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After OSC Investigation, Army Changes Security Regulation Relating to Sexual Orientation

FOR IMMEDIATE RELEASE

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WASHINGTON, D.C./October 16, 2014 –

In response to a U.S. Office of Special Counsel (OSC) investigation, the Department of the Army modified a long-standing regulation that could disqualify civilian employees from holding sensitive positions based on their sexual orientation. The issue arose after the Army terminated a civilian employee because his supervisors and coworkers discovered his anonymous online posts that mentioned the employee's sexual orientation. For privacy reasons, the complainant's identity is being kept anonymous.

OSC's investigation found that the Army's removal of the complainant from federal service because of an anonymous online post constituted a prohibited personnel practice under 5 U.S.C. § 2302(b)(10), which is discrimination based on conduct that does not affect job performance.

In response to OSC's investigation, the Army earlier this year changed Army Regulation (AR) 380-67, which had allowed legal, private, and consensual sexual activities to disqualify an individual from holding a sensitive position. The regulation now states that "no adverse inference" may be drawn solely from sexual orientation. The revised language better reflects the security concerns the regulation was intended to address and encourages a more thoughtful analysis of whether an employees' private conduct may actually create a security concern and thereby impact their work performance.

Additionally, the Army provided remedial and sensitivity training for relevant supervisors and employees and, in September, the Army and the complainant favorably settled the complainant's individual claims.

"I commend the Army for making these important systemic changes that create a more equitable workplace and a more welcoming environment for employees regardless of their sexual orientation," said Special Counsel Carolyn Lerner.

The U.S. Office of Special Counsel (OSC) is an independent federal investigative and prosecutorial agency. Our basic authorities come from four federal statutes: the Civil Service Reform Act, the Whistleblower Protection Act, the Hatch Act, and the Uniformed Services Employment & Reemployment Rights Act (USERRA). OSC's primary mission is to safeguard the merit system by protecting federal employees and applicants from prohibited personnel practices, especially reprisal for whistleblowing, and to serve as a safe channel for allegations of wrongdoing. For more information, please visit our website at www.osc.gov.