



Appendix F: Sexual Harassment Assessment



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Across the Department of Defense (DOD), dedicated Service members and civilian employees work tirelessly each day to ensure mission accomplishment and success in our daily operations as we endeavor to safeguard our nation and achieve our national defense objectives. Our people are at the core of the National Defense Strategy and ensuring their wellbeing remains of utmost importance to the Department. Behaviors that jeopardize the welfare of any member of the Total Force will not be tolerated, condoned, or ignored. Sexual harassment is one such problematic behavior which has no place in DOD. Sexually harassing behavior violates the responsibility of Service members and DOD civilian employees to treat each other with dignity and respect. Incidents of sexual harassment threaten force readiness and have the potential to undermine critical cohesion and trust among members of the Total Force.

Fundamental to mission readiness is the promotion of an environment free from personal, social, or institutional barriers that prevent members from rising to the highest possible level of responsibilities. The Department aims to identify and address problematic behaviors early, in an effort to prevent these behaviors from escalating. It continues to encourage reporting, including anonymous reporting, of sexual harassment and other harassing behaviors. The DOD strives to ensure that all who experience sexual harassment and other problematic behaviors have the confidence to file a complaint without fearing retaliation or reprisal.

Central to reporting incidents of sexual harassment is the belief that leadership will hold offenders appropriately accountable. To that end, in 2019 the Department formed the Sexual Assault Accountability and Investigation Task Force (SAAITF) to identify, evaluate, and recommend immediate and significant actions to improve the accountability process specific to the investigation and disposition of cases in which members of the Armed Forces are either victims or alleged offenders of sexual assault, while ensuring due process for both.¹ To improve the ability of commanders to set the appropriate command climate, SAAITF recommended identifying sexual harassment as a standalone military crime.

This appendix reports on complaints of sexual harassment received in Fiscal Year 2019 (FY19), which covers the period from October 1, 2018, to September 30, 2019. The topline summary of 1,021 formal sexual harassment complaints reported by the Military Services in FY19 increased 10 percent from FY18.

Oversight Responsibilities and Department Initiatives

The Office for Diversity, Equity, and Inclusion (ODEI) has responsibility for the DOD Military Equal Opportunity Program, which includes oversight of policy development, standardization of training and education, and data collection and analysis of Department-wide military sexual harassment complaints.

Definition of Sexual Harassment

Section 1561 of Title 10, United States Code 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:

¹ Department of Defense Sexual Assault Accountability and Investigation Task Force Report, April 2019.

- Submission to such conduct is made either explicitly or implicitly a term or condition of a person's job, pay, or career;
- Submission to or rejection of such conduct by a person is used as a basis for career or employment decisions affecting that person; or
- Such conduct has the purpose or effect of unreasonably interfering with an individual's work performance or creates an intimidating, hostile, or offensive environment; and is so severe or pervasive that a reasonable person would perceive, and the victim does perceive, the environment as hostile or offensive.

This definition emphasizes that conduct, to be actionable as harassment, does not need to result in concrete psychological harm to the victim, but rather only be so severe or pervasive that a reasonable person would perceive the environment as hostile or offensive. Any person in a supervisory or command position who uses or condones sexual behavior to control, influence, or affect the career, pay, or job of a Service member or DOD civilian employee is engaging in sexual harassment. A Service member or DOD civilian employee who makes deliberate or repeated unwelcome verbal comments, non-verbal, or physical contact of a sexual nature is engaging in sexual harassment.

DOD Harassment Prevention and Response Policy

On February 8, 2018, the Department published DOD Instruction (DODI) 1020.03, "Harassment Prevention and Response in the Armed Forces," in order to:

- Establish a comprehensive, DOD-wide harassment prevention and response program,
- Strengthen the Department's commitment and accountability through oversight,
- Update military harassment prevention and response policies and programs for Service members,
- Identify social media as a means through which harassment can occur,
- Update training and education requirements and standards, and
- Mandate substantiated incidents of harassment are annotated in Service members' fitness reports or performance evaluations.

