



Department of Defense

DIRECTIVE

NUMBER 1401.03

June 13, 2014

IG DoD

SUBJECT: DoD Nonappropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection

References: See Enclosure 1

1. **PURPOSE.** This directive reissues DoD Directive (DoDD) 1401.03 (Reference (a)) to establish policy and assign responsibilities for NAFI employee whistleblower protection in accordance with section 1587 of Title 10, United States Code (U.S.C.) (Reference (b)).

2. **APPLICABILITY.** This directive:

a. Applies to the OSD, the Military Departments, the Office of the Chairman of the Joint Chiefs of Staff and the Joint Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense (IG DoD), the Defense Agencies, the DoD Field Activities, and all other organizational entities in the DoD (referred to collectively in this directive as the “DoD Components”).

b. Does not apply to employees in positions the President excludes from the coverage of section 1587 of Reference (b), based on his or her determination that the exclusion is necessary and warranted by conditions of good administration.

3. **POLICY.** It is DoD policy that:

a. All NAFI employees, former employees, or applicants for appointment to positions as such employees (referred to in this directive as “applicants”) are encouraged to:

(1) Report violations of 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.

(2) File complaints of reprisal directly with the IG DoD. Enclosure 2 provides information for filing a complaint of reprisal.

b. All NAFI employees, former employees, or applicants must be free from reprisal for making protected disclosures, and their confidentiality is protected pursuant to section 1587 of Reference (b) and consistent with the appendix of Title 5, U.S.C., also known as the “Inspector General Act of 1978” (Reference (c)).

c. No civilian employee or member of the Armed Forces who has authority to take, direct others to take, recommend, or approve any personnel action will, 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 NAFI employee, former employee, or applicant as a reprisal for making a protected disclosure.

d. Violations of paragraph 3c:

(1) By a person subject to the authority of chapter 47 of Reference (b), also known and referred to in this directive as the “Uniform Code of Military Justice (UCMJ),” are subject to discipline as a violation of Article 92 of the UCMJ.

(2) By appropriated fund civilian employees of the DoD are subject to disciplinary actions for misconduct pursuant to chapters 43 and 75 of Reference (c) or to other disciplinary action.

(3) By the NAFI employees of the DoD are subject to disciplinary actions pursuant to Volume 1471 of DoDI 1400.25 (Reference (d)).

4. RESPONSIBILITIES. See Enclosure 3.

5. RELEASABILITY. **Cleared for public release**. This directive is available on the Internet from the DoD Issuances Website at <http://www.dtic.mil/whs/directives>.

6. EFFECTIVE DATE. This directive:

a. Is effective June 13, 2014.

b. Will expire effective June 13, 2024 if it hasn't been reissued or cancelled before this date in accordance with DoDI 5025.01 (Reference (e)).



Robert O. Work
Deputy Secretary of Defense

Enclosures

1. References
2. Submitting a Reprisal Complaint
3. Responsibilities

Glossary

ENCLOSURE 1

REFERENCES

- (a) DoD Directive 1401.03, “DoD Nonappropriated Fund Instrumentality (NAFI) Employee Whistleblower Protection,” April 23, 2008 (hereby cancelled)
- (b) Title 10, United States Code¹
- (c) Title 5, United States Code²
- (d) DoDI 1400.25, Volume 1471, “DoD Civilian Personnel Management System: Nonappropriated Fund (NAF) Labor-Management and Employee Relations,” March 27, 2014
- (e) DoD Instruction 5025.01, “DoD Issuances Program,” June 6, 2014
- (f) DoD 5400.11-R, “Department of Defense Privacy Program,” May 14, 2007

¹ Chapter 47 of Title 10, United States Code, also known as the “Uniform Code of Military Justice” (UCMJ)

² Appendix of Title 5, United States Code, also known as the “Inspector General Act of 1978,” as amended

ENCLOSURE 2

SUBMITTING A REPRISAL COMPLAINT

1. WHO IS ELIGIBLE TO FILE. NAFI employees, former employees, or applicants may submit complaints of reprisal (as defined in section 1587 of Reference (b)) to the IG DoD or other DoD Component inspectors general (IGs). Complaints of reprisal made to DoD Component IGs other than the IG DoD must be forwarded promptly to the IG DoD.

2. WHERE TO FILE. Individuals may submit reprisal complaints to the IG DoD through the DoD Hotline Website at <http://www.dodig.mil/hotline/>, calling (800) 424-9098, or mailing a letter addressed to:

DoD Hotline
The Pentagon
Washington, DC 20301-1900

3. CONTENT OF COMPLAINT. To submit a reprisal complaint and assist in the review of the complaint, employees, former employees, and applicants making complaints in accordance with this directive should provide as much of the following information as possible:

a. Full name, grade, duty title, organization, duty location, email address, telephone numbers, and mailing address for receipt of correspondence from the IG DoD.

b. A copy of the protected disclosure and any reply received. If unavailable, information regarding the protected disclosure should include the date the protected disclosure was made and to whom; the content of the protected disclosure; and whether, when, and by whom the matter was investigated.

c. The personnel action taken or withheld. Available documentation about the personnel action or description of the type of personnel action and the date such action occurred or should have occurred must be provided.

d. To the extent possible, the full name, rank or grade, duty title, organization, duty location, and telephone numbers of the officials believed to be responsible for taking, failing to take, directing, threatening to take or fail to take, recommending or approving a personnel action, alleged to be reprisal. Be prepared to provide any supporting evidence that may indicate that any official involved in the personnel action knew of the protected disclosure before acting. For additional guidance, see the DoD Hotline Website at www.dodig.mil/hotline/index.html.

