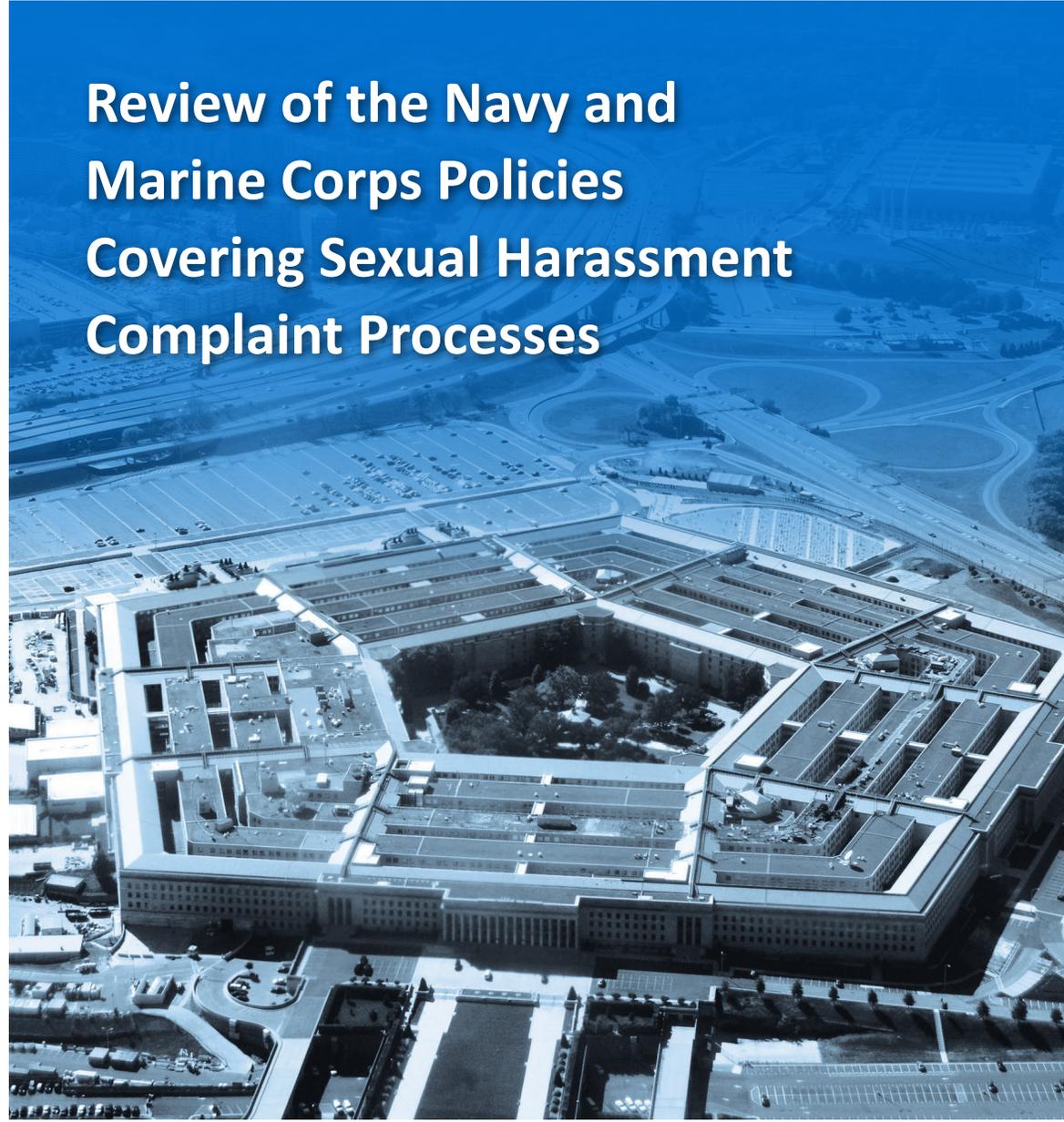


INSPECTOR GENERAL

U.S. Department of Defense

APRIL 2, 2024



Review of the Navy and Marine Corps Policies Covering Sexual Harassment Complaint Processes

INTEGRITY ★ INDEPENDENCE ★ EXCELLENCE ★ TRANSPARENCY





OFFICE OF INSPECTOR GENERAL
DEPARTMENT OF DEFENSE
4800 MARK CENTER DRIVE
ALEXANDRIA, VIRGINIA 22350-1500

April 2, 2024

MEMORANDUM FOR UNDER SECRETARY OF DEFENSE FOR PERSONNEL AND READINESS
AUDITOR GENERAL, DEPARTMENT OF THE NAVY

SUBJECT: Review of the Navy and Marine Corps Policies Covering Sexual Harassment Complaint Processes (Report No. DODIG-2024-071)

This final report provides the results of the DoD Office of Inspector General's review. We previously provided copies of the draft report and requested written comments on the recommendations. We considered management's comments on the draft report when preparing the final report. These comments are included in the report.

This report contains five recommendations that are considered unresolved because the Deputy Chief of Naval Operations/Chief of Naval Personnel, responding for the Chief of Naval Operations; the Deputy Director of the Manpower Plans and Policy Division, responding for the Commandant of the Marine Corps; and the Deputy Director of the DoD Office of Force Resiliency, responding for the Director of the DoD Office for Diversity, Equity, and Inclusion, did not agree or did not fully address the recommendations. Additionally, we merged two draft recommendations as one and redirected the recommendation to the Secretary of the Navy. Therefore, these recommendations remain open. We will track these recommendations until management has agreed to take actions that we determine to be sufficient to meet the intent of the recommendations and management submits adequate documentation showing that all agreed-upon actions are completed. DoD Instruction 7650.03 requires that recommendations be resolved promptly. Therefore, please provide us within 30 days your response concerning specific actions in process or alternative corrective actions proposed on the recommendations. Send your response to DIEMReporting@dodig.mil.

The Deputy Director of the DoD Office of Force Resiliency, responding for the Director of the DoD Office for Diversity, Equity, and Inclusion, agreed to address one recommendation presented in the report. In addition, although the Deputy Chief of Naval Operations and the Deputy Director of the Manpower Plans and Policy Division partially agreed or did not agree with six recommendations, their comments addressed the specifics of the recommendations. Therefore, we consider these recommendations resolved and open. We will close the recommendations when documentation is provided that shows that all agreed-upon actions to implement the recommendations are completed. Therefore, please provide us within 90 days your response concerning specific actions in process or completed on the recommendations. Send your response to either followup@dodig.mil if unclassified or rfunet@dodig.smil.mil if classified SECRET.

If you have any questions or would like to meet to discuss the review, please contact me at [REDACTED]. We appreciate the cooperation and assistance received during the review.

FOR THE INSPECTOR GENERAL:

A handwritten signature in black ink that reads "Sean McDonald". The signature is written in a cursive style with a prominent loop at the end of the last name.

Sean McDonald
Acting Deputy Inspector General for Diversity
and Inclusion and Extremism in the Military

Introduction

Executive Summary

Based on our review of Navy and Marine Corps policies, complaint forms, and interviews with officials responsible for the sexual harassment prevention and response programs, we found gaps in policy that can weaken program execution and oversight. We determined that Navy or Marine Corps policies do not require officials to document actions to support decisions to dismiss, downgrade, or withdraw complaints; investigate all egregious sexual harassment complaints; or complete investigation-related training when selected for the role of investigating officer for a formal complaint. Furthermore, we found that DoD, Navy, and Marine Corps policies do not require officials to track certain types of sexual harassment complaints, which may hinder the DoD's and the Department of the Navy's (DON's) ability to assess the effectiveness of the sexual harassment programs.

This report identifies opportunities for the Navy and Marine Corps to enhance the effectiveness of their current policies and inform the implementation of future initiatives.¹ Specifically, while the DoD and DON initiatives may resolve some of the identified policy gaps, the DoD, Navy, and Marine Corps should consider additional actions to resolve the remaining gaps to strengthen the overall effectiveness of the sexual harassment programs.

Objective

The objective of this review was to determine whether the U.S. Navy and U.S. Marine Corps effectively managed the DON sexual harassment prevention and response programs.²

Because we had difficulties, as detailed in Appendix A, in obtaining a complete universe of sexual harassment allegations and supporting documentation, we addressed our objective by reviewing the policies established by the Navy and Marine Corps to manage their sexual harassment prevention and response programs to identify weaknesses and opportunities for enhanced oversight. In addition, we assessed whether ongoing or future initiatives may resolve identified weaknesses. Specifically, this report focuses on our review of the procedures, established by Navy and Marine Corps policies, to resolve, track, and report sexual harassment complaints submitted by Active Component Service members. See Appendix A for a detailed discussion of the scope and methodology.

¹ It was beyond the scope of this review to assess the handling of specific complaints or investigations.

² The Navy and Marine Corps are Military Services organized under the DON.

Background

Sexual Harassment in the Military

DoD Instruction (DoDI) 1020.03 states that the DoD does not tolerate or condone harassment and describes the behavior as disruptive to combat readiness and mission accomplishment, affecting trust within the ranks and eroding unit cohesion.³ Types of harassment include, but are not limited to, discriminatory harassment, sexual harassment, hazing, bullying, and stalking. In part, DoDI 1020.03 defines “sexual harassment” as conduct that:

- involves unwelcome sexual advances, requests for sexual favors, and deliberate or repeated offensive comments or gestures of a sexual nature when:
 - submission to such conduct is made a term or condition of a person’s job, pay, or career;
 - submission to or rejection of such conduct is used as a basis for career or employment decisions; or
 - such conduct has the purpose or effect of unreasonably interfering with an individual’s work performance or creates an intimidating, hostile, or offensive working environment;
- is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive;
- involves any use or condonation, by any person in a supervisory or command position, of any form of sexual behavior to control, influence, or affect the career, pay, or job of a member of the Armed Forces; or
- involves any deliberate or repeated unwelcome verbal comments or gestures of a sexual nature by any member of the Armed Forces.

Furthermore, Secretary of the Navy Instruction (SECNAVINST) 5300.26E states that the DON is committed to maintaining an environment free from sexual harassment and that its leaders are responsible for enforcing a harassment-free environment.⁴ However, despite DoD and DON efforts to address sexual harassment in the military, the 2021 Workplace and Gender Relations Survey of Military Members

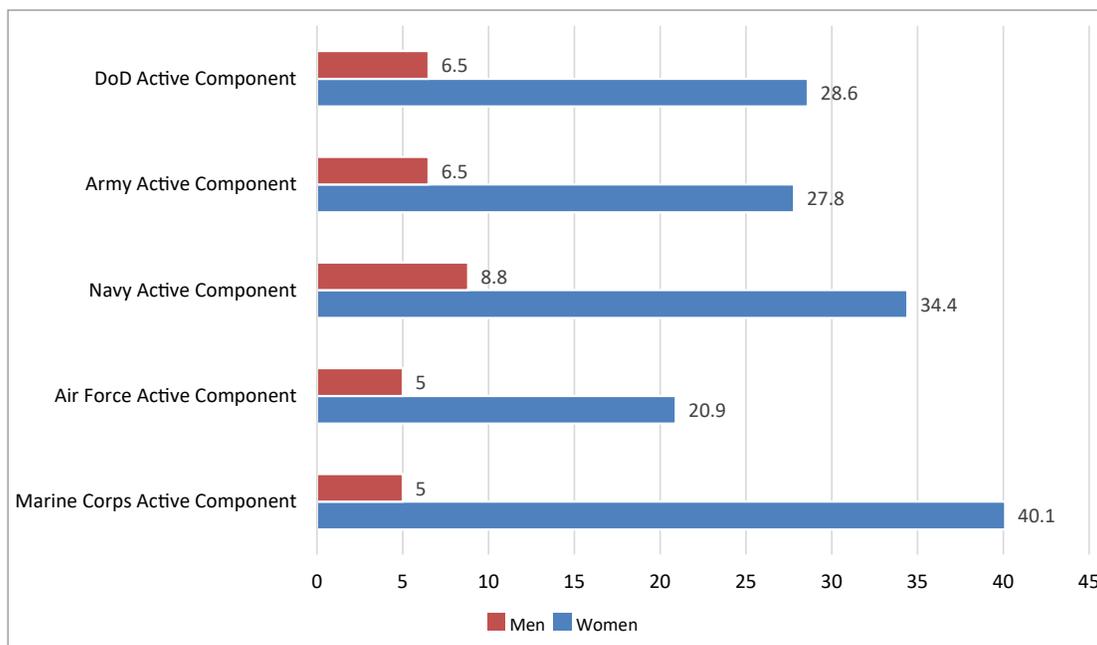
³ DoDI 1020.03, “Harassment Prevention and Response in the Armed Forces,” February 8, 2018 (Incorporating Change 2, December 20, 2022).

⁴ SECNAVINST 5300.26E, “Department of the Navy Policy on Sexual Harassment,” May 28, 2020.

by the Office of People Analytics showed that sexual harassment affected Navy and Marine Corps Service members in higher rates compared with Service members in other Military Services.⁵

One of the main purposes of the 2021 survey was to report estimated prevalence rates of sexual harassment among Service members.⁶ According to the 2021 survey, an estimated 28.6 percent of women and 6.5 percent of men across all of the DoD's Active Components indicated experiencing sexual harassment. In the Navy, an estimated 34.4 percent of women and an estimated 8.8 percent of men indicated experiencing sexual harassment. In the Marine Corps, an estimated 40.1 percent of women and an estimated 5 percent of men indicated experiencing sexual harassment. See Figure 1 for a breakout of the estimated sexual harassment prevalence rates for all Active Component Service members in 2021.