The policy supplements the DOD Retaliation Prevention and Response Strategy Implementation Plan for sexual harassment complaints involving retaliation. The Defense Equal Opportunity Reform Group was established to review, improve, and modify policies and procedures; analyze trends; identify potential gaps; and provide recommendations to senior leadership to ensure policies on harassment and discrimination are robust and effective.

Data Collection

Sexual harassment incidents are tracked by the Military Services and reported to the DOD using a standardized template developed and approved by the ODEI Data Working Group. The Department collects, assesses, analyzes and compiles this report in accordance with the reporting requirement in DODI 1020.03. The report contains information on sexual harassment incidents reported or closed between October 1, 2018 and September 30, 2019.

Overall FY19 Complaint Totals

In accordance with DODI 1020.03, the Military Services reported on FY19 sexual harassment complaints which includes formal, informal, and anonymous reports. DOD continues to

encourage reporting, including anonymous reporting, of sexual harassment and other harassing behaviors.

A formal complaint is an allegation submitted in writing to the staff designated to receive such complaints in the Military Department operating instructions and regulations, or an informal complaint, which the commanding officer or other person in charge of the organization determines warrants an investigation. Some complainants may request that allegations of sexual harassment be addressed and resolved informally.

An informal complaint is an allegation, made either orally or in writing, that is not submitted as a formal complaint through the office designated to receive harassment complaints. The allegation may be submitted to a person in a position of authority within the Service member's organization or outside of the Service member's organization. Such complaints may be resolved at the lowest level through intervention by the first-line supervisor, using alternative dispute resolution techniques such as informal mediation.

An anonymous complaint is an allegation received by a commanding officer or supervisor, regardless of the means of transmission, from an unknown or unidentified source, alleging harassment. The individual is not required to divulge any personally identifiable information.

Formal Complaints

During FY19, the Military Services and the National Guard Bureau (NGB) received, processed, and investigated a total of 1,021 formal sexual harassment complaints. The data indicate a 10 percent increase in FY19 from the 932 formal complaints that were received, processed, and investigated in FY18.

At the close of FY19, of the total 1,021 formal sexual harassment complaints, 718 formal complaints (70 percent) were resolved; 154 formal complaints (15 percent) remained open, pending the results of an investigation, and the statuses of 149 complaints (15 percent) were not reported.

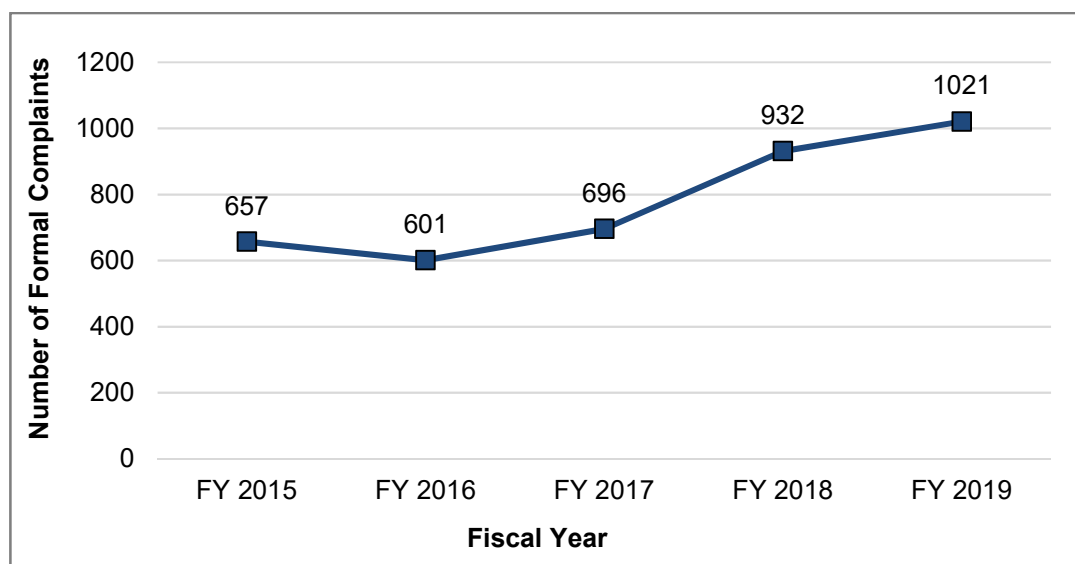


Figure 1. DOD Formal Sexual Harassment Complaints (FY15 - FY19)

