

Membership Balance Plan
Defense Advisory Committee on Investigation, Prosecution, and Defense of
Sexual Assault in the Armed Forces

Agency: Department of Defense (DoD)

1. Authority: The Secretary of Defense, pursuant to section 546 of the Carl Levin and Howard P. “Buck” McKeon National Defense Authorization Act for Fiscal Year 2015 (“the FY 2015 NDAA”) (Public Law 113-291), as modified by section 537 of the National Defense Authorization Act for Fiscal Year 2016 (Public Law 114-92), and in accordance with the provisions of the Federal Advisory Committee Act (FACA) of 1972 (5 U.S.C., Appendix) and 41 C.F.R. § 102-3.50(a), established the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces (“the Committee”), a non-discretionary advisory committee.
2. Mission/Function: The Committee, pursuant to section 546(c)(1) of the FY 2015 NDAA, will advise the Secretary of Defense and the Deputy Secretary of Defense on the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to section 546(c)(2) and (d) of the FY 2015 NDAA, the Committee, not later than March 30 of each year, will submit to the Secretary of Defense through the General Counsel for the Department of Defense (GC DoD), and the Committees on Armed Services of the Senate and House of Representatives, a report describing the results of the activities of the Committee pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The Committee will review, on an ongoing basis, cases involving allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces.

Pursuant to Section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), not later than September 30, 2019, and not less frequently than once every two years thereafter, the Secretary of Defense, acting through the Committee, shall submit to the congressional defense committees a report that includes, with respect to the period of two years preceding the date of the submittal of the report, the following:

- (1) The number of instances in which a covered individual was accused of misconduct or crimes considered collateral to the investigation of a sexual assault committed against the individual.
- (2) The number of instances in which adverse action was taken against a covered individual who was accused of collateral misconduct or crimes as described in paragraph (1).
- (3) The percentage of investigations of sexual assaults that involved an accusation or adverse action against a covered individual as described in paragraphs (1) and (2).

The term “covered individual” means an individual who is identified as a victim of a sexual assault in the case files of a military criminal investigative organization.

Pursuant to section 540I(c) of the of the National Defense Authorization Act for Fiscal Year 2020 (“the FY 2020 NDAA”) (Public Law 116-92), not later than December 20, 2020, the Committee shall submit to the Secretary of Defense and the Committees on Armed Services of the Senate and House of Representatives a report setting forth:

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- (1) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces accused of a penetrative sexual assault offense or contact sexual assault offense in an unrestricted report made pursuant to Department of Defense Instruction 6495.02, including an unrestricted report involving a spouse or intimate partner, in all cases completed in each fiscal year assessed.
- (2) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces against whom charges were preferred pursuant to Rule for Courts-Martial 307 for a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.
- (3) A review and assessment, by fiscal year, of the race and ethnicity of members of the Armed Forces who were convicted of a penetrative sexual assault offense or contact sexual assault offense in all cases completed in each fiscal year assessed.

The report shall include such recommendations for legislative or administrative action as the committee considers appropriate in light of such results.

Pursuant to section 540K(d) of the FY 2020 NDAA, the Committee shall be consulted by the Secretary of Defense on a report to be submitted by the Secretary to the Committees on Armed Services of the Senate and House of Representatives not later than June 17, 2020, making findings and recommendations on the feasibility and advisability of a policy for the Department of Defense that would permit a victim of a sexual assault, that is or may be investigated as a result of a communication described in 540k(b), which victim is a member of the Armed Forces or an adult dependent of a member of the Armed Forces, to have the reporting on the sexual assault be treated as a restricted report without regard to the party initiating or receiving such communication.

3. Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the Committee will be composed of no more than 20 members. Committee members selected will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses. Members of the Committee may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve as members of the Committee.

Committee members, who are not full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109, to serve as special government employee (SGE) members. Committee members who are full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members.

All Committee members are appointed to provide advice on the basis of their best judgment without representing any particular points of view and in a manner that is free from conflict of interest.

