



INSPECTOR GENERAL
U.S. Department of Defense

Statement of Glenn A. Fine

**Department of Defense
Principal Deputy Inspector General,
Performing the Duties of the Inspector General
for a hearing on**

**“Senior Leader Misconduct:
Prevention and Accountability”**

**Before the
Subcommittee on Military Personnel
House Armed Services Committee
February 7, 2018**

Good morning Chairman Coffman, Ranking Member Speier, and members of the Subcommittee. Thank you for inviting me to appear before you today to discuss the work of the Department of Defense Office of Inspector General (DoD OIG) regarding senior official misconduct prevention and accountability.

I. INTRODUCTION

In my testimony, I will briefly describe how the DoD OIG investigates senior official misconduct and oversees Military Service and Component Inspector General (IG) investigations of senior official misconduct. In addition, I will provide statistics and trends on the number of misconduct complaints, the types of misconduct, the number of investigations, the timeliness of investigations, and substantiation rates for both the DoD OIG and the Service IGs. As part of that discussion, I will also provide additional statistics for a particular type of misconduct – allegations of retaliation and reprisal by senior officials against whistleblowers. Finally, I will discuss various initiatives that are being implemented by the DoD OIG regarding preventing and investigating misconduct.

Before discussing the investigations process, I believe it is important to recognize that the vast majority of senior officials in the DoD perform their challenging jobs with dedication and integrity. Only a very small fraction of senior officials commit misconduct. By virtue of their positions, however, at some point in their careers they may be accused of misconduct. Most of these allegations are not substantiated. My experience, both as the Inspector General of the Department of Justice (DOJ) overseeing the DOJ and the Federal Bureau of Investigation (FBI) for 11 years (from 2000 to 2011) and my experience for over 2 years at the DoD performing the duties of the DoD Inspector General (from January 2016 to the present), is that only a very small percentage of these officials fail to uphold the high ideals and ethics required of their critical positions.

However, some do commit misconduct, either willfully or negligently. When they do, they need to be held accountable. The DoD OIG – and the Military Service IGs – therefore seek to conduct investigations of allegations of misconduct in a fair, thorough, professional, and timely way.

In addition, the DoD and Service IGs have an important role in trying to prevent misconduct by senior DoD officials before it happens. The DoD OIG therefore focuses attention on proactive education and training for senior officials and members of the Senior Executive Service (SES) about potential misconduct. For example, I speak to every APEX class of new DoD SES employees about

the work of the DoD OIG, ethical issues they will face, the types of actions that will get them in trouble, the need to avoid reprisal if there is a complaint against them, and other potential minefields for them. Similarly, I have begun speaking to each CAPSTONE class of new generals and admirals about these topics. I also answer their questions about the investigative process, and explain what they can and cannot do if they are the subject of a misconduct allegation. Through these sessions, we hope to prevent senior officials from inadvertently crossing lines that they should not.

II. DOD OIG INVESTIGATIVE PROCESSES

However, despite proactive education and training, some officials will cross the line, and others will be accused of crossing the line. The DoD OIG and the Service IGs will therefore need to handle these allegations. In this section of my testimony, I briefly describe the DoD system for reporting and investigating allegations against senior DoD officials.

Under DoD Directive 5505.06, the Military Services and DoD Components are responsible for reporting allegations of misconduct against senior DoD officials to the DoD OIG. Senior Officials are those current or former officers in the rank of O-7 (brigadier general and rear admiral lower half) and above, those selected for promotion to O-7, members of the SES and the Defense Intelligence Senior Executive Service, and Presidential Appointees.

The DoD OIG evaluates each allegation. If the allegation warrants investigation, the DoD OIG either takes investigative responsibility for the allegation, or determines that the allegations should be investigated by a Military Service or Component IG, with oversight by the DoD OIG. Under the Directive, the Service and Component IGs are required to provide the DoD OIG the final report of investigation for review, and are also required to provide a report on disciplinary or administrative actions taken as a result of substantiated investigations.

Under this shared responsibility, the DoD OIG generally assumes responsibility for conducting investigations of allegations against three and four-star general and flag officers, Presidential Appointees, Service Secretaries, DoD Agency Directors, and SES members in the Office of the Secretary of Defense, and allegations where there is reason why the Service or Component IG should not investigate the allegations. The Military Service IGs generally conduct investigations of one and two-star general and flag officers and members of the SES within their Service or Component.

To provide an avenue for individuals to report misconduct, the DoD OIG operates a well-publicized DoD Hotline that allows anyone to confidentially report allegations of misconduct, including allegations against senior DoD officials. The DoD Hotline receives allegations such as those related to misconduct; reprisal; other matters involving fraud, waste, and abuse; or issues related to national security involving DoD programs and operations. The DoD Hotline advertises on radio, television, Twitter, outreach events, and posters displayed at DoD facilities worldwide, as well as at Defense Contractor workplaces.

The DoD OIG also has assigned an OIG official to be the Whistleblower Protection Ombudsman, with responsibility to educate DoD employees and supervisors about their rights, protections, and responsibilities under the various whistleblower protection statutes. We are currently hiring someone to assume these responsibilities as a full-time position.

The DoD Hotline receives approximately 13,000 contacts a year. Some of those involve frivolous complaints or issues having nothing to do with the DoD, and we pass them on to the appropriate agency. However, the DoD Hotline receives many serious and credible allegations involving DoD operations. The DoD Hotline both opens and closes approximately 6,000 cases annually. The Military Service IGs also operate hotlines for Service members and employees to report misconduct or to obtain assistance in matters within their Service.

To investigate administrative allegations of misconduct, the DoD OIG has established an office dedicated to conducting senior official investigations. This office – called Administrative Investigations – is staffed with investigators and attorneys who are experienced and trained in investigating a broad range of misconduct, including potential violations of the Uniform Code of Military Justice, DoD or Service regulations, and whistleblower reprisal claims. Their training includes courses regarding investigative policies, procedures, and IG authorities taught by the Federal Law Enforcement Training Center, the DoD OIG, the Service Inspector General schools, the Council of the Inspectors General on Integrity and Efficiency (CIGIE), and private organizations and universities.

The DoD OIG conducts its senior official administrative investigations using formal processes that comply with the professional standards prescribed by the CIGIE and that are generally consistent across the federal OIG community. Consistent with the IG Act, we conduct these investigations independently, without any input or direction from the DoD. Upon receipt of complaints from hotlines

or other avenues, including from DoD leadership or Members of Congress, the DoD OIG evaluates the complaints through an intake process to determine if the complaint is credible and warrants investigation. This is an important step to ensure that all complaints are treated appropriately.

If the complaint relates to a possible criminal violation, it is referred to the Defense Criminal Investigative Service (DCIS), which is the DoD OIG's criminal investigative component, to a Military Criminal Investigative Organization (MCIO), or to the FBI.

If the matter is administrative, the allegations are evaluated to determine whether an administrative investigation is warranted. Once the determination has been made to open an administrative investigation, the subject of the investigation is notified of the allegations and that an investigation will be conducted. The investigation proceeds with the collection of evidence and sworn, recorded interviews of the witnesses. Subjects also receive Privacy Act notices and, when appropriate, rights advisements.

At the conclusion of the investigation, the DoD OIG completes a report of investigation that presents the findings on the allegations, reaches conclusions on whether the allegations are substantiated or not, and explains how the conclusions were reached.

In cases where the evidence supports substantiating an allegation, we provide the subject of the investigation a tentative conclusions letter and an opportunity to comment on the report of preliminary findings, and whether anything in the report is inaccurate. We consider any comments, and either issue the final report unchanged or we amend the report if we are convinced any changes are necessary or appropriate. In some cases, we may conduct additional investigative fieldwork in response to the subject's comments.

When we complete the final report of investigation, we notify the subject and provide the report to the subject's chain of command. Under the DoD Directive, it is the responsibility of DoD management to determine the disciplinary action. The Service Secretaries or the Service Chiefs determine the appropriate action to take upon consideration of the DoD OIG report and supporting evidence, as well as other factors relating to the individual's performance or career.

