



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 5370.7D
NAVINGEN
4 DEC 2014

SECNAV INSTRUCTION 5370.7D

From: Secretary of the Navy

Subj: MILITARY WHISTLEBLOWER PROTECTION

- Ref:
- (a) 10 U.S.C. §1034, The Military Whistleblower Protection Act, as amended through the National Defense Authorization Act of Fiscal Year 2014 (FY2014 NDAA)
 - (b) National Defense Authorization Act for Fiscal Year 2014, Section 1709, Prohibition of Retaliation Against Members of the Armed Forces for Reporting a Criminal Offense
 - (c) SECNAVINST 5430.92B, Assignment of Responsibilities to Counteract Fraud, Waste, and Related Improprieties Within the DON
 - (d) SECNAVINST 5370.5B, DON Hotline Program
 - (e) US Navy Regulations, 1990
 - (f) 5 U.S.C. Appx., Inspector General Act of 1978
 - (g) DoD Directive 7050.06, Military Whistleblower Protection of 23 July 2007
 - (h) DoD Instruction 6490.04, Mental Health Evaluations of Members of the Military Services of 4 March 2013
 - (i) 5 U.S.C. §552, the Freedom of Information Act (FOIA), as implemented by SECNAVINST 5720.42F, DON FOIA Program
 - (j) Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints of 7 November 2014 (no number, formerly IGDG 7050.6DI of 6 February 1996)
 - (k) SECNAVINST 5800.12B, Investigation of Allegations Against Senior Officials of the DON

- Encl:
- (1) Definitions
 - (2) Background
 - (3) Responsibilities and Procedures

1. Purpose. To implement amendments to reference (a) and to implement reference (b). This instruction is a significant revision and should be read in its entirety.

2. Cancellation. SECNAVINST 5370.7C.

3. Definitions. Terms used in this instruction are defined in enclosure (1).

4. Applicability

a. This instruction applies to the Office of the Secretary of the Navy (SECNAV), the Chief of Naval Operations, the Commandant of the Marine Corps, and all U.S. Navy and U.S. Marine Corps installations, commands, activities and field offices, all other organizational entities within the Department of the Navy (DON), all personnel assigned to these entities, and DON service members, as defined in enclosure (1) who are serving outside of the DON.

b. The protections in references (a), (b), and this instruction apply to all service members. Enclosure (2) provides background information.

c. The restrictions in references (a), (b), and this instruction apply to all service members and to all DON civilian personnel.

d. The boldface language in paragraphs 5d through 5f of this instruction constitutes regulatory orders that are applicable to all service members and 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 DON civilian personnel is punishable under regulations governing disciplinary or adverse action.

5. Policy

a. Service members shall be free to make a protected communication to a member of Congress; an inspector general (IG); a member of a Department of Defense (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 command regulations or other established administrative procedures for such communications. Service members shall also be free to provide testimony or otherwise participate in or assist with an investigation or proceeding

involving a protected communication. Navy regulations and instructions contain provisions that permit or require DON personnel to report suspected impropriety, including criminal offenses.

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

(2) Reference (e) includes guidance 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.

b. Per § 1137 of reference (e), DON service members are required to report known violations of the UCMJ which come under their observation. Per references (c), (d) and Section 7 of reference (f), all DON personnel should report suspected violations of law or regulation, fraud, waste, or mismanagement, to proper authority.

c. All service members and DON personnel who report to proper authority those acts or omissions they reasonably believe to be violations of law or regulation, fraud, waste, or mismanagement, shall be free from reprisal and retaliation.

d. No person shall restrict or attempt to restrict service members from making lawful communications to a member of Congress or an IG.

e. Service members and DON personnel shall not 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 who is perceived as making or preparing to make, a protected communication.

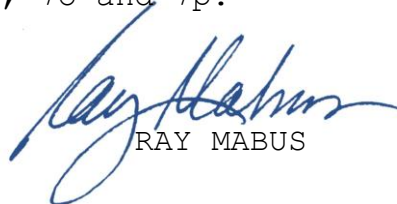
f. Service members and DON personnel shall not retaliate against a service member because the member reported a criminal offense.

6. Responsibilities. Responsibility for implementing the policy established in this instruction appears in enclosure (3). SECNAV responsibilities set forth in reference (a) are hereby delegated to the Assistant Secretary of the Navy, Manpower and Reserve Affairs (ASN (M&RA)), who may redelegate that authority to only the Principal Deputy ASN (M&RA).

