



INSPECTOR GENERAL

U.S. Department of Defense

**Statement of
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Department of Defense
for a Hearing on**

***Protecting Those Who Blow the Whistle on
Government Wrongdoing***

**Before the Subcommittee on Government
Operations
Committee on Oversight and Reform
U.S. House of Representatives
January 28, 2020**

Chairman Connolly, Ranking Member Meadows, and members of the subcommittee, thank you for inviting me to appear before you today for this hearing on the contributions of federal whistleblowers and the need to protect them from reprisal.

I. INTRODUCTION

My testimony will focus on the important work of the Department of Defense Office of Inspector General (DoD OIG) relating to whistleblowers.

I am the DoD Principal Deputy Inspector General, Performing the Duties of the Inspector General, and have been serving as the head of the DoD OIG for over 4 years. Prior to this position, in addition to working as an attorney in private practice, I was the Inspector General of the Department of Justice for 11 years, from 2000 to 2011.

In my testimony today, I will discuss the significant contributions of whistleblowers, why the protection of whistleblowers is so important, how the DoD OIG evaluates and investigates whistleblower disclosures and complaints of reprisal, and several best practices we have implemented at the DoD OIG to improve our timeliness and efficiency in whistleblower investigations.

Specifically, my testimony discusses:

- the mission and responsibilities of the DoD OIG,
- the importance of whistleblowers and the need to protect them from reprisal,
- examples of cases resulting from whistleblower disclosures,
- the DoD OIG's investigative processes,
- best practices that the DoD OIG has implemented to improve the timeliness and efficiency of reprisal investigations,

- the need for DoD management to take timely corrective action on substantiated whistleblower reprisal investigations, and
- the need for adequate resources to handle these important responsibilities.

II. BACKGROUND

The mission of the DoD OIG is to detect and deter waste, fraud, and abuse in DoD programs and operations; to promote the economy, efficiency, and effectiveness of these programs and operations; and to help ensure ethical conduct throughout the DoD.

As part of the DoD OIG's oversight of DoD programs and operations, we conduct audits, evaluations, and investigations, including administrative and criminal investigations. We also oversee the work of the Military Service and Component Inspectors General (IGs) and the Military Criminal Investigative Organizations, which also conduct administrative and criminal investigations throughout the DoD.

These are challenging responsibilities, given the size and scope of the operations of the DoD, which is the largest federal agency, and, in terms of people, is the largest organization of any kind in the world.

III. PROTECTION FOR WHISTLEBLOWERS

To perform our mission, we, like other OIGs, rely heavily on information provided by whistleblowers. Whistleblowers play a crucial role in exposing waste, fraud, and abuse, and other violations of law in government programs and operations. These whistleblowers must be protected from reprisal for their protected disclosures.

A whistleblower is someone who makes a good faith report to an authorized recipient of information regarding violations of law, rule, or regulation; gross waste of funds; gross mismanagement; an abuse of authority; or a substantial and specific danger to public health or safety.

Section 7 of the IG Act specifically prohibits reprisal against whistleblowers for good faith disclosures of wrongdoing. The Act also prohibits disclosure of whistleblowers' identities without their consent, except when unavoidable during the course of an investigation. Therefore, throughout the intake and investigative processes, IGs are mindful of our obligation under the IG Act to protect the identity of whistleblowers.

To help facilitate whistleblower disclosures, the DoD OIG runs the DoD Hotline for individuals to disclose allegations of waste, fraud, abuse, or misconduct related to DoD operations or programs. When individuals provide information to the DoD Hotline, they may either identify themselves, or file an anonymous complaint in which they do not disclose their identity or provide personally identifiable information.

For those individuals who choose to identify themselves, they may either withhold their consent for the DoD Hotline to share their name and contact information outside of the DoD Hotline, thereby remaining confidential, or they may give consent for their contact information to be shared on a need-to-know-basis. An example of a need to know would be if the investigators needed to contact a complainant for additional information to pursue the allegation.

Each of these types of disclosures can result in substantiated findings. For example, in fiscal year (FY) 2019, of the cases that the DoD Hotline referred for investigation, inquiry, or audit that resulted in substantiated findings, 49 percent were submitted by known, non-

confidential complainants, 5 percent were submitted by complainants who were known but wanted to remain confidential, and 46 percent were filed anonymously.

a. Reprisal

Congress has enacted various laws to protect whistleblowers from reprisal.

Whistleblower reprisal occurs when an individual or entity takes or fails to take, or threatens to take or fail to take, a personnel action against a whistleblower in retaliation for the whistleblower making a protected disclosure. The DoD OIG regularly investigates allegations of whistleblower reprisal made by:

- (1) members of the Armed Forces;
- (2) civilian appropriated fund employees of the DoD, including members of the DoD intelligence community and all DoD employees with access to classified information;
- (3) employees of DoD contractors, subcontractors, grantees, subgrantees, and personal service contractors; and
- (4) nonappropriated fund instrumentality (NAFI) employees who are paid from nonappropriated funds generated by Military Service clubs, bowling centers, golf courses, and other activities.

The DoD OIG conducts these investigations under the authority of the IG Act; 10 U.S.C., §§ 1034, 1587, and 2409; and Presidential Policy Directive–19 (PPD-19). For civilian appropriated fund employees, the DoD OIG shares investigative authority with the Office of Special Counsel (OSC), and we regularly consult with OSC to prevent duplication of investigations.