Figure 1. Comparison of Estimated Prevalence Rates of Sexual Harassment for Active Component Personnel Reported in 2021 (percent)



Note: See the Office of People Analytics Report No. 2022-183 for information on the sampling methodology, weighting process, and the margins of error for each Active Component group.

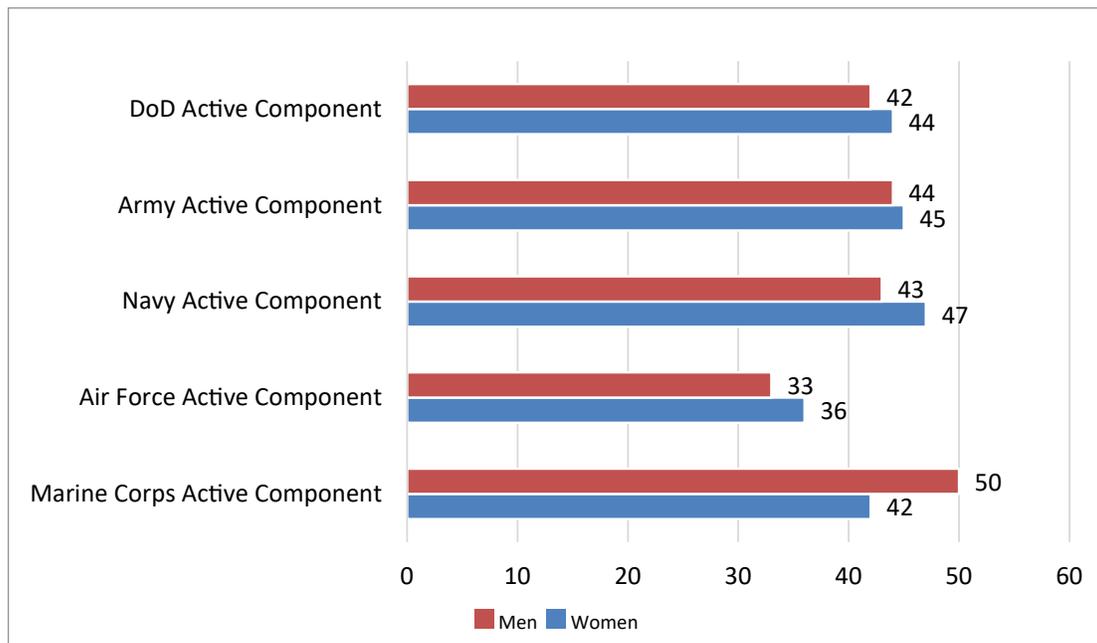
Source: Office of People Analytics Report No. 2022-183.

⁵ Office of People Analytics, Report No. 2022-183, "2021 Workplace and Gender Relations Survey of Military Members Active Component Results and Trends," October 2022. The Office of People Analytics is a directorate within the Defense Personnel Analytics Center. According to the Defense Personnel Analytics Center's website, the agency provides subject matter expertise for scientific assessments, data analytics, and outreach to improve the lives of the DoD community.

⁶ As described in the 2021 Workplace and Gender Relations Survey of Military Members, the Office of People Analytics used a scientific approach to sample Active Component personnel and applied a multistep weighting process to estimate survey responses across the Active Component population.

Furthermore, according to the 2021 survey, an estimated 47 percent of women and 43 percent of men in the Navy, and an estimated 42 percent of women and 50 percent of men in the Marine Corps who “experienced sexual harassment in the past 12 months and made a complaint” were “encouraged to drop the issue.” The 2021 survey does not provide details on who encouraged Service members to drop the issue. See Figure 2 for a breakout of the estimated percentages of all Active Component personnel who were encouraged to drop their sexual harassment complaint in 2021.

Figure 2. Comparing Estimated Rates of Active Component Personnel Who Reportedly Were Encouraged to Drop Their Sexual Harassment Complaint in 2021 (percent)



Note: See the Office of People Analytics Report No. 2022-183 for information on the sampling methodology, weighting process, and the margins of error for each Active Component group.

Source: Office of People Analytics Report No. 2022-183.

DoD Sexual Harassment Prevention and Response Policy

The DoD Office for Diversity, Equity, and Inclusion (ODEI), which falls under the Office of the Under Secretary of Defense for Personnel and Readiness, is the principal organization for developing DoD-wide harassment prevention and response policy. DoDI 1020.03 establishes core requirements for Military Departments to establish and oversee their respective sexual harassment prevention and response programs, as well as requirements for the Military Departments to process anonymous, formal, and informal complaints. Specifically, the Military Departments are required to:

- establish supplemental guidance for receiving, responding to, investigating, and resolving sexual harassment complaints;

- train personnel involved in the resolution of sexual harassment complaints;
- follow timelines for processing complaints;
- conduct legal sufficiency reviews on complaints; and
- collect data on complaints.

Department of the Navy, Navy, and Marine Corps Sexual Harassment Prevention and Response Policy

SECNAVINST 5300.26E provides policy for all Navy and Marine Corps personnel on the identification, prevention, and elimination of sexual harassment and establishes regulations to enforce policy. SECNAVINST 5300.26E also requires the Chief of Naval Operations and the Commandant of the Marine Corps to create military sexual harassment prevention and response programs that establish formal and informal resolution procedures. The Instruction requires that all reported incidents of sexual harassment be investigated and resolved at the lowest appropriate level. The nature of the investigation will depend on the particular facts and circumstances and may consist of an informal review or a formal investigation. The purpose and intent of informal resolution is to resolve sexual harassment complaints at the lowest appropriate level; however, SECNAVINST 5300.26E states that informal resolution may be inappropriate to use in some cases. Examples of inappropriately using the informal resolution procedures include instances when the objectionable behavior does not stop, the situation is not resolved, or the behavior is clearly criminal in nature. Instead, complainants should file a formal complaint.

Office of the Chief of Naval Operations Instruction (OPNAVINST) 5354.1H provides policies and standards to aid in the prevention of and response to harassment, defines requirements, and assigns responsibilities to implement the Navy's Harassment Prevention and Military Equal Opportunity (MEO) Program.⁷ In part, OPNAVINST 5354.1H assigned the Chief of Naval Operations, Navy Harassment Prevention and MEO Office (OPNAV N170C), the responsibility to monitor the Navy's progress toward accomplishing program goals, develop and implement standards for holding leaders accountable, and provide required reports to the ODEI.

⁷ OPNAVINST 5354.1H, "Navy Harassment Prevention and Military Equal Opportunity Program," November 3, 2021. OPNAVINST 5354.1H defines MEO as the "right of all Service members to serve and be evaluated based on only individual merit, fitness, capability and performance in an environment free from harassment and prohibited discrimination on the basis of race, color, religion, sex (including pregnancy), gender identity, national origin or sexual orientation."

Marine Corps Order (MCO) 5354.1F provides policy, procedures, and responsibilities for preventing and responding to prohibited activities and conduct.⁸ In part, MCO 5354.1F assigned the Marine Corps Headquarters, Manpower and Reserve Affairs, Opportunity, Diversity, and Inclusion Branch (MPE) the responsibility to monitor the Marine Corps' progress toward accomplishing various MEO Program goals, develop and execute senior-level training, and provide required reports to the ODEI.

Navy and Marine Corps Sexual Harassment Complaint Procedures

Navy and Marine Corps Service members can communicate allegations of sexual harassment by several methods, such as contacting their chain of command, Service Inspector General, or elected officials. Our report focuses on procedures used by Navy and Marine Corps commanders when resolving complaints within their jurisdiction. The procedures to resolve and track sexual harassment complaints are outlined in OPNAVINST 5354.1H for the Navy and MCO 5354.1F for the Marine Corps. In addition, All Navy Message (ALNAV) 024/22 outlines Navy and Marine Corps commanders' jurisdiction when resolving formal sexual harassment complaints.⁹

In April 2022, the Secretary of the Navy issued ALNAV 024/22 as interim policy to improve the DON's response to formal sexual harassment complaints until policy governing the independent investigation of such complaints is established. Previously, Navy and Marine Corps commanders over the subject of the complaint had jurisdiction over the complaint. However, ALNAV 024/22 modifies the formal resolution procedures outlined in OPNAVINST 5354.1H and MCO 5354.1F. Specifically, commanders, commanding officers, and officers-in-charge of a unit, vessel, or facility who receive a formal sexual harassment complaint from a person under their supervision must now forward that complaint to the next higher-level commander in the chain of command to assess the complaint and appoint an investigating officer.

⁸ MCO 5354.1F, "Marine Corps Prohibited Activities and Conduct (PAC) Prevention and Response Policy," April 20, 2021. Prohibited conduct involving sexual harassment, prohibited discrimination, harassment, hazing, bullying, dissident and protest activities, and wrongful distribution or broadcasting of intimate images are referred to collectively in MCO 5354.1F as prohibited activities and conduct.

⁹ ALNAV 024/22, "Interim Policy Governing Investigation of Formal Sexual Harassment Complaints Under [Section 1561, Title 10, United States Code]," April 22, 2022.

Complaint Acceptance, Dismissal, or Withdrawal Procedures

Navy and Marine Corps complainants have the option of submitting an informal, formal, or anonymous complaint. Upon receipt of a formal or anonymous Navy complaint or an informal, formal, or anonymous Marine Corps complaint, commanders with complaint jurisdiction review the allegation and decide to accept the complaint for resolution, refer the complaint, or dismiss the complaint.¹⁰ When accepting complaints, Navy commanders (or designees) follow complaint resolution procedures based on the type of complaint submitted—formal, informal, or anonymous. Marine Corps commanders may consider the complainant's request for a formal or informal resolution; however, unlike Navy policy, MCO 5354.1F provides Marine Corps commanders the discretion to determine which complaint resolution procedures, formal or informal, they will follow.

A Navy or Marine Corps commander with complaint jurisdiction, in consultation with the MEO and legal advisors, may determine that dismissal of a complaint is appropriate. Reasons for dismissal include a complaint not under a Service's purview, a complaint deemed without merit, duplicative complaint submissions, claims of institutional discriminatory practices and policies, failure to cooperate, lateness, and voluntary withdrawal. As outlined in OPNAVINST 5354.1H and MCO 5354.1F, a complainant may voluntarily withdraw their complaint at any time. Although, a complainant's voluntary withdrawal may be treated as a basis for dismissal of a complaint, the commander does not have to dismiss the complaint and may continue to take actions necessary to maintain good order and discipline within the command.

Formal and Anonymous Complaint Procedures

ALNAV 024/22 requires commanders who receive a formal sexual harassment complaint from a Service member under their supervision to forward that complaint to the next higher-level commander in the chain of command to assess the complaint and appoint an investigating officer. The investigating officer investigates the allegation and prepares a report on the findings that

¹⁰ According to the OPNAVINST 5354.1H, Navy commanders are not to intervene when those involved are appropriately resolving informal complaints. However, any informal complaint submitted directly to a Navy commander must be processed through the formal resolution process.

In some cases, Navy and Marine Corps commanders will refer a sexual harassment complaint to another organization. For example, allegations involving reprisal or allegations against senior officials must be referred to the Office of the Naval Inspector General or to the Office of the Inspector General of the Marine Corps. In cases where neither the command nor the Service has jurisdiction or the authority to remedy the complaint, the commander will refer a complaint to the relevant agency or agencies with personnel and subject matter jurisdiction to adjudicate the case, if applicable.

the commander uses to determine whether to substantiate the allegation. MEO and legal advisors then review the completed command investigation for sufficiency.¹¹ Specifically:

- MEO advisors perform a sufficiency review of the command investigation to determine, in part, whether the investigation: addressed all accepted allegations, included a review of the circumstances under which the alleged behavior occurred, analyzed how the complainant was treated compared to demographic groups, and did not include evidence of bias by the investigating officer.
- Staff judge advocates perform a legal sufficiency review of the command investigation to determine, in part, whether the investigation complied with all applicable legal and administrative requirements, adequately addressed the allegation, included findings supported by evidence, and included conclusions and recommendations consistent with the findings.

The command investigation, MEO advisor’s opinion, and legal sufficiency review are then forwarded to the commander with jurisdiction for final disposition. During final disposition, the commander makes the final determination of the complaint based on whether the preponderance of the evidence supports the complainant’s allegation, finding the complaint substantiated (supported by the evidence) or unsubstantiated (not supported by the evidence). If the commander substantiates the allegations, the commander will then determine the appropriate action to take against the subject of the complaint, which may include, but not limited to, filing an adverse evaluation report, or initiating non-judicial punishment or a court-martial. In some cases, Navy and Marine Corps policy requires the subject be processed for administrative separation from the Navy or Marine Corps. The offender may appeal the commander’s final determination.

If the aggrieved party does not want to participate in the complaint process, they can submit an anonymous complaint. The complainant is not required to divulge any personally identifiable information. Anonymous complaints may be submitted by several means, including, but not limited to, organizational hotlines or advice lines, email, or official telephone lines. Action taken regarding an anonymous complaint depends on the extent of information the complainant provides.