7. Procedures. Enclosure (3) provides information about procedures for receiving and investigating reprisal complaints.

8. Records Management. Records created as a result of this instruction, regardless of media and format, shall be managed per SECNAV Manual 5210.1 of January 2012.

9. Reports. The reports required in paragraph 5(a)1; enclosure 1, paragraph 14; enclosure 2, paragraph 5d; enclosure 2, paragraph 5e; enclosure 2, paragraph 5f, enclosure 2, paragraph 6b; enclosure 3, paragraph 1g; enclosure 3; paragraph 1k, enclosure 3, paragraph 2b, enclosure 3, paragraph 6a; enclosure 3, paragraph 1b; and enclosure 3, paragraph 8 are exempt from reports control per SECNAV M-5214.1 of December 2005, Part IV, paragraphs 7c, 7g, 7j, 7k, 7o and 7p.



RAY MABUS

Distribution:

Electronic only, via Department of the Navy Issuances Web site
<http://doni.documentservices.dla.mil>

DEFINITIONS

1. Abuse of Authority: An arbitrary or capricious exercise of power by a service 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.

2. Appropriate Authority: To qualify for protection under references (a), (b), or this instruction, a protected communication must be made to:

- a. A member of Congress;
- b. An IG (as defined in this enclosure) or any other IG appointed under reference (f);
- c. A member of a DoD audit, inspection, investigation, or law enforcement organization;
- d. Any person or organization in the chain of command;
- e. A court-martial proceeding;
- f. Any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or
- g. Any person conducting an investigation or proceeding related to a protected communication.

3. Chain of Command: For the purposes of this instruction, includes not only the succession of commanding officers from a superior to a subordinate through which command is exercised, but also the succession of officers, enlisted members, or civilian personnel through whom administrative control is exercised, including supervision and rating of performance.

4. Criminal Offense: An act or omission punishable under the UCMJ, or other federal, state, or local criminal law.

5. DON Personnel: DON Service members, as defined in paragraph 16 of this enclosure, and DON civilian personnel.

6. 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.

7. Gross Waste of Funds: A more than debatable expenditure that is significantly out of proportion to the benefit reasonably expected to accrue to the government.

8. Inspector General: Included are any of the following:

a. The IG of the DoD (IG DoD); the IG of the Department of Homeland Security, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy; and any other IG appointed under Appendix 3 of reference (f);

b. The Military Department IGs, which consist of the IG of the Army; the Naval Inspector General (the Naval IG); the IG of the Air Force; and the Deputy Naval IG for Marine Corps Matters (IGMC);

c. IGs within the Military Departments, which consist of any officer of the Armed Forces or employee of the DoD, other than a Military Department IG, who is assigned or detailed to serve as an IG at any level in one of the Military Departments; and

d. DoD Component IGs, which consist of IGs assigned or detailed at any command level in one of the DoD Components other than the Military Departments.

9. Lawful Communication: Any communication containing information that a service member may release without violating any law, rule, or regulation. Whether a member has such authority may depend upon the position the member occupies.

10. Member of Congress: Included in this definition are senators and representatives, members of their staffs or of congressional committees, and any delegate or resident commissioner to Congress.

11. Personnel Action: Per reference (g), any action taken with respect to a service member that affects, or has the potential to affect, that 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 reference (h); and any other significant change in duties or responsibilities inconsistent with the service member's grade.

12. Protected Communication

a. A communication protected under references (a), (b), and this instruction is:

(1) a lawful communication by a service member to a member of Congress or an IG; or

(2) a communication in which a service member complains of, or discloses to appropriate authority such information that the member reasonably believes constitutes evidence of, any of the following:

(a) Any violation of law or regulation, including any criminal offense as that term is defined in this instruction; a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of 10 U.S.C. §920 through §920c (articles 120 through 120c of the UCMJ); sexual harassment; or unlawful discrimination.

(b) Gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety.