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4. Other Balance Factors: N/A
5. Candidate Identification Process: The DoD, in selecting potential candidates for the Committee, reviews the educational and professional credentials of individuals with extensive professional experience in the points of view described above. Potential candidates may be gathered and identified by the General Council of the Department of Defense (GC DoD) and the Committee's staff.

Once potential candidates are identified, the Committee's Designated Federal Officer (DFO), working with the various stakeholders to include senior DoD officers and employees, reviews the credentials of each individual and narrows the list of potential candidates before forwarding the list to the GC DoD for review. During his or her review, the GC DoD strives to achieve a balance between the professional credentials of the individuals and the near-term subject matters that shall be reviewed by the Committee to achieve expertise in points of view regarding anticipated topics.

Once the GC DoD has narrowed the list of candidates and before formal nomination to the DoD Appointing Authorities, the list of potential candidates undergoes a review by the DoD Office of General Counsel and the Office of the Advisory Committee Management Officer (ACMO) to ensure compliance with federal and DoD governance requirements, including compliance with the Committee's statute, charter, and membership balance plan. Following this review, the GC DoD forwards to the list of nominees to the ACMO for approval by the DoD Appointing Authorities.

Following approval by the DoD Appointing Authorities, the candidates are required to complete the necessary appointment paperwork, to include meeting ethics requirements stipulated by the Office of Government Ethics for advisory committee members.

All Committee appointments are for a one-to-four year term of service, with annual renewals. No member, unless approved in a policy deviation by the DoD Appointing Authorities, may serve more than two consecutive terms of service on the Committee, including its subcommittees, or serve on more than two DoD Federal Advisory committees at one time.

Committee membership vacancies will be filled in the same manner as described above. Individuals being considered for appointment to the Committee, or any subcommittee, may not participate in any Committee or subcommittee work until his or her appointment has been approved by the DoD Appointment Authorities and the individual concerned is on-boarded in accordance with DoD policy and procedures.

6. Subcommittee Balance: The DoD, when necessary and consistent with the Committee's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the Committee.

Currently, the DoD has approved three subcommittees to the Committee. Subcommittee members must will have experience with the investigation, prosecution, and defense of allegations of sexual assault offenses.

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- 1) Case Review Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of cases involving such allegations.
- 2) Data Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its collection and analysis of data from cases involving such allegations.
- 3) Policy Subcommittee of the Defense Advisory Committee on Investigation, Prosecution, and Defense of Sexual Assault in the Armed Forces—composed of not more than 15 members to assess and make recommendations related to the investigation, prosecution, and defense of allegations of rape, forcible sodomy, sexual assault, and other sexual misconduct involving members of the Armed Forces based on its review of Department of Defense policies, Military Department policies, and Uniform Code of Military Justice provisions applicable to such allegations.

Individuals considered for appointment to any subcommittee of the Committee may come from members of the Committee or from new nominees, as recommended by the GC DoD and based upon the subject matters under consideration. Pursuant to DoD policy and procedures, the GC DoD shall follow the same procedures used for selecting and nominating individuals for appointment consideration by the DoD Appointing Authorities. Individuals being considered for appointment to any subcommittee of the Committee cannot participate in any Committee or subcommittee work until his or her appointment has been approved by the DoD Appointment Authorities, and the individual concerned is on-boarded according to DoD policy and procedures.

Subcommittee members shall be appointed for a term of service of one-to-four years, subject to annual renewals; however, no member shall serve more than two consecutive terms of service on the subcommittee, without prior approval by the Appointing Authorities. Subcommittee members, if not full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed as experts or consultants pursuant to 5 U.S.C. § 3109 to serve as SGE members. Subcommittee members who are full-time or permanent part-time Federal civilian officers or employees, or members of the Armed Forces, shall be appointed pursuant to 41 C.F.R. § 10-3.130(a) to serve as RGE members.

7. Other: As nominees are considered for appointment to the Committee, the DoD adheres to the Office of Management and Budget's Revised Guidance on Appointment of Lobbyists to Federal Advisory Committees, Boards, and Commissions (79 FR 47482; August 13, 2014) and the rules and regulations issued by the Office of Government Ethics.

8. Date Prepared: February 16, 2020