The Service and Component IGs are required to provide the DoD OIG a written summary of the final disciplinary or corrective actions taken in response to substantiated allegations.

The DoD OIG and the Service IGs currently have separate investigative case management systems. The DoD OIG, in coordination with the Service IGs, is developing a standardized case management system -- the Defense Case Activity Tracking System (Enterprise) (D-CATSe) system, which will be used by IGs across the DoD. This standardized system will promote more standardized processes as well as easier, and quicker, transmittal, storage, and sharing of investigative documents and data.

The DoD OIG also considers our reports of investigation for proactive public release, particularly in substantiated cases. We do this because we believe we have a responsibility to be transparent with our reports and findings, particularly when the matters involve issues of significant public concern and relate to high-level officials' actions regarding their official duties. We therefore will consider release, with appropriate redactions, even when the investigation involves classified matters. For example, in our recent investigation involving intelligence reporting at USCENTCOM, we issued and released an unclassified summary report, separate from the more detailed classified version that was not released.

Throughout our investigative process, we are mindful of our obligations under the IG Act to protect the identity of whistleblowers to the greatest extent possible. We recognize that our work relies on the willingness of whistleblowers to report allegations of misconduct, fraud, waste, or abuse and to provide information in IG investigations. Without cooperation from whistleblowers and witnesses, we are less able to detect and deter misconduct and waste, fraud, and abuse.

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

In addition to reviews of individual reports, the DoD OIG has recently initiated broader systemic Quality Assessment Reviews of the Military Service IG senior official, whistleblower reprisal, and hotline investigative operations. These reviews are similar to CIGIE peer reviews or Government Accountability Office (GAO) reviews that the DoD OIG undergoes. We conduct these reviews to assess, in a systematic way, the Service IGs' compliance with regulations and professional

standards, to identify areas for improvement, and to share best practices. We have completed such reviews of the offices of the Naval Inspector General and of the Air Force Inspector General. We intend to initiate this year a review of the Army Office of Inspector General.

In addition to investigating and overseeing investigations of misconduct, the DoD OIG is required to provide information relating to senior official misconduct to the DoD and the Congress in connection with the promotion process. Specifically, we perform checks of our investigative files for military officer actions requiring Presidential or Secretary of Defense approval or Senate confirmation. The DoD OIG reports adverse information or reportable information to the Office of the Under Secretary of Defense for Personnel and Readiness, which assembles the information for the DoD and the Senate. Adverse information includes substantiated findings or conclusions from an official investigation or inquiry. Reportable information also includes information related to alleged misconduct or impropriety that is subject to an ongoing investigative, administrative, or judicial process.

III. INVESTIGATIONS OF ALLEGATIONS OF MISCONDUCT BY SENIOR OFFICIALS (NON-REPRISAL)

In this section of my testimony, I provide statistics relating to trends in the numbers and types of senior official investigations (not involving reprisal), substantiated misconduct, and disciplinary actions taken. My testimony presents this data and trends relating to:

- 1) number of misconduct complaints against senior officials;
- 2) senior official misconduct cases closed, substantiated, and substantiation rates;
- 3) types of substantiated senior official misconduct allegations;
- 4) number of investigations completed by investigative office;
- 5) component and rank of subjects for substantiated allegations;
- 6) corrective actions by rank of senior official; and
- 7) average days to complete senior official investigations.

After that data, I provide similar trend information separately for complaints involving allegations of reprisal and restriction by senior DoD officials.

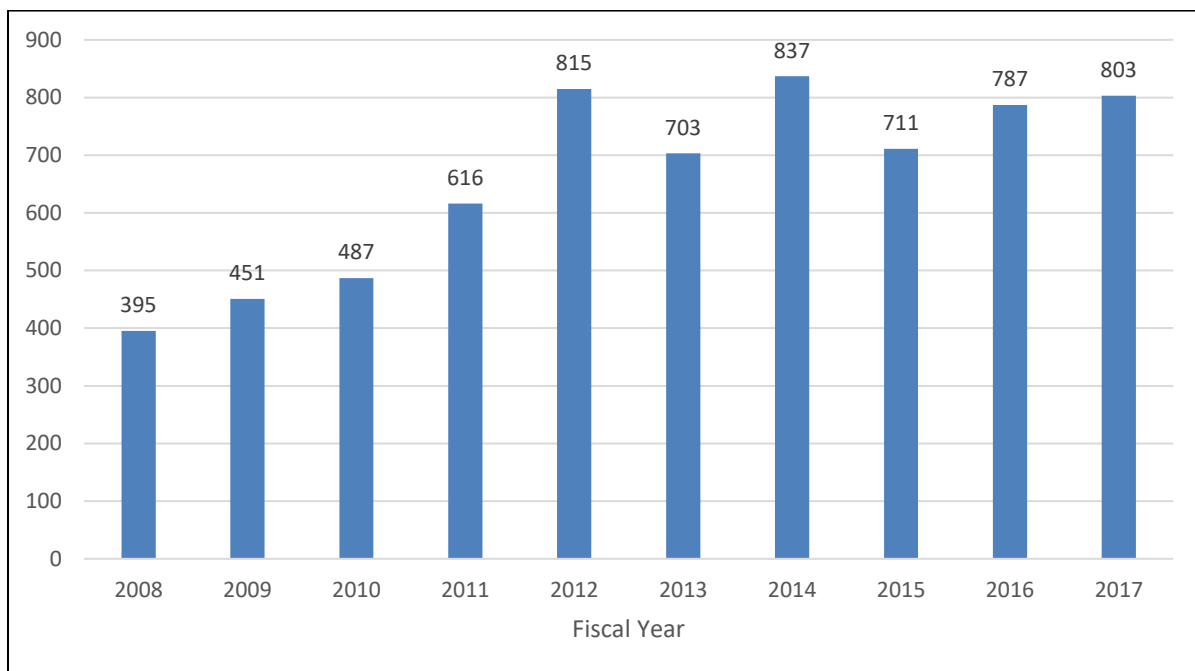
As reflected in the following tables, the trend data indicate that there was a significant increase in the number of complaints alleging misconduct by senior DoD officials from FY 2008 to FY 2012, and since then the number of complaints has been stable. During the same period, the number of allegations warranting investigation by the DoD OIG or Service and Component IGs has decreased, while the overall substantiation rate of the allegations investigated has increased. Overall, in recent years, the number of substantiated allegations of misconduct by senior DoD officials has decreased.

Misconduct Complaints Against Senior Officials

Figure 1 shows the number of misconduct complaints received by the DoD OIG and those reported to us by the Service and Component IGs involving senior DoD officials. Data on allegations related to reprisal and restriction are discussed separately in Section IV of this testimony.

As indicated in Figure 1, the number of senior official misconduct complaints dramatically increased from FY 2008 to FY 2012, rising from 395 in FY 2008 to 815 in FY 2012, but has remained relatively steady since then.