(c) 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 a service member or civilian or damage to military, Federal, or civilian property.

b. Such communications shall not be excluded from the protections provided in reference (a) or this instruction because:

(1) The communication was made to a person who participated in an activity the member reasonably believed to be covered by paragraph 12a of this enclosure;

(2) The communication revealed information that had previously been disclosed;

(3) Of the member's motive for making the communication;

(4) The communication was not made in writing;

(5) The communication was made while the member was off duty; or

(6) The communication was made during the normal course of duties of the member.

c. Providing testimony, or otherwise participating or assisting in an investigation or proceeding related to a protected communication, or filing, causing to be filed, participating in, or otherwise assisting in an action brought under references (a) or (b) also is a form of communication protected by reference (a).

13. Reprisal: Per reference (g), taking or threatening to take an unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, for making or preparing to make a protected communication. Per reference (a), making or threatening to make a significant change in the duties or responsibilities of a service member not commensurate with the member's grade is also prohibited.

14. Restrict (Restriction): Preventing or attempting to prevent a service member from making or preparing to make a lawful communication to a member of Congress and/or IG.

15. Retaliation

a. Per reference (b), retaliation against a service member is one of the following actions when taken because that member reported, either formally or informally, a criminal offense:

(1) Taking or threatening to take an unfavorable or adverse personnel action, or withholding or threatening to withhold a favorable personnel action;

(2) Ostracism, which is the exclusion from social acceptance, privilege, or friendship with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice; or

(3) Maltreatment, which is treatment by peers or by other persons, that, when viewed objectively under all the circumstances, is abusive or otherwise unwarranted, unjustified, and unnecessary for any lawful purpose, that is done with intent to discourage reporting of a criminal offense or otherwise discourage the due administration of justice, and that results in physical or mental harm or suffering, or reasonably could have caused, physical or mental harm or suffering. Maltreatment under this instruction does not require a senior-subordinate relationship as is required for maltreatment under Article 93, UCMJ.

b. This regulatory definition expands the minimum requirements of the definition set forth in reference (b) by extending the prohibition to "unfavorable" as well as "adverse" personnel actions. This expansion renders the personnel actions prohibited by reference (b) identical to those personnel actions prohibited by reference (a). Consequently, all the procedural requirements for processing alleged reprisal under reference (a) shall apply to the processing of alleged retaliatory personnel actions under reference (b). As stated in enclosure (3), allegations of retaliation in the form of ostracism or maltreatment prohibited by reference (b) shall be referred to the appropriate command for action except in those circumstances where IGs, in their discretion, determine the allegations should be handled by an IG.

16. Service Member (member of the Armed Forces as used in references (a) and (b)): Included in this definition are 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 DoD duty or function; and all other service members (as defined in reference (g)) who, although not in the Navy or Marine Corps, are assigned to a Navy or Marine Corps unit. Also included are members of the Coast Guard when the Coast Guard is operating as a service within the Navy, or when an individual member of the Coast Guard is

assigned to a Navy or Marine Corps unit. For former members of the Armed Forces, refer to reference (g).

17. Unlawful Communication: Any communication that contains information that a law, rule, or regulation would prohibit a service member from disclosing outside of the DoD, or to those within the DoD who do not have an official need for the information, or the requisite security clearance to receive the information. Such communication includes, but is not limited to, information that (1) is classified; (2) is a trade secret or commercial in nature; or (3) concerns a personal privacy interest. The communication of information that is exempt from release under reference (i) may be unlawful. Reference (a), like most whistleblower protection statutes, provides a mechanism for service members to bypass these restrictions by reporting such information to specific individuals identified in reference (a).

18. Unlawful Discrimination: Per reference (g), discrimination on the basis of color, national origin, race, religion, or sex, as also defined in reference (a).

BACKGROUND

1. Reference (a) provides that no person may restrict a service member from making a lawful communication to a member of Congress or IG. Reference (a) also prohibits reprisal against service members who:

a. Make "lawful" communications to members of Congress or IG; or

b. Make, prepare to make, or are perceived as making or preparing, communications to an appropriate authority as defined in paragraph 1 of enclosure (1), provided the member reasonably believes the information disclosed, or to be disclosed, constitutes evidence pertaining to matters described in subsection (c)(2) of reference (a) or the definition of protected communication in paragraph 12 of enclosure (1). Such communications may be "lawful" or "unlawful" as those terms are defined in enclosure (1).

c. Provide testimony, or otherwise participate in or assist with an investigation, or proceeding involving a protected communication.

