

SUPPORTING STATEMENT - PART A

Department of Defense Internal Review Team on Racial Disparities in the Investigative and Military Justice Systems (0704-XXXX)

1. Need for the Information Collection

House Report 115-200, accompanying a bill for the National Defense Authorization Act (NDAA) for Fiscal Year (FY) 2018, included a provision for the Government Accountability Office (GAO) to assess the extent to which disparities may exist in the military justice system. In May 2019, GAO issued its report, *DoD and the Coast Guard Need to Improve their Capabilities to Assess Racial and Gender Disparities* (GAO-19-344) (included in Supporting Documents). GAO's analysis of all offenses under the Uniform Code of Military Justice found that Black and Hispanic service members were more likely than white service members to be the subjects of recorded investigations in all of the Military Services and were more likely to be tried in general and special courts-martial in the Army, Navy, Marine Corps, and Air Force. With the concurrence of the Department of Defense (DoD), GAO recommended that the Secretary of Defense conduct an evaluation to identify the causes of disparities in the military justice system and take steps to address them.

In addition, section 549F of the NDAA for FY 2022 directed each Military Department to conduct an assessment of racial disparities in military justice and discipline processes, as well as military personnel policies. The Secretary of each Military Department is required to submit this assessment to the Congressional Armed Services Committees and to the Comptroller General of the United States, not later than December 27, 2022 (one year after enactment of the FY 2022 NDAA). Each Military Department's submission must include recommendations for statutory and regulatory changes the Secretary concerned considers appropriate to address racial disparities.

Section 549G of the NDAA for FY 2022 (codified at title 10, U.S. Code, section 485), directs the Secretary of each Military Department to submit to the Secretary of Defense, not later than March 1 of each year, a report on racial, ethnic, and sex demographics in the military justice system during the prior year. The law further directs the Secretary of Defense to submit these reports to the Committees on Armed Services of the Senate and the House of Representatives not later than April 30 of each year.

President Biden has put equity at the center of his agenda with a whole of government approach to embed racial justice across Federal agencies, policies, and programs.

Heeding the President's call to action, and mindful of Congressional interest and GAO's recommendation, and consistent with authorities under sections 113 and 132 of title 10, United States Code, the Deputy Secretary of Defense (DSD) directed the establishment of the Internal Review Team (IRT) on Racial Disparities in the Investigative and Military Justice Systems (included in Supporting Documents). The review is a 90-day "sprint" focused on addressing the perceived root causes of racial disparities in the DoD

investigative and military justice systems. The review will provide actionable recommendations the Department can implement or establish to improve strategies, programs, policies, processes, and resources to address these disparities. The IRT comprises General Officers (GO) and members of the civilian Senior Executive Service (SES) who, with the support of subject matter experts, will focus their full-time efforts on this review. The IRT commenced its work on June 1, 2022, and is charged to provide its findings and recommendation to the DSD not later than August 24, 2022. It is anticipated that IRT findings and recommendations will further inform the reports to Congress required by sections 549F and G, of the FY 2022 NDAA, referenced above.

A key component of the IRT’s review is an assessment of military leaders. This information collection will consider the role of first- and second-line military leaders (officers, noncommissioned officers, and enlisted personnel) who have a duty to take actions and make decisions to address Service member misconduct “on the ground”, as it occurs, and are empowered to do so. These military leaders can choose from a variety of “tools” to address Service member missteps—ranging from “on the spot” corrective counseling or re-training, to proposing that the member be administratively separated (i.e., fired or terminated) from the Service, or recommending that the Service member receive non-judicial punishment (under Article 15 of the Uniform Code of Military Justice) or be subject to court-martial. The IRT’s hypothesis is that these actions and decisions, the nature of the “tool” chosen to effectuate them, and the manner in which this “tool” is applied, have a significant effect on whether and how the service member will become involved in the military justice system. The IRT proposes to collect information via focus groups with officers, noncommissioned officers, and enlisted personnel currently serving in first- and second-line military leadership positions (or who have served in such positions within the last 365 days) to investigate this hypothesis.

2. Use of the Information

The IRT proposes to engage in information collection through focus groups with military leaders, as set forth below.