The responsibility for evaluating, investigating, and performing oversight reviews of DoD whistleblower reprisal complaints is shared among the DoD OIG, the Military Service IGs, the Intelligence Community IG, and statutory IGs in the Defense Intelligence agencies.

b. Whistleblower Disclosures to the DoD Hotline

There are many examples of whistleblowers exposing misconduct, saving taxpayer money, and improving the efficiency and effectiveness of DoD operations.

For example, the movie “War Dogs” was based on a DoD OIG Defense Criminal Investigative Service (DCIS) investigation involving U.S. contractors who were selling the U.S. government substandard, foreign-manufactured ammunition repackaged to conceal that it was manufactured in China. The contractors used a non-U.S. contractor to repackage the counterfeit ammunition. In one scene of the movie, a whistleblower is shown placing a call from overseas and stating, “Hello, Pentagon? I want to report a crime.” That call, in reality, was made to and answered by DoD OIG Hotline staff and was referred to DCIS for investigation. That investigation resulted in the conviction and imprisonment of the suspects and the removal of the counterfeit ammunition from the U.S. materiel stockpile.

Similarly, other whistleblower disclosures have resulted in significant DoD OIG investigations. The following are just a few examples of recent results from whistleblower disclosures.

1. Glenn Defense Marine Asia (the so-called “Fat Leonard” case)

The DoD OIG, the Naval Criminal Investigative Service (NCIS), and the Department of Justice have conducted a wide-ranging investigation that was based on a complaint originally filed by a whistleblower alleging conspiracy of bribery and fraud by Glenn Defense Marine Asia PTE, LTD (GDMA), and its chairman and owner, Leonard Glenn Francis (known as “Fat Leonard”). This investigation, one of the largest and most complex

public corruption criminal cases in DoD history, involves widespread ethical lapses throughout the Navy's 7th Fleet.

GDMA provided U.S. Navy ships in the Pacific "husbanding" services, such as refueling, resupply, tugboat services, and sewage disposal. The investigation determined that GDMA and Francis orchestrated a scheme to defraud the Navy of tens of millions of dollars by routinely overbilling for goods and services. Francis also systematically groomed and bribed active duty military and Navy civilian employees with dinners, gifts, travel, hotel expenses, money, and the services of prostitutes. In return, Navy officers and civilian employees provided Francis classified Navy ship and submarine schedules, helped Francis obtain contracts, overlooked inflated bills from Francis, and even helped Francis avoid detection during the criminal investigation of his conduct.

As a result of the whistleblower complaint and subsequent joint investigation by the DoD OIG and the NCIS, Francis, several former GDMA employees, and 17 former Navy and DoD officials—including a rear admiral and a Senior Executive Service (SES) member—pleaded guilty to criminal conduct. In addition, nine senior officers previously assigned to the Navy's 7th Fleet were indicted for conspiracy, bribery, false statements, and, in some instances, obstruction of justice for destroying documents. Among those charged were a Navy rear admiral, a Marine Corps colonel, and several Navy captains.

2. SofTec Solutions, Inc.

In November 2019, the DoD OIG completed a criminal investigation that originated with an anonymous complaint to the DoD Hotline alleging that a contractor mischarged DoD federal contracts. As a result of the investigation, the contractor was suspended from federal work, was

required to pay \$1.2 million in restitution, was fined \$250,000, and was sentenced to 6 months incarceration.

3. The CREC Group

On August 30, 2019, a former active duty Army colonel was sentenced to 60 months in prison and ordered to forfeit more than \$1.2 million. This investigation, conducted by DCIS, the Army Criminal Investigation Command (CID), and the Small Business Administration OIG, resulted from an anonymous whistleblower complaint to the DoD Hotline alleging that three senior military officers created a business, the CREC Group, that falsely claimed to be a small disadvantaged business, and, as a result, improperly received federal contracts.

4. MQ-9 Block 5 Reaper

In November 2017, a whistleblower submitted allegations to the DoD Hotline regarding the MQ-9 Block 5 Reaper (MQ-9), an unmanned aircraft with the ability to fly for up to 14 hours, with persistent capability to find, fix, track, target, engage, and assess targets. The resulting DoD OIG audit substantiated the allegation that the Air Force was not properly estimating and procuring MQ-9 aircraft spare parts. In December 2018, the DoD OIG reported that the Air Force owned 3,746 excess spare parts valued at \$30.9 million, and also significantly understocked other vital spare parts. For example, to accommodate the needs of the coming 3 years, the Air Force stocked only 129 battery unit assemblies even though these assemblies had been requested 281 times during the prior 3 years. The inability to meet repair demands can seriously jeopardize the readiness of the MQ-9 fleet.

IV. THE DOD OIG INVESTIGATIVE PROCESS

a. Making a Disclosure or Filing a Complaint

The DoD Hotline, which allows anyone to make protected disclosures involving DoD personnel and operations, advertises on radio, television, and Twitter, as well as through outreach events and posters displayed at DoD facilities and DoD contractor workplaces worldwide.

