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GUIDE TO INVESTIGATING MILITARY WHISTLEBLOWER REPRISAL AND RESTRICTION COMPLAINTS

Office of the Deputy Inspector General
for Administrative Investigations

A Model Oversight Organization in the
U.S. Government

INDEPENDENCE ★ INTEGRITY ★ EXCELLENCE ★ TRANSPARENCY

CONTENTS

- SECTION 1— FOREWORD 1**
 - 1.1 Disclaimer 1
 - 1.2 Applicability 1
 - 1.3 Point of Contact..... 1

- SECTION 2— SUMMARY OF CHANGES 2**
 - 2.1 DoDD 7050.06, “Military Whistleblower Protection,” April 17, 2015 (Incorporating Change 1, October 12, 2021) 2
 - 2.2 DoDI 7050.09, “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021 3

- SECTION 3— REFERENCES AND STATUTES 4**
 - 3.1 “Inspector General Act of 1978,” as amended (IG Act) (5 U.S.C. §§ 401-424) 4
 - 3.2 DoDD 5106.01, “Inspector General of the Department of Defense (IG DoD),” April 20, 2012 (Incorporating Change 2, Effective May 29, 2020) 4
 - 3.3 10 U.S.C. § 1034, “Protected Communications; Prohibition of Retaliatory Personnel Actions” (also known as the Military Whistleblower Protection Act)..... 5
 - 3.4 DoDD 7050.06, “Military Whistleblower Protection,” April 15, 2015 (Incorporating Change 1, October 12, 2021) 5
 - 3.5 DoDI 7050.09, “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021 6
 - 3.6 DoDD 5505.06, “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013 (Incorporating Change 1, Effective April 28, 2020) 6

- SECTION 4— CASE ASSIGNMENT 7**
 - 4.1 Notifying the DoD OIG 7
 - a. Notification Timeframes..... 7
 - b. Complaint Receipt Notification to the DoD OIG 7
 - 4.2 Case Retention by the DoD OIG 8

Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints

a. Sexual Assault	8
c. Senior Officials	9
d. Other Matters	9
4.3 Changes to the Uniform Code of Military Justice	9

SECTION 5— INVESTIGATION FUNDAMENTALS 10

5.1 Oversight Authority	10
5.2 Professional Standards	10
a. Independence	10
b. Confidentiality	11
5.3 Objectivity	11
5.4 Team Approach	12

SECTION 6— REPRISAL AND RESTRICTION INVESTIGATIONS..... 13

6.1 10 U.S.C. § 1034 Reprisal and Restriction Overview	13
a. Content of Complaint	13
b. Authorities	13
c. Standard of Proof	13
d. Service Member Applicability	13
e. Filing Deadline	14
6.2 Reprisal	15
a. Protected Communication	15
b. PC Examples	18
c. Not a PC	20
d. Personnel Actions	20
e. PA Examples	21
f. Not a PA	22
6.3 Restriction	23
a. Distinction from Reprisal	23
b. Hypothetical Examples of Restriction	23

SECTION 7— INVESTIGATIVE STAGES..... 25

7.1 Two Standardized Investigative Stages	25
7.2 Complaint Evaluation Stage	25
a. Initial Review on Receipt of a Complaint	25
b. Underlying Allegations	25

Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints

c.	<i>Prima Facie</i> Reprisal or Restriction	25
d.	Complaint Receipt Acknowledgement to the Service Member	27
e.	Analysis.....	27
f.	Interview of the Service Member.....	29
g.	Closure of Complaints that Do Not Require DoD OIG Approval.....	30
h.	Recommendations to Close Without Investigation	31
7.3	Investigation Stage	32
a.	Initiation of the Investigation	33
b.	Investigative Plans	33
c.	Witness Notification	34
d.	Subject Notification	35
e.	General Interview Information.....	35
f.	Interview Preparation	36
g.	Open-and Closed-Ended Questions.....	37
h.	Recommended Interview Questions	37
i.	Subject Interviews.....	40
j.	Reports on the Results of an Investigation and Supporting Documentation	41
k.	Legal Review of the Report on the Results of the Investigation	42
l.	Hardship Determination.....	42
7.4	Report on the Results of Investigation Timeliness Requirements	43
a.	Completed Report—Transmission of Results	43
b.	Guidance on Investigative Updates.....	43
c.	Remedies and Corrective or Disciplinary Actions	43
SECTION 8— OVERSIGHT AND OTHER REVIEWS		45
8.1	Whistleblower Reprisal Investigations Oversight Branch.....	45
8.2	Closures of Complaints Without DoD OIG Review	45
8.3	Reviews by the Oversight Branch of Reports on the Results of an Investigation.....	45
a.	Submit the Report on the Results of the Investigation to the Oversight Branch	45
b.	Material Deficiencies.....	46
c.	Feedback	46
SECTION 9— ACRONYMS AND ABBREVIATIONS		48

SECTION 1—FOREWORD

1.1 Disclaimer

This “Guide to Investigating Military Whistleblower Reprisal and Restriction Complaints” (hereinafter “guide”) does not create rights or benefits enforceable by law by any person against the United States or its agencies, officers, or employees. This guide does not create rights, entitlements, or privileges on the part of any person with respect to official activity of the DoD Office of Inspector General (DoD OIG).

This guide is a living document. The guide will be updated periodically as policies and procedures are refined or changed in response to changes in law, rules, regulations, case law, and best practices.

1.2 Applicability

The guidance in this document applies to all DoD Components, as defined in DoD Instruction (DoDI) 7050.09, “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021.

1.3 Point of Contact

Investigators with questions about this guide may contact:

DoD Office of Inspector General
Administrative Investigations
Whistleblower Reprisal Investigations
4800 Mark Center Drive, Suite 14G25
Alexandria, VA 22350-1500

SECTION 2—SUMMARY OF CHANGES

The significant amendments to section 1034, title 10, United States Code (10 U.S.C. § 1034) in 2013, 2016, and 2017 led the DoD OIG to update DoD Directive (DoDD) 7050.06, “Military Whistleblower Protection,” and create DoDI 7050.09, “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021. These changes required corresponding updates to this guide to ensure relevancy, currency, and applicability to all DoD Components. Following are just a few of the changes in the DoD issuances that required updates to this guide.

2.1 DoDD 7050.06, “Military Whistleblower Protection,” April 17, 2015 (Incorporating Change 1, October 12, 2021)

This directive:

- does not limit the ability of a commander to consult with specified advisors, as necessary, regarding specified complaints.
- provides the definition for “personnel action.” Formerly, the central aspect of this definition was that it involved any action taken on a Service member that affects, or has the potential to affect, that Service member’s “current position or career”; the revised definition includes “military pay, benefits, or career.” The updated definition specifies that personnel actions (PA) may be either favorable or unfavorable, and clarifies the difference.
- updates requirements for proper complaint receipt notification by DoD Components to the DoD OIG. These changes were necessary to facilitate expedited reporting priority matters while allowing additional time for processing routine matters.
- extends the time to complete the complaint evaluation stage from 30 to 60 days. This change was necessary to allow for more robust evaluations, when appropriate.
- clarifies that the DoD OIG will report to the Under Secretary of Defense for Personnel and Readiness, the Secretary of the Military Department concerned, and the Service member the results of an investigation no later than 180 days after the commencement of an investigation and every 180 days thereafter, until the transmission of the final report.
- clarifies that only Service members who allege reprisal or restriction may petition the Secretary of Defense for reconsideration of the final decision of the Secretary of the Military Department concerned.
- provides details for the 180-day notice requirement.
- assigns specific responsibilities to the DoD Intelligence Component IGs.

- assigns to the Secretaries of the Military Departments the responsibility of maintaining regulations requiring timely notification regarding complaints alleging violations of Articles 132 and 92, Uniform Code of Military Justice (UCMJ), made to persons or entities other than the IG. This change was necessary to bring this issuance into accord with the new UCMJ, Article 132, effective January 2019.
- clarifies that no later than 30 days after receiving a report on the results of an investigation from or approved by the DoD IG of a substantiated allegation, if the Secretary of the Military Department concerned determines that a corrective, disciplinary, or actions ordered should be taken, the Secretary is to take the appropriate action.
- specifies that when a Secretary of a Military Department orders that the record of a Service member be corrected, the Secretary is to refer the report on the results of the investigation to the appropriate Board for Correction of Military Records for review. This change was necessary to align with a change made to 10 U.S.C. § 1034(f)(2)(A) in 2016.
- specifies that when a Secretary of a Military Department takes corrective, disciplinary, or actions ordered, the Secretary is to submit a report to the DoD OIG within 10 days of taking the action.

2.2 DoDI 7050.09, “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021

This instruction includes details for the DoD OIG’s and DoD Components’ required adherence to two standardized investigative stages—the complaint evaluation stage and the investigation stage—as well as professional standards and confidentiality and privacy standards.

SECTION 3—REFERENCES AND STATUTES

The DoD OIG adheres to the following references and statutes when investigating allegations of reprisal and restriction against a Service member.

To access the current references and statutes noted below, visit the DoD Office of Inspector General webpage at www.DoDIG.mil, Resources—Policies—Administrative Investigations, Hotline, and Whistleblower Reprisal Policy.

3.1 “Inspector General Act of 1978,” as amended (IG Act) ([5 U.S.C. §§ 401-424](#))

The DoD OIG was established under the IG Act of 1978. The IG Act gives the DoD OIG authority to independently and objectively conduct, supervise, and coordinate investigations relating to the programs and operations of the DoD.

