



Department of Defense **DIRECTIVE**

NUMBER 7050.06
April 17, 2015

IG DoD

SUBJECT: Military Whistleblower Protection

References: See Enclosure 1

1. **PURPOSE.** This directive reissues DoD Directive (DoDD) 7050.06 (Reference (a)) to update established policies and assigned responsibilities for military whistleblower protection pursuant to section 1034 of Title 10, United States Code (U.S.C.) (Reference (b)).

2. **APPLICABILITY.** This directive applies to OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the DoD (referred to collectively in this directive as the “DoD Components”) and the Office of the Inspector General of the Department of Defense (IG DoD).

3. **POLICY.** It is DoD policy that:

a. Members of the Military Services (referred to in this directive as “Service members”) are free to make protected communications.

b. No person will restrict a Service member from making lawful communications to a member of Congress or an inspector general (IG).

c. Service members will be free from reprisal for making or preparing to make or being perceived as making or preparing to make a protected communication.

d. 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 Service member for making or preparing to make, or being perceived as making or preparing to make a protected communication.

e. No investigation is required when a Service member (hereinafter, use of “Service member” includes both current and former Service members) submits a reprisal complaint more than 1 year after the date that the member became aware of the personnel action that is the

subject of the allegation. However, an IG receiving a reprisal complaint more than 1 year later may consider the complaint based on compelling reasons or circumstances. These circumstances may include situations in which the Service member:

- (1) Was actively misled regarding his or her rights;
- (2) Was prevented in some extraordinary way from exercising his or her rights; or
- (3) Filed the same allegation within the 1 year period with the wrong office or agency.

4. RESPONSIBILITIES. See Enclosure 2.

5. RELEASABILITY. **Cleared for public release.** This directive is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

6. EFFECTIVE DATE. This directive is effective on April 17, 2015.



Robert O. Work
Deputy Secretary of Defense

Enclosures

1. References
2. Responsibilities

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 7050.06, "Military Whistleblower Protection," July 23, 2007 (hereby cancelled)
- (b) Title 10, United States Code
- (c) Title 5, United States Code
- (d) DoD Directive 5505.06, "Investigations of Allegations Against Senior DoD Officials," June 6, 2013
- (e) DoD Directive 5106.04, "Defense Inspectors General," May 22, 2014
- (f) DoD Instruction 6490.04, "Mental Health Evaluations of Members of the Military Services," March 4, 2013

ENCLOSURE 2
RESPONSIBILITIES

Unless otherwise expressly provided below, the responsibilities in this enclosure may be delegated in writing.

1. IG DoD. The IG DoD investigates or oversees DoD Component IG investigations of allegations that the prohibitions of restriction or reprisal of this directive have been violated. To ensure compliance with this directive and section 1034 of Reference (b), the IG DoD:

a. Determines if there is sufficient evidence to warrant an investigation of an allegation submitted to the IG DoD by a Service member that the prohibitions of restriction or reprisal have been violated. Within 30 days after the date of receipt of a complaint with sufficient evidence to warrant further investigation, IG DoD initiates an investigation or requests the DoD Component IG to initiate an investigation.

b. Reviews determinations by DoD Component IGs that investigation of an allegation is not warranted. Notifies the DoD Component IG of approval or concerns.

c. Ensures the investigating DoD Component IG:

(1) Is outside the immediate chain of command (as established under DoD Component regulations) of both the Service member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action; or

(2) Is at least one organization higher in the chain of command than the organization of the Service member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

d. Reviews the results of investigations into violations of restrictions and reprisals conducted by DoD Component IGs. Approves the results or ensures the DoD Component IG corrects inadequacies or initiates a follow-up investigation. Notifies DoD Component IG of approval.

e. Reports the results of the IG DoD investigation within 180 days after the date of receipt of an allegation of reprisal or restriction. The report will include:

(1) A thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the course of investigation, and summaries or transcripts of interviews conducted.

