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# Reporting Adverse Information About Senior Military Officers

The American public demands impeccable conduct from senior military officers. Thus, in 1988, when a recently disciplined lieutenant general retired at that rank with no mention being made of the disciplinary action, members of the Senate Armed Services Committee (SASC) voiced concern and asked to be told of any adverse information regarding flag and general officers as part of any confirmation process.<sup>1</sup> Accordingly, the Secretary of Defense directed the military departments to review all investigative files before forwarding any general or flag officer nomination for approval. He tasked them to forward any adverse information or to certify that the files had no such information. However, recent cases suggest that the processes for collecting and reporting this information differ across the services and are neither well documented nor well understood. The Department of Defense (DoD) asked researchers from the RAND National Defense Research Institute (NDRI) to review DoD procedures and those of the military services to ensure that consistent and reliable information supports the management of general and flag officers.

## Types of Information Considered and When

The services must consider two types of information: adverse and reportable. Adverse information is 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.<sup>2</sup>

<sup>1</sup> “Flag” rank refers to naval officers who are promoted above the grade of captain (O-6). However, the general officers of all services are referred to as “flag officers” in recognition of their right to fly a flag of rank.

<sup>2</sup> Under Secretary of Defense for Personnel and Readiness, “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.

## Key findings:

- By law, the Department of Defense (DoD) must report adverse information about general or flag officers nominated for promotion, assignment, or retirement.
- RAND reviewed DoD and service procedures and identified areas where practice differs from what is required and where current practice or supporting data may be inadequate.
- RAND recommended corrective actions, including a dialog between Congress and DoD to recognize differences in perspective.

Reportable information is where the allegations have received significant media attention or when the Senate Armed Services Committee (SASC) brings allegations to the attention of DoD.<sup>3</sup>

The personnel processes requiring consideration of adverse or reportable information include promotion to flag or general officer, assignment to O-9 or O-10 billets, and retirement from flag and general ranks. Boards reviewing promotion to O-7 or O-8 consider only adverse information, but the SASC must be apprised of any reportable information. Promotion or assignment to O-9 or O-10 requires consideration of both categories. Retirement does not require Senate confirmation, just that the Secretary of Defense certify that the retiring officer has served satisfactorily.

## Findings

RAND identified several areas where actual practice differs from what is required and where current practice or supporting data may be inadequate.

<sup>3</sup> Department of Defense Instruction 1320.4, *Military Officer Actions Requiring Approval of the Secretary of Defense or the President, or Confirmation by the Senate*, March 14, 1995.

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**Documented guidance is incomplete or requires revision.** Issues include the need for clearer definitions on reportable information and how that pertains to Equal Opportunity (EO) and Equal Employment Opportunity (EEO) information,<sup>4</sup> some inconsistencies between joint and DoD guidance, and the fact that no service has fully documented guidance about the assignment, promotion, and retirement processes for general and flag officers.

**Services' processes differ and lack a process expert.** Each service's process involves many offices and individuals and lacks an individual with either expert knowledge of or responsibility for the entire process.

**EEO and EO processes and the data that support those processes have gaps.** While the EO and EEO processes function as intended, the services were not consistently checking both EO and EEO files, and the EO and EEO data available in the services were insufficient to conduct such checks properly. This occurred in part because those involved in general and flag officer processes did not always clearly understand the difference between EEO and EO.

**DoD Inspector General (IG) screens are inconsistently requested.** Although the DoD IG files must be queried both before and after selection boards, the services were not consistently doing so before O-7 selection boards.

**The amount of information provided to selection boards varies; that provided to promotion review boards often lacks detail.** Promotion selection boards must consider any adverse information. Most generally see one-page summaries, and some contend that these can be subjective or written in ways that minimize the adverse action. Promotion review boards (convened when the adverse material comes to light after selection but before promotion) get different amounts of information, ranging from complete investigations (several binders of information), to redacted reports, to one-page summaries.

**DoD and SASC philosophies about the process differ.** DoD and the SASC differ regarding the threshold of information to be considered, the pay grade of the individual involved, and the duration of the information. DoD tends to regard adverse information as pertaining to an incident or an investigation and focuses on whether an allegation is substantiated. Interviews with SASC staff suggest that they focus more on the entirety of an individual, especially an

individual's judgment. This becomes problematic because IG investigations are not intended to evaluate judgment—indeed, IG investigators are explicitly instructed *not* to assess judgment. Additionally, DoD strongly believes that the commanders should be able to counsel an officer about an incident in writing without that incident or counseling being included in the personnel files. In contrast, SASC staff members are more inclined to think that even incidents that were treated privately should be considered in the promotion of more senior officers. Also, the SASC perspective would apply different standards for different pay grades, whereas DoD currently applies the same standard regardless of pay grade. Finally, DoD defines adverse information, in part, as less than ten years old, but the SASC questionnaire asks individuals about potential adverse incidents with no time restriction. These differences explain how the two organizations can have different views of the same individual.

## Recommendations

NDRI researchers recommend the following:

- DoD and the Joint Staff should update their guidance.
- Guidance 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, in formal service directives or instructions, the processes for considering adverse information in general and flag officer personnel actions.
- Each service should identify an individual 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 promotion review boards with complete investigative materials.
- Laws and regulations should retain the opportunity for the services to counsel officers privately without risk of the incident being considered in a nomination.
- The SASC and DoD should discuss the differences between the SASC and DoD perspectives regarding adverse information processes, especially pertaining to levels of scrutiny and issues of individual judgment. ■

<sup>4</sup> EO and EEO differ in that EO cases are those with a military victim or complainant, and EEO cases involve a civilian victim or complainant.

This research brief describes work done for the RAND National Defense Research Institute documented in *Managing Adverse and Reportable Information Regarding General and Flag Officers*, by Margaret C. Harrell and William M. Hix, MG-1088-OSD (available at <http://www.rand.org/pubs/monographs/MG1088.html>), 2012, 74 pp., \$22.50, ISBN: 978-0-8330-5233-9. This research brief was written by Jerry M. Sollinger. The RAND Corporation is a nonprofit institution that helps improve policy and decisionmaking through research and analysis. RAND's publications do not necessarily reflect the opinions of its research clients and sponsors. ® is a registered trademark.

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