



# INSPECTOR GENERAL

*U.S. Department of Defense*



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

PRESENTED BY: DOD OIG WHISTLEBLOWER PROTECTION COORDINATOR

Date: \_\_\_\_\_

**NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES**



# INSPECTOR GENERAL

*U.S. Department of Defense*

PRESENTED BY: KENNETH M. SHARPLESS

Date

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## **NONAPPROPRIATED FUND INSTRUMENTALITY EMPLOYEES THE LAW, RIGHTS, AND FILING PROCEDURES TITLE 10 U.S.C. § 1587**



# WHISTLEBLOWER PROTECTION COORDINATOR

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“The DoD’s ability to protect our warfighters and safeguard the taxpayer’s money depends on each of us. We rely heavily on our military members, civilian employees, and contractors to freely report issues of fraud, waste, and abuse without fear of retaliation. We all are potential whistleblowers and we should be aware of the protections afforded to us under the applicable statutes. It is a responsibility we can’t afford to dismiss!”

Ken Sharpless, DoD OIG WPC





# TOPICS

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- Whistleblower Protection History
- DoD OIG Whistleblower Protection Program
- Applicability
- Law and Protected Disclosures
- Processes and Procedures
- Filing a Complaint, Anonymity, Sensitive Material
- Alternative Dispute Resolution
- Additional References





# WHISTLEBLOWER PROTECTION HISTORY

- Congress wanted federal employees to report, without fear of retaliation, if they witnessed or otherwise became aware of fraud, misconduct, or other wrongdoing by federal officials, employees, contractors, or grantees
- Congress initially addressed whistleblower rights and protections for federal employees as part of the Civil Service Reform Act of 1978
- Protections updated and strengthened in the Whistleblower Protection Act of 1989 (WPA) provided Federal employees very specific rights and protections if they “blow the whistle” on waste, fraud, and abuse in the federal government and personnel actions are taken against them
- [Executive Order 12674](#), as amended, requires federal employees to, "disclose waste, fraud, abuse and corruption to appropriate authorities."
- The Whistleblower Protection Enhancement Act of 2012 broadened the scope for employee protections, and authorized an Ombudsman position to educate employees of each federal agency on their individual rights, responsibilities, and protections
- Congress passed the Whistleblower Protection Coordination Act in 2018 which renamed the Ombudsman to Whistleblower Protection Coordinator with similar responsibilities





# WHISTLEBLOWER PROTECTION PROGRAM

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- **The Whistleblower Protection Coordinator** is a designated individual who is required to educate agency (DoD) employees about whistleblower rights and protections, however is not an advocate for those who file a complaint
- **Department of Defense Hotline** Allegations of reprisal can be reported through the DoD Hotline at: [www.dodig.mil](http://www.dodig.mil)
- **Administrative Investigations, Directorate of Whistleblower Reprisal** is a team of specialized investigators and alternative dispute resolution attorneys that review, investigate, and mediate when feasible, reprisal allegations from military service members, employees of contractors and grantees, non-appropriated fund instrumentality employees, employees within the intelligence community and those having access to classified information, and appropriated fund employees. The directorate also has oversight responsibility for reprisal allegations and reports of investigations originating from the service components and defense agencies







# TITLE 10, U.S.C. § 1587

## APPLICABILITY

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- A civilian employee paid from nonappropriated funds of Army and Air Force Exchange Service, Navy Exchange Service Command, Marine Corps Exchanges, or any other instrumentality of the United States under the jurisdiction of the Armed Forces, which is conducted for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces
- Includes a civilian employee of a support organization within the Department of Defense or a Military Department, such as the Defense Finance and Accounting Service, who is paid from nonappropriated funds on account of the nature of the employee's duties
- The term "civilian employee" has the meaning given the term "employee" by Title 5, United States Code, Section 2105(a)





# TITLE 10, U.S.C. § 1587

## THE LAW AND PROTECTED DISCLOSURES

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- Any civilian employee or member of the armed forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, with respect to such authority, take or fail to take, or threaten to take or fail to take, a personnel action with respect to any nonappropriated fund instrumentality employee, or any applicant for a NAFI position, as a reprisal for;
- A disclosure of information in which the NAFI employee or applicant reasonably believes evidences;
  - a violation of any law, rule, or regulation; or
  - mismanagement,
  - a gross waste of funds,
  - an abuse of authority, or
  - a substantial and specific danger to public health or safety
- And such disclosure is not specifically prohibited by law and the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs







