

10 USC 1034: Protected communications; prohibition of retaliatory personnel actions

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From Title 10-ARMED FORCES

Subtitle A-General Military Law

PART II-PERSONNEL

CHAPTER 53-MISCELLANEOUS RIGHTS AND BENEFITS

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§1034. Protected communications; prohibition of retaliatory personnel actions

(a) Restricting Communications With Members of Congress and Inspector General Prohibited.-(1) No person may restrict a member of the armed forces in communicating with a Member of Congress or an Inspector General.

(2) Paragraph (1) does not apply to a communication that is unlawful.

(b) Prohibition of Retaliatory Personnel Actions.-(1) No person may take (or threaten to take) an unfavorable personnel action, or withhold (or threaten to withhold) a favorable personnel action, as a reprisal against a member of the armed forces for making or preparing or being perceived as making or preparing-

(A) a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted;

(B) a communication that is described in subsection (c)(2) and that is made (or prepared to be made) to-

(i) a Member of Congress;

(ii) an Inspector General (as defined in subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978;

(iii) a member of a Department of Defense audit, inspection, investigation, or law enforcement organization;

(iv) any person or organization in the chain of command;

(v) a court-martial proceeding; or

(vi) any other person or organization designated pursuant to regulations or other established administrative procedures for such communications; or

(C) testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication under subparagraph (A) or (B), or filing, causing to be filed, participating in, or otherwise assisting in an action brought under this section.

(2)(A) The actions considered for purposes of this section to be a personnel action prohibited by this subsection shall include any action prohibited by paragraph (1), including any of the following:

(i) The threat to take any unfavorable action.

(ii) The withholding, or threat to withhold, any favorable action.

(iii) The making of, or threat to make, a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade.

(iv) The failure of a superior to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates against a member.

(v) The conducting of a retaliatory investigation of a member.

(B) In this paragraph, the term "retaliatory investigation" means an investigation requested, directed, initiated, or conducted for the primary purpose of punishing, harassing, or ostracizing a member of the armed forces for making a protected communication.

(C) Nothing in this paragraph shall be construed to limit the ability of a commander to consult with a superior in the chain of command, an inspector general, or a judge advocate general on the disposition of a complaint against a member of the armed forces for an allegation of collateral misconduct or for a matter unrelated to a protected communication. Such consultation shall provide an affirmative defense against an allegation that a member requested, directed, initiated, or conducted a retaliatory investigation under this section.

(c) Inspector General Investigation of Allegations of Prohibited Personnel Actions.-(1) If a member of the armed forces submits to an Inspector General an allegation that a personnel action prohibited by subsection (b) has

been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall take the action required under paragraph (4).

(2) A communication described in this paragraph is a communication in which a member of the armed forces complains of, or discloses information that the member reasonably believes constitutes evidence of, any of the following:

(A) A violation of law or regulation, including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice), 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 member of the armed forces or employee of the Federal Government that indicates a determination or intent to kill or cause serious bodily injury to members of the armed forces or civilians or damage to military, Federal, or civilian property.

(3) A communication described in paragraph (2) shall not be excluded from the protections provided in this section because-

(A) the communication was made to a person who participated in an activity that the member reasonably believed to be covered by paragraph (2);

(B) the communication revealed information that had previously been disclosed;

(C) of the member's motive for making the communication;

(D) the communication was not made in writing;

(E) the communication was made while the member was off duty; and

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

(4)(A) An Inspector General receiving an allegation as described in paragraph (1) shall expeditiously determine, in accordance with regulations prescribed under subsection (h), whether there is sufficient evidence to warrant an investigation of the allegation.

(B) If the Inspector General receiving such an allegation is an Inspector General within a military department, that Inspector General shall promptly notify the Inspector General of the Department of Defense of the allegation. Such notification shall be made in accordance with regulations prescribed under subsection (h).

(C) If an allegation under paragraph (1) is submitted to an Inspector General within a military department and if the determination of that Inspector General under subparagraph (A) is that there is not sufficient evidence to warrant an investigation of the allegation, that Inspector General shall forward the matter to the Inspector General of the Department of Defense for review.

(D) Upon determining that an investigation of an allegation under paragraph (1) is warranted, the Inspector General making the determination shall expeditiously investigate the allegation. In the case of a determination made by the Inspector General of the Department of Defense, that Inspector General may delegate responsibility for the investigation to an appropriate Inspector General within a military department.

(E) If the Inspector General makes a preliminary determination in an investigation under subparagraph (D) that, more likely than not, a personnel action prohibited by subsection (b) has occurred and the personnel action will result in an immediate hardship to the member alleging the personnel action, the Inspector General shall promptly notify the Secretary of the military department concerned or the Secretary of Homeland Security, as applicable, of the hardship, and such Secretary shall take such action as such Secretary considers appropriate.