Figure 1. Misconduct Complaints against Senior Officials

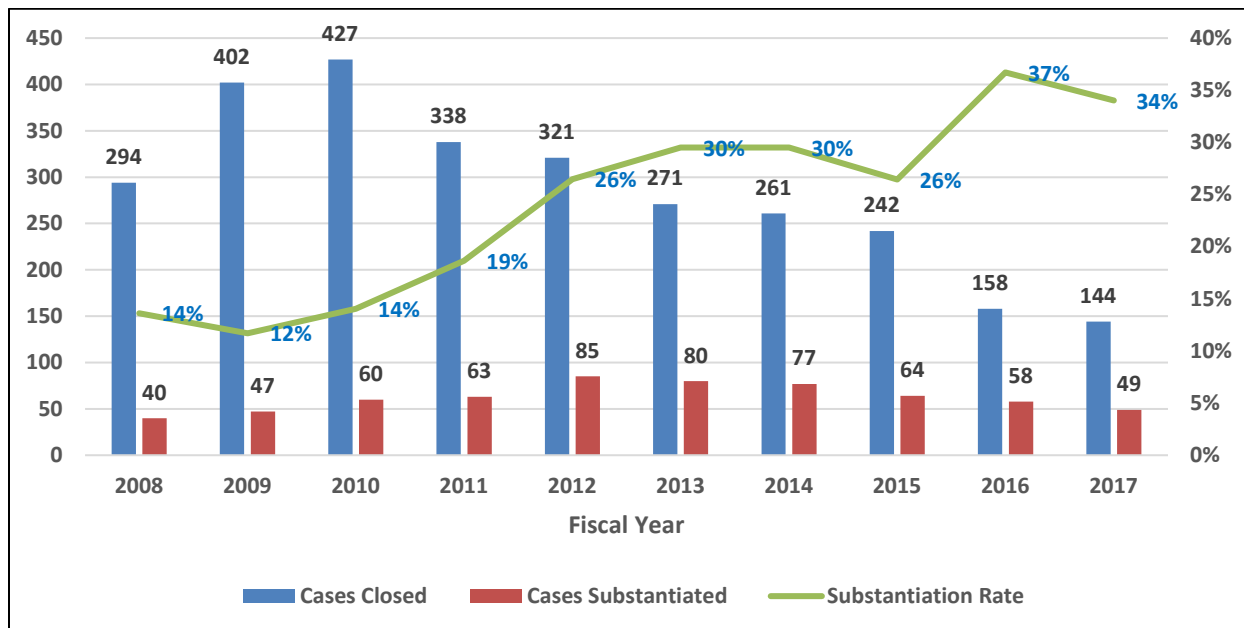


* These include both complaints received by DoD OIG and those reported by the Service and Component IGs to the DoD OIG

Senior Official Misconduct Cases Closed, Substantiated, and Substantiation Rates

As reflected in Figure 2, the number of investigations conducted by the DoD OIG and Service and Component IGs has steadily declined since FY 2010, from 427 in FY 2010 to 144 in FY 2017. As also reflected in Figure 2, the substantiation rate of investigations conducted has increased, from 14 percent FY 2010 to 34 percent in FY 2017. We believe the decline in the numbers of investigations conducted and the increase in the substantiation rate is attributable to the implementation of a more thorough complaint intake process.

Figure 2. Number of Senior Official Misconduct Cases Closed, Substantiated, and Substantiation Rates

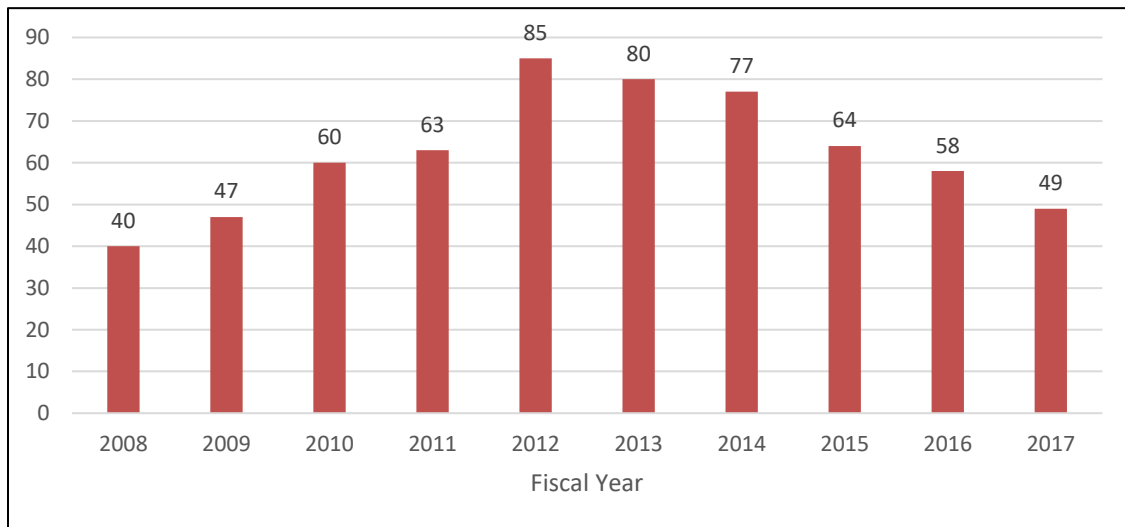


*We extracted the data from fiscal year 2008 through 2012 from our Semiannual Report to the Congress.

**Cases closed include closed investigations across the DoD.

Overall, as reflected in Figure 3, the number of senior official cases with any findings of substantiated misconduct rose between FY 2008 and FY 2012, but has steadily declined since then.

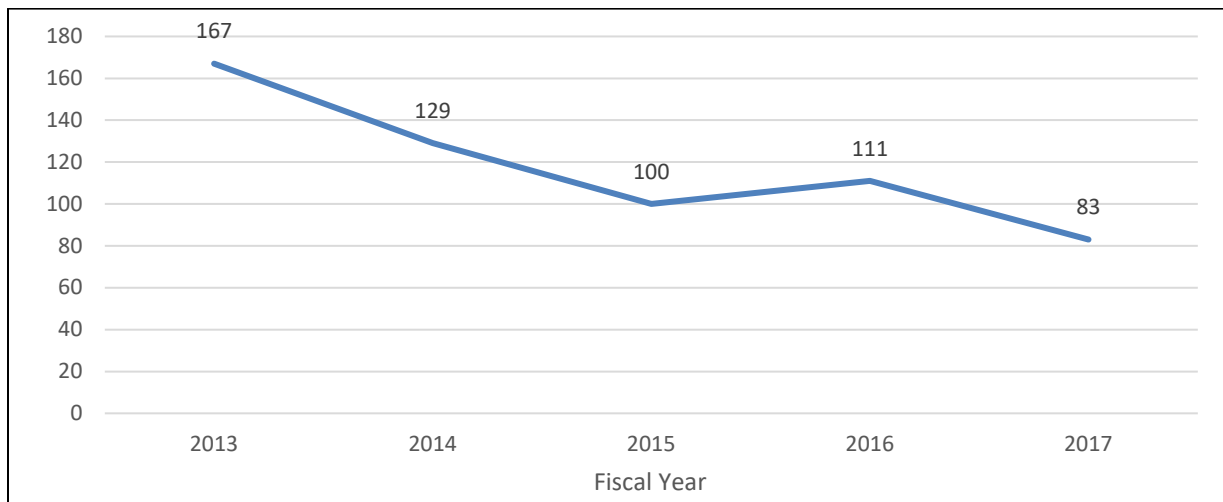
Figure 3. Number of Substantiated Senior Official Misconduct Cases



Number of Substantiated Senior Officials Misconduct Allegations

Within each substantiated case, there may be more than one substantiated violation. Since 2013, our D-CATS database can accurately track the number and type of substantiated allegations within each case. Figure 4 shows that from FY 2013 through FY 2017, the total number of substantiated allegations against senior officials, within all substantiated cases, decreased, from 167 to 83.

Figure 4. Number of Substantiated Senior Official Misconduct Allegations



I want to make clear our recognition that any misconduct by a senior official is unacceptable. However, to place the numbers in perspective, in FY 2017 the total number of DoD general and flag officers and SES members was 2,327 (963 general and flag officers and 1,364 SES members). Therefore, in FY 2017, the number of cases involving substantiated senior official misconduct involved approximately 2 percent of the DoD senior official population.

Types of Substantiated Senior Officials Misconduct Allegations

While the types of substantiated allegations against senior officials involve a broad range of misconduct, the allegations primarily fell within five main categories:

- 1) Personal Misconduct or Ethical Violations;
- 2) Improper Personnel Matters;
- 3) Misuse of Government Resources;
- 4) Travel Violations; and
- 5) Other violations.