The IG Act authorizes the DoD OIG to receive and investigate complaints of possible violations of law, rules, or regulations, or mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to public health and safety. It also requires the DoD IG to not disclose the identity of an employee without the consent of the employee, unless the DoD IG determines the disclosure is unavoidable during the investigation. The IG Act explicitly prohibits specified employees from reprising against employees who make a complaint or disclosure to an IG.

Additionally, the IG Act authorizes the DoD OIG to be given timely access to all records available to the DoD. The DoD OIG is authorized to request information or assistance from other Federal agencies, as necessary, for executing DoD OIG duties and responsibilities, and to subpoena documents or testimony from nongovernmental sources.

The DoD OIG tracks reprisal and restriction matters. In accordance with the IG Act, IGs are required to prepare semiannual reports to Congress that include data and descriptions of all instances of whistleblower reprisal cases. The IG Act also requires IGs to conduct criminal and administrative investigations in accordance with the Council of the Inspectors General on Integrity and Efficiency’s “Quality Standards for Investigations.”

3.2 [DoDD 5106.01](#), “Inspector General of the Department of Defense (IG DoD),” April 20, 2012 (Incorporating Change 2, Effective May 29, 2020)

DoDD 5106.01 implements the IG Act within the DoD, establishing the “mission, organization and management, responsibilities and functions, relationships, and authorities of the [O]IG DoD.”

In accordance with DoDD 5106.01, the DoD OIG maintains a Whistleblower Protection Program within the DoD, which, among other things, provides mechanisms to address complaints of reprisal. Accordingly, the DoD OIG maintains an Alternative Dispute Resolution program, has the ability to enter Memorandums of Understanding with other organizations, and produces sub-regulatory guidance, such as the Administrative Investigations Manual and this guide.

3.3 [10 U.S.C. § 1034](#), “Protected Communications; Prohibition of Retaliatory Personnel Actions” (also known as the Military Whistleblower Protection Act)

The Military Whistleblower Protection Act provides protections to Service members and grants the DoD OIG and Component IGs authority to conduct whistleblower reprisal and restriction investigations.

It prohibits taking, threatening to take, withholding, or threatening to withhold PAs against Service members in reprisal for making or preparing to make, or being perceived as making or preparing to make any protected communication (PC).

Section 1034, title 10, United States Code, also prohibits restricting a Service member from communicating with a Member of Congress or an IG.

3.4 [DoDD 7050.06](#), “Military Whistleblower Protection,” April 15, 2015 (Incorporating Change 1, October 12, 2021)

DoDD 7050.06 implements 10 U.S.C § 1034. It establishes policies that protect Service members making PCs and assigns responsibilities to:

- the DoD IG;
- the Under Secretary of Defense for Personnel and Readiness;
- DoD Component heads;
- DoD Intelligence Component heads;
- DoD Intelligence Component IGs; and
- Secretaries of the Military Departments.

This Directive also defines terms that are relevant to investigating allegations of reprisal and restriction against a Service member.

3.5 [DoDI 7050.09](#), “Uniform Standards for Evaluating and Investigating Military Reprisal or Restriction Complaints,” October 12, 2021

DoDI 7050.09 establishes policy, assigns responsibilities, and prescribes procedures for evaluating, investigating, and reporting complaints of military whistleblower reprisal and restriction made by Service members in accordance with 10 U.S.C § 1034, DoDD 7050.06, and uniform standards and processes.

This DoDI provides the standards that investigators must use to evaluate complaints. It also provides guidelines that investigators must follow when evidence supports a complaint and therefore warrants an investigation.

3.6 [DoDD 5505.06](#), “Investigations of Allegations Against Senior DoD Officials,” June 6, 2013 (Incorporating Change 1, Effective April 28, 2020)

DoDD 5505.06 establishes policy and assigns responsibilities for reporting and investigating allegations of misconduct against senior DoD officials in accordance with the IG Act and DoDD 5106.01.

DoDD 5505.06 requires the DoD IG to provide “oversight, as the IG DoD deems appropriate, on investigations conducted by the other DoD Components into allegations against senior officials.”

SECTION 4—CASE ASSIGNMENT

4.1 Notifying the DoD OIG

a. Notification Timeframes

In general, per DoDD 7050.06, all DoD Component IGs are responsible for notifying the DoD OIG within 30 days of receiving a reprisal or restriction allegation. For allegations of reprisal or restriction involving sexual assault or matters of known congressional interest, DoD Component IGs must notify the DoD OIG within 10 days after receipt of the allegation.

With respect to allegations of misconduct against a senior official, DoDD 5505.06 requires DoD Component IGs to notify the DoD OIG within 5 business days after receipt of the allegation.¹

After DoD Component IGs notify the DoD OIG of the respective allegations, the DoD OIG may choose to assume responsibility for conducting the complaint evaluation or investigation or request that the DoD Component IG do so.

b. Complaint Receipt Notification to the DoD OIG

The DoD Component IG must promptly notify the DoD OIG of having received any allegation that the prohibitions against reprisal or restriction have been violated consistent with the above timeframes. Pursuant to DoDI 7050.09, paragraph 3.2d, the DoD Component IG must include in the complaint receipt notification only unclassified information as follows.

i. The Complaint

- A copy of the entire incoming complaint
- All original attachments

ii. Case Information

- Relevant case tracking numbers
- Classification level of complaint materials

¹ “Senior official” is defined in DoDD 5505.06.

- Date the allegation was filed with an IG
- Date the Service member completed the applicable complaint filing procedure with the IG

iii. Service Member/Complainant’s Information²

- Full name
- Current rank and duty position
- Duty title and rank, location, and Component or Service at the time of the events
- Summary of the complaint, describing what is alleged to have happened, which actions were taken by whom, who was impacted by those actions, and why the Service member believes each action was taken, threatened, withheld, or threatened to be withheld in reprisal; or why the Service member alleges to have been restricted from communicating with an IG or Member of Congress

iv. Subject Information (for Each Alleged Subject)

- Full name
- Duty title and rank, location, and Component or Service at the time of the events
- Professional relationship to the Service member

v. Notifying IG Information

- Full name
- Rank and organization
- Contact information: email address and telephone number

4.2 Case Retention by the DoD OIG

a. Sexual Assault

A Service member who alleges reprisal as a result of the reporting of a sexual assault could be the victim of the assault at issue, or could have supported, or been perceived as

² An individual who files a reprisal or restriction complaint is generally deemed a “complainant.” However, to remain consistent with the DoD OIG’s guidance about military whistleblower protections (DoDD 7050.06 and DoDI 7050.09), throughout this guide, we use the term “Service member.”

having supported, a sexual assault victim—for example, a sexual assault response coordinator, healthcare professional, DoD law enforcement officer, or witness. Since 2016, the DoD OIG retains exclusive responsibility for all DoD reprisal allegations involving sexual assault. Accordingly, other than notifying the DoD OIG of receipt of the allegations, consistent with [Section 4.1](#), the DoD Component IGs must abstain from working on the matter.

c. Senior Officials

The DoD OIG will assume responsibility for certain senior official reprisal and restriction cases. If a DoD Component IG receives allegations regarding reprisal or restriction by a senior official, the Component IG must notify the DoD OIG in accordance with [Section 4.1](#). The DoD OIG will determine whether to accept the matter or refer the case to the DoD Component IG.

d. Other Matters

The DoD OIG may assume responsibility for cases involving joint commands or joint bases, Subjects from multiple services, high-visibility matters, or other issues as it deems appropriate.

4.3 Changes to the Uniform Code of Military Justice

As of January 1, 2019, reprisal is punishable under Article 132, “Retaliation,” of the UCMJ. Pursuant to DoDD 7050.06, Service secretaries must maintain regulations making restriction punishable under Article 92, “Failure to Obey an Order or Regulation,” of the UCMJ.

Service secretaries must also maintain regulations requiring timely notification by commanders to the command IG of complaints alleging retaliation, reprisal, or restriction in violation of Article 132 or 92 of the UCMJ. This includes any such complaints made to persons or entities other than an IG.

Investigators should consult the appropriate service regulation to determine the proper way to handle allegations of violations of Article 132 or 92 of the UCMJ.

SECTION 5—INVESTIGATION FUNDAMENTALS

5.1 Oversight Authority

While conducting reprisal and restriction complaint evaluations or investigations, the DoD Component IGs are operating under the oversight of the DoD OIG. In accordance with 10 U.S.C. § 1034 and DoDD 7050.06, and to safeguard independence, both real and perceived, both the DoD OIG and the DoD Component IG must ensure the IG evaluating or investigating the complaint is:

- outside the immediate chain of command of both the Service member submitting the allegation and the Subject alleged to have taken the retaliatory or restrictive action; or
- at least one organization higher in the chain of command than the organization of the Service member submitting the allegation and the Subject alleged to have taken the retaliatory or restrictive action.³

5.2 Professional Standards

a. Independence

i. Statutory Independence

The DoD OIG is by law an independent organization, and although it is under the general supervision of the DoD, DoD leadership cannot prevent or prohibit the DoD OIG from conducting an investigation, or direct or influence the manner in which it is conducted or the result thereof. It is this operational independence that grants the DoD OIG the freedom to conduct investigations without bias or influence from outside sources.

ii. Awareness of Potential Conflicts and Recusal

The requirements related to independence from the immediate chain of command are not the only scenarios under which an investigator or investigative organization should consider recusal. Conflicts of interest, real or perceived, could exist both personally and professionally.