If the complaint contains sufficient information to permit the initiation of an investigation, it is processed as a formal complaint. If the anonymous complaint

¹¹ This report refers to Navy command climate specialists and Marine Corps equal opportunity advisors as “MEO advisors.” Navy command climate specialists and Marine Corps equal opportunity advisors are Sailors and Marines who support commands as subject matter experts for handling and processing complaints of harassment and other prohibited activities.

does not contain sufficient information to initiate an investigation, the complaint is documented in the command files and is kept for 3 years in the Navy, and for 2 years in the Marine Corps.

Informal Complaint Procedures

On receipt of an informal complaint in the Navy, the MEO advisor evaluates possible actions to resolve the complaint. The informal complaint process does not investigate or substantiate the sexual harassment allegation. If the complaint is not resolved within 30 duty days, or the complainant is not satisfied with the outcome, the complainant may file a formal complaint. However, the complainant can stop the informal complaint process at any time to submit a formal complaint.

If a complaint was accepted under the Marine Corps' informal resolution procedures, the commander or designee evaluates possible actions to resolve the complaint. The informal complaint process does not investigate or substantiate the sexual harassment allegation. If after 30 calendar days the complaint is not resolved, the MCO 5354.1F states that the commander should consider initiating a formal resolution to resolve the matter.

Complaint Tracking Procedures

The Navy and Marine Corps use NAVPERS Form 5354/2 and NAVMC Form 11512, respectively, to document allegations and official actions taken during the complaint resolution process.¹² Navy officials forward to OPNAV N170C the NAVPERS Forms 5354/2 associated with complaints resolved using the formal and informal resolution procedures. OPNAV N170C officials collect and track sexual harassment data from these forms in an internal spreadsheet. The Marine Corps uses the Discrimination and Sexual Harassment (DASH) system to collect and track data from formal complaints. DASH, maintained by the MPE, is the system of record the Marine Corps uses to track and report all accepted complaints of prohibited activities and conduct across the Service from initial reporting until final command action. According to officials from OPNAV N170C and the Office of Force Resiliency, which reports to the Office of the Assistant Secretary of the Navy (Manpower and Reserve Affairs), the DON acquired a database to track and maintain prohibited discrimination and harassment data. Navy and Marine Corps MEO officials will eventually use the database—the Misconduct Report Incident Tracker—to collect data across the DON. The Office of Force Resiliency official estimated full implementation of the system by the end of December 2023.

¹² NAVPERS 5354/2, "Navy Equal Opportunity (EO) and Harassment Complaint Form," and NAVMC Form 11512, "Prohibited Activities and Conduct Complaint Form."

Ongoing DoD and Department of the Navy Initiatives to Update Sexual Harassment Prevention and Response

The DoD and DON have multiple ongoing initiatives intended to improve sexual harassment prevention and response programs. On February 26, 2021, the Secretary of Defense established a 90-day Independent Review Commission on Sexual Assault to conduct an independent assessment of the military's treatment of sexual assault and sexual harassment. On July 2, 2021, the Independent Review Commission published its report with 82 recommendations covering four broad areas—accountability, prevention, climate and culture, and support and care of victims.¹³

The DoD will implement sexual harassment response initiatives after accepting recommendations from the Independent Review Commission on Sexual Assault.¹⁴ These recommendations include adding sexual harassment as an offense under the Uniform Code of Military Justice, removing commanders from resolving certain covered offenses, and creating dedicated offices to prosecute covered offenses. In addition, the DoD and DON have other planned or ongoing initiatives that are also intended to improve program execution and oversight. For example, the DoD and DON plan to implement the following initiatives.

- The Office of the Special Trial Counsel (OSTC) will review formal complaints of sexual harassment.
- DoDI 1020.03 will incorporate updated sexual harassment complaint procedures.
- The ODEI will acquire a DoD-wide automated database to collect MEO-related data.
- The Naval Criminal Investigative Service (NCIS) will investigate instances of sexual harassment in the Navy and Marine Corps.

See Appendix B for a description of several ongoing or recently completed initiatives to improve the effectiveness of sexual harassment programs.

¹³ Independent Review Commission on Sexual Assault in the Military, "Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military," July 2, 2021.

¹⁴ Secretary of Defense Memorandum, "Commencing DoD Actions and Implementation to Address Sexual Assault and Sexual Harassment in the Military," September 22, 2021, outlines a four-tier approach to implement the Independent Review Commission recommendations with estimated completion ranging from FY 2027 through FY 2030.

Results

There are Opportunities to Strengthen the Effectiveness of DoD, Navy, and Marine Corps Policies Governing Sexual Harassment Programs

Gaps in DoD, Navy, and Marine Corps policies may hinder the Navy's and Marine Corps' ability to effectively manage DON sexual harassment prevention and response programs. As discussed below, we identified opportunities for the Navy and Marine Corps to enhance the effectiveness of their current policies and inform the implementation of future initiatives. Specifically, we determined that DoD, Navy, or Marine Corps policies do not require officials to:

- document MEO and legal advisors' opinions or concurrences when dismissing or downgrading a complaint, or actions supporting the complainant's decision to withdraw a complaint;
- investigate all severe and pervasive allegations and withdrawn allegations that would meet the administrative separation requirement outlined in SECNAVINST 5300.26E, if substantiated;
- complete investigation-related training when selected for the role of investigating officer for formal complaints; and
- track necessary data to assess all aspects of sexual harassment programs, such as information on informal, dismissed, or withdrawn complaints, or information on whether formal complaints are resolved outside the complainants' chain of command.

Gaps in policy can weaken program execution and oversight. In addition, Navy and Marine Corps efforts to administer sexual harassment prevention and response programs may be hindered by not tracking information needed to fully assess the programs. Furthermore, although the DoD and DON are developing initiatives that may resolve some of the identified policy gaps, the DoD, Navy, and Marine Corps should consider additional actions to resolve the remaining gaps to strengthen the overall effectiveness of the sexual harassment programs. Improving program procedures may increase trust in Navy and Marine Corps sexual harassment programs, thereby strengthening efforts to recruit future Service members and retain a ready military force.

Navy or Marine Corps Policies Do Not Require Officials to Document Actions Supporting Decisions to Dismiss, Downgrade, or Withdraw Complaints

Based on our review of Navy and Marine Corps policies and complaint forms, and interviews with officials responsible for the sexual harassment programs, we determined that Navy or Marine Corps policies do not require officials to document actions to support decisions to dismiss, downgrade, or withdraw complaints. Gaps in policy can cause inconsistent application of program procedures, weakening program execution. Therefore, to resolve identified policy gaps, the Navy and Marine Corps should consider additional actions, as discussed below, as the Services implement DoD and DON initiatives.

The Navy and Marine Corps Lack Requirements to Document Advisory Opinions When Dismissing Complaints

Navy and Marine Corps policies do not include procedures requiring commanders to document that they consulted MEO and legal advisors before dismissing a complaint.¹⁵ Navy and Marine Corps policies require commanders to consult MEO and legal advisors to determine whether dismissal of a complaint is appropriate. OPNAVINST 5354.1H requires Navy commanders to document their justification to dismiss a complaint in a memorandum for the record. MCO 5354.1F requires Marine Corps commanders to document their justification in the NAVMC Form 11512 associated with the complaint. However, OPNAVINST 5354.1H and MCO 5354.1F do not require commanders to document that they first consulted MEO and legal advisors before dismissing the complaint. Furthermore, we determined that NAVMC Form 11512 does not include fields to document the review or acknowledgement of the MEO and legal advisor. By documenting the full resolution process, commanders can ensure that the appropriate steps were completed and attest that complaints received the appropriate consideration by subject matter experts. Therefore, the Chief of Naval Operations and the Commandant of the Marine Corps should develop and implement policies or processes to ensure that the steps taken to dismiss a sexual harassment complaint are fully documented and retained in command files.

The Marine Corps Lacks a Requirement to Document Advisory Opinions When Downgrading Complaints

Marine Corps policy does not include procedures requiring commanders to consult MEO and legal advisors before declining a complainant's initial request for formal resolution and instead processing the complaint under the informal resolution

¹⁵ Withdrawn complaints are a subtype of a dismissed complaint, as outlined in OPNAVINST 5354.1H and MCO 5354.1F.

process, known as downgrading the complaint in this report.¹⁶ MCO 5354.1F gives Marine Corps commanders the discretion to direct some accepted formal complaints through the informal resolution process, but prohibits informal resolution of complaints alleging severe and pervasive behaviors.¹⁷ However, MCO 5354.1F does not require commanders to consult MEO and legal advisors about the alleged behavior before determining whether to downgrade formal complaints to informal complaints. Therefore, commanders may be inappropriately downgrading complaints alleging severe and pervasive behaviors.

An MPE official explained that MCO 5354.1F highly encourages the commander to consult MEO and legal advisors, and that a future update to the MCO—expected to be issued in early 2024—will require the MEO advisor’s documented participation in the decision process. According to the MPE official, a draft update to MCO 5354.1F will require the MEO advisor to assess each complaint to determine whether a violation occurred and recommend the most appropriate resolution process on NAVMC Form 11512 for the commander to use when determining to accept, dismiss, or refer the complaint. The MPE official indicated that the updated MCO 5354.1F would not require the legal advisor’s participation to be documented on NAVMC Form 11512 for cases of downgraded complaints but acknowledged that legal advisors should still be consulted. Therefore, the Commandant of the Marine Corps should develop and implement policies or processes to ensure that the steps taken to downgrade a sexual harassment complaint are fully documented and retained in command files, including the opinions or concurrences of the MEO and legal advisors.

In addition, ODEI officials told us that they had concerns over the Marine Corps process that allows commanders to downgrade a complaint from the formal resolution process to the informal resolution process. The ODEI MEO Policy Director explained that there is a lack of standardization between the Services, so officials from different Services may view the type of complaint differently. The ODEI MEO Policy Director stated that the ODEI would like to revise DoDI 1020.03 to provide additional guidance on whether commanders can downgrade complaints. Another ODEI official explained that the draft DoDI 1020.03 includes some additional guidance and, when finalized, the Instruction will specify that the complainant should make the decision whether to

¹⁶ Unlike the Marine Corps, Navy commanders do not have the discretion to downgrade a complaint submitted formally to be resolved through the informal resolution process. As outlined in OPNAVINST 5354.1H, Navy commanders receiving formal complaints must address such complaints through the formal resolution process.

¹⁷ Public Law 117-81, “National Defense Authorization Act for Fiscal Year 2022,” section 543, “Independent Investigation of Complaints of Sexual Harassment,” December 27, 2021, required the independent investigation of formal sexual harassment complaints, effective December 27, 2023. According to MPE officials, all formal complaints will be investigated without commanders having the discretion to decline a complainant’s initial request for formal resolution and instead process the complaint under the informal resolution process. However, MCO 5354.1F was not updated during the period of this review to remove the Marine Corps commanders’ discretion to downgrade complaints.

move forward with formal or informal complaint resolution procedures. However, the language in the draft Instruction is unclear, as it does not specify who would ultimately make that decision.¹⁸ To ensure that the Services comply with the intent of DoD requirements, the ODEI should clarify in policy whether commanders with complaint jurisdiction have the authority to downgrade a formal sexual harassment complaint to an informal complaint.

The Navy Lacks a Requirement to Document Actions Supporting a Complainant's Decision to Withdraw a Complaint

Navy policy does not include procedures for a complainant to document their decision to withdraw their complaint. According to OPNAVINST 5354.1H, a complainant may voluntarily withdraw their complaint at any time during the administrative process. Although OPNAVINST 5354.1H requires commanders to document the dismissal of complaints due to a voluntary withdrawal, the Instruction does not include procedures for a complainant to document and acknowledge that their decision to withdraw the complaint is free from improper influence by command leadership or other entities. In addition, the NAVPERS Form 5354/2 has no field for the complainant to document and acknowledge their voluntary withdrawal.¹⁹ As previously reported, the Office of People Analytics Report No. 2022-183 estimates that 47 percent of women and 43 percent of men in the Navy who made a sexual harassment complaint were encouraged to drop the issue.²⁰ By having the complainant document and acknowledge their decision, Navy officials can help ensure the decision to voluntarily withdraw a complaint is the decision of the complainant, and is not in response to pressure from any other entity. Therefore, the Chief of Naval Operations should develop and implement policies or processes to formalize the complaint withdrawal process to ensure that the complainant's decision to voluntarily withdraw their complaint is fully documented and free from improper influence by command leadership or other entities.

¹⁸ ODEI officials anticipated issuing the revised DoDI 1020.03 in December 2023.

¹⁹ Unlike the Navy, Marine Corps policy established procedures for handling complaints after a Service member decides to withdraw a complaint. Specifically, MCO 5354.1F requires a complainant to sign the NAVMC Form 11512, and the commander must ensure that there is no retaliatory action influencing a complainant's decision to withdraw a complaint.

²⁰ See the Office of People Analytics Report No. 2022-183 for information on the sampling methodology, weighting process, and the margins of error for each Active Component group. The 2021 survey does not provide details on who encouraged Service members to drop the issue.