2. References (a) and (b) do not immunize service 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. Nothing in this instruction shall be construed as imposing a requirement that DON personnel incriminate themselves.

3. Reference (a) gives specific procedural rights to service members who allege reprisal for making a protected communication only if the member submits the complaint of reprisal to an IG, as defined in enclosure (1).

4. Reference (a) requires the Secretaries of the Military Departments to ensure the Military Department IGs establish internal procedures for receiving, reporting, and investigating complaints of reprisal. Enclosure (3) of this instruction identifies those who may receive a complaint of reprisal and specifies the procedures they shall follow.

5. Procedures addressed in reference (a) include:

- a. Completion of the investigation within 180 days;
- b. Provision of a redacted copy of the report of investigation to the service member and, upon request, summaries of interviews and copies of documents acquired;
- c. Representation by a judge advocate when the investigation finds the prohibition of reprisal has been violated; a Board for Correction of Naval Records (BCNR) holds a hearing; and, when the service member is not represented by outside counsel, the Judge Advocate General or Staff Judge Advocate to the Commandant of the Marine Corps determines the service member would benefit from judge advocate assistance to ensure proper presentation of legal issues;
- d. Provision of a copy of the report of investigation to a Board for Correction of Military Records at the request of the Board, and IG assistance in gathering further evidence the Board may request;
- e. Action by the SECNAV upon receipt of a report of investigation that has been reviewed and approved by IG DoD;
- f. Review by the Secretary of Defense (SECDEF) of a SECNAV action under subsection (f) of reference (a); and
- g. Review by the BCNR when requested by SECNAV or the service member.

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

- a. Reference (a) protects "lawful" and "unlawful" communications concerning matters described in paragraph 1a, 1b, and 1c of this enclosure when made to any person or organization in the chain of command, or to any other person or organization designated under DON regulations, or other established administrative procedures to receive such communications.
- b. The protection afforded by reference (a) 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 use of the chain of command to address individual complaints and 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.

7. Responsibility to Base Allegations upon Reasonable Belief

a. To receive the protection of references (a), (b), and this instruction, personnel who make communications described in paragraph 1b of this enclosure must reasonably believe the information they disclose constitutes evidence of the type of matter described in subsection (c)(2) of reference (a) or the definition of protected communication in paragraph 12 of enclosure (1) of this instruction.

b. References (a) and (j) provide that the motive for reporting the initial matter is not an issue in a reprisal investigation. It is irrelevant whether the complainant is motivated by a sense of duty or regulatory requirement, or reports the matter in retaliation against the chain of command or another official. The investigator should consider only the motives for taking or withholding a personnel action. However, references (a) and (j) also require the complainant act upon a "reasonable belief" in reporting the initial matter. Should an investigator determine that the complainant intentionally made false statements or misrepresented the truth in a protected communication or other disclosure of a matter, it is appropriate to refer the complainant for appropriate command action and close the reprisal investigation. Before taking such action, the investigator shall obtain the concurrence of the Naval IG or the IGMC, as appropriate. Similarly, section 7 of reference (f) prohibits unfavorable personnel actions "unless the complaint was made or the information disclosed with the knowledge that it was false or with willful disregard for its truth or falsity."

4 DEC 2014

RESPONSIBILITIES AND PROCEDURES

1. The Naval IG and the IGMC have overall responsibility for assisting SECNAV in ensuring full implementation of reference (a) and the part of reference (b) that prohibits retaliation in the form of an unfavorable personnel action for reporting, or preparing to report, a criminal offense. For convenience, further reference to reprisal in this enclosure shall include retaliation prohibited by reference (b) that takes the form of an unfavorable personnel action. The Naval IG and the IGMC shall:

a. Establish the specific procedures they deem necessary for conducting reprisal investigations that are not inconsistent with the requirements of references (a), (b), (g), (h), (j), and this instruction, to include publication of guidance on what does, and does not, constitute a protected communication and an unfavorable personnel action within the meaning of references (a) and (b). To the extent practicable, the Naval IG and the IGMC shall coordinate such guidance with IG DoD.