An interest (prior relationship with personnel involved or the subject matter of the investigation) that could compromise or bias the professional judgment or objectivity of the investigator (or reviewer) or appears to have the potential to compromise or bias the investigator (or reviewer) must be immediately brought to the attention of management

³ 10 U.S.C. § 1034(c)(6) and DoDD 7050.06, enclosure 2, paragraph 3.d.(1).

personnel. A conflict of interest may exist when an independent observer might reasonably question whether the investigator's professional actions or decision are determined by considerations of prior relationships with the personnel involved or the subject matter related to the investigation.

b. Confidentiality

Consistent with the IG Act, DoD OIG and DoD Component IG personnel will not disclose the identity of Service members alleging reprisal or restriction or of witnesses to individuals outside the DoD OIG unless one of the following conditions applies.⁴

- The Service member or witness consents to disclosure.
- The Inspector General or Inspector General's delegee determines such disclosure is unavoidable during the investigation.
- Such disclosure is necessary to address an emergency.
For example, investigators must not reveal a Service member's name or other irrelevant aspects of the Service member's identity to individuals who lack a need to know. When a Service member contacts an investigator and says they are en route to the Subject's place of work and intends to harm the Subject, disclosure of the Service member's identity is necessary for reporting an emergency.

5.3 Objectivity

Investigators must analyze all potentially relevant facts when conducting an investigation. The relevant facts in a reprisal or restriction investigation must be established and analyzed on their own merits and without influence or bias on the part of the investigator.

As stated in 10 U.S.C. § 1034(c)(3), a communication shall not be excluded from the protections of the law because of the member's motive for making the communication. It is possible that a Subject or witnesses could believe that a Service member who alleges reprisal or restriction is motivated by "revenge" or "justice." However, investigators must ensure that a Service member's motive for filing a complaint is not the issue. Investigators do not need to assess the Service member's motive for filing a complaint—the motive does not affect the facts surrounding the alleged reprisal.

Both stellar and poor performers are susceptible to reprisal and restriction. In the case of a Service member with an outstanding record, that record reflects the Service member's past performance; the Service member's future actions may not be consistent with the past performance. Likewise, a Service member with a poor record may change to become an exemplary Service member. Investigators must avoid being biased as a result of a Service

⁴ Section 407(b) of the "Inspector General Act of 1978," as amended (5 U.S.C. §§ 401-424).

member's service history. In conducting a thorough analysis, investigators must objectively consider all relevant facts. For example, when a Service member alleges a favorable assignment was withheld, an investigator will need to evaluate the Service member's performance records.

5.4 Team Approach

Investigators must review and analyze whistleblower reprisal and restriction allegations and relevant evidence with objectivity, with thoroughness, and in a timely manner. Investigators must work in tandem with peers, supervisors, and a legal team to produce a report on the results of an investigation that is a professional IG product.

SECTION 6—REPRISAL AND RESTRICTION INVESTIGATIONS

6.1 10 U.S.C. § 1034 Reprisal and Restriction Overview

a. Content of Complaint

A 10 U.S.C. § 1034 complaint may allege reprisal or restriction.

b. Authorities

Investigators must evaluate and investigate whistleblower reprisal and restriction allegations made by Service members in accordance with 10 U.S.C. § 1034, DoDD 7050.06, and DoDI 7050.09.

c. Standard of Proof

Investigators must apply the correct standard of proof to the allegations of reprisal or restriction to assess whether reprisal or restriction occurred.⁵ The standard of proof for a 10 U.S.C. § 1034 investigation is “preponderance of the evidence.” “Preponderance of the evidence” is that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.

When a preponderance of the evidence indicates that reprisal or restriction occurred, the complaint is substantiated. However, if the evidence does not satisfy a preponderance of the evidence, the complaint is not substantiated.

d. Service Member Applicability

Section 1034, title 10, United States Code, applies to both current and former Service members. For purposes of a 10 U.S.C. § 1034 complaint, DoDD 7050.06 defines “Service member” as:

- a Regular or Reserve Component officer (commissioned and warrant) or enlisted member of the Army, Navy, Air Force, Marine Corps, Coast Guard (when it is operating as a Service in the Navy), or Space Force on active duty; or

⁵ The DoD IG conducts investigations pursuant to laws that employ standards of proof other than that of 10 U.S.C. § 1034. It is important for investigators to ensure they apply the correct standard of proof to the matter assigned to them.

- a Reserve Component officer (commissioned and warrant) or enlisted member in any duty or training status, including officers and enlisted members of the National Guard (NG).

With respect to NG members, investigators must assess whether a Federal nexus exists. The DoD OIG interprets “any duty or training status” broadly if a Federal nexus is present. A Federal nexus exists when NG members are in a title 10 status or are drilling or training in a title 32 status. A Federal nexus also exists for all activities of Washington, D.C., NG members, because their commander is the President of the United States. At least three NG activities do not warrant 10 U.S.C. § 1034 coverage; these include:

- NG members on “State Active Duty” under state orders and the command of the governor and who are paid with state funds;
- NG members training solely as state militia, as this state duty and training lacks a Federal nexus; and
- NG technicians working as full-time civilian employees rather than Service members.

e. Filing Deadline

i. Reprisal Allegations

Neither an initial determination nor an investigation is required in the case of an allegation made more than 1 year after the date the Service member becomes aware of the PA that is the subject of the allegation.

However, Component IGs may consider the complaint based on compelling reasons or circumstances. These circumstances may include situations in which the Service member:

- was actively misled regarding their rights;
- was prevented in some extraordinary way from exercising their rights; or
- filed the same allegation within the 1-year period with the wrong office or agency.

If no such compelling reasons or circumstances exist, the Component IG may exercise its discretion to close the case as untimely by issuing the appropriate closure letter and copying the DoD OIG on the letter transmission.

ii. Restriction Allegations

Allegations of restriction are not subject to a filing deadline.

6.2 Reprisal

Section 1034, title 10, United States Code, prohibits reprisal against any Service member. Reprisal includes taking or threatening to take an unfavorable PA or withholding or threatening to withhold a favorable PA for making, preparing to make, or being perceived as making or preparing to make a PC.

A reprisal analysis requires an investigator to evaluate PCs and PAs.

a. Protected Communication

When assessing reprisal, the investigator must assess whether the complaint alleges that the Service member alleging reprisal made or was preparing to make a PC, or that the Service member was perceived as having made or prepared to make a PC.

i. PC Defined

A PC is:

- any lawful communication by a Service member to a Member of Congress or an IG;
- a complaint or disclosure to an authorized recipient of information that the Service member reasonably believes evidences:
 - a violation of law or regulation (including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violation of 10 U.S.C. §§ 920, 920b, 920c or 930 [articles 120, 120b, 120c, or 130 of the UCMJ], sexual harassment, or unlawful discrimination);
 - gross mismanagement; a gross waste of funds or other resources; an abuse of authority; a substantial and specific danger to public health or safety; or
 - a threat by another Service member or employee of the U.S. Government that indicates a determination or intent to kill or cause serious bodily injury to Service members or civilians or damage to military, Federal, or civilian property; or
- testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication as described above; or filing, or causing to be filed, participating in, or otherwise assisting in a military whistleblower reprisal action.

ii. Lawful Communication to a Member of Congress or an IG

When a Service member shares information with a Member of Congress or an IG, as long as the communication is lawful, it qualifies as a PC under 10 U.S.C. § 1034. For purposes of a 10 U.S.C. § 1034 investigation, the following definitions apply.

- **A Member of Congress.** A Member of Congress is a U.S. Senator or Representative, delegate or resident commissioner to Congress, or a staff member of a senator, representative, or congressional committee, delegate, or resident commissioner.
- **Inspectors General.** The DoD IG; Military Department IGs (these include the Military Department IGs and IGs assigned or detailed under regulations of the Secretary of the Military Department concerned to serve at any command level in one of the Military Services); IGs appointed under the IG Act; and Defense IGs.
- **Defense IGs.** The Defense IGs are defined in DoDD 5106.04, "Defense Inspectors General," May 22, 2014 (Incorporating Change 1, Effective May 14, 2020), as officers or noncommissioned officers of the Army, Navy, Air Force, Marine Corps, and Coast Guard (when operating as a Military Service in the Navy), or DoD civilian, who are assigned to duty as IGs in a DoD Component other than the Military Departments or DoD OIG.
- **Joint IGs.** Joint IGs are a subset of Defense IGs.

Examples of a lawful communication to a Member of Congress or an IG include sharing routine constituent correspondence and complaints about chain of command and providing testimony before Congress.

Investigators should consult with their supervisors or seek legal advice if they suspect that a communication, or part of a communication, is unlawful. Examples of unlawful communications include the following.

- **Privacy Act violation.** A Service member working as an Administrative Clerk received a Noncommissioned Officer Evaluation Report with a lower-than-expected rating. The Service member uses their access to unit personnel files to obtain comparison Noncommissioned Officer Evaluation Reports and submits these with their reprisal complaint to a Component IG.
- **Unauthorized disclosure of classified information.** A Service member provides classified emails to an investigator at the base Military Equal Opportunity office in support of a discrimination claim without first verifying that the investigator has proper clearance and a "need to know."
- **False Official Statement.** A Service member knowingly and willfully alters a screenshot of a text message from a supervisor to include a materially false

statement and provides it to a Component IG to support allegations of reprisal.

iii. Complaint or Disclosure to an Authorized Recipient

For a communication to be protected, a Service member must make the communication to a recipient authorized by 10 U.S.C. § 1034. Authorized recipients are:

- a Member of Congress;
- an IG;
- a member of a DoD audit, inspection, investigation, or law enforcement organization;
- any person or organization in the chain of command;
- a court-martial proceeding; or
- any other person or organization designated pursuant to regulations or other established administrative procedures to receive such communications.