Navy and Marine Corps Policies Do Not Require Commanders to Investigate All Egregious, Severe, and Pervasive Allegations

Navy and Marine Corps policies do not require Navy and Marine Corps commanders to investigate all egregious sexual harassment complaints to ensure that offenders are processed for administrative separation if allegations are substantiated.²¹ SECNAVINST 5300.26E states that Sailors and Marines must be processed for administrative separation if a commander or a court-martial finds that any of the following allegations of sexual harassment are substantiated.

- “Actions, threats, or attempts to influence another’s career or job in exchange for sexual favors.”
- “Rewards in exchange for sexual favors.”
- “Physical contact of a sexual nature which, if charged as a violation of the Uniform Code of Military Justice, could result in punitive discharge.”

Although a complainant can withdraw their complaint at any time, OPNAVINST 5354.1H and MCO 5354.1F give Navy and Marine Corps commanders the discretion to continue investigations of withdrawn complaints. However, these policies do not require commanders to continue an investigation involving a complaint with sufficient information to permit an investigation of allegations meeting the administrative separation requirement outlined in SECNAVINST 5300.26E, if substantiated.

Furthermore, Navy informal complaint procedures do not exclude severe or pervasive allegations from being resolved through the informal complaint process.²² SECNAVINST 5300.26E states that complainants should file a formal complaint if quid pro quo sexual harassment is involved or the behavior is clearly criminal in nature.²³ However, the informal complaint procedures included in OPNAVINST 5354.1H encourage complaint stakeholders (complainant, third party, and supervisors) to use the formal complaint process only if the informal complaint procedures cannot resolve the complaint. OPNAVINST 5354.1H does not exclude instances of severe and pervasive allegations from being resolved using the informal resolution procedures. OPNAVINST 5354.1H states only that under the informal complaint process, there is no admission of guilt or substantiation of the

²¹ For the purposes of this report, we use the term “egregious” to categorize situations that would lead to administrative separations, as outlined in SECNAVINST 5300.26E.

²² Unlike the Navy, Marine Corps policy explicitly excluded severe and pervasive allegations from the informal resolution process. Specifically, MCO 5354.1F states that complaints alleging severe and pervasive sexual harassment behaviors must not be resolved through the informal resolution process, and lists quid pro quo and the unlawful distribution or broadcasting of an intimate image as examples.

²³ SECNAVINST 5300.26E defines “quid pro quo” as a form of sexual harassment that is experienced when recipients are offered or denied something that is work-related in return for submitting to or rejecting unwelcome sexual behavior.

complaint. Any informal complaint that results in punitive disciplinary action by the chain of command intended to hold an alleged offender accountable must be processed as a formal complaint.

Therefore, certain alleged offenses may not be substantiated, which could result in Navy and Marine Corps Service members remaining in service instead of being processed for administrative separation, as required by SECNAVINST 5300.26E. Ensuring that all types of egregious, severe, and pervasive allegations are investigated may prevent alleged offenders from victimizing additional Service members. Therefore, the Chief of Naval Operations and the Commandant of the Marine Corps should develop and implement policies or processes to ensure that commanders investigate withdrawn complaints with sufficient information to permit investigation of allegations that would meet the administrative separation requirement outlined in SECNAVINST 5300.26E, if substantiated. In addition, the Chief of Naval Operations should develop and implement policies or processes to ensure that complaints involving severe and pervasive allegations of sexual harassment are not directed to and resolved through the informal resolution process.

Navy and Marine Corps Policies Lack Training Requirements for Investigating Officers

Navy and Marine Corps policies do not require designated officials to complete investigation-related training when selected for the role of investigating officer for a formal complaint. DoDI 1020.03 requires the Military Department programs to include training and education requirements for commanders and any other appropriate personnel, such as investigating officers. In addition, SECNAVINST 5300.26E states that DON personnel assigned to conduct sexual harassment investigations must receive training in investigative methods and processes. However, OPNAVINST 5354.1H and MCO 5354.1F do not include requirements for Navy and Marine Corps officials to develop training for personnel assigned as investigating officers to become familiar with or proficient in investigative methods. In addition, OPNAV N170C and MPE officials confirmed that investigating officers do not receive training in investigative methods.

The Independent Review Commission on Sexual Assault reported that many failures in response to sexual offenses can be attributed to inexperienced investigators. As a result of the lack of investigative training for investigating officers, formal complaints of sexual harassment may not be investigated adequately, uniformly, or promptly. OPNAVINST 5354.1H and MCO 5354.1F require Navy and Marine Corps MEO and legal advisors to conduct sufficiency reviews of the investigation before submitting the results to the commander for final disposition. However, MEO and

legal reviews may not be sufficient in identifying investigating officers' critical errors or omissions in collecting evidence due to a lack of training, which can compromise the integrity of the investigation and the timeliness of the complaint's resolution. Investigating officers who are trained may improve commanders' ability to determine the disposition of complaints with adequate evidence in a timely manner.

In addition, the Independent Review Commission on Sexual Assault recommended the use of independent and trained investigators for sexual harassment cases. The DoD and DON have the following initiatives to introduce independent and trained investigators.

- The OSTC will review formal complaints of sexual harassment.
- NCIS will investigate instances of sexual harassment in the Navy and Marine Corps.

Specifically, the OSTC will review formal complaints of sexual harassment starting in January 2025.²⁴ However, the OSTC will have the discretion to not prosecute sexual harassment allegations and defer formal complaints to commanders for resolution. Therefore, formal complaints deferred to commanders by the OSTC could still be investigated by commander-designated investigating officers without training in investigative techniques.

In addition, DON officials stated that NCIS will investigate instances of sexual harassment in the Navy and Marine Corps. For this purpose, DON officials stated that NCIS hired approximately 70 investigators as of August 2023, and estimated that NCIS will investigate sexual harassment complaints in January 2025.²⁵ However, DON officials stated that the process for independently investigating sexual harassment complaints is to be determined, in part, by pending ODEI guidance on how to process complaints that do not meet the criminal definition of sexual harassment. Regardless of the determination, Navy and Marine Corps personnel assigned as investigating officers will still review sexual harassment complaints not reviewed by the OSTC or investigated by NCIS. As previously discussed, investigating officers who are not trained in investigative methods and processes can cause inadequate, inconsistent, or untimely investigations of formal sexual harassment complaints. Therefore, the Chief of Naval Operations

²⁴ Public Law 117-81, section 531, "Special trial counsel," established the requirement directing Secretaries of the Military Departments to each establish an OSTC to prosecute covered offenses starting on December 27, 2023. Public Law 117-263, "James M. Inhofe National Defense Authorization Act for Fiscal Year 2023," section 541, "Matters in connection with special trial counsel," December 23, 2022, established formal complaints of sexual harassment as a covered offense starting on January 1, 2025.

²⁵ Public Law 117-81, section 543, required the independent investigation of formal sexual harassment complaints, effective December 27, 2023.

and the Commandant of the Marine Corps should develop and implement policies or processes to ensure that Navy and Marine Corps officials assigned as investigating officers by commanders are trained in investigative methods and processes.

DoD, Navy, and Marine Corps Policies Do Not Require Officials to Track and Report the Data Necessary to Assess All Aspects of Sexual Harassment Programs

DoD, Navy, and Marine Corps policies do not require MEO officials to track and report information on informal, dismissed, or withdrawn complaints to the DoD, OPNAV N170C, or MPE, as outlined in Table 1 below. Furthermore, although Navy and Marine Corps policies require officials to track and report formal complaints, the information reported is insufficient to determine whether formal complaints were forwarded to the next higher-level commander, as required by ALNAV 024/22. Therefore, without requirements to track and report necessary data to assess all aspects of sexual harassment programs, DoD, Navy, and Marine Corps officials may be hindered in their ability to assess the effectiveness of their programs.

Table 1. Complaint Types Tracked and Reported by the DoD, OPNAV N170C, and MPE

Organization	Complaint Type				
	Withdrawn	Dismissed	Formal	Informal	Anonymous
ODEI	x	x	✓	✓	✓
OPNAV N170C	x	x	✓	✓	✓
MPE	x	x	✓	x	✓

Note: A green checkmark indicates that the organization tracked the complaint type. A red “x” indicates that the organization did not track the complaint type.

Source: The DoD OIG.

DoD, Navy, and Marine Corps Policies Do Not Require Officials to Track Data on Withdrawn, Dismissed, or Informal Complaints

DoD, Navy, and Marine Corps policies do not require officials to track sexual harassment data on withdrawn and dismissed complaints. DoDI 1020.03 requires the Military Departments to collect sexual harassment complaint data and report the data annually to the ODEI.²⁶ In addition, OPNAVINST 5354.1H and MCO 5354.1F include procedures for Navy and Marine Corps officials to collect sexual harassment complaint data. However, the data the Military Departments are required to report to the ODEI are limited to formal, informal, and anonymous complaints. Neither DoDI 1020.03 nor OPNAVINST 5354.1H and MCO 5354.1F require the tracking and reporting of data associated with withdrawn and dismissed complaints to ODEI

²⁶ See Appendix C for a description of the data collection and reporting requirements outlined in DoDI 1020.03.

or Navy and Marine Corps officials with oversight responsibilities. Instead, the policies only establish timeframes to maintain documentation associated with the complaints.

The ODEI MEO Policy Director stated that collecting data on withdrawn, dismissed, and informal complaints would be beneficial, and that such data collection will occur once the DoD-wide automated database is implemented. However, the DoD-wide automated database may not be functional until after FY 2025. Therefore, the ODEI should modify DoDI 1020.03 to require the Military Services to collect and annually report data on withdrawn and dismissed sexual harassment complaints.

DoDI 1020.03 requires the Military Departments to provide the ODEI with informal complaints data. In addition, although Navy policy requires officials to track informal complaints, Marine Corps policy does not require officials to track data from complaints resolved using the Marine Corps' informal resolution procedures. Specifically, MCO 5354.1F states that there is no DASH reporting required for complaints resolved informally. An MPE official stated that the ODEI did not require the tracking of informal complaints because the definition of informal complaint is vague. The ODEI allowed the Military Services to follow past practices that did not require reporting of informal complaints.²⁷ However, the MPE official stated that although DASH does not track informal complaints, these complaints will be tracked in the Misconduct Report Incident Tracker once the replacement database is functional. Therefore, the Commandant of the Marine Corps should update MCO 5354.1F to include the informal complaint reporting requirement outlined in DoDI 1020.03, and ensure that reporting procedures are in place to capture informal sexual harassment complaint data.

The Navy and Marine Corps Lack Requirements to Track Data to Confirm the Resolution of Formal Complaints by the Next Higher-Level Commander in the Chain of Command

Navy and Marine Corps policies do not require officials to track and determine whether formal complaints were resolved by the next higher-level commander in the complainants' chain of command. On April 22, 2022, the Secretary of the Navy issued ALNAV 024/22, which provides interim guidance requiring that formal sexual harassment complaints in the Navy and Marine Corps be forwarded to the next higher-level commander in the chain of command to assess the complaint

²⁷ The MPE official referred to DoD OIG Report No. DODIG-2023-073, "Evaluation of DoD Implementation of the Military Equal Opportunity Program's Data Collection and Reporting Requirements for Complaints of Prohibited Discrimination," May 18, 2023, to explain the reason the Marine Corps did not track informal complaints.

and appoint an independent investigating officer.²⁸ Navy and Marine Corps policies require officials to track information such as the titles or names of the commanders and investigating officers assigned to formal complaints. However, this information is insufficient for Navy and Marine Corps officials with oversight responsibilities to determine whether the responsible commanders are the next higher-level commanders in the complainants' chain of command and if appointed investigating officers are outside the command of both the subjects and complainants. For example, an OPNAV N170C official stated that the data tracked will not capture compliance with ALNAV 024/22. The official explained that the data captures only the rank of the commander deciding the disposition of the complaint, but not the commander's unit. There is no information available to determine whether the commander is the next higher-level commander. Therefore, the Secretary of the Navy, in coordination with the Chief of Naval Operations and the Commandant of the Marine Corps, should develop and implement policies or processes to verify whether formal complaints were resolved by the next higher-level commander in the complainants' chain of command.

Lack of Sufficient Data Tracking May Hinder Assessment of the Navy and Marine Corps Sexual Harassment Programs' Effectiveness

Because the Navy and Marine Corps do not track data associated with withdrawn, dismissed, informal, and formal complaints, officials may be hindered in their ability to assess the effectiveness of the sexual harassment programs.²⁹ OPNAV N170C and the MPE are required to collect sexual harassment complaint data and conduct annual assessments of the Navy and Marine Corps MEO programs. Although the Navy and Marine Corps conduct oversight of MEO compliance, this oversight may be insufficient to assess or monitor all aspects of the sexual harassment programs.

The Navy and Marine Corps would benefit from increased OPNAV N170C and MPE oversight and policy requiring the collection and assessment of additional sexual harassment complaint data. Data from the 2021 Office of People Analytics Workplace and Gender Relations Survey of Military Members indicated that the percentage of Navy and Marine Corps Service members experiencing sexual harassment does not reflect the complaint data collected by the Navy and Marine Corps. For example, the 2021 survey estimated that 34.4 percent of female Sailors and 40.1 percent of female Marines indicated experiencing

²⁸ As outlined in ALNAV 024/22, the next higher-level commander is required to appoint an investigating officer from outside the command of both the subject and complainant who is not familiar with either party.