b. Notify IG DoD within 10 days of receiving a complaint of reprisal. Conduct a preliminary analysis or inquiry or, at their discretion, direct an Echelon II IG or Command IG to conduct a preliminary inquiry that will enable the Naval IG or IGMC to determine whether there is sufficient evidence to conduct a full investigation. Report that decision to IG DoD within 30 days of receiving the complaint. In selecting Echelon II IGs or Command IGs to conduct specific reprisal investigations, the Naval IG and the IGMC may consider factors such as: the chain of command, location of subject, complainants and witnesses, travel costs, work load, operational factors, and conflicts of interest. However, the Naval IG and the IGMC tasking decisions are final.

c. Upon determining the evidence is sufficient to conduct a full investigation, or when requested by IG DoD, conduct, or direct an Echelon II IG or Command IG to conduct a reprisal investigation. Ensure only investigators with specialized training or experience conduct reprisal investigations. Because of the complexity of reprisal investigations, their statutory basis and the visibility often associated with them, the Naval IG and the IGMC may establish specific qualification requirements for reprisal investigators and certify reprisal investigators. Qualifications and guidance may be posted on Naval IG and IGMC websites. At a minimum, however, investigators should be qualified by temperament and experience to ensure compliance with references (a), (b), (g), (h), (j), and this instruction.

4 DEC 2014

d. Ensure that other DON IG personnel who receive complaints of reprisal from service members advise them of their rights under references (a), (b) and this instruction; document having provided that advice; offer to forward their complaints to IG DoD via the Naval IG or the IGMC; and offer to assist in preparing complaints that meet the content requirements of enclosure (3) of reference (g).

e. Determine whether a complaint has been made to a qualifying IG within 1 year of the service member becoming aware of the personnel action complained of and, if not, whether compelling reasons for the delay in submission or the strength of the evidence submitted warrants waiving the 1 year limitation on filing allegations of reprisal.

f. Ensure the investigator conducting a reprisal investigation under an IG DoD, Naval IG, or IGMC tasking requirement is outside the immediate chain of command of both the member submitting the allegation and the person(s) alleged to have engaged in reprisal or 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.

g. Ensure the investigator operating under IG DoD, Naval IG, or IGMC tasking requirement submits a draft of the preliminary inquiry or report of investigation to an attorney assigned to the Office of the General Counsel, or a Navy or Marine Corps judge advocate, for an appropriate legal sufficiency review.

h. Review and determine the adequacy of a reprisal investigation tasked by the IG DoD, the Naval IG, or the IGMC, ensuring that the investigation is conducted per references (g), (j), this instruction and such other investigative guidance as the Naval IG or the IGMC may provide. Ensure the report contains recommendations for an appropriate remedy for the service member. Provide the IG DoD the report of investigation for review within 150 days of receipt of the complaint of reprisal.

i. Take such other action as may be necessary to implement the policy set forth in paragraph 5 of this instruction and the requirements of paragraph 1 of this enclosure, including approval of requests for time extensions for conducting investigations, provision of redacted copies of reports of investigation, provision of advice and assistance to service members who seek correction of their naval records, and such additional investigative assistance as the BCNR or ASN (M&RA) may request.

4 DEC 2014

j. Not later than 7 days after the IG DoD completes or approves a report of investigation that concludes a personnel action prohibited by reference (a) has occurred, forward the report of investigation and, when applicable, the IG DoD approval memorandum to:

(1) The Chief of Naval Personnel (CNP) or Deputy Commandant Manpower & Reserve Affairs (DC M&RA), as appropriate, in order that they may take appropriate action to correct military records and then, within 30 days of the report's completion or approval by IG DoD, forward a report describing the action they have taken or explaining why they deem no corrective action is appropriate, to ASN (M&RA).

(2) The first flag officer, general officer, or member of the Senior Executive Service (SES) in the chain of command of any service member or civilian found to have taken a personnel action prohibited by reference (a), in order that they may consider appropriate administrative or disciplinary action against the service member or civilian and then, within 30 days of the report's completion or approval by IG DoD, forward to ASN (M&RA) a report describing the actions planned or taken, or explaining why they deem no administrative or disciplinary action is appropriate.

k. Not later than 30 days after the IG DoD completes or approves a report of investigation (whether or not it concludes a personnel action prohibited by reference (a) occurred), transmit a copy of the report of investigation and, when applicable, the IG DoD approval memorandum to the Secretary of Defense (SECDEF), ASN (M&RA) and the service member. The copy of the report provided to the service member may be redacted as allowed or required by reference (i) for provision to the general public. Upon request, transmit summaries of interviews conducted and documents collected during the investigation. Upon the service member's request, provide the service member similarly redacted summaries of interviews conducted and documents collected during the investigation.

