



DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
2 NAVY ANNEX  
WASHINGTON, DC 20380-1775

MCO 12000.10  
MPC-49  
21 Oct 1985

MARINE CORPS ORDER 12000.10 W/CH 1, 2

From: Commandant of the Marine Corps  
To: Distribution List

Subj: Employment Protection for Certain Nonappropriated Fund  
Instrumentality Employees/Applicants

Encl: (1) DoDDir. 1401.3 of 19 Jul 1985

1. Purpose. To transmit Department of Defense policy that established protection against reprisals for certain nonappropriated fund instrumentality (NAFI) civilian employees and applicants who have made protected disclosures. The enclosure sets forth responsibilities and authorities for providing such protection and prescribes operating procedures.

2. Action. Commanders will publicize the content of this Order within their activities to assure that NAFI employees or applicants fully understand the scope and application of this Order. The publicity should include a definition of the term "protected disclosure" and the procedures for filing a complaint.

3. Reserve Applicability. This Order is applicable to the Marine Corps Reserve.

GAIL M. REALS  
By direction

DISTRIBUTION: CQ1/L27

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DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, DC 20380-0001

MCO 12000.10 Ch 1  
MCP-32  
19 Dec 1986

MARINE CORPS ORDER 12000.10 Ch 1

From: Commandant of the Marine Corps  
To: Distribution List

Subj: Employment Protection for Certain Nonappropriated Fund  
Instrumentality Employees/Applicants

Encl: (1) New page insert to MCO 12000.10

1. Purpose. To transmit a new page insert to the basic Order.
2. Action. Incorporate the pen change in the basic Order as directed in the enclosure.
3. Filing Instructions. File this Change transmittal immediately behind the signature page of the basic Order. File the Change 1 transmittal of the DoD directive behind the signature page of the DoD directive.

GAIL M. REALS  
By direction

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DEPARTMENT OF THE NAVY  
HEADQUARTERS UNITED STATES MARINE CORPS  
WASHINGTON, DC 20380-0001

MCO 12000.10 Ch 2  
MWP  
29 Oct 90

MARINE CORPS ORDER 12000.10 Ch 2

From: Commandant of the Marine Corps

To: Distribution List

Subj: EMPLOYMENT PROTECTION FOR CERTAIN NONAPPROPRIATED FUND  
INSTRUMENTALITY EMPLOYEES/APPLICANTS

Encl: (1) New page insert to MCO 12000.10

1. Purpose. To transmit a new page insert to the Basic Order.
2. Action. Incorporate the pen change in the basic Order, as directed in the enclosure.
3. Filing Instructions. File this Change transmittal immediately behind the signature page of Change 1 of the basic Order. File the Change 2 transmittal of the DoD directive behind the signature page of Change 1 of the DoD directive.

J. R. JOY  
Director, Morale, Welfare and  
Recreation Support Activity

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Department of Defense  
DIRECTIVE

July 19, 1985  
NUMBER 1401.3

C, DoD

SUBJECT: Employment Protection for Certain Nonappropriated Fund  
Instrumentality Employees/Applicants

- References: (a) Public Law 98-94, Department of Defense  
Authorization Act, section 1253; 10 U.S.C.  
( )1587
- (b) DoD 1401.1-M, "Personnel Policy Manual for  
Nonappropriated Fund Instrumentalities,"  
December 1988, authorized by DoD Instruction

1401.1, November 15, 1985

(c) DoD Directive 7050.1, "Defense Hotline Program,"  
March 20, 1987

A. PURPOSE

This Directive provides policy and implements reference (a) that establishes protection against reprisals for certain Nonappropriated Fund Instrumentality (NAFI) civilian employees and applicants who have made protected disclosures. It sets forth responsibilities and authorities for providing such protection and prescribes operating procedures (enclosure 2).

B. APPLICABILITY AND SCOPE

1. This Directive applies to the Office of the Secretary of Defense (OSD), the Military Departments, the Unified and Specified Commands, the Defense Agencies, hereafter referred to as DoD Components. It also applies to the Army and Air Force Exchange Service (AAFES), Navy Resale and Services Support Office, and Navy Exchanges, Marine Corps Exchanges, and any other instrumentality of the Department of Defense that pays employees from nonappropriated funds.

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

C. DEFINITIONS

Terms used in this Directive are defined in enclosure 1.

D. POLICY

1. It is DoD policy that NAFI employees and applicants shall be free from reprisal in making protected disclosures and that the confidentiality of employees and applicants making such disclosures shall be protected in accordance with references (a), (b), and (c).

ENCLOSURE (1)

2. Any civilian (appropriated or nonappropriated fund instrumentality) employee or member of the Armed Forces who has authority to take, direct others to take, recommend or approve any personnel action shall not, under such authority, take or fail to take a personnel action with respect to any

nonappropriated fund instrumentality employee (or applicant) as a reprisal for disclosure of protected information.

