

Retaliation Related NDAA Requirements

FY2005 – FY2016

FY, Section & Effective Dates	NDAA Provision Summary	Implementation Status/Notes
RETALIATION		
FY05 §591 (PL 108-375, Oct 28, 2004)	<p style="text-align: center;"><u>Requires Protection of Armed Forces Personnel from Retaliatory Actions for Communications made through the Chain of Command</u></p> Amends Section 1034(b)(1)(B) of title 10 U.S.C. to include protection of Armed Forces personnel from retaliatory actions for communications made through the chain of command.	OPR: Legislative Deliverable: 10 U.S.C. 1034 Modification
FY14 §1709(a) 120 days (Apr 26, 2014)	<p style="text-align: center;"><u>Prohibition on Retaliation Against Service Members for Reporting a Criminal Offense</u></p> (a) Regulations on Prohibition of Retaliation- (1) Regulations Required – The Secretary of Defense shall prescribe regulations, or require the Secretaries of the military departments to prescribe regulations, that prohibit retaliation against an alleged victim or other member of the Armed Forces who reports a criminal offense. The regulations shall prescribe that a violation of the regulations is an offense punishable under Article 92 of the UCMJ. (2) Deadline – The regulations required by this subsection shall be prescribed not later than 120 days after the date of the enactment of this Act.	OPR: SecDef or Service Secretaries Deliverable: Policy/ New Regulations
FY14 §1709(b) 120 days (Apr 26, 2014)	<p style="text-align: center;"><u>Retaliation and Personnel Actions Defined</u></p> (b) Retaliation and Personnel Action Described – (1) RETALIATION – For purposes of the regulations required...the Secretary of Defense shall define retaliation to include, at a minimum – (A) Taking or threatening to take an adverse personnel action, or withholding or threatening to withhold a favorable personnel action, with respect to a member of the Armed Forces because the member reported a criminal offense; and (B) Ostracism and such acts of maltreatment, as designated by the Secretary of Defense, committed by peers of a member of the Armed Forces or by other persons because the member reported a criminal offense. (2) PERSONNEL ACTIONS – For purposes of paragraph (1)(A), the Secretary of Defense shall define the personnel actions to be covered by the regulations.	OPR: SecDef Deliverable: Definition for Regulations
FY14 §1709(c) Report due in 180 days (June 26, 2014)	<p style="text-align: center;"><u>Report on Separate Punitive Article for Retaliation</u></p> Requires SecDef to submit report to SASC and HASC setting forth recommendations regarding whether chapter 47 of 10 U.S.C. should be amended to add a new punitive article to prohibit retaliation against an alleged victim or other Service member who reports a criminal offense.	OPR: SecDef Deliverable: Report to Congress
FY14 §1714 Effective Immediately (Dec 26, 2013)	<p style="text-align: center;"><u>Expansion and Enhancement of Authorities Relating to Protected Communications and Prohibition of Retaliatory Personnel Actions</u></p> Expands prohibited retaliatory personnel actions to include making or threatening to make a significant change in the duties or responsibilities of a member not commensurate with the member’s grade. No person may take or threaten to take unfavorable personnel action as a reprisal against a member for making or preparing or being perceived as making a communication to a Member of Congress, an IG, law enforcement, any person in chain-of-command or a court martial. Modifies requirement that investigator be outside immediate chain of command to now be either outside of immediate chain or “at least one organization higher in the chain of command” (or both)	OPR: Legislative Deliverable: 10 U.S.C. 1034 Modification

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<p>FY14 §1715</p> <p>Effective Immediately (Dec 26, 2013)</p>	<p><u>IG Investigations of Retaliatory Actions Made Against Members Because of Communications Regarding Sexual Misconduct</u></p> <p>Expands investigations IG must conduct to include retaliatory actions made against members whose communications were made to personnel or agencies regarding rape, sexual assault, or other sexual misconduct and sexual harassment.</p>	<p>OPR: Legislative</p> <p><u>Deliverable: 10 U.S.C. 1034 Modification</u></p>
<p>FY14 §1751</p>	<p><u>Sense of Congress on Commanding Officer Responsibility for Command Climate Free of Retaliation</u></p> <p>It is the sense of Congress that-</p> <ol style="list-style-type: none"> (1) Commanding officers in the Armed Forces are responsible for establishing a command climate in which sexual assault allegations are properly managed and fairly evaluated and in which a victim can report criminal activity, including sexual assault, without fear of retaliation, including ostracism and group pressure from other members of the command; (2) The failure of commanding officers to maintain such a command climate is an appropriate basis for relief from their command positions; and (3) Senior officers should evaluate subordinate commanding officers on their performance in establishing a command climate as described in paragraph (1) during the regular periodic counseling and performance appraisal process prescribed by the Armed Force concerned for inclusion in the systems of records maintained and used for assignment and promotion selection boards. 	<p><u>SENSE OF CONGRESS PROVISION:</u></p> <p>No Deliverable Required</p>
<p>FY15 §508</p> <p>Effective Immediately (Dec 19, 2014)</p>	<p><u>Required Consideration of Certain Elements of Command Climate in Performance Appraisals of Commanding Officers</u></p> <p>The Secretary of a military department shall ensure that the performance appraisal of a commanding officer in an Armed Force under the jurisdiction of that Secretary indicates the extent to which the commanding officer has or has not established a command climate in which –</p> <ol style="list-style-type: none"> (1) Allegations of sexual assault are properly managed and fairly evaluated; and (2) A victim of criminal activity, including sexual assault, can report the criminal activity without fear of retaliation, including ostracism and group pressure from other members of the command. 	<p>OPR: Service Secretaries</p> <p><u>Deliverable: Service Policy – command performance appraisals</u></p>
<p>FY16 §539</p> <p>Effective Immediately (Nov 25, 2015)</p>	<p style="text-align: center;">RETALIATION STRATEGY</p> <p><u>Preventing Retaliation Against Members of the Armed Forces Who Report or Intervene on behalf of the Victim of an Alleged Sex-related Offense</u></p> <ol style="list-style-type: none"> (a) The SecDef shall develop a comprehensive strategy to prevent retaliation carried out by members of the Armed Forces against other members who report or otherwise intervene on behalf of the victim of an alleged sex-related offense. (b) Elements – the comprehensive strategy shall include, at a minimum, the following: <ol style="list-style-type: none"> (1) Bystander intervention programs emphasizing the importance of guarding against retaliation. (2) DoD and military department policies and requirements to ensure protection for victims of alleged sex-related offences and members who intervene on behalf of victims from retaliation. (3) Additional training for commanders on methods and procedures to combat attitudes and beliefs that result in retaliation. (c) Definitions – for purposes of this section: <ol style="list-style-type: none"> (1) “alleged sex-related offence” has same meaning as 1044e(g) (2) “retaliation” has such meaning as that given the term by SecDef in the development of the strategy required by subsection (a). 	<p>OPR: SecDef</p> <p><u>Deliverable: New DoD Policy/Strategy</u></p>