Each year, the DoD Hotline receives approximately 14,000 contacts, many of which involve serious and credible allegations related to criminal acts or misconduct; reprisal; other matters involving waste, fraud, and abuse; or issues related to national security involving DoD programs and operations. As a result of these disclosures, the DoD Hotline opens approximately 6,000 cases annually.

b. Investigations

It is illegal to reprise against whistleblowers for their protected disclosures, and the DoD OIG often receives allegations that a whistleblower has suffered reprisal for making a disclosure. When a whistleblower contacts the DoD OIG to allege that he or she experienced reprisal for reporting waste, fraud, abuse, or other misconduct, the DoD OIG carefully evaluates each allegation. If the DoD OIG determines that the allegation warrants investigation, the DoD OIG either takes investigative responsibility for the allegation, or refers the allegation to be investigated by a Military Service or other DoD Component IG, with DoD OIG oversight.

Certain types of reprisal complaints—such as those arising from reporting a military sexual assault, most security clearance matters, and those filed by Defense contractor employees or NAFI employees—are typically handled by the DoD OIG rather than referred to a Military Service or DoD Component IG.

At the conclusion of a DoD OIG investigation, the DoD OIG completes a report of investigation that presents its findings related to the allegations, provides its conclusions on whether the allegations are substantiated or not, and explains how its investigators reached these conclusions.

The DoD OIG also reviews final reports of whistleblower reprisal investigations completed by Military Service and DoD Component IGs. If the DoD OIG determines that the Service or DoD Component IG investigation did not adequately investigate or address relevant issues or leads, or that the report is deficient, we return the investigation to the Service or Component IG for additional work.

In addition to reviewing completion reports for appropriate quality and conclusions, the DoD OIG also tracks and analyzes the timeliness of open Service and Component IG investigative work throughout the DoD.

c. DoD OIG Best Practices

The DoD OIG has implemented several important best practices in recent years to improve the timeliness and efficiency of our whistleblower programs. The following are examples of these improvements.

1. Focus on timeliness

Timeliness of investigations is critically important. OIGs need to investigate whistleblower disclosures expeditiously, not only to uncover wrongdoing or retaliation in a timely way and hold subjects accountable in a timely way, but also to clear subjects in a timely way when the facts and evidence warrant it.

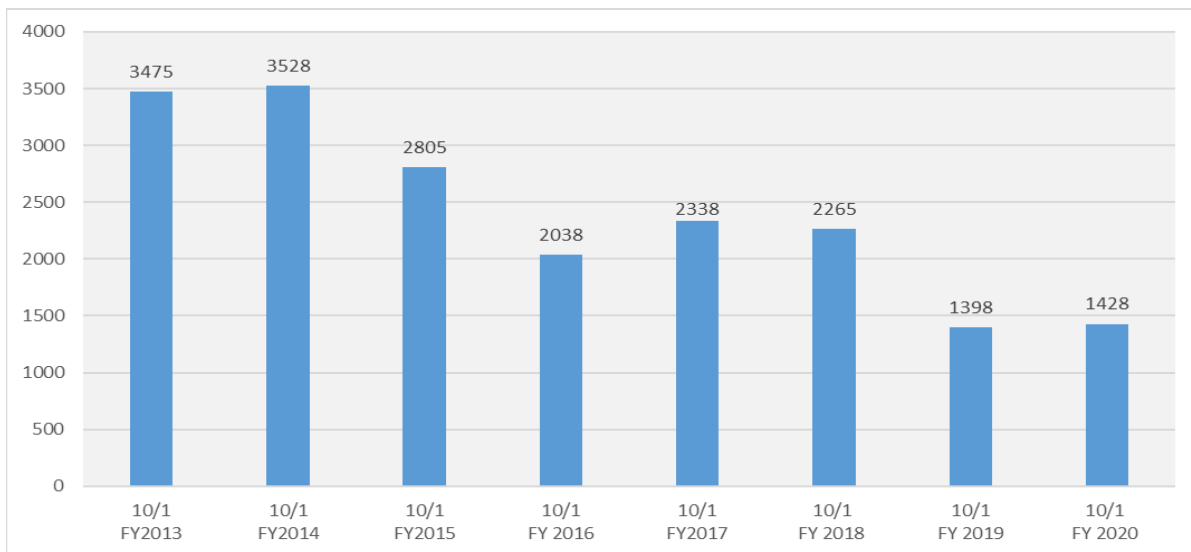
The DoD OIG has therefore focused significant attention on improving the timeliness of our investigations and oversight. This has been challenging, given the increase in the number of

complaints, the increasing complexity of these complaints, and the growing volume of digital and electronic evidence that investigators must review. It is also important to balance timeliness with thoroughness, and to ensure the investigations are accurate.

However, the DoD OIG has improved our timeliness in recent years. For example, 3,475 DoD Hotline cases remained open on October 1, 2013. Many of these cases were not effectively managed with the legacy case management system. In the ensuing years, legacy cases were efficiently managed with new processes, reallocated resources, and a DoD OIG case management system in which the DoD OIG captures all relevant data. The legacy cases were oversights and appropriately closed. On October 1, 2019, there were 1,428 open DoD Hotline cases.

Figure 1 shows the overall reduction in the DoD Hotline’s case inventory from FYs 2013 through 2020.

Figure 1. Hotline Open Cases Trend FYs 2013 Through 2020



2. Assignment of Additional Resources

To handle incoming whistleblower allegations in a more timely and thorough manner, in the last several years we have reallocated significant resources to the DoD OIG’s Administrative

Investigations component, which is responsible for the DoD Hotline, senior official misconduct investigations, and whistleblower reprisal investigations. Specifically, we increased staffing in Administrative Investigations from 114 full-time equivalents in FY 2016 to 154 in FY 2019.