Subsequent to an appropriate investigation, complaints are found to be substantiated or unsubstantiated. Of the 718 resolved complaints filed in FY19, 61 percent (437) were substantiated, 36 percent (261) were unsubstantiated, and 3 percent (20) were dismissed.

In FY18, of the 932 formal complaints received, processed, and investigated, 704 formal complaints (76 percent) were resolved, while 228 formal complaints (24 percent) remained open, pending the results of an investigation. Of the 704 formal complaints resolved, 61 percent (432) were substantiated, 38 percent (266) were unsubstantiated, while dismissed complaints represented 1 percent (6).

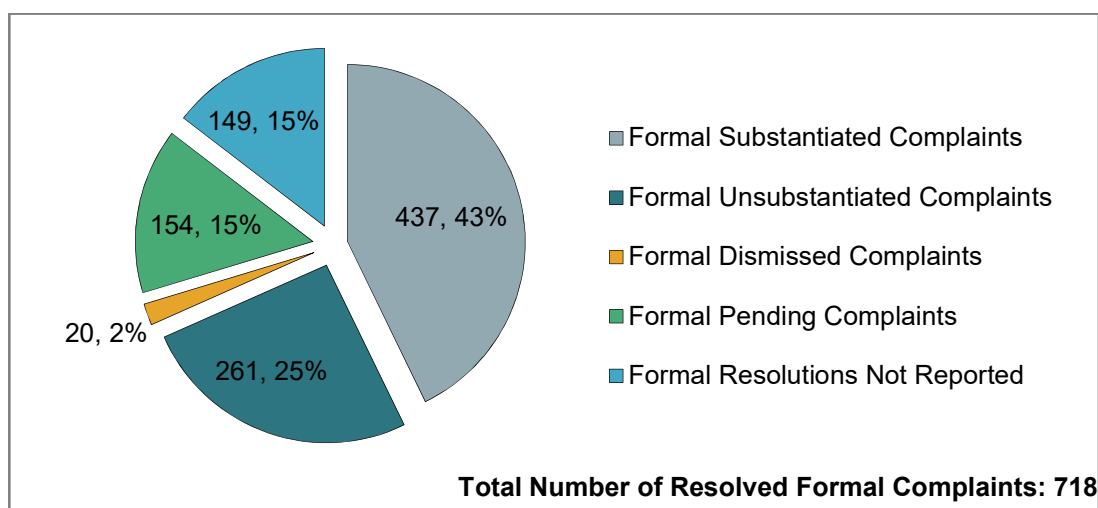


Figure 2. Total Resolved Formal Sexual Harassment Complaints Received by DOD in FY19

Informal Complaints

In FY19, the Military Services and NGB received, processed, and addressed a total of 591 informal sexual harassment complaints. At the close of the fiscal year, 442 informal complaints (75 percent) were addressed and resolved at the lowest level, 126 informal complaints (21 percent) were reported as administratively closed, and 23 informal complaints (4 percent) were pending resolution.

In comparison, the Military Services and NGB received, processed, and addressed a total of 512 informal sexual harassment complaints in FY18. Of these 512 FY18 informal complaints, 268 complaints (52 percent) were addressed and resolved at the lowest level, 17 complaints (3 percent) were pending resolution, and the statuses of 227 complaints (45 percent) were reported as administratively closed.

