



DEPARTMENT OF THE NAVY
OFFICE OF THE SECRETARY
1000 NAVY PENTAGON
WASHINGTON DC 20350-1000

SECNAVINST 5350.16A
ASN M&RA
18 December 2006

SECNAV INSTRUCTION 5350.16A

From: Secretary of the Navy

Subj: EQUAL OPPORTUNITY (EO) WITHIN THE DEPARTMENT OF THE
NAVY (DON)

Ref: (a) DOD Directive 1350.2 of 18 Aug 95
(b) DON Discrimination Complaints Manual of 12 Mar 03
(c) EEOC Management Directive 110
(d) EEOC Management Directive 715
(e) OPNAVINST 5354.1E
(f) MCO P5354.1D
(g) Uniform Code of Military Justice (UCMJ)
(h) DOD Instruction 1100.16 of 14 Aug 89
(i) SECNAVINST 5800.11B
(j) OPNAVINST 3100.6G
(k) SECNAV M-5214.1

Encl: (1) Equal Opportunity Definitions
(2) Equal Opportunity in Off-base Housing Guidance
(3) Department of the Navy Policy on Military Equal
Opportunity Complaint Processing
(4) Military Equal Opportunity Assessment Reporting
Requirements

1. Purpose. To implement the Department of the Navy (DON) policy on Equal Opportunity (EO), assign related responsibilities, and assign all duties stipulated in reference (a).

2. Cancellation. SECNAVINST 5350.14, SECNAVINST 5350.16, and SECNAVINST 5354.1.

3. Applicability. This instruction applies to all DON military personnel, Regular and Reserve; Naval Academy and Reserve Officer Training Corps Midshipmen; and Reservists performing active or inactive duty or engaging in any activity related to the performance of Department of Defense (DOD) Reserve duty or function. Civilian Equal Employment Opportunity (EEO) policy guidance and related assignment of responsibilities are

contained in references (b) through (d). This instruction also applies to off-base housing and fair housing enforcement.

4. Background. The DON's ability to perform its mission at home and abroad is directly related to the fair and equitable treatment of its service members. Sailors and Marines, regardless of race, religion, color, gender, or national origin, will be treated with dignity and respect and be assured that they are a valued member of the Navy/Marine Corps team. It is the intent of this instruction to provide guidance on EO matters.

5. Discussion. Sailors and Marines are our most precious resource. In order to ensure mission readiness, we must overcome any prejudicial bias or stereotypes that impede our cohesiveness, camaraderie, or morale. Such behavior is contrary to DON Core Values of Honor, Courage, and Commitment and shall not be tolerated. Unlawful discrimination undermines and diminishes a unit's ability to function in an effective manner. Discrimination destroys members' confidence and trust in their service and erodes a unit's cohesion and combat readiness. Every member of the DON must be afforded an equal opportunity to become a productive, contributing member of the Navy/Marine Corps team.

6. Definition and Terms. EO and other related definitions are contained in enclosure (1).

7. Policy. It is DON policy that:

a. Unlawful discrimination based on race, religion, color, gender, or national origin is strictly prohibited and will not be tolerated.

b. No commander or supervisor may, by act, word, deed, or omission, condone or ignore unlawful discrimination. Commanders, commanding officers (COs) and officers in charge (OICs) are responsible and accountable for enforcing the policy against unlawful discrimination.

c. It is the responsibility of every Sailor and Marine to ensure that unlawful discrimination does not occur in any form

at any level. Every servicemember has the responsibility to make the appropriate authorities aware of each violation of this policy.

d. Commanders or individuals in supervisory positions are responsible for ensuring that all military personnel receive EO training annually per references (e) and (f).

e. Heritage ceremonies and observances conducted within DON organizations or commands must comply with this policy and references (e) and (f).

f. All formal/informal EO complaints must be handled per references (a), (e) and (f).

g. Commanders shall ensure that a mandatory Fitness Report or Enlisted Evaluation comment is made in the record of any servicemember who has been found guilty by a court martial or other court of competent jurisdiction or who has received nonjudicial punishment based on commission of a criminal offense involving unlawful discrimination against another person based on race, religion, color, gender, or national origin.

h. Commanders must also ensure that military personnel and their families receive fair and equitable treatment both on and off base. Discriminatory practices detected by DON civilian and military personnel shall be reported to the proper authorities for appropriate action.

i. Commanders shall take actions to overcome discrimination in off-base housing and to impose off-limits sanctions in housing cases, as required by enclosure (2) and reference (h). In cases of discriminations involving places of public accommodation outside military installations, off-limits sanctions may be imposed through the cognizant Armed Forces Disciplinary Control Board (AFDCB).

j. Reprisals against any victim or witness of discrimination are strictly prohibited per enclosure (3).