²⁹ As previously discussed, the Navy tracks informal complaint data.

sexual harassment. However, when comparing this estimate to the Navy and Marine Corps' 2021 ODEI sexual harassment report submissions, only 0.30 percent of female Sailors and 1.61 percent of female Marines submitted formal or anonymous complaints.³⁰ Tracking additional data on withdrawn, dismissed, and informal complaints could provide Navy and Marine Corps officials with a broader representation of what Service members are experiencing and how all allegations of sexual harassment are resolved. Further, the increased data associated with the withdrawn, dismissed, and informal complaints could help Navy and Marine Corps officials identify alleged repeat offenders, or other trends at units and bases. In addition, tracking all complaint types could help OPNAV N170C and the MPE provide a greater level of oversight when assessing the sexual harassment programs. Specifically, tracking and monitoring additional data associated with withdrawn, dismissed, informal, and formal complaints can help Navy and Marine Corps officials determine compliance with all critical elements of the program, such as whether:

- retaliatory actions influenced complainants' decisions to withdraw complaints;
- complaint dismissals complied with applicable guidance;
- use of informal resolution procedures, instead of the formal complaint process, was adequate; and
- the final disposition of a formal complaint was made by the next higher-level commander in the complainant's chain of command.

As a result, improving OPNAV N170C and MPE oversight of the sexual harassment programs could:

- decrease retaliatory actions against complainants and inappropriate complaint dismissals;
- ensure the use of formal resolution procedures in all required cases, so that substantiated offenses result in appropriate disciplinary actions; and
- provide additional assurance that complaints are investigated impartially by the next higher-level commander in the complainants' chain of command.

³⁰ Complaints with a FY 2021 complaint date listed in the Navy and Marine Corps' ODEI report submissions that are associated with active duty female Sailors and Marines. For the Navy, we compared the total complaints reported (211) against the total number of active duty female Sailors (70,252) listed in the DoD's FY 2021 demographics report: Office of the Deputy Assistant Secretary of Defense (Military Community and Family Policy), "2021 Demographics—Profile of the Military Community." For the Marine Corps, we compared the total complaints reported (262) against the total number of active duty female Marines (16,301) listed in the DoD's FY 2021 demographics report.

In addition, the 2021 survey estimated that only 48 percent of female Sailors and 43 percent of female Marines would feel comfortable reporting a sexual harassment complaint. The Independent Review Commission on Sexual Assault also reported that experiencing sexual harassment is among the leading reasons women leave the military.³¹ Having fuller data sets would help the Navy and Marine Corps identify a broader range of trends and opportunities, identify needed policy updates, provide a greater ability to assess implementation of policy, and better assist potential complainants and personnel involved in the resolution process. Through these steps, the Navy and Marine Corps may increase trust in their sexual harassment programs, thereby improving their ability to recruit Service members and retain a ready military force.

Addressing Gaps in DoD, Navy, and Marine Corps Policies Can Improve the Effectiveness of Sexual Harassment Programs

Gaps in DoD, Navy, and Marine Corps policies to execute and oversee sexual harassment programs can weaken program effectiveness. We found that DoD, Navy, or Marine Corps policies do not require officials to document actions taken, investigate all types of severe and pervasive allegations, train investigating officers, and track the data necessary to assess all aspects of sexual harassment programs. Although the DoD and DON are developing initiatives that may resolve some of the identified policy gaps, the DoD, Navy, and Marine Corps should consider additional actions to resolve the remaining gaps to strengthen the overall effectiveness of the sexual harassment programs. Improving complaint resolution procedures in policy can allow for a consistent execution and oversight of the sexual harassment programs. In addition, tracking the information necessary to assess all aspects of the sexual harassment programs may improve how the Navy and Marine Corps measure progress and identify policies and procedures requiring revisions.

Recommendations, Management Comments, and Our Response

Redirected Recommendations

As a result of management comments, we redirected draft Recommendations 1.f and 2.a.4 to the Secretary of the Navy, who has the authority to implement the recommendations, and merged them as Recommendation 4 in this report.

³¹ Independent Review Commission on Sexual Assault in the Military, "Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military," July 2, 2021.

Recommendation 1

We recommend that the Chief of Naval Operations develop and implement policies or processes to:

- a. Ensure that the steps taken to dismiss a sexual harassment complaint are fully documented and retained in command files, including the opinions or concurrences of the Military Equal Opportunity and legal advisors.**

Chief of Naval Operations Comments

The Deputy Chief of Naval Operations/Chief of Naval Personnel, responding for the Chief of Naval Operations, partially agreed with the recommendation, stating that OPNAVINST 5354.1H currently mandates that commanders consult with the MEO and legal advisors before documenting their justification for dismissing a complaint. In addition, the Deputy stated that the process for involving the OSTC and NCIS in the formal sexual harassment complaint process is currently being developed. The finalization of this process may result in policy that removes a commander's ability to dismiss a sexual harassment complaint. Therefore, a potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

Our Response

Although the Deputy Chief of Naval Operations/Chief of Naval Personnel partially agreed, comments from the Deputy did not describe the potential policy revision that will be on hold until the implementation of the updated sexual harassment complaint process involving the OSTC and NCIS. Therefore, the recommendation is unresolved. Although the Deputy did not include actual or planned completion dates for the implementation of the updated process, the OSTC will review formal complaints of sexual harassment starting in January 2025 as required by the National Defense Authorization Act for FY 2023. In addition, DON officials estimated that NCIS will review formal complaints of sexual harassment starting in January 2025. While we understand that the best course of action may be holding a policy revision until the updated process is finalized, this recommendation resulted from the review of policies that currently affect victims of sexual harassment and those involved in the resolution of such allegations, so timely action is critical in this area.

Finally, we disagree with the Deputy's position that the current OPNAVINST 5354.1H requirement—which mandates that a commander consult with the MEO and legal advisors before documenting the justification for dismissing a complaint—is sufficient. As discussed in the report, while OPNAVINST 5354.1H requires Navy commanders to document their justification to dismiss a complaint in a

memorandum for the record, the Instruction does not specify whether commanders must document that they first consulted MEO and legal advisors before dismissing the complaint. We believe that by fully documenting the steps taken to dismiss a sexual harassment complaint and retaining the documentation in command files, commanders can ensure that the appropriate steps were completed and attest that those complaints received the appropriate consideration by subject matter experts. This recommendation will remain open until the Chief of Naval Operations implements new policy or updates existing policy that addresses the identified policy gap. Therefore, we request that the Chief of Naval Operations (or designee) provide comments on the final report within 30 days. Those comments should state how this recommendation will be addressed in the development of the policy covering the sexual harassment complaint process involving the OSTC and NCIS and describe the specific policy revision the Chief of Naval Operations will keep on hold to resolve this recommendation until the implementation of the updated policy.

- b. Formalize the complaint withdrawal process to ensure the complainant's decision to voluntarily withdraw their complaint is fully documented and free from improper influence by command leadership or other entities.**

Chief of Naval Operations Comments

The Deputy Chief of Naval Operations/Chief of Naval Personnel, responding for the Chief of Naval Operations, partially agreed with the recommendation, stating that OPNAVINST 5354.1H classifies a complaint that is voluntarily withdrawn by the complainant as a dismissed complaint and mandates that the commander document the justification for dismissing the complaint. In addition, the Deputy stated that the process for OSTC and NCIS involvement in formal sexual harassment complaints is currently being developed. The finalization of this process may result in policy that removes a complainant's ability to withdraw a sexual harassment complaint. Therefore, a potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

Our Response

Although the Deputy Chief of Naval Operations/Chief of Naval Personnel partially agreed, comments from the Deputy did not describe the potential policy revision that will be on hold until the implementation of the updated sexual harassment complaint process involving the OSTC and NCIS. Furthermore, while we agree with the Deputy's statement regarding the current complaint withdrawal process outlined in OPNAVINST 5354.1H, the intent of our recommendation is to ensure that the withdrawal process allows complainants to fully document their decision. We believe that, in addition to the commanders' justification, full documentation of a complainant's decision will assist the program in ensuring that such decisions

are free from improper influence by command leadership or other entities. Our conclusion is aligned with the Deputy's response to Recommendation 1.d, in which the Deputy acknowledged the importance of the inclusion of Service member decisions in the sexual harassment resolution process. Therefore, the recommendation is unresolved. This recommendation will remain open until the Chief of Naval Operations implements new policy or updates existing policy that addresses the identified policy gap. We request that the Chief of Naval Operations (or designee) provide comments on the final report within 30 days. Those comments should state how this recommendation will be addressed in the development of the policy covering the sexual harassment complaint process involving the OSTC and NCIS and describe the specific policy revision that the Chief of Naval Operations will keep on hold to resolve this recommendation until the implementation of the updated policy.

- c. Ensure that commanders investigate withdrawn complaints with sufficient information to permit investigation of allegations that, if substantiated, would meet the administrative separation requirement outlined in Secretary of the Navy Instruction 5300.26E.**

Chief of Naval Operations Comments

The Deputy Chief of Naval Operations/Chief of Naval Personnel, responding for the Chief of Naval Operations, partially agreed with the recommendation, stating that OPNAVINST 5354.1H outlines that, while a complainant may voluntarily withdraw their complaint, the commander may continue to take actions necessary to maintain good order and discipline within the command. In addition, the Deputy stated that the ODEI is currently developing policy that will direct the offender in a substantiated sexual harassment complaint to be processed for administrative separation. According to the Deputy, this policy will also provide an opportunity for rehabilitation in certain limited situations. Finally, the Deputy stated that the process for OSTC and NCIS involvement in formal sexual harassment complaints is currently being developed. The finalization of this process may result in policy that removes a complainant's ability to withdraw a sexual harassment complaint. Therefore, a potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

Our Response

Although the Deputy Chief of Naval Operations/Chief of Naval Personnel partially agreed, comments from the Deputy did not describe the potential policy revision that will be on hold until the implementation of the updated sexual harassment complaint process involving the OSTC and NCIS. Furthermore, while we agree with the Deputy's statement regarding the current complaint withdrawal process

outlined in OPNAVINST 5354.1H, the intent of our recommendation is to ensure that the Navy investigates withdrawn complaints with sufficient information to permit investigations of allegations that, if substantiated, would meet the administrative separation criteria. We believe that leaving the decision to take continued action as discretionary in cases that would, if substantiated, result in administrative separation could result in alleged offenses not being investigated, potentially allowing offenders to victimize additional Service members. Therefore, the recommendation is unresolved. This recommendation will remain open until the Chief of Naval Operations implements new policy or updates existing policy that addresses the identified policy gap. We request that the Chief of Naval Operations (or designee) provide comments on the final report within 30 days. Those comments should state how this recommendation will be addressed in the development of the policy covering the sexual harassment complaint process involving the OSTC and NCIS and describe the specific policy revision that the Chief of Naval Operations will keep on hold to resolve this recommendation until the implementation of the updated policy.

- d. Ensure that complaints involving severe and pervasive allegations of sexual harassment are not directed to and resolved through the informal resolution process.**

Chief of Naval Operations Comments

The Deputy Chief of Naval Operations/Chief of Naval Personnel, responding for the Chief of Naval Operations, partially agreed with the recommendation, stating that the definition of sexual harassment uses “severe and pervasive” in part to determine a hostile work environment as it relates to the reasonable person standard and not as stand-alone terms signifying a level of severity to determine the method of resolution. The Deputy stated that the Navy believes the Service member should retain the option to determine the resolution method; however, during the next policy revision process, the Navy Harassment Prevention and MEO office will propose a process, for fleet review and concurrence, that informal resolution is not an available resolution method for certain alleged behaviors, such as quid pro quo. A potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

Our Response

Although the Deputy Chief of Naval Operations/Chief of Naval Personnel partially agreed, comments from the Deputy addressed the specifics of the recommendation. Therefore, the recommendation is resolved but open. We will

close the recommendation when we verify that the Navy implemented a process whereby informal resolution is not an available resolution method for certain alleged behaviors, such as quid pro quo.

- e. **Ensure that Navy personnel assigned by commanders to investigate sexual harassment complaints are trained in investigative methods and processes.**

Chief of Naval Operations Comments

The Deputy Chief of Naval Operations/Chief of Naval Personnel, responding for the Chief of Naval Operations, partially agreed with the recommendation, stating that the process for OSTC and NCIS involvement in formal sexual harassment complaints is currently being developed. The Deputy stated that the finalization of this process may result in policy that establishes NCIS as the investigative entity for sexual harassment complaints, placing the responsibility for training with NCIS.

Our Response

Although the Deputy Chief of Naval Operations/Chief of Naval Personnel partially agreed, comments from the Deputy addressed the specifics of the recommendation. Therefore, the recommendation is resolved but open. We will close the recommendation when we verify that the Chief of Naval Operations formalized the plan for NCIS to investigate instances of sexual harassment or developed alternate policy to address the recommendation.