(F) In the case of an investigation under subparagraph (D) within the Department of Defense, the results of the investigation shall be determined by, or approved by, the Inspector General of the Department of Defense (regardless of whether the investigation itself is conducted by the Inspector General of the Department of Defense or by an Inspector General within a military department).

(5) Neither an initial determination under paragraph (4)(A) nor an investigation under paragraph (4)(D) is required in the case of an allegation made more than one year after the date on which the member becomes aware of the personnel action that is the subject of the allegation.

(6) The Inspector General of the Department of Defense, or the Inspector General 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), shall ensure that the Inspector General conducting the investigation of an allegation under this subsection is one or both of the following:

(A) Outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action.

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

(d) Inspector General Investigation of Underlying Allegations.-Upon receiving an allegation under subsection (c), the Inspector General receiving the allegation shall conduct a separate investigation of the information that the member making the allegation believes constitutes evidence of wrongdoing (as described in subparagraph (A), (B), or (C) of subsection (c)(2)) if there previously has not been such an investigation or if the Inspector

General determines that the original investigation was biased or otherwise inadequate. In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned.

(e) Reports on Investigations.- (1) After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(F), the Inspector General conducting the investigation shall submit a report on the results of the investigation to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary 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 shall transmit a copy of the report on the results of the investigation to the member of the armed forces who made the allegation investigated. The report shall be transmitted to such Secretaries, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(4)(E).

(2) In the copy of the report transmitted to the member, the Inspector General shall ensure the maximum disclosure of information possible, with the exception of information that is not required to be disclosed under section 552 of title 5. However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member.

(3)(A) Not later than 180 days after the commencement of an investigation of an allegation under subsection (c)(4), and every 180 days thereafter until the transmission of the report on the investigation under paragraph (1) to the member concerned, the Inspector General conducting the investigation shall submit a notice on the investigation described in subparagraph (B) to the following:

- (i) The member.
- (ii) The Secretary of Defense.
- (iii) The Secretary of the military department concerned, or the Secretary 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.

(B) Each notice on an investigation under subparagraph (A) shall include the following:

- (i) A description of the current progress of the investigation.
- (ii) An estimate of the time remaining until the completion of the investigation and the transmittal of the report required by paragraph (1) to the member concerned.

(4) The report on the results of the investigation shall contain a thorough review of the facts and circumstances relevant to the allegation and the complaint or disclosure and shall include documents acquired during the course of the investigation, including summaries of interviews conducted. The report may include a recommendation as to the disposition of the complaint.

(f) Action in Case of Substantiated Violations.- (1) Not later than 30 days after receiving a report from the Inspector General under subsection (e), the Secretary of Homeland Security or the Secretary of the military department concerned, as applicable, shall determine whether corrective or disciplinary action should be taken. If the Secretary concerned determines that corrective or disciplinary action should be taken, the Secretary shall take appropriate corrective or disciplinary action.

(2) If the Inspector General determines that a personnel action prohibited by subsection (b) has occurred, the Secretary concerned shall-

- (A) order such action as is necessary to correct the record of a personnel action prohibited by subsection (b), including referring the report to the appropriate board for the correction of military records; and
- (B) submit to the Inspector General a report on the actions taken by the Secretary pursuant to this paragraph, and provide for the inclusion of a summary of the report under this subparagraph (with any personally identifiable information redacted) in the semiannual report to Congress of the Inspector General of the Department of Defense or the Inspector General of the Department of Homeland Security, as applicable, under section 5 of the Inspector General Act of 1978 (5 U.S.C. App.).

(3) If the Secretary concerned determines under paragraph (1) that an order for corrective or disciplinary action is not appropriate, not later than 30 days after making the determination, such Secretary shall-

- (A) provide to the Secretary of Defense and the member or former member a notice of the determination and the reasons for not taking action; and
- (B) when appropriate, refer the report to the appropriate board for the correction of military records for further review under subsection (g).

(g) Correction of Records When Prohibited Action Taken.- (1) A board for the correction of military records acting under section 1552 of this title, in resolving an application for the correction of records made by a member

or former member of the armed forces who has alleged a personnel action prohibited by subsection (b), on the request of the member or former member or otherwise, may review the matter.

(2) In resolving an application described in paragraph (1) for which there is a report of the Inspector General under subsection (e)(1), a correction board-

- (A) shall review the report of the Inspector General;
- (B) may request the Inspector General to gather further evidence;
- (C) may receive oral argument, examine and cross-examine witnesses, and take depositions; and
- (D) shall consider a request by a member or former member in determining whether to hold an evidentiary hearing.