ENCLOSURE 3

RESPONSIBILITIES

1. IG DoD. The IG DoD:

- a. Receives complaints of reprisal by NAFI employees, former employees, or applicants, and determines whether there is sufficient evidence to warrant an investigation.
- b. Notifies the NAFI employee, former employee, or applicant, and the Director, Administration and Management (DA&M), if the IG DoD determines that an investigation will not be conducted.
- c. Conducts an investigation if it is determined that investigation of a complaint of reprisal is warranted. Upon completion of the investigation, provides the Under Secretary of Defense for Personnel and Readiness and the DA&M with a report of findings of facts, conclusions, and recommendations.
- d. Protects the confidentiality of NAFI employees, former employees, or applicants making protected disclosures unless the IG DoD determines that disclosure of the employee's, former employee's, or applicant's identity is necessary to resolve their complaints.
- e. Ensures that matters reported by NAFI employees, former employees, or applicants in the underlying protected disclosure are adequately addressed.

2. DA&M. The DA&M:

- a. Orders a stay of a personnel action when it is determined there are reasonable grounds to believe that a personnel action was taken as reprisal for making a protected disclosure.
- b. Adjudicates complaints of reprisal, based on reports submitted by the IG DoD, as the final adjudicative authority within the DoD.
- c. Directs appropriate corrective action. The authority to direct corrective action may not be further delegated.
- d. Recommends appropriate disciplinary action.
- e. Notifies the NAFI employee, former employee, or applicant in writing of the adjudication determinations concerning the employee's or applicant's complaint of reprisal.
- f. Protects the confidentiality of NAFI employees, former employees, or applicants making protected disclosures unless the disclosure of the identity of the employee, former employee, or applicant is necessary to perform the DA&M responsibilities in accordance with this directive.

3. DoD COMPONENT HEADS. The DoD Component heads:

a. Ensure that NAFI employees, former employees, or applicants are advised of their right to file complaints of reprisal directly to the IG DoD and of the procedures for doing so.

b. Protect the confidentiality of NAFI employees, former employees, or applicants making protected disclosures, unless a responsible official within the DoD Component determines that disclosure of the employee's, former employee's, or applicant's identity is necessary to resolve the complaints and such disclosure is permitted by law.

c. Ensure that complaints of reprisal received from NAFI employees, former employees, or applicants are promptly forwarded to the IG DoD.

d. Implement the corrective action directed by the DA&M, and provide the DA&M and the IG DoD with a report on compliance.

e. Consider the DA&M's recommendations for disciplinary actions against those responsible for reprisal against NAFI employees, former employees, or applicants for their protected disclosure.

f. Ensure any personally identifiable information is collected, maintained, disseminated, and used in accordance with DoD 5400.11-R (Reference (f)).

g. Disseminate the content of this directive within their activities to ensure that NAFI employees, former employees, or applicants fully understand the scope and application of the directive. The information will specify that NAFI employees have the right, and are encouraged, to disclose directly to the IG DoD suspected violations of law, rule, or regulation; mismanagement; a gross waste of funds; an abuse of authority; or a substantial or specific danger to public health or safety; and any reprisals. The information will also include procedures for filing complaints with the DoD Component IGs.

GLOSSARY

PART I. ABBREVIATIONS AND ACRONYMS

DA&M Director of Administration and Management

DoDD DoD Directive

IG Inspector General

IG DoD Inspector General of the Department of Defense

NAFI Nonappropriated Fund Instrumentality

UCMJ Uniform Code of Military Justice

U.S.C. United States Code

PART II. DEFINITIONS

Unless otherwise noted, these terms and their definitions are for the purposes of this directive.

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 DA&M 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.

A person subject to the UCMJ is subject to disciplinary actions pursuant to Article 92 of the UCMJ.

Civilian appropriated-funds employees of the DoD are subject to disciplinary actions in accordance with chapters 43 and 75 of Reference (c).

The NAFI employees of the DoD are subject to disciplinary actions pursuant to Reference (d).

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.

NAFI employee. A civilian employee who is 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. Such term includes a civilian employee of a support organization within the DoD 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.

personnel action. With respect to a NAFI employee, former employee, or applicant:

An appointment.

A promotion.

A disciplinary or corrective action.

A detail, transfer, or reassignment.

A reinstatement, restoration, or reemployment.

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.

Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

protected disclosure

A disclosure of information by an employee, former employee, or applicant that the employee, former 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; or

A disclosure by an employee, former employee, or applicant to any civilian employee or Service member designated by law or the Secretary of Defense to receive disclosures in accordance with 1587(b)(1) of Reference (b), which the employee, former employee, or applicant making the disclosure 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.

reprisal. Taking or failing to take or threatening to take a personnel action because of a protected disclosure of information.