# TITLE 10, U.S.C. § 1587

## THE LAW AND PROTECTED DISCLOSURES

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Additionally,

A disclosure by a NAFI employee or applicant can be made to any civilian employee or member of the armed forces designated by law or by the Secretary of Defense to receive such disclosures of information, which the employee or applicant, reasonably believes evidences;

- a violation of any law, rule, or regulation; or
- mismanagement
- a gross waste of funds
- an abuse of authority, or
- a substantial and specific danger to public health or safety





# TITLE 10, U.S.C. § 1587

## PROCESS AND PROCEDURES

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- NAFI employees, former employees, or applicants may submit complaints of reprisal to the DoD Inspector General or other DoD Component Inspectors General
- When submitting a reprisal complaint, provide as much of the following information as possible
  - full name, grade, duty title, organization, duty location, email address, telephone numbers, and mailing address
  - the details of the personnel action that you allege to be in reprisal and a copy of the protected disclosure
  - details of the personnel action taken, threatened, or withheld that you allege to be in reprisal
  - indicate the names of responsible officials that took, threatened, or withheld the personnel action





# TITLE 10, U.S.C. § 1587

## PROCESS AND PROCEDURES

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### DoD OIG:

- Receives complaints of reprisal by NAFI employees, former employees, or applicants, and determines whether there is sufficient evidence to warrant an investigation
- Notifies the NAFI employee, former employee, or applicant if the DoD OIG determines that an investigation will not be conducted
- Conducts an investigation if it is determined that investigation of a complaint of reprisal is warranted
- Upon completion of the investigation, provides the NAFI employee, former employee, or applicant, and the Under Secretary of Defense for Personnel and Readiness and the Chief Management Officer (CMO) with a report of the investigation
- Protects the confidentiality of a NAFI employee, former employee, or applicant that made a protected disclosure, unless it is determined that the disclosure of the employee's, former employee's, or applicant's identity is necessary to resolve their complaints





# TITLE 10, U.S.C. § 1587

## FILING COMPLAINTS WITH DoD HOTLINE

- Report and resolve your complaint within the Inspector General (IG) system; you can also notify your local or command IG office
- You can file a complaint with the DoD Hotline: [www.dodig.mil](http://www.dodig.mil)
- Phone: 1-800-424-9098 (Call prior to submitting complaints via SIPRNET or JWICS or to ask general questions regarding submitting a complaint)
- Do not report the following through the DoD Hotline:

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| • 911 Emergencies                                  | • Personnel matters involving requests for individual relief                             | • DoD Contractor Compliance and Disclosure requirements |
| • Minor incidents of time and attendance abuse     | • Employment related grievances and complaints against management officials              | • Locating a military service member                    |
| • Minor incidents of theft of Government resources | • Complaints of EEO discrimination   | • Obtaining military records                            |
| • Minor incidents of misuse of Government vehicles | • Matters relating to the Uniform Code of Military Justice to include Article 15 appeals | • Child and spousal support matters                     |
| • Department of Defense job opportunities          | • Tricare complaints   | • Pay and allowance matters                             |
| • DoD Incentive Awards Program suggestions         |  | • Deceptive lending practices and other consumer fraud  |





# TITLE 10, U.S.C. § 1587

## ANONYMITY

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- You don't have to provide your name when making a protected disclosure. You can elect to remain anonymous or request your name not to be released
- If you remain anonymous, you cannot be contacted for additional information; it may not be possible to investigate your allegations, resulting in dismissal
- If an investigation is conducted, it is always possible your identity will become known during an inquiry or investigation due to the nature of the allegations
- If you provide your name and request it not be released, be aware there may be circumstances, usually related to litigation, when agencies are compelled to identify whistleblowers, or circumstances when identities must be disclosed for compelling reasons of health or safety





# TITLE 10, U.S.C. § 1587

## SENSITIVE OR CLASSIFIED MATERIAL

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- Disclosure of any information subject to specific non-disclosure statutes, orders, and agreements (for example trade secrets or national security and classified information) may only be made in accordance with law and regulations for the disclosure to be covered by Whistleblower protections and remedies
- Use the Secure Internet Protocol Router Network (SIPRNET) for complaints at the SECRET level
- Use the Joint Worldwide Intelligence Communications System (JWICS) for complaints involving TOP SECRET information
- For classified disclosures, go to [www.dodig.mil/Hotline/classifiedcomplaint.html](http://www.dodig.mil/Hotline/classifiedcomplaint.html) to learn how to report them to the DoD Hotline