(3) If the board holds an administrative hearing, the member or former member who filed the application described in paragraph (1)-

- (A) may be provided with representation by a judge advocate if-
 - (i) the Inspector General, in the report under subsection (e)(1), finds that there is probable cause to believe that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in subsection (c)(2);
 - (ii) the Judge Advocate General concerned determines that the member or former member would benefit from judge advocate assistance to ensure proper presentation of the legal issues in the case; and
 - (iii) the member is not represented by outside counsel chosen by the member; and

(B) may examine witnesses through deposition, serve interrogatories, and request the production of evidence, including evidence contained in the investigatory record of the Inspector General but not included in the report submitted under subsection (e)(1).

(4) The Secretary concerned shall issue a final decision with respect to an application described in paragraph (1) within 180 days after the application is filed. If the Secretary fails to issue such a final decision within that time, the member or former member shall be deemed to have exhausted the member's or former member's administrative remedies under section 1552 of this title.

(5) The Secretary concerned shall order such action, consistent with the limitations contained in sections 1552 and 1553 of this title, as is necessary to correct the record of a personnel action prohibited by subsection (b).

(6) If the Board determines that a personnel action prohibited by subsection (b) has occurred, the Board may recommend to the Secretary concerned that the Secretary take appropriate disciplinary action against the individual who committed such personnel action.

(h) Review by Secretary of Defense.-Upon the completion of all administrative review under subsection (f), the member or former member of the armed forces (except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) who made the allegation referred to in subsection (c)(1), if not satisfied with the disposition of the matter, may submit the matter to the Secretary of Defense. The Secretary shall make a decision to reverse or uphold the decision of the Secretary of the military department concerned in the matter within 90 days after receipt of such a submittal.

(i) Regulations.-The Secretary of Defense, and the Secretary of Homeland Security with respect to the Coast Guard when it is not operating as a service in the Navy, shall prescribe regulations to carry out this section.

(j) Definitions.-In this section:

- (1) The term "Member of Congress" includes any Delegate or Resident Commissioner to Congress.
- (2) The term "Inspector General" means any of the following:
 - (A) The Inspector General of the Department of Defense.
 - (B) The Inspector General 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.
 - (C) Any officer of the armed forces or employee of the Department of Defense who is assigned or detailed to serve as an Inspector General at any level in the Department of Defense.

(3) The term "unlawful discrimination" means discrimination on the basis of race, color, religion, sex, or national origin.

(Aug. 10, 1956, ch. 1041, 70A Stat. 80 ; Pub. L. 98-525, title XIV, §1405(19)(A), (B)(i), Oct. 19, 1984, 98 Stat. 2622 ; Pub. L. 100-456, div. A, title VIII, §846(a)(1), Sept. 29, 1988, 102 Stat. 2027 ; Pub. L. 101-225, title II, §202, Dec. 12, 1989, 103 Stat. 1910 ; Pub. L. 103-337, div. A, title V, §531(a)-(g)(1), Oct. 5, 1994, 108 Stat. 2756-2758 ; Pub. L. 105-261, div. A, title IX, §933, Oct. 17, 1998, 112 Stat. 2107 ; Pub. L. 106-398, §1 [[div. A], title IX, §903], Oct. 30, 2000, 114 Stat. 1654 , 1654A-224; Pub. L. 107-296, title XVII, §1704(b)(1), Nov. 25, 2002, 116 Stat. 2314 ; Pub. L. 108-375, div. A, title V, §591(a), Oct. 28, 2004, 118 Stat. 1933 ; Pub. L. 110-181, div. A, title X, §1063(a)(8), Jan. 28, 2008, 122 Stat. 322 ; Pub. L. 112-81, div. A, title V, §523, Dec. 31, 2011, 125 Stat. 1401 ; Pub. L. 113-66, div. A, title XVII, §§1714, 1715, Dec. 26, 2013, 127 Stat. 964-966 ; Pub. L. 114-328, div. A, title V, §§531(a)-(d), 532(a), (b), Dec. 23, 2016, 130 Stat. 2118-2120 ; Pub. L. 115-91, div. A, title X, §1081(c)(2)(C), Dec. 12, 2017, 131 Stat. 1599 .)

Historical and Revision Notes

<i>Revised section</i>	<i>Source (U.S. Code)</i>	<i>Source (Statutes at Large)</i>
1034	50 App.:454(a) (last par.)	June 24, 1948, ch. 625, §4(a) (last par.); restated June 19, 1951, ch. 144, §1(d) (last par.), 65 Stat. 78 .

The words "prevented", "directly or indirectly", "concerning any subject", "or Members", and "and safety" are omitted as surplusage. The word "unlawful" is substituted for the words "in violation of law".

REFERENCES IN TEXT

The Inspector General Act of 1978, referred to in subsecs. (b)(1)(B)(ii) and (f)(2)(B), is *Pub. L. 95–452, Oct. 12, 1978, 92 Stat. 1101* , which is set out in the Appendix to Title 5, Government Organization and Employees.