Additionally, to attain the protections of 10 U.S.C. § 1034, the communication must contain an allegation of:

- a violation of law or regulation (including a law or regulation prohibiting rape, sexual assault, or other sexual misconduct in violations of 10 U.S.C. §§ 920, 920b, 920c, or 930 [articles 120, 120b, 920c, or 130 of the UCMJ], sexual harassment or unlawful discrimination);
- gross mismanagement;
- a gross waste of funds or other resources;
- an abuse of authority;
- a substantial and specific danger to public health or safety; or
- a threat by another Service member or employee of the U.S. Government that indicates a determination or intent to kill or cause serious bodily injury to Service members or civilians, or damage to military, Federal, or civilian property.

Additional activities treated as protected under 10 U.S.C. § 1034 (b)(1)(C) include:

- testimony, or otherwise participating in or assisting in an investigation or proceeding related to a communication as described above; or
- filing, or causing to be filed, participating in, or otherwise assisting in a military whistleblower reprisal action.

iv. Service Member's Reasonable Belief

A belief is considered reasonable if a disinterested observer with knowledge of the essential facts known to and readily ascertainable by the Service member could reasonably conclude that the disclosed information evidences one of the categories of wrongdoing in 10 U.S.C. § 1034.

As long as the Service member's belief is reasonable, the report of wrongdoing itself does not need to be factually correct. For example, if a Service member reported that the commander violated a regulation based on the Service member's understanding, the communication is still protected, even if the commander did not in fact violate that regulation. If the commander were to take action against the Service member, a reprisal investigation might be warranted.

Of note, an investigator need not assess the Service member's reasonable belief of matters asserted in a Service member's testimony or other participation or assistance in an investigation or proceeding related to a 10 U.S.C. § 1034 PC or in which the Service member files or causes to be filed, participates in, or otherwise assists in a military whistleblower reprisal action investigation.

v. Protected Status

A PC will not lose protected status because:

- the communication was made to a person who participated in the activity about which the Service member complained;
- the communication revealed information that had been previously disclosed;
- of the Service member's motive for making the communication;
- the communication was not in writing;
- the communication was made when the Service member was off duty; or
- the communication was made during the normal course of the Service member's duties.

b. PC Examples

Following are several hypothetical PCs; this is not a comprehensive or an exhaustive list of every potential PC. Investigators should use their judgment and knowledge of the relevant fact pattern to assess whether an alleged PC, in fact, qualifies as a PC.

i. Communications Commonly Considered Protected

- Direct report to the chain of command. An Air Force Service member reported to their chain of command that their supervisor used foul language.

This would be a protected communication because if an Air Force service member communicates indecent language either orally or in writing to another person, they are violating the provisions of Air Force Instruction 1-1, "Air Force Standards," August 18, 2023.

- Formal request for a redress of wrongs. An NG Service member filed an Article 138, "Complaint of Wrongs," against their leadership, in which they alleged bullying and a hostile work environment.
- Complaint to the DoD Hotline. An Army Service member filed a complaint with the DoD Hotline, in which they alleged undue command influence and a denial of promotion.
- Participating in an unrelated DoD investigation. A Navy Service member was interviewed as a witness in a DoD investigation. During the interview, the Service member reported violations.
- Any communication with an IG. An Air Force Service member entered the IG office to discuss that weekend's big game. Although the Service member's visit to the IG office was purely social, the communication was lawful and therefore protected.

ii. Perceived PCs

- Perceived Service member complaint. A unit commander had specific knowledge that a Service member was upset about a specific issue. Several weeks later, the commander was notified that an investigation was being conducted into that same issue. While the commander had no specific knowledge of the Service member making a complaint, it is reasonable to conclude that the commander more likely than not perceived the Service member as having filed a complaint, leading to the investigation.
- Perceived Service member complaint. A unit commander knew that a Service member was upset with them about a specific issue. Several weeks later, as the commander was walking past the building that houses the Component IG's office, they saw the Service member walking out of the same building. The Service member had been in the building for lunch with a friend; unaware of that fact, the commander perceived the Service member as having filed an IG complaint against them.

iii. Preparing to Make a PC

- Preparing to make an electronic notification PC. After an unsatisfying attempt to resolve an issue through the chain of command, a Service member sent an email to leadership in which they stated an intention to file a complaint with a U.S. Senator.

- Preparing to make a verbal notification PC. A Service member verbally notified their commander that they would be filing a complaint with the DoD OIG after being passed over for promotion.

c. Not a PC

- Not an authorized recipient. A Service member reported a hazing incident to their close friend and peer who was not part of their chain of command.
- Not an authorized recipient. A Service member reported a series of administrative errors affecting their pay to the Better Business Bureau.
- Content. A Service member alleged to an equal opportunity (EO) advisor that their captain counseled them for being absent without leave.
- Content. A Service member told their deputy director that another Service member acting in a temporary position and with a history of filing EO complaints would likely file an EO complaint for being replaced when new leadership arrived at their command.
- An opinion. A Service member met with a command sergeant major to discuss their concerns about an EO investigation. The Service member expressly told the IG that they did not report a violation but only a personal opinion of the investigation findings.
- Policy disagreement. A Service member in the Army reported to their commander that they disagreed with the presence of U.S. forces within the Africa Command area of responsibility but did not report any violation.

d. Personnel Actions

Investigators must analyze each alleged action to assess if it is a PA and if so, if it is covered under DoDD 7050.06. The goal is to determine if the complaint alleges that an unfavorable PA was taken or threatened against the Service member, or that a favorable PA was withheld or threatened to be withheld from the Service member.

i. PA Defined

A PA is any action taken on a Service member that affects, or has the potential to affect, that member's military pay, benefits, or career. Such actions include:

- threatening to take any unfavorable action;
- withholding, or threatening to withhold, any favorable action;
- making, or threatening to make, a significant change in the duties or responsibilities of a Service member not commensurate with the member's grade;

- a supervisor failing to respond to any retaliatory action or harassment (of which the superior had actual knowledge) taken by one or more subordinates against a member;
- conducting a retaliatory investigation of a Service member. A retaliatory investigation is any investigation requested, directed, initiated, or conducted for the primary purpose of punishing, harassing, or ostracizing a Service member for making a PC; and
- creating a referral for a mental health evaluation in accordance with DoDI 6490.04, "Mental Health Evaluations of Members of the Military Services," March 4, 2013 (Incorporating Change 1, Effective April 22, 2020).

ii. Favorable and Unfavorable PAs

Personnel actions may be either favorable or unfavorable. Favorable PAs are those that are reasonably expected to result in a positive impact on the Service member's military pay, benefits, or career. Unfavorable PAs are those that are reasonably expected to result in an adverse impact on the Service member's military pay, benefits, or career.

e. PA Examples

The following are hypothetical examples designed to familiarize investigators with common scenarios that appear in investigations and include PAs. Keep in mind that the facts and circumstances of each investigation are critical; investigators should use their judgment and knowledge of the relevant fact pattern to assess whether an alleged PA, in fact, qualifies as a PA.

- A Service member had their approved promotion rescinded.
- A commander was removed from command before their scheduled end of tour. Similarly, a Service member was removed from their duty position.
- A Service member was removed from an assignment, deployment, or a previously approved duty.
- A captain was assigned to duties generally assigned to a lieutenant.
- A Service member was removed as the battalion executive officer and reassigned to a headquarters company.
- A commander took no action after a Service member informed them that the command sergeant major was harassing them in retaliation for reporting that another member of the unit violated a technical order.
- A Service member alleged that the commander initiated an investigation concerning actions taken by them to report a violation.
- A Service member was ordered by their chain of command to undergo a Mental Health Evaluation.

f. Not a PA

i. Inconsequential Matters

Matters that do not or would not have a significant impact on the career of a Service member are inconsequential matters that do not qualify as PAs. Examples of inconsequential matters include the following.

- A Service member alleged that they were not nominated for a unit-level award.
- A first lieutenant alleged that an additional rater for their draft Officer Performance Report included a comment that their performance was “adequate.” The first lieutenant’s final Report did not include that language. Note, although this does not qualify as a PA, under appropriate circumstances it may be analyzed as a threatened PA.

Investigators should use their judgment to evaluate whether an alleged PA should be considered an inconsequential matter, given the particular facts and circumstances at hand.

ii. Affirmative Defenses

While 10 U.S.C. § 1034 prohibits retaliatory investigations, it does not limit the ability of a commander or appointing authority to consult with:

- a superior in the chain of command,
- an Inspector General, or
- a judge advocate general (JAG)

on the disposition of a complaint against a Service member for an allegation:

- of collateral misconduct, or
- about a matter unrelated to a PC.

Such a consult may be a valid affirmative defense under 10 U.S.C. § 1034. An affirmative defense may also exist when a Subject consults with a superior in the chain of command, and the superior then consults with the servicing JAG office or an IG.

Investigators should review, analyze, and assess the communications that occurred between the Subject and servicing JAG or IG to assess whether the Subject provided all the relevant information required for the JAG or IG to provide a legally supportable decision. Investigators should consult with their supervisors or seek legal advice to determine if an affirmative defense applies. If investigators are instructed to

close a matter, they should do so consistent with [Section 7.f](#) or [7.g](#). The Service member may petition their respective Board for Correction of Military Records.

6.3 Restriction

Section 1034, title 10, United States Code, states that no person will restrict a Service member from making lawful communications to a Member of Congress or an IG. DoDD 7050.06 defines restriction as preventing or attempting to prevent a current Service member from making or preparing to make a lawful communication to a Member of Congress.

An analysis of restriction requires the investigator to assess whether the Service member alleges that the Subject said or did something that a reasonable person could believe, if true, would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG.