8. EO Complaint Processing.

a. COs must be informed immediately, usually within 24 hours, of any allegation of unlawful discrimination or EO complaint in their command. Informal complaints will be handled

through the Informal Resolution System (IRS) and formal complaints will be fully investigated to determine if the case is substantiated or unsubstantiated. Anyone who has been discriminated against, observed an act of unlawful discrimination or whose command believes may have been discriminated against will be considered to be a victim or witness.

b. These incidents must be reported to the appropriate authorities in the chain of command. Formal complaints of discrimination and sexual harassment must be reported by SITREP or OPREP per references (e), (f) and (j) via the Special Incident Reporting System.

c. Formal EO complaints shall be processed in accordance with enclosure (3). Per reference (a), if a case is appealed to the general court-martial authority (GCMA), the GCMA shall ensure that the complaint is reviewed for legal sufficiency. In the event that the complaint is further appealed, the Secretary of the Navy (SECNAV) or his designee shall make the final determination.

9. Accountability and Enforcement. The policies detailed in paragraph 7 apply to the conduct of all DON military personnel. Any violation, attempted violation or solicitation of another to violate these policies is subject to appropriate disciplinary action.

10. Assignment of Responsibility. The Assistant Secretary of the Navy (Manpower and Reserve Affairs) (ASN (M&RA)) is responsible for the overall execution of the EO program, its administration and supervision, and shall keep the Secretary of the Navy (SECNAV) and the Under SECNAV informed of progress and any significant issues.

11. Action. The Chief of Naval Operations (CNO) and Commandant of the Marine Corps (CMC) shall:

a. Implement these policies within their existing EO instructions. These changes should take place within 180 days from date of issuance.

b. Notify ASN (M&RA) of any substantive changes to Service policies not less than 30 days prior to implementation of those changes.

c. Initiate required changes in coordination with ASN (M&RA) to amend any regulation or practice that serves as an obstacle to providing EO in off-base housing.

d. Ensure that this policy is covered in detail during all entry-level training for both enlisted and officer accession programs.

e. Ensure that information on the complaints process and EO will also be published in command Plans of the Day, in prominent locations and that every command in the DON has a current copy of the complaint form and their respective Equal Opportunity Manual.

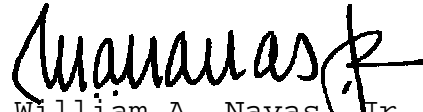
f. Provide annual training and updates on EO in Professional Military Education (PME) courses, general military training (GMT), leadership training, commander's courses, troop information programs, and at all organizational levels.

g. Submit an annual Military Equal Opportunity Assessment for the period ending 30 September to the Under Secretary of Defense (Personnel & Readiness) (USD (P&R)) via the chain of command to arrive no later than 1 February of the following year and provide SECNAV with an annual briefing of the results by 1 June. This assessment and briefing shall include information contained in enclosure (4).

Note: This assessment is currently not required by reference (a) until further guidance on race/ethnic codes is determined by the Office of the Secretary of Defense, but tracking of this data is still required.

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12. Report. Symbol DD-P&R (A) 1760(5350) is assigned to the reporting requirement contained in paragraph 11g, enclosure (4) and in accordance with reference (k).



William A. Navas, Jr.
Assistant Secretary of the Navy
(Manpower and Reserve Affairs)

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EQUAL OPPORTUNITY (EO) DEFINITIONS

1. Complaint. An allegation of unlawful discrimination based on race, religion, color, ethnicity, gender, or national origin.

a. Informal Resolution System (IRS). A system for resolving Equal Opportunity/Sexual Harassment complaints at the lowest possible level in the chain of command.

b. Informal Complaint. Allegation of unlawful discrimination or sexual harassment, made either orally or in writing that is not submitted as a formal complaint.

c. Formal Complaint. Allegation of unlawful discrimination of sexual harassment that is submitted in writing to the authority designated for receipt of such complaints in Service implementing regulations.

2. Complainant. A servicemember who submits allegations of unlawful discrimination.

3. Equal Opportunity (EO). The right of all persons to participate in, and benefit from programs and activities for which they are qualified. These programs and activities shall be free from social, personal, or institutional barriers that prevent people from rising to the highest level of responsibility possible. Persons shall be evaluated on individual merit, fitness, and capability, regardless of race, religion, color, gender, or national origin.