AMENDMENTS

2017-Subsec. (c)(2)(A). *Pub. L. 115–91* substituted "section 920, 920b, 920c, or 930 of this title (article 120, 120b, 120c, or 130 of the Uniform Code of Military Justice)" for "sections 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice)".

2016-Subsec. (b)(2). *Pub. L. 114–328, §531(a)*, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "Any action prohibited by paragraph (1) (including the threat to take any unfavorable action, the withholding or threat to withhold any favorable action, or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade) shall be considered for the purposes of this section to be a personnel action prohibited by this subsection."

Subsec. (c)(4)(E), (F). *Pub. L. 114–328, §531(b)(1)*, added subpar. (E) and redesignated former subpar. (E) as (F).

Subsec. (e)(1). *Pub. L. 114–328, §531(b)(2)*, substituted "subsection (c)(4)(F)" for "subsection (c)(4)(E)".

Subsec. (e)(3). *Pub. L. 114–328, §531(c)*, amended par. (3) generally. Prior to amendment, par. (3) read as follows: "If, in the course of an investigation of an allegation under this section, the Inspector General determines that it is not possible to submit the report required by paragraph (1) within 180 days after the date of receipt of the allegation being investigated, the Inspector General shall provide to the Secretary of Defense and the Secretary of the military department concerned (or to the Secretary 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 to the member making the allegation a notice-

"(A) of that determination (including the reasons why the report may not be submitted within that time); and

"(B) of the time when the report will be submitted."

Subsec. (f). *Pub. L. 114–328, §532(a)(1)*, substituted "Substantiated Violations" for "Violations" in heading.

Subsec. (f)(1). *Pub. L. 114–328, §532(a)(2)*, substituted "corrective or disciplinary action should be taken. If the Secretary concerned determines that corrective or disciplinary action should be taken, the Secretary shall take appropriate corrective or disciplinary action." for "there is sufficient basis to conclude whether a personnel action prohibited by subsection (b) has occurred."

Subsec. (f)(2). *Pub. L. 114–328, §532(b)(1)*, substituted "the Inspector General determines" for "the Secretary concerned determines under paragraph (1)" and "the Secretary concerned shall" for "the Secretary shall" in introductory provisions.

Subsec. (f)(2)(A). *Pub. L. 114–328, §532(b)(2)*, inserted before semicolon ", including referring the report to the appropriate board for the correction of military records".

Subsec. (f)(2)(B). *Pub. L. 114–328, §532(b)(3)*, added subpar. (B) and struck out former subpar. (B) which read as follows: "take any appropriate disciplinary action against the individual who committed such prohibited personnel action."

Subsec. (g)(2). *Pub. L. 114–328, §531(d)*, amended par. (2) generally. Prior to amendment, par. (2) read as follows: "In resolving an application described in paragraph (1), a correction board-

"(A) shall review the report of the Inspector General submitted under subsection (e)(1);

"(B) may request the Inspector General to gather further evidence; and

"(C) may receive oral argument, examine and cross-examine witnesses, take depositions, and, if appropriate, conduct an evidentiary hearing."

2013-Subsec. (b)(1). Pub. L. 113–66, §1714(a)(1)(A), substituted "preparing or being perceived as making or preparing-" for "preparing-" in introductory provisions.

Subsec. (b)(1)(B)(v), (vi). Pub. L. 113–66, §1714(a)(1)(C), added cl. (v) and redesignated former cl. (v) as (vi).

Subsec. (b)(1)(C). Pub. L. 113–66, §1714(a)(1)(B), (C)(ii), (D), added subpar. (C).

Subsec. (b)(2). Pub. L. 113–66, §1714(a)(2), substituted a comma for "and" after "unfavorable action" and inserted ", or making or threatening to make a significant change in the duties or responsibilities of a member of the armed forces not commensurate with the member's grade" after "favorable action".

Subsec. (c)(1). Pub. L. 113–66, §1714(b)(1), substituted "paragraph (4)" for "paragraph (3)".

Subsec. (c)(2)(A). Pub. L. 113–66, §1715, substituted "rape, sexual assault, or other sexual misconduct in violation of sections 920 through 920c of this title (articles 120 through 120c of the Uniform Code of Military Justice), sexual harassment, or" for "sexual harassment or".

Subsec. (c)(3) to (6). Pub. L. 113–66, §1714(b)(2)–(5), added par. (3), redesignated former pars. (3) to (5) as (4) to (6), respectively, in par. (5), substituted "paragraph (4)(A)" for "paragraph (3)(A)", "paragraph (4)(D)" for "paragraph (3)(D)", and "one year" for "60 days", and in par. (6), substituted "one or both of the following:" and subpars. (A) and (B) for "outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action."

Subsec. (d). Pub. L. 113–66, §1714(c), substituted "subparagraph (A), (B), or (C) of subsection (c)(2)" for "subparagraph (A) or (B) of subsection (c)(2)".