An investigation may substantiate restriction even if the Subject did not intend to restrict or the attempt at preventing a lawful communication failed to actually prevent or deter the Service member from subsequently making contact with a Member of Congress or an IG.

a. Distinction from Reprisal

Section 1034, title 10, United States Code, prohibits both reprisal and restriction; however, analysis for the two actions is dissimilar.

As explained in [Section 6.2](#), reprisal includes—by definition—a PC and a PA. The focus of a restriction investigation is simply whether the Subject restricted or attempted to restrict a Service member from making a lawful communication to a Member of Congress or an IG.

Investigators should establish the words the Subject used and the actions the Subject took and consider whether a reasonable person under the circumstances would interpret those words or actions as restricting or attempting to restrict a similarly situated Service member from lawfully communicating with a Member of Congress or an IG.

Unlike reprisal, allegations of restriction are not subject to a filing deadline.

b. Hypothetical Examples of Restriction

The following are hypothetical examples of 10 U.S.C. § 1034 restriction. These hypotheticals are neither a comprehensive nor an exhaustive list of every potential means by which a Subject can restrict a Service member. Investigators should use their judgment and knowledge of the relevant fact pattern to assess whether restriction occurred.

i. Individual Counseling

A commander attempted to restrict a subordinate known to have made prior complaints during a counseling session. Within the issued counseling statement, the commander advised the subordinate that “jumping the chain of command” should be a last resort, as it could breed distrust. The commander also advised the subordinate that it was lawful to make a direct communication to an outside organization; however, the commander ordered the subordinate to notify the chain of command before making any outside communications.

Note: Depending on what a reasonable person would believe under the circumstances, the advisement regarding jumping the chain of command could itself be lawful, particularly given that the commander specified the legality of making direct communications to an outside organization. An order to notify the chain of command before making any outside communication, however, is restrictive and therefore unlawful.

ii. Group Communication

A commander addressing their subordinates explained to the group that they knew that someone made a complaint to an IG regarding activity within the group, although the commander did not know the identity of the Service member. The commander announced that although they maintained an open-door policy, the Service member had not attempted to bring the complaint to the chain of command before filing the allegations. The commander stated that there were “consequences” for going to an IG, and Service members needed to consider those consequences before making an IG complaint.

In this hypothetical example, the commander’s position of authority, combined with their choice of words regarding consequences for making an IG complaint, had the effect of attempting to restrict Service members from lawfully communicating with an IG.

iii. Specific Direction

A Service member was giving a formal tour to an IG when a commander approached the Service member and issued an order that the Service member not make any reports to the IG during the tour.

This is a clear example of a commander issuing a direct order that a Service member not make a report to an IG.

SECTION 7—INVESTIGATIVE STAGES

7.1 Two Standardized Investigative Stages

Inspectors General who receive an allegation of military reprisal or restriction must evaluate the allegation “to determine if there is sufficient evidence to warrant an investigation.”⁶ In handling military reprisal and restriction complaints, the DoD OIG and DoD Component IGs must follow two standardized investigative stages: complaint evaluation and investigation. The first step on receipt of an allegation of reprisal or restriction is to begin complaint evaluation. Complaint evaluation is followed, when appropriate, by an investigation. When submitting a case for closure, DoD Component IGs will ensure that the case documentation fully complies with the relevant investigative standards.

7.2 Complaint Evaluation Stage

a. Initial Review on Receipt of a Complaint

On receipt of a complaint, the investigator should review the complaint and supporting documents provided by the Service member to:

- consider whether the organization evaluating the complaint has jurisdiction over the parties involved, and consult with a supervisor or seek legal advice in the case of potential jurisdictional concerns, and
- discern whether any additional or clarifying information may be needed to evaluate the complaint and request such information as appropriate.

b. Underlying Allegations

Investigators must verify that a separate investigation of underlying allegations contained in the PC is conducted. If an investigation of the underlying allegations has not occurred, the investigator must follow up accordingly.

c. *Prima Facie* Reprisal or Restriction

During the complaint evaluation stage, the investigator expeditiously evaluates the complaint to determine whether it is supported by “prima facie” evidence when held to the preponderance of the evidence standard of proof so that the investigator may recommend either to close it or to initiate an investigation. Black’s Law Dictionary defines a prima facie case as one that is “established by sufficient evidence, and can be overthrown only by rebutting evidence adduced on [offered by] the other side.” In the context of the complaint

⁶ 10 U.S.C. § 1034(c)(4)(A) and DoDD 7050.06.

evaluation stage, the investigator is to weigh whether sufficient evidence exists to warrant an investigation. A preponderance of the evidence means the degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than untrue.⁷

For purposes of this determination, the investigator should view the allegations in the light most favorable to the Service member when analyzing the four elements of the reprisal allegation or the restriction allegation. The level of effort necessary to evaluate an incoming complaint may depend on multiple factors, including the clarity of the complaint, complexity in terms of the relevant time period, and the number of personnel involved. The investigator may need to review certain documentary evidence or perform limited fieldwork to assess whether sufficient evidence exists to warrant an investigation. This stage culminates in a recommendation from the DoD Component IG to the DoD OIG to either close the case without conducting an investigation or to conduct an investigation.

i. Complaints Alleging Reprisal⁸

This stage requires the investigator of a reprisal complaint to evaluate:

- whether the complaint alleges the existence of a qualifying actual or perceived PC made or prepared by the Service member;
- whether one or more Subjects took or threatened a qualifying unfavorable PA against the Service member or withheld or threatened to withhold a favorable PA from the Service member; and
- whether the evidence presented supports an inference that one or more Subjects knew of the PC and whether it is possible to infer that the PC could have been a factor in the PA.
 - An inference is a conclusion reached on the basis of evidence and reasoning.
 - In the context of a reprisal complaint, the DoD OIG analyzes whether there is a causal connection, or inference, between the PC and the PA. Often, such an inference is based on the timing of the PC and the PA.

ii. Complaints Alleging Restriction⁹

This stage requires the investigator of a restriction complaint to evaluate whether the complaint alleges that the Subject said or did something that, if true, would have deterred a similarly situated Service member from lawfully communicating with a Member of Congress or an IG. The Subject's words or actions are evaluated from the perspective of a

⁷ See title 5 Code of Federal Regulations section 1201.4(q).

⁸ DoDI 7050.09, paragraph 3.2, a.(1).

⁹ DoDI 7050.09, paragraph 3.2, a.(2).

reasonable Service member—that is, an objective third person with knowledge of the essential facts known to and readily ascertainable by the Service member; this is known as the “reasonable person standard.”

d. Complaint Receipt Acknowledgement to the Service Member

As soon as practicable, the Service member alleging reprisal or restriction should be informed that the complaint was received and that an investigator is evaluating it. The investigator should briefly explain the investigative process and, if necessary, briefly explain reprisal or restriction, as appropriate.

In many circumstances, it is appropriate to interview the Service member during the complaint evaluation stage to clarify the complaint allegations. Even if an interview is deemed unnecessary at the complaint evaluation stage because the written complaint is sufficiently clear, the investigator must still promptly acknowledge receipt of the complaint. Investigators should also consider:

- asking the Service member to confirm their contact information;
- asking the Service member if anything has changed since the complaint was filed;
- informing the Service member that the Investigator is evaluating the complaint; and
- providing the Service member with the investigator’s name and contact information.

Investigators may refer a Service member with concerns about reporting fraud, waste, and abuse within the DoD without fear of reprisal to the Whistleblower Protection Coordinator (WPC). The WPC is available to educate employees about the role of the OIG and other entities involved in investigating allegations of reprisal and restriction. The WPC can also provide general information about the timeline for reprisal cases, alternative dispute resolution mechanisms, and other avenues for potential relief. For more information about the WPC, visit www.DoDIG.mil, Whistleblower and DoD Hotline—WPC.

e. Analysis

When evaluating whether sufficient evidence exists to warrant an investigation, investigators should consider different factors, depending on whether they are analyzing an allegation of reprisal or restriction.

i. Reprisal Analysis

In reprisal cases, the standard of proof is a preponderance of the evidence; meaning that degree of relevant evidence that a reasonable person, considering the record as a whole, would accept as sufficient to find that a contested fact is more likely to be true than

untrue. Specifically, the investigator must be sure to make a determination regarding the four elements of reprisal. The investigator should ask questions similar to the following.

- PC:
 - Has the Service member alleged that they made or were preparing to make a PC, or that they were perceived as making or preparing to make a PC?
 - To whom did the Service member consider making, prepare to make, or make the PC?
 - What did the Service member specifically communicate?
 - When did the Service member make each PC?
 - Whom did the Service member tell about their PC or that they were preparing to make a PC?
- PA:
 - Has the Service member alleged that an unfavorable PA was taken or threatened against them, or that a favorable PA was withheld or threatened to be withheld from them?
 - Who was the Subject who took the action or made the threat? If there was a threatened PA, how was this threat communicated?
 - What was each Subject's role in each PA?
 - When was the PA taken or threatened?
- Knowledge:
 - Does the Service member provide any information demonstrating that the Subject knew of or that would support an inference that the Subject knew of the PC being made or prepared, or perceived the Service member as making or preparing to make a PC?
 - Why does the Service member believe the Subject had such knowledge?
 - Whom did the Service member tell about their PC or that they were preparing to make a PC?
 - How did each Subject become aware of each PC?
- Causation:
 - When did the PA occur in relation to the PCs?
 - Did the Subject make any kind of statement regarding the reasons the PA was taken or threatened?
 - What motive would the Subject have to reprise against the Service member?
 - Was the Service member treated consistently with other similarly situated non-whistleblowers.