3. The DoD OIG's Alternative Dispute Resolution Program

In the fall of 2017, the DoD OIG established the Alternative Dispute Resolution (ADR) program as an option for resolving certain whistleblower reprisal complaints. ADR is a voluntary process, facilitated by a DoD OIG ADR attorney, in which the parties agree to use mediation or facilitated settlement negotiations to seek resolution of a complaint prior to an otherwise lengthy investigative process, or at any point during the handling of the complaint. During this process, the parties have the opportunity to explain their interests and concerns, explore possible solutions, and negotiate a potential resolution. Examples of resolutions include monetary relief, expungement of negative personnel records, neutral references, re-characterizing discharge as resignation, temporary reinstatement until new employment is secured, training of agency personnel, debt forgiveness, reassignment, leave restoration, and improved working relationships.

The contribution of the DoD OIG's ADR program to timeliness has been significant. Since October 2017, the DoD OIG ADR program has resulted in settlements for 114 complainants and their employers. In addition to providing voluntary resolutions for the parties, including the whistleblower, ADR eliminates the need for lengthy investigations, which reduces the workload for DoD OIG investigators and allows them to conduct and handle other cases in a more timely fashion.

In fact, since the inception of the ADR program, the number of cases resolved through ADR has matched or exceeded the number of completed whistleblower reprisal investigations.

Figure 2 compares the number of cases resolved in ADR with the number of investigations completed.

Figure 2. Completed Investigations and Resolutions Reached Through ADR



A report issued by the Project on Government Oversight (POGO) highlighted the DoD OIG’s ADR program as a model program and recommended that other OIGs consider adopting similar programs.¹

4. Enhanced Intake Procedures

In 2019, the DoD OIG modified our intake process for whistleblower reprisal complaints to encourage a more robust review of the complaints. This review can include preparing chronologies of key events, discovery of relevant background information, and obtaining pertinent documentary evidence. As a result of these enhanced intake procedures, we have become more efficient in the conduct and overall timeliness of our reprisal investigations.

¹ POGO report, “The Watchdogs after Forty Years: Recommendations for Our Nation’s Federal Inspectors General,” July 9, 2018, available at <https://www.pogo.org/report/2018/07/watchdogs-after-forty-years-recommendations-for-our-nations-federal-inspectors-general/>.

5. Summary Reports

The DoD OIG also implemented the use of summary reports of investigation for some whistleblower reprisal cases in which the facts are straightforward, the analysis is uncomplicated, and reprisal is not substantiated. For example, we use summary reports when the evidence shows that the complainant did not make any protected disclosure or did not make a protected disclosure before the personnel action in question was taken. These summary reports allow investigators to focus more time and attention on more complex investigations and reports.

6. Proactive Release

We also believe in the importance of transparency and, therefore, implemented a proactive release policy. We believe that IGs have a responsibility to be transparent with our findings, particularly when the matters involve issues of significant public concern and relate to high-level officials' actions in their official duties. We consider each of our reports of investigation, including cases arising from whistleblower disclosures and whistleblower reprisal cases, for proactive public release. In appropriate cases, we publicly release the reports of investigation even before receiving a Freedom of Information Act (FOIA) request for the report. POGO recently noted the DoD OIG's decision to proactively release reports and other select investigations to the public, calling it "a powerful means of increasing the government's accountability to the public."

7. Whistleblower Protection Coordinator

The Whistleblower Protection Enhancement Act of 2012 added a requirement that all IGs designate a Whistleblower Protection Ombudsman. In 2018, the name of the position was changed to a Whistleblower Protection Coordinator.

The DoD OIG recognizes the important role of the OIG's Whistleblower Protection Coordinator and therefore made this a full-time GS-15 position rather than a collateral duty, as it was in the past. The Whistleblower Protection Coordinator is responsible for educating DoD employees and contractors on their rights, remedies, and avenues to report allegations, and also educating management on their responsibilities to abide by the laws and regulations that protect whistleblowers from retaliation for making a protected disclosure.

8. Process Reviews of DoD Military Service IGs

The DoD OIG has also implemented a program to conduct detailed process reviews of Military Service IGs, based upon Council of Inspectors General on Integrity and Efficiency (CIGIE) Peer Reviews and Investigative Standards. Our reviews, which are like CIGIE peer reviews, cover Military Service hotline, reprisal, and senior official complaints and investigations. We comprehensively review the administrative investigative processes, operations, and policies of each Military Service IG. These reviews have identified areas the Services IG should improve and best practices for them to implement. We are expanding this review program to other DoD agencies.

For example, significant matters the DoD OIG has identified during these reviews include Service IGs not accurately entering or reporting subject names, allegations, findings, and corrective actions in corresponding data fields in case management systems, which makes the data not retrievable. As a result, the Senate Armed Services Committee, in its report accompanying the FY 2020 National Defense Authorization Act, included a requirement that such data be captured in all DoD Component IG case management systems, including those of the Military Service IGs. In addition, the DoD OIG has been developing an enterprise-wide

version of its current case management system, which eventually will be used throughout the DoD.

9. Training and Outreach

The DoD OIG's training curriculum for whistleblower reprisal investigators is a model program and covers all aspects of evaluating, investigating, and reporting on reprisal complaints. We regularly deliver our whistleblower reprisal investigations course to participants throughout the DoD and to other federal agency OIGs. In recent years, we have also developed and delivered a course on conducting administrative investigative interviews, and we are developing a course on contractor whistleblower reprisal investigations. We have also piloted a professional certification program for administrative investigators throughout the DoD.