Anonymous Complaints

During FY19, 28 sexual harassment complaints were filed anonymously. Sixteen (57 percent) of the 28 complaints were resolved, 11 complaints (39 percent) remained open pending resolution, and the status of the 1 remaining complaint (4 percent) was not reported. Of the 16 resolved anonymous complaints, 12 (75 percent) were substantiated and 4 (25 percent) were unsubstantiated.

In FY18, 22 sexual harassment complaints were filed anonymously. Sixteen (73 percent) of the 22 complaints filed anonymously were resolved, 5 (23 percent) remained open pending resolution by the end of FY18, and the status of the 1 remaining complaint was not reported.

Of the 16 anonymous complaints resolved, 7 (44 percent) were substantiated and 9 (56 percent) were unsubstantiated.

Nonconsensual Distribution of Private Sexual Images

Section 537 of the National Defense Authorization Act for FY18 requires inclusion of information in annual SAPRO reports, regarding sexual harassment incidents involving nonconsensual distribution of private sexual images. In accordance, the Military Services reported on the FY19 complaints of sexual harassment that involved nonconsensual distribution of private sexual images. In FY19, the Military Services and NGB received, processed, and investigated 51 total complaints of sexual harassment involving nonconsensual distribution of private sexual images. Of the 51 total complaints, 37 complaints (73 percent) were formal and 14 complaints (27 percent) were informal.

Substantiated formal complaints constituted 10 (27 percent) of the 37 total formal complaints of sexual harassment involving nonconsensual distribution of private sexual images, while unsubstantiated formal complaints totaled 5 (>13 percent), formal complaints pending resolution accounted for 4 complaints (11 percent), and the statuses of 18 complaints (49 percent) were unknown.

Of the 14 total informal complaints of sexual harassment involving nonconsensual distribution of private sexual images, substantiated informal complaints constituted 6 complaints (43 percent), informal complaints pending resolution accounted for 1 complaint (7 percent), and the statuses of 7 informal complaints (50 percent) were unknown.

Top Line Results from FY19 Substantiated Complaints

Substantiated complaints contain at least one founded allegation of sexual harassment addressed at the lowest appropriate level in the complainant's chain of command. Unsubstantiated complaints contain at least one founded allegation of sexual harassment addressed at the lowest appropriate level in the complainant's chain of command. Dismissed complaints include a formal complaint that has been dropped to address the correct problematic behavior, to investigate another behavior that has more evidence, or to investigate more severe problematic behavior(s). Pending complaints are open sexual harassment reports that have not yet been resolved or adjudicated. Appeals are also included here, since the final decision and potential actions against the alleged offender are pending.

During FY19, the Military Services and the NGB reported a total of 603 substantiated sexual harassment complaints, of which 437 (72 percent) were reported as a formal complaint, 154 (26 percent) were informal, and 12 (2 percent) were reported anonymously.