Recommendation 2

We recommend that the Commandant of the Marine Corps:

- a. **Develop and implement policies or processes to:**
 - 1. **Ensure that the steps taken to dismiss or downgrade a sexual harassment complaint are fully documented and retained in command files, including the opinions or concurrences of the Military Equal Opportunity and legal advisors.**

Commandant of the Marine Corps Comments

The Deputy Director of the Manpower Plans and Policy Division, responding for the Commandant of the Marine Corps, disagreed with the recommendation, stating that the MEO advisor's opinion is only a Marine Corps requirement and not an ODEI requirement for the Services. The Deputy Director stated that the MEO advisor's opinion will no longer be needed as the new process requires the commander to have the investigation completed by NCIS before making the decision to dismiss or refer the complaint. The Deputy Director added that the Marine Corps uses the NAVMC Form 11512 to document if the complaint is dismissed, downgraded, or

upgraded in box 10a, with a detailed explanation in box 11a, or when the complaint is voluntarily withdrawn in Part III. The NAVMC Form 11512 is then uploaded into DASH and the MEO advisors can use the chronology tab in DASH to document these types of situations. Finally, the Deputy Director stated that the MEO and legal advisors' opinions are completed as separate documents and are uploaded into DASH. The Deputy Director suggested that this recommendation should be removed as the Marine Corps continues to document complaints that are dismissed, downgraded, and voluntarily withdrawn.

Our Response

Comments from the Deputy Director did not address the specifics of the recommendation; therefore, the recommendation is unresolved. Although the Deputy Director stated that the MEO and legal advisors' opinions are completed as separate documents and uploaded into DASH, this process is described in MCO 5354.1F for completed investigations of formal complaints only and not for instances of dismissed or downgraded complaints. While MCO 5354.1F requires Marine Corps commanders to document their justification to dismiss a complaint in the NAVMC Form 11512, the Order does not specify whether commanders must document that they first consulted MEO and legal advisors before dismissing a complaint. In addition, MCO 5354.1F does not require commanders to consult MEO and legal advisors about the alleged behavior before determining whether to downgrade formal complaints to informal complaints.

DON officials estimated that NCIS will investigate sexual harassment complaints beginning in January 2025. While we understand that the MEO advisor's opinion may no longer be needed once NCIS begins its investigations, this recommendation resulted from the review of policies that currently affect victims of sexual harassment and those involved in the resolution of such allegations, so timely action is critical in this area. We commend the Marine Corps for having additional internal controls not mandated by the ODEI, such as requiring MEO and legal advisors to provide their subject matter experts' opinions in allegations of sexual harassment. However, we believe that documenting opinions required by policy, regardless of the issuer of that policy (DoD, DON, or Marine Corps), is an integral part of an internal control system. For example, by fully documenting and retaining in command files the steps taken to dismiss or downgrade a sexual harassment complaint, commanders can ensure that the appropriate steps were completed and attest that complaints received appropriate consideration by subject matter experts. Therefore, we request that the Commandant of the Marine Corps (or designee) provide comments on the final report within 30 days addressing

whether the procedures included in this recommendation will be considered as the Marine Corps prepares to comply with statutory and policy requirements that will go into effect in 2025.

- 2. Ensure that commanders investigate withdrawn complaints with sufficient information to permit investigation of allegations that, if substantiated, would meet the administrative separation requirement outlined in Secretary of the Navy Instruction 5300.26E.**

Commandant of the Marine Corps Comments

The Deputy Director of the Manpower Plans and Policy Division, responding for the Commandant of the Marine Corps, disagreed with the recommendation. Specifically, the Deputy Director stated that at the time this review was conducted, the Navy and Marine Corps informed the DoD Office of Inspector General team that sexual harassment policy was being overhauled to properly align with statutory requirements and recommendations from the Independent Review Commission on Sexual Assault. The Deputy Director explained that because section 1561, title 10, United States Code requirements were implemented in December 2023, all formal allegations of sexual harassment will be investigated. The Deputy Director further explained that the Marine Corps does not allow allegations of quid pro quo, unwanted sexual contact, unlawful distribution, or broadcasting of an intimate image to be submitted as informal complaints.

The Deputy Director stated that the Marine Corps will continue to respect the Service member's choice to the extent practicable and will work with NCIS to mirror the Sexual Assault Prevention and Response Program's Section 540K Declination Letter, whereby a victim can choose not to participate in the investigation and allow Military Criminal Investigation Organizations to determine whether to close the investigation. The Deputy Director stated that requirement 1.2 included in the Independent Review Commission on Sexual Assault's report will require the administrative separation of alleged offenders in the case of all substantiated complaints. The Deputy Director stated that this recommendation is premature, as the Navy and Marine Corps are still codifying the process of sexual harassment response to align with statutory and policy requirements that will go into effect January 2025.

Our Response

Although the Deputy Director disagreed with the recommendation, comments from the Deputy Director addressed the specifics of the recommendation. Therefore, the recommendation is resolved but open. In addition, while we understand that the sexual harassment complaint process is undergoing revisions and the Deputy

Director considered this recommendation as premature, this recommendation resulted from the review of policies that currently affect victims of sexual harassment and those involved in the resolution of such allegations, so timely action is critical in this area. We will close the recommendation when we verify that procedures, such as the 540K Declination Letter described by the Deputy Director, are in place to ensure that the Marine Corps investigates withdrawn complaints with sufficient information to permit investigations of allegations that would meet administrative separation criteria, if substantiated.

- 3. Ensure that Marine Corps personnel assigned by commanders to investigate sexual harassment complaints are trained in investigative methods and processes.**

Commandant of the Marine Corps Comments

The Deputy Director of the Manpower Plans and Policy Division, responding for the Commandant of the Marine Corps, disagreed with the recommendation, stating that the command investigation process and appointing an investigating officer are not under the purview of the MEO Program. The Deputy Director stated that the command investigation is outlined in Judge Advocate General Instruction 5800.7G, which states that commanders are to appoint a trained investigating officer. The Deputy Director further explained that prior to the Independent Review Commission on Sexual Assault, there was no statutory or policy requirement to train investigating officers; however, investigating officers were encouraged to read Judge Advocate General Instruction 5800.7G.

In addition, the Deputy Director stated that the DON has appointed NCIS as the investigating officer for all formal sexual harassment complaints and that NCIS personnel are receiving training. According to the Deputy Director, NCIS will begin investigating sexual harassment as of January 1, 2025, and in the interim, the DON has obtained investigating officer training that will be used. The Deputy Director suggested that this recommendation should be removed from the MEO Program.

Our Response

Although the Deputy Director disagreed with the recommendation, comments from the Deputy Director addressed the specifics of the recommendation. Therefore, the recommendation is resolved but open. In addition, although the Deputy suggested that this recommendation be removed from the MEO Program, this recommendation was addressed to the Commandant of the Marine Corps. We also disagree that there was no policy requirement to train investigating officers prior to the issuance of the Independent Review Commission on Sexual Assault report, which was published on July 2, 2021. As discussed in the report,

SECNAVINST 5300.26E, dated May 28, 2020, states that DON personnel assigned to conduct sexual harassment investigations must receive training in investigative methods and processes. We will close the recommendation when we verify the interim investigating officer training and the formalized plan for NCIS to investigate instances of sexual harassment.

- b. Update Marine Corps Order 5354.1F to include the informal complaint reporting requirement outlined in DoD Instruction 1020.03.**

Commandant of the Marine Corps Comments

The Deputy Director of the Manpower Plans and Policy Division, responding for the Commandant of the Marine Corps, neither agreed nor disagreed with the recommendation. The Deputy Director stated that the updated MCO 5354.1G will be published later this year and will contain language that all informal complaints will be tracked in the Misconduct Report Incident Tracker. The Head of the Marine Corps Audit Coordination and Response Office clarified that the estimated completion date is December 31, 2024.

Our Response

Comments from the Deputy Director addressed the specifics of the recommendation; therefore, the recommendation is resolved but open. We will close the recommendation when we verify that MCO 5354.1G has been updated to include the informal complaint reporting requirement outlined in DoDI 1020.03.

- c. Ensure reporting procedures are in place to capture informal sexual harassment complaint data to satisfy the requirements of DoD Instruction 1020.03.**

Commandant of the Marine Corps Comments

The Deputy Director of the Manpower Plans and Policy Division, responding for the Commandant of the Marine Corps, neither agreed nor disagreed with the recommendation. The Deputy Director stated that the updated MCO 5354.1G will contain language that all informal complaints will be tracked in the Misconduct Report Incident Tracker and will include all the DoDI 1020.03 reporting requirements.

Our Response

Comments from the Deputy Director addressed the specifics of the recommendation; therefore, the recommendation is resolved but open. We will close the recommendation when we verify that reporting procedures are in place to capture informal sexual harassment complaint data to satisfy the requirements of DoDI 1020.03.

Recommendation 3

We recommend that the Director of the DoD Office for Diversity, Equity, and Inclusion:

- a. **Clarify in policy whether Military Service commanders with complaint jurisdiction have the authority to downgrade a formal sexual harassment complaint to an informal complaint.**

Director, DoD Office for Diversity, Equity, and Inclusion Comments

The Deputy Director of the DoD Office of Force Resiliency, responding for the ODEI Director, agreed with the recommendation, stating that the DoD will clarify the issue regarding commander discretion to downgrade a formal complaint to an informal complaint. The Deputy Director stated that this clarification will be coordinated with the DoD Office of General Counsel and published by the first quarter of FY 2026 in DoDI 1020.03.

Our Response

Comments from the Deputy Director addressed the specifics of the recommendation; therefore, the recommendation is resolved but open.

We will close the recommendation when we verify that the ODEI clarified in DoDI 1020.03 whether Military Service commanders with complaint jurisdiction have the authority to downgrade a formal sexual harassment complaint to an informal complaint.

- b. **Modify DoD Instruction 1020.03 to require the Military Services to collect and annually report data on withdrawn and dismissed sexual harassment complaints.**

Director, DoD Office for Diversity, Equity, and Inclusion Comments

The Deputy Director of the DoD Office of Force Resiliency, responding for the ODEI Director, disagreed with the recommendation. Specifically, the Deputy Director stated that although the recommendation appears to be a promising practice that requires further consideration, the feasibility of this measure has not been examined and it would be a significant departure from existing complaint processes for complaints involving sexual harassment and other problematic behaviors. The Deputy Director suggested that we modify the recommendation to instead recommend the ODEI Director examine whether requiring the Military Services to collect and annually report data on withdrawn and dismissed sexual harassment complaints would materially improve program oversight.

Our Response

Comments from the Deputy Director did not address the specifics of the recommendation; therefore, the recommendation is unresolved. Although the Deputy Director stated that the feasibility of implementing this recommendation has not been examined, we met with the ODEI MEO Policy Director and discussed how neither DoDI 1020.03 nor OPNAVINST 5354.1H and MCO 5354.1F require the tracking and reporting of data associated with withdrawn and dismissed complaints to ODEI or Navy and Marine Corps officials with oversight responsibilities. As discussed in the report, the ODEI MEO Policy Director stated that collecting data on withdrawn and dismissed complaints would be beneficial, and that such data collection will occur once the DoD-wide automated database is implemented. Therefore, we request that the ODEI Director (or designee) provide comments on the final report within 30 days addressing whether the collection and annual report of withdrawn and dismissed complaints will occur once the DoD-wide automated database is implemented. If this action will not occur, we request that the ODEI Director (or designee) provide comments on alternate actions to address the recommendation.

Recommendation 4

We recommend that the Secretary of the Navy, in coordination with the Chief of Naval Operations and the Commandant of the Marine Corps, develop and implement policies or processes to track and ensure that all Navy and Marine Corps formal sexual harassment complaints are resolved by the next higher-level commander in the complainants' chain of command.

Management Comments Required

We request that the Secretary of the Navy provide comments within 30 days in response to the final report on developing and implementing policies or processes to track and ensure that all Navy and Marine Corps formal sexual harassment complaints are resolved by the next higher-level commander in the complainants' chain of command. While we understand that the formal complaint resolution process will be updated in the future, we would like to emphasize that this recommendation resulted from the review of policies that currently affect the monitoring of sexual harassment complaint data. Specifically, this recommendation resulted after determining how tracking and monitoring the resolution of formal complaints by the next higher-level commander in the complainants' chain of command can provide additional assurance that complaints are investigated impartially.

Summary of Recommendations Status

Management	Recommendations Unresolved	Recommendations Resolved	Recommendations Closed
Director, DoD Office for Diversity, Equity, and Inclusion	3.b	3.a	None
Chief of Naval Operations	1.a, 1.b, 1.c	1.d, 1.e	None
Commandant of the Marine Corps	2.a.1	2.a.2, 2.a.3, 2.b, 2.c	None
Secretary of the Navy	4	None	None

Note: The following categories are used to describe agency management’s comments to individual recommendations.

Unresolved – Management has not agreed to implement the recommendation or has not proposed actions that will address the recommendation. The redirected recommendation (Recommendation 4) appears as an unresolved recommendation.

Resolved – Management agreed to implement the recommendation or has proposed actions that will address the underlying finding that generated the recommendation.

Closed – DoD OIG verified that the agreed upon corrective actions were implemented.