l. Within 30 days of receiving notice that ASN (M&RA) has determined no administrative or disciplinary action is appropriate, notify the subject(s) of allegations contained in the report of investigation of that determination and that they may request a copy of the report of investigation under reference (i).

m. Upon receipt of allegations of retaliation in the form of ostracism or maltreatment prohibited by reference (b), refer those allegations to the appropriate command for action except in those

4 DEC 2014

circumstances where the IGs, in their discretion, determine that the allegations should be handled by an IG. Such circumstances would exist, for example, when either ostracism, maltreatment, or both is alleged to have occurred in addition to a retaliatory personnel action prohibited by reference (b) and the IG receiving the allegation determines it would be unreasonable to conduct two separate investigations, or, per reference (k), when a flag officer or member of the senior executive service is alleged to have engaged in the ostracism or maltreatment.

2. ASN (M&RA) (or Principal Deputy ASN (M&RA) if designated by ASN (M&RA)) shall:

a. Not later than 30 days after receiving from the Naval IG or the IGMC a report of investigation under reference (a) that has been completed or approved by the IG DoD determine:

(1) whether there is sufficient basis to conclude that a personnel action prohibited by reference (a) has occurred;

(2) whether any corrective action planned or taken by CNP or DC M&RA is appropriate;

(3) whether any administrative or disciplinary action planned or taken against the service member or civilian found to have taken a personnel action prohibited by reference (a) is appropriate; and

(4) order such other or additional corrective, administrative or disciplinary action as he or she deems appropriate.

b. Upon determining that no corrective, administrative or disciplinary action is appropriate, then, not later than 30 days after making such determination, provide SECDEF and the service member (regardless of current active-duty status) a notice of the determination and the reasons for not taking action. When appropriate, refer the report to the BCNR for further review under subsection (g) of reference (a).

c. Report decisions about corrective, administrative and/or disciplinary action to the Naval IG or the IGMC within 60 days of making the decision in order that they may report the results to the IG DoD.

d. Within 180 days after a service member or former service member submits to the BCNR an application for the correction of

4 DEC 2014

military records that alleges there was a personnel action prohibited by reference (a), issue a final decision on that application. The decision shall order such action, consistent with the limitations contained in 10 U.S.C. §1552 and §1553, as the ASN (M&RA) (or Principal Deputy ASN (M&RA) when designated) deems necessary to correct the record of a personnel action prohibited by reference (a). If ASN (M&RA) fails to issue a final decision within that time, the service member or former service member shall be deemed to have exhausted his or her administrative remedies under 10 U.S.C. §1552.

3. The Judge Advocate General of the Navy and the Staff Judge Advocate to the Commandant of the Marine Corps shall ensure that:

a. Judge advocates are made available to assist and advise service members of their rights and responsibilities under references (a) and (b), and this instruction, with emphasis on the procedures for making or preparing a communication that qualifies for protection under references (a) or (b), and for filing complaints of reprisal or retaliation for making, or preparing to make, a protected communication.

b. Judge advocates are made available to assist and advise commanders and commanding officers in meeting their responsibilities under this instruction, with emphasis on the provision of training designed to ensure compliance with references (a), (b), (g), (h), (j), and this instruction.

c. Judge advocates are made available to advise investigators and conduct reviews for legal sufficiency. These persons should be qualified by temperament and experience to ensure compliance with references (a), (b), (g), (h), and (j).

d. Judge advocates are made available to provide representation to the service member in a BCNR proceeding at the member's request when: (1) the investigation finds the prohibition of reprisal has been violated; (2) the service member is not represented by outside counsel; and (3) the Judge Advocate General or Staff Judge Advocate to the Commandant of the Marine Corps determines the member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case.

4. CNP or DC M&RA shall, within 30 days of the report's completion or approval by IG DoD, take appropriate action to correct military records and such other corrective action as they deem appropriate and forward a report describing the reasons for those actions to the ASN (M&RA) for review. Should they conclude

4 DEC 2014

no corrective action is appropriate, the report shall give reasons for that conclusion.