- What reason was the Service member given for the action taken and was that reason accurate?
- Why does the Service member believe the action was taken in reprisal and not for the reasons given?
- What motive would the Subject have to reprise against the service member?
- Who else can corroborate the information provided?

ii. Restriction Analysis

Unlike a reprisal analysis, a restriction analysis asks only one question: whether the Subject restricted or attempted to restrict the Service member from making a lawful communication to an IG or to a Member of Congress. As with a reprisal case, the standard of proof in restriction cases is the preponderance of the evidence—a preponderance of the evidence must establish that the Subject prevented, or attempted to prevent, a Service member from making or preparing to make a lawful communication to a Member of Congress or an IG.

During interviews with Service members alleging restriction, the investigator's questions should focus on what the Subject said or did to restrict the Service member. Investigators should establish the circumstances surrounding the event or events in question and the Subject's words or actions. Investigators should also establish whether or not a reasonable person would have interpreted those words or actions as restricting or attempting to restrict a Service member from lawfully communicating with an IG or a Member of Congress.

f. Interview of the Service Member

In general, it is appropriate to conduct a sworn and recorded interview with the Service member to clarify the specifics of the allegation. The purpose of the interview is to ensure that the investigator has a thorough understanding of the allegations and clarifies any questions needing resolution.

During the interview, the investigator should discuss with the Service member every PC alleged to be a factor in the alleged PAs, generally in chronological order. Dates are also particularly important to evaluate whether an inference of causation is apparent.

When interviewing the Service member, the investigator should conduct the interview in such a manner that if investigation were to be deemed appropriate, the investigator would not need to re-interview the Service member. The investigator should make sure they ask the critical questions and focus the interview on the PCs, the PAs, the Subject's knowledge of the PCs, and any information that suggests the possible existence of a causal connection. In addition, the investigator should ask the Service member what other witnesses they believe have information relevant to each of the elements.

g. Closure of Complaints that Do Not Require DoD OIG Approval

i. General Information

DoD Components may close certain complaints without prior DoD OIG approval, provided that the DoD Component IG fulfills the requirements as described in the four exception scenarios described in this section. In addition to any information or document specified therein:

- if the DoD Component IG's decision to close occurs before complaint receipt notification is made to the DoD OIG, submit that notification to the DoD OIG, along with the appropriate closure letter; and
- if the DoD Component IG's decision to close occurs after complaint receipt notification was made to the DoD OIG, include the DoD OIG as a carbon copy on the closure letter.

ii. Withdraw

When a Service member communicates the intent to withdraw a complaint, the communication must be in writing, and the DoD Component IG must evaluate whether the withdrawal was voluntary. IGs are not required to accept a withdrawal, particularly if investigative efforts to date indicate that the alleged violations may be substantiated. If the DoD Component IG is satisfied that the communicated intent to withdraw was not coerced, they may acknowledge the withdrawal by issuing a withdrawal acknowledgement and closure letter, copying the DoD OIG on the letter transmission, and closing the case.

iii. Untimely

When, during the complaint evaluation process, it becomes apparent that the complaint was not filed within 1 year of the Service member becoming aware of the most recent alleged PA, the DoD Component IG should consider whether to excuse the untimely filing of the complaint based on compelling reasons or circumstances. After consideration, if no such compelling reasons or circumstances exist, the DoD Component IG may exercise their discretion to close the case as untimely by issuing the appropriate closure letter and copying the DoD OIG on the letter transmission. Compelling reasons or circumstances to excuse an untimely filing may include situations in which Service members:

- were actively misled regarding their rights;
- were prevented in some extraordinary way from exercising their rights; or
- filed the same allegation within the 1-year period with the wrong office or agency.

Reminder: Allegations of restriction are not subject to the 1-year filing deadline.

iv. Unresponsive/Lack of Cooperation

In general, Service members alleging reprisal or restriction understand that investigations require their timely cooperation. In the event the Service member becomes unresponsive or fails to cooperate during either the complaint evaluation or investigation stage, the DoD Component IG will make at least three attempts to reach the Service member using appropriate methods of contact. If the Service member remains unresponsive or uncooperative, the DoD Component IG will advise the Service member in writing that it will not be possible to further evaluate the alleged reprisal or restriction without the Service member's cooperation, and the case will be closed unless a response is received within 10 days from the date of this advisement.

After allowing a minimum of 10 days for the Service member to respond, the DoD Component IG may close the case for lack of cooperation by issuing the appropriate closure letter and copying the DoD OIG on the letter transmission. The Component IG will maintain documentation of the dates and methods used in attempting to contact the Service member.

v. Duplicate Complaint

DoD Component IGs may cease complaint evaluation if the incoming complaint is a duplicate or is intrinsically related to a previously filed complaint and contains no new and compelling information that would warrant the reopening of a closed case or the creation of a new one. If a DoD Component IG determines that a complaint meets these criteria, it may exercise its discretion to close the case as a duplicate.

h. Recommendations to Close Without Investigation

If the Component IG determines that a complaint is not supported by evidence and should be closed, the investigator should ensure the determination is reviewed, at a minimum, at the Directorate level before forwarding it to the DoD OIG for review.

When forwarding the matter to the DoD OIG, the DoD Component IG should cite and provide to the DoD OIG (as applicable):

- an attestation, notifying the IG that:
 - they meet the requirements of DoDD 7050.06;
 - they are free of personal, financial, or other interests that could influence or be perceived as influencing the handling of the matter at hand;
 - no one interfered with or duly influenced their handling of the matter at hand;
 - they have not had a conflict of interest with any witness, the Service member, or any Subject during the conduct of the matter at hand; and
- an analysis of the alleged facts either against the definition of restriction or the elements of reprisal, which should include:

- a concise chronological summary of each alleged PC, explaining whether the Service member made or prepared to make a PC, or was perceived as making or preparing to make a PC; to whom the PC was made; the date of the PC; and whether the alleged PC is protected in accordance with DoDD 7050.06; if not protected, explain the reason;
- a concise chronological summary of each unfavorable PA that was taken or threatened to be taken against the Service member and each favorable PA that was withheld or threatened to be withheld from the Service member; this should identify the Subject responsible for such PAs, including their full name, rank, and duty position; the date of the PA; and whether the alleged PA qualifies as a PA in accordance with DoDD 7050.06—if not, explain the reason;
- evidence of the Subject’s knowledge or an explanation of a possible inference of knowledge; that is, whether the Subject could likely have known of the PC or perceived that the PC was being prepared or made by the Service member; and
- an explanation of a possible inference of causation, including concise analysis indicating whether a causal connection could exist between the PC and the PA based on timing or otherwise.

The investigator should assess whether, absent the PCs, the same action would have been taken or withheld. If the recommended determination is to close the case due to no inference of causation, provide the analysis that the evidence indicates no causal connection could exist between the PC and PA due to:

- the Subject’s stated reasons for a PA, if supported by evidence indicating that the basis for that action was unrelated to the PCs;
- the Subject’s motive to reprise, particularly whether the evidence indicates that PCs may involve or reflect on the individual or organization in a manner that could create motive or hostility for reprisal, testing the Subject’s assertions regarding motive against the evidence, and considering the totality of the circumstances surrounding each PA; or
- disparate treatment with evidence showing whether an individual was treated consistently with other similarly situated non-whistleblowers.

If the DoD OIG agrees with the Component IG’s determination to close a matter, the DoD Component IG should inform the Service member as soon as is practicable that the case is being closed and include an explanation.

7.3 Investigation Stage

In accordance with 10 U.S.C. § 1034, the Inspector General conducting an investigation of reprisal or restriction allegations must be:

- outside the immediate chain of command of the Service member submitting the allegation and the Subject against whom the allegation was filed; or
- at least one organization higher in the chain of command than the organization of the Service member and the Subject or Subjects alleged to have taken the retaliatory action.

a. Initiation of the Investigation

The investigator is responsible for both informing the Service member alleging reprisal or restriction that an investigation has been commenced as soon as is practicable and notifying the DoD OIG of the date of initiation of the investigation.

Note: The DoD Component IGs must process cases involving senior officials in accordance with DoDD 5505.06.

b. Investigative Plans

Investigators should prepare a written investigative plan (IP) and document it in the case file. For reprisal, the investigator should focus the plan on determining whether the alleged PAs were taken, threatened, not taken, or threatened to not be taken in reprisal for a PC. For restriction, the plan should outline an investigation sufficient to determine whether the Subject restricted the Service member from lawfully communicating with an IG or a Member of Congress. For reprisal cases, the IP should identify the information and sources essential to obtaining relevant documentation of the PC and PA raised in the complaint and to completing a thorough and expedient investigation. This should include records the investigator believes they should obtain and review, as well as a list of all potential interviewees, including Service members alleging reprisal or restriction and the related witnesses and Subjects. The investigator should develop the IP with the elements required for the report of the results of that investigation in mind to ensure all elements are addressed.

Note: When progressing through an investigation, the investigator should regularly reevaluate their thoughts, opinions, blind spots, and any potential need for recusal. Conflicts of interest can develop at any point and without notice. A witness or a link to another relevant individual or unit may be uncovered, which could present or appear to present a conflict of interest. See [Section 5.2.a.ii](#) of this document as needed.

i. Develop a List of Witnesses

Investigators should examine which individuals have or may have information relevant to the investigation and develop a list of witnesses to interview. This list may be based on information obtained during the complaint evaluation interview with the Service member filing the complaint, a review of documents obtained during the complaint evaluation stage, and research performed about the individuals and organizations related to the investigation. The investigator should review documents that demonstrate the

organization structure and the chain of command. The investigator should consider which information each witness can provide and use that information to develop the sequence in which they will interview the witnesses.

ii. Develop a List of Documents

Specifically, the investigator should:

- begin to examine which facts need to be established over the course of the investigation and consider which documents are necessary to do so; and
- identify which individual or agency is best situated to provide each document and draft Requests for Information, as required.