Subsec. (e)(1). Pub. L. 113–66, §1714(d)(1), substituted "subsection (c)(4)(E)" for "subsection (c)(3)(E)" in two places and "transmitted to such Secretaries" for "transmitted to the Secretary" and inserted "and the Secretary of the military department concerned" after "the Secretary of Defense".

Subsec. (e)(3). Pub. L. 113–66, §1714(d)(2), inserted "and the Secretary of the military department concerned" after "the Secretary of Defense" in introductory provisions.

Subsec. (f). Pub. L. 113–66, §1714(e)(2), added subsec. (f). Former subsec. (f) redesignated (g).

Subsec. (g). Pub. L. 113–66, §1714(e)(1), (f), redesignated subsec. (f) as (g), and in par. (3), substituted "board holds" for "board elects to hold" in introductory provisions and "the member or former member would benefit from" for "the case is unusually complex or otherwise requires" in subpar. (A)(ii). Former subsec. (g) redesignated (h).

Subsecs. (h) to (j). Pub. L. 113–66, §1714(e)(1), redesignated subsecs. (g) to (i) as (h) to (j), respectively.

2011-Subsec. (c)(2)(C). Pub. L. 112–81 added subpar. (C).

2008-Subsec. (b)(2). Pub. L. 110–181 inserted "unfavorable" before "action and the withholding".

2004-Subsec. (b)(1)(B)(iv), (v). Pub. L. 108–375 added cls. (iv) and (v) and struck out former cl. (iv) which read as follows: "any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures for such communications."

2002-Subsecs. (c)(5), (e)(1), (3), (h), (i)(2)(B). Pub. L. 107–296 substituted "of Homeland Security" for "of Transportation".

2000-Subsec. (c)(3)(A). Pub. L. 106–398, §1 [[div. A], title IX, §903(a)], inserted ", in accordance with regulations prescribed under subsection (h)," after "shall expeditiously determine".

Subsec. (i)(2). Pub. L. 106–398, §1 [[div. A], title IX, §903(b)(1)], inserted "any of" after "means" in introductory provisions.

Subsec. (i)(2)(C) to (G). Pub. L. 106–398, §1 [[div. A], title IX, §903(b)(2), (3)], added subpar. (C) and struck out former subpars. (C) to (G) which read as follows:

"(C) The Inspector General of the Army, in the case of a member of the Army.

"(D) The Naval Inspector General, in the case of a member of the Navy.

"(E) The Inspector General of the Air Force, in the case of a member of the Air Force.

"(F) The Deputy Naval Inspector General for Marine Corps Matters, in the case of a member of the Marine Corps.

"(G) An officer of the armed forces assigned or detailed under regulations of the Secretary

concerned to serve as an Inspector General at any command level in one of the armed forces."

1998-Subsec. (b)(1)(B)(ii). Pub. L. 105-261, §933(f)(2), substituted "subsection (i)) or any other Inspector General appointed under the Inspector General Act of 1978" for "subsection (j))".

Subsec. (c)(1). Pub. L. 105-261, §933(a)(1)(A), added par. (1) and struck out former par. (1) which read as follows: "If a member of the armed forces submits to the Inspector General of the Department of Defense (or the Inspector General of the Department of Transportation, in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy) an allegation that a personnel action prohibited by subsection (b) has been taken (or threatened) against the member with respect to a communication described in paragraph (2), the Inspector General shall expeditiously investigate the allegation. If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action."

Subsec. (c)(2)(B). Pub. L. 105-261, §933(b), substituted "Gross mismanagement" for "Mismanagement".

Subsec. (c)(3) to (5). Pub. L. 105-261, §933(a)(1)(B), added pars. (3) to (5) and struck out former par. (3) which read as follows: "The Inspector General is not required to make an investigation under paragraph (1) in the case of an allegation made more than 60 days after the date on which the member becomes aware of the personnel action that is the subject of the allegation."

Subsec. (d). Pub. L. 105-261, §933(a)(2), inserted "receiving the allegation" after ", the Inspector General" and "In the case of an allegation received by the Inspector General of the Department of Defense, the Inspector General may delegate that responsibility to the Inspector General of the armed force concerned." at end.

Subsec. (e)(1). Pub. L. 105-261, §933(c)(1), substituted "After completion of an investigation under subsection (c) or (d) or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E), the Inspector General conducting the investigation shall submit a report on" for "Not later than 30 days after completion of an investigation under subsection (c) or (d), the Inspector General shall submit a report on" and inserted "shall transmit a copy of the report on the results of the investigation to" before "the member of the armed forces" and "The report shall be transmitted to the Secretary, and the copy of the report shall be transmitted to the member, not later than 30 days after the completion of the investigation or, in the case of an investigation under subsection (c) by an Inspector General within a military department, after approval of the report of that investigation under subsection (c)(3)(E)." at end.