The Personal Misconduct or Ethical Violations category includes allegations involving inappropriate relationships, such as sexual relationships with subordinates or an improper business relationship with a subordinate. It also includes treating employees with a lack of dignity and respect, improper acceptance of gifts, misuse of position (such as improperly accepting services from a subordinate), misuse of subordinate's time (such as requiring subordinates to perform personal errands), and the improper endorsement of a non-Federal entity (such as using an official position and title improperly).

The Improper Personnel Matters category includes failure to follow regulations, improper hiring actions, prohibited personnel practices, and harassment or discrimination. Examples of such violations include unwelcome physical contact with subordinate employees and improper hiring practices.

The Misuse of Government Resources category includes the misuse of a government vehicle, equipment, supplies, or facilities. Examples of such violations include improperly using a government vehicle for commuting and misuse of military aircraft.

The Travel Violations category includes scheduling official travel for primarily personal reasons, improper authorization of military aircraft or official travel for spouse or other family

members, claiming reimbursement for hotels in excess of per diem rate without justification, improper upgrades on commercial flights, and using preferred airlines or hotels to accrue reward points.

The Other category includes various other types of misconduct, such as improper procurement or contracting and security violations.

Figures 5 and 6 show the data on the types of substantiated allegations, by fiscal year. Figure 5 shows the data as a line chart; Figure 6 provides the same data in a table.

Figure 5. Types of Substantiated Senior Official Misconduct Allegations

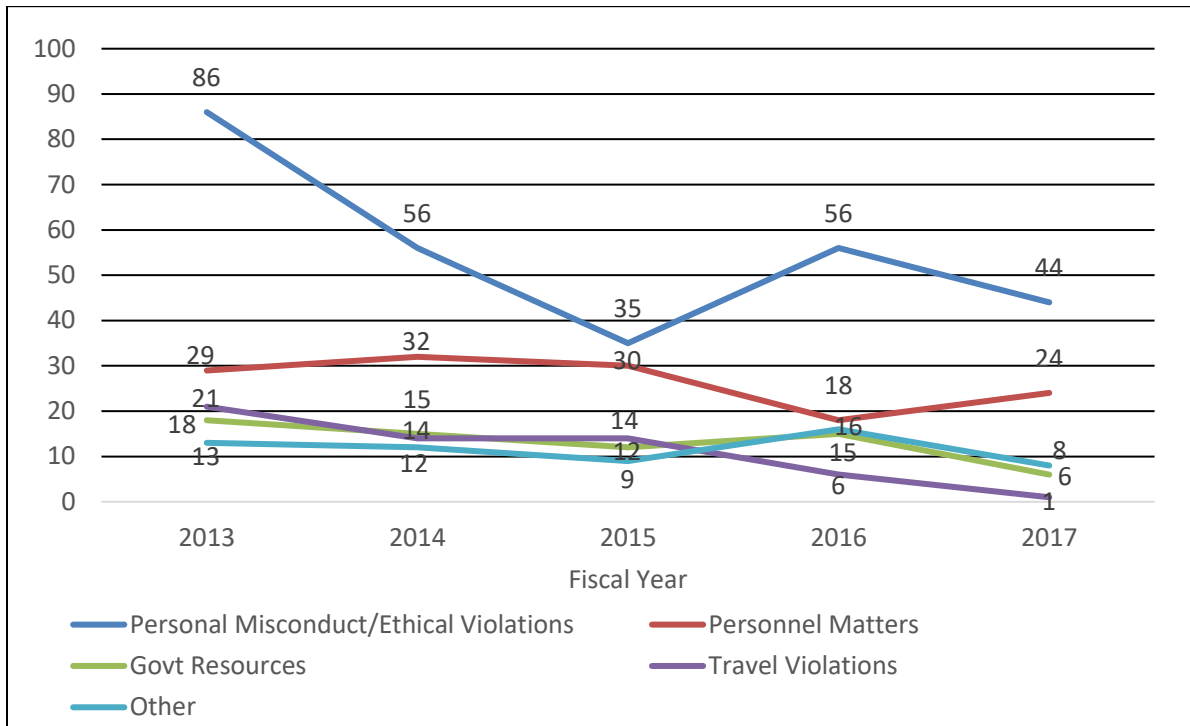


Figure 6. Types of Substantiated Senior Official Misconduct Allegations (Same Data as Figure 5)

| Allegation Type | Number of Allegations by Fiscal Year | | | | | Total |
|--|--------------------------------------|------------|------------|------------|-----------|------------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | |
| Personal Misconduct/Ethical Violations | 86 | 56 | 35 | 56 | 44 | 277 |
| Personnel Matters | 29 | 32 | 30 | 18 | 24 | 133 |
| Government Resources | 18 | 15 | 12 | 15 | 6 | 66 |
| Travel Violations | 21 | 14 | 14 | 6 | 1 | 56 |
| Other | 13 | 12 | 9 | 16 | 8 | 58 |
| Total Allegations Substantiated | 167 | 129 | 100 | 111 | 83 | 590 |

Substantiated Allegations of Inappropriate Relationships and Sexual Harassment

Within these trends, there are areas of additional concern that I want to highlight. As reflected in Figure 7, there are a significant number of substantiated allegations against senior officials engaging in inappropriate relationships, and these cases have received substantial public attention. Examples of substantiated cases include an Army major general who engaged in a sexual relationship and “swinger” lifestyle with a GS-12 employee, starting when he was a lieutenant colonel in 2005 until the Army IG investigated him in 2015. Another example involved an Army major general who engaged in a close personal relationship with a subordinate, which included public displays of affection, thus creating the impression in the command that the two were engaged in an inappropriate relationship. In another example, a different Army major general engaged in a close personal relationship with a subordinate, caused the perception of partiality, and had an adverse impact on the command. In another example, an Army lieutenant general visited adult entertainment clubs while on official travel, engaged in physical contact with female subordinates, and attempted to kiss a female subordinate. In another example, an Air Force brigadier general engaged in an inappropriate relationship with a subordinate married officer that created the perception of favoritism. In another example, an Air Force lieutenant general engaged in an inappropriate relationship with a married female Air Force colonel through sexually suggestive e-mails and invitations to meet privately.

Figure 7. Number of Substantiated Allegations of Inappropriate Relationships and Sexual Harassment

| Allegations | Number of Substantiated Allegations by Fiscal Year | | | | | Total |
|----------------------------|--|------|------|------|------|-----------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | |
| Inappropriate Relationship | 10 | 10 | 5 | 11 | 8 | 44 |
| Sexual Harassment | 0 | 2 | 0 | 2 | 0 | 4 |

Investigations of Allegations of Senior Official Misconduct Completed by Investigative Office

Figure 8 shows the number of investigations of senior official misconduct, broken down by investigative office. The Army IG conducts the largest number of the investigations, which is in line with the Army’s larger senior official population.

Figure 8. Number of Investigations of Senior Official Misconduct Completed by Investigative Office

| Office of Inquiry | Number of Investigations by Fiscal Year | | | | | Total |
|---------------------|---|------------|------------|------------|------------|-------------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | |
| Air Force | 54 | 75 | 60 | 31 | 27 | 247 |
| Army | 141 | 117 | 114 | 61 | 63 | 496 |
| Defense Agencies | 22 | 10 | 16 | 33 | 28 | 109 |
| Joint Command/COCOM | 3 | 7 | 5 | 1 | 4 | 20 |
| Marine Corps | 7 | 5 | 7 | 4 | 3 | 26 |
| Navy | 23 | 21 | 20 | 25 | 30 | 119 |
| DoD OIG | 27 | 28 | 20 | 3 | 6 | 84 |
| Total | 277 | 263 | 242 | 158 | 161 | 1101 |

Component and Rank of Subject for Substantiated Allegations

Figure 9 shows the number of substantiated allegations of misconduct by senior officials, broken down by the Service and rank of the subject, from FY 2013 through FY 2017.

