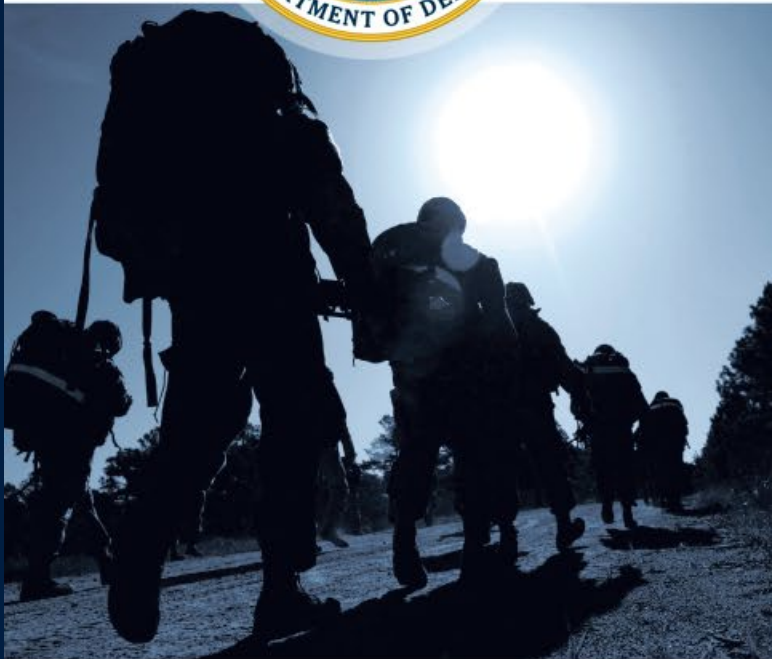




INSPECTOR GENERAL

U.S. Department of Defense



INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE

PRESENTED BY: WHISTLEBLOWER PROTECTION COORDINATOR

WHISTLEBLOWER PROTECTIONS



INSPECTOR GENERAL

U.S. Department of Defense

PRESENTED BY: KENNETH M.SHARPLESS

Date

PRESIDENTIAL POLICY DIRECTIVE-19

WITHOUT FEAR OF REPRISAL/RETALIATION

“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



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



DoD OIG WHISTLEBLOWER PROTECTION PROGRAM

- **Administrative Investigations (AI)**: helps ensure ethical conduct throughout the DoD by conducting investigations and overseeing DoD Component investigations of allegations of misconduct by senior DoD officials, whistleblower reprisal, and Service member restriction from communication with an IG or Member of Congress. AI also manages the DoD Hotline and the Contractor Disclosure Program, provides education and training on whistleblower protections through its Whistleblower Protection Coordinator, and facilitates voluntary resolution of whistleblower reprisal allegations through its Alternative Dispute Resolution program
- **Whistleblower Protection Coordinator (WPC)**: 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**: provides a confidential, reliable means to report violations of law, rule, or regulation; fraud, waste, and abuse; mismanagement; trafficking in persons; serious security incidents; or other criminal or administrative misconduct that involve DoD personnel and operations, without fear of reprisal. Allegations of reprisal can be reported through the DoD Hotline at: www.dodig.mil
- **Directorate of Whistleblower Reprisal (WRI)**: 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, nonappropriated 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
- **Alternative Dispute Resolution Program (ADR)**: the Whistleblower Reprisal Investigations Directorate (WRI) offers a voluntary alternative dispute resolution (ADR) for complaints filed by employees of nonappropriated fund instrumentalities employees and Department of Defense employees of contractors, subcontractors, grantees, sub-grantees, and personal services contractors, as well as certain other qualified types of cases in an effort to reach a resolution of a complaint through mediation or facilitated settlement negotiations prior to or during an otherwise lengthy investigation process



PRESIDENTIAL POLICY DIRECTIVE -19

- Ensures that employees serving in the Intelligence Community or who are eligible for access to classified information can effectively report waste, fraud, and abuse while protecting classified national security information
- Prohibits retaliation against employees for reporting waste, fraud, and abuse



PRESIDENTIAL POLICY DIRECTIVE-19 (PART A)