In addition, the DoD Hotline hosts a Worldwide Outreach each July on National Whistleblower Appreciation Day. The event is open to all DoD, federal, state, and non-governmental organization hotlines, and the media. The event not only recognizes the importance of whistleblowers, but also provides a forum to share best practices.

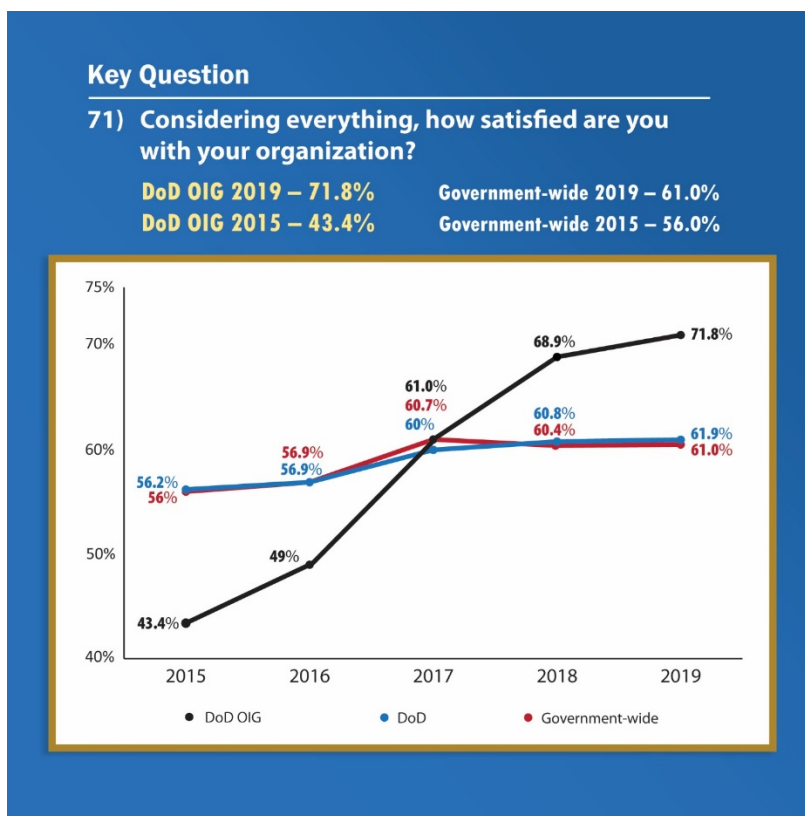
10. Employee Engagement

I also want to note the hard work and dedication of the DoD OIG employees who handle important responsibilities related to whistleblowers. We can only perform these responsibilities effectively with engaged employees, and we are proud of our progress in improving the morale and engagement of DoD OIG employees.

Each year, the Office of Personnel Management conducts a Federal Employee Viewpoint Survey (FedView), asking federal employees about their views of their organization. In years past, the DoD OIG FedView results were low—far below government and DoD averages. We therefore focused attention on improving areas where results were low and, through the efforts of

employees, managers, and supervisors throughout the OIG, we have dramatically improved our FedView results. We now rank above the government and DoD averages for virtually every question on the survey. For example, a key question on the survey, question 71, asks “Considering everything, how satisfied are you with your organization?” As shown in the Figure 3, the DoD OIG has improved its scores on this question significantly in the last several years, and now scores well above the DoD and government averages.

Figure 3. Improvement to DoD OIG Employees’ Overall Satisfaction With the Organization



It is also important to note that the overall results for the DoD OIG’s Administrative Investigative component, which handles the whistleblower matters discussed in my testimony, are very high. They are much above the government and DoD averages on most questions, and are among the highest in the DoD OIG.

I point this out because it is only through the dedication and hard work of our engaged Administrative Investigations employees—who are willing to go the extra mile and work long and hard to handle a challenging and relentless assignment—are we able to stay on top of the burgeoning caseload related to whistleblowers.