The IRT will conduct focus groups in the context of visits to eight (8) military installations in the Continental United States, representing all Military Services, each with heavy concentrations of assigned military personnel, as follows:

INSTALLATION	DATE OF VISIT	SERVICE
Naval Station Norfolk, VA	11 July 2022	Navy
Langley Air Force Base, VA	12 July 2022	Air Force
Camp LeJeune, NC	13 July 2022	Marine Corps
Fort Bragg, NC	15 July 2022	Army
Naval Station San Diego, CA	18 July 2022	Navy
Camp Pendleton, CA	19 July 2022	Marine Corps
Fort Carson, CO	21 July 2022	Army
Peterson Air Force Base, CO	22 July 2022	Air Force/Space Force

At least three IRT members will participate in each installation visit; not including travel, the duration of each installation visit will be one (1) day. At each installation, the IRT members will organize into teams comprising at least two IRT members. Each IRT Team will conduct either three or four focus groups over the course of the day-long visit. Depending on the number of IRT Teams, at least three, but no more than six focus groups will be conducted at each installation.

On June 29, 2022, Ms. Julie Blanks, the Executive Director of the Office of the Under Secretary of Defense for Personnel and Readiness, the sponsor of the IRT, briefed the Assistant Secretaries for Manpower and Reserve Affairs of each of the Military Services. Ms. Blanks advised the Assistant Secretaries of the IRT’s proposal to collect information from military leaders via focus groups, and informed each of the installations under his/her cognizance the IRT proposed to visit, and the date of each such visit. Ms. Blanks asked each Assistant Secretary to facilitate the information collection effort by providing the name and contact information of an appropriate senior point of contact (POC) at each installation. That senior POC will assist the IRT Support Team in preparing for the IRT visit and identifying Service members for participation in the focus groups. Each Assistant Secretary expressed support for the IRT efforts and each indicated a willingness to provide all necessary support and assistance.

As soon as OMB approval for information collection is received, a member of the IRT Support Team will contact the designated senior POC at each installation to be visited. The IRT Support Team will request that the senior POC work in conjunction with installation’s Chief of Military Personnel to identify and provide the IRT with direct contact information (phone and email) for 200 military personnel currently serving in the command/on the installation in first- or second line leadership positions (or who have so served within the last 365 days). These 200 personnel will be comprised as follows:

POOL of POTENTIAL FOCUS GROUP RESPONDENTS at each INSTALLATION			
NUMBER	OFFICER/Enlisted/NCO	GRADE RANGE	SELF-IDENTIFIED RACE/ETHNICITY
20	Officer	O-1 – O-3	White
20	Officer	O-1 – O-3	All Underrepresented Groups
20	Officer	O-4 – O-5	White
20	Officer	O-4 – O-5	All Underrepresented Groups
30	Enlisted/NCO	E-4 – E-6	White
30	Enlisted/NCO	E-4 – E-6	All Underrepresented Groups
30	NCO	E-7 – E-9	White
30	NCO	E-7 – E-9	All Underrepresented Groups

A Service member’s self-identified race or ethnicity will be determined through a review of the member’s military personnel file, in which this information is recorded.

Underrepresented Groups comprise Service members who self-identify as American Indian or Alaska Native, Asian, Black or African American, Hispanic or Latino, or Native Hawaiian or Other Pacific Islander.

Once the requisite information is received from the installation senior POC, members of the IRT Support Team will generate a preliminary focus group schedule and reserve private, professional sites/facilities on the installation, at which the focus groups will be conducted. As soon as possible in advance of the installation visit, a member of the IRT will reach out personally, via DoD electronic mail, to each Service member identified, inviting his/her participation in a focus group (template e-mail invitation included in Supporting Documents). It is anticipated that only about one-third to one-half of the 200 personnel identified will be available and interested in participating. The IRT Support Team will monitor Service member responses and engage with the installation senior POC to ensure that those who agree to participate are properly excused from other duties during the time period in which the focus group will be conducted.

Focus groups will be scheduled for 90 minutes, but at the discretion of the IRT facilitators, and with the consent of the respondents, may be extended to no longer than 120 minutes. Focus groups will be conducted in person.

6-16 Service members will participate in each focus group. Each focus group will be comprised wholly of officer respondents in the same grade range or wholly of enlisted personnel/noncommissioned officer respondents in the same grade range, as appropriate. To the greatest extent practicable, each focus group will include a diversity of participants across all races and ethnicities.

Each focus group will be facilitated by an IRT Team. The focus group collection instrument is included with Supporting Documents. The IRT Team facilitating the focus group will use the collection instrument as a "menu" from which to select questions to pose to all focus group participants. The questions are not intended to elicit one-word answers, but rather to prompt a respondent's contemplation, fulsome narrative response, as well as group discussion. The members of the IRT Team will use their best judgment in probing respondents for clarification of their responses or in encouraging a respondent to elaborate further on a response or comment of particular interest or import.