- Applies to DoD employees in Defense Civilian Intelligence Personnel System (DCIPS) positions and prohibits various actions, including traditional personnel actions as well as decisions to order psychiatric testing or examination, in reprisal for making certain protected disclosures
 - Specifically, Part A precludes any officer or employee of a covered agency who has the authority to take, direct others to take, recommend, or approve any personnel action, from taking or failing to take, threatening to take or failing to take, a personnel action on any employee serving in an Intelligence community element as a reprisal for their protected disclosure



PRESIDENTIAL POLICY DIRECTIVE -19 (PART B)

- Applies to any officer or employee of an executive branch agency who has authority to take, direct others to take, recommend, or approve any action affecting an employee's Eligibility for Access to Classified Information
 - Shall not take or fail to take, or threaten to take or fail to take, any action affecting an employee's eligibility for access to classified information as a reprisal for a protected disclosure



PRESIDENTIAL POLICY DIRECTIVE-19 (PROTECTED DISCLOSURES)

- Information the employee reasonably believes evidences a violation of any law, rule, or regulation; gross mismanagement; a gross waste of funds; an abuse of authority; a substantial and specific danger to public health or safety
- An employee exercising the right to appeal, file a complaint, or grievance with regard to a violation of part A or B of PPD-19; or lawfully participating in an investigation or proceeding regarding a violation of part A or B of this directive, are protected disclosures
- Cooperating with or disclosing information to an IG, in accordance with applicable provisions of law in connection with an audit, inspection, or investigation conducted by the IG, are protected disclosures



PRESIDENTIAL POLICY DIRECTIVE -19 (PROTECTED DISCLOSURES)

- Disclosures must be made to any of the following:
 - a supervisor in the employee's direct chain of command up to and including the head of the employing agency;
 - the IG of the employing agency or Intelligence Community Element;
 - the Director of National Intelligence
 - the IG of the Intelligence Community
 - an employee designated by any of the above officials for the purpose of receiving such disclosures



PRESIDENTIAL POLICY DIRECTIVE-19 (PART C)

- An employee alleging a reprisal who has exhausted the applicable review process either in Part A or Part B of PPD-19 has a statutory right under 50 U.S.C. § 3236 to request an external review by a three-member Inspector General panel chaired by the Inspector General of the Intelligence Community (ICIG)
- The ICIG will decide whether to convene an external review panel (ERP). If an ERP is convened, the ICIG will designate two other panel members from the Inspectors General of the following agencies: Departments of State, Treasury, Defense, Justice, Energy, Homeland Security, Central Intelligence Agency, Defense Intelligence Agency, National Geospatial-Intelligence Agency, National Reconnaissance Office, and the National Security Agency
- The Inspector General from the agency that completed the initial review or investigation will not be a member of the ERP. For example, if the DoD OIG conducted the PPD-19 investigation, they would not be a part of the review panel
- The ERP will complete a review of the request, which may consist of just a file review, within 270 days



PRESIDENTIAL POLICY DIRECTIVE-19 (PART C)

- If an ERP determines that the individual was the subject of a personnel action prohibited in Part A while an employee of a covered agency, or an action affecting their eligibility for access to classified information prohibited in Part B...
 - the panel can recommend the agency head take corrective action to return the employee, as nearly as practicable and reasonable, to the position the employee would have held had the reprisal not occurred
 - the panel can recommend agency head reconsider the employee's eligibility for access to classified information consistent with the national security and with Executive Order 12968
- The agency head must carefully consider the recommendation of the ERP within 90 days
 - agency head must inform the panel and the Director of National Intelligence (DNI) of what action was taken. If the agency head fails to inform the DNI, the DNI will notify the President



PRESIDENTIAL POLICY DIRECTIVE -19 (DEFINITIONS)