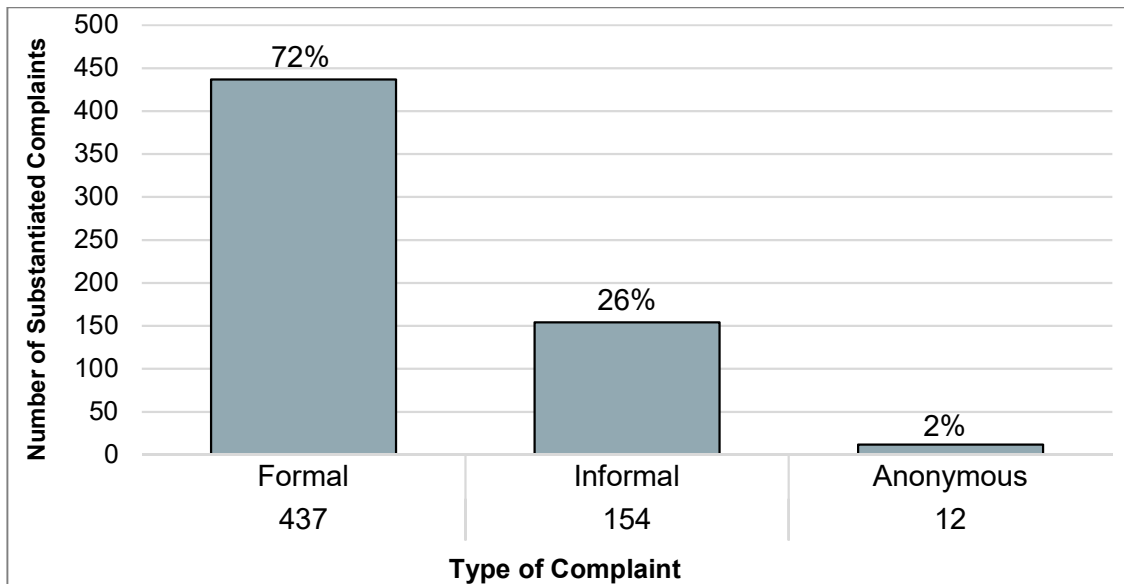


Figure 3. DOD Sexual Harassment Complaints Substantiated in FY19

Complaint Characteristics

This section presents complainant characteristics, offender characteristics, nature of substantiated incidents, timeliness of reporting and investigation, and accountability by substantiated formal and informal sexual harassment complaints.

Formal Complaints

There were 430 complainants associated with the 437 substantiated formal incidents. A complainant may be involved in more than one sexual harassment incident. Complainants were predominantly women (344 of 430; 80 percent). Men made up 18 percent (78 of 430) of complainants. The gender of 2 percent (8 of 430) of complainants was unknown. Eighty-eight percent of complainants (378 of 430) were enlisted members. Officers represented 4 percent of complainants (18 of 430). Less than 1 percent of complainants were warrant officers (4 of 430). The paygrade category was not reported for 6 percent of complainants (25 of 430) and less than 1 percent of complainants were reported as others (5 of 430).

Service members in paygrades E1–E4 account for 67 percent of all complainants (287 of 430). The largest single grouping of complainants by gender and paygrade were women in paygrades E1–E4 (236 of 430; 55 percent). Enlisted males in the paygrades of E1–E4 account for 12 percent (50 of 430) of complainants. Officer complainants were predominately women in grades O1–O3 (11 of 18; 61 percent) and less than 1 percent of unknown formal complainants were enlisted (2 of 430).

Informal Complaints

The Military Services reported 151 complainants for the 154 substantiated informal incidents. Complainants were predominantly women (125 of 151; 83 percent). Men totaled 15 percent (22 of 151) of complainants and unknown gender comprised 2 percent (4 of 151) of complainants.

Enlisted members comprised 85 percent of complainants (129 of 151). Officers represented 5 percent of complainants (7 of 151). Three percent (4 of 151) of complainants were DOD civilian employees and 2 percent (3 of 151) were DOD contractors. The personnel category was reported as unknown for the remaining 5 percent of complainants (8 of 151).

Enlisted members in paygrades E1–E4 account for 52 percent of all complainants (79 of 151). The largest single grouping of complainants by gender and paygrade was E1–E4 women (74 of 151; 49 percent). Enlisted men in paygrades E1–E4 comprised 3 percent (4 of 151) of complainants, and the gender of 1 percent (1 of 151) of informal complainant was unknown.

Offender Characteristics

First-Time Offender

Notably, a single offender can be associated with more than one complaint. There were 425 total offenders reported for 437 substantiated complaints, of which 95 percent (404 of 425) were first-time offenders. First-time offenders were predominantly male (382 of 404; 95 percent). First-time offenders consisted of 5 percent female offenders (21 of 404) of.

Enlisted members comprised 84 percent of offenders (339 of 404). Offenders were most often junior enlisted (E1–E4; 145 of 404, 36 percent), of which 92 percent were men (133 of 145). Nine percent of offenders (36 of 404) were officers, of which 58 percent (21 of 36) were males in paygrades O1–O3; 22 percent (8 of 36) were in paygrades O4–O6; and a little more than 19 percent (7 of 36) were warrant officers. Seven percent (29 of 404) of all first-time offenders were either DOD civilian employees (2 of 29), contractors (6 of 29), or the employment type was not reported (21 of 29).