Figure 9. Component and Rank of Subject for Substantiated Allegations

| Component | Rank/Grade | | | | | | | | Total ISO Substantiated Allegations |
|-------------------------------|------------|------------|------------|-----------|----------|------------|----------|----------|-------------------------------------|
| | 0-6(P) | 0-7 | 0-8 | 0-9 | 0-10 | SES | PA | NAF 6 | |
| Air Force | 26 | 48 | 53 | 2 | 1 | 17 | 1 | 0 | 148 |
| Army | 32 | 76 | 63 | 10 | 0 | 22 | 0 | 0 | 203 |
| COCOM/Defense Agencies/ Other | 0 | 0 | 0 | 0 | 0 | 169 | 3 | 0 | 172 |
| Marines | 0 | 5 | 7 | 3 | 0 | 0 | 0 | 0 | 15 |
| NAFI | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 3 | 3 |
| Navy | 1 | 13 | 13 | 9 | 0 | 13 | 0 | 0 | 49 |
| Total | 59 | 142 | 136 | 24 | 1 | 221 | 4 | 3 | 590 |

*O-6(P) are those O-6s who were selected for promotion to O-7, but were not yet promoted. PA are Presidential Appointees. NAF are Nonappropriated Funds.

Corrective Actions by Rank of Senior Officials

An essential part of accountability is whether disciplinary or corrective actions are taken in response to substantiated investigations. The DoD regulation governing investigations of senior DoD officials requires that the corrective actions taken in response to senior official investigations be reported to the DoD OIG. Figure 10 shows the corrective actions reported to the DoD OIG for the 590 substantiated allegations of senior official misconduct from FY 2013 to FY 2017. There were 346 corrective actions taken, and 81 are pending follow-up (action not yet reported).

Figure 10. Corrective Actions by Rank of Senior Official

| Corrective Actions Taken | O-6 (P) | O-7 | O-8 | O-9 | O-10 | SES | PA | NAF 6 | Total |
|-----------------------------------|-----------|------------|-----------|-----------|----------|------------|----------|----------|------------|
| Declined to Take Action | 2 | 5 | 8 | 4 | | 9 | 1 | | 29 |
| Letter of Counseling | 13 | 29 | 19 | 4 | | 11 | | | 76 |
| Other | 1 | 1 | 3 | 3 | | 4 | 1 | | 13 |
| Recover - Money | | 1 | 3 | | 1 | | | | 5 |
| Reduction in Rank/Grade | | | 2 | | | 4 | | | 6 |
| Removed From Assignment | 1 | 1 | 3 | 1 | | 3 | | | 9 |
| Resigned | | | | | | 13 | | | 13 |
| Restitution | | | 1 | | | 6 | | | 7 |
| Retired | 2 | | 3 | 1 | | 15 | | 1 | 22 |
| Suspension Individual With Pay | | | | | | 5 | | | 5 |
| Suspension Individual Without Pay | | | | | | 6 | | | 6 |
| Verbal Counseling | 6 | 19 | 22 | 4 | | 21 | | | 72 |
| Verbal Reprimand | | | | | | 3 | | | 3 |
| Written Reprimand | 13 | 29 | 20 | 3 | | 15 | | | 80 |
| Pending Follow - Up Action | 4 | 15 | 14 | | | 46 | 2 | | 81 |
| Total | 42 | 100 | 98 | 20 | 1 | 161 | 4 | 1 | 427 |

For 29 allegations (or 5% of the substantiated allegations), DoD Components declined to take action. A variety of reasons was provided to the DoD OIG for these decisions, such as disagreement that the finding should be substantiated, the minor type of misconduct, and the official's otherwise exemplary performance.

Average Days to Complete Senior Official Investigations

IGs across the DoD strive to conduct senior official investigations in a timely manner. However, as reflected in Figure 11 (average days to complete investigations), over the past 5 years it is taking longer for IGs to complete investigations.

Figure 11. Average Days to Complete Investigations by Investigative Office

| Office of Inquiry | Average Days per Fiscal Year | | | | |
|---------------------|------------------------------|------|------|------|------|
| | 2013 | 2014 | 2015 | 2016 | 2017 |
| Air Force | 208 | 176 | 189 | 192 | 203 |
| Army | 168 | 195 | 307 | 275 | 453 |
| Defense Agencies | 109 | 208 | 353 | 377 | 401 |
| Joint Command/COCOM | 129 | 176 | 126 | 126 | 147 |
| Marine Corps | 136 | 161 | 209 | 361 | 321 |
| Navy | 145 | 232 | 198 | 188 | 223 |
| DoD OIG | 267 | 316 | 235 | 269 | 472 |

There are several factors that have affected the timeliness of IG investigations during this time period. One is the increased complexity of the matters under investigation, including the increasing amount of digital and electronic evidence that needs to be reviewed. Another factor is the increased scrutiny these cases receive, which leads to greater thoroughness and lengthier reports. Another factor is the need to intake, evaluate, and refer the increasing number of complaints of misconduct, even if these complaints do not result in investigations. In addition, as reflected in the next section of my testimony, the number of whistleblower reprisal complaints and investigations has increased, requiring increased IG investigative resources, which can affect the resources available to handle senior official cases. At the same time, IGs have had relatively static or decreasing resources to assign to conduct senior official investigations, which impacts timeliness.

For example, within the DoD OIG, our budget has not kept pace with the growth of the DoD budget over the last 5 years, while the overall caseload and our oversight responsibilities have significantly increased. The same is true for many of the Service and Component IGs.

In addition, the DoD OIG recently has been asked to handle several high profile, resource-intensive investigations, such as allegations that senior officials in USCENTCOM distorted intelligence to make the efforts against ISIS in Iraq and Syria appear more successful than the intelligence warranted. The DoD OIG devoted many of its senior official investigators to conduct this important investigation, which is what caused the spike in our timeline for the few DoD OIG investigations closed in FY 2017. Specifically, we assigned a team of about 30 DoD OIG employees, led by our senior officials' investigations directorate, to thoroughly investigate these serious allegations. The USCENTCOM investigation lasted 17 months, required the review of over one million electronic documents, involved interviews of over 100 witnesses, and resulted in a classified report of 542 pages and an unclassified, publicly released report of 190 pages. This case caused the increase in the DoD OIG's average time for cases closed in FY 2017 and continued to have lagging effects for cases closed in FY 2018.

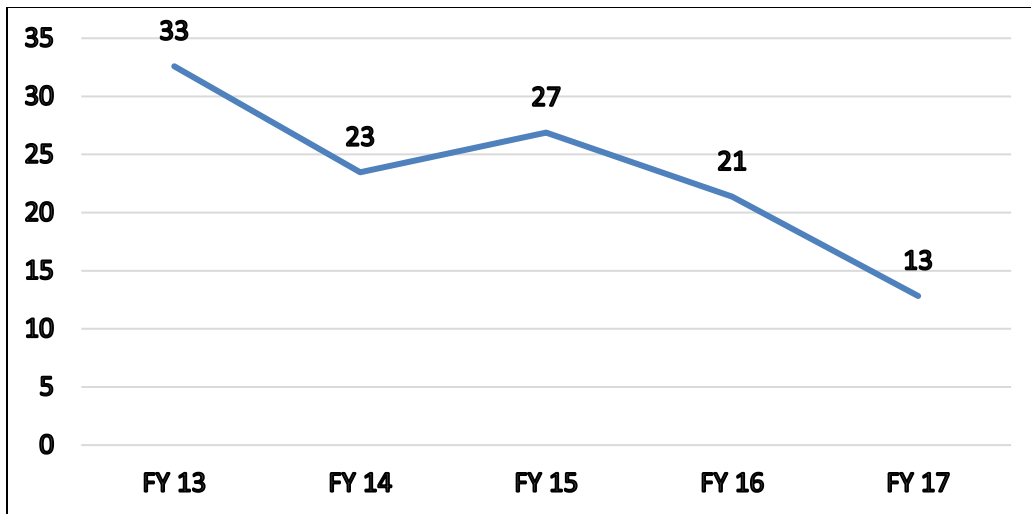
In addition, another factor affects DoD OIG timeliness. To enhance thoroughness as well as fairness, we give the subjects of substantiated investigations an opportunity to comment on our tentative conclusions before we complete our final report, to provide us any additional information they believe is relevant, and to correct any inaccuracies in the report before it is completed. We also summarize and address relevant issues raised by the subjects in their comments in our final reports. Sometimes, the comments process leads to additional fieldwork, which further extends the time for

completing reports. In addition, subjects often consult with a personal attorney before submitting a response, and in the interest of fairness, we grant reasonable requests for extensions. These actions typically delay our reports by several weeks or even months.

