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Managing Adverse and Reportable Information Regarding General and Flag Officers

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Prepared for the Office of the Secretary of Defense

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Summary

Background

Adverse and reportable information must be considered at the time of assignments, promotions, or retirements of senior military officers. However, the processes for identifying and considering this information, as well as the offices and resources involved, differ across the services and are not well documented or well understood. This monograph describes these processes and identifies several potential gaps: areas where actual practice differs from the required practice, or where current practice—or the supporting data—may be inadequate to consider adverse information appropriately and completely. This document considers two categories of information: adverse and reportable. These are defined as follows:

- Adverse information: “. . . any substantiated adverse finding or conclusion from an officially documented investigation or inquiry, or other official record for report. Adverse information of a credible nature does not include information that is more than 10 years old or records of minor offenses that did not result in personal harm or significant property damage.”¹

¹ Under Secretary of Defense for Personnel and Readiness (USD P&R), “General and Flag Officer Boards—Adverse Information of a Credible Nature,” memorandum for Secretary of the Army, Secretary of the Navy, Secretary of the Air Force, Chairman of the Joint Chiefs of Staff, Washington, D.C., July 19, 2006.

- Reportable information: “. . . where the allegations have received significant media attention or when the Senate Armed Services Committee (SASC) brings allegations to the attention of the Department of Defense.”²

Potential adverse information comes from multiple sources, including (but not limited to) criminal investigation files, Inspector General (IG) investigation files, equal employment opportunity (EEO) files, and equal opportunity (EO) files. Each service has an internal process to consider whether information extracted from these files qualifies as adverse information.

Personnel Processes

The personnel processes of interest that consider adverse and reportable information include promotion to O-7 and to O-8, promotion to and assignment for O-9 and O-10, and retirement from general and flag officer ranks.³

In the case of promotion to O-7 and O-8, adverse information must be considered by a promotion selection board. If adverse information for a newly selected officer is discovered after the promotion selection board, that information must be considered by a promotion review board, which recommends to the secretary of the military department whether to support that individual's promotion. The promotion selection board's chair and the service secretary must certify exemplary conduct of all selected officers. In the case of individuals with adverse or reportable information that has not previously been considered by the Senate, DoD must acknowledge and describe the information to the President and the Senate. Officers promoted to O-8 must also com-

² Department of Defense Instruction (DoDI) 1320.4, *Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate*, March 14, 1995.

³ These processes are described in Chapter Three.

plete a financial disclosure, which identifies any conflict of interest or financial information of concern.

When officers are recommended for an O-9 or O-10 assignment, whether or not the assignment involves a promotion, adverse and reportable information must be acknowledged and described. In most services, any existing adverse information is considered when the service recommends an officer for an assignment. In all cases, adverse and reportable information that has not previously been considered by the Senate must be clearly described and acknowledged as part of the nomination package. Further, individual officers must complete a financial disclosure and must also complete a questionnaire from the SASC that addresses prior misconduct. This information is considered by the Senate during the confirmation process.

The consideration of adverse and reportable information on the occasion of retirement from general and flag officer ranks differs slightly from consideration during the assignment and promotion processes. Retirement does not require Senate confirmation. The service secretary can approve retirements from the grades of O-7 and O-8; the Secretary of Defense has the authority to approve retirements from the grades of O-9 and O-10. The Secretary of Defense certifies to the President and the Senate that the retiring officer served satisfactorily in grade. The scope of the inquiries for adverse information also differs for retirement, as the focus is on the current grade rather than the ten years preceding the personnel action.

Evaluation and Discussion

This monograph includes several observations about the personnel processes that consider adverse and reportable information. These are summarized below.

Documented Guidance Is Incomplete or Requires Revision

The DoD instruction governing these processes (DoDI 1320.4) is supplemented by memoranda that should be incorporated into the instruction. Additionally, the instruction could be revised to provide

a clear definition of reportable information and to refer to both EEO and EO. The companion Chairman of the Joint Chiefs of Staff (CJCS) instruction (CJCSI 1331.01D) is inconsistent with the current DoD requirements. The services have their own written guidance. Some of these documents provide robust description of parts of the process, but no service has complete documented guidance about the assignment, promotion, and retirement processes for all general and flag officers.

The Services' Processes Differ, and There Is No Expert in the Process

The services' processes differ regarding the roles of the offices involved. As long as adverse and reportable information is managed consistently across the services, there appears to be no compelling reason that the services' processes or offices involved should be the same.