(2) Recommendations for an appropriate remedy for the whistleblower in a substantiated case.

f. If a report of the IG DoD investigation cannot be issued within 180 days, notifies the Under Secretary of Defense for Personnel and Readiness (USD(P&R)), the Secretary of the Military Department concerned, and the Service member of the reasons for the delay and of the time when the report will be issued.

g. Conducts or requests a DoD Component IG to conduct a separate investigation of the underlying allegations contained in the protected communication when:

(1) An investigation has not been initiated; or

(2) An investigation of the allegation(s) contained in the protected communication has been conducted, and the IG DoD determines that the investigation was biased or inadequate.

h. Maintains reports on the results of the IG DoD investigation of restriction, reprisal, or underlying allegations and is responsible for transmitting the reports to the USD(P&R), the Secretary of the Military Department concerned, and the Service member not later than 30 days after the completion of the investigation; and when requested, transmits a copy of the documents acquired during the investigation and summaries or transcripts of testimony to the Service member. Ensures the copy of the report and supporting documents released to the Service member includes the maximum disclosure of information possible, with the exception of information that is not required to be disclosed in accordance with section 552 of Title 5, U.S.C. (Reference (c)).

i. Advises the Service member concerned that he or she may request review of the matter by a Board for Correction of Military Records (BCMR).

j. At the request of a BCMR, submits a copy of the report on the results of the investigation and gathers further evidence.

2. USD(P&R). On behalf of the Secretary of Defense, the USD(P&R):

a. Reviews reports on the results of investigations conducted pursuant to this directive and section 1034 of Reference (b).

b. Within 90 days of receipt of an appeal of a decision pursuant to this directive:

(1) Reviews the final decision of the Secretary of the Military Department concerned on applications for correction of military records decided in accordance with this directive and section 1034 of Reference (b).

(2) Decides whether to uphold or reverse the decision of the Secretary of the Military Department concerned. The decision of the USD(P&R) is final within the Department of Defense.

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

d. Notifies the IG DoD and Military Department IG concerned of decisions made on appeals pursuant to this directive to the Secretary of Defense.

3. DoD COMPONENT HEADS. The DoD Component heads:

a. Will maintain regulations governing civilian employees that makes any violation of the prohibitions of restriction and reprisal the basis for appropriate disciplinary action.

b. Direct that all allegations submitted in accordance with section 1034 of Reference (b) are thoroughly, objectively, and timely considered, and appropriate corrective actions are taken.

c. Direct that their respective IGs:

(1) Establish internal procedures for receiving, reporting, and investigating pursuant to this directive and section 1034 of Reference (b) allegations that the prohibitions of restriction and reprisal have been violated.

(2) Notify the IG DoD within 10 working days after receiving any allegation that the prohibitions of restriction or reprisal of this directive have been violated. Provide a copy of the written complaint to the IG DoD.

(3) Determine if there is sufficient evidence to warrant an investigation within 30 days of receipt of a restriction or reprisal allegation.

(4) Forward to the IG DoD any determination that there is not sufficient evidence to warrant investigation. If the IG DoD agrees with the determination, the DoD Component IG will notify the Service member making the allegation.

(5) Initiate an investigation when it has been determined investigation is warranted or upon the request of IG DoD. Forward reports on the results of investigation to the IG DoD for approval.

(6) Apply the provisions of DoDD 5505.06 (Reference (d)) when a reprisal or restriction allegation is made against a senior official of the DoD.

d. Ensure the investigating IG:

(1) Is outside the immediate chain of command (as established under DoD Component regulations) of both the Service member submitting the allegation(s) and the individual(s) alleged to have taken the retaliatory action; or

(2) Is at least one organization higher in the chain of command than the organization of the Service member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

e. Provide the IG DoD with the report of investigation within 150 days after the date of receipt of the allegation from the Service member by the DoD Component IG or IG DoD. Include in the report:

(1) A thorough review of the facts and circumstances relevant to the allegation(s), relevant documents acquired during the investigation, and summaries or transcripts of interviews conducted.

(2) Recommendations for an appropriate remedy for the whistleblower in a substantiated case.

f. If the report cannot be issued within 180 days after receipt of the allegation, notify the USD(P&R), IG DoD, the Secretary of the Military Department concerned, and the Service member of the reasons for the delay and an estimate of when the report will be issued.

g. Conduct a separate investigation of the underlying allegations contained in the protected communication when an investigation has not been initiated or an investigation of the allegation(s) contained in the protected communication has been conducted, and the DoD Component IG or IG DoD determines that the investigation was biased or inadequate.

h. Transmit a report on the results of the investigation of restriction, reprisal, or underlying allegations to the USD(P&R), the Secretary of the Military Department concerned, and the Service member not later than 30 days after IG DoD approval of the results of the investigation. If requested, transmit a copy of the documents acquired during the investigation and summaries or transcripts of testimony to the Service member. Ensure the copy of the report and supporting documents released to the Service member includes the maximum disclosure of information possible, with the exception of information not required to be disclosed pursuant to section 552 of Reference (c).

i. Advise the Service member that he or she may request review of the matter by a BCMR.

j. At the request of a BCMR, ensures the investigating IG submits a copy of the investigation report or gathers further evidence.