5. The first flag officer, general officer, or member of the Senior Executive Service (SES) in the chain of command of the individual(s) found to have taken a personnel action prohibited by reference (a) shall, within 30 days of the report's completion or approval by IG DoD, take or propose appropriate administrative or disciplinary action against the service member or civilian found to have taken a personnel action prohibited by reference (a) and shall forward a report describing the actions planned or taken, and the reasons for such actions, to the ASN (M&RA). Should they conclude no administrative or disciplinary action is appropriate, the report shall give reasons for that conclusion. When necessary to comply with applicable civilian personnel law, the member of the SES may refer the decision on administrative or disciplinary action to a lower level supervisor within the chain of command.

6. Commanders and Commanding Officers shall:

a. Take specific action to publicize the contents of references (a) and (b). At a minimum, they shall publicize the prohibitions of paragraphs 5d through 5f of this instruction, the definitions contained in enclosure (1), and the procedures for filing a complaint of reprisal.

b. Ensure that service members assigned to their command who make an allegation to them of reprisal or retaliation that may be prohibited under references (a) or (b) are advised in writing of their rights under references (a), (b), and this instruction; document the provision of such advice; offer to forward the complaint of reprisal under reference (a) or retaliation in the form of an unfavorable personnel action under reference (b) to the IG DoD, via the Naval IG (for members attached to a Navy activity), or the IGMC (for member attached to a Marine Corps activity); and forward the complaint upon the member's request.

c. Promptly investigate allegations of retaliation in the form of ostracism or maltreatment prohibited by reference (b) and this instruction made directly to them or forwarded to them for action by a DON IG. Refer the allegations to the next level in the chain of command for investigation when necessary to avoid the appearance of a lack of impartiality or objectivity of an investigation conducted under their direction. Upon conclusion of the investigation, take prompt corrective and/or accountability action as appropriate.

4 DEC 2014

d. Make personnel available to perform investigations and reviews for legal sufficiency. These persons should be qualified by temperament and experience to ensure compliance with references (a), (b), (g), (h), and (j).

e. Encourage trust in the chain of command and promote the policy underlying references (a) and (b) by ensuring independent, fair, impartial, and timely investigation and resolution of complaints of reprisal, ostracism, or maltreatment.

f. Take such other action, including periodic training, as may be necessary to meet the requirements of and implement the policy underlying references (a), (b), and this instruction.

7. 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 references (a), (b), or this instruction.

8. Echelon II IGs and Command IGs shall forward completed reports of preliminary inquiries and final investigations to the Naval IG or the IGMC, as appropriate, for review and transmission to IG DoD. Unless otherwise appropriate, these reports need not be forwarded via the investigating IG's chain of command. Reports of preliminary inquiries and final investigations shall be accompanied by a redacted copy of the report to give the service member and a memorandum from an attorney (assigned to the Office of General Counsel or a judge advocate authorized to conduct the review) indicating a legal review was performed and whether the attorney concurs in the findings, opinions, and conclusions in the report. The Naval IG and the IGMC may return preliminary inquiries and final investigations to the Echelon II IG or Command IG for additional work when, in their opinion, they are not complete or reach inappropriate conclusions.

9. Any officer of the Armed Forces or DoD employee who is assigned or detailed to serve as an IG or Command IG at any level in the DoD is, per reference (g), authorized to receive complaints of reprisal from naval personnel for the purpose of satisfying the 1 year filing deadline specified in reference (a) and shall immediately forward the complaint to IG DoD via the Naval IG, IGMC, or other senior level IG, as appropriate for endorsement and forwarding to IG DoD.

10. Any officer of the Armed Forces or DoD employee who is assigned or detailed to serve as an IG within the DON shall:

4 DEC 2014

a. Take particular care to ensure compliance with paragraphs 1c, 1d, 1f, and 1g of this enclosure.

b. Upon the receipt of allegations of retaliation in the form of ostracism or maltreatment prohibited by reference (b), refer them to the appropriate command for action except in those circumstances where the IGs, in their discretion, determine that the allegations should be handled by an IG. Such circumstances would exist, for example, when either ostracism, maltreatment, or both is alleged to have occurred in addition to a retaliatory personnel action prohibited by reference (b) and the IG receiving the allegation determines it would be unreasonable to conduct two separate investigations, or, per reference (k), when a flag officer or member of the senior executive service is alleged to have engaged in the ostracism or maltreatment.