Each IRT Team will be accompanied by one, but no more than two members of the IRT Support Team designated to serve as note takers. The purpose of the note takers is to free the members of the IRT to give their full attention to the focus group participants with whom they are engaging. As to each focus group, the note takers will identify in their notes *only* the name(s) of the IRT members facilitating the group; the date, time, and location of the focus group; and the military status and grade range of the focus group participants (e.g., officers or non-commissioned officers, O-4 – O-5).

As the first order of business, the IRT members will advise respondents that their participation in the focus group is *voluntary*. Any focus group participant may choose not to participate at any time and/or may decline to answer any or all of the questions posed.

Further, participants will be assured that their participation is *confidential*. Neither participants' names, nor any other personally identifiable information (PII) will be recorded or documented by the IRT. The IRT facilitator will explain that although the note takers are taking notes about statements or comments made in the context of the focus group, these notes will not include the name of the speaker, nor will any statement or comment be attributed by the IRT to a specific participant. Statements or comments will not be shared with participants' military leadership, supervisor, or chain of command. Although key findings from across all focus groups will be summarized and discussed with the IRT in the form of themes, trends, or vignettes, the other members of the IRT will not know who participated in the focus groups. These same rules will apply should a statement, theme, trend, or vignette be referenced and discussed in the IRT's briefing to the DSD or in the comprehensive written outline accompanying the briefing.

Concurrent with the progress of a focus group, the note takers will summarize responses to questions, statements, and comments made by respondents. A note taker may hand write notes or may type his/her notes on a laptop or other device, then print them to hard copy. No other record documenting the focus group will be created or maintained.

The notes generated by the note takers will be safeguarded. A hard copy of such notes will be maintained, in chronological order by date of focus group, in a file maintained by the IRT.

Further, although focus group respondents will not be required or prompted to submit additional written matters for consideration by the IRT, respondents who request to do so will be provided the electronic mail address for an IRT "drop box" established for this purpose, and to which only members of the IRT and IRT Support Team have access. Respondents would be advised not to include any PII in any such submission. Any additional matters submitted by a focus group participant to the IRT "drop box" will be filed with the notes pertaining to the focus group in which the submitter participated.

Only members of the IRT and IRT Support Team personnel will have access to the file and its contents. The file will be incorporated in the records of the IRT and retained in accordance with Records Retention Schedule File Number 212-04 (included in Supporting Documents).

As the result of this information collection, the IRT will have access to a body of qualitative information provided by military leaders (including military officers, noncommissioned officers, and enlisted personnel) regarding their personal experiences in addressing Service member misconduct and performance matters. This information may assist the IRT in identifying themes, trends, and vignettes that illustrate how the actions and decisions of military leaders affect whether and how a subordinate Service member will become involved in the military justice system. Note that in addition to the conduct of the focus groups described above, the IRT will conduct a virtual "Listening Session" to solicit non-standardized general feedback from key organizations with expertise on certain topics of interest and import to the IRT's work. Notice of the "Listening Session" will be published in the Federal Register.

The IRT will aggregate the information gleaned from both the focus groups and the “Listening Session” better to understand similarities and differences in the nature of racial disparities and the perceived root causes thereof, applicable to members of the armed forces and members of the American public. The totality of this information will inform IRT recommendations to address the perceived root causes of racial disparities in DoD investigative and military justice systems. The information also may be used to inform the reports to Congress required by sections 549F and G, of the FY 2022 NDAA, referenced above.

3. Use of Information Technology

The percentage of electronic submissions for the focus groups is expected to be zero (0%). Respondents will be invited to participate in an “in person” focus group of 6-16 participants of the same military status and in the same grade range.

4. Non-duplication

The information obtained through this collection is unique and is not already available for use or adaptation from another cleared source.

5. Burden on Small Businesses

This information collection does not impose a significant economic impact on a substantial number of small businesses or entities.

6. Less Frequent Collection

This is a one-time information collection. The IRT has only 90 days in which to conduct its work and submit actionable findings and recommendations to the Deputy Secretary of Defense. As set forth above, the IRT views this information collection as essential to its work.

7. Paperwork Reduction Act Guidelines

This collection of information does not require collection to be conducted in a manner inconsistent with the guidelines delineated in 5 CFR 1320.5(d)(2).

8. Consultation and Public Comments

A 1-day Federal Register Notice (FRN) for the collection published on July 7, 2022. The 1-Day FRN citation is 87 FR 40515.

9. Gifts or Payment

No payments or gifts are being offered to respondents as an incentive to participate in the collection.

10. Confidentiality

A Privacy Act Statement is not required for this collection because we are not requesting individuals to furnish PII for a system of records.

A System of Record Notice (SORN) is not required for this collection because records are not retrievable by PII.