- **Covered Agency** means an executive department or independent establishment, as defined under sections 101 and 104 of title 5, United States Code, that contains or constitutes an Intelligence Community Element
- **Eligibility for Access to Classified Information** means the result of the determination whether an employee (a) is eligible for access to classified information in accordance with Executive Order 12968 (relating to access to classified information), or any successor thereto, and Executive Order 10865 of February 20, 1960, as amended (relating to safeguarding classified information with industry), or any successor thereto; and (b) possesses a need to know under such orders
- **Intelligence Community Element** means any executive agency or unit thereof determined by the President under section 2302 (a) (2) (C) (ii) of title 5, United States Code, to have as its principal function the conduct of foreign intelligence or counterintelligence activities, including but not limited to the Office of the DNI, the Central Intelligence Agency, the National Security Agency, the Defense Intelligence Agency, the National Geospatial-Intelligence Agency, and the National Reconnaissance Office



INTELLIGENCE COMMUNITY WHISTLEBLOWER PROTECTION ACT

- The ICWPA provides a secure means for employees to report “matters of urgent concern” regarding classified information to Congress
 - A process for an employee assigned to or a contractor working for the Defense Intelligence Agency, National Geospatial-Intelligence Agency, National Reconnaissance Office, and the National Security Agency to report matters of "urgent concern" to the intelligence committees of Congress
- Matters of urgent concern are defined as:
 - Serious or flagrant problems, abuse, or violation of law or executive order; deficiencies relating to the funding, administration, or operations of an intelligence activity involving classified information (but not including differences of opinion on public policy matters)
 - A false statement to Congress, or willful withholding from Congress, on an issue of material fact relating to the funding, administration, or operation of an intelligence activity
 - An action, including a personnel action described in section 2302(a)(2)(A) of Title 5, constituting reprisal or threat of reprisal prohibited under section 7(c) of the Inspector General Act of 1978, as amended, in response to an employee reporting an urgent concern



ADDITIONAL REFERENCES

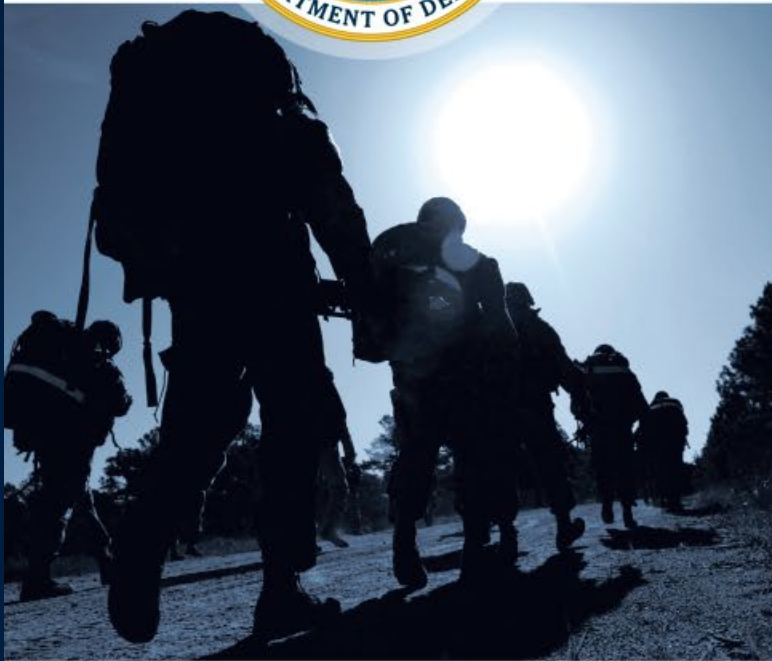
- Presidential Policy Directive-19, External Review Panel [50 U.S.C § 3236](#) and Part C [Procedures](#)
- Intelligence Community Whistleblower Protection Act, Reporting Matters of Urgent Concern
- Nonappropriated Fund Instrumentality Employees, Title 10, U.S.C. § 1587
- Military Service Members, Title 10, U.S.C. § 1034
- Appropriated Fund Employees, Title 5, U.S.C. § 2302
- Employees of contractors, subcontractors, grantees, subgrantees, personal services contractors, Title 10, U.S.C. § 2409
- Review the whistleblower protection statutes: click on [me](#)
- Review the guides on how to file: click on [me](#)





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