We will consider revising the report, and correcting any inaccuracies, if the subjects can convince us that we have something wrong. We do not change a report to appease the subject of the investigation or to change language in the report in a way that the subject simply prefers. However, if we have included something in the report that is not fully accurate or clear, we should be open to modifying it to improve the accuracy of the product. While this process can increase the amount of time to complete an investigation, we believe it is a fair and appropriate process, and we intend to continue to use it.

Yet, having noted all these factors that affect timeliness, we recognize that these investigative timelines are too long. Timeliness of investigations can affect morale, and readiness, and the pendency of an investigation can prevent senior officers from being promoted or retiring. We believe that if senior officials commit misconduct, they should be held accountable in a timely manner; if they did not, they should be cleared in a timely manner. The DoD OIG and the Service and Component IGs are therefore seeking ways to improve timeliness, including streamlining and standardizing investigative processes across the DoD.

Moreover, as discussed in Figure 12, the DoD OIG has made improvements over the past five years in the timeliness of our oversight reviews of Service and Component IG investigation reports. We also give priority to reviewing investigations involving officers who are pending career actions that require Senate confirmation. As reflected in Figure 12, we have significantly reduced the time we take to conduct such oversight reviews.

Figure 12. Average Days for the DoD OIG to Complete Reviews of Component Investigation Reports

In addition, to address timeliness, the DoD OIG has reassigned resources from other components of the OIG to its administrative investigations unit, which conducts senior official and reprisal investigations. Specifically, in 2017, we allocated 21 additional positions to the DoD OIG's administrative investigative unit, which is in the process of selecting and filling those additional positions.

However, balancing timeliness with thoroughness is a continuing challenge, with no easy answers. Each case relies upon the judgment of professional investigators to determine when there is enough evidence to complete the investigation and reports, and when the key issues have been addressed and the key questions answered in sufficient detail. But we will continue to focus attention on the timeliness of investigations, both in the DoD OIG and with the Service and Component IGs.

IV. INVESTIGATIONS OF ALLEGATIONS OF REPRISAL AND RESTRICTION BY SENIOR OFFICIALS

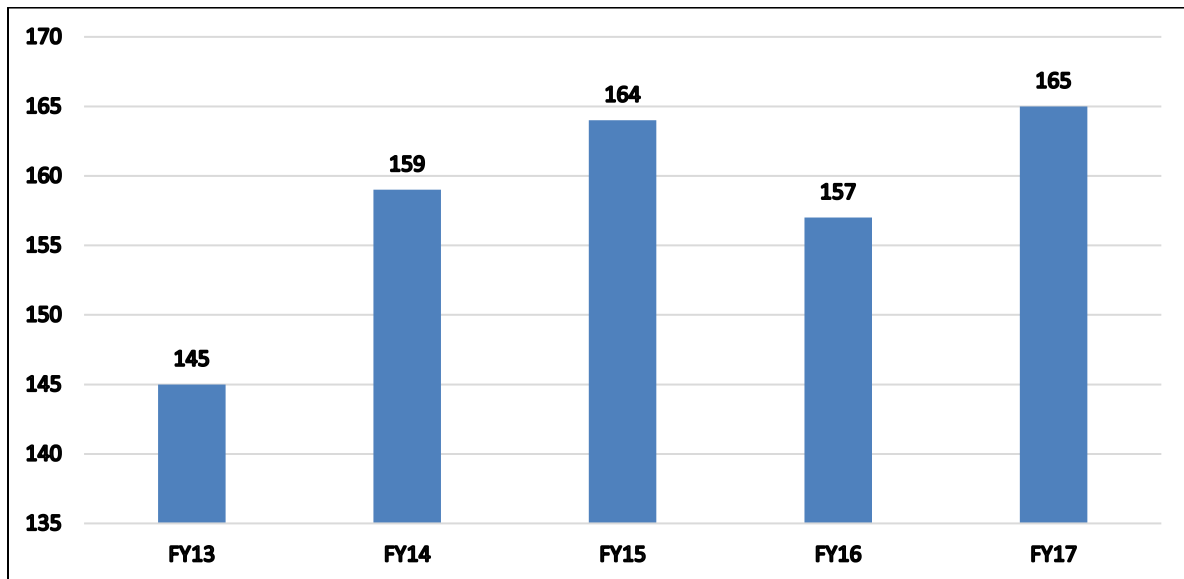
Because I know the Committee is very interested in the investigation of allegations that senior officials retaliated against whistleblowers for their protected disclosures, I will provide data on these investigations separately in this section of my testimony. The data on these types of allegations are not included in the data, discussed in Section III, regarding other allegations of senior official misconduct.

In addition to reprisal investigations, the data in this section includes investigations regarding alleged restriction of military members from making a lawful communication with Congress or an Inspector General. See 10 U.S.C. § 1034(a).

Reprisal and Restriction Complaints against Senior Officials

As reflected in Figure 13, the number of complaints received by the DoD OIG and Service and Component IGs alleging reprisal or military restriction by senior officials has increased by 14 percent over the last 5 years, from 145 in FY 2013 to 165 in FY 2017.

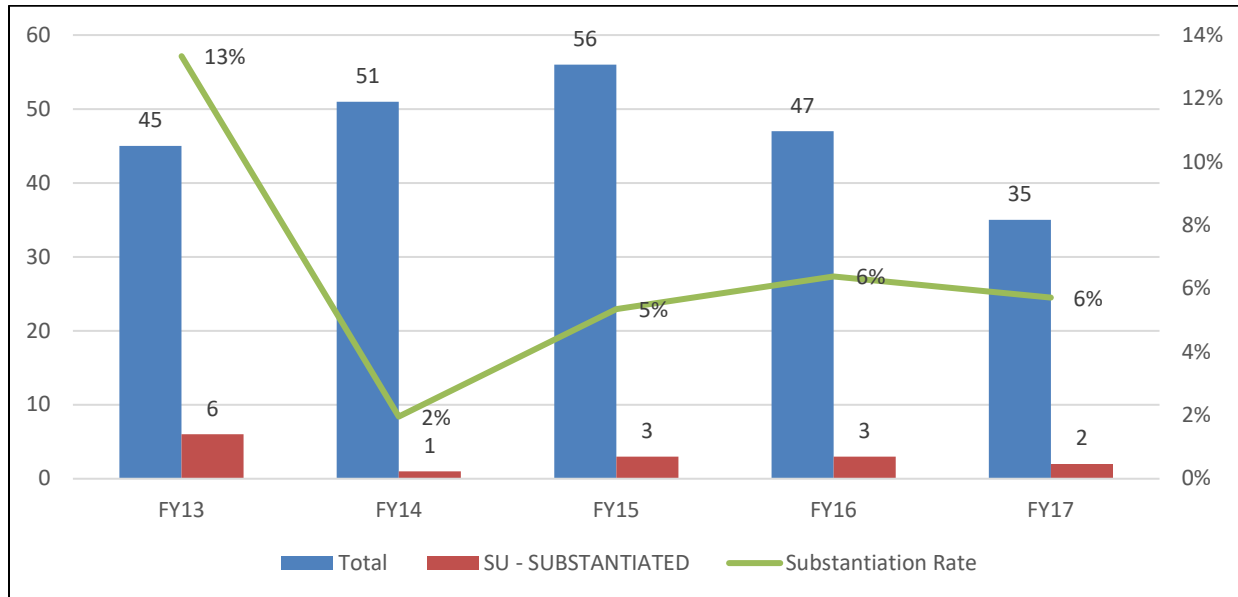
Figure 13. Reprisal and Restriction Complaints Against Senior Officials



By contrast, the number of reprisal and restriction complaints against all subjects has increased from 1013 to 1804 over the last 5 years, or 78 percent.