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

l. Publicize the content of this directive to ensure that members of the Military Services and other DoD personnel fully understand its scope and application.

4. SECRETARIES OF THE MILITARY DEPARTMENTS. In addition to the responsibilities in section 3 of this enclosure, the Secretaries of the Military Departments:

a. Will maintain regulations that make punishable, under Article 92 of chapter 47 of Reference (b) (also known and referred to in this directive as “the Uniform Code of Military Justice (UCMJ)”), any violation of the prohibitions of restriction and reprisal by persons subject to the UCMJ.

b. Not later than 30 days after receiving a report from or approved by IG DoD of a substantiated allegation, determine if there is sufficient basis to conclude the prohibition of restriction or reprisal of this directive has been violated.

c. When a prohibition has been violated:

(1) Order the record of the Service member corrected.

(2) Take any appropriate disciplinary or corrective action against the individual who committed the restriction or reprisal.

d. If an order for remedial, disciplinary, or corrective action is not appropriate, not later than 30 days after making the determination:

(1) Provide the Secretary of Defense and the Service member a notice of the determination and the reasons for not taking action.

(2) When appropriate, refer the report to the appropriate BCMR for further review.

e. Based on the IG report, take remedial action including assisting members in preparing an application to BCMR when implementation of the recommendations of the report requires action by a BCMR. Notify IG DoD of remedial action taken within 10 working days of taking action.

f. Ensure their respective BCMRs:

(1) Considers applications for the correction of military records at the request of a Service member who alleged restriction or reprisal.

(2) Establishes procedures to resolve such an application that as a minimum include:

(a) Reviewing the IG report submitted to the Secretary of the Military Department concerned.

(b) Requesting the IG DoD or the Military Department IG concerned to gather further evidence if needed.

(c) As appropriate, taking depositions, conducting an evidentiary hearing, examining and cross-examining witnesses, and receiving oral arguments.

(d) As appropriate, recommending to the Secretary of the Military Department concerned that disciplinary action be taken against the individual responsible for violations of the prohibitions.

(e) If the BCMR holds a hearing, the Service member who filed the application:

1. May be provided with representation by a judge advocate if:

a. The IG investigation finds the prohibition of reprisal has been violated.

b. The Judge Advocate General concerned determines that the Service member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case.

c. The Service member is not represented by outside counsel.

2. The Service member may examine witnesses through depositions, serve interrogatories, and request the production of evidence, including evidence in an IG investigative record not included in the report released to the Service member.

g. Issue a final decision on an application submitted to the BCMR in accordance with this directive within 180 days after the application is filed. If the Secretary of the Military Department fails to issue a final decision within that time, the Service member will be deemed to have exhausted the administrative remedies afforded by section 1552 of Reference (b).

h. Advise the Service member that he or she may request review of the matter by the USD(P&R) on behalf of the Secretary of Defense. The request must be made within 90 days after receipt of the Secretary of the Military Department's decision.

i. Order such action, consistent with the limitations in section 1552 and 1553 of Reference (b), to correct the record of a personnel action prohibited by section 1034 of Reference (b).

j. Notify the IG DoD, the USD(P&R), and the Military Department IG concerned of a decision on an application for the correction of military records received from a Service member pursuant to this directive.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

BCMR	Board for Correction of Military Records
DoDD	DoD Directive
IG	inspector general
IG DoD	Inspector General of the Department of Defense
UCMJ	Uniform Code of Military Justice
U.S.C.	United States Code
USD(P&R)	Under Secretary of Defense for Personnel and Readiness

PART II. DEFINITIONS

Unless otherwise noted, these definitions are for the purposes of this directive.

abuse of authority. An arbitrary or capricious exercise of power by a military member or a federal official or employee that adversely affects the rights of any person or results in personal gain or advantage to himself or herself or to preferred other persons.

audit, inspection, investigation, or law enforcement organizations. The IG DoD, the U.S. Army Audit Agency, the Naval Audit Service, the Air Force Audit Agency, and the Defense Contract Audit Agency. 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, and the Air Force Office of Special Investigations.