Examples of relevant documents include copies of any PC and PA. Copies of PAs may be found in official personnel files. In addition to copies of any PCs or PAs, official personnel files may contain other relevant documents including performance evaluations, counselings, awards, copies of disciplinary actions including letters of reprimand, and copies of separation, and re-enlistment and reduction actions. Staffing packages, emails, memorandums, and other correspondence are also often useful as evidence. Once the investigator has finalized the list, they may send the RFIs to the appropriate agencies or offices.

c. Witness Notification

Using their list of witnesses, investigators should contact each witness when ready to schedule their interviews; investigators should keep a record of the notification. Investigators should try to protect witness identities to the maximum extent possible. Investigators should relay the following information when initially contacting the witness.

- Identify self, provide full name and title, and specify DoD Component.
- Let the witness know that they are not the subject of an investigation but rather that they have been identified as a witness who can provide testimony relevant to an investigation.
- Provide the witness a broad explanation of the information sought from them.
- Provide an estimate of the time it will take to conduct the witness interview.
- Inform the witness that the interview will be sworn and recorded.
- Ask the witness not to discuss the matter at hand with any other personnel.

- Inform the witness that, if they have concerns about your identity as an IG Investigator, they can confirm your identity (by contacting their local IG office or branch IG and referencing [Case Number]).
- Schedule the witness interview.

d. Subject Notification

After a decision has been made to open an investigation, investigators should contact the Subject to inform them they are the subject of an investigation and the nature of the allegation. Investigators should verbally notify the Subject and follow up with an official letter to keep a record of the notification.

e. General Interview Information

i. Identify the Reason for Interviewing Each Witness

Investigators should identify which types of information or documentation each witness may offer and formulate interview questions accordingly. Identifying the reason for interviewing each witness gives the investigator the best opportunity to meet the timeliness goals identified in [Section 7.4.b](#) of this document.

The investigator should consider the order of the interviews; that is, they should assess why it might be best to interview one witness before another. When scheduling interviews, the investigator should review the sections of the report on the results of the investigation that require further development and tailor the questions asked of each witness to ensure those sections are thoroughly addressed. Each witness contributes a unique perspective that allows the investigator to visualize and understand the facts and circumstances of the investigation.

ii. Scheduling Priorities

The order in which witnesses are interviewed is typically at the discretion of the investigator. However, in nearly every case, the Subject will be the final interview of an investigation. It is important for investigators to plan the order of witness interviews. Thorough preparation can help with timeliness and organization. The investigator may not be able to successfully interview one witness without learning a unique piece of information from a previous witness. Despite the most thorough preparation, however, it is common that a witness produces a vital piece of information that requires the investigator to re-interview a previous witness or to interview a previously unidentified witness. Identifying and developing these necessary sequential interviews is vital to producing a thorough, accurate, and timely report on the results of the investigation.

iii. Authority to Conduct Interviews and Receive Documents

In many cases, the investigator may find it helpful to explain the authorities under which they are requesting to interview a witness or obtain documents. DoDD 5106.01 grants the DoD IG authority to initiate, conduct, supervise, and coordinate investigations within the DoD, including within a Military Department as the DoD IG considers appropriate.

DoDD 7050.06 requires DoD Components to evaluate all allegations submitted in accordance with 10 U.S.C. § 1034 in a thorough, objective, and timely manner. The evaluating and investigating IG's report on the results of the investigation must include a thorough review of relevant documents acquired during the investigation and the summaries or transcripts of the interviews conducted.

Similarly, DoDI 7050.09 requires investigators to obtain and review documentation to conduct a thorough and expedient investigation and to include all the evidence relied on in the report in the case file.

iv. Read-In, Read-Out

Investigators must follow standard pre-recording read-in and read-out processes. This is to ensure that all witnesses are treated equally and receive the proper notifications of authorities, due process, general rights, and warnings.

v. Oath

Investigators should conduct interviews of the Service member alleging reprisal or restriction (if such an interview did not occur during the complaint evaluation stage), knowledgeable witnesses, and the Subject. Interviews should be both under oath and recorded.

vi. Counsel and Attorneys

An investigator should allow any interviewee to have an attorney present during administrative interviews; this includes a private attorney (not at Government expense), or military appointed counsel, if duly authorized and appointed under the applicable Service regulation. Military and civilian attorneys assigned to positions in which they advise a command or organization must not represent the interests of an individual during investigative interviews—their responsibility is to represent the U.S. Government's interests. Investigators should inform interviewees with counsel that their attorney is not allowed to speak on their behalf or otherwise testify during the interview. After reading in the interviewee, the investigator should clarify the role of the attorney on the recording.

f. Interview Preparation

Preparation is key to timely, efficient, thorough, and objective interviews. For each interview, the investigator should prepare a well-thought-out list of topics to discuss.

Identifying these topics is critical to a successful interview as it can help the investigator properly focus on the specific issues related to the investigation. The investigator should plan the order in which each topic will be discussed.

Laying out the topics of discussion should begin with the elements of reprisal (if appropriate) and an assessment of the information the investigator believes the witness possesses. The investigator should anticipate possible answers the witness may provide and should plan appropriate follow-up questions. Adequate preparation allows the investigator efficient use of time with the interviewee and lessens the chance of surprise responses from the witness.

g. Open-and Closed-Ended Questions

Investigators should maximize use of open-ended questions to allow interviewees to share their testimony in their own words. Investigators should avoid close-ended and leading questions, unless necessary, as these constrain the interviewee's response.

- Open-ended questions:
 - What can you tell me about X?
 - What circumstances led to the Service member's relief?
 - Who downgraded the Service member's award? or Why did you downgrade the Service member's award?
 - What did you consider in making the decision?
 - How did you go about downgrading the Service member's award?
 - Would you tell me more? and/or Would you tell me more about x?
 - What happened and/or What happened next?
 - Why? and/or Why did that matter/was that important?
- Closed-ended questions:
 - Did you relieve the Service member?
 - Did you downgrade the Service member's award?

h. Recommended Interview Questions

In general, the questions in this section are the foundation of any witness interview. Investigators should revise the questions as needed to adapt to different witnesses.

i. PC

- Did the Service member make or prepare to make a PC, or were they perceived as having made or preparing to make a PC?

- What was the PC? Describe the details and provide any copies.
- To whom was the PC made?
- When was the PC made? Be as precise as possible to establish a timeline.
- How was the PC made? (orally, via email, and so on)
- Who knew about the PC?
- How did each person (who knew of the PC) find out about the PC?
- Were there any witnesses to the PC?

ii. PA

- Was an unfavorable PA taken or threatened against the Service member, or was a favorable PA withheld or threatened to be withheld from the Service member?
- What PA was taken, threatened, withheld, or threatened to be withheld?
- Who took, threatened, withheld, or threatened to withhold the [the PA that was articulated above]?
- Did any other individual in the chain of command provide guidance or input about the PA to [the person that took, threatened, withheld, or threatened to withhold the PA] or recommend or approve the PA?
- Did the Subject seek legal advice before taking the PA?
- When was the PA taken, threatened, withheld, or threatened to be withheld? The investigator should aim to establish a complete chronology of events.
- How does the PA affect the Service member's position or career?
- Were there any witnesses to the PA?
- What reason did the Subject give for the PA?
- Is there any truth to that reason the Subject gave for the PA?
- Was the Service member treated differently than other Service members who were in similar situations but were not perceived to be whistleblowers?

iii. Knowledge

- Did the Subject know of the Service member's PC or perceive the Service member as making or preparing to make a PC?
- Why do you believe the Subject knew of the PC?
- Who else can testify or provide evidence that the Subject knew of the PC?

- Was it commonly believed that the Service member made or was preparing to make a PC?
- Do any documents demonstrate that the Subject knew of the PC or perceived that the Service member made or prepared to make a PC?
- Did you know the Service member made or was preparing to make a PC?
- Did you suspect the Service member made a PC?
- How did you find out?
- When did you find out?
- Did you tell anyone else?
- Who else may have known the Service member made or was preparing to make a PC?

iv. Causation

- Would the same PA have been taken, threatened, withheld, or threatened to be withheld absent any PCs?
- Have you ever discussed the PA with the Subject?
- If so, what did the Subject say regarding the reason for taking, threatening, withholding, or threatening to withhold the PA?
- Did the Subject mention the Service member's PC?
- Did you ever discuss the Service member's PC with the Subject?
- Did the Subject ever say or do anything that indicated they held any bias or animosity toward the Service member for making or preparing to make a PC?
- Do you think the Subject took, threatened, withheld, or threatened to withhold the PA in reprisal for the Service member making or preparing to make a PC?
- Why do you think that?

v. Restriction Interviews

During restriction investigation interviews, the investigator's questioning should focus on what was said or done to restrict the Service member. The investigator should ascertain the precise words used or actions taken by the Subject. Ultimately, the investigator must assess whether or not a reasonable person would have interpreted those words or actions as restricting or attempting to restrict a Service member from lawfully communicating with an IG or a Member of Congress.

i. Subject Interviews

Often, the Subject will be interviewed after all witnesses have been interviewed. This process ensures the investigator has a full picture of the events surrounding the reprisal or restriction allegations. The Subject interview may also be the first chance the Subject has to present the Subject's side of the story regarding the allegations against them, and the investigator should interview the Subject without bias or entrenched conclusions.

i. Notification of Neutrality

During the Subject interview, the investigator should ask the Subject questions regarding the allegations against them and may consider explaining to the Subject that the questions do not in any way indicate support for or agreement with the Service member's allegations. Investigators should explain that they have not yet reached any conclusions regarding the matter at hand, and that they are neutral, independent fact finders. It may also be helpful to explain that as investigators, they do not represent the Service member.

ii. Helpful Questions to Ask the Subject

- What are the circumstances that led you to take, threaten, withhold, or threaten to withhold the PA from the Service member?
- With whom did you discuss or consult before making this decision?
- What information did you provide to the person with whom you consulted?
- What considerations went into your decision?
- Who recommended or influenced your decision?
- What reasons did they provide?
- Have you taken the same or similar actions against any other Service members? Did they do the same thing as the Service member? Describe those examples.
- Did you know the Service member made or prepared to make a PC?
- How and when did you become aware of the PC?
- What was your reaction on learning of the PC?
- Did the PC influence your decision in any way regarding the PA?
- Did the PC result in any investigations?

