

Foreword

This rapid action revision of the Guide is intended to describe best practices in light of changes made to 10 U.S.C. 1034 by the 2017 National Defense Authorization Act for Fiscal Year 2017 signed December 23, 2017. This guide replaces the “Green Guide” (IGDG 7050.6, cancelled). It describes best practices for conducting military reprisal and restriction intakes and investigations. Please refer to the most recent version of DoDD 7050.06, “Military Whistleblower Protection,” dated April 18, 2015 for policy and responsibilities for military whistleblower protection, to include notification requirements.

Changes to 10 U.S.C. 1034 include:

- New prohibited personnel actions and an affirmative defense. It is now a violation of 10 U.S.C. 1034 to conduct a retaliatory investigation of a member. The statute defines the term “retaliatory investigation” to mean 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. Commanders are not limited in their ability 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 provides an affirmative defense against an allegation that a member requested, directed, initiated, or conducted a retaliatory investigation under this section.
- A new requirement for Inspectors General to notify Service Secretaries early in a case under limited circumstances. If the Inspector General makes a preliminary determination in a reprisal investigation that, more likely than not, a personnel action prohibited by 10 U.S.C. 1034 has occurred and the personnel action will result in an immediate hardship to the member alleging the personnel action, the Inspector General is required to 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.
- There are new requirements for Inspectors General relating to “180 day letters.” Inspectors General are required to send a notice 180 days after the commencement of a whistleblower reprisal investigation and every 180 days thereafter until the report on the investigation is transmitted to the member concerned, The Inspector General conducting the investigation will submit a notice on the investigation described to the member, the Secretary of Defense,, and 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. The Each notice on an investigation under subparagraph (A) shall include a description of the current progress of the investigation and an estimate of the remaining until the completion of the investigation and the transmittal of the report.

- There are additional changes as to how cases are handled at the Service secretary level and how boards for correction of military records proceed.

In addition to the changes within 10 U.S.C. 1034, Congress added retaliation as a distinct crime under Article 132 of the Uniform Code of Military Justice

Questions and Comments: For questions or comments concerning this guide, please contact Steve Arntt at the Department of Defense Office of the Inspector General, 4800 Mark Center Drive, Alexandria, VA 22350-1500; telephone: (703) 699-5612; email: steve.arntt@dodig.mil.

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