Repeat Offender

Repeat offenders, defined as having more than one complaint substantiated for sexual harassment, represented 5 percent of all offenders (21 of 425). Seventy-one percent (15 of 21) of repeat offenders were enlisted members. Ninety-three percent (14 of 15) of enlisted repeat offenders were male, of which 21 percent (3 of 14) were in paygrades E1 to E4, 43 percent (6 of 14) were E5–E6, and 36 percent (5 of 14) were E7–E8. The remaining (7 percent) enlisted repeat offender was a female in paygrade E5–E6. Twenty-nine percent (6 of 21) of repeat offenders were male officers in paygrades O1–O3.

Informal Complaints

First-Time Offender

The Military Services reported 158 total offenders for 154 substantiated informal complaints, of which 96 percent (151 of 158) were first-time offenders. These first-time offenders were predominantly male (135 of 151; 89 percent). Female offenders made up 8 percent (12 of 151) of all first-time offenders and the gender of 3 percent of first-time offenders (4 of 151) was unknown.

Enlisted members comprised 73 percent of first-time offenders (110 of 151). The largest paygrade grouping of enlisted first-time offenders was E5–E6 (51 of 110, 46 percent), of which 98 percent were male (50 of 51). Eight percent of first-time offenders (12 of 151) were officers, of which were all male; the gender was unknown for 3 percent (4 of 151) of the first-time

offenders. Fifty-eight percent (7 of 12) of officer first-time offenders were in paygrades O1–O3 and 33 percent (4 of 12) were in paygrades O4–O6. Warrant officers made up less than 9 percent (1 of 12) of officer first-time offenders. Nineteen percent (29 of 151) of first-time offenders were either DOD civilian employees (13 of 29), contractors (6 of 29), or the employment type was not reported (10 of 29).

Repeat Offender

Repeat offenders, defined as having more than one complaint substantiated for sexual harassment, represented 5 percent of all offenders (7 of 151). Fifty-seven percent (4 of 7) of repeat offenders were males, of which 25 percent (1) was in paygrade E1–E4, 50 percent were E5–E6, and 25 percent (1 of 4) was in paygrade E7–E9. The remaining 43 percent of repeat offenders were all female DOD or Military Service contractors.

Duty Status and Nature of Substantiated Incidents

Formal

Eighty-three percent (362 of 437) of formal substantiated incidents occurred while the complainant was on duty. Because substantiated complaints may involve multiple allegations of sexually harassing behavior, a total of 629 types of allegations were reported. The most frequently reported allegations involved crude and/or offensive behavior (309 of 629; 49 percent). All other reported allegations were characterized as unwanted sexual attention (291 of 629; 46 percent) and sexual coercion/quid pro quo (29 of 629; 5 percent).

Informal

Eighty-four percent (129 of 154) of informal substantiated incidents occurred while the complainant was on duty. A total of 227 types of allegations were reported. The most frequently reported allegations involved crude and/or offensive behavior (120 of 227; 53 percent). All other reported allegations were characterized as unwanted sexual attention (99 of 227; 44 percent) and sexual coercion/quid pro quo (8 of 227; 4 percent).

Timeliness of Reporting

DOD policy requires that, to the extent practicable, commanders will forward sexual harassment complaint information or allegations to a General Court-Martial Convening Authority (GCMCA) within 72 hours of receipt. One hundred percent of formal complaints of sexual harassment (1,021) were forwarded to the GCMCA and 80 percent of these (812 of 1,021) were forwarded within 72 hours.

Accountability

Formal Complaints

Offenders may receive more than one type of corrective action. For example, an offender may receive a letter of reprimand, administrative actions, and non-judicial punishment. In FY19, there were a total of 425 sexual harassment offenders, of which 95 percent (404 of 425) were first-time offenders. Ninety percent (364 of 404) received disciplinary actions. At the close of the fiscal year, 11 percent (47) of offenders were pending disciplinary actions.