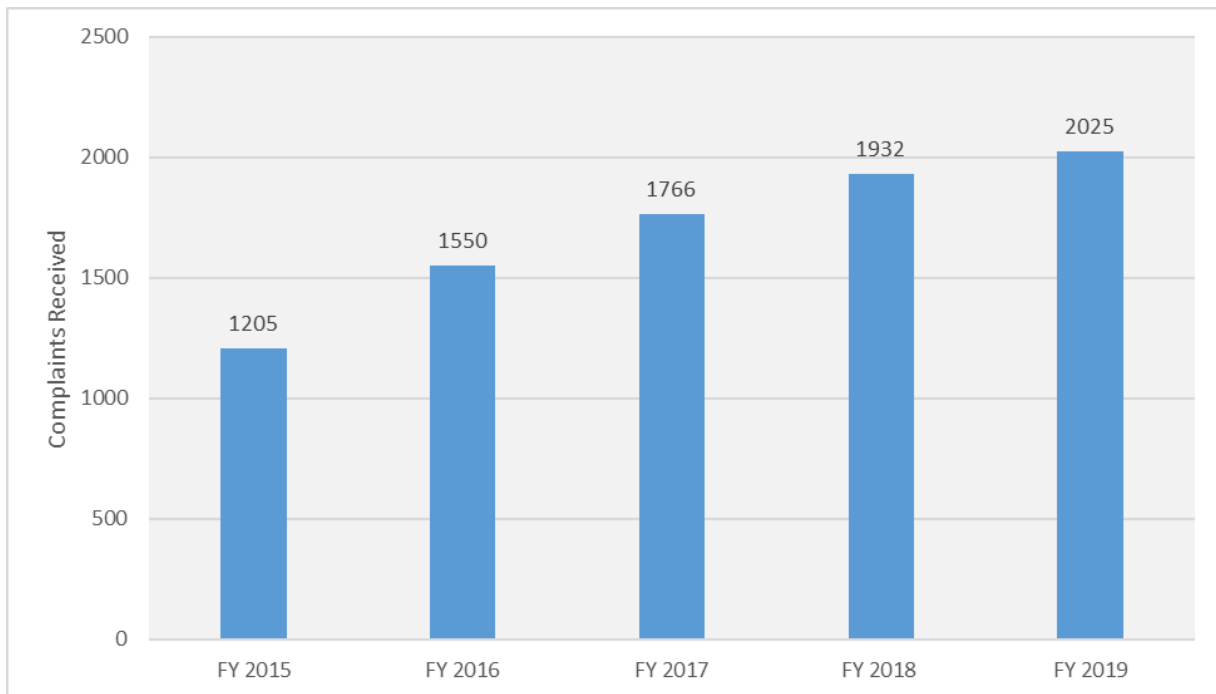
V. TIMELINESS OF REPRISAL INVESTIGATIONS

Conducting timely, thorough, and accurate investigations is even more challenging as our caseloads have increased and the investigations have become more complex.

For example, in FY 2015, the DoD OIG received 1,205 reprisal complaints and closed 1,107 cases. In FY 2019, we received 2,025 reprisal complaints and closed 1,999 cases.

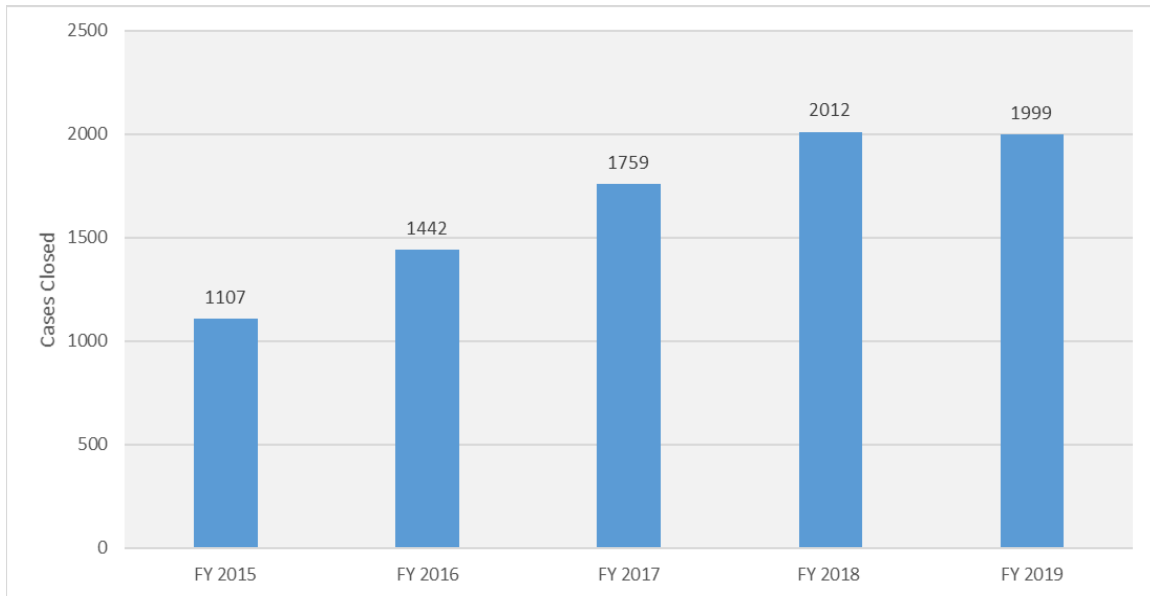
Figure 4 shows the number of reprisal complaints received throughout the DoD (from the DoD OIG, Service IGs, and Component IGs) increasing year after year.

Figure 4. Reprisal Complaints Received Throughout the DoD by Fiscal Year



Correspondingly, Figure 5 shows the increasing number of reprisal cases that the DoD closed during the past 5 years.

