



Department of Defense
DIRECTIVE

NUMBER 1401.3

October 16, 2001

Certified Current as of February 20, 2004

IG, DoD

**SUBJECT: Reprisal Protection for Nonappropriated Fund Instrumentality
Employees/Applicants**

- References: (a) DoD Directive 1401.3, "Employment Protection for Certain Nonappropriated Fund Instrumentality Employees/Applicants," July 19, 1985 (hereby canceled)
- (b) Section 1587 of title 10, United States Code, "Employees of Nonappropriated Fund Instrumentalities: Reprisals"
- (c) Appendix 3 of title 5, United States Code, "Inspector General Act of 1978," as amended

1. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update policy and implement reference (b), which establishes protection against reprisals for Nonappropriated Fund Instrumentality (NAFI) employees, former employees, or applicants for NAFI positions who have made protected disclosures. This Directive also sets forth responsibilities and authorities for providing such protection and prescribes requirements for filing complaints of reprisal by NAFI employees, former employees, or applicants.

2. APPLICABILITY AND SCOPE

2.1. This Directive applies to the Office of the Secretary of Defense, the Military Departments, Chairman of the Joint Chiefs of Staff, the Combatant Commands, the Office of the Inspector General of the Department of Defense, the Defense Agencies, the DoD Field Activities, and all other organizational entities within the Department of Defense (hereafter referred collectively to as "the DoD Components").

2.2. This Directive does not apply to employees in positions excluded from the coverage of reference (b) by the President, based upon a determination by the President that the exclusion is necessary and warranted by conditions of good administration.

3. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

4. POLICY

It is DoD policy that:

4.1. All NAFI employees, former employees, or applicants for appointment to positions as such employees shall be free from reprisal in making protected disclosures, and the confidentiality of employees, former employees, or applicants making such disclosures shall be protected consistent with Section 1587 of 10 U.S.C. (reference (b)) and Appendix 3 of 5 U.S.C. (reference (c)).

4.2. All NAFI employees, former employees, or applicants shall be encouraged to report suspected fraud, waste, mismanagement, and reprisal to the Inspector General, Department of Defense (IG, DoD).

4.3. Any civilian (appropriated or nonappropriated fund instrumentality) employee or member of the Armed Forces who has authority to take, direct others to take, recommend, or approve any personnel action shall not, under such authority, take or fail to take a personnel action with respect to any nonappropriated fund instrumentality employee, former employee, or applicant as a reprisal for making a protected disclosure.

5. RESPONSIBILITIES

5.1. The Under Secretary of Defense for Personnel and Readiness shall receive reports of investigations conducted under this Directive.

5.2. The Director of Administration and Management shall have the authority and responsibility to:

5.2.1. Order a stay of a personnel action, when appropriate.

5.2.2. Adjudicate complaints of reprisal based on reports submitted by the IG, DoD. The Director of Administration and Management, OSD (DA&M), is the final adjudicative authority within the Department of Defense.

5.2.3. Direct appropriate corrective action. The DA&M may not further delegate this authority.

5.2.4. Notify the NAFI employee, former employee, or applicant in writing of the adjudication determinations concerning the employee's or applicant's complaint of reprisal.

5.2.5. Protect the confidentiality of NAFI employees, former employees, or applicants making protected disclosures unless the disclosure of the identity of the employee or applicant is necessary in order to carry out the DA&M responsibilities under this Directive.

5.3. The Inspector General, Department of Defense shall:

5.3.1. Receive complaints of reprisal by NAFI employees and expeditiously determine whether there is sufficient evidence to warrant an investigation. Notify the employee, former employee, or applicant and the DA&M if it is determined that an investigation will not be conducted.

5.3.2. Conduct an investigation if it has been determined that investigation of a complaint of reprisal is warranted. Upon completion of the investigation, provide the USD(P&R) and the DA&M with a report of findings of fact, conclusions, and recommendations.

5.3.3. Protect the confidentiality of NAFI employees, former employees, or applicants making protected disclosures unless the IG, DoD, determines that disclosure of the employee's or applicant's identity is necessary to resolve the complaints.