Appendix A

Scope and Methodology

We reviewed the sexual harassment complaint policies applicable to Service members in the Navy and Marine Corps Active Components. Our scope did not include procedures applicable to the Navy and Marine Corps Reserve Components or the civilian workforce. To determine whether the Navy and Marine Corps effectively managed the DON sexual harassment programs, we reviewed Federal, DoD, DON, Navy, and Marine Corps criteria and guidance; interviewed personnel responsible for executing sexual harassment programs; and reviewed survey results and prior reports by oversight organizations. We also obtained the FY 2020 to FY 2022 sexual harassment complaint data that the Navy and Marine Corps submitted to the ODEI for inclusion in the DoD annual report.

The sexual harassment complaint data we obtained had information associated with formal and anonymous complaints from FY 2020 to FY 2022. However, the data was incomplete and did not contain informal complaint data for the entire period.³² We discussed with Navy and Marine Corps officials ways to obtain the missing complaint data or documentation supporting the actions taken to resolve formal complaints of sexual harassment.³³ MPE officials expressed concerns over staffing limitations, and OPNAV N170C officials informed us that the Navy does not have a centrally located system to store supporting documentation for sexual harassment allegations. Because of these data limitations and the implementation of ongoing initiatives discussed in this report, such as the pending implementation of a new DON database, we did not assess actual sexual harassment data, review supporting documentation, or compare Navy and Marine Corps policies against Federal and DoD guidance to assess program effectiveness.³⁴ Although we did not make observations on the data from FY 2020 to FY 2022, we addressed our objective by reviewing the policies established by the Navy and Marine Corps to manage their sexual harassment prevention and response programs to identify weaknesses and opportunities for enhanced oversight. In addition, we assessed whether ongoing or future initiatives may resolve identified weaknesses.

³² The Navy provided informal complaint data to the ODEI only for FY 2022. The Marine Corps did not provide informal complaint data from FY 2020 to FY 2022. See Appendix C for the description of the data required to be reported to the ODEI for inclusion in the DoD annual report.

³³ Documentation supporting actions taken to resolve formal complaints of sexual harassment include complaint forms, investigation reports, and MEO and legal advisors' sufficiency reviews.

³⁴ Navy and Marine Corps MEO officials will eventually use the database called "Misconduct Report Incident Tracker" to collect sexual harassment data across the DON. A DON Office of Force Resiliency official estimated full implementation of the system by the end of December 2023.

In order to understand the DON sexual harassment prevention and response programs and the implementing Navy and Marine Corps policies, we reviewed the following criteria and guidance:

- Public Law 117-81, “National Defense Authorization Act for Fiscal Year 2022,” December 27, 2021
- Public Law 117-263, “James M. Inhofe National Defense Authorization Act for Fiscal Year 2023,” December 23, 2022
- DoDI 1020.03, “Harassment Prevention and Response in the Armed Forces,” February 8, 2018 (Incorporating Change 2, December 20, 2022)
- SECNAVINST 5300.26E, “Department of the Navy Policy on Sexual Harassment,” May 28, 2020
- ALNAV 024/22, “Interim Policy Governing Investigation of Formal Sexual Harassment Complaints Under [Section 1561, Title 10, United States Code],” April 22, 2022
- OPNAVINST 5354.1H, “Navy Harassment Prevention and Military Equal Opportunity Program,” November 3, 2021
- MCO 5354.1F, “Marine Corps Prohibited Activities and Conduct (PAC) Prevention and Response Policy,” April 20, 2021
- Marine Corps Judge Advocate Division Practice Directive 1-22, “Requirement for Appointment of Independent Investigating Officers for Sexual Harassment Investigations,” July 8, 2022

In addition, we interviewed personnel from the following offices and commands to discuss current policies and procedures, prior oversight coverage, or ongoing and future initiatives:

- ODEI
- Assistant Secretary of the Navy (Manpower and Reserve Affairs), Office of Force Resiliency
- OPNAV N170C
- Naval Inspector General
- MPE
- Inspector General of the Marine Corps

We reviewed prior recommendations and outcome metrics associated with DON sexual harassment programs included in the following reports:

- DoD OIG Report No. DODIG-2023-073, “Evaluation of DoD Implementation of the Military Equal Opportunity Program’s Data Collection and Reporting Requirements for Complaints of Prohibited Discrimination,” May 18, 2023

- Office of People Analytics Report No. 2022-183, “2021 Workplace and Gender Relations Survey of Military Members Active Component Results and Trends,” October 2022
- Independent Review Commission on Sexual Assault in the Military, “Hard Truths and the Duty to Change: Recommendations from the Independent Review Commission on Sexual Assault in the Military,” July 2, 2021

We conducted this review with integrity, objectivity, and independence, as required by the Council of the Inspectors General on Integrity and Efficiency’s “Quality Standards for Federal Offices of Inspector General,” August 2012.

Appendix B

Additional DoD and Department of the Navy Initiatives to Improve Sexual Harassment Programs

The DoD and DON have several ongoing or recently completed initiatives to improve the effectiveness of sexual harassment programs. These initiatives cover a range of support. For example, some initiatives described by an OPNAV N170C official include:

- ongoing studies, including those from the DoD to assess support services available to Service members and from the Navy to assess whether commands are effectively implementing and using command resiliency teams;³⁵
- collaboration within the DON to develop a cyber-harassment training module;³⁶
- the Integrated Primary Prevention Workforce, a DoD initiative intended to promote protective factors and reduce risk factors among individuals, within relationships, and within organizations, through policies, programs, and practices;³⁷ and
- the ongoing development and implementation of the Culture of Excellence, a Navy-wide approach intended to empower Service members by fostering psychological, physical, and emotional toughness; promoting organizational trust and transparency; and ensuring inclusion and connectedness among every Sailor, family member, and civilian.

In addition, the DoD and the Services are taking action in response to recommendations from the Independent Review Commission on Sexual Assault. For example, the Under Secretary of Defense for Personnel and Readiness announced in a June 2023 memorandum that the DoD will conduct a 2-year pilot program to assess whether processes should be implemented to provide Service members the option to confidentially report sexual harassment to an individual

³⁵ According to a human resources website maintained by the Navy Personnel Command, a command resiliency team improves insight into a command's climate and helps to facilitate and promote an environment of dignity and respect. A command resiliency team helps preserve unit cohesion, good order and discipline, and mission readiness. It has four main responsibilities: administering command climate assessments, executing primary prevention activities, incorporating human factors processes into daily operations, and providing training to mitigate destructive and counterproductive behaviors that affect command climate.

³⁶ Sexual harassment can occur through electronic communications, including social media.

³⁷ According to a website covering integrated primary prevention maintained by the DoD, protective factors decrease the likelihood of harmful behaviors and increase an individual's ability to thrive in all aspects of life. Examples of protective factors include inclusion, greater access to resources, and financial literacy. Risk factors increase the likelihood of self-directed harm and harm directed towards others. Examples of risk factors include isolation, continuous high op-tempo, and a lack of safe leisure options.

outside the immediate chain of command.³⁸ As part of the pilot program, Military Departments are required to independently implement a confidential reporting option for their respective Service members.

Finally, the DoD and DON have issued policy memorandums to provide more enhanced care and understanding to victims. For example, in response to a 2021 Secretary of Defense memorandum, the Secretary of the Navy issued the DON No Wrong Door Policy on June 24, 2022, with the purpose of improving care and support to sexual assault, sexual harassment, and domestic abuse victims and survivors.³⁹ Sailors or Marines who disclose sexual harassment to any DON victim care and support office will receive services from that office to the fullest extent practicable and must not be denied or inappropriately delayed in getting care and support. If the office contacted cannot provide support and care then the staff member contacted, with the victim's permission, will directly connect them to an appropriate service provider. The direct connection must be done in person or virtually with the appropriate provider and include an introduction with responsible staff and follow-through with the victim to ensure that the needs of the person seeking care were met.

³⁸ Under Secretary of Defense for Personnel and Readiness Memorandum, "Interim Processes for Confidential Reporting of Sexual Harassment," June 14, 2023.

³⁹ Secretary of Defense Memorandum, "Commencing DoD Actions and Implementation to Address Sexual Assault and Sexual Harassment in the Military," September 22, 2021.

Appendix C

Data Collection and Reporting Requirements

DoDI 1020.03 requires the Military Departments to maintain data on formal, informal (if applicable), and anonymous harassment complaints, including sexual harassment. The Military Departments must annually report the data collected to the ODEI for inclusion into a consolidated annual report. The annual report will include an aggregation and assessment of the Military Departments' data, including the number of complaints substantiated, the types of harassment alleged, and the types of harassment substantiated; information regarding DoD efforts to improve harassment prevention and response policies and procedures; and recommendations to strengthen harassment prevention and response efforts.

At a minimum, the Military Departments must collect and report data covering:

- the type of complaint (such as formal, informal [if applicable], or anonymous);
- the number of complaints received and the types of harassment alleged;
- the number of complaints substantiated, the types of harassment alleged, and the types of harassment substantiated, if any;
- the demographics (such as the race, ethnicity, gender, and grade) of the complainant and alleged offender;
- the relationship between the complainant and the alleged offender at the time of the incident(s) (such as superior, coworker, or subordinate);
- the duty status of both the complainant and alleged offender (such as training, temporary duty, leave, and on-duty or off-duty);
- whether the alleged offender has prior substantiated harassment complaints documented in his or her personnel file;
- a narrative description of the alleged incident(s), including the use of social media;
- for Service members assigned, detailed, or otherwise working in a DoD or Office of the Secretary of Defense Component other than a Military Department, the identification of the DoD Component in which the harassment complaint occurred;
- the location of the alleged incident;
- the timeline of events from the date of complaint to final disposition, and reason(s) for any delays;

- the adjudication and disposition of substantiated complaints, including by whom and at what level of the organization the allegation was investigated, and by whom and at what level of the organization the allegation was adjudicated; and
- data on retaliation complaints associated with complaints of sexual harassment.

Management Comments

Chief of Naval Operations



DEPARTMENT OF THE NAVY
OFFICE OF THE CHIEF OF NAVAL OPERATIONS
2000 NAVY PENTAGON
WASHINGTON DC 20350-2000

7500
N17
12 Feb 24

From: Director, Navy Culture and Force Resilience Office (OPNAV N17)
To: Assistant Secretary of the Navy (Manpower and Reserve Affairs)
Via: Deputy Chief of Naval Operations for Personnel, Manpower, and Training (OPNAV N1)

Subj: MANAGEMENT RESPONSE TO DEPARTMENT OF DEFENSE DRAFT REPORT
D2023-DODIEM-0141 "REVIEW OF THE DEPARTMENT OF THE NAVY POLICIES
COVERING SEXUAL HARASSMENT COMPLAINT PROCESSES"

Ref: (a) Review of the Department of the Navy Policies Covering Sexual Harassment
Complaint Processes Draft Report

Encl: (1) Management Response

1. Per reference (a), enclosure (1) is provided.

2. My point of contact is [REDACTED]

B. W. MIETUS

FIRST ENDORSEMENT

From: Deputy Chief of Naval Operations for Personnel, Manpower, and Training (OPNAV N1)
To: Assistant Secretary of the Navy (Manpower and Reserve Affairs)

1. Enclosure (1) forwarded approved.

S. W. CROLEY
By direction

Chief of Naval Operations (cont'd)

**DODIG DRAFT REPORT DATED JANUARY 1, 2024
DODIG (Project No. D2023-D0DIEM-0141.000)**

**“REVIEW OF THE DEPARTMENT OF THE NAVY POLICIES COVERING SEXUAL
HARASSMENT COMPLAINT PROCESSES”**

**DEPUTY, CHIEF OF NAVAL OPERATIONS (N1) / CHIEF OF NAVAL PERSONNEL
COMMENTS**

RECOMMENDATION 1.a: The CNO should develop policies or processes to ensure that the steps taken to dismiss a sexual harassment complaint are fully documented and retained in command files, including the opinions or concurrences of the MEO and legal advisors.

DCNO (N1)/CHNAVPERS RESPONSE: DCNO (N1)/CHNAVPERS partially concurs. The OPNAVINST 5354.1H, *Navy Harassment Prevention and Military Equal Opportunity (MEO) Program Manual*, currently mandates the commander consults with a command climate specialist (CCS) and judge advocate and then documents the justification for dismissing a complaint. The process for Naval Criminal Investigative Service (NCIS) and the Office of Special Trial Counsel (OSTC) involvement in formal sexual harassment complaints is currently being developed. The finalization of this process may result in policy which removes the ability for a commander to dismiss a sexual harassment complaint. A potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

RECOMMENDATION 1.b: The CNO should develop policies or processes to formalize the complaint withdrawal process to ensure that the complainant’s decision to voluntarily withdraw their complaint is fully documented and free from improper influence by command leadership or other entities.

DCNO (N1)/CHNAVPERS RESPONSE: DCNO (N1)/CHNAVPERS partially concurs. The OPNAVINST 5354.1H outlines a complainant voluntarily withdrawing a complaint to be considered as a dismissed complaint. The OPNAVINST 5354.1H currently mandates the commander documents the justification for dismissing a complaint. The process for NCIS and OSTC involvement in formal sexual harassment complaints is currently being developed. The finalization of this process may result in policy which removes the ability for a complainant to withdraw the complaint. A potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

RECOMMENDATION 1.c: The CNO should develop policies or processes to ensure that commanders investigate withdrawn complaints with sufficient information to permit investigation of allegations that would meet the administrative separation requirement outlined in SECNAVINST 5300.26E, if substantiated.