Figure 14 shows the total number of investigations conducted by the DoD OIG and Service and Component IGs of reprisal or military restriction by senior officials, the number of substantiated cases, and the substantiation rate. As reflected in this figure, the substantiation rate of reprisal or restriction by senior officials has decreased, from 6 in FY 2013 to 2 in FY 2017.

Figure 14. Number of Senior Official Reprisal and Restriction Investigations Closed, Substantiated, and Rate of Substantiation



Investigations Conducted by Investigative Office

Figure 15 shows the breakdown by office conducting the reprisal and restriction investigations.

Figure 15. Number of Senior Official Reprisal and Restriction Investigations Closed by Investigative Office

| Office of Inquiry | Number of Investigations by Fiscal Year | | | | | Total |
|---------------------|---|-----------|-----------|-----------|-----------|------------|
| | 2013 | 2014 | 2015 | 2016 | 2017 | |
| Air Force | 6 | 6 | 13 | 12 | 7 | 44 |
| Army | 17 | 27 | 24 | 26 | 13 | 107 |
| Defense Agencies | 0 | 0 | 1 | 1 | 4 | 6 |
| Joint Command/COCOM | 0 | 0 | 0 | 0 | 2 | 2 |
| Marine Corps | 0 | 0 | 1 | 0 | 3 | 4 |
| Navy | 5 | 6 | 3 | 1 | 0 | 15 |
| DoD OIG | 17 | 12 | 14 | 7 | 6 | 56 |
| Total | 45 | 51 | 56 | 47 | 35 | 234 |

Component and Rank of Senior Officials for Substantiated Reprisal and Restriction Allegations

Figure 16 shows the rank and Service of the senior official subjects in substantiated reprisal and restriction investigations.

Figure 16. Component and Rank of Senior Officials for Substantiated Reprisal and Restriction Allegations

| Component | Rank/Grade | | | | | | | Total Reprisal and Restriction Substantiated Allegations |
|-------------------------------|------------|----------|----------|----------|----------|----------|----------|--|
| | O-7 | O-8 | O-9 | O-10 | GS-15 | SES | PA | |
| Air Force | 0 | 2 | 0 | 0 | 0 | 0 | 0 | 2 |
| Army | 4 | 5 | 2 | 0 | 0 | 0 | 0 | 11 |
| COCOM/Defense Agencies/ Other | 0 | 0 | 0 | 0 | 0 | 0 | 0 | 0 |
| Marines | 0 | 0 | 0 | 0 | 0 | 1 | 0 | 1 |
| Navy | 3 | 0 | 0 | 0 | 0 | 0 | 0 | 3 |
| Total | 7 | 7 | 2 | 0 | 0 | 1 | 0 | 17 |

Figure 17 shows the type of corrective actions taken for substantiated allegations of reprisal and restriction by rank of the senior officials. The number of corrective actions taken (18) exceeded the number of substantiated allegations (17) because more than one corrective action could apply to a substantiated allegation. In 3 cases (18 percent), the Services declined to take action. These three cases all involved allegations of retaliation against Rear Admiral Brian Losey.

Figure 17. Corrective Actions for Substantiated Allegations of Reprisal or Restriction by Senior Officials, by Rank

| Corrective Actions Taken | Rank/Grade | | | | | | Total |
|--------------------------|------------|----------|----------|----------|----------|----------|-----------|
| | O-7 | O-8 | O-9 | O-10 | SES | PA | |
| Declined to Take Action | 3 | 0 | 0 | 0 | 0 | 0 | 3 |
| Letter of Counseling | 0 | 2 | 2 | 0 | 0 | 0 | 4 |
| Removed From Assignment | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Verbal counseling | 0 | 1 | 0 | 0 | 0 | 0 | 1 |
| Written Reprimand | 2 | 2 | 0 | 0 | 0 | 0 | 4 |
| Pending Follow-Up Action | 2 | 2 | 0 | 0 | 1 | 0 | 5 |
| Total | 7 | 8 | 2 | 0 | 1 | 0 | 18 |

Average Days to Complete Senior Official Reprisal and Restriction Investigations by Investigative Office

Figure 18 shows the timeliness of senior official reprisal and restriction investigations, by investigative office.

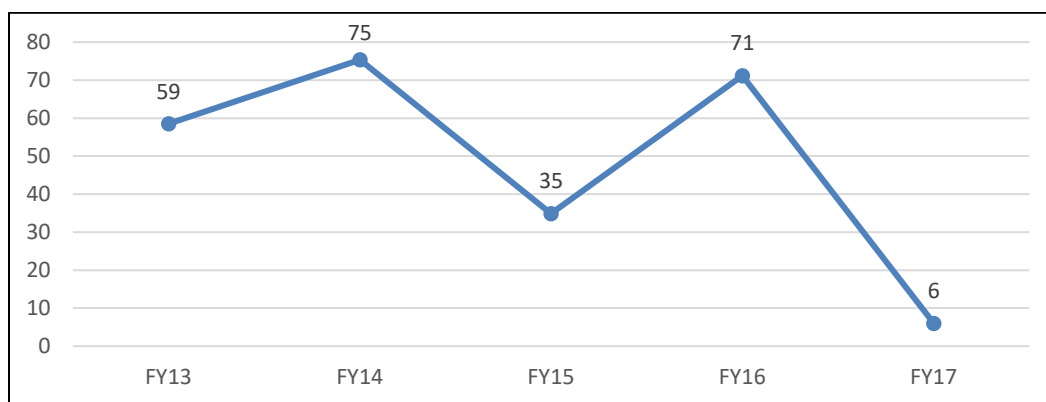
Figure 18. Average Days to Complete a Senior Official Reprisal and Restriction Investigation by Investigative Office

| Office of Inquiry | Average Days per Fiscal Year | | | | |
|---------------------|------------------------------|------|------|------|------|
| | 2013 | 2014 | 2015 | 2016 | 2017 |
| Air Force | 554 | 637 | 346 | 315 | 305 |
| Army | 525 | 342 | 371 | 477 | 432 |
| Defense Agencies | --- | --- | 630 | 567 | 405 |
| Joint Command/COCOM | --- | --- | --- | --- | 747 |
| Marine Corps | --- | --- | 173 | --- | 324 |
| Navy | 433 | 448 | 380 | 542 | --- |
| DoD OIG | 459 | 424 | 434 | 569 | 429 |

Note: The average days by Office of Inquiry is calculated based on the date the complaint was filed to the date the closure letter was sent to the complainant.

The Service IGs investigate the vast majority of military reprisal and restriction complaints, with oversight by the DoD OIG. As reflected in Figure 19, the DoD OIG has significantly improved the timeliness of its oversight process of reprisal and restriction cases conducted by the Service IGs.

Figure 19. Average Days for the DoD OIG to Complete its Reviews of Component Reprisal and Restriction Cases



However, we recognize that the timeliness of IG investigations of whistleblower reprisal throughout the DoD needs improvement. One initiative the DoD OIG has recently implemented to help improve timeliness in reprisal investigations is an alternative dispute resolution program, similar to the program used by the Office of Special Counsel. Alternative dispute resolution, or ADR, is a

voluntary process in which parties use mediation or facilitated settlement negotiations to seek resolution of a complaint prior to an otherwise lengthy investigative process. Voluntary resolutions through ADR can help reduce the time for resolving cases, and it can also allow limited investigative resources to be allocated to completing other investigations in a timely manner. In addition, early resolution through settlements also save time on the back end. Instead of waiting for remedial action to be taken in response to recommendations made in a report of investigation, complainants are made whole quickly. Our program, which began in September 2017, has already shown positive effects. Of the 81 cases that our ADR team has considered, 11 were resolved—a 14 percent settlement rate.

