:

1. The Office of the Secretary of Defense, the Military Departments (including the Coast Guard when it is operating as a Military Service in the Navy), the Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Inspector General of the Department of Defense (IG, DoD), the Defense Agencies, and the DoD Field Activities, including nonappropriated fund activities (hereafter referred to collectively as "the DoD Components"). The term "Military Services," as used herein, refers to the Army, the Navy, the Air Force, and the Marine Corps.
2. All DoD personnel.

Enclosure (1)

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 2.

D. POLICY

It is DoD policy that:

1. Members of the Armed Forces shall be free to make a protected communication to a Member of Congress; an Inspector General (IG); a member of a DoD audit, inspection, investigation, or law enforcement organization; or any other person or organization (including any person or organization in the chain of command) designated under Component regulations or other established administrative procedures to receive such communications.

2. No person shall restrict a member of the Armed Forces from making a protected communication.

3. Members of the Armed Forces shall be free from reprisal for making or preparing a protected communication.

4. No person may take or threaten to take an unfavorable personnel action, or withhold or threaten to withhold a favorable personnel action, in reprisal against any member of the Armed Forces for making or preparing a protected communication.

5. Any violation of subsection D.4., above, by a person subject to Chapter 47 of 10 U.S.C. (reference (b)), is punishable as a violation of Section 892 of reference (b). Any violation of subsection D.4., above, by a civilian employee is punishable under regulations governing disciplinary or adverse actions.

E. RESPONSIBILITIES

1. The Inspector General of the Department of Defense shall:

a. Expediently initiate, or request the IG of a DoD Component to initiate, an investigation of an allegation submitted to the IG, DoD, by a member of the Armed Forces, that the prohibitions of subsection D.4., above, have been violated. No investigation is required when such allegation is submitted to the IG, DoD, more than 60 days after a member became aware of the personnel action that is the subject of the allegation. When the IG, DoD, requests the IG of the DoD Component to conduct the investigation, the IG, DoD, shall:

(1) Ensure that the IG conducting the investigation is outside the immediate chain of command (as established under Component regulations) of the member submitting the allegation and the individual(s) alleged to have taken the reprisal action.

(2) Review and determine the adequacy of the investigation. If such an investigation is inadequate, initiate a followup investigation to correct those inadequacies or ensure that the IG of a DoD Component corrects them.

b. Issue a report of investigation within 90 days of the receipt of the allegation of reprisal. If a determination is made that the report cannot be issued within that time, notify the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)) and the member or former member of the reasons for the delay and when that report will be issued.

c. Notify the ASD(FMP) of the results of the investigation and provide a copy of the

report of investigation to the member or former member not later than 30 days after completion of the investigation. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint. The copy of the report released to the member or former member shall include the maximum disclosure of information possible except what is not required to be disclosed under 5 U.S.C. 552 (reference (d)).

d. Advise the member or former member concerned that he or she may request review of the matter by a board for correction of military records (BCMR).

e. At the request of a BCMR:

(1) Submit a copy of the report of investigation to the BCMR.

(2) Gather further evidence.

f. After the final action on a military reprisal complaint filed with the IG, DoD, when possible, interview the member or former member who made the allegation to determine his or her view on the disposition of the matter.

g. Initiate, or request the IG of a DoD Component to initiate, a separate investigation into the allegations contained in the protected communication when:

(1) Such an investigation has not already been started.

(2) The IG, DoD, determines the investigation was biased or inadequate.

h. When an investigation under paragraph E.1.g., above, is required, submit a report on the results of the investigation to the ASD(FMP) and a copy of the report of investigation to the member or former member. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews taken. The copy of the report released to the member or former member shall include the maximum disclosure of information possible except what is not required to be disclosed under Section 552 of reference (d).

2. The Assistant Secretary of Defense for Force Management Policy, under the Under Secretary of Defense for Personnel and Readiness, shall:

a. On behalf of the Secretary of Defense, within 90 days of receipt of a request submitted under enclosure 1, section C., review the final decision of the Secretary of the Military Department concerned on applications for correction of military records decided under this Directive and 10 U.S.C. 1034 (reference (b)), and decide whether to uphold or reverse the decision of the Secretary of the Military Department concerned. The decision on behalf of the Secretary of Defense is final.

b. Have access to all research, reports, investigations, audits, reviews, documents, papers, or any other material necessary to carry out the responsibilities assigned to the ASD(FMP) by this Directive.

c. If necessary, obtain for review and request the Secretary of the Military Department concerned to comment on evidence considered by a BCMR when the Secretary of Defense is requested to reconsider the final decision of the Secretary concerned.

d. Notify the IG, DoD, of decisions made for the Secretary of Defense on requests submitted under enclosure 1, section C and issue such DoD Instructions as may be necessary to implement this subsection (E.2.) and the requirements of enclosure 1, section C.

