

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), as further modified by section 535 of the National Defense Authorization Act for Fiscal Year 2020 (Public Law 116-92), and in accordance with chapter 10 of title 5, U.S.C. (commonly known as “the Federal Advisory Committee Act” or “FACA”) 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) 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 such cases.

Pursuant to sections 546(d) of the FY 2015 NDAA, the DAC-IPAD will, not later than March 30th of each year, 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 the House of Representatives, a report describing the results of the activities of the DAC-IPAD during the preceding year. The DAC-IPAD will also focus on matters of special interest to the DoD, as determined by the Secretary of Defense, the Deputy Secretary of Defense, or the GC DoD, as the DAC-IPAD’s Sponsor.

Pursuant to section 547 of the John S. McCain 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 offense committed against the individual.
- 2) The number of instances in which adverse action was taken against a covered individual who was suspected of collateral misconduct or crimes as described in paragraph (1).
- 3) The percentage of investigations of sexual offenses that involved suspicion of 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 immediately above, 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, U.S.C. (commonly known as “the Uniform Code of Military Justice” or “UCMJ”).

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

Pursuant to the Fiscal Year 2020 Joint Explanatory Statement (“the Joint Explanatory Statement”), the DAC-IPAD, shall:

- (1) Review, as appropriate, whether other justice programs (e.g., restorative justice programs, mediation) could be employed or modified to assist the victim of an alleged sexual assault or the alleged offender, particularly in cases when the evidence in the victim’s case has been determined not to be sufficient to take judicial, non-judicial, or administrative action against the perpetrator of the alleged offense.
 - (2) On a one-time basis, or more frequently, as appropriate, and adjunct to its review of court-martial cases completed in any particular year, assess whether military judges are according appropriate deference to victims of crimes who exercise their right to be heard under Rule for Courts-Martial (R.C.M.) 1001(c) at sentencing hearings, and appropriately permitting other witnesses to testify about the impact of the crime under R.C.M. 1001.
3. Membership Criteria and Points of View: Pursuant to section 546(b) of the FY 2015 NDAA, the DAC-IPAD shall consist of no more than 20 members, who must have extensive experience and subject matter expertise in the investigation, prosecution, and defense of allegations of sexual assault 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.

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 and the procedures described below, the GC DoD, as the DAC-IPAD Sponsor, shall nominate to the DoD Appointing Authority a list of highly qualified individuals who represent a diverse and inclusive range of viewpoints, backgrounds,

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

and experiences to serve as DAC-IPAD members. To identify potential candidates, the GC DoD should request recommendations from senior career and political officials within the DoD and members of the DAC-IPAD. 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 for nomination. In reviewing the list of potential candidates for nomination to the DoD Appointing Authority, the GC DoD, in consultation with the Special Assistant to the Secretary of Defense for White House Liaison, 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 Advisory Committee Management Officer (ACMO) and the DoD Office of General Counsel 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 Performance Management Officer and Director of Administration and Management (PIO/DA&M), who submits it to the DoD Appointing Authority for approval.

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 (OGE) 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.

DAC-IPAD members who are not full-time or permanent part-time Federal civilian officers or employees 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 shall be designated pursuant to 41 C.F.R. § 102-3.130(a) to serve as regular government employee (RGE) members.

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 ("subcommittees") to support the DAC- IPAD.

Individuals considered for appointment to any DAC-IPAD subcommittee may come from the DAC-IPAD membership 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.

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

Individual appointments to serve on DAC-IPAD subcommittees shall be approved by the DoD Appointing Authority or the PIO/DA&M, as appropriate, for a term of service of one-to-four years, with annual renewals, in accordance with DoD policy and procedures. No member shall serve more than two consecutive terms of service on a subcommittee without prior approval from the DoD Appointing Authority. Subcommittee members, who are not full-time or permanent part-time Federal civilian officers or employees 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 shall be designated pursuant to 41 C.F.R. § 102-3.130(a) to serve as RGE members.

Each subcommittee member is appointed to exercise their own best judgment on behalf of the DoD, without representing any particular point of view, and to discuss and deliberate in a manner free from conflicts of interest. Except for reimbursement for official travel and per diem related to the DAC-IPAD or its subcommittees, subcommittee members shall serve without compensation.

Currently, the DoD has approved three permanent subcommittees for the DAC-IPAD. Each subcommittee must comprise less than a majority of members of the DAC-IPAD, in keeping with FACA requirements. Each subcommittee cannot have more than 15 members. The approved subcommittees are:

- (1) Case Review Subcommittee—shall assess and provide independent advice to the DAC-IPAD 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) Policy Subcommittee—shall assess and provide independent advice to the DAC-IPAD 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 DoD policies, Military Department-specific policies, and UCMJ provisions applicable to such allegations.
 - (3) Special Projects Subcommittee—shall assess and provide independent advice to the DAC-IPAD 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 and analysis of existing, developing, and proposed statutory requirements and the DoD and Military Department-specific plans and policies, and the UCMJ and Manual for Courts-Martial rules and provisions, applicable to such requirements, plans, policies, and provisions.
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 OGE.
8. Date Prepared/Updated: February 16, 2024