DoD OIG Investigations for Reprisal and Restriction Related to Reports of Sexual Assault

An important subcategory of reprisal and restriction cases involves allegations that a senior official reprised against an individual for reporting an allegation of sexual assault. Figure 20 shows the number of these cases involving senior officials.

Figure 20. DoD OIG Investigations of Senior Officials for Reprisal and Restriction related to Reports of Sexual Assault¹

| Senior Official Sexual-Assault-Related Reprisal and Restriction Investigations Conducted by the DoD OIG | Number by Fiscal Year | | | | |
|---|-----------------------|-----------|-----------|------------|-----------|
| | 2013 | 2014 | 2015 | 2016 | 2017 |
| Closed | 1 | 0 | 2 | 4 | 2 |
| Substantiated | 0 | 0 | 0 | 1 | 0 |
| Substantiation Rate | 0% | 0% | 0% | 25% | 0% |

The one substantiated case, in FY 2016, involved an Army National Guard brigadier general who gave an Army National Guard lieutenant colonel an unfavorable officer evaluation report in reprisal for the lieutenant colonel reporting a sexual assault to her chain of command.

In July 2016, DoD OIG dedicated an investigative team to handle sexual-assault-related reprisal cases. The team received specialized training relating to sexual assault and handling investigations of reprisal for reporting allegations of sexual assault. Since then, the number of these complaints has continued to rise, and we have now established a second team to deal exclusively with sexual-assault-related reprisal complaints.

¹ In July 2016, DoD OIG assumed responsibility for all sexual-assault-related reprisal complaints filed across the DoD. At that time, we assumed responsibility for several ongoing investigations being conducted by Service IGs. Before that time, we could not accurately track the number of cases alleging retaliation for sexual assault report that were being handled by the Service IGs.

The DoD OIG currently has 28 open investigations of allegations of reprisal for making a report of sexual assault. The number of complaints alleging retaliation for making a report of sexual assault has dramatically increased, rising from fewer than 10 in FY 2012 to over 80 in FY 2017.

V. DOD OIG CRIMINAL INVESTIGATIONS

The DoD OIG also has a criminal investigative division to handle investigations of criminal misconduct. This division, the Defense Criminal Investigative Service (DCIS), typically investigates allegations relating to procurement fraud, public corruption, health care fraud, product substitution, the illegal transfer of sensitive DoD technology, and cyber-crimes involving DoD programs, operations, and contracts. In these investigations, DCIS frequently partners with other DoD law enforcement agencies to work the investigation jointly. DCIS typically partners with the DoD's Military Criminal Investigative Organizations (MCIOs), (such as the Naval Criminal Investigative Service (NCIS), the Air Force Office of Special Investigations (OSI), and the Army Criminal Investigation Command (CID)), as well as with the FBI, Homeland Security Investigations (HSI) and other Federal OIGs.

Some DCIS cases involve criminal allegations against DoD senior officials. Currently, the biggest case DCIS is handling involves Glenn Defense Marine Asia (GDMA), and its Chairman and owner, Leonard Glenn Francis (widely known as "Fat Leonard"). DCIS is the lead investigative agency on this case. GDMA provided "husbanding" services to U.S. Navy ships in the Pacific, such as refueling, resupply, tugboat services, and sewage disposal. GDMA and Francis orchestrated a scheme to defraud the U.S. Navy of tens of millions of dollars by routinely overbilling for goods and services. Francis accomplished this criminal conduct by systematically grooming and bribing active duty military and civilian employees of the U.S. Navy with things of value, such as dinners, gifts, travel, hotel expenses, bribes of money, and the services of prostitutes. In return, Navy officers and civilian employees provided Francis classified U.S. 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 him.

To date, Francis, several former employees of GDMA, and 17 former Navy and DoD officials, including a rear admiral and a SES member, have pled guilty to criminal conduct. In addition, in 2017, 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 rear admiral, a Marine Corps colonel, and several Navy captains.

The U.S. Navy has also established a Consolidated Disposition Authority (CDA) to determine if hundreds of Navy officers who allegedly received something of value from Francis should be charged under the Uniform Code of Military Justice or should receive administrative action. The CDA has already adjudicated more than 300 cases.

This is one of the largest and most complex public corruption criminal case in DoD history, and it involves disturbing and widespread ethical lapses throughout the Navy's 7th Fleet. We continue to work with the DOJ to pursue resolution of this case.

VI. CONCLUSIONS

In sum, the DoD OIG recognizes our important role in preventing and investigating senior official misconduct. We also recognize that the timeliness, thoroughness, and accuracy of these investigations affect DoD operations.

We therefore seek to investigate allegations of misconduct thoroughly, fairly, and timely; to seek to hold individuals who have committed misconduct accountable and to clear those who have not; and to provide transparency on this process.

Our staff strives to accomplish that difficult and continuous challenge, and we have implemented, and are implementing, several measures to further improve the process.

First, as noted above, to help prevent misconduct, we brief new senior DoD civilian and military officials about our investigative process, what actions to avoid, and what will get them in trouble.

Second, to educate DoD employees and supervisors about their rights and responsibilities regarding whistleblowing and the need to prevent reprisal against whistleblowers we are hiring a full-time Whistleblower Ombudsman.

Third, to promote expertise and experience in certain kinds of sensitive investigations, we have established two dedicated teams of investigators to handle allegations of reprisal against individuals who made reports of sexual assault.

Fourth, to help standardize investigations and speed the review process, we are working to implement a standardized case management database among the DoD OIG and Military Service IGs.

Fifth, to ensure compliance with laws and regulations, and to share best practices among the Military Service IGs, we have begun conducting Quality Assessment Reviews of the Service IGs, similar to peer reviews and GAO reviews.

Sixth, to promote transparency, we consider proactive public release of our completed reports, particularly those with findings of substantiated misconduct involving high-level officials.

Seventh, to promote fairness, we provide subjects an opportunity to comment on the accuracy of our findings through the tentative conclusions letter process, prior to completion of the final report.

Eighth, to help address timeliness, we have reallocated resources within the DoD OIG to increase the number of investigators working on misconduct and whistleblower reprisal cases.

Ninth, to further promote timeliness and to help resolve cases short of full investigations, we have implemented an alternative dispute resolution program in an attempt to reach voluntary resolution of certain complaints in a timely way, which can free resources to handle other complaints that require full investigation.

In addition to these measures, we will continue to examine other ways to improve our responsibilities with regard to investigations of senior official misconduct. However, we are also asking for help from the Congress. Handling the increasing number and complexity of complaints requires resources, not only for the DoD OIG but also for the Service and Component IGs throughout the DoD. Therefore, it is critical to adequately resource the DoD OIG, as well as the Service and Component IGs, particularly when the DoD and our caseload continues to grow.

For example, I regularly assert to agency leaders and Congress that if the agency budget grows, the IG's budget should grow at least a commensurate amount. That does not always happen. While I recognize that the IG's budget will not be first on the priority list for growth in an agency, it should not be overlooked. Adequately funding IGs is a valuable investment, not only for handling investigations of misconduct, but also for detecting and deterring waste, fraud, and abuse, and for returning money to the government. Overall, according to the Council of Inspectors General for Integrity and Efficiency, federal IGs return approximately 15 dollars for each dollar in their budget.

In short, I believe that adequate budgets are essential for the DoD OIG, and for the Service IGs, to help both timeliness and thoroughness, and we ask for your support in that regard.

In conclusion, the DoD OIG and the Service IGs have a challenging but critically important mission to investigate allegations of misconduct thoroughly, fairly, professionally, and timely. We will continue to strive to fulfill that important responsibility.

This concludes my statement and I would be glad to answer questions.