A Privacy Impact Assessment (PIA) is not required for these information collections because PII is not being collected electronically.

These records are permanent and will be retained in accordance with Records Retention Schedule File Number 212-04. File Title: Special Studies and Task Force Files, cut off annually or upon termination of the committee, board, or group; transfer to NARA 20 years after cutoff.

11. Sensitive Questions

This information collection will include questions of a sensitive nature relating to the topic of race and ethnicity. Because the IRT's efforts are focused on the identification of racial disparities in the investigative and military justice systems of the DoD; the perceived root causes of these disparities; and the means by which these disparities can be addressed, such questions go to the crux of the Deputy Secretary's purpose in establishing the IRT and are fundamental to the IRT's mission and this information collection.

12. Respondent Burden and its Labor Costs

Part A: ESTIMATION OF RESPONDENT BURDEN

(1) Focus Groups with Military Leaders

- (a) Number of Respondents: 480
- (b) Number of Responses Per Respondent: 1
- (c) Number of Total Annual Responses: 1
- (d) Response Time: 2 hours
- (e) Respondent Burden Hours: 960 hours

(3) Total Submission Burden

- (a) Total Number of Respondents: 480
- (b) Total Number of Annual Responses: 480
- (c) Total Respondent Burden Hours: 960 hours

Part B: LABOR COST OF RESPONDENT BURDEN

(1) Focus Groups with Military Leaders

- (a) Number of Total Annual Responses: 480
- (b) Response Time: 2 hours
- (c) Respondent Hourly Wage: \$28.15
- (d) Labor Burden per Response: \$56.30
- (e) Total Labor Burden: \$27,024.00

The Respondent hourly wage was determined by using the 2022 Military Active and Reserve Pay Table at [at](#)

<https://www.dfas.mil/Portals/98/Documents/militarymembers/militarymembers/pay-tables/2022%20Military%20Pay%20Tables.pdf>

- (2) Overall Labor Burden
 - (a) Total Number of Annual Responses: 480
 - (b) Total Labor Burden: \$27,024.00

13. Respondent Costs Other Than Burden Hour Costs
There are no annualized costs to respondents other than the labor burden costs addressed in Section 12 of this document to complete this collection.

14. Cost to the Federal Government

Part A: LABOR COST TO THE FEDERAL GOVERNMENT

- (1) Focus Groups with Military Leaders
 - (a) Number of Total Annual Responses: 480
 - (b) Processing Time per Response: 2.0 hours
 - (c) Hourly Wage of Worker(s) Processing Responses: \$60.00
 - (d) Cost to Process Each Response: \$120.00
 - (e) Total Cost to Process Responses: \$57,600.00

- (2) Overall Labor Burden to the Federal Government
 - (a) Total Number of Annual Responses: 480
 - (b) Total Labor Burden: \$57,600.00

Part B: OPERATIONAL AND MAINTENANCE COSTS

- (1) Cost Categories
 - (a) Equipment: \$0
 - (b) Printing: \$100.00
 - (c) Postage: \$0
 - (d) Software Purchases: \$0
 - (e) Licensing Costs: \$0
 - (f) Other/Travel: \$30,000.00

- (2) Total Operational and Maintenance Cost: \$30,100.00

Part C: TOTAL COST TO THE FEDERAL GOVERNMENT

- (1) Total Labor Cost to the Federal Government: \$57,600.00

- (2) Total Operational and Maintenance Costs: \$30,100.00

- (3) Total Cost to the Federal Government: \$87,700.00

15. Reasons for Change in Burden
This is a new information collection with a new associated burden.

16. Publication of Results

De-identified information from this collection may be included in the IRT's August 24, 2022, briefing to the Deputy Secretary of Defense, at which the IRT will set forth its findings and recommendations. The Deputy's briefing will be augmented by a comprehensive outline that elaborates on the IRT's findings and recommendations and the underlying rationale therefore, potentially including de-identified information derived from this collection.

Given that the information derived from this collection is expected to be qualitative in nature, there is ***no intent to publish the information for statistical use***. A decision as to whether the IRT's briefing to the Deputy and/or the supporting outline will be published is ***reserved to the Deputy Secretary of Defense***. It is likely that IRT recommendations approved for implementation will be set forth in a directive memorandum to the Heads of the DoD Components, together with a follow-on implementation plan, and will be subject to regular progress reviews and reports.

17. Non-Display of OMB Expiration Date

We are not seeking approval to omit the display of the expiration date of the OMB approval on the collection instrument.

18. Exceptions to "Certification for Paperwork Reduction Submissions"

We are not requesting any exemptions to the provisions stated in 5 CFR 1320.9.