# TITLE 10, U.S.C. § 1587

## SUBSTANTIATED INVESTIGATIONS

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- The DoD OIG concluded that three management officials at a Marine Corps base issued a warning notice and terminated a nonappropriated fund employee in reprisal for the employee making protected disclosures to senior management officials regarding mismanagement and abuse of authority by one of the three management officials
- The DoD OIG determined that a Federal civilian supervisor at an Air Force base discharged a nonappropriated fund instrumentality employee in reprisal for the employee reporting violations of rules and regulations to the chain of command and an Inspector General
- A Department of Navy GS-11 civilian employee admonished a nonappropriated fund instrumentality (NAFI) employee in reprisal for making protected disclosures to NAFI management officials about unsanitary conditions in a fitness center exercise room

Find Reports of Investigation at: [www.dodig.mil](http://www.dodig.mil)





# TITLE 10, U.S.C. § 1587

## IF YOU HAVE QUESTIONS

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- Contact the DoD Whistleblower Protection Coordinator, who is:
  - Responsible for educating all agency employees on responsibility of reporting fraud, waste, abuse and misconduct to appropriate authorities
  - Educating agency employees on the roles of agencies investigating allegations of reprisal
  - Educating agency employees about the rights and remedies against retaliation for protected disclosures under applicable statutes
- Prohibited from acting as a legal representative, agent, or advocate

Contact the Coordinator at [wpc@dodig.mil](mailto:wpc@dodig.mil)





# ALTERNATIVE DISPUTE RESOLUTION

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- Whistleblower Reprisal Investigations Directorate (WRI) offers alternative dispute resolution (ADR) for complaints filed by nonappropriated fund instrumentality employees and employees of Department of Defense contractors, subcontractors, grantees, subgrantees, and personal services contractors, and other qualified cases
- ADR is an informal, voluntary process in which parties may reach a resolution by using mediation or facilitated settlement negotiations prior to or during an otherwise lengthy investigation process
- Quicker than an investigation; less adversarial and more informal
- Allows parties to control and customize the resolution of the complaint, instead of a third party decision-maker
- During a mediation, a third-party neutral facilitates communication between the parties in dispute to assist in reaching a mutually-agreeable resolution





# Additional References

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- DoD Directive 1401.03, Nonappropriated Fund Instrumentality Employee Whistleblower Protection
- Member of the Armed Forces, Title 10, U.S.C. § 1034
- Appropriated Fund Employees, Title 5, U.S.C. § 2302
- Intelligence Community Employees or those having Access to Classified Information, PPD-19
- Employees of contractors, subcontractors, grantees, subgrantees, personal services contractors, Title 10, U.S.C. § 2409
- Review the statutes: click on [me](#)
- Review the guides on how to file: click on [me](#)





# KEY DEFINITIONS

Abuse of Authority	An arbitrary and capricious exercise of power by an employee or military member that adversely affects the rights of any person or that results in personal gain or advantage to himself or herself or to preferred other persons.
Applicant	Anyone who applies for employment as a NAFI employee as defined in section 1587 of Reference (b)
Corrective Action	Any action permitted by law that is deemed necessary by the CMO to make the complainant whole, such as reinstatement, promotion, reassignment, back pay; or changes in DoD Component rules, regulations, or practices
Disciplinary Action	An action against an offending employee or military member using the applicable action procedures, or a referral to the U.S. Attorney General of any evidence of criminal violation.
Reprisal	Taking or failing to take or threatening to take a personnel action because of a protected disclosure of information.





# KEY DEFINITIONS

Gross Waste of funds	An expenditure that is significantly out of proportion to the benefit expected to accrue to the government
Mismanagement	Wrongful or arbitrary and capricious actions that may have an adverse effect on the efficient accomplishment of the agency's mission
Protected Disclosure	A disclosure of information by an employee or applicant that the employee or applicant, reasonably believes evidences a violation of any law, rule, or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial and specific danger to public health or safety, if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs
Personnel Action	<p>With respect to a NAFI employee or applicant:</p> <ul style="list-style-type: none"><li>An appointment</li><li>A promotion</li><li>A disciplinary or corrective action</li><li>A detail, transfer, or reassignment</li><li>A reinstatement, restoration, or reemployment</li><li>A decision concerning pay, benefits, awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this section</li><li>Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level</li></ul>







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