4. Equal Opportunity (EO) Climate Assessment. Determining the "health" and functioning effectiveness of an organization by examining such factors as morale, teamwork, and communication. This is accomplished through some or all of the following: group and/or individual interviews, observations, surveys or questionnaires, and review of records and reports.

5. Ethnic Group. A group socially distinguished or set apart by others and/or by itself, primarily on the basis of culture or nationality characteristics. Example: Hispanic - A person having origins in any of the original peoples of Mexico, Puerto Rico, Cuba, Central or South America or of other Spanish cultures, regardless of race.

6. Legal Sufficiency Review. A review of an investigation into a formal complaint of unlawful discrimination or sexual harassment to determine whether:

a. The investigation complies with all applicable legal and administrative requirements.

b. The investigation adequately addresses the matters complained of.

c. The evidence supports the findings of the investigating officer or board.

d. The conclusions and recommendations of the investigating officer or board are consistent with the findings.

e. Any errors or irregularities exist, and, if so, their legal effects if any.

7. National Origin. An individual's or ancestor's place of origin. Also applies to a person who has physical, cultural, or linguistic characteristics of a national group.

8. Protected Communication. Any lawful communication to a Member of Congress or an Inspector General (IG). A communication by a member of the Armed Forces to a Member of Congress, an Inspector General (IG), any member of a Department of Defense (DOD) audit, inspection, investigation, or law enforcement organization, or to any other person or organization (including any person or organization in the chain of command) designated pursuant to regulations or other established administrative procedures to receive such communications. Making a complaint or disclosing information that the member reasonably believes constitutes evidence of a violation of law or regulation (including a law or regulation prohibiting sexual harassment or unlawful discrimination), gross mismanagement, a gross waste of funds, an abuse of authority, or a substantial and specific danger to public health or safety. Whistleblower protections are defined in 10 U.S.C. 1034.

9. Race. A division of human beings identified by the possession of traits that are transmissible by descent and that are sufficient to characterize persons possessing these traits as a distinctive human genotype.

10. Race Codes. A division of human beings that possesses traits that are transmissible by descent and that are sufficient to characterize as a distinctive human type.

Note: More information on race and ethnic codes can be found in the Office of Management and Budget (OMB) Provisional Guidance on the Implementation of the 1997 Standards for Federal Data on Race and Ethnicity. The race categories and standard data item codes to use for reporting are:

a. American Indian or Alaskan Native. A person having origins in the original peoples of North and South America (including Central America).

b. Asian. A person having origins in any of the original peoples of the Far East, Southeast Asia, or Indian subcontinent. This area includes Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, Philippine Islands, Thailand, and Vietnam.

c. Black or African American. A person having origins in any of the original peoples of Africa.

d. Native Hawaiian or other Pacific Islander. A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.

e. White. A person having origins in any of the original peoples of Europe, North Africa, or the Middle East.

11. Religion. A personal set or institutional system of attitudes, moral, or ethical beliefs, and practices that are held with the strength of traditional religious views, characterized by ardor and faith, and generally evidenced through specific religious observances.

12. Reprisal. Taking or threatening an unfavorable personnel action or withholding or threatening to withhold a favorable personnel action, or any other act of retaliation, against a military member for making or preparing a protected communication.

13. Senior Diversity Council. The senior executive level decision-making body that provides advice and counsel to Secretary of Defense (SECDEF) and Deputy SECDEF on all DOD EO, Equal Employment Opportunity (EEO), and diversity matters. DON

will utilize the Force Management Oversight Council to provide updates to this body.

14. Sexual Harassment. A form of gender discrimination that involves unwelcome sexual advances, requests for sexual favors, and/or other verbal or physical conduct of a sexual nature when:

a. Submission to such conduct is made either explicitly or implicitly a term of condition of a person's job, pay or career, or;

b. Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person, or;

c. 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.

Note: This definition emphasizes that workplace conduct, to be actionable as "abusive work environment" harassment, need not result in concrete psychological harm to the victim, but rather need only be so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the work environment as hostile or offensive. ("Workplace" is an expansive term for military members and may include conduct on or off duty, 24 hours a day.) Any person in a supervisory or command position who uses or condones any form of sexual behavior to control, influence, or affect the career, pay or job of a military member or civilian employee is engaging in sexual harassment. Similarly, any military member or civilian employee who makes deliberate or repeated unwelcome verbal comments, gestures, or physical contact of a sexual nature in the workplace is also engaging in sexual harassment.

15. Unlawful Discrimination. Discrimination on the basis of race, religion, color, gender, or national origin that is not otherwise authorized by law or regulation.