Subsec. (e)(2). Pub. L. 105-261, §933(c)(2), substituted "transmitted" for "submitted" and inserted at end "However, the copy need not include summaries of interviews conducted, nor any document acquired, during the course of the investigation. Such items shall be transmitted to the member, if the member requests the items, with the copy of the report or after the transmittal to the member of the copy of the report, regardless of whether the request for those items is made before or after the copy of the report is transmitted to the member."

Subsec. (e)(3). Pub. L. 105-261, §933(c)(3), substituted "180 days" for "90 days".

Subsec. (h). Pub. L. 105-261, §933(f)(1), redesignated subsec. (i) as (h).

Pub. L. 105-261, §933(d), struck out heading and text of subsec. (h). Text read as follows: "After disposition of any case under this section, the Inspector General shall, whenever possible, conduct an interview with the person making the allegation to determine the views of that person on the disposition of the matter."

Subsec. (i). Pub. L. 105-261, §933(f)(1), redesignated subsec. (j) as (i). Former subsec. (i) redesignated (h).

Subsec. (j). Pub. L. 105-261, §933(f)(1), redesignated subsec. (j) as (i).

Subsec. (j)(2). Pub. L. 105-261, §933(e), substituted "means the following:" for "means-" in introductory provisions, added subpars. (A) to (F), redesignated former subpar. (B) as (G) and substituted "An officer" for "an officer" in that subpar., and struck out former subpar. (A) which read as follows: "an Inspector General appointed under the Inspector General Act of 1978; and".

1994-Pub. L. 103-337, §531(g)(1), substituted "Protected communications" for "Communicating

with a Member of Congress or Inspector General" in section catchline.

Subsec. (b). Pub. L. 103-337, §531(a), inserted "(1)" before "No person may take", substituted "or preparing-" for "or preparing a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted.", added subpars. (A) and (B), inserted "(2)" before "Any action prohibited", and substituted "paragraph (1)" for "the preceding sentence".

Subsec. (c). Pub. L. 103-337, §531(b)(3), substituted "Allegations of Prohibited Personnel Actions" for "Certain Allegations" in heading.

Subsec. (c)(1). Pub. L. 103-337, §531(b)(1), inserted at end "If, in the case of an allegation submitted to the Inspector General of the Department of Defense, the Inspector General delegates the conduct of the investigation of the allegation to the inspector general of one of the armed forces, the Inspector General of the Department of Defense shall ensure that the inspector general conducting the investigation is outside the immediate chain of command of both the member submitting the allegation and the individual or individuals alleged to have taken the retaliatory action."

Subsec. (c)(2). Pub. L. 103-337, §531(b)(2), added par. (2) and struck out former par. (2) which read as follows: "A communication described in this paragraph is a communication to a Member of Congress or an Inspector General that (under subsection (a)) may not be restricted in which the member of the armed forces makes a complaint or discloses information that the member reasonably believes constitutes evidence of-

"(A) a violation of a law or regulation; or

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

Subsec. (c)(4). Pub. L. 103-337, §531(c)(2), struck out par. (4) which read as follows: "If the Inspector General has not already done so, the Inspector General shall commence a separate investigation of the information that the member believes evidences wrongdoing as described in subparagraph (A) or (B) of paragraph (2). The Inspector General is not required to make such an investigation if the information that the member believes evidences wrongdoing relates to actions which took place during combat."

Subsec. (c)(5). Pub. L. 103-337, §531(d)(1), redesignated subsec. (c)(5) as subsec. (e)(1).

Subsec. (c)(6), (7). Pub. L. 103-337, §531(d)(4), redesignated subsec. (c)(6) and (7) as subsec. (e)(3) and (4), respectively.

Subsec. (d). Pub. L. 103-337, §531(c)(2), added subsec. (d). Former subsec. (d) redesignated (f).

Subsec. (e). Pub. L. 103-337, §531(d)(1), redesignated subsec. (c)(5) as subsec. (e) and inserted subsec. heading and par. (1) designation before "Not later than 30 days". Former subsec. (e) redesignated (g).

Subsec. (e)(1). Pub. L. 103-337, §531(d)(2), substituted "subsection (c) or (d)" for "this subsection" and "the member of the armed forces who made the allegation investigated" for "the member of the armed forces concerned" and struck out at end "In the copy of the report submitted to the member, the Inspector General may exclude any information that would not otherwise be available to the member under section 552 of title 5."

Subsec. (e)(2). Pub. L. 103-337, §531(d)(3), added par. (2).

Subsec. (e)(3). Pub. L. 103-337, §531(d)(4), (5), redesignated subsec. (c)(6) as subsec. (e)(3) and substituted "paragraph (1)" for "paragraph (5)".