E. RESPONSIBILITIES

1. The Inspector General, Department of Defense, (IG, DoD) shall:

a. Conduct a preliminary investigation of charges of reprisal taken in connection with a protected disclosure of fraud, waste, abuse of funds, or mismanagement to determine if there are reasonable grounds to believe that a reprisal action is being or has taken place.

b. Advise the employee or applicant and the Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD), if there is no finding of reasonable grounds and the reasons therefor.

c. If a finding of reasonable grounds is made, conduct a full investigation and provide the DA&M, OSD with a report of findings of fact, conclusions, and recommendations.

d. Protect the confidentiality of employees and applicants making protected disclosures unless the IG, DoD determines that disclosure of the employee's or applicant's identity is necessary to conduct the investigation.

2. The Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD) shall:

a. Based upon the report of the IG, DoD, make a determination as to whether or not reprisal action has been taken as a result of a protected disclosure.

b. Advise employee or applicant of decision and reasons therefor.

c. Protect the confidentiality of employees and applicants making protected disclosures unless the disclosure of the identity of the complainant is necessary in order to carry out his function.

3. DoD Components shall:

a. Implement the corrective action directed by the DA&M, OSD with proof of compliance.

b. Publicize the content of this Directive within their activities to assure that NAFI employees or applicants fully understand the scope and application of the Directive. The publicity should include a definition of the term "protected disclosure" and the procedures for filing a complaint.

F. AUTHORITY

The Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD) is hereby delegated authority to:

ENCLOSURE (1)

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1. Adjudicate complaints of reprisal based on reports submitted by the IG, DoD.
2. Order a stay of a personnel action, when appropriate.
3. Direct corrective action.
4. Have access to all research, reports, investigations, audits, reviews, documents, papers or any other material necessary to carry out the above authority.

G. EFFECTIVE DATE

This Directive is effective immediately.

William H. Taft, IV  
Deputy Secretary of Defense

Enclosures - 2

1. Definitions
2. Operating Procedures

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MCO 12000.10  
21 OCT 1985

DEPARTMENT OF DEFENSE		
DIRECTIVES SYSTEM TRANSMITTAL		
NUMBER	DATE	DISTRIBUTION
1401.3, Ch 1	October 9, 1986	1400 Series
ATTACHMENTS		
None		

INSTRUCTIONS FOR RECIPIENTS

The following pen change to DoD Directive 1401.3, "Employment Protection for Certain Nonappropriated Fund Instrumentality Employees/Applicants, "July 19, 1985, is authorized:

PEN CHANGE

Page 2, subsection D.2., line 1. Insert "(appropriated or nonappropriated fund instrumentality)" after "civilian" and before "employee".

EFFECTIVE DATE

The above change is effective immediately.

JAMES L. ELMER, Director  
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL  
TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

ENCLOSURE (1)  
(Ch 1 (19 Dec 86))

MCO 12000.10  
21 OCT 1985

DEPARTMENT OF DEFENSE

DIRECTIVES SYSTEM TRANSMITTAL

NUMBER	DATE	DISTRIBUTION
1401.3, Change 2	April 19,1990	1000 Series

ATTACHMENTS

None

#### INSTRUCTIONS FOR RECIPIENTS

The following pen and ink changes to DoD Directive 1401.3, "Employment Protection for Certain Nonappropriated Fund Instrumentality Employees/Applicants, "July 19, 1985, are authorized:

#### PEN CHANGES

Page 1

References.

(b) Change "January 1981" to "December 1988, authorized by DoD Instruction 1401.1, November 15, 1985"

(c) Change "DoD Hotline", "May 14, 1982' to "Defense Hotline Program, "March 20, 1987' Organizational symbol, upper right hand corner. Change "ASD(C)" to "C, DoD"

Page 2

Section E.

Paragraph 1.b., lines 1 and 2. Change "Deputy Assistant Secretary of Defense (Administration), (DASD(A))" to "Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD)"

Paragraph 1.c., line. Change "DASD(A)" to "DA&M, OSD"

Subsection 2., line 1. Change "Deputy Assistant Secretary of Defense (Administration), (DASD(A))" to "Director of Administration and Management, Office of the Secretary of Defense, (DA&M, OSD)"

Paragraph 3.a, lines 1 and 2. Change "DASD(A)" to "DA&M, OSD"

Section F., line 1. Change "Deputy Assistant Secretary of Defense (Administration)(DASD(A))" to "Director of Administration and Management, Office of the Secretary of Defense (DA&M, OSD)"

Page 1-1, definition 2., line 1. Change "DASD(A)" to "DA&M, OSD"

Page 2-1



Paragraphs 7., line 2; paragraph 8., line 2; and paragraph 10., lines 1 and 4. Change "DASD(A)" to "DA&M, OSD"

EFFECTIVE DATE

The above changes are effective immediately.