3. The Secretaries of the Military Departments and the Heads of the Other DoD Components shall:

a. Ensure that the Military Department or other Component IG (as applicable) shall:

(1) On receipt of an allegation of reprisal from a military member, advise the member in writing that to obtain consideration of the matter under this Directive, complaints of reprisal must be made to the IG, DoD, or forwarded to the IG, DoD, under enclosure 1, section A.

(2) On written request of the member, forward the allegation to the IG, DoD, under enclosure 1, section A. When an allegation of reprisal is made against a senior official of the Department of Defense, DoD Directive 5505.6 (reference (e)) also applies.

(3) At the request of the IG, DoD, investigate the allegation of reprisal and provide the IG, DoD, within 90 days of the request, the report of investigation. That report shall include a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint. The copy of the report submitted to the IG, DoD, for release to the member or former member shall include the maximum disclosure of information possible except what is not required to be disclosed under 5 U.S.C. 552 (reference (d)).

(4) At the request of the IG, DoD, investigate the allegations contained in the member's protected communication. The report of investigation shall include a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews taken. The report may include a recommendation as to the disposition of the complaint. The copy of the report submitted to the IG, DoD, for release to the member or former member shall include the maximum disclosure of information possible except what is not required to be disclosed under Section 552 of reference (d).

b. Based on the IG report of investigation, take corrective action, to include providing assistance to members preparing an application to a BCMR, when implementation of the recommendations of the report requires action by a BCMR.

c. Ensure that the subject(s) of the investigation of an allegation of reprisal conducted under this Directive are afforded procedural protections, including the opportunity to present matters in their behalf, incident to administrative or disciplinary action, under Component regulations or other established administrative procedures governing such action.

d. Publicize the content of this Directive to ensure that military and other DoD personnel fully understand its scope and application.

4. The Secretaries of the Military Departments shall:

a. Ensure that the BCMR:

(1) Considers applications for the correction of military records at the request of a member or former member, or otherwise, who alleged that the prohibitions of subsection

D.4., above, have been violated.

(2) In resolving such an application:

(a) Shall review the report by the IG under paragraph E.1.a., above.

(b) May request the IG, DoD, to gather further evidence.

(c) May receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct a hearing. If a hearing is held, the requirements of enclosure 1, section B., shall apply.

(d) If the BCMR determines that a personnel action was in reprisal under this Directive, it may recommend to the Secretary of the Military Department concerned that disciplinary action be taken against the individual(s) responsible for such personnel action.

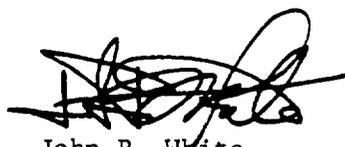
b. Issue a final decision on an application received under this Directive within 180 days after the application is filed. If the Secretary of the Military Department concerned fails to issue a final decision within that time, the member or former member shall be deemed to have exhausted the administrative remedies under 10 U.S.C. 1552 (reference (b)). Advise the member or former member that he or she may request review of the matter by the Secretary of Defense, under subsection E.2., above, and enclosure 1, section C., and that such a request must be made within 90 days of receipt of a decision by the Secretary of the Military Department concerned on the matter.

c. Order such action, consistent with the limitations in Sections 1552 and 1553 of reference (b), to correct the record of a personnel action prohibited by subsection D.4., above.

d. Notify the IG, DoD, and the Military Department or other Component IG, of a decision on an application for the correction of military records received from a member or former member of the Armed Forces under this Directive and of any disciplinary action taken.

F. EFFECTIVE DATE

This Directive is effective immediately.¹



John P. White
Deputy Secretary of Defense

Enclosures - 2

1. Requirements
2. Definitions

¹As required by Section 1034 of reference (b), any implementing documents must stipulate that a violation of the prohibition in subsection D.4., above, by a person subject to Chapter 47 of reference (b), is punishable as a violation of Section 892 of reference (b), and that such a violation by a DoD civilian employee is punishable under regulations governing disciplinary or adverse action.

REQUIREMENTS

A. FILING A COMPLAINT OF REPRISAL

To be considered under this Directive, a complaint of reprisal (as defined in enclosure 2, definition 9.) must be made to the IG, DoD. The member or former member may request the complaint be forwarded to the IG, DoD, by the IG of a DoD Component.

1. Time Limits. No investigation is required when a complaint is made or forwarded to the IG, DoD, more than 60 days after a member became aware of the personnel action at issue.