Subsec. (e)(4). Pub. L. 103-337, §531(d)(4), redesignated subsec. (c)(7) as subsec. (e)(4).

Subsec. (f). Pub. L. 103-337, §531(c)(1), (f)(1), redesignated subsec. (d) as (f) and substituted "subsection (e)(1)" for "subsection (c)(5)" in pars. (2)(A), (3)(A)(i) and (B). Former subsec. (f) redesignated (h).

Subsec. (g). Pub. L. 103-337, §531(c)(1), (f)(2), redesignated subsec. (e) as (g) and substituted "subsection (f)" for "subsection (d)". Former subsec. (g) redesignated (i).

Subsecs. (h), (i). Pub. L. 103-337, §531(c)(1), redesignated subsecs. (f) and (g) as (h) and (i), respectively. Former subsec. (h) redesignated (j).

Subsec. (j). Pub. L. 103-337, §531(c)(1), (e), redesignated subsec. (h) as (j) and added par. (3).

1989-Subsec. (c)(1). Pub. L. 101-225, §202(1), inserted "when the Coast Guard is not operating as a service in the Navy" after "Coast Guard".

Subsec. (c)(5). Pub. L. 101-225, §202(2), inserted "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the

Navy)" after "Secretary of Defense".

Subsec. (c)(6). Pub. L. 101–225, §202(3), inserted "(or to the Secretary of Transportation in the case of a member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" after "Secretary of Defense".

Subsec. (e). Pub. L. 101–225, §202(4), inserted "(except for a member or former member of the Coast Guard when the Coast Guard is not operating as a service in the Navy)" after "armed forces".

1988-Pub. L. 100–456 substituted "Communicating with a Member of Congress or Inspector General; prohibition of retaliatory personnel actions" for "Communicating with a Member of Congress" in section catchline, and amended text generally. Prior to amendment, text read as follows: "No person may restrict any member of an armed force in communicating with a Member of Congress, unless the communication is unlawful or violates a regulation necessary to the security of the United States."

1984-Pub. L. 98–525 substituted "Member" for "member" in section catchline and text.

EFFECTIVE DATE OF 2017 AMENDMENT

Amendment by Pub. L. 115–91 effective immediately after the amendments made by div. E (§§5001–5542) of Pub. L. 114–328 take effect as provided for in section 5542 of that Act (10 U.S.C. 801 note), see section 1081(c)(4) of Pub. L. 115–91, set out as a note under section 801 of this title.

EFFECTIVE DATE OF 2016 AMENDMENT

Pub. L. 114–328, div. A, title V, §532(c), Dec. 23, 2016, 130 Stat. 2121 , provided that: "The amendments made by this section [amending this section] shall take effect on the date of the enactment of this Act [Dec. 23, 2016], and shall apply with respect to reports received by the Secretaries of the military departments and the Secretary of Homeland Security under section 1034(e) of title 10, United States Code, on or after that date."

EFFECTIVE DATE OF 2004 AMENDMENT

Pub. L. 108–375, div. A, title V, §591(b), Oct. 28, 2004, 118 Stat. 1933 , provided that: "The amendments made by this section [amending this section] apply with respect to any unfavorable personnel action taken or threatened, and any withholding of or threat to withhold a favorable personnel action, on or after the date of the enactment of this Act [Oct. 28, 2004]."

EFFECTIVE DATE OF 2002 AMENDMENT

Amendment by Pub. L. 107–296 effective on the date of transfer of the Coast Guard to the Department of Homeland Security, see section 1704(g) of Pub. L. 107–296, set out as a note under section 101 of this title.

EFFECTIVE DATE OF 1988 AMENDMENT

Pub. L. 100–456, div. A, title VIII, §846(d), Sept. 29, 1988, 102 Stat. 2030 , provided that: "The amendment to section 1034 of title 10, United States Code, made by subsection (a)(1), shall apply with respect to any personnel action taken (or threatened to be taken) on or after the date of the enactment of this Act [Sept. 29, 1988] as a reprisal prohibited by subsection (b) of that section."

REGULATIONS

Pub. L. 103–337, div. A, title V, §531(h), (i), Oct. 5, 1994, 108 Stat. 2758 , provided that:

"(h) Deadline for Regulations.-The Secretary of Defense and the Secretary of Transportation shall prescribe regulations to implement the amendments made by this section [amending this section] not later than 120 days after the date of the enactment of this Act [Oct. 5, 1994].

"(i) Content of Regulations.-In prescribing regulations under section 1034 of title 10, United States Code, as amended by this section, the Secretary of Defense and the Secretary of Transportation shall provide for appropriate procedural protections for the subject of any investigation carried out under the provisions of that section, including a process for appeal and review of investigative findings."