JAMES L. ELMER  
Director  
Correspondence and Directives

WHEN PRESCRIBED ACTION HAS BEEN TAKEN, THIS TRANSMITTAL  
TRANSMITTAL SHOULD BE FILED WITH THE BASIC DOCUMENT

ENCLOSURE (1)  
(Ch 2 29 Oct 90)

DEFINITIONS

1. Abuse Of Authority means an arbitrary and capricious exercise of power by a high-level official or an employee that adversely affects the rights of any person or that results in personal gain or advantage to himself/herself or to preferred other persons.
2. Corrective Action means any action deemed necessary by the DA&M, OSD to make the complainant whole, such as reinstatement, promotion, reassignment, back pay; changes in agency rules, regulations, or practices, disciplinary action against offending employee or member; referral to the U.S. Attorney General of any evidence of criminal violation.
3. Gross Waste Of Funds means unnecessary expenditure of substantial sums of money, or a series of instances of unnecessary expenditures of smaller amounts.
4. Mismanagement means wrongful or arbitrary and capricious actions that may have any adverse effect on the efficient accomplishment of the agency mission.
5. Nonappropriated Fund Instrumentality (NAFI) Employee means a civilian employee of a DoD Component who is paid from nonappropriated funds and assists in providing programs for the comfort, pleasure, contentment, or physical or mental improvement of members of the Armed Forces and authorized civilians.

6. Personnel Action with respect to a NAFI employee (or an applicant for a position as such an employee), means:

- a. An appointment;
- b. A promotion;
- c. A disciplinary or corrective action;
- d. A detail, transfer, or reassignment;
- e. A reinstatement, restoration, or reemployment;
- f. A decision concerning pay, benefits, or awards, or concerning education or training if the education or training may reasonably be expected to lead to an appointment, promotion, or other action described in this subsection; and
- g. Any other significant change in duties or responsibilities that is inconsistent with the employee's salary or grade level.

7. Protected Disclosure means:

- a. A disclosure of information by an employee or applicant that the employee or applicant reasonably believes evidences a violation of any law or regulation; or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety; if such disclosure is not specifically prohibited by law and if the information is not specifically required by or pursuant to executive order to be kept secret in the interest of national defense or the conduct of foreign affairs; or

(Encl 1)

1-1

- b. A disclosure by such an employee or applicant to any civilian employee or member of the Armed Forces designated by law or the Secretary of Defense to receive disclosures described in paragraph 7.a. above, of information which the employee or applicant reasonably believes evidences a violation of any law, rule, or regulation; or mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health and safety.

8. Reasonable Grounds means there is substantial evidence that an employee or applicant made a protected disclosure, a personnel action affecting that employee or applicant was or is to be taken, and the employee or military member who recommended, took, directed, or approved the personnel action

was aware or reasonably should have been aware of the protected disclosure.

9. Whistleblower means a present employee or applicant for employment who discloses information he/she reasonably believes evidences a violation of any law, rule or regulation, or mismanagement, a gross waste of funds, an abuse of authority, or a substantial or specific danger to public health or safety.

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#### OPERATING PROCEDURES

1. Any civilian employee or applicant of a nonappropriated fund instrumentality who reasonably believes a personnel action (including failure to take such action) as defined in item 6, Enclosure 1 of this Directive was taken to effect a reprisal for making a protected disclosure may file a complaint with the DoD Hotline. Such a complaint may be filed by telephone (800) 424-9098, (202) 693-5080, or Autovon 223-5080 or by letter addressed to DoD Hotline Program, The Pentagon, Washington, D.C. 20301-1155.

2. Complaints should include the name of the complainant, the specific NAFI activity and location of the activity where the alleged violation occurred, a description of the protected disclosure, the type of personnel action involved, the DoD Component, and the individual(s) believed to be responsible for the personnel action, when the alleged violation occurred, and what information suggests or evidences a connection between the protected disclosure and the retaliatory action. The complainant's identity will be protected to the extent possible.

3. The IG, DoD shall determine if reasonable grounds exist to believe a personnel action affecting the employee or applicant was taken as reprisal for a protected disclosure.

4. Complaints may be referred to the appropriate DoD Component for investigation.

5. DoD Components conducting investigations shall provide the IG, DoD with a report of findings of facts, conclusions and recommendations.

6. The IG, DoD shall conduct a preliminary investigation to the extent necessary to determine if reasonable grounds exist to believe a personnel action affecting the employee or applicant was taken as a result of a protected disclosure.

7. If the IG, DoD determines that no reasonable grounds exist, the employee or applicant and the DA&M, OSD shall be so advised and provided with the reasons for such determination.

8. If reasonable grounds are found to exist the IG, DoD shall conduct a thorough investigation and provide the DA&M, OSD with a report of finding of facts, conclusions, and recommendations.

9. If an investigation is terminated, the IG, DoD shall notify the complainant in writing of the termination of the investigation and the reasons therefor.

10. Based on the report, the DA&M, OSD shall render a decision and direct corrective action. The DoD Component will comply with any direction for corrective action. The employee or applicant and the DoD Component shall receive a copy of the DA&M, OSD decision.

(ENCL 2)