5.4. The Heads of the DoD Components shall:

5.4.1. Ensure that NAFI employees, former employees, or applicants making complaints of fraud, waste, mismanagement, or reprisal are advised of their right to submit complaints directly to the IG, DoD, and of the procedures for submitting complaints to the IG, DoD.

5.4.2. Ensure that complaints of reprisal received from NAFI employees, former employees, or applicants shall be forwarded to the IG, DoD.

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

5.4.4. 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 should specify that NAFI employees have the right and are encouraged to submit complaints of fraud, waste, mismanagement, and reprisal directly to the IG, DoD, and the information also should include procedures for filing complaints with the IG, DoD.

6. INFORMATION REQUIREMENTS

6.1. NAFI employees, former employees, or applicants may submit complaints of reprisal (as defined in enclosure 1, definition E1.1.8.) to the IG, DoD, or other DoD Component IGs. Complaints of reprisal made to DoD Component IGs other than the IG, DoD, shall be forwarded promptly to the IG, DoD.

6.2. Filing Address. Complaints of reprisal to the IG, DoD, may be made by telephone at (800) 424-9098, by email at hotline@dodig.osd.mil, or by letter addressed as follows:

Department of Defense Inspector General
ATTENTION: Defense Hotline
1900 Defense Pentagon
Washington, DC 20301-1900

6.3. Content of Complaint of Reprisal. To assist in the review of the complaint, employees, former employees, and applicants making complaints under this Directive should provide as much of the following information as possible. For guidance see the DoD Hotline web site at www.dodig.osd.mil/hotline/index.html.

6.3.1. Employee's, former employee's, or applicant's full name, grade, duty title, organization, duty location, telephone numbers, and mailing address for receipt of correspondence from the IG, DoD.


6.3.2. A copy of the protected disclosure and any reply received. If a copy is 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 the matter was investigated, when and by whom.

6.3.3. Identify the personnel action taken or withheld. Provide available documentation about the personnel action or describe the type of personnel action and the date such action occurred.

6.3.4. Provide to the extent possible, the full name, rank and/or grade, duty title, organization, duty location, and telephone numbers of the officials believed to be responsible for taking or influencing the personnel action alleged to be reprisal. Provide any evidence that may indicate that any official involved in the personnel action knew of the protected disclosure before taking the action.

7. EFFECTIVE DATE

This Directive is effective immediately.



Paul Wolfowitz
Deputy Secretary of Defense

Enclosures - 1
E1. Definitions

E1. ENCLOSURE 1

DEFINITIONS

E1.1.1. 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/herself or to preferred other persons.

E1.1.2. Corrective Action. Any action permitted by law that is deemed necessary by the Director of Administration and Management to make the complainant whole, such as reinstatement, promotion, reassignment, back pay; changes in DoD Component rules, regulations, or practices; disciplinary action against an offending employee or military member; or referral to the U.S. Attorney General of any evidence of criminal violation.

E1.1.3. Gross Waste of Funds. Unnecessary expenditure of substantial sums of money, or a series of instances of unnecessary expenditures of smaller amounts.

E1.1.4. Mismanagement. Wrongful or arbitrary and capricious actions that may have an adverse effect on the efficient accomplishment of the Agency's mission.

E1.1.5. Nonappropriated Fund Instrumentality (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 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.

E1.1.6. Personnel Action (with respect to a NAFI employee or an applicant):

E1.1.6.1. An appointment;

E1.1.6.2. A promotion;

E1.1.6.3. A disciplinary or corrective action;

E1.1.6.4. A detail, transfer, or reassignment;

E1.1.6.5. Reinstatement, restoration, or reemployment;

E1.1.6.6. A decision concerning pay, benefits, or 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 subparagraph; and

E1.1.6.7. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

E1.1.7. Protected Disclosure

E1.1.7.1. 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; or 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

E1.1.7.2. A disclosure by such an employee or applicant to any civilian employee or member of the Armed Forces designated by law or the Secretary of Defense to receive disclosures of information described in subparagraph E1.1.7.1., above, which the employee or applicant making the disclosure 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 and safety.

E1.1.8. Reprisal. Taking or failing to take a personnel action because of a protected disclosure of information.