DCNO (N1)/CHNAVPERS RESPONSE: DCNO (N1)/CHNAVPERS partially concurs. The OPNAVINST 5354.1H outlines that while a complainant may voluntarily withdraw their complaint the commander may continue to take actions necessary to maintain good order and discipline within the command. The Office for Diversity Equity and Inclusion is currently

Enclosure (1)

Chief of Naval Operations (cont'd)

developing policy that will direct the offender in a substantiated sexual harassment complaint to be processed for administrative separation. This policy will also provide an opportunity for rehabilitation in certain limited situations. The process for NCIS and OSTC involvement in formal sexual harassment complaints is currently being developed. The finalization of this process may result in policy which removes the ability for a complainant to withdraw the complaint. A potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

RECOMMENDATION 1.d: The CNO should develop policies or processes to ensure that complaints involving severe and pervasive allegations of sexual harassment are not directed to and resolved through the informal resolution process.

DCNO (N1)/CHNAVPERS RESPONSE: DCNO (N1)/CHNAVPERS partially concurs. The definition of sexual harassment uses "severe and pervasive" in part to determine a hostile work environment as it relates to the reasonable person standard and not as stand-alone terms signifying a level of severity to determine the method of resolution. The Navy believes the Service member should retain the option to determine the resolution method. However, during the next policy revision process, the Navy Harassment Prevention and MEO office will propose a process, for fleet review and concurrence, that informal resolution is not an available resolution method for certain alleged behaviors, i.e. quid pro quo. A potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

RECOMMENDATION 1.e: The CNO should develop policies or processes to ensure that officials assigned as investigating officers by commanders are trained in investigative methods and processes.

DCNO (N1)/CHNAVPERS RESPONSE: DCNO (N1)/CHNAVPERS partially concurs. The process for NCIS and OSTC involvement in formal sexual harassment complaints is currently being developed. The finalization of this process may result in policy which establishes NCIS as the investigative entity for sexual harassment complaints, placing the responsibility for training with NCIS.

RECOMMENDATION 1.f: The CNO should develop policies or processes to track and ensure that all formal sexual harassment complaints are resolved by the next higher-level commander in the complainants' chain of command.

DCNO (N1)/CHNAVPERS RESPONSE: DCNO (N1)/CHNAVPERS partially concurs. The process for NCIS and OSTC involvement in formal sexual harassment complaints is currently being developed. The finalization of this process will outline the appropriate level of commander that will be responsible for resolution. A potential policy revision will be on hold until the updated sexual harassment complaint process has been implemented.

Commandant of the Marine Corps



DEPARTMENT OF THE NAVY
HEADQUARTERS, UNITED STATES MARINE CORPS
3000 MARINE CORPS PENTAGON
WASHINGTON, DC 20350-3000

IN REPLY REFER TO:
14 Feb 24

MEMORANDUM FOR DEPARTMENT OF DEFENSE OFFICE OF INSPECTOR GENERAL

SUBJECT: Review of the Department of the Navy Policies Covering Sexual Harassment
Complaint Processes, Project No. D2023-D0DIEM-0141.000, Jan 17, 2024

Pursuant to your January 17, 2024 draft report, the attachments provide Marine Corps management official comments on the content of the report and its recommendations addressed to the Commandant of the Marine Corps.

Our attached Component responses are signed by SES Michael R. Melillo, Deputy Director, Manpower Plans and Policy Division, Manpower and Reserve Affairs Department, Headquarters, U.S. Marine Corps.

Our estimated completion date for recommendations no. 2.b and 2.c is 31 December 2024.

For questions regarding this response, you may contact me at [REDACTED]

A handwritten signature in black ink, appearing to read "C. Dove".

Charles K. Dove
Head, Audit Coordination and Response
Office of the Director, Marine Corps Staff

Attachments:
As stated

Commandant of the Marine Corps (cont'd)

SELECT A CLASSIFICATION
DoD ISSUANCE COORDINATION RESPONSE



COMPONENT COORDINATOR RESPONSE

January 26, 2024

SUBJECT: Proposed Changes to Choose an item. Review of the Department of Navy Policies
Covering Sexual Harassment Complaint Process

On behalf of my Component, my formal response to this issuance is: Nonconcur. Below are
comments that detail my Component's objections to this issuance.

My point of contact for this action is [REDACTED]

X Handwritten signature of M. Melillo in black ink.

Double-click the 'X' to insert a digital signat...
or print and sign a hard copy.

Coordinating Official's Name: SES, Mr. Micheal Melillo

Coordinating Official's Position Title: Deputy Director, Manpower Plans and Policy Division (MP)

Coordinating Official's Component: USMC

DD FORM 818, AUG 2016

UNCLASSIFIED

Commandant of the Marine Corps (cont'd)

**DODIG DRAFT REPORT DATED JANUARY 17, 2024
PROJECT NO. D2023-D0DIEM-0141.000**

**“REVIEW OF THE DEPARTMENT OF THE NAVY POLICIES COVERING SEXUAL
HARASSMENT COMPLAINT PROCESSES”**

**UNITED STATES MARINE CORPS COMMENTS
TO THE DODIG RECOMMENDATIONS**

RECOMMENDATION 2.a.1: DODIG recommends that the Commandant of the Marine Corps:

- a. Develop policies or processes to:
 1. Ensure that the steps taken to dismiss or downgrade a sexual harassment complaint are fully documented and retained in command files, including the opinions or concurrences of the Military Equal Opportunity and legal advisors.

USMC RESPONSE: The EOA Advisory Opinion is a requirement by the Marine Corps only and is not a requirement from ODEI. The EOA Advisory Opinion will no longer be needed as the new process requires the commander to have the investigation completed by NCIS prior to making the decision to dismiss or refer the complaint. USMC utilizes the NAVMC 11512 to document if the complaint is dismissed or downgraded/upgraded box 10a with a detailed explanation in box 11a or when the complainant has voluntary withdrawn in Part III. The NAVMC 11512 is then uploaded into DASH and the EOAs can utilize the chronology tab found within the DASH case to document these types of situations. The EOA Advisory Opinion and Legal Review are completed as separate documents and are uploaded into the DASH case. This recommendation should be removed as USMC was and continues to document dismissed/downgrade and voluntary withdrawal.

RECOMMENDATION 2.a.2: DODIG recommends that the Commandant of the Marine Corps:

- a. Develop policies or processes to:
 2. Ensure that commanders investigate withdrawn complaints with sufficient information to permit investigation of allegations that would meet the administrative separation requirement outlined in Secretary of the Navy Instruction 5300.26E, if substantiated.

USMC RESPONSE: At the time this study was conducted USMC and Navy informed DoDIG that sexual harassment is currently undergoing an overhaul to properly align with statutory and IRC requirements, which is ongoing. Due to Title 10 Section 1561 implemented December 2023, all formal allegations of sexual harassment will be investigated. USMC does not allow for quid pro quo, unwanted sexual contact, unlawful distribution or broadcasting of an intimate image to be an informal complaint. USMC will continue to respect the service member's choice to the extent practicable and will work with NCIS to mirror the SAPR 540K Declination Letter where a victim can choose not to participate in the investigation by submitting the 540K declination letter allowing the MCIO to determine if they will close the investigation. With the IRC Requirement 1.2 all substantiated complaints will be required to initiate administrative separation. This

Commandant of the Marine Corps (cont'd)

recommendation is premature as USN and USMC are still codifying the process of SH to align with statutory and policy requirements that will go into effect January 2025.

RECOMMENDATION 2.a.3: DODIG recommends that the Commandant of the Marine Corps:

a. Develop policies or processes to:

3. Ensure that Marine Corps personnel assigned by commanders to investigate sexual harassment complaints are trained in investigative methods and processes.

USMC RESPONSE: The command investigation process and appointing an investigative officer is not under the purview of the MEO Program. The command investigation is outlined in the JAGMAN chapter 2 and states that the commanders are to appoint a trained investigative officer. Prior to the IRC there was no statutory or policy requirement to train investigative officers but were encouraged to read the JAGMAN chapter 2.

The DON has appointed NCIS as the investigative officer for all formal sexual harassment complaints and are receiving training. NCIS will begin investigating SH as of 1 Jan 2025, in the interim DON has obtained IO training that will be utilized. This recommendation should be removed from the MEO Program.

RECOMMENDATION 2.a.4: DODIG recommends that the Commandant of the Marine Corps:

a. Develop policies or processes to:

4. Track and ensure that all formal sexual harassment complaints are resolved by the next higher-level commander in the complainants' chain of command.

USMC RESPONSE: While USMC does not have a dedicated field in the Discrimination and Sexual Harassment (DASH) database to assess if the complainant was forwarded to the next higher level commander DASH does track the convening authority and GCMCA along with the unit of the alleged offender. With this information USMC could determine if it was forwarded to the NHLC but it would be very time consuming. DASH is being sundown as SECNAV has authorized the Misconduct Reporting Incident Tracker (M-RIT) to be DON's authoritative data repository for all sexual harassment complaints. Since there is no statutory or policy requirement to track this information, DON would need to mandate this requirement and update the M-RIT system to include this information so that it can easily be reported, as needed.

RECOMMENDATION 2.b: DODIG recommends that the Commandant of the Marine Corps: Update Marine Corps Order 5354.1F to include the informal complaint reporting requirement outlined in DoD Instruction 1020.03.

USMC RESPONSE: The update MCO 5354.1G that will be published later this year already contains the language that all informal complaints will be tracked within MRIT.

Commandant of the Marine Corps (cont'd)

RECOMMENDATION 2.c: DODIG recommends that the Commandant of the Marine Corps: Ensure reporting procedures are in place to capture informal sexual harassment complaint data to satisfy the requirements of DoDI 1020.03.

USMC RESPONSE: The update MCO 5354.1G that will be published later this year already contains the language that all informal complaints will be tracked within MRIT and contains all reporting requirement per DoDI 1020.03.

Director, DoD Office for Diversity, Equity, and Inclusion



FORCE RESILIENCY

OFFICE OF THE UNDER SECRETARY OF DEFENSE
4000 DEFENSE PENTAGON
WASHINGTON, D.C. 20301-4000

Sean McDonald
Acting Deputy Inspector General for
Diversity and Inclusion and Extremism
Department of Defense
Office of Inspector General
4800 Mark Center Drive
Alexandria, VA 22350-1500

Dear Mr. McDonald,

Thank you for the opportunity to provide the following response to the Office of Inspector General draft report, "Review of the Department of the Navy Policies Covering Sexual Harassment Complaint Processes" (Project No. D2023-D0DIEM-0141.000). The Office for Diversity, Equity, and Inclusion (ODEI) largely concurs with the findings and recommendations in the report and provides the following response and suggested edit concerning Recommendation 3b, which pertains to the ODEI Director.

Recommendation 3a: Clarify in policy whether Military Service commanders with complaint jurisdiction have the authority to downgrade a formal sexual harassment complaint to an informal complaint.

Response: Concur. The Department of Defense (DoD) will clarify the issue regarding commander discretion to downgrade a formal complaint to an informal complaint. This clarification, in coordination with the DoD Office of General Counsel, will be published by first quarter FY 2026 in DoD Instruction 1020.03, "Harassment Prevention and Response in the Armed Forces."

Recommendation 3b: Modify DoD Instruction 1020.03 to require the Military Services to collect and annually report data on withdrawn and dismissed sexual harassment complaints.

Response: Nonconcur. Although this appears to be a promising practice that requires further consideration, the feasibility of this measure has not been examined and it would be a significant departure from existing complaint processes for complaints involving sexual harassment and other problematic behaviors. Respectfully suggest this recommendation is modified to instead recommend the ODEI Director examine whether requiring the Military Services to collect and annually report data on withdrawn and dismissed sexual harassment complaints would materially improve program oversight.

I would like to thank your team for their tireless efforts. Those efforts helped our team identify key areas for improvement that are needed to strengthen the DoD Military Equal Opportunity and Harassment Prevention and Response Programs so we can better meet the needs of our Service members, which is our end-state goal.

Sincerely,

A handwritten signature in black ink, appearing to read "Timothy V. Hoyt".

Timothy V. Hoyt Ph.D.
Deputy Director, Office of Force Resiliency

Acronyms and Abbreviations

ALNAV	All Navy Message
DASH	Discrimination and Sexual Harassment (system)
DoDI	DoD Instruction
DON	Department of the Navy
MCO	Marine Corps Order
MEO	Military Equal Opportunity
MPE	Marine Corps Headquarters, Manpower and Reserve Affairs, Opportunity, Diversity, and Inclusion Branch
NCIS	Naval Criminal Investigative Service
ODEI	DoD Office for Diversity, Equity, and Inclusion
OPNAVINST	Office of the Chief of Naval Operations Instruction
OPNAV N170C	Chief of Naval Operations, Navy Harassment Prevention and MEO Office
OSTC	Office of the Special Trial Counsel
SECNAVINST	Secretary of the Navy Instruction



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U.S. DEPARTMENT OF DEFENSE

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Congressional Liaison

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Media Contact

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4800 Mark Center Drive
Alexandria, Virginia 22350-1500
www.dodig.mil
DoD Hotline 1.800.424.9098

