

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 Federal Advisory Committee Act (FACA) (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 (DAC-IPAD), as a non-discretionary advisory committee.
2. Mission/Function: Pursuant to section 546(c)(1) of the FY 2015 NDAA, the DAC-IPAD shall provide independent advice and recommendations on 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 ongoing review of cases.

Pursuant to sections 546(c)(2) and (d) of the FY 2015 NDAA, the DAC-IPAD, not later than March 30 of each year, shall submit to the Secretary of Defense through the General Counsel of 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 DAC-IPAD pursuant to section 546 of the FY 2015 NDAA, as amended, during the preceding year. The purpose of providing advice to the Secretary of Defense pursuant to this section, the DAC-IPAD shall review, on an ongoing basis, cases involving allegations of sexual misconduct described in section 546(c)(1) of the FY 2015 NDAA.

Pursuant to section 547 of the National Defense Authorization Act for Fiscal Year 2019 (Public Law 115-232), as amended by section 536 of the William M. (Mac) Thornberry National Defense Authorization Act for Fiscal Year 2021 (Public Law 116-283), not later than September 30, 2019 and once every two years thereafter, the Secretary of Defense, acting through the DAC-IPAD, 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 suspected 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 in the case files of a military criminal investigative organization as a victim of a sexual offense that occurred while that individual was serving on active duty as a member of the Armed Forces. The term ‘suspected of,’ when used with respect to a covered individual suspected of collateral misconduct or crimes as described in subsection (a), means that an investigation by a military criminal investigative organization reveals facts and circumstances that would lead a reasonable person to believe that the individual committed an offense under chapter 47 of title 10, United States Code (the Uniform Code of Military Justice).

3. Membership Criteria and Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD shall be composed of no more than 20 members. DAC-IPAD members must have extensive experience and subject matter expertise in the investigation, prosecution, or defense of allegations of sexual

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offenses. DAC-IPAD members may include Federal and State prosecutors, judges, law professors, and private attorneys. Members of the Armed Forces serving on active duty may not serve on the DAC-IPAD or any of its subcommittees.

The DoD, in evaluating potential candidates for the DAC-IPAD, considers the candidate's educational, experiential, and professional credentials with respect to the subject matters anticipated to be tasked to the DAC-IPAD. The DoD has found that viewing the complex issues facing the DoD through a multidisciplinary advisory committee provides the DoD and, more importantly, the American public with a broader understanding of the issues on which subsequent policy decisions are based.

Membership shall be fairly balanced to provide variety of background, experience, and thought in support of the DAC-IPAD's mission. The DAC-IPAD's membership balance is not static and the Secretary of Defense or the Deputy Secretary of Defense ("the DoD Appointing Authority") may change the membership based upon work assigned to the DAC-IPAD by the DoD Appointing Authority or the GC DoD, as the DAC-IPAD's Sponsor.

DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, 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 active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members. The DoD, unless otherwise provided for by statute or Presidential directive, does not use representative members on DoD Federal advisory committees. Each member, based upon their own individual experiences, exercises their own best judgment concerning matters before the DAC-IPAD, does not represent any particular point of view, and discusses and deliberates in a manner free from conflicts of interest.

4. Other Balance Factors: N/A
5. Candidate Identification Process: In accordance with DoD policy, the DoD GC shall nominate to the DoD Appointing Authority a slate of highly qualified individuals who represent a diverse and inclusive range of viewpoints, backgrounds, and experiences to serve as Committee members. To identify potential candidates, the DoD GC will request recommendations from senior career and political officials within the DoD. The DoD, in selecting potential candidates for the DAC-IPAD, reviews the expertise and professional credentials of individuals with extensive professional experience in the areas described in section 3 above.

Once potential candidates are identified, the DAC-IPAD Designated Federal Officer (DFO), in consultation with other senior DoD officers and employees, reviews the credentials of each individual and narrows the list of candidates for consideration by the GC DoD. In reviewing the list of potential candidates for nomination to the DoD Appointing Authority, the GC DoD strives to provide a membership that delivers diversity of background, experience, and thought in support the DAC-IPAD mission.

Before formal nomination to the DoD Appointing Authority, the list of candidates is reviewed by the DoD Office of General Counsel and the DoD Advisory Committee Management Officer (ACMO) to ensure compliance with Federal and DoD governance requirements, including compliance with the DAC-IPAD's statute, charter, and membership balance plan. Following this review, the DoD ACMO prepares the appropriate DoD Appointment Approval Instrument for the Director of Administration and Management, who submits it to the DoD Appointing Authority for approval.

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Following approval by the by the DoD Appointing Authority, the candidates must complete appointment paperwork and training, to include any financial disclosure or other ethics requirements stipulated by the

Office of Government Ethics for advisory committee members. All DAC-IPAD members are appointed for a term of service of one-to-four years with annual renewals. No member, unless approved by the DoD Appointing Authority, may serve more than two consecutive terms of service on the DAC-IPAD, including its subcommittees. Membership vacancies for the DAC-IPAD will be filled in the same manner as described above.

6. Subcommittee Balance: The DoD, as necessary and consistent with the DAC-IPAD's mission and DoD policies and procedures, may establish subcommittees, task forces, or working groups to support the DAC-IPAD ("subcommittees").

Individuals considered for appointment to any DAC-IPAD subcommittee may come from members of the DAC-IPAD itself 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 described above in section 5 to nominate new members for appointment.

Subcommittee members shall be appointed for a term of service of one-to-four years, with annual renewals. However, no member will serve more than two consecutive terms of service on a subcommittee unless previously approved by the DoD Appointing Authority. Subcommittee members who are not full-time or permanent part-time Federal civilian officers or employees, or active duty members of the Uniformed Services, 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 active duty members of the Uniformed Services, shall be appointed pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members.

7. Other: As nominees are considered for appointment to the DAC-IPAD, 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, 2022