Figure 5. Reprisal Cases Closed Throughout the DoD by Fiscal Year

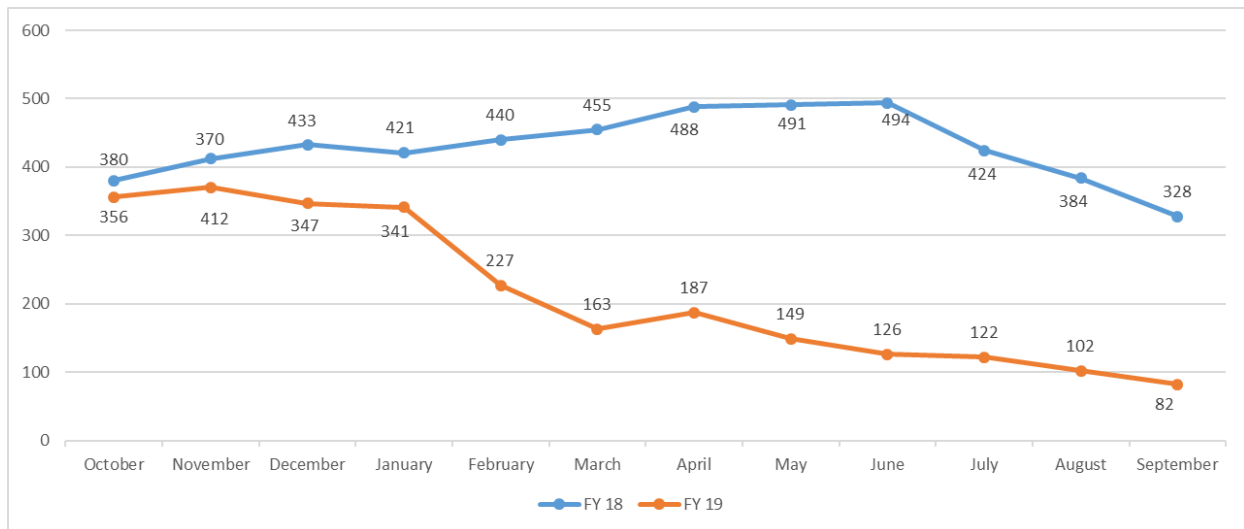


Despite the increasing number of complaints received each year, the best practices described above have resulted in improvements in the quality and timeliness of our reprisal investigations.

For example, these improvements created a downward trend in the age of closed investigations. By dedicating more personnel to conducting reprisal investigations and reducing caseloads for investigators, using the summary report format when appropriate, and focusing on appropriate levels of investigative effort warranted by individual fact patterns, by the end of FY 2019, the DoD OIG reduced the average number of days to complete a reprisal investigation from 570 days to 375 days. In addition, 17 of the 52 investigations that the DoD OIG closed in FY 2019 were 180 or fewer days old, including 6 military reprisal cases. In prior years, it was rare to close a case in less than 180 days.

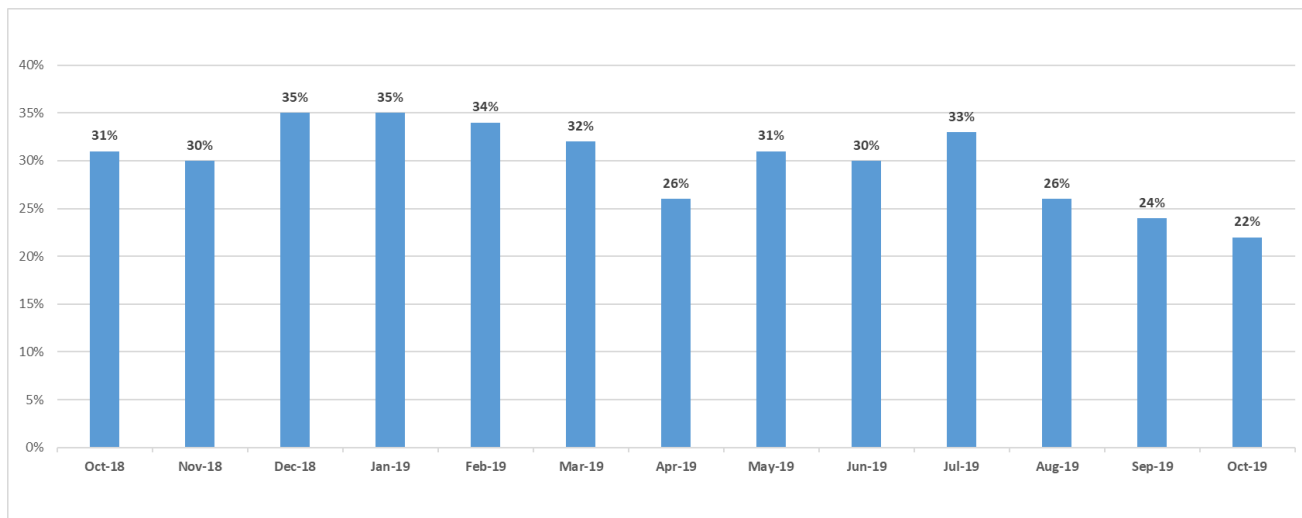
The age of closed cases is also a lagging indicator. The age of our current open investigations has fallen significantly, as shown in Figure 6. We believe that having reduced older cases, we are positioned to be able to improve and maintain timeliness.

Figure 6. Average Days in Investigation (Open DoD OIG Reprisal Investigations) by Fiscal Year



The Service IGs have also focused attention on timeliness. As a result, the Service IGs have reduced the number of their reprisal cases that are over 1 year old from a peak of 35 percent of their reprisal cases in December 2018 and January 2019 to 22 percent in October 2019. However, the Services also struggle to address increasing caseloads with limited resources, and have a considerable backlog of open older reprisal cases. Figure 7 shows the percentage of Service IGs’ reprisal cases that were open for a year or longer during FY 2019.

Figure 7. Service IG Reprisal Cases Open for a Year or More



VI. MANAGEMENT ACTION ON SUBSTANTIATED WHISTLEBLOWER REPRISAL INVESTIGATIONS

When whistleblower reprisal cases are substantiated, it is critical that management take prompt remedial action to make whistleblowers whole. When we substantiate an allegation of reprisal against a whistleblower, we complete a final report of investigation, notify the subject, and provide the report to the subject’s chain of command for appropriate action. DoD management is then responsible for determining appropriate disciplinary action and reporting their decision on the case and the action taken to the DoD OIG. The DoD OIG monitors, records, and reports corrective and disciplinary actions that it receives from throughout the DoD.