Of the 421 disciplinary actions, approximately 47 percent (196) were non-judicial punishments, approximately 48 percent (200) were adverse or administrative actions (e.g., chapter discharge or letters of reprimand), and more than 5 percent (25) of cases were punitive and consisted of 17 courts-martial and 8 discharges in lieu of courts-martial.

Of the 425 offenders of substantiated formal complaints, 5 percent (21) were repeat offenders. Of the 21 repeat offenders, 17 (80 percent) received 24 corrective actions. Thirteen percent (3 of 24) of corrective actions were judicial punishments, 2 were discharges in lieu of courts-martial and 1 was a court martial. Fifty percent (12 of 24) of corrective actions were non-judicial punishments, they were all adverse administrative actions. The remaining approximately 38 percent received administrative non-punitive corrective actions, 8 were adverse or administrative and 1 was in discharge in lieu of disciplinary action.

Informal Complaints

In FY19, for substantiated informal complaints, there were 158 total offenders of substantiated informal complaints, of which 151 were first-time offenders. Of the 151 first-time offenders, 134 (89 percent) received 215 corrective actions.

Three percent (7) of corrective actions were judicial punishments, 35 percent (75) were non-judicial punishments. Out of 75 non-judicial, there were 56 adverse administrative actions and 19 other corrective actions. Out of 215 corrective actions, 62 percent (133) were administrative actions; there were 54 adverse or non-punitive actions, 3 were referred to agency outside DOD, 3 were discharges in lieu of disciplinary actions and 73 were other corrective actions. The remaining 11 percent (17 of 151) of first-time offenders were pending corrective actions at the close of the fiscal year.

Of the 158 total offenders of substantiated informal complaints, 7 (4 percent) were repeat offenders, for which 7 corrective actions were administered. Twenty-nine percent (2 of 7) were non-judicial punishments. The remaining 71 percent (5 of 7) of corrective actions were administrative.

Retaliation Complaints

Formal

There were 48 retaliation referrals reported for 1,021 formal complaints; 77 percent (37 of 48) of retaliation referrals were for nonconsensual distribution of private images. Of the 48 retaliation referrals, 13 percent (6) were maltreatment, 8 percent (4) were ostracism and 2 percent (1) was reprisal/retaliation.

Informal

There were 22 retaliation referrals reported for 591 informal complaints, 64 percent (14 of 22) of retaliation referrals were for nonconsensual distribution of private images. Of the 22 retaliation referrals 14 percent (3) were ostracism, 9 percent (2) were maltreatment, 9 percent (2) were retaliation referrals and 5 percent (1) was reprisal/retaliation.

Way Forward

Sexual harassment is the antithesis of the ethos by which DOD operates. Any instance of sexually harassing behavior directed at a member of the Total Force is a breach of trust and the ethics of military service. Incidents of sexual harassment jeopardize combat readiness and mission accomplishment, weaken trust within the ranks, erode unit cohesion, and will not be tolerated, condoned, or ignored.

Holding sexual harassment offenders appropriately accountable for their action is paramount to good order and discipline. Leaders at all levels are responsible for fostering a climate of inclusion within their organizations that is free from harassment and does not tolerate retaliation or reprisal for reporting harassment allegations. Over the past year, ODEI has participated in Secretary of Defense-directed efforts to improve the Department's climate assessment process. This effort intends to provide leaders with actionable results and a suite of tools to better address sexually harassing behaviors and other misconduct that erodes mission readiness.

ODEI also continues to strengthen prevention of sexual harassment and other problematic behaviors by participating in DOD efforts to find solutions that extend beyond a single portfolio. This includes collaborative efforts with SAPRO, the Defense Suicide Prevention Office, Family Advocacy Program, and Service representatives to implement the Sexual Assault Prevention Plan of Action. By identifying and addressing problematic behaviors early, DOD strives to prevent inappropriate conduct from occurring or escalating. The Department's goal is to create respectful workplaces that are ready to execute the National Defense Strategy.