Pub. L. 100–456, div. A, title VIII, §846(b), Sept. 29, 1988, 102 Stat. 2030 , provided that: "The Secretary of Defense and the Secretary of Transportation shall prescribe the regulations required by subsection (g) [now (i)] of section 1034 of title 10, United States Code, as amended by subsection (a), not

later than 180 days after the date of the enactment of this Act [Sept. 29, 1988]."

UNIFORM STANDARDS FOR INSPECTOR GENERAL INVESTIGATIONS OF PROHIBITED PERSONNEL ACTIONS AND OTHER MATTERS

Pub. L. 114–328, div. A, title V, §531(e), Dec. 23, 2016, 130 Stat. 2120 , provided that:

"(1) In general.-Not later than one year after the date of the enactment of this Act [Dec. 23, 2016], the Inspector General of the Department of Defense shall prescribe uniform standards for the following:

"(A) The investigation of allegations of prohibited personnel actions under section 1034 of title 10, United States Code (as amended by this section), by the Inspector General and the Inspectors General of the military departments.

"(B) The training of the staffs of the Inspectors General referred to in subparagraph (A) on the conduct of investigations described in that subparagraph.

"(2) Use.-Commencing 180 days after prescription of the standards required by paragraph (1), the Inspectors General referred to in that paragraph shall comply with such standards in the conduct of investigations described in that paragraph and in the training of the staffs of such Inspectors General in the conduct of such investigations."

NOTICE TO CONGRESS OF CERTAIN DEPARTMENT OF DEFENSE NONDISCLOSURE AGREEMENTS

Pub. L. 112–239, div. A, title X, §1054, Jan. 2, 2013, 126 Stat. 1937 , provided that:

"(a) Notice Required.-The Secretary of Defense shall submit to the congressional defense committees [Committees on Armed Services and Appropriations of the Senate and the House of Representatives] notice of any request or requirement for members of the Armed Forces or civilian employees of the Department of Defense to enter into nondisclosure agreements that could restrict the ability of such members or employees to communicate with Congress. Each such notice shall include the following:

"(1) The basis in law for the agreement.

"(2) An explanation for the restriction of the ability to communicate with Congress.

"(3) A description of the category of individuals requested or required to enter into the agreement.

"(4) A copy of the language contained in the agreement.

"(b) Timing of Notification.-

"(1) Requests or requirements before date of enactment.-In the case of nondisclosure agreements described in subsection (a) that members or employees were first requested or required to enter into on or before the date of the enactment of this Act [Jan. 2, 2013], the notice required by subsection (a) shall be submitted not later than 60 days after the date of enactment.

"(2) Requests or requirements after date of enactment.-In the case of nondisclosure agreements described in subsection (a) that members or employees were first requested or required to enter into after the date of the enactment of this Act, the notice required by subsection (a) shall be submitted not later than 30 days after the date on which the Secretary first requests or requires that the members or employees enter into the agreements."

WHISTLEBLOWER PROTECTIONS FOR MEMBERS OF ARMED FORCES

Pub. L. 102–190, div. A, title VIII, §843, Dec. 5, 1991, 105 Stat. 1449 , provided that:

"(a) Regulations Required.-The Secretary of Defense shall prescribe regulations prohibiting members of the Armed Forces from taking or threatening to take any unfavorable personnel action, or withholding or threatening to withhold a favorable personnel action, as a reprisal against any member of the Armed Forces for making or preparing a lawful communication to any employee of the Department of Defense or any member of the Armed Forces who is assigned to or belongs to an organization which has as its primary responsibility audit, inspection, investigation, or enforcement of any law or regulation.

"(b) Violations by Persons Subject to the UCMJ.-The Secretary shall provide in the regulations that a violation of the prohibition by a person subject to chapter 47 of title 10, United States Code (the Uniform Code of Military Justice), is punishable as a violation of section 892 of such title (article 92 of the Uniform Code of Military Justice).

"(c) Deadline.-The regulations required by this section shall be prescribed not later than 180 days after the date of the enactment of this Act [Dec. 5, 1991]."

REPORT ON ACTIVITIES OF INSPECTOR GENERAL

Pub. L. 100-456, div. A, title VIII, §846(c), Sept. 29, 1988, 102 Stat. 2030 , directed Inspector General of Department of Defense (and Inspector General of Department of Transportation with respect to Coast Guard) to submit, not later than Feb. 1, 1990, a report to Congress on activities of Inspector General under this section, with that report to include, in the case of each case handled by Inspector General under this section, a description of (A) nature of allegation described in subsec. (c) of this section; (B) evaluation and recommendation of Inspector General with respect to allegation; (C) any action of appropriate board for correction of military records with respect to allegation; (D) if allegation was determined to be meritorious, any corrective action taken; and (E) views of member or former member of armed forces making allegation (determined on basis of interview under subsec. (f) of this section) on disposition of case.