EQUAL OPPORTUNITY IN OFF-BASE HOUSING GUIDANCE

DON is committed to ensuring fair and equitable treatment for all personnel in obtaining off-base housing. Discriminatory off-base practices directed against servicemembers and their families are contrary to DON Equal Opportunity (EO) policy.

1. Commanding Officers and housing offices will:

a. Monitor off-base housing conditions to ensure that discriminatory practices are identified and promptly addressed.

b. Establish procedures for prompt (normally within three working days of initiation of a complaint) and thorough review of off-base housing discrimination complaints by housing referral office personnel, EO staff, and legal staff, as appropriate.

c. Take proactive measures to improve, to the maximum extent possible, the surrounding community's EO climate.

d. Forward all substantiated housing discrimination complaints and investigations to Commander, Navy Personnel Command (COMNAVPERSCOM) (PERS-670) or Commandant of the Marine Corps (CMC) (Code MHE) within 45 days from the date the original complaint is filed. A sample letter report of off-base housing discrimination is included.

2. The reporting requirement in paragraph 4d is exempt from reports control.

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**SAMPLE LETTER REPORTING SUBSTANTIATED
OFF-BASE HOUSING DISCRIMINATION**

5350
Ser XXX/xx
Date

(FOR NAVY ACTIVITIES)

From: Commanding Officer, Naval Station, Charleston
To: Commander, Navy Personnel Command (PERS-670)

(FOR MARINE CORPS ACTIVITIES)

From: Commanding Officer, Quantico Marine Corps Base
To: Commandant of the Marine Corps (Code MHE)

Subj: DISCRIMINATION IN OFF-BASE HOUSING

Ref: (a) SECNAVINST 5350.16A

Encl: (1) Off-Base Housing Discrimination Report
Submitted by MM2 Davy Jones of 14 June 05
(2) Investigation Conducted by Housing Office, Legal
Office, or Equal Opportunity Office

1. As directed in reference (a), this letter reports the resolution of racial discrimination submitted to Naval Station Charleston. A summary of the complaint(s) follow(s): MM2 Davy Jones, USN, 123-45-6789, a white male was denied housing by Mrs. Jane Doe, a white female landlord of Pine View Apartments in Charleston, South Carolina. Mrs. Doe offered MM2 Jones an apartment for \$900.00 per month, while the market rate for the apartment, as verified by command personnel, was \$575.00 per month. Discrimination was verified when Mrs. Doe cited the higher monthly rent for another white Sailor, but cited the lower rate for two black verifiers.

2. Point of contact for this matter is LT Joe Jones, Legal Officer, DSN 580-1234.

G. P. BURDELL

Copy to:
ISIC
TYCOM

**DEPARTMENT OF THE NAVY (DON) POLICY ON MILITARY
EQUAL OPPORTUNITY (EO) COMPLAINT PROCESSING**

DON is committed to ensuring that military members are afforded a fair and effective EO complaint process. In support of this commitment:

1. All reported incidents of unlawful discrimination and sexual harassment will be investigated and resolved at the lowest appropriate level. The DON Informal Resolution System, NAVPERS 15620, serves as the model for informal complaint handling. Complaints should be resolved informally whenever possible; however, there is no requirement to attempt informal resolution prior to filing a formal complaint.

2. A complaint should be made within 60 days of the offending incident, or in the case of a series of incidents, within 60 days of the most recent incident. Commanders may accept complaints beyond this timeframe if, in their judgment, circumstances warrant.

3. Complaints will be investigated and resolved within 60 days of filing the complaint. In the case of complaints filed by an inactive Reservist or in which an inactive Reservist is the subject of the complaint (a "Reserve complaint"), resolution of formal complaints should be completed within 120 days of filing.

4. A written complaint form provided by each service as outlined in references (e) and (f) will be used for initiating and processing formal complaints of discrimination and sexual harassment. The form will document all steps of the investigation and resolution process, and will contain, at a minimum the following elements:

a. A summary of the complaint, including date submitted and remedy requested by the complainant.

b. Referral to counseling and support services.

c. A record of the investigative process, including commencement and completion dates, findings and recommendations, and acknowledgement of receipt of investigation findings and recommendations by complainant and subject(s) of the complaint.

d. A record of action taken to resolve the complaint by the chain of command.

e. A block in which the complainant or the subject of the complaint can request appeal of the command decision to higher authority. A separate block in which either the complainant or the subject of the complaint may request a final appeal to SECNAV via the GCMA. Invoking the appeal option should require no further application or documentation by the complainant or the subject of the complaint.

f. A record of command follow-up with the complainant 30 to 45 days from completion of remedial action on the complaint. In the case of a Reserve complaint, follow-up should extend through a minimum period of one year following conflict resolution. Command follow-up will include a determination of complainant satisfaction with the effectiveness of corrective action, timeliness, present command climate, and a check to ensure reprisal did not occur.