BCMR. Any board empowered pursuant to section 1552 of Reference (b) to recommend correction of military records to the Secretary of the Military Department concerned.

chain of command. The succession of commanding officers from a superior to a subordinate through which command is exercised; also the succession of officers, enlisted members, or civilian personnel through whom administrative control is exercised, including supervision and rating of performance. For members of the National Guard this also includes the Adjutant General and the Governor of the State.

gross mismanagement. A management action or inaction that creates a substantial risk of significant adverse impact on the agency's ability to accomplish its mission. The matter must be

significant and more than *de minimis* wrongdoing or simple negligence. It does not include management decisions that are merely debatable among reasonable people.

gross waste of funds. An expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.

IGs. The IG DoD; the Military Department IGs (these include the Military Department IGs and IGs assigned or detailed under regulations of the Secretary of the Military Department concerned to serve at any command level in one of the Military Services); Defense IGs (as defined in DoDD 5106.04 (Reference (e))); an IG appointed under Appendix of Reference (c).

member of Congress. A U.S. Senator or Representative, delegate or resident Commissioner to the U.S. Congress, or a staff member of a Senator, Representative, or congressional committee, delegate, or resident Commissioner.

personnel action. Any action taken on a Service member that affects, or has the potential to affect, that member's current position or career. Such actions include promotion; disciplinary or other corrective action; transfer or reassignment; a performance evaluation; decisions concerning pay, benefits, awards, or training, relief and removal; separation; discharge; referral for mental health evaluations in accordance with DoD Instruction 6490.04 (Reference (f)); and any other significant change in duties or responsibilities inconsistent with the Service member's grade.

protected communication. The Table describes when a communication is protected.

remedial action. Appropriate relief to make the complainant whole, to include such action as is necessary to correct the record of a retaliatory personnel action.

reprisal. Taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making, preparing to make, or being perceived as making or preparing to make a protected communication.

restriction. Preventing or attempting to prevent a current Service member from making or preparing to make a lawful communication to a member of Congress or an IG.

Service member. A Regular or Reserve Component officer (commissioned and warrant) or enlisted member of the Army, the Navy, the Air Force, the Marine Corps, and the Coast Guard (when it is operating as a Service in the Navy) on active duty. A Reserve Component officer (commissioned and warrant) or enlisted member in any duty or training status, including officers and enlisted members of the National Guard.

unlawful discrimination. Discrimination on the basis of race, color, religion, sex, or national origin.

whistleblower. A Service member who makes, prepares to make, or is perceived as making or preparing to make a protected communication.

Table. Protected Communication

Type of Communication:	Conditions on Protection:	When made to:
Any communication	Must be a lawful communication	<ul style="list-style-type: none"> • A member of Congress or • An IG
<p>Any communication in which a Service member communicates information that he or she reasonably believes evidences:</p> <ul style="list-style-type: none"> • A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violations of section 920 through 920c of Reference (c) (articles 120 through 120c of the UCMJ), sexual harassment or unlawful discrimination; • Gross mismanagement, a gross waste of funds or other resources, an abuse of authority, or a substantial and specific danger to public health or safety; or • A threat by another Service member or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to Service members or civilians or damage to military, federal, or civilian property. 	<p>A communication will not lose its protected status because:</p> <ul style="list-style-type: none"> • The communication was made to a person who participated in the activity that the Service member complained of; • The communication revealed information that had been previously disclosed; • Of the Service member's motive for making the communication; • The communication was not in writing; • The communication was made while the Service member was off duty; or • The communication was made during the normal course of the Service member's duties. 	<ul style="list-style-type: none"> • A member of Congress; • An IG; • A member of a DoD audit, inspection, investigation, or law enforcement organization; • Any person or organization in the chain of command; • A court-martial proceeding; or • Any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.
<ul style="list-style-type: none"> • Testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication as described above; or • Filing, or causing to be filed, participating in, or otherwise assisting in a military whistleblower reprisal action. 		