- Did the PC result in any adverse action against you?
- Did the PC reflect negatively on you?
- Did anyone in your chain of command discuss the subject matter of the PCs with you? Describe.

j. Reports on the Results of an Investigation and Supporting Documentation

i. Reprisal Reports

A report on the results of an investigation related to allegations of reprisal must analyze the alleged facts against the four elements of reprisal as detailed in DoDD 7050.09.

A substantiated report must recommend appropriate remedies for the Service member. The report must also recommend that the Secretary of the Military Department concerned determine whether corrective or disciplinary action should be taken.

ii. Restriction Reports

A report on the results of an investigation related to allegations of restriction must analyze the alleged facts against the definition of restriction.

iii. Accuracy

Investigators should ensure accuracy in the report on the results of the investigation when recounting statements made by interviewees. Investigators should record interviews to the maximum extent practicable, as this assures accuracy. When quoting interviewees, investigators should use the words stated by the interviewee (as they appear in the transcript, are heard in a recording, or are noted by an investigator). When paraphrasing, to the extent possible, investigators should use the terms stated by the interviewee to convey the interviewee's meaning and intent. Selectively quoting words used in an interview may inadvertently distort a witness's meaning.

Example: While interviewing a Subject, the following exchange occurs.

Q: What impact could a substantiated investigation have on your career?

A: It could mean I get passed over for promotion, but I was not worried about that.

Using the previous example, it would be accurate for an investigator to write that the Subject acknowledged that a substantiated investigation could result in a failure to be promoted, and that outcome could be viewed as motivation to reprise against the Service member. However, it is vital to note that the Subject expressed no concern about being

passed over for promotion—this may diminish the Subject’s motivation to reprise based on a fear of not being promoted. Note that the exchange above requires the investigator to conduct further analysis, ask the Subject follow-up questions, such as “Why were you not worried about getting passed over to promotion?”, and account for the facts and circumstances of the case to make a conclusion about the Subject’s motive.

iv. Credibility

Investigators should know of any biases, real or perceived, to ensure the results of reprisal or restriction allegations are credible. The objective of the report on the results of the investigation is not to retell the testimonies of what happened; rather, it is to tell what happened. When witnesses provide different accounts, the investigator must resolve the factual disputes by comparing witness testimonies with other evidence (including the testimony of the Service member and other witnesses) and assigning the accounts the appropriate weight to determine whose version of the events is most credible.

Incomplete analysis and premature conclusions may raise doubts in a reader’s mind about the credibility of the investigation; they undermine the credibility of the report of the results of the investigation, DoD Component IGs, and the DoD OIG.

k. Legal Review of the Report on the Results of the Investigation

In accordance with DoDI 7050.09, paragraph 3.3.d., investigators must obtain a legal review of the report on the results of the investigation. For the case to be complete, the servicing legal office must conclude the report is legally sufficient. The case file should include evidence of the legal review, the review’s findings, and the identity of the reviewer.

l. Hardship Determination

In accordance with DoDI 7050.09, paragraph 3.3.f., after making a preliminary determination in an investigation that, more likely than not, a prohibited PA occurred that will result in an immediate hardship to the Service member, the responsible IG must promptly notify the Secretary of the Military Department concerned of the hardship.

7.4 Report on the Results of Investigation Timeliness Requirements

a. Completed Report—Transmission of Results

i. Transmit Report to the DoD OIG

Per DoDD 7050.06, Enclosure 2, 3.e, DoD Component IGs have 150 days from the commencement of the reprisal or restriction investigation to provide a report on the results of an investigation to the DoD OIG.¹⁰

ii. DoD IG Approval

The DoD Component IG will not send closure notifications to the Service member, Subject, Under Secretary of Defense for Personnel and Readiness, or the Secretary of the Military Department concerned until the DoD OIG reviews and approves the results unless the complaint meets any of the four conditions specified in [Section 7.2.g](#) of this document.

iii. Transmittal of Report to the Service Member and the DoD Leadership

When a complaint is investigated, the DoD Component IG has 30 days from the day the DoD OIG approves the report on the results of the investigation to transmit the report to the Under Secretary of Defense for Personnel and Readiness, the Secretary of the Military Department concerned, and the Service member.

b. Guidance on Investigative Updates

Not later than 180 days after the commencement of a reprisal or restriction investigation, and every 180 days thereafter until the transmission of the report on the investigation to the Service member, Component IGs must submit a notice on the investigation to the Service member, the Secretary of Defense, the Secretary of the Military Department concerned, and the DoD OIG. Each notice on an investigation must include a description of the current progress of the investigation and an estimate of the time remaining until the completion of the investigation and the transmittal of the report to the Service member.

c. Remedies and Corrective or Disciplinary Actions

If the final result of an investigation substantiates allegations of reprisal or restriction, the Secretary of the Military Department concerned has 30 days to determine whether corrective or disciplinary action should be taken. If the Secretary concerned determines that

¹⁰ DoDD 7050.06, Enclosure 2, “Responsibilities,” paragraph 3.e.

corrective or disciplinary action should be taken, the Secretary will take appropriate corrective or disciplinary action. The DoD Component IG has 10 days to notify the DoD OIG of any corrective or disciplinary action taken and remedies provided to the Service member.

SECTION 8—OVERSIGHT AND OTHER REVIEWS

8.1 Whistleblower Reprisal Investigations Oversight Branch

The Whistleblower Reprisal Investigations Oversight Branch (Oversight Branch) ensures that complaint evaluations and investigations into allegations of reprisal or restriction conducted by the DoD Component IGs are conducted in accordance with the standards identified in [Section 3](#) of this guide.

When a Component IG determines there is not sufficient evidence to warrant an investigation of an allegation, that IG will forward the matter to the Oversight Branch for review. In the case of an investigation, the results will be determined by, or approved by, the DoD OIG (regardless of whether the investigation itself is conducted by the DoD OIG or a Component IG).

If the DoD OIG finds a deficiency or otherwise questions the conclusion in the report, the DoD OIG will return it to the DoD Component IG to address our concerns.

8.2 Closures of Complaints Without DoD OIG Review

Four specific sets of circumstances described in [Section 7.2.g](#) allow a DoD Component IG to close a complaint without review by the DoD OIG. All other closures without investigation must be reviewed by the DoD OIG.

8.3 Reviews by the Oversight Branch of Reports on the Results of an Investigation

a. Submit the Report on the Results of the Investigation to the Oversight Branch

All reports on the results of an investigation conducted by the DoD Component IGs will be submitted to the DoD OIG for review. The DoD Component IGs will include:

- the initial complaint from the Service member;
- the ROI or Determination Form;
- a legal review; and
- evidence (as required).

b. Material Deficiencies

The Oversight Branch may return an ROI to the DoD Component IG with a request for additional information or work if the ROI contains material deficiencies.

The following are some common scenarios that require the Component IG to conduct more work on an ROI.

- No interview of the Service member or no notification that such an interview occurred
- Addressing of only the non-reprisal allegations
- Misapplication of the facts to each reprisal element
- Failure to address all alleged PCs and PAs
- Failure to analyze all Subjects
- Questioning of the Service member's motives for submitting a complaint
- Inappropriate reference to previous complaints
- The appearance of bias
- Failure to obtain testimony or evidence sufficient to support the conclusion
- An appearance of the conflict of interest and need for recusal
- Reliance on leading questions during the Service member's clarification interview
- Use of the incorrect framework of analysis, evidentiary standard, or both

c. Feedback

When applicable, the DoD OIG will review the work of and provide feedback to the DoD Component IGs through documentation of the DoD OIG review and approval process. That feedback will generally take the form of an oversight worksheet and approval memorandums.

i. Oversight Worksheet

Oversight worksheets are used to document observed strengths and weaknesses in submissions from the DoD Component IGs and are unique to the type of case in question.

- Closures without investigation
- Reprisal investigations
- Restriction investigations

ii. Approval Memorandum

An approval memorandum indicates to the DoD Component IG that the DoD OIG has reviewed and approved the action in question. It serves to document the completion of the DoD OIG review and approval process and indicates that the DoD Component IG can proceed to send out any requisite notifications.

SECTION 9—ACRONYMS AND ABBREVIATIONS

DoDD	DoD Directive
DoDI	DoD Instruction
DoD OIG	DoD Office of Inspector General
EO	Equal Opportunity
Guide	Guide to Investigating Military Whistleblower Reprisal and Restriction Complaint
IG Act	Inspector General Act of 1978
IP	Investigative plan
JAG	Judge advocate general
NG	National Guard
PA	Personnel action
PC	Protected communication
U.S.C.	United States Code
UCMJ	Uniform Code of Military Justice
WPC	Whistleblower Protection Coordinator