5. While submission of a written EO complaint is the preferred method of filing a formal complaint, servicemembers may instead file a UCMJ, article 138 complaint against their CO or Navy Regulations, article 1150 complaint against a superior (other than their CO). Additionally, all servicemembers have the right to communicate with the Inspector General and members of Congress.

6. Either the complainant or the subject of the complaint may appeal the decision on a formal complaint. There are two levels of appeal, neither automatic. Each appeal must be affirmatively requested by either the complainant or the subject of the complaint. In addition to the complaint form, documentation, such as statements of witnesses, personnel record entries, etc., that may be helpful in resolving an appeal may be submitted to the appellate authority by the party requesting the appeal.

a. The first appeal of a decision on a formal complaint will be to the first commander in the chain of command with general court martial authority (GCMA). This appeal should be requested within seven days of the notice of the decision on the formal complaint.

b. If a further appeal is requested, the final resolution of an appeal on a formal complaint will rest with SECNAV or his

designee. Once requested, the GCMA will forward the complaint and all documents pertinent to the complaint to SECNAV, via the Office of the Judge Advocate General, for final review. In processing this final appeal, the procedures applicable to the SECNAV review of UCMJ, article 138 complaints, as detailed in Chapter III of the Manual of the Judge Advocate General (JAGMAN), shall be used in so far as practicable. This final appeal should be requested within 30 days of receipt of the GCMA's decision on the initial appeal. An appeal requested after 30 days, may be returned as untimely, unless unusual circumstances justify the delay.

c. An appeal may be submitted on any legal or equitable grounds based upon a perception that existing DOD or DON regulations were incorrectly applied in the particular case, that facts were ignored or weighed correctly, that remedial action ordered by a commander was insufficient under the circumstances, or on any other good faith basis.

d. Both the initial and the final appellate authority may determine whether the initial complaint and/or the appeal were made in good faith, and if not, to take appropriate corrective measures, including punitive ones.

7. Commanders will ensure that their command climate does not tolerate acts of reprisal, intimidation or further acts of discrimination in response to the filing of a formal or informal EO complaint, and will take immediate action to stop, identify and prevent all forms of reprisal within their command.

8. If a senior-subordinate relationship exists between the complainant and the subject(s) of the complaint, commanders will, when possible, relocate one or both parties, without prejudice, during the course of the investigation. If the subject of the complaint is the commander, and their motivation in a particular situation could be legitimately called into question (as in the case of writing the complainant's personnel evaluation), a commander should consider recusing themselves and requesting an appropriate reporting senior to fulfill their responsibilities.

9. If the discrimination/harassment investigation finds the complaint is substantiated, and the subject of the complaint is the complainant's supervisor, the commander may remove the subject from their supervisory role as operational requirements

necessitate. In such an event, the complainant will be moved only at their request. Transfer of the parties involved shall not be considered by the commander to be a resolution of the complaint.

10. If the investigation finds the complaint is unsubstantiated, the commander will monitor potential reprisals by checking on work center climate and ensuring performance appraisals document job performance accurately (i.e., downgrades shall be supported by written counseling and not related to the complaint).

11. Administrative investigations will be conducted by the local command, as appropriate. Reprisal investigations will normally be handled at the next higher level in the chain of command.

12. The complainant and subject of the complaint will be provided with feedback throughout the investigation and resolution process. The complainant and subject of the complaint will receive a copy of the complaint form each time information is added to it and upon their request receive a copy of the investigating officer's final report, consistent with the Privacy Act.

**MILITARY EQUAL OPPORTUNITY ASSESSMENT (MEOA) REPORTING
REQUIREMENTS**

Each DOD component shall submit an annual Military Equal Opportunity Assessment (MEOA) for the period ending 30 September to USD (P&R) no later than 1 February of the following year. The report shall include the following information:

a. An executive summary, providing an overall assessment of each DOD component's EO Programs.

b. An assessment of diversity in the following ten categories shall be made an enclosure to the report. The assessment in each category should include quantitative data in the basic race and/or ethnic classifications for officers and enlisted personnel broken down by gender.

- (1) Recruiting and/or accessions.
- (2) Composition.
- (3) Promotions.
- (4) Professional Military Education/GMT.
- (5) Separations.
- (6) Augmentation and/or Retention.
- (7) Assignments.
- (8) Discrimination and/or Sexual Harassment Complaints.
- (9) Utilization of Skills.
- (10) Discipline.

c. These requirements are further explained in reference (a).