2. Address. Complaints of reprisal may be made by telephone to the IG, DoD, at (800) 424-9098 or by letter addressed, as follows:

Department of Defense Inspector General
ATTENTION: Defense Hotline
1900 Defense Pentagon
Washington, DC 20301-1900

3. Content of Complaint. To assist in the review of the complaint, provide as much of the following information as possible:

a. Member's full name, rank, duty title, organization, duty location, commercial or Defense Switches Network (DSN) telephone numbers, and residence telephone number and mailing address for receipt of correspondence from the IG, DoD.

b. A copy of the protected communication (as defined in enclosure 2, definition 8.) and any reply about the matter. If a copy is not available, include the date of the protected communication, to whom the protected communication was made, the content of the protected communication, and whether the matter was investigated, when and by whom.

c. Identify the personnel action(s) (as defined in enclosure 2, definition 7.) taken, withheld, or threatened to be taken or withheld. Provide documentation about the personnel action or describe the type of personnel action and the date such action occurred.

d. Provide to the extent possible, the full name, rank and/or grade, duty title, organization, duty location, and commercial or DSN telephone number of the officials responsible for signing, taking, recommending, or influencing the personnel action at issue. Indicate why and how any official involved in the personnel action knew of the protected communication.

e. List key witnesses and the information they have that will establish the personnel action at issue was in reprisal for making or preparing a protected communication; include commercial and DSN telephone numbers or other information on how to contact the witnesses.

f. Provide any other information in support of the allegations. If possible, provide a chronology of events, including the date of the protected communication and dates of all subsequent personnel actions taken, withheld, or threatened to be taken or withheld.

B. HEARING HELD BY A BCMR

If a BCMR elects to hold an administrative hearing under subparagraph E.4.a.(2) of the main body of this Directive, above, the member or former member who filed the application:

1. May be represented by a judge advocate if all of the following conditions exist:
 - a. The IG investigation finds there is probable cause that a personnel action was in reprisal for a member of the Armed Forces making or preparing a protected communication.
 - b. The Judge Advocate General concerned determines that the case is unusually complex or otherwise requires judge advocate assistance to ensure proper presentation of the legal issues in the case.
 - c. The member is not represented by outside counsel retained by the member.
2. May examine witnesses through depositions, serve interrogatories, and request the production of evidence, including evidence in an IG investigatory record not included in the report released to the member or former member.

C. APPEAL TO THE SECRETARY OF DEFENSE

A member or former member of the Armed Forces who has filed an application for the correction of military records under 10 U.S.C. 1034 (reference (b)) alleging reprisal for making or preparing a protected communication may request review by the Secretary of Defense of the final decision of the Secretary of the Military Department concerned on such application under this section and subparagraph E.2.a. of the main body of this Directive, above.

1. Requests based on factual allegations or evidence not previously presented to the cognizant BCMR shall not be considered.
2. New allegations or evidence must be submitted directly to the BCMR for reconsideration under procedures established by the BCMR.
3. Content of Appeal. The appeal to the Secretary of Defense must be in writing and include the following:
 - a. Member's full name, rank, duty title, organization, duty location, and commercial or DSN telephone numbers.
 - b. A copy of the application to the BCMR and the final decision by or for the Secretary of the Military Department concerned on such application.
 - c. A statement of the specific reasons why the member or former member is not satisfied with the decision of the Secretary of the Military Department concerned and the specific remedy or relief requested.
4. Time Limits. The request for review by the Secretary of Defense must be submitted within 90 days of receipt of the final decision by or for the Secretary of the Military Department concerned.
5. Address. Address requests for review by the Secretary of Defense as follows:

Assistant Secretary of Defense
for Force Management Policy
Attention: Director, Legal Policy
4000 Defense Pentagon
Washington, DC 20301-4000