However, each service's process involves many different offices and individuals in the process, including (but not limited to) the general and flag officer management offices, offices responsible for officer management below the ranks of general and flag officer, the IG, the judge advocate general, general counsel, and those offices that manage additional data files, such as EO, EEO, and criminal investigations. In no service is there an individual with either expert knowledge of the entire process or responsibility for the entire process.

There Are Gaps in the EEO and EO Processes and the Data That Support Those Processes

At the time of this study, the services were not consistently checking both EO and EEO files consistent with the requirements to identify adverse information. Additionally, the EO and EEO data available in the services were insufficient to conduct such checks properly. This occurred in part, but not entirely, because those involved in general and flag officer processes did not always clearly understand the difference between EEO and EO.

Department of Defense Inspector General Screens Are Inconsistently Requested

Although the Department of Defense Inspector General (DoD IG) files must be queried both before and after selection boards, the services were not consistently doing so prior to O-7 selection boards.

The Amount of Information Provided to Selection Boards Varies; That Provided to Promotion Review Boards Is Lacking in Detail

Promotion selection boards are required to consider any adverse information. The summaries of such information provided to the selection boards tend to be approximately one page in length. The amount of information provided to promotion review boards varies: Some promotion review boards see the same type of one-page summary that would be shown to a selection board; some see redacted reports of investigation (ROIs) that are often seven to ten pages in length; some see complete investigative files, including, but not limited to, nonredacted ROIs.

There Is Greater Focus on the Assignment and Promotion Processes Than on the Retirement Process

DoD and the SASC focus primarily on assignment and promotion processes, rather than on the retirement process. This seems appropriate for two reasons. First, the retirement process only considers adverse and reportable information occurring within the officer's current pay grade. Further, the retirement process does not require Senate confirmation.

DoD and the SASC Have Different Philosophies About the Process

DoD and the SASC perceive these processes differently, and these differences are evident in several ways.

First, DoD defines and treats adverse information as an incident. In contrast, the SASC has expressed interest in the overall individual, with special emphasis on the judgment of the individual. The DoD process, and especially the IG processes within DoD, do not focus on an individual's judgment. DoD and the SASC also have both different thresholds of information required and different timelines.

Many senior officers in the services feel strongly that senior officers should have the opportunity and the authority and discretion to privately counsel officers, for their professional development. Such counseling may result in documentation, such as nonpunitive letters of communication. The SASC would like to see these documents, whereas the services maintain that those are private documents.

Additionally, the DoD definition of adverse information is limited to incidents within the past ten years, whereas the SASC asks officers nominated for O-9 and O-10 assignments to provide information about any adverse incident, without limiting the request to ten years.

Another difference is their perspectives on the scrutiny that should apply to officers of different pay grades; SASC staff expressed a view that more senior officers should endure more scrutiny, but the DoD system applies the same standards of adverse information to all officers. Also, increased scrutiny would suggest that adverse information that did not hinder promotion to O-7 might be of concern for subsequent nominations, but the current processes do not revisit adverse information that was considered by the SASC during a prior personnel action.

Finally, SASC staff believe that the services should consider each adverse case in more depth and should read all supporting investigative materials, whereas service personnel typically determine which cases require a thorough reading, without presuming the need to read all investigative materials for all adverse cases.

Recommendations

The recommendations that emerged from this RAND analysis are discussed in more detail in the final chapter of this monograph and include the following:

- The Office of the Secretary of Defense and the Joint Staff should update DoD and Joint Staff guidance.
- These guidance documents should clarify the definition of reportable information and the means by which the list of reportable

information will be updated and distributed to the general and flag officer management offices.

- The services should clarify, with formal service directives or instructions, the processes by which adverse and reportable information is considered in general and flag officer personnel processes.
- Each service should identify the individual within the service who is responsible for the entire nomination and retirement process, including the inclusion of adverse and reportable information.
- The services should ensure that they satisfy the requirement to prescreen all officers eligible for promotion to pay grades O-7 and O-8 and that the prescreens include DoD IG checks.
- The services should provide complete investigative materials to promotion review boards.
- Law and regulations should retain the opportunity for the services to privately counsel officers without risk of the incident being considered in a nomination.
- The SASC and DoD should initiate a dialog and recognize the differences between the DoD and the SASC perspectives regarding adverse information processes, especially pertaining to levels of scrutiny and issues of individual judgment.
- Service personnel should read the complete investigative materials of each case unless they explicitly determine the individual case does *not* require a complete reading.