However, recently, we have seen a small but disturbing trend in the DoD disagreeing with the results of the DoD OIG’s investigations or not taking disciplinary action in substantiated cases, without adequate or persuasive explanations. This is troubling. When DoD managers do not uphold or take action on substantiated findings of reprisal, it can negatively impact not only the individual complainant but also the whistleblower protection program as a whole. Failure to

take action also sends a message to agency managers that reprisal will be tolerated, and to potential whistleblowers that the system will not protect them.

The following sections discuss examples of cases in which the DoD OIG substantiated that reprisal had occurred, but the DoD disagreed and did not take corrective action.

i. Leidos Case

The DoD OIG investigated a contractor reprisal complaint filed by a subcontractor hired by Inductive Minds under a subcontract issued by Leidos, the prime contractor. The subcontractor employee disclosed to the contracting officer's representative that a government employee in the office had created a hostile work environment, made inappropriate sexual comments, and made inappropriate comments about women from her country of origin. We determined that, after she complained to government and Leidos officials about the conduct of the government official, Leidos retaliated against her by not selecting her for work on a bridge contract.

We provided the DoD our substantiated report of investigation on January 3, 2018. We recommended that the DoD order Leidos to award the complainant compensatory damages, and take appropriate action against Leidos for retaliating against the complainant. The Washington Headquarters Service Office of General Counsel (WHS OGC) disagreed with certain aspects of our report of investigation. In response, we provided WHS OGC an in-depth explanation of why each of its assertions was inaccurate. The Under Secretary of Defense for Acquisition and Sustainment eventually replied, disagreeing with our conclusion without detailed explanation.

ii. Case of Discharged NAFI Employee

The DoD OIG investigated a reprisal allegation by an employee at a NAFI Child and Youth Program (C&YP) facility where employees were using

C&YP audio equipment for personal use—which constituted waste, fraud, and abuse, children were being allowed to sign themselves out of the center against regulations and policy, and personnel were allowed to transport children in a C&YP bus without a commercial driver’s license. The complainant also reported the last violation to the local IG, who initiated an investigation. Within a day of learning of the IG investigation, a NAFI official, the complainant’s supervisor, to whom the complainant’s protected disclosures were made, discharged him. The NAFI official claimed that the complainant would have been discharged even without the protected disclosure; however, the evidence did not support this claim. We substantiated the reprisal allegation in this case.

After almost 3 years of not acting on our recommendation, the DoD Chief Management Officer (CMO) had failed to take remedial action. The decision was originally handled by the CMO’s Director of Administration and Management (DA&M), however, the responsibilities of the DA&M have since been distributed under the CMO. Eventually, after our repeated attempts to obtain a decision from the DA&M, the DA&M closed the case as not substantiated. We disagreed with the DA&M’s conclusion and were unpersuaded by their reasoning. We believe that the evidence fully supported our finding of substantiated reprisal.

iii. Case of Terminated NAFI Employee

The DoD OIG investigated an allegation by a former auto mechanic at the Marine Corps Exchange Service Station at Camp Allen, Virginia, that Marine Corps Community Services officials gave him an Employee Warning Notice and terminated his employment in reprisal for disclosing that the manager of the service station engaged in mismanagement.

In our June 5, 2018, report of investigation, we recommended that the DA&M direct the removal of the Employee Warning Notice and offer the

employee a commensurate auto mechanic position. We also recommended that the DA&M take corrective action against the Marine Corps Community Services officials.

The DoD Deputy Chief Management Officer (DCMO) reviewed the matter but relied on Merit Systems Protection Board (MSPB) decisions to reach the conclusion that the employee's "purported whistleblower disclosures" were not protected disclosures because they are not "the type of activity that would rise to the level of mismanagement contemplated by whistleblower law."

We disagreed with the DCMO's conclusion, which we believe was based on an incorrect standard and was otherwise unpersuasive.

We are troubled by these and other instances of the DoD not taking action following receipt of our substantiated reports of investigation, without detailed or persuasive explanations.

In addition, DoD officials often do not make timely decisions on corrective actions. As noted above, failure to take prompt and appropriate corrective action to make whistleblowers whole and to hold the reprising official accountable has the potential to deter other whistleblowers from making protected disclosures in the future.

VII. RESOURCES

As noted above, to address an increased volume of reprisal complaints, the DoD OIG has increased the number of investigators conducting and overseeing these investigations. While the size of the DoD and the complexity of complaints and investigations have increased, DoD OIG resources have remained relatively static over the years. In addition, the Military Service IGs have also struggled to obtain adequate resources to handle whistleblower cases. We believe

it is critical that these challenging responsibilities receive sufficient resources. Insufficient resources will have an adverse impact on the success of whistleblower protection programs and IG operations in general.

VIII. CONCLUSION

Whistleblowers regularly expose waste, fraud, and abuse and misconduct, and the DoD OIG seeks to investigate their allegations fully, fairly, and in a more timely way. These whistleblowers must be protected from reprisal, and when the allegations are substantiated, prompt corrective action should occur.

The DoD OIG takes these responsibilities seriously, and we have made significant improvements in handling these important matters. We recognize that more work needs to be done, and we will continue to focus attention on this important area.