DEFINITIONS

1. Audit, Inspection, Investigation, and Law Enforcement Organizations. The law enforcement organizations at any command level in any of the DoD Components, the Defense Criminal Investigative Service, the U.S. Army Criminal Investigation Command, the Naval Criminal Investigative Service, the Air Force Office of Special Investigations, the U.S. Army Audit Agency, the Naval Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency.
2. Board for Correction of Military Records (BCMR). Any board empowered under 10 U.S.C. 1552 (reference (b)) to recommend correction of military records to the Secretary of the Military Department concerned.
3. Corrective Action. Any action deemed necessary to make the complainant whole; changes in Agency regulations or practices; administrative or disciplinary action against offending personnel; or referral to the U.S. Attorney General or court-martial convening authority of any evidence of criminal violation.
4. Inspector General (IG). An IG appointed under Appendix III of 5 U.S.C. (reference (d)); or an officer of the Armed Forces or civilian employee assigned, detailed, or employed as an IG at any command level in one of the DoD Components.
5. Member of Congress. Besides a Senator or Representative, includes any Delegate or Resident Commissioner to the Congress.
6. Member or Member of the Armed Forces. All Regular and Reserve component officers (commissioned and warrant) and enlisted members of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a Military Service in the Navy) on active duty, and Reserve component officers (commissioned and warrant) and enlisted members in any duty or training status. Includes professors and cadets of the Military Service academies and officers and enlisted members of the National Guard.
7. Personnel Action. Any action taken on a member of the Armed Forces that affects or has the potential to affect that military member's current position or career. Such actions include a promotion; a disciplinary or other corrective action; a transfer or reassignment; a performance evaluation; a decision on pay, benefits, awards, or training; referral for mental health evaluations under DoD Directive 6490.1 (reference (c)); and any other significant change in duties or responsibilities inconsistent with the military member's rank.
8. Protected Communication
 - a. Any lawful communication to a Member of Congress or an IG.
 - b. A communication in which a member of the Armed Forces communicates information that the member reasonably believes evidences a violation of law or regulation, including sexual harassment or unlawful discrimination, mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety, WHEN such communication is made to any of the following:
 - (1) A member of Congress, an IG, or a member of a DoD audit, inspection, investigation, or law enforcement organization.

²DoD Directive 7050.1 (reference (f)), further defines applicable terms.

RIGHTS ACKNOWLEDGEMENT/ELECTION FORMAT

**MILITARY WHISTLEBLOWER PROTECTION ACT (10 U.S.C. 1034)
ACKNOWLEDGEMENT OF RIGHTS AND ELECTION OF INVESTIGATIVE PROCEDURES**

I, _____ (name and rank/grade) spoke to _____ (name and rank/grade), who is the _____ (position and command), concerning my complaint of reprisal for making, or preparing to make, a communication I believe is protected by 10 U.S.C. 1034. I understand that in order to obtain all of the procedural rights provided by 10 U.S.C. 1034, I must submit my complaint of reprisal to the Inspector General, Department of Defense (DoDIG). I understand these rights include the following:

- (1) completion of the investigation within 90 days;
- (2) a report format that requires a thorough review of the facts and circumstances relevant to the allegations, relevant documents acquired during the investigation, and summaries of interviews conducted;
- (3) provision of a redacted copy of the report of investigation to the member;
- (4) advice and assistance in filing a request for correction of the member's military record when implementation of the recommendations of the report requires action by a board for correction of military records;
- (5) provision of a copy of the report of investigation to a board for correction of military records and Inspector General assistance in gathering further evidence the board may request;
- (6) review of the board's decision by the Secretary of the Military Department;
- (7) review of the Secretary's decision by the Assistant Secretary of Defense for Force Management Policy (ASD(FMP)); and
- (8) after final action on the complaint, an interview, when possible, with the military member to determine his or her view on the disposition of the matter.

I also understand that if I choose not to submit my complaint to the DoDIG, I may submit my complaint to the Naval Inspector General (NAVINSGEN) or the Deputy Naval Inspector General for Marine Corps Matters (DNIGMC), and receive all of the procedural rights listed above except for item (7).

I further understand that I may send my request directly to the DoDIG, the NAVINSGEN, or the DNIGMC, using the address or fax number provided below, or that, upon my written request, my complaint will be forwarded for me. Based on the foregoing, I have decided (initial one, write "no" in the other two):

_____(initial/no) I will submit my complaint directly to _____ (specify DoDIG, NAVINSGEN or DNIGMC).

_____(initial/no) I request that my complaint be forwarded to _____ (specify DoDIG, NAVINSGEN or DNIGMC).

_____(initial/no) I request that my complaint be investigated by my chain of command. I understand that I will not be entitled to the procedural rights listed above.

_____(signature) _____(date)

Witnessed by:

_____(signature) _____(date)

Defense Hotline
The Pentagon
Washington, DC 20301
1-800-424-9098
Fax 1-703-604-8567

Naval Inspector General
901 M Street SE
Washington Navy Yard
Washington, DC 20374-5006
1-800-522-3451
Fax 1-202-433-2613

Deputy Naval Inspector General
for Marine Corps Matters
Washington, DC 20380
1-703-614-1348/9/1698
Fax 1-703-697-6690

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***For More Information Write To:
Defense Hotline, The Pentagon
Washington, DC 20301-1900***

or

***Contact Your Local Inspector General or
Legal Assistance Officer***

